

No. 25-

IN THE
Supreme Court of the United States

MICROCHIP TECHNOLOGY INC., ET AL.,
Petitioners,

v.

PETER SCHUMAN AND WILLIAM COPLIN,
Respondents.

**On Petition for Writ of Certiorari to the
United States Court of Appeals
for the Ninth Circuit**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

Whether, in a case involving a release of claims under the Employee Retirement Income Security Act, a plan sponsor's alleged breach of fiduciary duty may prevent the enforcement of an otherwise knowing and voluntary release, where the releasing parties were aware of the facts underlying the alleged breach when they signed the release.

PARTIES TO THE PROCEEDING

Petitioners Microchip Technology Incorporated, Atmel Corporation, and Atmel Corporation U.S. Severance Guarantee Benefit Program were defendants in the district court and appellees and cross-appellants in the court of appeals.

Respondents Peter Schuman and William Coplin were plaintiffs in the district court and appellants and cross-appellees in the court of appeals.

CORPORATE DISCLOSURE STATEMENT

Petitioner Microchip Technology Incorporated, a publicly held corporation, owns 10% or more of petitioner Atmel Corporation. No publicly held corporation owns 10% or more of Microchip Technology Incorporated.

RELATED PROCEEDINGS

U.S. Court of Appeals for the Ninth Circuit:

Schuman v. Microchip Tech. Inc., No. 24-2624
(June 5, 2025)

Schuman v. Microchip Tech. Inc., No. 24-2978
(June 5, 2025)

U.S. District Court for the Northern District of
California:

Schuman v. Microchip Tech. Inc., No. 4:16-cv-5544
(Apr. 11, 2024)

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INTRODUCTION

This case presents a square conflict regarding a question of significant importance to the resolution of claims under the Employee Retirement Income Security Act of 1974 (ERISA). Parties frequently avoid costly litigation under ERISA by resolving disputes about whether an employee is entitled to plan benefits through a release. Under these voluntary settlements, plan administrators provide a would-be plaintiff with some of the benefits he asserts he is entitled to under the plan in exchange for a promise not to pursue his ERISA claims—including claims for breach of fiduciary duty. In the decision below, the Ninth Circuit considered whether a plaintiff can prevent the enforcement of an otherwise knowing and voluntary release of ERISA claims by alleging that the plan administrator breached its fiduciary duty in obtaining the release.

The Ninth Circuit held, contrary to the Second Circuit, that such allegations of breach can prevent the enforcement of a release even where—as here—the alleged breach is nothing more than a repackaging of the dispute that prompted the plan administrator to offer the release in the first place. Pet. App. 18a. And the Ninth Circuit situated its holding within a broader circuit split regarding the proper knowing-and-voluntary inquiry for enforcing ERISA releases, purporting to agree with the approach of the Seventh and Eighth Circuits, while disagreeing with the First and Second. *Id.* at 17a. In fact, the Ninth Circuit went much further than any of its sister circuits, seriously jeopardizing the ability of parties to enter into enforceable releases of ERISA claims involving alleged misinterpretations of plan terms.

Respondents are former employees of petitioner Atmel who alleged that they were entitled to termination benefits under an ERISA plan Atmel adopted before being acquired by petitioner Microchip. After the acquisition, Microchip disagreed with respondents' interpretation of the plan and asserted that no benefits were available. In an effort to resolve this dispute over the plan's interpretation, Microchip offered to provide respondents with 50% of the benefits they claimed in exchange for a release of their ERISA claims. Respondents accepted that offer and the tens of thousands of dollars in benefits it provided, but respondents did not honor the release. Instead, they brought suit alleging that Microchip had breached its fiduciary duty by misinterpreting the plan to deny them coverage, and they asserted that this alleged breach made the release unenforceable. The district court rejected that assertion, finding that plaintiffs knew about the purported misinterpretation underlying the claimed breach when they signed the release, such that the alleged breach did not prevent the release from being both knowing and voluntary. But the Ninth Circuit vacated that determination, holding that the alleged breach should be given "serious consideration" and "may weigh particularly heavily against finding that the release was 'knowing' or 'voluntary.'" Pet. App. 18a.

That rule provides a blueprint for any party seeking to evade the effects of an ERISA release. A plaintiff need simply allege that the defendant breached its fiduciary duty by asserting that the plaintiff was not entitled to benefits and offering a release to resolve the dispute. Under the Ninth Circuit's rule, giving that allegation "serious consideration" would effectively require the defendant

to litigate and win the coverage dispute on the merits in order to enforce a release that was intended to prevent that very litigation.

Nothing in ERISA requires this result. No provision mandates a special rule for ERISA releases or even suggests that such releases are disfavored. To the contrary, this Court has recognized that ERISA embodies a policy of promoting “prompt and fair claims settlement.” *Am. Airlines, Inc. v. Wolens*, 513 U.S. 219, 232 (1995) (citation omitted). And more generally, this Court has recognized for well over a century that public policy favors the voluntary settlement of claims. *Williams v. First Nat’l Bank*, 216 U.S. 582, 595 (1910).

Because the Ninth Circuit’s judge-made rule finds no footing in ERISA’s text, public policy, or common sense, and because it squarely implicates a circuit conflict regarding the proper standard for enforcing ERISA releases, this Court should grant certiorari and reverse.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 6a-24a) is reported at 139 F.4th 1045. The opinion of the district court (Pet. App. 25a-65a) is not reported but is available at 2023 WL 5498065.

JURISDICTION

The judgment of the court of appeals was entered on June 5, 2025. The court of appeals denied rehearing on July 25, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

A. Factual Background

1. Respondents are former employees of petitioner Atmel Corporation, a company that petitioner Microchip acquired. Pet. App. 26a. In anticipation of an acquisition, Atmel created an employee benefits plan in July 2015 that would provide severance benefits for Atmel employees terminated after an acquisition if certain conditions were met (the “Atmel Plan”). *Id.* at 7a, 26a-28a. Specifically, the Plan would provide an employee with severance benefits “only if”: 1) by November 1, 2015, Atmel entered a “definitive agreement” that “will result in a Change of Control of the Company”; 2) a “Change of Control” actually occurred; and 3) the employee was terminated within 18 months of the definitive agreement. *Id.* at 7a-8a.

In September 2015, Atmel entered a definitive agreement with a company called Dialog Semiconductor. Pet. App. 8a. But Dialog did not ultimately acquire Atmel, and no Change of Control occurred pursuant to the definitive agreement with Dialog. *Ibid.* Instead, Microchip put in a competing offer, resulting in the execution of a new acquisition agreement in January 2016. *Ibid.* Microchip ultimately acquired Atmel in April 2016. *Id.* at 9a.

After the acquisition, Microchip held an all-hands meeting for Atmel employees at which it explained that, based on its interpretation of the Atmel Plan conditions, the Plan expired without coming into force because Microchip did not enter into a definitive agreement with Atmel until January 2016, two months after the November 1, 2015 deadline for a definitive agreement under the Plan had passed. Pet.

App. 9a. Microchip stated, however, that it would offer terminated employees 50% of the benefits they would have received under the Atmel Plan if they would sign a release of any Plan-related claims. *Id.* at 30a-31a. Microchip then sent a release to terminated employees with a cover letter explaining the offer and stating that Atmel “and Microchip are making this offer, in part to resolve any current disagreement or misunderstanding regarding severance benefits previously offered by” Atmel. *Id.* at 9a.

2. Some terminated employees, including respondents, signed the release and received the promised 50% of Plan benefits in return. Pet. App. 9a. Other terminated employees refused to sign and instead brought suit in *Berman v. Microchip Technology Inc.* *Id.* at 10a-11a.

The plaintiffs in *Berman* alleged that Microchip had wrongly refused to provide full benefits under the Atmel Plan because Atmel had entered into a definitive agreement with Dialog in September 2015, before the Plan’s November 2015 deadline for a definitive agreement. *Berman v. Microchip Tech. Inc.*, No. 17-cv-01864-HSG, 2019 WL 1318550, at *6 (N.D. Cal. Mar. 22, 2019). The employees argued that it was irrelevant that the agreement with Dialog did not result in a Change of Control, because the Plan conditions were still met. *Ibid.* The district court agreed with the *Berman* plaintiffs, holding that the Atmel Plan unambiguously mandated that result. *Id.* at *6-7. But the Ninth Circuit reversed, holding that the Plan terms were “ambiguous” and that “reasonable parties could disagree as to whether the [Atmel] Plan required the Initial Triggering Event and the Change of Control to involve the same merger

partner.” *Berman v. Microchip Tech. Inc.*, 838 F. App’x 292, 293 (9th Cir. 2021) (alteration in original) (quotation marks omitted). The Ninth Circuit remanded for further proceedings to resolve the parties’ conflicting interpretations of the Plan terms. *Ibid.* Before those proceedings could occur, the parties in *Berman* settled. Pet. App. 11a.

B. Procedural History

Respondents brought a separate suit against Microchip on behalf of themselves and a class of approximately 200 other employees who had signed releases and received 50% of the Plan benefits in exchange. Pet. App. 9a. Respondents alleged that Microchip breached its fiduciary duty to the class by “misinterpreting” the Atmel Plan “as having expired” and “encouraging [them] to sign releases in exchange for reduced severance benefits.” *Id.* at 10a.

1. Microchip moved for summary judgment, alleging that respondents’ claims were barred by the valid releases they signed and that—in any event—“misinterpreting” an ambiguous ERISA plan cannot constitute a breach of fiduciary duty. Pet. App. 36a. The district court held that there was a genuine issue of material fact as to whether Microchip breached its fiduciary duty by misinterpreting the Plan, *id.* at 60a-61a, but it granted summary judgment as to respondents’ individual claims on the grounds that their releases precluded their suit, *id.* at 53a-54a.

The district court explained that there did not appear to be any dispute that “if the releases were valid and enforceable[,] they would bar [respondents’] claims.” Pet. App. 37a. The court further explained that the enforceability of an ERISA release turns on whether it was “knowing and voluntary” under the

totality of the circumstances. *Id.* at 43a. And it cited six factors drawn from the Second Circuit’s decision in *Finz v. Schlesinger*, 957 F.2d 78, 82 (2d Cir. 1992), that courts typically consider as part of the totality-of-the-circumstances analysis: “(1) plaintiff’s education and business sophistication; (2) the respective roles of employer and employee in determining the provisions of the waiver; (3) the clarity of the agreement; (4) the time plaintiff had to study the agreement; (5) whether plaintiff had independent advice, such as that of counsel; and (6) the consideration for the waiver.” Pet. App. 43a-44a.

The court observed that respondents had not addressed *any* of these factors. Pet. App. 44a. Instead, respondents argued that “whether the releases were knowingly and voluntarily obtained is simply irrelevant” because Microchip allegedly violated its fiduciary duty in seeking the releases by misinterpreting the Plan and then offering releases based on that misinterpretation. *Ibid.*

The district court rejected that argument, explaining that it had no support in case law or the text of ERISA. Pet. App. 45a. The court also explained that the alleged breach of fiduciary duty was simply offering “reduced severance benefits in exchange for releases to resolve the dispute over the meaning of the Atmel Plan.” *Id.* at 46a. Thus, “[t]aken to its logical extreme,” respondents’ argument “would preclude parties from settling cases whenever [they] disagreed about the meaning of an ERISA plan.” *Ibid.*

The district court further found that, to the extent respondents engaged with the knowing-and-voluntary inquiry, it was only to reassert that the releases could not have been knowing and voluntary

because Microchip had misinterpreted the Atmel Plan and “declared” its interpretation to the employees. Pet. App. 47a. But the court observed that the Ninth Circuit had already found the Plan ambiguous in *Berman*. *Ibid*. And “the record indicate[d] that [respondents] knew there was a dispute” about whether the Plan was in force “and knew that [petitioners] explicitly offered the releases (and reduced severance benefits) to resolve this dispute.” *Id.* at 48a. It pointed to evidence that Microchip had explained its interpretation at the all-hands meeting and sent the releases with a cover letter explaining that they were offered to resolve any potential disputes. *Id.* at 48a-49a. And the court observed that respondents themselves had testified that they understood they were waiving their claims when they signed the releases. *Id.* at 49a.

The district court further held that, under the standard six-factor totality-of-the-circumstances inquiry, the releases were knowing and voluntary. Pet. App. 50a-53a. Indeed, it found that respondents had neither “challenge[d]” petitioners’ “proffered evidence that the releases were knowing and voluntary” under this inquiry, nor “offer[ed] any evidence of their own that raise[d] a genuine dispute of material fact about these factors.” *Id.* at 50a. It found, for example, that respondents “were sophisticated individuals,” that the letters offering the releases were “clear” about the terms, that respondents “were given sufficient time to consider” them and that they knew they could have consulted with attorneys during that time, and that they received tens of thousands of dollars in compensation as well as stock and health care benefits in exchange for the releases. *Id.* at 50a-52a.

The district court therefore granted the motion for summary judgment as to respondents' individual claims, although it declined to apply that holding to the unnamed class members. Pet. App. 54a. Instead, it found that the knowing-and-voluntary inquiry "implicates individualized considerations" that appeared to be unsuitable for class resolution, and it issued an order to show cause why the class should not be decertified on that basis. *Ibid.* The court also declined to grant summary judgment for petitioners on the merits, holding that, despite the ambiguity of the Atmel Plan's language, there was a genuine issue of material fact as to whether Microchip breached its fiduciary duty. *Id.* at 60a-61a.

2. Respondents appealed the grant of summary judgment against them on their individual claims, and the Ninth Circuit reversed. Pet. App. 6a-7a. The court of appeals explained that its precedent did not address "what the relationship is between enforceability" of ERISA releases "and allegations of employer and fiduciary abuse." *Id.* at 14a. It observed that its sister circuits generally apply a knowing-and-voluntary inquiry in determining the enforceability of ERISA releases, with "special scrutiny" given the ERISA context. *Id.* at 14a-15a.

It observed, however, that the four circuits to adopt "ERISA-specific tests for the enforceability of releases" have "employed slightly different" inquiries. Pet. App. 16a-17a. Specifically, the First and Second Circuit have applied a "non-exhaustive six-part test," while the Seventh and Eighth Circuits have "adopted more comprehensive but still non-exhaustive eight- and nine-part tests" that "explicitly require consideration of any improper conduct by the fiduciary." *Id.* at 17a.

The Ninth Circuit purported to “join” the Seventh and Eighth Circuit’s “approach.” Pet. App. 17a. It articulated a nine-part non-exhaustive totality-of-the-circumstances inquiry, including an express requirement to consider “whether the employee’s release was induced by improper conduct.” *Id.* at 18a. It then held that “[w]here, as here, the district court has found a genuine issue of fact material to the issue of a breach of fiduciary duty in obtaining the release of claims, the final factor warrants serious consideration and may weigh particularly heavily against finding that the release was ‘knowing’ or ‘voluntary’ or both.” *Ibid.* It then remanded to the district court to apply its test. *Ibid.*

3. The court of appeals denied Microchip’s petition for rehearing. Pet. App. 67a.

REASONS FOR GRANTING THE PETITION

The decision below significantly sharpens the existing circuit split regarding the standard for enforcing ERISA releases, threatening to undermine the utility of releases in providing for the prompt and amicable resolution of ERISA claims. If left uncorrected, the decision will prejudice parties that count on the finality of releases and burden courts that will be forced to litigate claims that have already been released. To resolve the circuit split and prevent those mischiefs from arising, this Court should step in now to correct the Ninth Circuit’s error.

I. THE DECISION BELOW DEEPENS A CONFLICT AMONG THE COURTS OF APPEALS.

In the decision below, the Ninth Circuit recognized an existing split between the First and Second Circuits, on the one hand, and the Seventh and Eighth Circuits, on the other, regarding the proper knowing-

and-voluntary inquiry in the ERISA context. Pet. App. 17a. While the court then purported to join the Seventh and Eighth Circuits' side of the split, it actually went much further—creating a new rule that makes it easy for would-be ERISA plaintiffs to side-step valid releases, contrary to ERISA's policy of promoting prompt and fair claims settlement.

1. In deciding whether to enforce a release of ERISA claims, the First and Second Circuits apply a totality-of-the-circumstances inquiry that directs courts to consider six non-exclusive factors that focus on the releasing party's education and experience, its ability to evaluate the terms and participate in developing them, its access to legal advice, and the value of the consideration given. *Finz*, 957 F.2d at 82; *Morais v. Cent. Beverage Corp. Union Emps.' Supp. Ret. Plan*, 167 F.3d 709, 713 & n.6 (1st Cir. 1999).

By contrast, the Seventh and Eighth Circuits apply more elaborate totality-of-the-circumstances tests that ask courts to consider additional factors designed “to ensure the fiduciary did not obtain the release in violation of its duties to the beneficiary.” *Leavitt v. Nw. Bell Tel. Co.*, 921 F.2d 160, 162 (8th Cir. 1992). Thus, in *Leavitt*, the Eighth Circuit held that courts “must consider” *nine* distinct factors to determine whether an ERISA release is enforceable, including “whether [the] release was induced by improper conduct on [the defendant's] part.” *Ibid.* And the Seventh Circuit applies a similar eight-factor test that includes consideration of “whether the employee's release was induced by improper conduct on the defendant's part.” *Howell v. Motorola, Inc.*, 633 F.3d 552, 559 (7th Cir. 2011) (citation omitted).

2. The Ninth Circuit purported to “join” the Seventh and Eighth Circuit's “approach.” Pet. App.

17a. And like those circuits, it adopted an elaborate nine-part test for determining the enforceability of ERISA releases, with a final factor requiring courts to assess “whether the employee’s release was induced by improper conduct on the fiduciary’s part.” *Id.* at 18a. But the court then went much further than the Seventh or Eighth Circuits, holding for the first time that courts should give “serious consideration” to an alleged breach of fiduciary duty and that allegations of a breach “may weigh particularly heavily against finding that the release was ‘knowing’ or ‘voluntary’ or both.” *Ibid.* The court therefore articulated a standard that places a heavy thumb on the scale against enforcing a release in cases where the plaintiff alleges a breach of fiduciary duty.

In adopting that new standard, the Ninth Circuit was not simply choosing sides in the existing disagreement—it was announcing a newly minted rule that squarely conflicts with the Second Circuit’s decision in *Finz*. There, as here, the plaintiff sought to evade a release of his ERISA claims on the ground that the defendants had breached their fiduciary duty by failing to provide him with plan documents that would have helped him to understand the plan terms. 957 F.2d at 82-83. The Second Circuit agreed that the defendants had likely violated their fiduciary duty in this way, but it held that the alleged breach “d[id] not nullify [the plaintiff’s] waiver.” *Id.* at 83.

The Second Circuit explained that, based on the record, there was “no question that [the plaintiff] knew that he may have been covered under the plan when he relinquished his benefits,” and that he “understood that his waiver would settle the parties’ dispute over his coverage under the plan.” 957 F.2d at 83. Because the plaintiff “at all times believed that

defendants were misrepresenting his entitlement to benefits,” the Second Circuit held that he could “not be permitted to strike a better bargain at this late date by claiming that he signed the agreement in reliance on defendants’ misrepresentations.” *Ibid.*

Under the Second Circuit’s reasoning, respondents’ claims plainly fail because—like the plaintiff in *Finz*—they seek to avoid enforcement of their ERISA releases based on allegations that petitioners misinterpreted the terms of the Atmel Plan, even though respondents knew the terms of the Plan and knew the parties disagreed over the Plan’s interpretation when they signed. Indeed, the district court cited *Finz* when it correctly found that the releases were enforceable, despite respondents’ fiduciary breach allegations. Pet. App. 43a-44a, 53a.

The Ninth Circuit, however, rejected the district court’s determination and broke from *Finz*. It held that the allegations of breach here were entitled to “serious consideration,” Pet. App. 18a—despite the district court’s undisturbed findings that 1) respondents knew about the conduct underlying the alleged breach (*i.e.*, a dispute over plan interpretation) when they signed the releases, *id.* at 48a-49a; and 2) the parties actually entered into the releases to resolve the dispute regarding the Plan’s interpretation that now forms the basis of respondents’ allegations of breach, *id.* at 49a.

That square conflict, couched within a broader dispute regarding the enforceability of ERISA releases, warrants this Court’s intervention.

II. THE DECISION BELOW IS WRONG.

This Court’s review is also necessary because the Ninth Circuit’s decision is wrong. Nothing in ERISA

justifies the court of appeals' novel instruction to give special weight to allegations of a breach of fiduciary duty in deciding whether to enforce an ERISA release. And applying such a rule would give would-be plaintiffs an easy way to circumvent any ERISA release they regret entering (or never intended to honor in the first place), discouraging the use of releases to the detriment of parties and courts alike.

1. This Court has long recognized that public policy favors the voluntary settlement of claims. *Williams v. First Nat'l Bank*, 216 U.S. 582, 595 (1910); see *McDermott, Inc. v. AmClyde*, 511 U.S. 202, 211 (1994). Over fifty years ago, this Court explained in the Title VII context that an employee may release his federal claims against his employer “as part of a voluntary settlement” if the employee’s consent to the settlement “was voluntary and knowing.” *Alexander v. Gardner-Denver Co.*, 415 U.S. 36, 52 & n.15 (1974).

Following *Alexander*, courts of appeals have held that releases of claims arising under various federal laws are enforceable if they were knowing and voluntary under the totality of the circumstances. *E.g.*, *Torrez v. Pub. Serv. Co. of N.M., Inc.*, 908 F.2d 687, 689-690 (10th Cir. 1990); *O'Hare v. Glob. Nat. Res., Inc.*, 898 F.2d 1015, 1017 (5th Cir. 1990); *Stroman v. W. Coast Grocery Co.*, 884 F.2d 458, 462 (9th Cir. 1989); *Bormann v. AT&T Commc'ns, Inc.*, 875 F.2d 399, 402 (2d Cir. 1989); *Coventry v. U.S. Steel Corp.*, 856 F.2d 514, 522 (3d Cir. 1988). And in assessing whether a release was knowing and voluntary, these courts apply an inquiry that—like the six-factor test applied by the First and Second Circuits in ERISA cases—focuses on traditional factors such as the sophistication of the plaintiffs, the clarity of the release, and the availability of advice

from counsel. See, e.g., *Stroman*, 884 F.2d at 463 (enforcing release where plaintiff was “sufficiently intelligent” to understand the release, expressly decided not to consult an attorney, and was not “coerced” to sign); *O’Hare*, 898 F.2d at 1017-18 (enforcing release where plaintiff “had the experience and the training to understand” the release, received it long before signing, consulted with attorneys, and “received consideration”).

Nothing in ERISA justifies discarding this standard inquiry in favor of a new nine-factor test that gives special weight to an alleged breach of fiduciary duty in cases involving a release of ERISA claims. ERISA does not mention releases *at all*, let alone suggest that a special test applies for enforcing releases in the ERISA context. And this Court has recognized that the statute embodies a policy of promoting “prompt and fair claims settlement.” *Am. Airlines, Inc. v. Wolens*, 513 U.S. 219, 232 (1995) (citation omitted). It would be inconsistent with that policy to put a thumb on the scale against enforcing a release in any case involving an alleged breach of fiduciary duty.

Moreover, Congress has shown that it knows how to establish a special test for the release of federal claims when it wants one. It included such a provision in the Older Workers Benefit Protection Act of 1990, which provides that a release of claims subject to the Act must be “knowing and voluntary” and then sets out a series of requirements that must be met in order for a release to meet that standard. 29 U.S.C. 626(f)(1). The absence of any similar provision in ERISA suggests that Congress intended for the traditional inquiry to apply. Courts may not undo that decision by crafting their own special test for

ERISA releases. “[A]dd[ing] words to the law to produce what is thought to be a desirable result” “is Congress’s province,” not the courts’. *E.E.O.C. v. Abercrombie & Fitch Stores, Inc.*, 575 U.S. 768, 774 (2015).

2. In nonetheless holding that courts must give special consideration to an alleged breach of fiduciary duty in deciding whether to enforce an ERISA release, the Ninth Circuit relied on inapt citations to the statute and this Court’s ERISA precedent. It observed that, by requiring plan administrators to carry out their responsibilities “solely in the interest of the participants and beneficiaries,” 29 U.S.C. 1104(a)(1) imposes a fiduciary duty on those administrators. Pet. App. 15a. And the court of appeals noted that this Court has recognized that a plan administrator violates its fiduciary duty when it “knowingly and significantly” deceives plan beneficiaries about what the plan provides, *Varity Corp. v. Howe*, 516 U.S. 489, 506 (1996). See Pet. App. 16a. But these undisputed principles merely establish the basis for a claim against a plan proponent who violates its fiduciary duty in this way; they do *not* preclude the parties from entering into a valid release to resolve a dispute as to whether the plan administrator has misconstrued the terms of the plan in the first place. Yet that is precisely the consequence of the Ninth Circuit’s rule.

As the district court explained, “[t]aken to its logical extreme,” the assertion that an ERISA plaintiff may prevent the enforcement of a release based on an alleged breach of fiduciary duty “would preclude parties from settling cases whenever the parties disagree[] about the meaning of an ERISA plan.” Pet. App. 46a. When that occurs, as it did here,

the plaintiff may simply repackage the defendant's alleged misinterpretation of the plan as an alleged breach of fiduciary duty that will "weigh particularly heavily against" enforcement of any release. *Id.* at 18a.

Not only is that result illogical, it runs contrary to the principles that apply in other related areas of the law. As the Second Circuit observed in *Finz*, "a plaintiff who has settled a claim involving fraud may not subsequently assert that he or she is not bound by the settlement" merely because there was fraud, even if "the extent of the fraud was not fully disclosed" when the settlement was signed. 957 F.2d at 83. Rather, under the basic contract law doctrine of fraudulent inducement, a plaintiff can avoid the enforcement of a release based on allegations that it was obtained through deception only if he can show that the misrepresentation was "material" and that he relied on the misrepresentation in signing the release. 26 Williston on Contracts §§ 69:12, 69:33 (4th ed.); see also 28 Williston § 70:220. Even then, the remedy is "rescission" of the release, 28 Williston § 70:220, which typically requires the plaintiff to return any consideration he received for the release before pressing the claims the release would have covered, 26 Williston § 69:50.

The same basic rule should apply in the ERISA context. Where, as here, a plaintiff alleges that a defendant breached its fiduciary duty by misrepresenting the ERISA plan's terms, the alleged breach should prevent the release's enforcement only if it was material and the plaintiff relied on that misrepresentation in accepting the release, such that it was not knowing and voluntary. And where the plaintiff makes such a showing, he must also

relinquish whatever benefits he got from entering into the release in the first place.

The Ninth Circuit’s decision flouts these principles. Here, the alleged “misrepresentation” is petitioners’ interpretation of the terms of a plan that the Ninth Circuit itself has found ambiguous. And respondents cannot show that the alleged misrepresentation was material to their decision to enter the releases because the district court found that respondents “knew there was a dispute” about the Plan terms and that petitioners “explicitly offered the releases (and reduced severance benefits) to resolve this dispute.” Pet. App. 48a. Respondents did not challenge this conclusion before the court of appeals, and the Ninth Circuit did not even hint that it was erroneous. Nor is there any suggestion that respondents have returned the payments they received in return for the releases. Indeed, the district court actually dismissed respondents’ rescission claim for failure to tender back their severance payments. *Schuman v. Microchip Tech., Inc.*, 302 F. Supp. 3d 1101, 1122 (N.D. Cal. 2018). But the Ninth Circuit disregarded these issues entirely, vacating the district court’s decision and remanding for the court to perform a new enforceability analysis that gives “serious consideration” to the alleged breach. Pet. App. 18a.

This Court has previously rejected similar attempts to displace traditional common-law principles with special ERISA-specific rules that find no footing in the statute itself. For example, in *Nationwide Mutual Insurance Company v. Darden*, 503 U.S. 318 (1992), the Court found that it was appropriate to “incorporate traditional agency law criteria for identifying master-servant relationships” in determining who constitutes an “employee” under

ERISA, rather than adopting a different ERISA-specific standard. *Id.* at 319. The Court explained that the traditional “common-law test” should apply because there was no ERISA “provision either giving specific guidance on the term’s meaning or suggesting that construing it to incorporate traditional agency law principles would thwart the congressional design or lead to absurd results.” *Id.* at 323. And in *Thole v. U.S. Bank N.A.*, 590 U.S. 538 (2020), the Court similarly declined to create an “ERISA exception to Article III,” recognizing that the standard rules must apply. *Id.* at 547. These holdings reflect that ERISA’s goal of creating “a uniform set of administrative procedures” for disposing of benefits claims, *Fort Halifax Packing Co., Inc. v. Coyne*, 482 U.S. 1, 11 (1987), is best served by the consistent application of standard common-law principles, not extratextual, ERISA-specific rules.

Further, the Ninth Circuit’s newly-created ERISA-specific test is particularly inappropriate because it subjects releases to heightened scrutiny in precisely the circumstances where such scrutiny is least necessary and where the rationale for enforcing releases is the strongest—when the parties specifically intend to settle a particular, known dispute over the meaning of a plan. Scrutinizing a release of claims of which the parties were not aware at the time of the release is one thing (though such releases are still enforceable if they are knowing and voluntary, see *Howell*, 633 F.3d at 559 (enforcing general release of ERISA claims)). But adopting a rule that permits a court to invalidate a release entered for the specific purpose of settling a dispute known to the parties is different, because it directly undermines the ability of parties to settle known

disputes under ERISA. Because nothing in ERISA requires that result, this Court should grant certiorari to correct the Ninth Circuit's error.

III. THE QUESTION PRESENTED IS OF FUNDAMENTAL IMPORTANCE.

Prompt intervention is particularly important here because the decision below creates a roadmap for plaintiffs to evade their ERISA claims releases, thereby casting doubt on existing releases and inviting a flood of litigation over released claims. Moreover, because the Ninth Circuit claimed to be adopting the approach of the Seventh and Eighth Circuits, litigants in all three circuits are likely to rely on the court of appeals' flawed decision in an effort to circumvent valid ERISA releases. And the decision also creates uncertainty for parties seeking to settle ERISA claims in the future, as they must now wonder whether releases will be enforced in court. The result will be fewer releases and more court battles, harming plan administrators, beneficiaries, and courts alike.

1. The primary result of the Ninth Circuit's decision is more ERISA litigation of claims that parties have *already* settled. To date, there have been relatively few cases seeking to press ERISA claims that the plaintiffs have already released, for the obvious reason that such claims were presumed to be, well, released. But the decision below invites ERISA plaintiffs to overlook that pesky obstacle. Armed with the Ninth Circuit's decision and a modicum of creativity, ERISA plaintiffs can simply recharacterize their claims as respondents have here, asserting that their plan administrator breached its fiduciary duty by disputing the employees' eligibility for relief under the ERISA plan and offering a release to resolve the dispute.

This state of affairs is bad for the plan administrators who entered into the releases in a good-faith effort to resolve a dispute about plan terms, and who generally paid quite a bit for the now-potentially-worthless release. And it is bad for the courts who now have to adjudicate claims that were supposed to have been settled privately. Indeed, even if plan administrators are ultimately able to defeat the claims of a breach on the merits, the cost of litigating the case to that point will be a significant drain.

2. The Ninth Circuit's decision also harms parties who might wish to enter into an ERISA release in the future. Such releases can provide a cost-effective means of amicably resolving disputes about plan terms. But by casting doubt on whether such releases will hold up in court, the Ninth Circuit's decision makes releases far less attractive to plan administrators. Because they can no longer be certain that they will reap the promised benefits of offering a partial payout in exchange for settling a claim, administrators will be reluctant to offer such settlements, leading to more costly litigation.

3. These harmful consequences are likely to extend beyond the Ninth Circuit, as plaintiffs throughout the country will seek to use the decision to revive settled ERISA claims. And the court of appeals' decision is particularly likely to transcend circuit boundaries because the Ninth Circuit claimed to be adopting the same approach as the Seventh and Eighth Circuits, meaning that ERISA plaintiffs in those circuits are likely to assert that the Ninth Circuit's new rule is directly applicable to them, too.

The result will be different rules in different parts of the country, as courts in the First and Second

Circuits properly apply the standard knowing-and-voluntary inquiry while courts in other circuits place a heavy thumb on the scale against enforcing releases in the face of allegations of a breach of fiduciary duty. That outcome is in significant tension with ERISA's purpose of providing "a uniform set of administrative procedures" rather than "a patchwork scheme of regulation" for employee plans. *Coyne*, 482 U.S. at 11. This Court should step in to prevent it.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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October 2025

APPENDIX

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APPENDIX A

FOR PUBLICATION
UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PETER SCHUMAN; WILLIAM COPLIN,

*Plaintiffs-Appellants /
Cross-Appellees,*

v.

MICROCHIP TECHNOLOGY INCORPORATED;
ATMEL CORPORATION; ATMEL CORPORATION
UNITED STATES SEVERANCE GUARANTEE
BENEFIT PROGRAM,

*Defendants-Appellees /
Cross-Appellants*

No. 24-2624, 24-2978
D.C. No. 4:16-cv-05544-HSG
OPINION

Appeal from the United States District Court
for the Northern District of California
Haywood S. Gilliam, Jr., District Judge, Presiding

2a

Argued and Submitted May 12, 2025
San Francisco, California

Filed June 5, 2025

Before: Sidney R. Thomas, William A. Fletcher, and
Milan D. Smith, Jr., Circuit Judges.

Opinion by Judge Sidney R. Thomas

SUMMARY*

Release of Claims/ERISA

The panel reversed the district court’s summary judgment against Peter Schuman and William Coplin in a case concerning the enforceability of a release of claims under the Employee Retirement Income Security Act of 1974 (“ERISA”); remanded to the district court for further proceedings; and dismissed for lack of appellate jurisdiction a cross-appeal by Microchip Technology Inc., Atmel Corp., and Atmel Corp. U.S. Severance Guarantee Benefit Program (collectively “Defendants”).

In anticipation of a potential merger, Atmel Corp. created a benefits plan (“Plan”), governed by ERISA, for employees to receive severance in the event that

* This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

an acquiring company fired Atmel staff. Soon after Microchip acquired Atmel, Microchip terminated Schuman and Coplin, without cause, and offered them significantly lower benefits than promised in the Plan in exchange for a release of all potential claims. Schuman and Coplin signed the releases.

Schuman and Coplin later filed a class-action complaint, on behalf of about 200 similarly situated former Atmel employees who had also signed releases, alleging violations of ERISA, including breach of fiduciary duty and denial of benefits, and challenging the enforceability of the releases.

The district court entered final judgment under Federal Rule of Civil Procedure 54(b) in favor of Defendants and against Schuman and Coplin, certifying for this court's review the question of what legal test should apply in determining the enforceability of the releases signed by Schuman and Coplin and the majority of class members.

The panel held that the district court's Rule 54(b) certification was not improper.

The panel held that courts must consider alleged improper conduct by the fiduciary in obtaining a release as part of the totality of the circumstances concerning the knowledge or voluntariness of the release or waiver. In evaluating the totality of the circumstances to determine whether the individual entered into the release or waiver knowingly and voluntarily, courts should consider the following non-

exhaustive factors: (1) the employee's education and business experience; (2) the employee's input in negotiating the terms of the settlement; (3) the clarity of the release language; (4) the amount of time the employee had for deliberation before signing the release; (5) whether the employee actually read the release and considered its terms before signing it; (6) whether the employee knew of his rights under the plan and the relevant facts when he signed the release; (7) whether the employee had an opportunity to consult with an attorney before signing the release; (8) whether the consideration given in exchange for the release exceeded the benefits to which the employee was already entitled by contract or law; and (9) whether the employee's release was induced by improper conduct on the fiduciary's part. Where, as here, the district court has found a genuine issue of fact material to the issue of a breach of fiduciary duty in obtaining the release of claims, the final factor warrants serious consideration and may weigh particularly heavily against finding that the release was "knowing" or "voluntary" or both.

The panel remanded to the district court for its application of the factors.

The panel dismissed for lack of jurisdiction Microchip's cross-appeal challenging the district court's denial of summary judgment as to the non-named plaintiffs. Pendent jurisdiction does not apply because the issue raised in the cross-appeal—whether the judgment against Schuman and Coplin

5a

extinguished the non-named plaintiffs' claims—is not inextricably intertwined with the issue properly before this court on interlocutory appeal.

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OPINION

S.R. Thomas, Circuit Judge:

In this appeal, we consider what legal test courts must apply to evaluate the enforceability of a release of claims under the Employee Retirement Income Security Act of 1974 (“ERISA”). We hold that courts must decide whether the employee entered into the release knowingly and voluntarily by examining the totality of the circumstances, including enumerated factors. This inquiry requires an assessment of whether any improper fiduciary conduct, such as an

employer's breach of an ERISA-imposed fiduciary duty in the course of obtaining the release, undermines the validity of the release.

We have jurisdiction over the appeal pursuant to 28 U.S.C. § 1291 because the district court properly entered judgment pursuant to Federal Rule of Civil Procedure 54(b). As discussed *infra*, we lack appellate jurisdiction over the cross-appeal.

We review the district court's grant of summary judgment *de novo*. *King v. Blue Cross & Blue Shield of Ill.*, 871 F.3d 730, 739 (9th Cir. 2017). We reverse and remand for proceedings consistent with this opinion.

I

In anticipation of a potential merger, the technology company Atmel Corporation created a benefits plan ("Plan"), governed by ERISA, for employees to receive severance in the event that an acquiring company fired Atmel staff. Atmel told employees that the Plan, which included significant cash severance, was "intended to ease concerns."

The Plan would only pay out benefits if several conditions were met. First, the Plan would expire "on November 1, 2015 unless an Initial Triggering Event . . . ha[d] occurred prior" to that date. The Plan defined an "Initial Triggering Event" as occurring "only if the Company enter[ed] into a definitive agreement . . . on or before November 1, 2015, that [would] result in a Change of Control of the

Company.” If such an event occurred, the Plan would “remain in effect for” the next eighteen months.

Second, if the “Initial Triggering Event” occurred by the deadline, Atmel employees could then receive the benefits only if two more conditions were met: (A) “[a] Change of Control actually occur[red];” and (B) “[t]heir employment [was] terminated without ‘Cause’ by the Company (or its successor) at any time within 18 months of the execution date of the Definitive Agreement.”

The meaning of the key language in these conditions—specifically, whether an eventual “Change of Control” had to involve the same company with which Atmel entered into a “definitive agreement” on or before the November 1, 2015 deadline—remains in dispute.

In September 2015, Dialog Semiconductor agreed to acquire Atmel. But before the merger closed, Microchip Technology Inc. put in a competing offer. Microchip agreed in January 2016 to acquire Atmel. Between the Dialog deal and the announcement of the Microchip agreement, an Atmel human resources executive assured employees that the Plan would provide benefits for those “terminated without Cause in connection with a Change of Control of the company, including an acquisition by Dialog or Microchip.” After the Microchip agreement, Atmel’s human resources department circulated a “Frequently Asked Questions” document—which

evidence suggests Microchip reviewed and approved—stating that Microchip would honor the Atmel Plan. Microchip’s merger with Atmel officially closed in April 2016.

Soon after the merger, Microchip terminated the named plaintiffs in this suit, Peter Schuman and William Coplin, without cause, and offered them significantly lower benefits than promised in the Plan in exchange for a release of all potential claims. Letters to Schuman and Coplin accompanying the proposed releases stated that Atmel “and Microchip are making this offer, in part to resolve any current disagreement or misunderstanding regarding severance benefits previously offered by [Atmel].” Microchip informed Atmel employees that the benefits promised to them under the Plan were not available because the Plan had expired. Microchip’s stance was that the Plan had expired because the deal initiated before the deadline, with Dialog, had not resulted in a finalized merger. Schuman and Coplin signed the releases.

Schuman and Coplin later filed a class-action complaint against Microchip, Atmel Corp., and Atmel Corp. U.S. Severance Guarantee Benefit Program (collectively, “Microchip”), on behalf of about 200 similarly situated former Atmel employees who had also signed releases.¹ The complaint alleged

¹ Discovery revealed that 5 members of the currently certified 220-member class did not in fact sign the release. The status of

violations of ERISA, including breach of fiduciary duty and denial of benefits, and challenged the enforceability of the releases. As stated by the district court, Schuman and Coplin alleged that Microchip breached its “fiduciary duties by misinterpreting the [Plan] as having expired and encouraging Plaintiffs to sign releases in exchange for reduced severance benefits” because Microchip allegedly knew or should have known that the Plan remained valid.² The district court certified the class, and Microchip eventually moved for summary judgment.

Meanwhile, a group of nine former Atmel employees who had not signed releases also sued Microchip, alleging similar violations of ERISA. The two suits proceeded on parallel tracks before the same district judge. In the nine former employees’ suit, the district court initially found that the Plan’s key language regarding the “Change of Control” and “definitive agreement” unambiguously meant that the Plan had not expired by the time of the Microchip merger, and that Microchip had breached its fiduciary duties. On appeal, this Court concluded that the language was ambiguous, and remanded for further proceedings to resolve the Plan’s meaning. *Berman v. Microchip Tech. Inc.*, 838 F. App’x 292, 293 (9th Cir.

those class members remains unresolved and is not at issue in this appeal.

² There is no dispute about Microchip’s status as a fiduciary as relevant here.

2021). The parties in *Berman* then settled, leaving the meaning of the Plan's key language unresolved.

After *Berman* settled, Microchip renewed its summary judgment motion in Schuman and Coplin's class action, which had been stayed pending the expected trial in *Berman*. As described by the district court, Microchip "argue[d] that Plaintiffs knowingly and voluntarily waived their right to pursue claims under the Atmel Plan," which should dispose of the action. Schuman and Coplin argued that even if they had knowingly and voluntarily signed the releases, the releases were unenforceable because "Microchip violated its fiduciary duties by the very act of obtaining releases in exchange for sharply reduced severance payments" when it knew or should have known employees were still entitled to benefits under the Plan, contrary to Microchip's misrepresentations.

The district court granted summary judgment against the named plaintiffs but denied summary judgment for the non-named plaintiffs' claims. Strictly applying a six-part test from the First and Second Circuits, the district court found Schuman's and Coplin's releases were enforceable and therefore disposed of their claims. That test asks whether a release was "knowing and voluntary" in light of the totality of the circumstances, including:

- (1) plaintiffs' education and business sophistication;
- (2) the respective roles of employer and employee in determining the provisions of the

waiver; (3) the clarity of the agreement; (4) the time plaintiff had to study the agreement; (5) whether plaintiff had independent advice, such as that of counsel; and (6) the consideration for the waiver.

Morais v. Cent. Beverage Corp. Union Emps.' Supplemental Ret. Plan, 167 F.3d 709, 713 n.6 (1st Cir. 1999) (citing *Rivera-Flores v. Bristol-Myers Squibb Caribbean*, 112 F.3d 9, 12 n.4 (1st Cir. 1997)); see also *Finz v. Schlesinger*, 957 F.2d 78, 82 (2d Cir. 1992).

The district court analyzed each factor and found that Schuman and Coplin understood the terms and stakes of the release and signed it willingly. The district court did not consider any evidence of Microchip's alleged breach of fiduciary duties when analyzing these factors and reviewing the totality of the circumstances. It thus granted summary judgment against Schuman and Coplin.

As for the non-named plaintiffs, the district court found that the six-factor test was too individualized to support a class-wide conclusion that all of the releases were signed knowingly and voluntarily. Because the court had certified the class based in part on the expectation of evaluating the releases' enforceability on a class-wide basis, and the parties had not briefed the six-factor test at certification, the court ordered the parties to show cause "why the class should or should not be decertified."

The court then separately considered the non-named plaintiffs' claim that Microchip breached its fiduciary duties under ERISA because it knew or should have known that the Plan had not expired. The court denied summary judgment as to these plaintiffs because there was "at least one material dispute of fact regarding Defendants' knowledge of the Plan and its intended interpretation."

Subsequently, the district court entered final judgment under Federal Rule of Civil Procedure 54(b) in favor of Microchip and against Schuman and Coplin, certifying for our review the question of "what legal test the Court should apply in determining the enforceability of the releases signed by Plaintiffs Peter Schuman and William Coplin and the majority of class members." The district court wanted clarification as to whether it properly adopted and applied the First and Second Circuit's six-part test or whether it should have considered Microchip's alleged breach of fiduciary duties as part of its evaluation. The district court considered this a threshold question, to be answered before moving ahead with class treatment or decertification. The court stayed the remainder of the case pending appeal.

Schuman and Coplin appealed. Microchip cross-appealed, contending that the district court erred by denying summary judgment as to the non-named plaintiffs instead of applying the judgment against Schuman and Coplin to the rest of the class.

II

The primary question in this appeal is what legal test determines whether an ERISA release is enforceable.

We first consider whether ERISA requires heightened scrutiny of a waiver or release of ERISA claims. In *Vizcaino v. Microsoft Corp.*, 120 F.3d 1006, 1012 (9th Cir. 1997) (en banc), we suggested that if a waiver of ERISA claims had been at issue, we “would have [had] to consider whether” the waiver “must and would withstand special scrutiny designed to prevent potential employer or fiduciary abuse,” and that a waiver would need to be “knowing and voluntary.” However, it was unnecessary to decide that issue in *Vizcaino*. *Id.* Although we have since considered the enforceability of ERISA releases, we have not yet determined what the relationship is between enforceability and allegations of employer and fiduciary abuse, or whether releases must indeed withstand “special scrutiny.” *See, e.g., Washington v. Bert Bell/Pete Rozelle NFL Ret. Plan*, 504 F.3d 818, 823–25 (9th Cir. 2007) (assessing an alleged breach of fiduciary duty, finding no breach, and then evaluating whether the release was knowing and voluntary).

In accord with ERISA’s purposes and guided by other circuits’ approaches, we conclude that, when a breach of fiduciary duties is alleged, courts must evaluate releases and waivers of ERISA claims with “special scrutiny designed to prevent potential

employer or fiduciary abuse.” *Vizcaino*, 120 F.3d at 1012.

Requiring courts to consider evidence of a breach of fiduciary duty related to a release of claims under ERISA aligns with the statute’s purpose, structure, and underlying trust-law principles. *See Tibble v. Edison Int’l*, 575 U.S. 523, 528–31 (2015); *Varity Corp. v. Howe*, 516 U.S. 489, 497 (1996).

Congress enacted ERISA “to protect . . . the interests of participants in employee benefit plans . . . by establishing standards of conduct, responsibility, and obligation for fiduciaries of employee benefit plans, and by providing for appropriate remedies, sanctions, and ready access to the Federal courts.” 29 U.S.C. § 1001(b). The statute “requires a fiduciary,” such as an employer, “to discharge its responsibilities ‘solely in the interest of the participants and beneficiaries’ and ‘for the exclusive purpose of . . . providing benefits’” to them. *Guenther v. Lockheed Martin Corp.*, 972 F.3d 1043, 1051 (9th Cir. 2020) (quoting 29 U.S.C. § 1104(a)(1)).

The fiduciary duties ERISA imposes are drawn to a significant degree “from the common law of trusts, the law that governed most benefit plans before ERISA’s enactment.” *Varity Corp.*, 516 U.S. at 496. “The duty of loyalty is one of the common law trust principles that apply to ERISA fiduciaries,” and includes “a duty to disclose” accurate and material information and the duty to “deal fairly.” *Washington*,

504 F.3d at 823 (cleaned up). Relatedly, the Supreme Court has held that “[t]o participate knowingly and significantly in deceiving a plan’s beneficiaries in order to save the employer money at the beneficiaries’ expense” breaches the employer’s fiduciary duty, as doing so “is not to act ‘solely in the interest of the participants and beneficiaries.’” *Varity Corp.*, 516 U.S. at 506 (quoting 29 U.S.C. § 1104(a)).

The question, then, is how to apply the required special scrutiny in practice. Four other circuits have adopted ERISA-specific tests for the enforceability of releases. *See Morais*, 167 F.3d at 713 & n.6 (totality of the circumstances, including six factors); *Finz*, 957 F.2d at 82 (substantially the same test); *Howell v. Motorola, Inc.*, 633 F.3d 552, 559 (7th Cir. 2011) (substantially the same, but weighing eight factors, including “improper conduct” by the fiduciary); *Leavitt v. Nw. Bell Tel. Co.*, 921 F.2d 160, 162 (8th Cir. 1990) (substantially the same, but weighing nine factors, including “improper conduct” by fiduciary and employee’s awareness of rights). In doing so, our sister circuits have recognized that “[b]ecause we are guided by principles of trust law . . . we must examine the totality of the circumstances in which the release was signed to ensure the fiduciary did not obtain the release in violation of its duties to the beneficiary.” *Leavitt*, 921 F.2d at 162.

We accordingly conclude that courts must consider alleged improper conduct by the fiduciary in obtaining a release as part of the totality of the

circumstances concerning the knowledge or voluntariness of the release or waiver.

In assessing the totality of the circumstances, our sister circuits have employed slightly different tests. In contrast to the First and Second Circuit's non-exhaustive six-part test, the Seventh and Eighth Circuits have adopted more comprehensive but still non-exhaustive eight- and nine-part tests. The Seventh and Eighth Circuits' tests vary slightly in wording and content, but both explicitly require consideration of any improper conduct by the fiduciary.³ The approach of the Seventh and Eighth Circuits provides the right balance between a strictly traditional voluntariness examination and an ERISA-based analysis. Thus, we join their approach.⁴

³ The approaches differ in three respects: (1) the Eighth Circuit asks "whether [the employee] was given an opportunity to consult with an attorney before signing the release," *Leavitt*, 921 F.2d at 162, while the Seventh Circuit asks "whether the employee was represented by counsel or consulted with an attorney," *Howell*, 633 F.3d at 559; (2) the Eighth Circuit asks whether the employee "received adequate consideration," *Leavitt*, 921 F.2d at 162, while the Seventh Circuit's inquiry is "whether the consideration given in exchange for the waiver exceeded the benefits to which the employee was already entitled by contract or law," *Howell*, 633 F.3d at 559; and (3) the Eighth Circuit asks whether the employee "knew of his rights under the plan and the relevant facts when he signed the release," *Leavitt*, 921 F.2d at 162, while the Seventh Circuit does not.

⁴ Schuman and Coplin urge us to adopt a test that would ask, as a prerequisite to any consideration of "knowing and voluntary," whether the release is unenforceable at the outset because of the fiduciary's improper conduct in obtaining it. We decline to adopt that approach, which no circuit uses.

Combining the two sets of factors, we hold that, in evaluating the totality of the circumstances to determine whether the individual entered into the release or waiver knowingly and voluntarily, courts should consider the following non-exhaustive factors: (1) the employee's education and business experience; (2) the employee's input in negotiating the terms of the settlement; (3) the clarity of the release language; (4) the amount of time the employee had for deliberation before signing the release; (5) whether the employee actually read the release and considered its terms before signing it; (6) whether the employee knew of his rights under the plan and the relevant facts when he signed the release; (7) whether the employee had an opportunity to consult with an attorney before signing the release; (8) whether the consideration given in exchange for the release exceeded the benefits to which the employee was already entitled by contract or law; and (9) whether the employee's release was induced by improper conduct on the fiduciary's part.

Where, as here, the district court has found a genuine issue of fact material to the issue of a breach of fiduciary duty in obtaining the release of claims, the final factor warrants serious consideration and may weigh particularly heavily against finding that the release was "knowing" or "voluntary" or both.

Given our formulation of the applicable test, we remand the question to the district court for its application of the factors.

III

Contrary to Microchip’s assertion, the district court’s Rule 54(b) certification was not improper. The order certified the question of “what legal test the Court should apply in determining the enforceability of the releases signed by Plaintiffs Peter Schuman and William Coplin and the majority of class members.”

Under Rule 54(b), “[w]hen an action presents more than one claim for relief . . . or when multiple parties are involved, the court may direct entry of a final judgment as to one or more, but fewer than all, claims or parties only if the court expressly determines that there is no just reason for delay.” Fed. R. Civ. P. 54(b). The district court here both expressly directed entry of final judgment against Schuman and Coplin and expressly determined that “there is no just reason for delay.” See *United States v. Gila Valley Irrigation Dist.*, 859 F.3d 789, 797 (9th Cir. 2017); *Noel v. Hall*, 568 F.3d 743, 747 (9th Cir. 2009).

“Our function on appeal is to ‘scrutinize the district court’s evaluation of such factors as the interrelationship of the claims so as to prevent piecemeal appeals in cases which should be reviewed only as single units.’” *Noel*, 568 F.3d at 747 (quoting *Curtiss-Wright Corp. v. Gen. Elec. Co.*, 446 U.S. 1, 10 (1980)). We review de novo the district court’s determination of the “juridical concerns” underlying the order, such as the “interrelationship of the

claims,” while the “equitable analysis” regarding the need for an interlocutory appeal “ordinarily ‘is left to the sound judicial discretion of the district court.’” *Jewel v. Nat’l Sec. Agency*, 810 F.3d 622, 628 (9th Cir. 2015) (quoting *Wood v. GCC Bend, LLC*, 422 F.3d 873, 878–79 (9th Cir. 2005)).

The order easily satisfies each requirement. The district court’s reasoning as to the “juridical concerns” properly centered on the need to answer the threshold legal question of the test for enforceability of all class members’ releases to “streamline the ensuing litigation,” including by guiding the determination of whether class treatment was still appropriate. *Id.* (quoting *Noel*, 568 F.3d at 747). The district court’s “assessment of equitable factors such as prejudice and delay” was similarly proper, *Noel*, 568 F.3d at 747, as the court found that “all parties, and the Court, will benefit from a prompt interlocutory review” to resolve the legal question, *see Texaco, Inc. v. Ponsoldt*, 939 F.2d 794, 797–98 (9th Cir. 1991). There was no error in the certification order.

IV

We lack appellate jurisdiction over Microchip’s cross-appeal from the underlying partial summary judgment order. An order granting partial summary judgment is not an appealable final order. *Dannenberg v. Software Toolworks Inc.*, 16 F.3d 1073, 1074 (9th Cir. 1994).

Microchip contends that pendent appellate jurisdiction or the collateral order doctrine nevertheless provides jurisdiction. This is incorrect. Pendent jurisdiction does not apply because the issue raised in the cross-appeal—whether the judgment against Schuman and Coplin extinguished the non-named plaintiffs’ claims—is not “inextricably intertwined with” the issue “properly before us on interlocutory appeal.” *Meredith v. Oregon*, 321 F.3d 807, 812–13 (9th Cir. 2003) (cleaned up), *amended*, 326 F.3d 1030 (9th Cir. 2003). “[T]he legal theories on which the issues advance must either (a) be so intertwined that we must decide the pendent issue in order to review the claims properly raised on interlocutory appeal, or (b) resolution of the issue properly raised on interlocutory appeal necessarily resolves the pendent issue.” *Cunningham v. Gates*, 229 F.3d 1271, 1285 (9th Cir. 2000) (citations omitted). But “two issues are not inextricably intertwined where their resolution requires ‘application of separate and distinct legal standards’”—that is, standards that “turn on wholly different factors.” *Arc of Cal. v. Douglas*, 757 F.3d 975, 993 (9th Cir. 2014) (first quoting *Meredith*, 321 F.3d at 815; then quoting *Burlington N. & Santa Fe Ry. Co. v. Vaughn*, 509 F.3d 1085, 1093 (9th Cir. 2007)).

Microchip’s theory of jurisdiction is that “[t]he judgment entered against” the named plaintiffs—which is the issue “properly raised on interlocutory appeal”—“necessarily resolves” the issue raised in the

cross-appeal, “i.e., the legal consequence of that judgment for the unnamed class members.” But the issue on appeal is a narrow one: whether the district court applied the correct legal test for enforceability of the releases, and, if not, what test is proper. The resolution of that legal issue does not “necessarily resolve[]” the issue of whether the district court should have granted summary judgment against the non-named plaintiffs as well. *Cunningham*, 229 F.3d at 1285.

Further, the legal standards relevant to the appeal and cross-appeal are “separate and distinct,” as they “turn on wholly different factors.” *Arc of Cal.*, 757 F.3d at 993 (cleaned up). Resolution of the appeal depends on legal standards specific to the enforceability of releases under ERISA, whereas the cross-appeal requires application of legal standards governing the adjudication and management of class actions. These standards “turn on wholly different factors.” *Id.*

The collateral order doctrine is similarly inapposite. Three conditions must be met for the doctrine to apply: “First, [the order] must conclusively determine the disputed question; second, it must resolve an important issue completely separate from the merits of the action; third, it must be effectively unreviewable on appeal from a final judgment.” *United States v. Tillman*, 756 F.3d 1144, 1149 (9th Cir. 2014) (alteration in original) (quoting *Flanagan v. United States*, 465 U.S. 259, 265 (1984)). Microchip

contends that the collateral order at issue is the partial grant of summary judgment in favor of Microchip, “against . . . only the class representatives.”

“We need not address whether” the issue presented by the cross-appeal “meets the first and second prongs of the test outlined above because it is effectively reviewable on appeal.” *Cunningham*, 229 F.3d at 1284. Reversing and remanding the grant of summary judgment against Schuman and Coplin gives Microchip another chance to argue that summary judgment against the named plaintiffs requires summary judgment against the class. The outcome would be reviewable on a later appeal.

We therefore dismiss the cross-appeal for lack of jurisdiction.

V

In sum, we hold that releases and waivers under ERISA must “withstand special scrutiny designed to prevent potential employer or fiduciary abuse.” *Vizcaino*, 120 F.3d at 1012. This scrutiny requires courts to consider whether the plaintiff entered into the release knowingly and voluntarily, and will be of particular importance where, as here, there is evidence that the defendant potentially breached its fiduciary duty by or in the course of obtaining a release of ERISA claims. Summary judgment against Schuman and Coplin is reversed, and we remand to

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the district court for further proceedings consistent with this opinion.

**REVERSED AND REMANDED; CROSS-
APPEAL DISMISSED.**

25a

APPENDIX B

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

PETER SCHUMAN, et al.,

Plaintiffs,

v.

MICROCHIP TECHNOLOGY INCORPORATED,

et al.,

Defendants.

Case No. 16-cv-05544-HSG

**ORDER GRANTING IN PART AND DENYING
IN PART MOTION FOR SUMMARY
JUDGMENT**

Re: Dkt. No. 163

Pending before the Court is the motion for summary judgment filed by Defendants Microchip Technology, Inc., Atmel Corporation, and Atmel Corporation U.S. Severance Guarantee Benefit Program. Dkt. No. 163. The motion was held in abeyance while the case was stayed, and the parties completed the briefing and the Court heard argument once the stay was lifted. For the reasons detailed

below, the Court **GRANTS IN PART** and **DENIES IN PART** the motion.

I. BACKGROUND

A. Factual Background

The parties are familiar with the facts of this case, and many remain undisputed. Plaintiffs are a certified class of 220 former employees of Defendant Atmel Corporation.¹ See Dkt. No. 122 (order granting class certification); *see also* Dkt. 107 at 6, n.4; Dkt. 134 at 14, n.7. In July 2015, Atmel created the U.S. Severance Guarantee Benefit Program (“Plan” or “Atmel Plan”). See *Berman v. Microchip Technology Inc.*, Case No. 17-cv-01864-HSG, Dkt. No. 157 at 4115–19. The cover letter distributed with the Plan said that Atmel recognized there “ha[d] been significant market speculation regarding possible transactions involving the company,” and that “such rumors can be distracting and unsettling.” *Id.* at 4117. The letter further explained that the Plan was “intended to ease concerns among [] employees” and allow them to “focus[] on [the company’s] continued success.” See *id.*

The relevant terms of the Plan are as follows:

Term of the Severance Guarantee Benefit Program: The U.S. Severance Guarantee Benefit

¹ The nine plaintiffs in the related action, *Berman v. Microchip Technology Inc.*, Case No. 17-cv-01864-HSG, did not sign any release agreements, and the parties settled that case in April 2023.

Program is effective from July 1, 2015 and will terminate on November 1, 2015 unless an Initial Triggering Event (as described below) has occurred prior to November 1, 2015, in which event the U.S. Severance Guarantee Benefit Program will remain in effect for 18 (eighteen) months following that Initial Triggering Event.

Eligibility: Eligibility is limited to U.S.-based employees of Atmel Corporation as of the date a Change of Control is consummated.

Initial Triggering Event: Benefits under the U.S. Severance Guarantee Benefit Program will become available to eligible employees only if the Company enters into a definitive agreement (a “Definitive Agreement”), on or before November 1, 2015, that will result in a Change of Control of the Company. If a Definitive Agreement is not entered into on or before that date, the U.S. Severance Guarantee Benefit Program described in the letter and this Addendum will automatically expire, unless expressly extended by the Company’s Board of Directors.

Benefits Conditions: After an Initial Triggering Event occurs that makes available to eligible employees the U.S. Severance Guarantee Benefit Program, participants will then be entitled to receive cash payments and COBRA benefits if, but only if:

- (A) A Change of Control actually occurs; and

(B) Their employment is terminated without “Cause” by the Company (or its successor) at any time within 18 months of the execution date of the Definitive Agreement.

For purposes of this U.S. Severance Guarantee Benefit Program, the definition of “Change of Control” and “Cause” will be the same as that contained in the Company’s Senior Executive Change of Control and Severance Plan.

Id. at 4115. The Plan further states that Atmel’s successor would “assume the obligations” of the Plan. *Id.* at 4116. The Plan therefore created three conditions precedent to Plaintiffs’ entitlement to severance benefits: (1) an Initial Triggering Event occurred before November 1, 2015; (2) a Change of Control actually occurred; and (3) Plaintiffs were terminated without cause. *Id.* at 4115. The parties in both *Berman* and *Schuman* disputed whether the first condition was met because the eventual “Change of Control” did not involve the same company that entered into a “Definitive Agreement with Atmel before November 1, 2015.”

In September 2015, Atmel entered into an agreement with Dialog Semiconductor, under which Dialog would acquire Atmel. *See* Dkt. No. 152 at 2202–48. However, before the merger with Dialog closed, Atmel received a competing offer from Defendant Microchip Technology Inc. *See id.* at 2250–51. During this time, Atmel’s then-Senior Vice

President of Global Human Resources, Suzy Zoumaras, sent a letter to employees—including the named Plaintiffs in this case—stating that the Atmel Plan “continues to remain in place.” *See Berman*, Dkt. No. 152 at 419; *see also* Dkt. No. 176-1, Ex. B at 25:1–27:24. The letter further reminded employees of the benefits they may be eligible for if terminated following “an acquisition by Dialog or Microchip.” *See id.*; *see also* Dkt. No. 176-1, Ex. C at 24:2–16 (Atmel CEO Steve Laub explaining that he communicated to employees “their severance agreements would be effective if Microchip turned out to be the acquirer”). Ultimately, Dialog did not make a new offer, and Atmel entered into a new agreement with Microchip in January 2016. *See* Dkt. No. 29 at ¶ 36. In February 2016, Atmel’s Human Resources Department circulated a “Frequently Asked Questions” document to employees regarding “compensation & benefits relating to the Microchip merger.” Dkt. No. 176-2, Ex. S at 421–22. The document stated that “Microchip has agreed to honor each of your employment and compensatory contracts agreements”—including severance agreements—“*that are in effect immediately prior to the closing of the transaction.*” *Id.* (emphasis added). Employees continued to raise concerns about the applicability of the Atmel Plan to the Microchip merger. *See, e.g.*, Dkt. No. 163-1, Ex. 2 at ¶ 13; Dkt. No. 163-1, Ex. 3 at ¶¶ 11–12; Dkt. No. 163-1, Ex. 4 at ¶¶ 8–20. The merger between Atmel

and Microchip ultimately closed in April 2016. *See* Dkt. No. 29 at ¶ 36.

Following the merger, Microchip’s CEO—and the new CEO of Atmel—Steve Sanghi held an “all-hands” meeting for Atmel employees, during which he explained that the Atmel Plan had expired and Microchip would not honor its terms. *See* Dkt. No. 176-1, Ex. E at 65:24–77:20. He also had a PowerPoint presentation explaining Microchip’s interpretation of the Plan. *Id.* at 67:17–23. According to William Coplin, one of the named Plaintiffs, Mr. Sanghi asserted that “Atmel employees would have to fight him in court if they wanted to challenge him on their entitlement to benefits under the [Atmel] Plan.” *See* Dkt. No. 176-1, Ex. R at 256–57. Mr. Sanghi also explained that Microchip was nevertheless willing to offer terminated Atmel employees 50 percent of the benefits provided by the Atmel Plan in exchange for signing a release of any claims under the original Atmel Plan. *See* Dkt. No. 176-1, Ex. E at 65:24–77:20.

Plaintiffs in this case were terminated without cause following the merger with Microchip and offered reduced severance benefits. *See, e.g.*, Dkt. No. 163-1, Ex. R to Ex. 1 at 815–820. As relevant to this case and Defendants’ motion for summary judgment, 215 of the 220 Plaintiffs signed a release in exchange for a portion of the severance benefits provided for by

the Atmel Plan.² *See, e.g.*, Dkt. No. 176-2, Ex. R at 410–13. The cover letter to the offer explained that “[t]he Company and Microchip are making this offer, in part to resolve any current disagreement or misunderstanding regarding severance benefits previously offered by the Company” *See* Dkt. No. 163-1, Ex. R to Ex. 1 at 815. The letter further states that the agreement “supersedes any other actual or perceived promises, warranties, or representations . . . including, for the avoidance of doubt, any programs, policies, or agreements with respect to severance or equity acceleration benefits made prior to April 4, 2016.” *Id.* at 816.

The release itself states in relevant part:

You agree to release the Company, its subsidiaries and affiliates, and its and their officers, agents and employees from any liability related to or arising out of your employment with any of them. *This includes a release of any liability for claims of any kind that you ever had or may have at this time, whether you know about them or not.* This release is as broad as the law allows and includes a release of claims under federal and state laws, such as anti-discrimination, harassment and retaliation laws and expressly includes any claims under the Age Discrimination in Employment Act. This

² Five class members in this case, like those in the *Berman* case, did not sign a release. *See* Dkt. No. 176 at 1; *see also* Dkt. 107 at 6, n.4.

release also includes a release of any tort and contract claims, and any other claims that could be asserted under federal, state or local statutes, regulations or common law.

See id. at 818 (emphasis added).

Despite signing these releases, named Plaintiffs Peter Schuman and William Coplin filed this class action in September 2016. *See* Dkt. No. 1. The parties then agreed to give Plaintiffs an opportunity to exhaust ERISA’s administrative claims process and to file an amended complaint. *See* Dkt. No. 27. Plaintiffs accordingly submitted claims for severance benefits under the Atmel Plan, and the plan administrator denied their claims. *See* Dkt. No. 176-1, Ex. R at 600–03, 1900–03. The denial letters stated that Plaintiffs were “not eligible for benefits under the Atmel Severance Plan” because the Plan had “automatically expired on November 1, 2015.” *Id.* The letters further acknowledged Plaintiffs’ requests for rescission of the releases, but the plan administrator concluded that Plaintiffs had not supported the request, and in any event, because Plaintiffs were “not eligible for benefits under the Atmel Severance Plan,” the releases were “not relevant” to their claims for benefits. *Id.* Plaintiffs’ administrative appeals were also denied. *See* Dkt. No. 176-2, Ex. V at 117–19, 135–37. Again, the letters explained that Plaintiffs were “not eligible for benefits under the Atmel Severance Plan” because it had expired. *Id.*

Plaintiffs then filed an amended complaint in this case. *See* Dkt. No. 29 (“FAC”).

B. Procedural History

In the FAC, Plaintiffs alleged that Defendants (1) breached their fiduciary duties by misinterpreting the severance agreements as having expired and encouraging Plaintiffs to sign releases in exchange for reduced severance benefits, in violation of ERISA § 404(a), 29 U.S.C. § 1104(a); (2) improperly denied their claims for benefits, in violation of ERISA § 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B); and (3) interfered with their right to recover benefits payments, in violation of ERISA § 510, 29 U.S.C. § 1140. *See id.* at ¶¶ 82–111. In addition to benefits under the Atmel Plan, Plaintiffs also sought several forms of equitable relief based on the alleged breach of fiduciary duty. *See id.* at ¶¶ 93–97. In February 2018, the Court granted in part and denied in part Defendants’ motion to dismiss, narrowing the scope of the case. *See* Dkt. No. 54. The Court dismissed Plaintiffs’ third cause of action for interference with claim benefits, and also dismissed several of the forms of equitable relief that Plaintiffs sought as duplicative of their claim for benefits under the Atmel Plan. *Id.* at 16–25. And as relevant to Defendants’ argument regarding the enforceability of the releases that Plaintiffs signed in this case, *see* Section III.A below, the Court interpreted Plaintiffs’ request to void the releases as a claim for rescission. *See id.* at 22–24. However, the Court dismissed the rescission claim

because Plaintiffs failed to allege that they offered to tender the partial severance benefits that they received by signing the releases. *Id.*

The operative complaint thus contains claims for (1) breach of fiduciary duty and (2) denial of claim benefits. Plaintiffs also seek injunctive relief preventing Microchip from enforcing the releases it obtained and from soliciting new releases. *See* FAC at ¶¶ 93–97; *see also* 176 at 3 (“[T]he appropriate equitable remedy . . . is an order enjoining the enforcement of Microchip’s wrongfully obtained releases . . .”).

In response to the FAC, Defendants filed a counterclaim for equitable relief under ERISA § 502(a)(3) to enjoin Plaintiffs from dissipating benefits received and estopping them from pursuing their claims in this case. *See* Dkt. No. 59. In March 2019, the Court granted Plaintiffs’ motion to dismiss Defendants’ counterclaim. *See* Dkt. No. 103. The Court explained that regardless of the effect that any release may eventually have on the merits of Plaintiffs’ case, “it is not a covenant not to sue.” *See id.* at 6. Defendants therefore had not established that Plaintiffs violated the terms of an ERISA plan. *Id.* The Court subsequently granted Plaintiffs’ motion for class certification, Dkt. No. 122, and the parties moved for summary judgment.

At the same time, the parties continued to litigate the related *Berman* case, and eventually agreed to

stay this case pending resolution of the *Berman* trial. See Dkt. No. 169. As relevant here, the Court granted the *Berman* plaintiffs’ motion for partial summary judgment and denied Defendants’ Rule 56(d) request for discovery. See *Berman*, Dkt. No. 95. At the time, the Court found that under the plain language of the Atmel Plan, it had not expired in November 2015 and the *Berman* plaintiffs were entitled to severance benefits. *Id.* The Court further reasoned that as a consequence of this plain meaning, the plan administrator breached its fiduciary duties by misrepresenting the Plan terms and denying benefits. *Id.* On appeal, the Ninth Circuit reversed in part, concluding that the pertinent plan language was “ambiguous” and that discovery was therefore warranted. See *Berman v. Microchip Tech. Inc.*, 838 F. App’x 292, 293 (9th Cir. 2021).

On remand, the Court denied the *Berman* parties’ cross-motions for summary judgment and the case was set for trial. However, the parties settled before the trial. The Court accordingly lifted the stay in this case, Dkt. No. 172, and Defendants renewed their prior motion for summary judgment, see Dkt. Nos. 163, 173.

II. LEGAL STANDARD

Summary judgment is proper when a “movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). A fact is

“material” if it “might affect the outcome of the suit under the governing law.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). And a dispute is “genuine” if there is evidence in the record sufficient for a reasonable trier of fact to decide in favor of the nonmoving party. *Id.* But in deciding if a dispute is genuine, the court must view the inferences reasonably drawn from the materials in the record in the light most favorable to the nonmoving party, *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587–88 (1986), and “may not weigh the evidence or make credibility determinations,” *Freeman v. Arpaio*, 125 F.3d 732, 735 (9th Cir. 1997), *overruled on other grounds by Shakur v. Schriro*, 514 F.3d 878, 884–85 (9th Cir. 2008). If a court finds that there is no genuine dispute of material fact as to only a single claim or defense or as to part of a claim or defense, it may enter partial summary judgment. Fed. R. Civ. P. 56(a).

III. DISCUSSION

First, Defendants contend that almost all Plaintiffs in this case signed valid releases that bar their claims for benefits under the Atmel Plan. Dkt. No. 163 at 7–14. *Second*, Defendants contend that Plaintiffs’ breach of fiduciary duty claim and their related requests for equitable relief fail. *See id.* at 14–25. *Lastly*, Defendants preserve their argument that Plaintiffs’ denial of benefits claim also fails. *Id.* at 7, n.1.

A. Releases

As an initial matter, Defendants argue that Plaintiffs knowingly and voluntarily waived their right to pursue claims under the Atmel Plan.³ See Dkt. No. 163 at 7–14. Plaintiffs respond that Defendants waived the right to rely on these releases, and in any event, they are not enforceable given the unique context of this case. See Dkt. No. 176 at 12–15.

i. Waiver

Plaintiffs do not appear to dispute that if the releases were valid and enforceable they would bar Plaintiffs' claims in this case. See Dkt. No. 176 at 3 (“[T]he appropriate equitable remedy . . . is an order enjoining the enforcement of Microchip’s wrongfully obtained releases, thus entitling plaintiffs and class to their long-unpaid severance amounts under the Plan.”). Instead, Plaintiffs first urge that Defendants waived any right to rely on the releases. See *id.* at 12–14.

Plaintiffs argue that Defendants cannot rely on the releases to bar their right to pursue their claims in this case because the plan administrator did not base the denial of claims on the existence of these releases. *Id.* Rather, the denial letters simply stated that the Atmel Plan had expired. See Dkt. No. 176-1, Ex. R at 600–03, 1900–03. To the extent the letters

³ For purposes of this section, when referring to “Plaintiffs” the Court only refers to the 215 of the 220 class members who signed releases in exchange for partial severance benefits.

referenced the releases at all, they said they were “not relevant.” *Id.* Plaintiffs point out that the Ninth Circuit has held that “a court will not allow an ERISA plan administrator to assert a reason for denial of benefits that it had not given during the administrative process.” *Harlick v. Blue Shield of California*, 686 F.3d 699, 719–20 (9th Cir. 2012).

In *Harlick*, the plaintiff had sought coverage for treatment for anorexia nervosa. *See id.* at 703–04. The defendant denied her claim, concluding that the plaintiff’s treatment was at a residential facility, which was not covered under the plan. *Id.* at 705–06. The Ninth Circuit concluded that the California Mental Health Parity Act required coverage of all “medically necessary treatment for severe mental illness,” and proceeded to consider whether the plaintiff’s stay at the facility was medically necessary. *Id.* at 719. The claim administrator had not denied the claim based on a failure to show that the treatment was medically necessary. *Id.* at 719–20. The Ninth Circuit rejected the defendant’s attempt to raise this argument for the first time on appeal, holding that “a court will not allow an ERISA plan administrator to assert a reason for denial of benefits that it had not given during the administrative process.” *Id.*

The Court explained that ERISA and its implementing regulations require that “[a]n ERISA plan administrator who denies a claim [] explain the ‘specific reasons for such denial’ an provide a ‘full and

fair review’ of the denial.” *Id.* at 719 (quoting 29 U.S.C. § 1133). This is designed to allow claimants the ability to prepare for administrative review and appeal to the federal courts, and to prevent them from being “sandbagged’ by a rationale the plan administrator adduces only after the suit has commenced.” *Id.* at 720 (quotation omitted); *see also Jebian v. Hewlett–Packard Co. Emple. Benefits Org. Income Prot. Plan*, 349 F.3d 1098, 1104 (9th Cir. 2003) (explaining that this rule “parallels the general rule that an agency’s order must be upheld, if at all, on the same basis articulated in the order by the agency itself, not a subsequent rationale articulated by counsel.”) (quotation omitted).

Because the plan administrator here did not base the denial of Plaintiffs’ claims on the existence of the releases, Plaintiffs contend that Defendants waived the ability to rely on them as a defense in this case. *See* Dkt. No. 176 at 12–14. The Court is not persuaded. Unlike in *Harlick*, the Court is not considering the releases as part of the merits of Plaintiffs’ claims, but rather as an affirmative defense to determine whether they can pursue their ERISA claims at all. Several courts in this district have addressed this same set of circumstances and concluded that “a right to ERISA benefits and a right to bring an ERISA action in federal court are distinct.” *Gonda v. The Permanente Med. Grp., Inc.*, No. 11-CV-01363-SC, 2015 WL 678969, at *4 (N.D. Cal. Feb. 17, 2015), *aff’d sub nom. Gonda v.*

Permanente Med. Grp., Inc., 691 F. App'x 397 (9th Cir. 2017) (collecting cases); *see also Upadhyay v. Aetna Life Ins. Co.*, No. C 13-1368 SI, 2014 WL 186709, at *2 (N.D. Cal. Jan. 16, 2014), *aff'd*, 645 F. App'x 569 (9th Cir. 2016); *Parisi v. Kaiser Found. Health Plan Long Term Disability Plan*, No. C 06-04359 JSW, 2008 WL 220101, at *3 (N.D. Cal. Jan. 25, 2008).

Plaintiffs attempt to distinguish these cases by suggesting that Defendants may only raise the releases as an affirmative defense if the claim administrator was unaware at the time it evaluated the claims that the releases existed. *See* Dkt. No. 176 at 13–14. Because Plaintiffs challenged the validity of the releases when they submitted claims for benefits under the Atmel Plan, *see* Dkt. No. 176-1, Ex. R at 600–03, 1900–03, Plaintiffs point out that the claim administrator here was aware of—and could have relied on—the releases when denying their claims. She did not, and instead simply explained that Plaintiffs were “not eligible” because the Atmel Plan had expired. Dkt. No. 176-2, Ex. V at 117–19, 135–37. But as Defendants point out, none of the cases identified above turned on whether the plan administrator was aware of the releases. To the contrary, in *Parisi*, the court acknowledged that the administrator was “fully aware” of the release but did not use it as a reason to deny benefits. *See* 2008 WL 220101, at *1, n.1. These cases turned on the idea that there is a meaningful distinction between consideration of the merits of a plaintiff's claim for

benefits and his or her right to bring an ERISA action in federal court. Plaintiffs fail to grapple with this distinction at all.

The Court finds the reasoning of these cases persuasive and adopts it here. In considering the releases in this case, the Court is neither opening up the administrative record nor reviewing Defendants' denial of Plaintiffs' benefits claims. The Court is simply being asked to consider whether the releases bar Plaintiffs' ERISA action in the first instance. And here, the broad language of the releases is clear, and if enforceable, would preclude an ERISA action in federal court. Under the releases, Plaintiffs agree "to release the Company, its subsidiaries and affiliates, and its and their officers, agents and employees from *any liability* related to or arising out of [Plaintiffs'] employment with any of them. *This includes a release of any liability for claims of any kind that you ever had or may have at this time*, whether you know about them or not." See Dkt. No. 163-1, Ex. R to Ex. 1 at 818 (emphasis added). The accompanying offer letter further explained that Defendants were offering benefits in exchange for releases "to resolve any current disagreement or misunderstanding regarding severance benefits previously offered by the Company" See Dkt. No. 163-1, Ex. R to Ex. 1 at 815.

Plaintiffs briefly suggest that the plan administrator had authority to waive the releases, and thus did so by failing to rely on them during the administrative process. See Dkt. No. 176 at 13–14.

But the only two cases that Plaintiffs cite are inapposite. In *Barron v. UNUM Life Insurance Co. of America*, the Fourth Circuit rejected a claim administrator's attempt to deny the plaintiff benefits based on a general release that she had signed when she worked for a different employer and had coverage under a different employee benefits plan. 260 F.3d 310, 313–16 (4th Cir. 2001). The defendant had attempted to argue that the release, entered into with UNUM Life Insurance, covered not only the earlier UNUM policy, but any other future UNUM policy regardless of the policyholder. *Id.* at 313–14. The court rejected this interpretation, finding no support for it in the language of the policy, and concluding that the defendant was improperly trying to reduce its own insurance risk. *Id.* at 315–16. And in *Jacobs v. Xerox Corp. Long Term Disability Income Plan*, the district court simply stated in a footnote that the claim administrator had an “alternative basis” for denying the plaintiff's claim based on a general release. 356 F. Supp. 2d 877, 891, n.12 (N.D. Ill. 2005). Neither case addressed whether a plan administrator can waive the company's right to assert a release as an affirmative defense in court if the administrator does not rely on it during the administrative process. Plaintiffs have not offered any on-point support for their contention that Defendants waived the right to rely on the releases in this case.

The Court finds that Defendants may raise their waiver defense in this case even though the releases

were not relied upon during the administrative process. The Court therefore considers whether the releases are enforceable.

ii. Enforceability

“A release is the abandonment, relinquishment or giving up of a right or claim to the person against whom it might have been demanded or enforced . . . and its effect is to extinguish the cause of action; hence it may be pleaded as a defense to the action.” *Skilstaf, Inc. v. CVS Caremark Corp.*, 669 F.3d 1005, 1017, n.10 (9th Cir. 2012) (quotation omitted). In other words, a release is “the act of giving up a right or claim to the person against whom it could have been enforced.” *Syverson v. Int’l Bus. Machines Corp.*, 472 F.3d 1072, 1084 (9th Cir. 2007) (quoting Release, Black’s Law Dictionary (abridged 7th ed. 2000)). The parties appear to agree that in the context of ERISA, releases must be evaluated under a “heightened scrutiny” standard. *See* Dkt. No. 176 at 14–15; Dkt. No. 177 at 3–4; *see also Vizcaino v. Microsoft Corp.*, 120 F.3d 1006, 1012 (9th Cir. 1997) (noting that in the context of ERISA, releases “must withstand special scrutiny designed to prevent potential employer or fiduciary abuse”).

Courts therefore consider whether the release was “‘knowing and voluntary’ by examining the totality of the circumstances.” *See Rombeiro v. Unum Ins. Co. of Am.*, 761 F. Supp. 2d 862, 868–69 (N.D. Cal. 2010) (collecting cases). Relevant factors include:

(1) plaintiff's education and business sophistication; (2) the respective roles of employer and employee in determining the provisions of the waiver; (3) the clarity of the agreement; (4) the time plaintiff had to study the agreement; (5) whether plaintiff had independent advice, such as that of counsel; and (6) the consideration for the waiver.

Id. (quotation omitted); *accord Gonda*, 2015 WL 678969, at *3 (applying same six-factor test as developed in *Finz v. Schlesinger*, 957 F.2d 78, 82 (2d Cir.1992)); *Upadhyay*, 2014 WL 186709, at *4 (same); *Parisi*, 2008 WL 220101, at *4 (same).

Plaintiffs do not address these factors at all, urging that this analysis is somehow improper under the specific circumstances of this case. Dkt. No. 176 at 14–15. Plaintiffs contend that whether the releases were knowingly and voluntarily obtained is simply irrelevant where, as alleged here, “Microchip violated its fiduciary duties by the very act of obtaining releases in exchange for sharply reduced severance payments.” Dkt. No. 176 at 14 (emphasis omitted). In the FAC and in their opposition brief, Plaintiffs allege that Defendants breached their fiduciary duties in multiple ways, including by failing to provide complete information about the benefits to which Plaintiffs were entitled, failing to investigate the intended meaning of the Atmel Plan, and offering Plaintiffs reduced severance benefits in exchange for releases. *See* FAC at ¶¶ 87–89; *see also* Dkt. No. 176

at 2–3, 18–22. In other words, Defendants misinterpreted and misled Plaintiffs about the meaning of the Atmel Plan. During the hearing on the motion, Plaintiffs reiterated their position that a review of the totality of the circumstances or use of the six-factor test to evaluate the releases is inappropriate in light of these alleged breaches. In short, Plaintiffs suggest that releases are never enforceable in cases where, as here, the plaintiffs allege that the defendant breached its fiduciary duty by even seeking them.

Yet Plaintiffs offer no authority for this contention. Although emphasizing that waivers of ERISA rights are subject to heightened scrutiny and citing some of the same cases referenced above, Dkt. No. 176 at 14, Plaintiffs state that these cases are somehow meaningfully different from this one. Plaintiffs point out that the releases in these other cases were “the product of legitimate negotiations following a good-faith employment dispute *unrelated* to any dispute about ERISA benefits.” *See* Dkt. No. 176 at 15 (emphasis in original). None of these cases, however, conditioned application of the six-factor test in this way. To the contrary, in each case the court evaluated the totality of the circumstances, including the nature of the negotiations. *See Rombeiro*, 761 F. Supp. 2d at 868–69 (considering “the respective roles of employer and employee in determining the provisions of the waiver”).

Plaintiffs also briefly cite 29 U.S.C. § 1110(a), which provides that “any provision in an agreement or instrument which purports to relieve a fiduciary from responsibility or liability for any responsibility, obligation, or duty under this part shall be void as against public policy.” *See* Dkt. No. 176 at 14; *see also IT Corp. v. Gen. Am. Life Ins. Co.*, 107 F.3d 1415, 1418 (9th Cir. 1997). Yet courts have routinely explained that § 1110 does not preclude individuals from entering into agreements that settle or release breach of fiduciary duty claims. *See, e.g., Upadhyay*, 2014 WL 186709, at *3 (“[C]ourts have uniformly permitted ‘knowing and voluntary’ private releases of statutory claims.”) (collecting cases).

Here, Defendants offered reduced severance benefits in exchange for releases to resolve the dispute over the meaning of the Atmel Plan and Plaintiffs’ entitlement to benefits under it. Taken to its logical extreme, Plaintiffs’ argument would preclude parties from settling cases whenever the parties disagreed about the meaning of an ERISA plan. Plaintiffs have not offered any authority or policy rationale for such a sweeping prohibition, and the Court finds no basis to conclude that a knowing and voluntary release is nonetheless unenforceable in this context. The Court therefore finds it appropriate to evaluate the totality of the circumstances to

determine whether the releases were in fact knowing and voluntary.⁴

To the extent Plaintiffs engage at all with the question of whether the releases were knowing and voluntary, they simply urge that Defendants erroneously determined, and declared to employees, that the Atmel Plan had expired. Plaintiffs suggest that Defendants were obligated to pay benefits under the plain language of the Atmel Plan. *See* Dkt. No. 176 at 15, 19–20 (noting that Defendants “refused to pay the full benefits due under ERISA”). Although the Court initially agreed with Plaintiffs that Defendants’ interpretation of the Plan was unreasonable on its face, *see Berman*, Dkt. No. 95 at 9–13, the Ninth Circuit disagreed.

The Ninth Circuit concluded that “the relevant language in the Atmel Plan is ambiguous.” *Berman*, 838 F. App’x at 293. Specifically, the Court considered the requirement that benefits “will become available to eligible employees only if the Company enters into a definitive agreement [], on or before November 1, 2015, *that will result in a Change of Control of the*

⁴ Both in their opposition and during the hearing, Plaintiffs suggest that the Court has already decided that it has the power to prevent Defendants from enforcing the releases. *See, e.g.*, Dkt. No. 176 at 1. But until now the Court has not had occasion to consider the merits of Defendants’ argument that the releases simply bar Plaintiffs’ claims entirely. The Court further notes that its orders on the motions to dismiss and motions for class certification both predated the Ninth Circuit’s memorandum disposition in *Berman*.

Company.” *Berman*, Dkt. No. 157 at 4115 (emphasis added). The Ninth Circuit explained that “the phrase ‘that will result’ is ambiguous because it does not ‘exclud[e] all alternative readings as unreasonable,’ and the ambiguity is not eliminated by reading the phrase in the context of the plan as a whole.” *Berman*, 838 F. App’x at, 293 (quoting *McDaniel v. Chevron Corp.*, 203 F.3d 1099, 1110 (9th Cir. 2000)). In short, the Ninth Circuit found that the Atmel Plan was susceptible to more than one interpretation. The actual meaning of the Atmel Plan is of course the crux of the parties’ dispute in *Berman* and in this case. *See, e.g.*, Section III.B.i.

But apart from of the actual meaning of the Atmel Plan, the record indicates that Plaintiffs knew there was a dispute about the expiration of the Plan and knew that Defendants explicitly offered the releases (and reduced severance benefits) to resolve this dispute:

- During the all-hands meeting for Atmel employees, Microchip and the new Atmel CEO Mr. Sanghi explained that Microchip believed the Atmel Plan had expired, and it would not honor its terms. *See* Dkt. No. 176-1, Ex. E at 65:24–77:20. He also used a PowerPoint presentation during the meeting to explain Microchip’s interpretation of the Plan and their intention to offer reduced benefits. *Id.* The slides stated that “[e]mployees will have to sign and accept the new severance plan and waive

any rights under the old plan.” *See* Dkt. No. 163-1, Ex. Q to Ex. 1 at 3239.

- The offer letters accompanying the releases stated that “Atmel and Microchip are making this offer, in part to resolve any current disagreement or misunderstanding regarding severance benefits previously offered by [Atmel], and in part to provide you with the security of certain benefits in the event your relationship is terminated involuntarily without Cause” *See* Dkt. No. 163-1, Ex. R to Ex. 1 at 815–20. The letter further explained that the “receipt of the Severance Benefits [under this offer] will be subject to you signing and not revoking a release of any and all claims” *Id.*
- Plaintiffs Schuman and Coplin similarly testified during their depositions that they understood they were waiving claims under the Atmel Plan by signing the release. *See* Dkt. No. 163-1, Ex. W to Ex. 1 at 99:19–100:7; *id.*, Ex. S at 88:19–25. Mr. Schuman said that at the time he signed, he felt like he “was being taken advantage” of, but he “was trying to get this behind [him]” and was “walking away.” *Id.*, Ex. W at 100:19–23.

Plaintiffs offer no contrary evidence regarding their awareness of the dispute and the nature of the releases. And as the *Berman* case illustrates, not all

Atmel employees signed these releases. Some decided not to sign and to pursue their right to benefits under the Atmel Plan instead.

Turning to the other circumstances regarding the releases, Plaintiffs do not challenge Defendants' proffered evidence that the releases were knowing and voluntary under the "heightened scrutiny" six-factor test. Nor do Plaintiffs offer any evidence of their own that raises a genuine dispute of material fact about these factors. *See* Dkt. No. 175 at 15 (arguing that "the releases should not be enforceable, whether or not they were 'knowingly' or 'voluntarily' obtained—and regardless of the extent to which plaintiffs were 'intimidated and coerced"). The evidence, at least as to Plaintiffs Schuman and Coplin, indicates that the releases were in fact knowingly and voluntarily entered into:

- Defendants point out that both Schuman and Coplin were sophisticated individuals, holding management positions at Atmel. Plaintiff Coplin was a Director of Human Resources, and was responsible for understanding benefits programs, assisting employees as they needed help, and interfacing with in-house attorneys with any legal issues that arose. *See* Dkt. No. 163-1, Ex. S. to Ex. 1 at 11:2–12:25, 23:9–25. He also was trained regarding ERISA, attending multiple seminars on the subject. *Id.* Plaintiff Schuman, in turn, was a Senior

Director of Investor Relations. *See* Dkt. No. 163-1, Ex. JJ to Ex. 1.

- As already discussed above, the record indicates that Defendants were clear both in the offer letters themselves and in the all-hands PowerPoint presentation that the releases and payments were offered to resolve any dispute about the meaning of the Atmel Plan and employees' entitlement to benefits under that Plan. And both Plaintiffs Schuman and Coplin testified during their depositions that they understood they were waiving claims under the Atmel Plan by signing the releases.
- The record also indicates that Plaintiffs were given sufficient time to consider the offer. Plaintiff Schuman acknowledged that he had 45 days to consider whether to accept the offer. *See* Dkt. No. 108-1, Ex. 6 at 101:3–10; *see also* Dkt. No. 163-1, Ex. W to Ex. 1 at 84:8–13. During that time, he consulted with a lawyer, but ultimately decided to sign after just a couple weeks “to be done with this” and “walk[] away.” *See* Dkt. No. 163-1, Ex. W to Ex. 1 at 84:12–21, 100:5–7, 100:19–23. Plaintiff Coplin similarly acknowledged that he had “ample time” to review the offer and release, though he ultimately took just a few days to do so. *See* Dkt. No. 163-1, Ex. S to Ex. 1 at 73:2–4. The offer itself advised employees to consult with lawyers. *See id.* at 78:3–25. However, Plaintiff

Coplin explained that he did not consult with a lawyer or other ERISA expert before signing because he thought things were “clear” since “Mr. Sanghi had told [them] what was going on and [the offer] was the end result of what he had planned,” and there was no need to consult outside help. See *id.* at 73:5–74:5.

- In exchange for accepting the offer and signing the release, Plaintiff Schuman received 25% of his annual base salary, or \$53,045.00, an incentive bonus of \$5,917.81, 100% vesting acceleration of stock, and three months of COBRA benefits paid by Microchip. See Dkt. No. 163-1, Ex. EE to Ex. 1. Plaintiff Coplin, in turn, received 25% of his annual base salary, or \$48,255.99, an incentive bonus of \$7,745.90, 100% vesting acceleration of stock, and three months of COBRA benefits paid by Microchip. See Dkt. No. 163-1, Ex. DD to Ex. 1. As the Court previously explained, they did not offer to tender as part of this lawsuit, and they appear to have retained this consideration. See Dkt. No. 54 at 23–24.

During the hearing on the motion for summary judgment, Plaintiffs suggested for the first time that the release was not sufficiently clear because it did not explicitly reference ERISA claims, although it mentioned statutory provisions generally. The Court does not ordinarily consider arguments raised for the first time at the hearing. But even if the Court were

to consider this argument, as noted above, Plaintiffs Schuman and Coplin testified that they knew that the releases were intended to resolve the outstanding dispute about their right to ERISA benefits under the Atmel Plan. *See* Dkt. No. 163-1, Ex. W to Ex. 1 at 99:19–100:7; *id.*, Ex. S at 88:19–25. Mr. Sanghi explained during the all-hands meeting that “[e]mployees will have to sign and accept the new severance plan and waive any rights under the old plan.” *See* Dkt. No. 163-1, Ex. Q to Ex. 1 at 3239. And the offer letters themselves explained that “Atmel and Microchip are making this offer, in part to resolve any current disagreement or misunderstanding regarding severance benefits previously offered by [Atmel]” *See* Dkt. No. 163-1, Ex. R to Ex. 1 at 815–20.

Having considered the totality of the circumstances based on the undisputed facts, the Court finds that the releases signed by Plaintiffs Peter Schuman and William Coplin were obtained knowingly and voluntarily. As a consequence, it is not clear to the Court how this class action can proceed without the two named Plaintiffs. And it does not appear that any of the other class members would be meaningfully different from Messrs. Schuman or Coplin for purposes of substituting in as a class representative. The five individuals who did not sign releases do not appear to be similarly situated to the vast majority of the class, and the other class members all signed releases.

Despite Defendants' urging, however, there is not sufficient evidence for the Court to evaluate the six factors as to the remaining Plaintiffs who signed the releases. As discussed during the hearing on the motion, the Court's order granting class certification was premised, at least in part, on the idea that questions about the enforceability of the releases could be addressed on a class-wide basis. The parties' class certification briefs focused on the uniformity (or lack thereof) of the communications that Defendants made to class members, but did not discuss the six-factor test described above. *See, e.g.*, Dkt. No. 108 at 8–9, 15–20. It is now apparent, however, that the threshold question regarding enforceability of the releases implicates individualized considerations. The Court therefore **ORDERS** the parties to **SHOW CAUSE** why the class should or should not be decertified in light of the Court's finding that individualized consideration is required under the six-factor test to determine whether the releases were obtained knowingly and voluntarily. The Court sets a briefing schedule for the OSC in Section IV below..

* * *

The Court **GRANTS** the motion for summary judgment as to the two named Plaintiffs.

B. Breach of Fiduciary Duties and Equitable Relief

As to the remaining non-named Plaintiffs, Defendants argue that their breach of fiduciary duty

claim fails. Defendants argue that (1) Plaintiffs lack factual support for their contention that Defendants breached any fiduciary duties, and in any event (2) Plaintiffs are not entitled to any of their requested equitable relief for such a breach. *See* Dkt. No. 163 at 14–25.

i. Alleged Breach

“To establish an action for equitable relief under ERISA section 502(a)(3) [for breach of fiduciary duty], the defendant must be an ERISA fiduciary acting in its fiduciary capacity, and must ‘violate [] ERISA-imposed fiduciary obligations.’” *See Mathews v. Chevron Corp.*, 362 F.3d 1172, 1178 (9th Cir. 2004) (quoting *Varity Corp. v. Howe*, 516 U.S. 489, 506 (1996)). Under ERISA, fiduciaries must “discharge [their] duties with respect to a plan solely in the interest of the participants and beneficiaries” and as relevant here, “for the exclusive purpose of providing benefits to participants and their beneficiaries” 29 U.S.C. § 1104(a)(1)(A)(i). ERISA fiduciaries have “an obligation to convey complete and accurate information material to the beneficiary’s circumstance, even when a beneficiary has not specifically asked for the information.” *King v. Blue Cross & Blue Shield of Ill.*, 871 F.3d 730, 744 (9th Cir. 2017) (quotation omitted). And ERISA “fiduciaries breach their duties if they mislead plan participants or misrepresent the terms of administration of a plan.” *Id.* (quotation omitted).

Here, Plaintiffs contend that Defendants breached their fiduciary duties by failing to provide complete information about the benefits to which Plaintiffs were entitled, failing to investigate the intended meaning of the Atmel Plan, and offering Plaintiffs reduced severance benefits in exchange for releases. *See* FAC at ¶¶ 87–89; *see also* Dkt. No. 176 at 2–3, 18–22. At bottom, these allegations collapse into the same core claim: Defendants knew or should have known that the Atmel Plan had not in fact expired.

In support of this theory, Plaintiffs point out that in early April 2016, Lauren Carr, Microchip’s Senior Vice President of Global Human Resources, saw a letter written to Plaintiff Schuman from Atmel’s Senior Vice President of Global Human Resources, which stated in relevant part:

We recognize that there continues to be significant speculation regarding the acquisition of the company and understand that this can be distracting and unsettling. As a result we believe it is important to remind you of the benefits for which you may be eligible in the event that your employment is involuntarily terminated without Cause in connection with a Change of Control of the company, *including an acquisition by Dialog or Microchip*.

See Dkt. No. 176-1, Ex. 6 at 33:10–35:10; *see also id.*, Ex. 2 to Ex. 6 (emphasis added). The letter further stated that the Atmel Plan “remain[ed] in place.” *Id.*

Critically, the letter was dated January 14, 2016, over two months *after* the November 1, 2015, date on which Defendants contend the Atmel Plan expired. *Id.* Despite this letter, however, Ms. Carr testified that she thought the language of the Plan was clear that it had expired, and there was no reason to discuss an alternate interpretation with the Plan’s drafters. *See id.*, Ex. 6 at 28:23–33:9. Similarly, and as already discussed, Mr. Sanghi testified that he met with Atmel employees after the merger, and understood they were upset by—and disagreed with—Microchip’s interpretation that the Plan had expired. *See* Dkt. No. 176-1, Ex. E at 65:25–71:1, 73:14–77:20.

Defendants argue that irrespective of this evidence, they did not breach any fiduciary duty when they interpreted the Plan as having expired. Dkt. No. 163 at 15–16; Dkt. No. 177 at 6–8. They point out that the Ninth Circuit concluded that the Plan itself was ambiguous, and characterize that court’s decision as finding that their interpretation was reasonable. *Id.* As already explained, the Ninth Circuit in *Berman* concluded that summary judgment should not have been entered in the *Berman* plaintiffs’ favor because the Atmel Plan was ambiguous on its face. *See Berman*, 838 F. App’x at 293. The Ninth Circuit quoted this Court’s motion to dismiss order in concluding that “reasonable parties could disagree as to whether the [Atmel] Plan required the Initial Triggering Event and the Change of Control to involve the same merger partner.” *Id.* (quoting

Berman, Dkt. No. 35 at 23). The Court believes that a somewhat detailed discussion of the circumstances that led to its motion to dismiss order and the Ninth Circuit’s memorandum disposition in *Berman* is necessary to provide important clarification.

In their initial motion to dismiss in *Berman*, Defendants argued that Plaintiffs had not sufficiently stated a claim for equitable estoppel. *See Berman*, Dkt. No. 9 at 17. Defendants pointed out that Plaintiffs’ theory of the case “rest[ed] on the argument that the ‘plain language’ of the Atmel Plan unambiguously entitle[d] them to benefits” *Id.* Defendants urged that because a claim for equitable relief requires Plaintiffs to show that provisions of the Plan were ambiguous, “any claim for equitable estoppel would directly refute—and destroy—their entire case.” *Id.* In response to this argument, the Court simply concluded that at the motion to dismiss stage, Plaintiffs could plead in the alternative. *See Berman*, Dkt. No. 35 at 23, & n.14. The Court further explained that Plaintiffs had sufficiently pleaded this alternative claim when viewing the fact in the light most favorable to them, as required at the motion to dismiss stage:

Viewing the facts in Plaintiffs’ favor, the Court finds that Plaintiffs have sufficiently pled their claim for equitable estoppel. First, the Court is satisfied, notwithstanding Plaintiffs’ assertions that the provisions of the Atmel Plan are unambiguous, that reasonable parties could

disagree as to whether the Plan required the Initial Triggering Event and the Change of Control to involve the same merger partner—particularly at the motion to dismiss stage, and particularly since that interpretation is one of the primary disputes in this case.

Id. The Court did not make any factual findings about the interpretation of the Plan. *See id.* The Court simply concluded that under the relevant legal standard for a motion to dismiss, a reasonable factfinder could conclude that the Plan was ambiguous and required the same merger partner for both the Initial Triggering Event and the Change of Control. *Id.*

In citing to this Court’s language on appeal, the Ninth Circuit did not definitively resolve the meaning of the Plan either. It concluded that “the relevant language in the Atmel Plan [wa]s ambiguous,” meaning that summary judgment could not be granted in Plaintiffs’ favor based solely on the face of the Plan. *See Berman*, 838 F. App’x at 293. Despite Defendants’ urging, the Ninth Circuit did not hold that any claim, including a breach of fiduciary duty claim, somehow fails as a matter of law if it is premised on the misinterpretation of an ambiguous plan. *Id.* Nor did it make any factual findings about the Plan itself. Rather, it found that discovery was appropriate under the circumstances. *Id.* The *Berman* memorandum disposition, therefore, does not

definitively resolve this case or even this particular claim.

Still, Defendants repeatedly state that a “reasonable interpretation of an ambiguous plan [] cannot constitute a breach of fiduciary duty.” *See, e.g.*, Dkt. No. 163 at 15. But they offer no legal support for this conclusion. The Ninth Circuit, on the other hand, has explained that ERISA fiduciaries may misinform beneficiaries and violate their fiduciary duties, not only through direct misstatements, but also “by saying that something is true when the person does not know whether it is true or not.” *Mathews*, 362 F.3d at 1183 (quotation omitted) (emphasis omitted); *see also* 29 U.S.C. § 1104(a)(1)(A)(i) (requiring that fiduciaries “discharge [their] duties with respect to a plan solely in the interest of the participants and beneficiaries”). Even if the Plan on its face may have been ambiguous, Plaintiffs allege that Defendants’ interpretation was wrong, and that they should have known it was wrong based on the information available to Defendants after the merger. The Court need not, and cannot, decide at this stage the veracity of Defendants’ interpretation that the Plan expired, or assess the strength of Plaintiffs’ evidence that Defendants knew or should have known the actual meaning of the Plan. But Plaintiffs have raised at least one material dispute of fact regarding Defendants’ knowledge of the Plan and its intended interpretation that precludes summary judgment.

The Court therefore **DENIES** the motion on this basis.

ii. Equitable Relief

“ERISA authorizes participants and beneficiaries to seek equitable relief for violations of [fiduciary] duty.” *Guenther v. Lockheed Martin Corp.*, 972 F.3d 1043, 1051 (9th Cir. 2020) (citing 29 U.S.C. § 1132(a)(3)); 29 U.S.C. § 1132(a)(3)(B) (permitting beneficiary to bring civil action “to obtain other appropriate equitable relief . . . to redress [ERISA] violations”). But without regard to any factual disputes regarding liability for a breach of fiduciary duty, Defendants argue that Plaintiffs are not entitled to any of the equitable relief they seek under § 502(a)(3). *See* Dkt. No. 163 at 15–25. Since they initially filed this case, Plaintiffs have winnowed down their requested equitable relief. They acknowledge that the only equitable relief they are now seeking is an injunction to preclude the enforcement of the releases.⁵ *See* Dkt. No. 176 at 3, 25 (“[T]he appropriate equitable remedy—the *only* remedy that would restore the plaintiffs and class members to their pre-breach status and make them whole from the consequences of those breaches of fiduciary duty—is an order enjoining the enforcement of Microchip’s wrongfully obtained releases, thus

⁵ Plaintiffs acknowledge that they are no longer seeking equitable estoppel or equitable surcharge. *See* Dkt. No. 176 at 1, 19, & n.1; *see also* Dkt. No. 144 at 19, n.5.

entitling plaintiffs and class to their long-unpaid severance amounts under the Plan.”).

Defendants argue that Plaintiffs’ claim for injunctive relief fails because the Ninth Circuit previously ruled that the *Berman* plaintiffs’ remaining claims for injunctive relief should have been dismissed. *See* Dkt. No. 163 at 23–24; *see also Berman*, 838 Fed. App’x at 293. Defendants’ primary argument that Plaintiffs’ injunctive relief is precluded by res judicata is not well taken. The Ninth Circuit’s memorandum disposition does not discuss this issue at any length, but states in the penultimate sentence that “[t]he district court erred in denying the defendants’ motion to dismiss . . . the claim for injunctive relief because plaintiffs failed to plead ‘irreparable injury.’” *Berman*, 838 Fed. App’x at 293 (citation omitted).

Critically, Defendants made no effort in their motion to establish that privity exists between the *Berman* plaintiffs and Plaintiffs in this case. *See Ruiz v. Snohomish Cty. Pub. Util. Dist. No. 1*, 824 F.3d 1161, 1164 (9th Cir. 2016) (citing requirements for res judicata to apply, including identity or privity between parties). Defendants simply asserted in a single sentence that “privity exists between the *Schuman* plaintiffs and the *Berman* plaintiffs,” without any explanation. *See* Dkt. No. 163 at 24. Only in their reply brief did Defendants attempt to explain how they are in privity, urging in summary fashion that the *Berman* plaintiffs raised similar arguments

based on the same underlying factual allegations and were represented by the same attorneys. *See* Dkt. No. 177 at 14. Defendants’ attempt to support their argument only in reply is improper. But regardless, their contentions fall short of establishing that a finding of privity is appropriate here.

“[P]rivacy may exist if there is substantial identity between parties, that is, when there is sufficient commonality of interest.” *See Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg’l Plan. Agency*, 322 F.3d 1064, 1081 (9th Cir. 2003) (quotation omitted). Yet Defendants have not adequately explained how the *Berman* plaintiffs had a sufficient commonality of interest to Plaintiffs in this case to warrant a finding of res judicata. As discussed at length above, unlike in *Berman*, the vast majority of Plaintiffs in this case signed releases and obtained reduced severance benefits upon their termination from Microchip. Although the complaint in *Berman* references such releases, *see Berman*, Dkt. No. 1 at ¶¶ 53–60, 79, 83–84, Prayer for Relief at ¶ 6, none of the *Berman* plaintiffs signed them. *Cf. Berman*, Dkt. No. 9 (“[T]he Separation Agreement[s] have no relevancy to Plaintiffs’ claims as they admit that *none* of them signed one.”) (emphasis in original). It is therefore unsurprising that in their briefs to the Ninth Circuit the *Berman* parties did not address whether injunctive relief to prevent the enforcement of such releases was appropriate or properly pled. *See generally* Dkt. No. 179. The Court therefore finds that

res judicata does not bar Plaintiffs' requested injunctive relief in this case.

Nevertheless, given the current posture of this case, the Court need not evaluate whether such relief is actually available or sufficiently supported. This requested relief—preventing the enforcement of the releases—would be irrelevant to any Plaintiffs whose claims are able to proceed in this case. As to the five Plaintiffs who never signed a release, Defendants could not—and do not seek—to enforce the releases against them. As to the other non-named Plaintiffs who did sign releases, they will have to establish that the releases were not obtained knowingly and voluntarily in order to proceed with their claims. If they are able to do so, the releases would be unenforceable anyway. Following the briefing on class decertification, if any non-named Plaintiffs who signed releases still seek injunctive relief to prevent the enforcement of releases, Defendants may raise this argument again. For now, the Court **DENIES** the motion on this basis.

C. Denial of Claim Benefits

Lastly, in a footnote to their motion, Defendants preserve their argument for appeal that summary judgment is appropriate as to Plaintiffs' Section 502(a)(1)(B) claim for benefits. *See* Dkt. No. 163 at 7, n.1. Defendants acknowledge that the Court rejected these same arguments in the *Berman* action, finding that material disputes of fact precluded summary

judgment. *Id.* The Court continues to find this reasoning correct. *See Berman*, Dkt. No. 177. The Court therefore **DENIES** the motion on this basis.

IV. CONCLUSION

Accordingly, the Court **GRANTS** the motion for summary judgment as to the two named Plaintiffs, but otherwise **DENIES** the motion. As explained in Section III.A.ii above, the Court further **ORDERS** the parties to **SHOW CAUSE** why the class should or should not be decertified based on the individualized inquiry necessary to assess the validity of the releases signed by the majority of class members. The parties shall submit simultaneous briefs of no more than 15 pages by September 15, 2023. The parties may then file simultaneous reply briefs of no more than 10 pages by September 29, 2023. The matter will be deemed submitted upon receipt of the replies unless otherwise ordered by the Court.

IT IS SO ORDERED.

Dated: 8/23/2023

/s/ Haywood S. Gilliam, Jr.
HAYWOOD S. GILLIAM, JR.
United States District Judge

66a

APPENDIX C

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

FILED JUL 25 2025
MOLLY C. DWYER, CLERK
U.S. COURTS OF APPEALS

PETER SCHUMAN; WILLIAM COPLIN,

Plaintiffs-Appellants/
Cross-Appellees,

v.

MICROCHIP TECHNOLOGY INCORPORATED;
ATMEL CORPORATION; ATMEL CORPORATION
UNITED STATES SEVERANCE GUARANTEE
BENEFIT PROGRAM,

Defendants-Appellees/
Cross-Appellants.

Nos. 24-2624, 24-2978
D.C. No. 4:16-cv-05544-HSG
Northern District of California, Oakland
ORDER

Before: S.R. THOMAS, W. FLETCHER, and M.
SMITH, Circuit Judges.

The panel unanimously votes to deny the petition for panel rehearing. Judge M. Smith votes to deny the petition for rehearing en banc, and Judges S.R. Thomas and W. Fletcher so recommend. The full court has been advised of the petition for rehearing en banc, and no judge of the court has requested a vote on it. See Fed. R. App. P. 40. Accordingly, the petition for rehearing and rehearing en banc is
DENIED.