

**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

ROBERT GARFIELD, derivatively on )  
behalf of THE ODP CORPORATION )  
and individually on behalf of himself )  
and all other similarly situated )  
stockholders of THE ODP )  
CORPORATION, )

C.A. No. 2021-0420-JTL

Plaintiff, )

v. )

QUINCY L. ALLEN, KRISTIN A. )  
CAMPBELL, MARCUS B. DUNLOP, )  
CYNTHIA T. JAMISON, )  
FRANCESCA RUIZ DE )  
LUZURIAGA, V. JAMES MARINO, )  
SHASHANK SAMAT, WENDY L. )  
SCHOPPERT, GERRY P. SMITH, )  
DAVID M. SZYMANSKI, NIGEL )  
TRAVIS, and JOSEPH S. )  
VASSALLUZZO, )

Defendants. )

and )

THE ODP CORPORATION, )  
Nominal Defendant. )

**NOTICE OF PENDENCY AND SETTLEMENT OF ACTION**

**TO: ALL CURRENT RECORD AND BENEFICIAL OWNERS OF THE ODP CORPORATION (“ODP” OR THE “COMPANY”) COMMON STOCK, AND ALL HOLDERS OF ODP COMMON STOCK, EITHER RECORD OR BENEFICIALLY, AS OF MARCH 10, 2020.**

**BROKERAGE FIRMS, BANKS, AND OTHER PERSONS OR ENTITIES WHO HELD OR HOLD SHARES OF RECORD WHO ARE NOT ALSO BENEFICIAL**

**OWNERS ARE DIRECTED TO FORWARD THIS NOTICE PROMPTLY TO THE BENEFICIAL OWNERS OF SUCH SHARES, OR REQUEST ODP TO DO SO (SEE SECTION AT THE END OF THIS NOTICE ENTITLED “NOTICE TO PERSONS OR ENTITIES HOLDING RECORD OWNERSHIP ON BEHALF OF OTHERS.”).**

**PLEASE READ ALL OF THIS NOTICE CAREFULLY. YOUR RIGHTS WILL BE AFFECTED BY THE LEGAL PROCEEDINGS IN THE ACTION. THIS NOTICE RELATES TO THE PROPOSED SETTLEMENT OF A LAWSUIT AND CONTAINS IMPORTANT INFORMATION. IF THE COURT APPROVES THE PROPOSED SETTLEMENT, YOU WILL BE FOREVER BARRED FROM CONTESTING THE FAIRNESS OF THE SETTLEMENT OR PURSUING THE RELEASED PLAINTIFF CLAIMS (AS DEFINED HEREIN) AGAINST THE RELEASED DEFENDANT PARTIES (AS DEFINED HEREIN).**

**IN THIS ACTION, THERE IS NO COMMON FUND UPON WHICH YOU CAN MAKE A CLAIM FOR MONETARY PAYMENT. IF YOU DO NOT OBJECT TO THE TERMS AND CONDITIONS OF THE PROPOSED SETTLEMENT OR THE AMOUNT OF ATTORNEYS’ FEES AND EXPENSES DESCRIBED IN THIS NOTICE, YOU ARE NOT OBLIGATED TO TAKE ANY ACTION.**

The purpose of this Notice is to inform you about (i) the pendency of the above-captioned stockholder derivative and class action (the “Action”), which was brought by a stockholder of The ODP Corporation (“ODP”) on behalf and against ODP, pending in the Court of Chancery of the State of Delaware (the “Court”); (ii) a proposed settlement of the Action (the “Settlement”), subject to Court approval and other conditions as set forth in a Stipulation and Agreement of Compromise, Settlement, and Release that was filed with the Court and is publicly available for review as indicated in paragraph 23 below; (iii) the hearing that the Court will hold on June 21, 2023 at 1:30 p.m., to determine whether to approve the class and the Settlement, and to consider Plaintiff’s Counsel’s application for an award of attorneys’ fees and expenses and Plaintiff’s Counsel’s application for an incentive award to Plaintiff; and (iv) ODP stockholders’ rights with respect to the proposed Settlement, Plaintiff’s Counsel’s application for an award of attorneys’

fees and expenses, and Plaintiff’s Counsel’s application for an incentive award to Plaintiff.<sup>1</sup>

**PLEASE READ THIS NOTICE CAREFULLY AND IN ITS ENTIRETY.  
YOUR RIGHTS WILL BE AFFECTED BY THIS ACTION.**

**WHAT IS THE PURPOSE OF THIS NOTICE?**

1. The Court directed the issuance of this Notice because Current Stockholders of ODP and holders of ODP common stock as of March 10, 2020 (a “Class Member”) have a right to know about their options before the Court rules on the proposed Settlement and understand how this action generally affects their legal rights.

2. The issuance of this Notice is not an expression by the Court of any findings of fact or any opinion concerning the merits of any claim in the Action, and the Court has not yet decided whether to approve the Settlement.

**WHAT IS THE CASE ABOUT? WHAT HAS HAPPENED SO FAR?**

THE FOLLOWING DESCRIPTION OF THE ACTION AND THE SETTLEMENT HAS BEEN PREPARED BY COUNSEL FOR THE SETTLING PARTIES. THE COURT HAS MADE NO FINDINGS WITH RESPECT TO SUCH MATTERS, AND THIS NOTICE IS NOT AN EXPRESSION OR STATEMENT BY THE COURT OF FINDING OF FACT.

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<sup>1</sup> The terms and conditions of the Settlement are set forth in the Stipulation and Agreement of Compromise, Settlement, and Release dated November 8, 2022 (the “Stipulation” or the “Agreement”), entered into by and among individual defendants Quincy L. Allen, Kristin A. Campbell, Marcus B. Dunlop, Cynthia T. Jamison, Francesca Ruiz de Luzuriaga, V. James Marino, Shashank Samant, Wendy L. Schoppert, Gerry P. Smith, David M. Szymanski, Nigel Travis, and Joseph S. Vassalluzzo, nominal defendant The ODP Corporation, and Plaintiff Robert Garfield (the “Plaintiff”).

3. By a letter dated March 18, 2021, counsel for Plaintiff made a stockholder litigation demand on the Company's Board of Directors, alleging a breach of fiduciary duty in connection with stock awards granted to the Company's Chief Executive Officer, Gerry P. Smith, in March 2020. Specifically, the demand alleged that, in March 2020, the Board granted Smith Performance Shares that entitled him to earn a maximum of 4,733,840 shares, if the results, at the end of the performance period, were above target, thus, exceeding the 3,500,000 limit imposed by the Company's 2019 Long-Term Incentive Plan (the "Plan"). On April 9, 2021, the Board responded to Plaintiff's litigation demand, contending that the awards complied with the Plan.

4. On May 13, 2021, Plaintiff filed his Verified Stockholder Derivative and Class Complaint on behalf and against ODP, asserting a derivative claim of breach of fiduciary duty and a class claim of breach of contract against the Board and Gerry P. Smith, and a derivative unjust enrichment claim against Gerry P. Smith. The Complaint alleged that the Board granted Gerry P. Smith awards in March 2020 that exceeded the limits imposed by the stockholder-approved 2019 Plan, thus breaching its fiduciary duties to the Company. Further, Plaintiff alleged that, by declining to modify the awards to Smith as requested in the demand, the Board breached its fiduciary duties. In the Complaint, Plaintiff sought declaratory relief and damages.

5. On July 15, 2021, the Defendants filed a Motion to Dismiss Plaintiff's Complaint pursuant to Rule 12(b)(6). On May 24, 2022, the Court denied Defendants' Motion to Dismiss in its entirety.

6. The Settling Parties engaged in settlement discussions in early June 2022. Ultimately, following arm's length negotiations, on August 1, 2022, the Settling Parties reached an agreement-in-principle to settle the Action. The settlement terms include an acknowledgement by Gerry P. Smith in which he states that he is not entitled to any awards in excess of the annual limit in the Company's 2019 Long-Term Incentive Plan and that he will not receive any replacement compensation for the value of any shares in excess of the annual limit. Further, the Board's Compensation and Talent Committee shall implement certain Resolutions set forth in paragraph 9 below.

7. On November 8, 2022, the Parties entered into a Stipulation and Agreement of Compromise, Settlement, and Release setting forth the terms of the Settlement.

## WHAT ARE THE TERMS OF THE SETTLEMENT?

8. As consideration for the Settlement, within ten days (10) days of the Effective Date, Gerry P. Smith shall execute the following Acknowledgement:

### Acknowledgement

I, Gerry Smith, hereby acknowledge and agree to the action of the Compensation and Talent Committee of the Board of Directors of The ODP Corporation (the “Committee” and the “Company”, respectively) set out in the Unanimous Written Consent attached hereto as Exhibit A with respect to the performance share awards granted to me in March 2020 under the Company’s 2019 Long-Term Incentive Plan. I further acknowledge and agree that I shall not be entitled to any shares in excess of the Performance Share Limit, or cash settlement or replacement compensation of same, and hereby relinquish any such rights or claims thereto.

9. Within ten (10) days of the Effective Date, the Board’s Compensation and Talent Committee shall adopt the following Resolutions of the Compensation and Talent Committee by Unanimous Written Consent without a Meeting:

- a. The Performance Share Limit applies to the Awards such that in no event will the total number of Shares paid to Mr. Smith under the Awards exceed the Performance Share Limit.
- b. If, based on the performance of the Company, the total number of Shares payable under both Awards to Mr. Smith could exceed the Performance Share Limit, the Committee shall reduce the number of Shares payable under one or both of the Awards so that the total number of Shares payable under the Awards in the aggregate equals or is below the Performance Share Limit and shall not pay the value of such excess Shares to Mr. Smith in cash as part of any settlement of the Awards or as a replacement thereof.

10. On October 26, 2022, the Board approved the terms of the proposed Settlement, including the text of the Acknowledgement and Resolutions described in paragraphs 8 and 9 above.

**WHAT ARE THE PARTIES' REASONS FOR THE SETTLEMENT?**

11. Plaintiff and Plaintiff's Counsel thoroughly considered the facts and law underlying the claims asserted in the Action. Plaintiff's agreement to settle the Action is not intended to be and shall not be construed as an admission or concession concerning the relative strength or merit of the claims. However, Plaintiff and Plaintiff's Counsel also recognize the significant risk, expense, and length of continued proceedings necessary to prosecute the Action through trial and possible appeals, and took these factors into account.

12. Plaintiff and Plaintiff's Counsel have determined that the proposed Settlement is fair, reasonable, adequate, and in the best interests of ODP, its stockholders, and the Class Members. The Settlement provides immediate and substantial benefits for the Company without the risk that continued litigation could result in obtaining similar or lesser relief after continued extensive and expensive litigation, including trial and possible appeals, the outcome of which is inherently uncertain.

13. The Defendants have vigorously denied, and continue to vigorously deny, all allegations of wrongdoing, fault, liability or cognizable damage to ODP, its stockholders, or the Class Members, and assert that they acted properly at all times. The Defendants have agreed to the Settlement solely because they consider it desirable that the claims against them in the Action be settled and dismissed with prejudice in order to, among other things, (i) avoid the substantial expense, inconvenience and distraction of continued litigation, and (ii) finally put to rest the claims asserted against the Defendants in the Action.

**WHAT WILL HAPPEN IF THE SETTLEMENT IS APPROVED?  
WHAT CLAIMS WILL THE SETTLEMENT RELEASE?**

14. If the Settlement is approved, the Court will enter a Final Order and Judgment (the "Judgment"). Pursuant to the Judgment, upon the Effective Date of

the Settlement (as defined in the Stipulation), the Action will be dismissed with prejudice and the following releases will occur:

**Release of Claims by Plaintiff, ODP, the Class Members, and other ODP stockholders:** ODP, Plaintiff, the Class, and every other ODP stockholder, on behalf of ODP, on behalf of themselves and any other person or entity who could assert any of the Released Plaintiff's Claims on their behalf, in such capacity only shall fully, finally, and forever release, settle, and discharge and shall forever be enjoined from prosecuting, the Released Plaintiff's Claims against Defendants and any other Released Defendant Parties.

“Released Claims Against the Defendant Parties” means any and all manner of claims, demands, rights, liabilities, losses, obligations, duties, costs, debts, expenses, interest, penalties, sanctions, fees, attorneys’ fees, actions, potential actions, causes of action, suits, agreements, judgments, decrees, matters, issues and controversies of any kind, nature, or description whatsoever, whether legal or equitable, known or unknown (including Unknown Claims as defined in ¶1.42 of the Stipulation), disclosed or undisclosed, accrued or unaccrued, apparent or nonapparent, foreseen or unforeseen, matured or not matured, suspected or unsuspected, liquidated or not liquidated, fixed or contingent that have been or could have been asserted by the Released Plaintiff Parties and any Class Member in any capacity against the Released Defendant Parties or that ODP could have asserted directly against the Released Defendant Parties or that any ODP stockholder could have asserted derivatively on behalf of ODP against the Released Defendant Parties in any court, tribunal, forum, or proceeding, whether direct, derivative, individual, or class in nature, that are based upon, arise out of, or relate in any way, directly or indirectly to the allegations made in, or the subject matter of, the Action or Litigation Demand, including, but not limited to: (i) FCF Performance Share Award; (ii) TSR Performance Share Award; and (iii) the adherence of the Awards to the Performance Share Limit of the Company’s 2019 Long-Term Incentive Plan, except for claims relating to the enforcement of the Settlement.

“Released Defendant Parties” means, whether or not each or all of the following Persons or entities were named, served with process, or

appeared in the Action, the Settling Defendants and the Company, and their respective successors, successors-in-interest, predecessors, predecessors-in-interest, parents, subsidiaries, affiliates, partners, directors, employees, officers, lawyers, advisors, insurers, reinsurers, trustees, executors, heirs, estates, spouses, marital communities, assigns or transferees, and any person or entity acting for or on behalf of any of them and each of them.

**Release of Claims by Defendants:** Defendants, on behalf of themselves and any other person or entity who could assert any of the Released Defendants' Claims on their behalf, in such capacity only, shall fully, finally, and forever release, settle, and discharge, and shall forever be enjoined from prosecuting, the Released Defendants' Claims against Released Plaintiff Parties.

“Released Claims Against the Plaintiff Parties” means any and all manner of claims, demands, rights, liabilities, losses, obligations, duties, costs, debts, expenses, interest, penalties, sanctions, fees, attorneys' fees, actions, potential actions, causes of action, suits, agreements, judgments, decrees, matters, issues and controversies of any kind, nature, or description whatsoever, whether legal or equitable, known or unknown (including Unknown Claims as defined in ¶1.42 of the Stipulation), disclosed or undisclosed, accrued or unaccrued, apparent or nonapparent, foreseen or unforeseen, matured or not matured, suspected or unsuspected, liquidated or not liquidated, fixed or contingent that have been or could have been asserted by the Released Defendant Parties against the Released Plaintiff Parties in any court, tribunal, forum, or proceeding that are based upon, arise out of, or relate in any way, directly or indirectly to the institution, prosecution, or settlement of the claims against any or all of the Released Defendant Parties and the Company, except for claims relating to the enforcement of the Settlement.

“Released Plaintiff Parties” means Plaintiff, Plaintiff's Counsel, and their respective successors, successors-in-interest, predecessors, predecessors-in-interest, parents, subsidiaries, affiliates, partners, directors, employees, officers, lawyers, advisors, insurers, reinsurers, trustees, executors, heirs, estates, spouses, marital communities,



assigns or transferees and any person or entity acting for or on behalf of any of them and each of them.

**“Release of Unknown Claims”** means any claims that any of the Settling Parties does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Parties, including claims which, if known by him, her, or it, might have affected his, her, or its settlement with, and release of the Released Parties, or might have affected his, her, or its decision not to object to this Settlement. With respect to all Released Claims, the Released Parties stipulate and agree that, upon the Effective Date, the Settling Parties and Class Members shall be deemed to have, and by operation of the Order and Final Judgment shall have, expressly waived the provisions, rights, and benefits of California Civil Code § 1542, which provides:

“A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.”

and any law of any state or territory of the United States, or principle of common law or foreign law, which is similar, comparable, or equivalent to California Civil Code § 1542. The Settling Parties each agree and acknowledge that this waiver is an essential term of the Settlement, without which the consideration given herein would not have been given by the Parties.

15. If the Settlement is approved and the Effective Date occurs, no ODP stockholder or Class Member will be able to bring another action asserting the Released Plaintiff’s Claims against any of the Released Defendant Parties on behalf of ODP or individually.

16. Pending final determination by the Court of whether the Settlement should be approved, all proceedings in the Action, other than proceedings necessary to carry out or enforce the terms and conditions of the Settlement, have been stayed by the Court. By order of the Court, pending final determination of whether the

Settlement should be approved, Plaintiff, Class Members, and all other ODP Stockholders are barred and enjoined from commencing, instituting or prosecuting any of the Released Claims against any of the Released Parties.

### **CLASS CERTIFICATION**

The Court has provisionally ordered that, for settlement purposes, the Action shall be maintained as a non-opt out class action pursuant to Chancery Court Rules 23(a), 23(b)(1), and 23(b)(2) on behalf of the class.

### **HOW WILL PLAINTIFF'S COUNSEL BE PAID?**

Plaintiff's Counsel have not received any payment for their services in pursuing the claims asserted in the Action, nor have Plaintiff's Counsel been reimbursed for their out-of-pocket expenses. Plaintiff's Counsel invested their own resources in pursuing the Action on a contingency basis, meaning they would only recover their expenses and be compensated for their time if they created benefits through the Action. In light of the risks undertaken in pursuing the Action on a contingency basis and the benefits created for ODP, its stockholders, and the class through the Settlement and prosecution of the Action, Plaintiff's Counsel intends to petition the Court for an award of attorneys' and litigation expenses to be paid by Defendants' insurers, and from no other source, which shall not exceed \$410,000 in the aggregate (the "Fee and Expense Amount"). Plaintiff also intends to petition the Court for an incentive award of up to \$2,000 be paid to Plaintiff solely from the Fee and Expense Amount (the "Incentive Award"). Any attorneys' fees and expenses that are awarded by Court (the "Fee Award") and/or the Incentive Award will be paid by Defendants and/or their insurers. Defendants and ODP agree that they will not object to or otherwise take any position on the Fee and Expense Amount and/or the Incentive Award so long as the Fee and Expense Amount seeks an award no greater than \$410,000 in the aggregate and the Incentive Award seeks no greater than \$2,000 of the Fee Award. The Court will determine the amount of any Fee Award to Plaintiff's Counsel and any Incentive Award to Plaintiff at the Settlement Hearing.

### **WHEN WILL THE SETTLEMENT HEARING BE HELD? DO I HAVE A RIGHT TO APPEAR AT THE SETTLEMENT HEARING?**

17. The Court will consider the Settlement and all matters related to the Settlement at the Settlement Hearing. The Settlement Hearing will be held before

The Honorable J. Travis Laster, Vice Chancellor, on June 21, 2023 at 1:30 p.m., at the Court of Chancery of the State of Delaware, Court of Chancery Courthouse, Courtroom 8D, in the Leonard L. Williams Justice Center, 500 North King Street, Wilmington, Delaware 19801 (or by telephone or Zoom if the Settlement Hearing is conducted in such a manner).

18. The Court will consider any submission made in accordance with the provisions below even if an Objector (as defined herein) does not attend the hearing. Participation in the Settlement is not conditioned on attendance at the Settlement Hearing.

19. Any record or beneficial stockholder of ODP or Class Member who objects to the Settlement, the proposed Order and Final Judgment to be entered in the Action, Plaintiff's Counsel's application for the Fee and Expense Amount, and/or Plaintiff's application for the Incentive Award, or who otherwise wishes to be heard (an "Objector"), may appear in person (or by telephone or Zoom if the Settlement Hearing is conducted in such manner) or by his, her, or its attorney at the Settlement Hearing and present any evidence or argument that may be proper and relevant; provided, however, that no Objector shall be heard or entitled to contest the approval of the terms and conditions of the Settlement, or, if approved, the Order and Final Judgment to be entered thereon, unless he, she, or it has, no later than ten business days before the Settlement Hearing (unless the Court in its discretion shall thereafter otherwise direct, upon application of such Objector and for good cause shown), files with the Register in Chancery, Court of Chancery, Leonard L. Williams Justice Center, 500 North King Street, Wilmington, Delaware 19801, the following: (i) proof of membership in the Class, proof of ownership of ODP's stock from November 8, 2022 continuously to the date of the objection; (ii) a written and signed notice of the Objector's intention to appear, which states the name, address, and telephone number of his, her, or its counsel; (iii) a detailed statement of the objections to any matter(s) before the Court; and (iv) a detailed statement of all grounds for such objection(s) and the reasons for the Objector's desire to appear and to be heard, as well as all documents or writings which the Objector desires the Court to consider. Any such filings with the Court must also be served upon each of the following counsel (i) by hand, first class U.S. mail, or express service, and (ii) by email such that they are received no later than ten business days prior to the settlement hearing:

Brian Farnan (No. 4089)  
Michael J. Farnan (No. 5165)  
FARNAN LLP  
919 North Market Street, 12th Floor  
Wilmington, DE 19801  
(302) 777-0300  
[bfarnan@farnanlaw.com](mailto:bfarnan@farnanlaw.com)

Steven J. Purcell  
Robert H. Lefkowitz  
PURCELL & LEFKOWITZ LLP  
369 Lexington Avenue, 3rd Floor  
New York, NY 10017  
(212) 725-1000  
[spurcell@pjlfirm.com](mailto:spurcell@pjlfirm.com)

*Counsel for Plaintiff*

Brian M. Rostocki (No. 4599)  
Benjamin P. Chapple (No. 5871)  
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Wilmington, DE 19801  
(302) 778-7500  
[brostocki@reedsmith.com](mailto:brostocki@reedsmith.com)

William M. Regan  
Allison M. Wuertz  
HOGAN LOVELLS LLP  
390 Madison Avenue  
New York, NY 10017  
(212) 918-3000  
[william.regan@hoganlovells.com](mailto:william.regan@hoganlovells.com)

*Counsel for Defendants*

20. Unless the Court orders otherwise, any person or entity who fails to object in the manner described above shall be deemed to have waived any objection to the proposed Settlement (including the right to appeal), unless the Court in its discretion allows such objection to be heard at the Settlement Hearing, and shall be forever barred from raising any objection to the Settlement, Plaintiff's Counsel's application for an award of attorneys' fees and expenses, and Plaintiff's application for an incentive fee award, or any other matter related to the Settlement, in the Action or in any other action or proceeding, and will otherwise be bound by the Order and Final Judgment to be entered and the release to be given.

**CAN I SEE THE COURT FILE? WHOM SHOULD I  
CONTACT IF I HAVE QUESTIONS?**

21. This Notice contains only a summary of the terms of the proposed Settlement. For more detailed information about the matters involved in the Action, you are referred to the papers on file in the Action, including the Stipulation and its Exhibits, which may be inspected at the Office of the Register in Chancery in the Court of Chancery of the State of Delaware, Leonard L. Williams Justice Center, 500 North King Street, Wilmington, DE 19801, during regular business hours of each business day. If you have questions regarding the Settlement, you may write or call the following representative for Plaintiff's Counsel: Steven J. Purcell, PURCELL & LEFKOWITZ LLP, 369 Lexington Avenue, 3<sup>rd</sup> Floor, New York, NY 10017, (212) 725-1000, [spurcell@pjlfirm.com](mailto:spurcell@pjlfirm.com) and Brian Farnan, FARNAN LLP, 919 North Market Street, 12<sup>th</sup> Floor, Wilmington, DE 19801, 302 777-0300.

**DO NOT CALL OR WRITE THE COURT OR THE OFFICE OF THE  
REGISTER IN CHANCERY REGARDING THIS NOTICE.**

**NOTICE TO PERSONS OR ENTITLED HOLDING RECORD  
OWNERSHIP ON BEHALF OF OTHERS**

22. Brokerage firms, banks, and other persons or entities who hold shares of ODP common stock as record owners, but not as beneficial owners, are directed to either (a) promptly request from ODP sufficient copies of this Notice to forward to all such beneficial owners and after receipt of the requested copies promptly forward such Notices to all such beneficial owners; or (b) promptly provide a list of the names and addresses of all such beneficial owners to Broadridge Corporate Issuer Solutions c/o Broadridge Investor Communications Solutions, Inc., 51

Mercedes Way, Edgewood NY 11717, Attn: Corporate Action Dept. Email: [BCISClassActionMailingService@Broadridge.com](mailto:BCISClassActionMailingService@Broadridge.com) after which ODP will promptly send copies of the Notice to such beneficial owners. This Notice is also available at [www.odpcorp.com/investor-relations](http://www.odpcorp.com/investor-relations).



**IN THE COURT OF CHANCERY OF THE STATE OF DELAWARE**

ROBERT GARFIELD, derivatively on )  
behalf of THE ODP CORPORATION )  
and individually on behalf of himself )  
and all other similarly situated )  
stockholders of THE ODP )  
CORPORATION, )

C.A. No. 2021-0420-JTL

Plaintiff,

v.

QUINCY L. ALLEN, KRISTIN A. )  
CAMPBELL, MARCUS B. DUNLOP, )  
CYNTHIA T. JAMISON, )  
FRANCESCA RUIZ DE )  
LUZURIAGA, V. JAMES MARINO, )  
SHASHANK SAMANT, WENDY L. )  
SCHOPPERT, GERRY P. SMITH, )  
DAVID M. SZYMANSKI, NIGEL )  
TRAVIS, and JOSEPH S. )  
VASSALLUZZO )

Defendants.

and

THE ODP CORPORATION, )  
Nominal Defendant. )

**STIPULATION AND AGREEMENT  
OF COMPROMISE, SETTLEMENT, AND RELEASE<sup>1</sup>**

<sup>1</sup> Unless otherwise noted, all capitalized terms shall have the meaning set forth in ¶ 1.

This Stipulation and Agreement of Compromise, Settlement, and Release, dated November 11, 2022, is made and entered into by and among the following parties (the “Settling Parties”), by and through their respective counsel: (i) plaintiff Robert Garfield, individually, derivatively on behalf of The ODP Corporation (“ODP”), and on behalf of all other similarly situated stockholders of ODP; (ii) individual defendants Quincy L. Allen, Kristin A. Campbell, Marus B. Dunlop, Cynthia T. Jamison, Francesca Ruiz de Luzuriaga, V. James Marino, Shashank Samant, Wendy L. Schoppert, Gerry P. Smith, David M. Szymanski, Nigel Travis, and Joseph S. Vassalluzzo; and (iii) nominal defendant ODP. The Stipulation is intended by the Settling Parties to fully, finally, and forever resolve, discharge, and settle the Released Claims (as defined below in ¶ 1.33) upon Court approval and subject to the terms and conditions hereof.

## **I. PROCEDURAL BACKGROUND**

### **A. The Litigation Demand**

By a letter dated March 18, 2021, Plaintiff made a litigation demand (the “Litigation Demand”) alleging breaches of fiduciary duties in connection with stock awards granted to the Company’s Chief Executive Officer, Gerry P. Smith (“Smith”) that purportedly exceeded the annual limit of 3,500,000 shares imposed by the Company’s stockholder-approved 2019 Long-Term Incentive Plan. Specifically, the Litigation Demand alleged that, in March 2020, the Board granted Smith



Performance Shares that entitled him to earn a maximum of 4,733,840 shares, if the results, at the end of the performance period, were above target, thus, exceeding the 3,500,000 limit imposed by the 2019 Plan. Through his Litigation Demand, Plaintiff requested, among other things, that the Board modify the Awards to comply with the Performance Share Limit of the 2019 Plan.

On April 9, 2021, the Board responded to the Plaintiff's Litigation Demand, taking the position that the stock awards granted to Smith complied with the 2019 Plan because the Board had the discretion to limit any award that might exceed the 2019 Plan's cap and, in any event, the number of shares granted to Smith could not be determined until March of 2023.

**B. The Action**

On May 13, 2021, Plaintiff filed a Verified Stockholder Derivative and Class Action Complaint on behalf of ODP, asserting a derivative claim of breach of fiduciary duty and a class claim of breach of contract against the Board and Smith, and a derivative unjust enrichment claim against Smith. The Complaint alleged that the Board granted Smith awards in March 2020 that exceeded the limits imposed by the 2019 Plan. Further, Plaintiff alleged that, by declining to modify the awards to Smith as requested in the Litigation Demand, the Board breached its fiduciary duties. In the Complaint, Plaintiff sought declaratory relief and damages.

**C. The Motion to Dismiss**

On July 15, 2021, Defendants filed their Motion to Dismiss Plaintiff's Complaint pursuant to Rule 12(b)(6). Plaintiff filed an opposition to Defendants' Motion to Dismiss on September 15, 2021. On October 15, 2021, Defendants filed their Reply.

The Court heard argument on March 1, 2022, and issued an Opinion and Order denying the Motion to Dismiss on May 24, 2022.

**D. Settlement Negotiations**

Beginning in June 2022, the parties engaged in arm's-length settlement discussions to explore a potential resolution of the Action. Over the next several weeks, the Settling Parties engaged in good faith and extensive negotiations over Plaintiff's settlement demands.

Ultimately, on August 1, 2022, the Settling Parties reached an agreement in principle to settle the Action on the terms set forth below, subject to Court approval.

Prior to reaching an agreement on the material terms of the Settlement, the Parties did not negotiate the amount of attorneys' fees to be requested in any petition by Plaintiff and his counsel for an award of attorneys' fees and expenses.

**II. CLAIMS OF THE STOCKHOLDER AND BENEFITS OF SETTLEMENT**

Plaintiff and his counsel believe that the claims asserted in the Action have merit but recognize and acknowledge the expense of continued proceedings

necessary to prosecute the Action against the Settling Defendants through trial and potential appeal. Plaintiff and his counsel have considered the uncertain outcome and the risk and expense of litigation, especially in complex actions such as the Action, as well as the difficulties and delays inherent in such litigation. Plaintiff's Counsel are also mindful of the inherent problems of proof of, and possible defenses to, the claims asserted in the Action, as well as potential difficulties in establishing damages to ODP. Based on Plaintiff's and his counsel's evaluation of these considerations, they have determined that the Settlement set forth in this Stipulation will provide substantial value and benefits to ODP and its stockholders.

### **III. THE SETTLING DEFENDANTS' DENIALS OF WRONGDOING AND LIABILITY**

The Settling Defendants have denied and continue to deny each of the claims and contentions alleged by Plaintiff. The Settling Defendants have denied and continue to deny all allegations of wrongdoing or liability against them or any of them arising out of, based upon, or related to any of the conduct, statements, acts, or omissions alleged, or that could have been alleged in the Action. Without limiting the foregoing, the Settling Defendants have denied and continue to deny, among other things, that they breached their fiduciary duties or any other duty owed to ODP, its stockholders, or the Class, breached their contract, unjustly enriched Smith via the Awards, or that the Company, its stockholders, and the Class suffered any damage or were harmed as a result of any conduct alleged in the Action or otherwise.

The Settling Defendants have further asserted and continue to assert that, at all relevant times, they acted in good faith and in a manner they reasonably believed to be in the best interests of ODP, its stockholders, and the Class.

Nonetheless, the Settling Defendants also have taken into account the expense, uncertainty, and risks inherent in any litigation, especially in complex cases like this Action, and that the proposed Settlement would, among other things: (a) bring to an end the expenses, burdens, and uncertainties associated with the continued litigation of the claims asserted in the Action; (b) finally put to rest those claims; and (c) confer substantial benefits upon them, including further avoidance of disruption of their duties due to the pendency and defense of this Action. Therefore, the Settling Defendants have determined that it is desirable and beneficial that the Action, and all of the Settling Parties' disputes related thereto, be fully and finally settled in the manner and upon the terms and conditions set forth in this Stipulation. Pursuant to the terms set forth below, this Stipulation (and the Exhibits) shall in no event be construed as or deemed to be evidence of an admission or concession by the Settling Defendants with respect to any claim of fault, liability, wrongdoing, or damage whatsoever.

#### **IV. BOARD REVIEW OF THE SETTLEMENT**

On October 26, 2022, the Board reviewed the proposed Settlement and, in an exercise of its independent business judgment, confirmed that the Settlement and its

terms provide a substantial benefit to, and are in the best interests of, the Company, its stockholders, and the Class.

## **V. CLASS CERTIFICATION**

Solely for purposes of the Settlement and for no other purpose, the Individual Defendants and ODP stipulate and agree to: (a) certification of the Action as a non-opt out class action pursuant to Chancery Court Rules 23(a), 23(b)(1), and 23(b)(2) on behalf of the Class; (b) appointment of Plaintiff as representatives for the Class; and (c) appointment of Plaintiff's Counsel as counsel for the Class.

## **VI. TERMS OF STIPULATION AND AGREEMENT OF SETTLEMENT**

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Parties through their counsel of record and subject to the approval of the Court pursuant to Rules 23 and 23.1, and the other conditions set forth herein, that in exchange for the Consideration and Resolutions set forth below, the Released Claims shall be fully, finally, and forever compromised, settled, discharged, relinquished, and released, and the Action shall be dismissed with prejudice as to the Settling Defendants, upon and subject to the terms and conditions of this Stipulation, as follows:

### **1. Definitions**

As used in this Stipulation, the following terms have the meanings specified below:

1.1 “Action” means the above-captioned action, *Garfield v. Allen et al.*, C.A. No. 2021-0420-JTL, pending in this Court.

1.2 “ODP” or the “Company” means The ODP Corporation, including, but not limited to, its predecessors, successors, partners, joint ventures, subsidiaries, affiliates, divisions, and assigns.

1.3 “Approval Date” means the date on which the Court enters the Order and Final Judgment.

1.4 “Award” or “Awards” mean the FCF Performance Share Award and the TSR Performance Share Award, individually or collectively as the context may require, granted to Smith on March 10, 2020 under the 2019 Plan.

1.5 “FCF Performance Share Award” means the award granted to Smith on March 10, 2020 under the 2019 Plan pursuant to which he could receive a maximum of 2,601,140 shares depending on ODP’s free cash flow generated during the relevant performance period.

1.6 “TSR Performance Share Award” means the award granted to Smith on March 10, 2020 under the 2019 Plan pursuant to which he could receive a maximum of 2,132,700 shares depending on ODP’s total shareholder return during the relevant performance period.

1.7 “Board” means the board of directors of The ODP Corporation.

1.8 “Change of Control” means the sale of all or substantially all the assets of the Company; any merger, restructuring, consolidation, or acquisition of the Company with, by or into another corporation, entity, or person that results in a change in the ownership of more than fifty percent (50%) of the voting capital stock of the Company; or any change in the ownership of more than fifty percent (50%) of the voting capital stock of the Company in one or more related transactions.

1.9 “Class” means all Persons who owned shares of The ODP Corporation common stock, either of record or beneficially, as of March 10, 2020, including any and all of their respective successors-in-interest, predecessors, representatives, trustees, executors, administrators, heirs, assigns or transferees, immediate and remote, and any person or entity acting for or on behalf of, or claiming under, any of them, and each of them, other than Excluded Holders.

1.10 “Class Member” means any Person who is a member of the Class.

1.11 “Committee” means the Compensation and Talent Committee of the Board of Directors of The ODP Corporation.

1.12 “Committee Defendants” means Kristin A. Campbell, Francesca Ruiz de Luzuriaga, V. James Marino, and Nigel Travis.

1.13 “Complaint” means the Verified Stockholder Derivative and Class Action Complaint filed by Plaintiff in this Court on May 13, 2021.

1.14 “Court” means the Court of Chancery of the State of Delaware.

1.15 “Current Stockholders” means any Person or Persons who are record or beneficial owners of ODP common stock as of the close of business on the date of this Stipulation.

1.16 “Defendants’ Counsel” means any counsel of record that have appeared in this Action or rendered legal services to any of the Settling Defendants in connection with the Action.

1.17 “Effective Date” means the first date by which all of the events and conditions specified in ¶ 6.1 of this Stipulation have been met and have occurred.

1.18 “Excluded Holders” means the Individual Defendants and each of their immediate family members, affiliates, legal representatives, heirs, estates, successors, or assigns, as well as any entity in which any Individual Defendant has a direct or indirect controlling interest.

1.19 “Final” means the expiration of all time to seek appeal or other review of the Order and Final Judgment, or if any appeal or other review of such Order and Final Judgment is filed and not dismissed, after such Order and Final Judgment is upheld on appeal in all material respects and is no longer subject to further review or reargument to the Delaware Supreme Court.

1.20 “Individual Defendants” means Quincy L. Allen, Kristin A. Campbell, Marcus B. Dunlop, Cynthia T. Jamison, Francesca Ruiz de Luzuriaga, V. James



Marino, Shashank Samant, Wendy L. Schoppert, Gerry P. Smith, David M. Szymanski, Nigel Travis, and Joseph S. Vassalluzzo.

1.21 “Litigation Demand” means the demand sent by Plaintiff to the Board on or about March 18, 2021.

1.22 “Notice” means the Notice of Pendency and the Settlement of the Action substantially in the form annexed hereto as Exhibit C.

1.23 “Order and Final Judgment” means the Order and Final Judgment substantially in the form attached to this Stipulation as Exhibit D, approving the terms of the Settlement set forth in this Stipulation, dismissing this Action with prejudice, and providing for release of the Released Claims.

1.24 “Performance Share Limit” means the limit set forth in Section 4.2(c) of the 2019 Plan.

1.25 “Person” or “Persons” mean an individual, corporation, limited liability company, professional corporation, limited liability partnership, partnership, limited partnership, association, joint venture, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, and any other business or legal entity, and each of their heirs, predecessors, successors, representatives, or assignees.

1.26 “Plaintiff” means Robert Garfield.

1.27 “Plaintiff’s Counsel” means any counsel of record that have appeared in this Action or rendered legal services to Plaintiff in connection with the Action.

1.28 “Released Defendant Parties” means, whether or not each or all of the following Persons or entities were named, served with process, or appeared in the Action, the Settling Defendants and the Company, and their respective successors, successors-in-interest, predecessors, predecessors-in-interest, parents, subsidiaries, affiliates, partners, directors, employees, officers, lawyers, advisors, insurers, reinsurers, trustees, executors, heirs, estates, assigns or transferees, and any person or entity acting for or on behalf of any of them and each of them.

1.29 “2019 Plan” means the Company’s stockholder-approved 2019 Long-Term Incentive Plan.

1.30 “Released Plaintiff Parties” means Plaintiff, Plaintiff’s Counsel, and their respective successors, successors-in-interest, predecessors, predecessors-in-interest, parents, subsidiaries, affiliates, partners, directors, employees, officers, lawyers, advisors, insurers, reinsurers, trustees, executors, heirs, estates, assigns or transferees and any person or entity acting for or on behalf of any of them and each of them.

1.31 “Released Claims Against the Defendant Parties” means any and all manner of claims, demands, rights, liabilities, losses, obligations, duties, costs, debts, expenses, interest, penalties, sanctions, fees, attorneys’ fees, actions, potential

actions, causes of action, suits, agreements, judgments, decrees, matters, issues and controversies of any kind, nature, or description whatsoever, whether legal or equitable, known or unknown (including Unknown Claims as defined in ¶ 1.42), disclosed or undisclosed, accrued or unaccrued, apparent or nonapparent, foreseen or unforeseen, matured or not matured, suspected or unsuspected, liquidated or not liquidated, fixed or contingent that have been or could have been asserted by the Released Plaintiff Parties and any Class Member in any capacity against the Released Defendant Parties or that ODP could have asserted directly against the Released Defendant Parties or that any ODP stockholder could have asserted derivatively on behalf of ODP against the Released Defendant Parties in any court, tribunal, forum, or proceeding, whether direct, derivative, individual, or class in nature, that are based upon, arise out of, or relate in any way, directly or indirectly to the allegations made in the Action, including, but not limited to: (i) the FCF Performance Share Award; (ii) the TSR Performance Share Award; and (iii) the Litigation Demand, except for claims relating to the enforcement of the Settlement.

1.32 “Released Claims Against the Plaintiff Parties” means any and all manner of claims, demands, rights, liabilities, losses, obligations, duties, costs, debts, expenses, interest, penalties, sanctions, fees, attorneys’ fees, actions, potential actions, causes of action, suits, agreements, judgments, decrees, matters, issues and controversies of any kind, nature, or description whatsoever, whether legal or

equitable, known or unknown (including Unknown Claims as defined in ¶ 1.42), disclosed or undisclosed, accrued or unaccrued, apparent or nonapparent, foreseen or unforeseen, matured or not matured, suspected or unsuspected, liquidated or not liquidated, fixed or contingent that have been or could have been asserted by the Released Defendant Parties against the Released Plaintiff Parties in any court, tribunal, forum, or proceeding that are based upon, arise out of, or relate in any way, directly or indirectly, to the institution, prosecution, or settlement of the claims against any or all of the Released Defendant Parties and the Company, except for claims relating to the enforcement of the Settlement.

1.33 “Released Claims” means Released Claims Against the Plaintiff Parties and Released Claims Against the Defendant Parties, individually or collectively as the context may require.

1.34 “Released Parties” means the Released Plaintiff Parties and the Released Defendant Parties, individually or collectively as the context may require.

1.35 “Resolutions” means the Resolutions of the Compensation and Talent Committee By Unanimous Written Consent without a Meeting executed in connection with this Stipulation and attached as Exhibit A hereto.

1.36 “Scheduling Order” means an order, substantially in the form annexed to this Stipulation as Exhibit B, scheduling a hearing on the fairness, reasonableness and adequacy of the Settlement and approving the form of Notice and method of,

and directing the giving of, Notice of the Settlement to ODP stockholders and Class Members.

1.37 “Settlement” means the terms and conditions contained in this Stipulation.

1.38 “Settling Defendants” means the Individual Defendants and ODP.

1.39 “Settling Parties” means the Plaintiff, the Settling Defendants, and ODP, individually or collectively as the context may require.

1.40 “Stipulation” means this Stipulation and Agreement of Compromise, Settlement, and Release.

1.41 “Exhibits” means each and all of the exhibits appended to the Stipulation.

1.42 “Unknown Claims” means any claims that any of the Settling Parties does not know or suspect to exist in his, her, or its favor at the time of the release of the Released Parties, including claims which, if known by him, her, or it, might have affected his, her, or its settlement with, and release of the Released Parties, or might have affected his, her, or its decision not to object to this Settlement. With respect to all Released Claims, the Released Parties stipulate and agree that, upon the Effective Date, the Settling Parties and Class Members shall be deemed to have, and by operation of the Order and Final Judgment shall have, expressly waived the provisions, rights, and benefits of California Civil Code § 1542, which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR.**

Further, with respect to any and all claims released pursuant to ¶ 4 below, the Settling Parties stipulate and agree that, upon the Effective Date, each of the Released Parties and the Class Members shall expressly waive, and by operation of the Order and Final Judgment shall have expressly waived, any and all provisions, rights, and benefits conferred by any law of any jurisdiction or any state or territory of the United States, or principle of common law, which is similar, comparable, or equivalent to California Civil Code § 1542. The Settling Parties and Class Members may hereafter discover facts in addition to or different from those which he, she, or it now knows or believes to be true with respect to the subject matter of the Released Claims, known or unknown, suspected or unsuspected, contingent or non-contingent, accrued or unaccrued, which now exist, or heretofore have existed, upon any theory of law or equity now existing or coming into existence in the future, including, but not limited to, conduct which is negligent, intentional, with or without malice, or a breach of any duty, law, or rule, without regard to the subsequent discovery or existence of such different facts or additional facts. The Settling Parties acknowledge, and the Class Members and ODP stockholders shall be deemed by operation of the Order and Final Judgment to have acknowledged, that the foregoing

waiver was separately bargained for and is a key element of the Settlement of which this release is a part.

## **2. Consideration and Committee Resolutions**

2.1 Within ten (10) days of the Effective Date, Gerry P. Smith shall execute the following Acknowledgement:

### Acknowledgement

I, Gerry Smith, hereby acknowledge and agree to the action of the Compensation and Talent Committee of the Board of Directors of The ODP Corporation (the “Committee” and the “Company”, respectively) set out in the Unanimous Written Consent attached hereto as Exhibit A with respect to the performance share awards granted to me in March 2020 under the Company’s 2019 Long-Term Incentive Plan. I further acknowledge and agree that I shall not be entitled to any shares in excess of the Performance Share Limit, or cash settlement or replacement compensation of same, and hereby relinquish any such rights or claims thereto.

2.2 Attached as Exhibit A to the Acknowledgement and this Stipulation are the “Resolutions of the Compensation and Talent Committee by Unanimous Written Consent without a Meeting.” Within ten (10) days of the Effective Date, the Committee will execute the Resolutions. A summary of the Resolutions, qualified by any of the terms in Exhibit A, are as follows:

2.2.1 The Performance Share Limit applies to the Awards such that in no event will the total number of shares paid to Smith under the Awards exceed the Performance Share Limit.

2.2.2 If based on the performance of the Company, the total number of shares payable under the Awards to Smith could exceed the Performance Share Limit, the Committee shall reduce the number of shares payable so that the Awards comply with the Performance Share Limit and the Committee shall not pay the value of such excess shares to Smith in cash as part of any settlement of the Awards or as a replacement award.

### **3. Settlement Procedures**

3.1 Immediately after execution of this Stipulation, the Settling Parties shall jointly submit the Stipulation and Exhibits to the Court, and shall apply to the Court for entry of the Scheduling Order, in the form annexed as Exhibit B.

3.2 In accordance with the Scheduling Order, within fifteen (15) business days after the entry of the Scheduling Order, the Company shall: (i) post a copy of the Stipulation and the Notice, substantially in the form attached as Exhibit C to this Stipulation, on the Investor Relations page of the Company's website for a period of thirty (30) calendar days; and (ii) mail, or cause to be mailed, by first class U.S. mail or other mail service if mailed outside of the U.S., postage prepaid, the Notice, substantially in the form attached as Exhibit C to this Stipulation, to Current Stockholders and Class Members at their last known address appearing in the stock transfer records maintained by the Company. All Current Stockholders and Class



Members who are record holders of the Company common stock on behalf of beneficial owners shall be directed to forward the Notice promptly to the beneficial owners of those securities.

3.3 ODP shall pay any and all costs and expenses related to providing notice of the proposed Settlement (“Notice Costs”) regardless of whether the Court declines to approve the Settlement or the Effective Date otherwise fails to occur. In no event shall Plaintiff, any other ODP stockholder, or any of their attorneys (including Plaintiff’s Counsel) be responsible for any Notice Costs.

3.4 The Settling Parties and their attorneys agree to use their individual and collective reasonable best efforts to obtain Court approval of the Settlement. The Settling Parties and their attorneys further agree to use their individual and collective reasonable best efforts to effect, take, or cause to be taken all actions reasonably necessary, proper, or advisable under applicable laws, regulations, and agreements to consummate and make effective, as promptly as practicable, the Settlement provided for hereunder and the dismissal of the Action with prejudice. The Settling Parties and their attorneys agree to cooperate fully with one another in seeking the Court’s approval of this Settlement and to use their reasonable best efforts to effect the consummation of the Settlement.

3.5 If the Settlement embodied in this Stipulation is approved by the Court, the Parties shall request that the Court enter the Order and Final Judgment, substantially in the form attached hereto as Exhibit D.

#### **4. Releases**

4.1 Upon the Effective Date, as defined in ¶ 6.1, the Plaintiff (acting on his own behalf and derivatively on behalf of ODP and its stockholders), the Class Members, all other stockholders of ODP, and ODP, for good and sufficient consideration, the receipt and adequacy of which are hereby acknowledged, shall be deemed to have, and by operation of law and the Order and Final Judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged and dismissed with prejudice each and every one of the Released Claims Against the Released Defendant Parties.

4.2 Upon the Effective Date, as defined in ¶ 6.1, the Plaintiff (acting on his own behalf and derivatively on behalf of ODP and its stockholders), the Class Members, all other stockholders of ODP, and ODP, for good and sufficient consideration, the receipt and adequacy of which are hereby acknowledged, shall be forever barred and enjoined from commencing, instituting, or prosecuting any of the Released Claims Against the Defendant Parties. Nothing herein shall in any way impair or restrict the rights of any Settling Party to enforce the Stipulation's terms.

4.3 Upon the Effective Date, as defined in ¶ 6.1, the Settling Defendants, for good and sufficient consideration, the receipt and adequacy of which are hereby acknowledged, shall be deemed to have, and by operation of law and the Order and Final Judgment shall have, fully, finally, and forever compromised, settled, released, resolved, relinquished, waived, and discharged and dismissed with prejudice each and every one of the Released Claims Against the Released Plaintiff Parties.

4.4 Upon the Effective Date, as defined in ¶ 6.1, the Settling Defendants for good and sufficient consideration, the receipt and adequacy of which are hereby acknowledged, shall be forever barred and enjoined from commencing, instituting, or prosecuting any of the Released Claims Against the Plaintiff Parties. Nothing herein shall in any way impair or restrict the rights of any Settling Party to enforce the Stipulation's terms.

## **5. Plaintiff's Counsel's Separately Negotiated Attorneys' Fees and Expenses**

5.1 After negotiating the principal terms of the Settlement, Plaintiff's Counsel and the Settling Defendants, acting by and through their counsel, separately negotiated at arm's-length the attorneys' fees and expenses the Settling Defendants and/or their insurers would pay to Plaintiff's Counsel. In light of the benefits conferred by Plaintiff's Counsel's efforts upon ODP and its stockholders, the Class, and ODP, acting by and through its Board, has agreed that the Settling Defendants and/or their insurers will pay an all-in award of attorneys' fees and litigation

expenses, in the amount of \$410,000 (the “Fee and Expense Amount”), based on the substantial benefits provided to ODP, the Class, and the Company’s stockholders from the Settlement and the prosecution of the Action, subject to approval of the Court. Plaintiff’s Counsel intends to petition the Court for approval of an incentive award for Plaintiff of \$2,000 which shall be paid out of any Fee and Expense Amount approved by the Court (the “Incentive Fee Award”).

5.2 Subject to approval of the Order and Final Judgment, the separately negotiated Fee and Expense Amount shall be paid to Purcell & Lefkowitz LLP, as receiving agent for Plaintiff’s Counsel, within fifteen (15) business days thereafter, notwithstanding the existence of any timely filed objections thereto, or potential for appeal therefrom, or collateral attack on the Settlement or any part thereof, subject to Plaintiff Counsel’s several obligations to make appropriate refunds or repayments if, and when, as a result of any appeal and/or further proceedings on remand, or successful collateral attack, approval of the Settlement is denied or overturned. Neither ODP nor any other Released Defendant Parties shall have any obligations with respect to Plaintiff’s Counsel’s fees and/or expenses beyond the Fee and Expense Amount.

5.3 Except for any Incentive Fee Award for Plaintiff approved by the Court as referenced in ¶ 5.1, neither Plaintiff nor his counsel shall be liable for or obligated to pay any fees, expenses, costs, or disbursements to, or incur any expenses on behalf

of, any Person (including, without limitation, the Settling Defendants, ODP, or their counsel), directly or indirectly, in connection with the Action or the Settlement.

**6. Conditions of Settlement; Effect of Disapproval, Cancellation, or Termination**

6.1 The Effective Date shall be conditioned on the occurrence of all of the following events:

(a) the Court has entered the Scheduling Order, substantially in the form of Exhibit B attached hereto; and the Court has entered the Order and Final Judgment, substantially in the form of Exhibit D attached hereto; and

(b) the Order and Final Judgment has become Final.

6.2 If any of the conditions specified in ¶ 6.1 are not met, then the Stipulation shall be canceled and terminated subject to the provisions of ¶ 6.4, unless counsel for the Settling Parties mutually agree in writing to proceed with an alternative or modified Stipulation and submit it for Court approval.

6.3 The Settling Parties shall each have the right to terminate the Settlement and this Stipulation, by providing written notice of their election to do so (“Termination Notice”) to the other parties to this Stipulation within thirty (30) days of any of the following, which notice shall constitute grounds for termination of the Settlement: (a) the Court’s refusal to enter the Scheduling Order in any material respect; (b) the Court’s refusal to enter the Order and Final Judgment in any material respect as to the Settlement; or (c) the date upon which the Order and Final Judgment

is modified or reversed in any material respect by the Delaware Supreme Court. The provisions of ¶ 6.4 below shall apply to any termination under this paragraph.

6.4 If for any reason this Stipulation is terminated, cancelled, or otherwise fails to become effective for any reason:

(a) The Settling Parties shall be restored to their respective positions that existed immediately prior to the date of execution of this Stipulation;

(b) All negotiations, proceedings, documents prepared, and statements made in connection with this Stipulation shall be without prejudice to the Settling Parties, shall not be deemed or construed to be an admission by a Settling Party of any act, matter, or proposition, and shall not be used in any manner for any purpose (other than to enforce the terms remaining in effect) in any subsequent proceeding in the Action or in any other action or proceeding; and

(c) The terms and provisions of the Stipulation, with the exception of the provisions of ¶¶ 3.3 and 5.3, shall have no further force and effect with respect to the Settling Parties and shall not be used in the Action or in any other proceeding for any purpose, and any judgment or orders entered by the Court in accordance with the Stipulation's terms shall be treated as vacated, *nunc pro tunc*.

6.5 No order of the Court or modification or reversal on appeal of any order of the Court concerning the amount of attorneys' fees, costs, and expenses awarded by the Court to Plaintiff's Counsel shall constitute grounds for cancellation or

termination of the Stipulation, affect the enforceability of the Stipulation, or delay or preclude the Order and Final Judgment from becoming Final.

## **7. Miscellaneous Provisions**

7.1 The Settling Parties (a) acknowledge that it is their intent to consummate the terms and conditions of this Stipulation; and (b) agree to cooperate to the extent reasonably necessary to effectuate and implement all terms and conditions of the Stipulation and to exercise their reasonable best efforts to accomplish the foregoing terms and conditions of the Stipulation.

7.2 The Settling Parties intend this Settlement to be a final and complete resolution of all disputes between the Plaintiff, ODP, the Class, and Current Stockholders on the one hand, and the Released Defendant Parties on the other hand, arising out of, based upon, or relating to, the Released Claims. The Settlement compromises claims that are contested and shall not be deemed an admission by any Settling Party or Released Party as to the merits of any claim, allegation, or defense. The Order and Final Judgment shall contain a finding that during the course of the litigation, the parties and their respective counsel at all times complied with the requirements of the Court's rules and all other similar laws relating to the institution, prosecution, defense, or settlement of the Action. No Released Party shall assert any claims for violation of the Rules of the Court or any similar laws relating to the institution, prosecution, defense, or settlement of the Action. The Settling Parties

agree that the Released Claims are being settled voluntarily after consultation with experienced legal counsel who were fully competent to assess the strengths and weaknesses of their respective clients' claims or defenses.

7.3 Pending the Effective Date, the Settling Parties agree not to initiate any proceedings concerning the Released Claims other than those incident to the Settlement itself; provided, however, that ODP and the Settling Defendants may seek to prevent or stay any other action or claims brought seeking to assert any Released Claims. The Settling Parties further agree that the Action will be stayed other than to pursue approval of the Settlement until the Settlement is finally approved or terminated.

7.4 Neither the Stipulation nor the Settlement, including any Exhibits attached hereto, nor any act performed or document executed pursuant to or in furtherance of the Stipulation or the Settlement is or may be deemed to be or may be: (a) offered, attempted to be offered, or used in any way as a concession, admission, or evidence of the validity of any Released Claims, or of any fault, wrongdoing, or liability of the Released Parties; or (b) used as a presumption, admission, or evidence of any liability, fault, or omission of any of the Released Parties in any civil, criminal, administrative, or other proceeding in any court, administrative agency, tribunal, or other forum. Neither this Stipulation nor the Settlement shall be admissible in any proceeding for any purpose, except to enforce



the terms of the Settlement, and except that the Released Parties may file or use the Stipulation, the Scheduling Order, or the Order and Final Judgment in any action that may be brought against them in order to support a defense or counterclaim based on principles of *res judicata*, collateral estoppel, full faith and credit, release, good faith settlement, standing, judgment bar or reduction, or any other theory of claim preclusion or issue preclusion or similar defense or counterclaim.

7.5 All Exhibits to this Stipulation are material and integral parts hereof and are fully incorporated herein by this reference.

7.6 This Stipulation may be amended or modified only by a written instrument signed by or on behalf of all Settling Parties or their respective successors-in-interest.

7.7 This Stipulation and the Exhibits attached hereto constitute the entire agreement among the Settling Parties and no representations, warranties, or inducements have been made to any Settling Party concerning the Stipulation and/or any of its Exhibits, other than the representations, warranties, and covenants contained and memorialized in such documents. The Stipulation supersedes and replaces any prior or contemporaneous writing, statement, or understanding pertaining to the Action. It is understood by the Settling Parties that, except for matters expressly represented herein, the facts or law with respect to which this Stipulation is entered into may turn out to be other than or different from the facts

now known to each party or believed by such party to be true; each party therefore expressly assumes the risk of facts or law turning out to be different, and agrees that this Stipulation shall be in all respects effective and not subject to termination by reason of any such different facts or law.

7.8 Except as otherwise provided herein, all parties, including all the Released Defendant Parties and the Released Plaintiff Parties shall bear their own fees, costs, and expenses.

7.9 Counsel for the Settling Parties are expressly authorized by their respective clients to take all appropriate actions required or permitted to be taken pursuant to the Stipulation to effectuate its terms and conditions.

7.10 Plaintiff represents and warrants that he has not assigned or transferred, or attempted to assign or transfer, to any Person any Released Claims or any portion thereof or interest therein.

7.11 Each counsel or other Person executing this Stipulation or any of its Exhibits on behalf of any party hereto hereby warrants that such Person has the full authority to do so.

7.12 Any failure by any party to this Stipulation to insist upon the strict performance by any other party of any of the provisions of the Stipulation shall not be deemed a waiver of any of the provisions, and such party, notwithstanding such

failure, shall have the right thereafter to insist upon strict performance of all provisions of the Stipulation to be performed by such other party.

7.13 The Stipulation and Exhibits may be executed in one or more counterparts. A faxed or PDF signature shall be deemed an original signature for purposes of this Stipulation. All executed counterparts, including facsimile and/or PDF counterparts, shall be deemed to be one and the same instrument. A complete set of counterparts, either originally executed or copies thereof, shall be filed with the Court.

7.14 This Stipulation shall be binding upon, and inure to the benefit of, the Settling Parties and the Released Parties and their respective successors, assigns, heirs, executors, administrators, trustees in bankruptcy, and legal representatives.

7.15 Without affecting the finality of the Order and Final Judgment, entered in accordance with this Stipulation, the Court shall retain jurisdiction with respect to implementation and enforcement of the terms of the Stipulation, the Scheduling Order, and the Order and Final Judgment, and the Settling Parties hereto submit to the jurisdiction of the Court for purposes of implementing and enforcing the Settlement embodied in the Stipulation, the Scheduling Order, and the Order and Final Judgment, and for matters arising out of, concerning, or relating thereto.

7.16 This Stipulation shall survive any Change of Control of the Company, regardless of the effect a change in control will otherwise have on the Action or the

Released Claims, including on the Resolutions provided for herein, to the extent they remain applicable following a Change of Control.

7.17 This Stipulation and the Exhibits hereto shall be considered to have been negotiated, executed, and delivered, and to be wholly performed, in the State of Delaware, and the rights and obligations of the Settling Parties to the Stipulation shall be construed and enforced in accordance with, and governed by, the internal substantive laws of the State of Delaware without giving effect to any choice-of-law principles.

7.18 The headings herein are used for the purpose of convenience only and are not meant to have legal effect.

7.19 Nothing in this Stipulation, or the negotiations relating thereto, is intended to or shall be deemed to constitute a waiver of any applicable privilege or immunity, including, without limitation, the attorney-client privilege, the joint defense privilege, or work product protection.

7.20 Without further order of the Court, the parties may agree to reasonable extensions of time to carry out any of the provisions in this Stipulation.

[Signature pages follow]

IN WITNESS WHEREOF, IT IS HEREBY AGREED, by the undersigned as  
of the date noted above.

Dated: November 11, 2022

Respectfully submitted,

*Of Counsel:*

Steven J. Purcell  
Robert H. Lefkowitz  
PURCELL & LEFKOWITZ LLP  
369 Lexington Avenue, 3rd Floor  
New York, NY 10017  
(212) 725-1000

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