# Peter Schuman et al v. Microchip Technology Incorporated et al

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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 CLASS CERTIFICATION Re: Dkt. No. 107

Pending before the Court is the motion for class certification filed by Plaintiffs Peter Schuman and William Coplin. See Dkt. No. 107. The Court held a hearing on June 27, 2019. See Dkt. No. 113. For the reasons detailed below, the Court GRANTS the motion for class certification.

I. BACKGROUND

Plaintiffs filed this putative class action in September 2016, alleging violations of the See Dkt. No. 1. Plaintiffs allege that their former employer Atmel Corporation and merger partner Microchip Technology, Inc., which acquired Atmel in April 2016, failed to honor the terms of their employee severance agreements under Plan . See at ¶¶ 1 2.

A. Factual Background

i. The Atmel Plan In July 2015, Atmel created the Atmel Plan to encourage its approximately 1,800 U.S. employees to continue working for the company while Atmel searched for a merger partner. See FAC at ¶¶ 2, 18 19. Only July 9, 2015, Atmel delivered personalized letters to employees Atmel Plan. See id. at ¶ 20; see also Dkt. No. 107-2, Ex. H at 6 8. 1

The letters detailed the three primary severance benefits of the Atmel Plan: (1) a cash payment of between 25 percent and 50 percent of annual base salary, depending on the class of employee; (2) paid health insurance premiums for between three to six months, again depending on the class of employee; and (3) a prorated porti bonus for director-level and professional exempt employees. See FAC at ¶ 21; see also Dkt. No.

107-2, Ex. H at 6. In an addendum to the letter, Atmel set forth the terms of the Atmel Plan:

Term of the Severance Guarantee Benefit Program: The U.S. Severance Guarantee Benefit 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. . . . 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 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 rd 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 Company (or its successor) at any time within 18 months

of the execution date of the Definitive Agreement. Dkt. No. 107-2, Ex. H at 7. Atmel Plan. Dkt. No. 107-2, Ex. H at 8. The Atmel Plan would also 1

The evidence that the parties cite and rely on contains various Bates Stamp numbering and pagination. For ease of reference, unless o PDF pagination in each docket entry. Atmel. Id.

ii. On September 19, 2015, Atmel and Dialog Semiconductor PLC executed and publicly announced a formal merger agreement. See Dkt. No. 107-1, Ex. D. at 121 66. However, the agreement between Atmel and Dialog never closed because Microchip made a better offer. Id. at 113, 167 68; see also Dkt. No. 107-2, Ex. H at 2. After Dialog declined to match or improve 2016. Id.

Prior to the closing of the merger, Atmel provided Microchip with documentation relating to the Atmel Plan, including summaries and estimates of how much would be owed to Atmel employees under the Plan. See Dkt. No. 107-1, Ex. A. at 14 19; Dkt. No. 107-1, Ex. B. at 33 36. ne Zoumaras, who helped draft the Atmel Plan, explained that it to ensure benefits would still be available following an Initial Triggering Event, even if there were a superior bid and a Change of Control occurred with a different company. See Dkt. No. 107-1, Ex. A. at 10 13. Steve Laub similarly believed that the Change of Control with the Microchip merger fell within

the terms of the Atmel Plan, and as such, discussed the scope of the Atmel Plan wit CEO Steve Sanghi. See Dkt. No. 107-1, Ex. B at 25 31, 33 36.

At the same time, Atmel also communicated to its employees that the Atmel Plan would remain in effect, regardless of whether the merger was with Dialog or Microchip. On February 3, 2016, Frequently Asked Questions Regarding Compensation & series of Frequently Asked Questions . See

Dkt. No. 107-1, Ex. D at 80 83, 106 114,

233 36, 296 97, 326 27, 340 42; see also Dkt. No. 107- at ¶ 4, & Ex. B; Dkt. No. 107- 4, & Ex. B. The FAQs indicated that Microchip has agreed to honor each of your employment and compensatory contracts (including . . . severance . . . agreements) with Atmel, or its subsidiaries, that are in effect immediately prior to the closing of acquired Atmel. See Schuman Decl., Ex. B at 12 13; Coplin Decl., Ex. B at 10 12.

The merger between Atmel and Microchip closed on April 4, 2016. Dkt. No. 107-1, Ex. D at 113, 167 68; see also Dkt. No. 107-2, Ex. H at 2.

iii. -Merger Conduct In the days f Microchip announced its position that the Atmel Plan had expired on November 1, 2015, and that it therefore had no obligation to and thus would not pay the severance benefits provided by the Atmel Plan to any terminated employees. See, e.g., Dkt. No. 107-1, Ex. D at 106 14; id., Ex. G at 370 73; Dkt. No. 107-2, Ex. H at 2 5, 9 12; Schuman Decl. at ¶¶ 7 9. - meeting, at which he explained to Atmel employees that the Atmel Plan had expired, and

Microchip would not pay any severance benefits under its terms. See Dkt. No. 107-1, Ex. D at 10 11, 113 14; id., Ex. G at 225 27, 233 36, 370 73 would have to fight him in court if [they] wanted to challenge him on [their] entitlement to See Coplin Decl. at ¶ 5. During the meeting, Mr. Singh 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 claims. See id.

Microchip also began terminating Atmel employees without cause, including Plaintiff Schuman who was terminated on April 6. See Schuman Decl. at ¶¶ 7 8; see also Dkt. No. 107-1, Ex. D. at 82 83. On April 6, 2016, Microchip gave these terminated employees a document titled offering them four to six weeks of salary as severance in exchange for releasing all claims against Microchip and Atmel, See Schuman Decl. at ¶ 9, & Ex. C; see also Dkt. No. 107-1, Ex. D. at 82 87. Plaintiffs state, and Defendants do not appear to contest, that no putative class members signed the April 6 Agreement. See Dkt. No. 107 at 5. Approximately one week later, on April 11, 2016, Microchip sent a second letter to the terminated employees, outlining a more generous severance agreement. Under the terms of this plan, the former employees would receive severance benefits worth one-half of those offered under the Atmel Plan, in exchange for releasing any claims they may have had against April 11 Agreement See Schuman Decl. at ¶ 10, & Ex. D; see also Dkt. No. 107-1, Ex. D. at 82 83representations, Plaintiff Schuman and other putative class members signed the April 11 Agreement. See, e.g., id.; see also Dkt. No. 107-1.

Other putative class members remained employed for some time with Microchip through 2016 and part of 2017. On approximately April 13, 2016, Microchip began distributing to these See, e.g., Coplin Decl. at ¶ 6, & Ex. C; Dkt. No. 107-1,

Ex. D at 113 16; Dkt. No. 107-2, Ex. H at 13 1341. Plaintiffs contend that the CEDBO included substantially the same terms as the April 11 Agreement, offering severance benefits worth one- half of those offered under the Atmel Plan. See Dkt. No. 107 at 6; compare Schuman Decl., Ex. D, with Coplin Decl., Ex. C. eventual receipt of these benefits would require the employee to sign a release of any and all claims. See Coplin Decl., Ex. D.

On April 25 See Dkt. No. 107-1, Ex. E at 173 74. The letter urged those who did not yet sign the CEDBO to do so by the newly extended deadline, April 28, 2016. Id. Mr. Singh stated in the email known, but the situation if you do not return the signed letters is still lose-Id. Based on these representations, Plaintiff Coplin and other putative class members signed the CEDBO. See, e.g., Coplin Decl. at ¶ 6, & Ex. C; Dkt. No. 107-2, Ex. H at 13 1341. subsequent terminations without cause, Microchip demanded that they sign a release, entitled . As previewed in the CEDBO, and like the April 11 Agreement, the Continuing Employee Release conditioned benefits on releasing any claims they may have had against Atmel and Microchip. See Coplin Decl. at ¶ 7, & Ex. D; see also Dkt. No. 107-2, Ex. H at 13 1341.

Plaintiffs estimate that approximately 200 Atmel employees were participants in the Atmel Plan and were terminated without cause after the merger. See Dkt. No. 107 at 8, & n.5; see also Dkt. No. 107-2, Ex. H at 13 1341.

ii. On September 29, 2016, Plaintiff Schuman submitted a claim for benefits under the Atmel Plan to the plan administrator. See Dkt. No. 107-1, Ex. D at 91 101. Plaintiff Coplin did the same on September 30, 2016. See id. at 64 75. resources manager, identifying herself as the plan administrator eligibility grounds, stating that the Atmel Plan had expired on November 1, 2015, and the agreement with Dialog did not result in a Change in Control, so could not form the basis of any entitlement to benefits under the Atmel Plan. See, e.g., Dkt. No. 107-1, Ex. D at 76 78, 102 05. Id.

Plaintiffs appealed the denials on January 23, 2017. See Dkt. No. 107-1, Ex. F at 176 90, 194 208. The plan administrator denied their appeals on March 23, 2017, again on grounds of eligibility. Id. at 191 92, 209 10. Again, the plan administrator did not rely on the releases as part of its reasoning. Id.

B. Procedural History

i. Judicial Proceedings Plaintiffs filed an action against Defendants on September 29, 2016. See Dkt. No. 1. In the operative complaint, Plaintiffs allege 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 Section 404(a) of ERISA, 29 U.S.C. § 1104(a); and (2) improperly denied their claim for benefits, in violation of Section 502(a)(1)(B) of ERISA, 29 U.S.C. § 1132(a)(1)(B). See FAC at ¶¶ 82 100. Plaintiffs seek the following relief: (1) an injunction to prevent Microchip from enforcing the releases it has obtained and from soliciting new claims releases from Plaintiffs; (2) an injunction to prevent Microchip from an order estopping

Microchip from denying Plaintif to receive benefits

due under the Atmel Plan. See Dkt. No. 107 at 8.

On the basis of these allegations, Plaintiffs move to certify a single class, defined as:

All former U.S.-based employees of defendant Atmel Corporation who were employed as of the April 4, 2016 closing date of the Atmel- Microchip merger and who were terminated by defendant Microchip Technology Incorporated without cause between April 4, 2016 and March 19, 2017. See Dkt. No. 107 at 1. The class excludes those plaintiffs in the related case, Berman v. Microchip, Case No. 17-cv-01864, also pending before this Court and explained in more detail in Section I.B.ii. below. See id. Plaintiffs seek certification of two claims for relief: (1) equitable relief under Section 502(a)(3), 29 U.S.C. § 1132(a)(3); and (2) improper denial of benefits under Section 502(a)(1)(B), 29 U.S.C. § 1132(a)(1)(B). See id.

ii. Related Action Nine of the former Atmel employees who refused to sign any of a separate action against Defendants on April 4, 2017, in the related action Berman v. Microchip, Case No. 17-cv-01864. On March 22, 2019, the Court granted the Berman motion for partial summary judgment. See Case No. 17-cv-01864, Dkt. No. 95. The Court concluded that (1) the plaintiffs were entitled to severance benefits under ERISA § 502(a)(1)(B); and (2) the defendants were liable for breach of fiduciary duty under ERISA § 502(a)(3). See id. at 9 13.

At the time, the Court did not assess what damages the Berman plaintiffs may be entitled to as a result of its ruling regarding liability. See id. at 14. The parties subsequently stipulated to the amount of unpaid severance benefits owed each of the plaintiffs, and the plaintiffs filed a motion for summary judgment seeking an additional ten percent per annum, as either an equitable surcharge or prejudgment interest. See Dkt. No. 100 at 3 13. On September 3, 2019, the Court the plaintiffs failed to provide any evidence that would permit the Court to award an equitable surcharge or prejudgment interest above the default interest rate prescribed in 28 U.S.C. § 1961(a). See Dkt. No. 112. The plaintiffs subsequently withdrew their request for such a remedy. See Dkt. No. 115. The Court entered judgment in favor of the plaintiffs and against the defendants on October 18, 2019, severance benefits and prejudgment interest. See id., Dkt. No. 119. II. CLASS CERTIFICATION STANDARD

Federal Rule of Civil Procedure 23 governs class actions, including the issue of class certification. Class certification is a two-step process. To warrant class certification, a plaintiff Zinser v. Accufix Research Inst., Inc., 253

F.3d 1180, 1186 (9th Cir.), , 273 F.3d 1266 (9th Cir. 2001); see also Wal-Mart Stores, Inc. v. Dukes certification must affirmatively demonstrate [her] comp

numerous that joinder of all members is impracticable; (2) there are questions of law or fact common

to the class; (3) the claims or defenses of the representative parties are typical of the claims or defenses of the class; and (4) the representative parties will fairly and adequately protect ts of numerosity, commonality, typicality, and adequacy of representation to maintain a class action. Mazza v. Am. Honda Motor Co., Inc., 666 F.3d 581, 588 (9th Cir. 2012).

If the four prerequisites of Rule 23(a) are met, a court also must find that the plaintiff Comcast Corp. v. Behrend, 569 U.S. 27, 33 (2013). Plaintiffs assert that they meet the requirements of Rule 23(b)(1), 23(b)(2), and 23(b)(3). See Dkt. No. 107 at 10 17. Rule 23(b)(1) provides for certification where prosecuting separate actions by or against individual class members would create a risk of . . . inconsistent or varying adjudications with respect to individual class members that would establish in See Fed. R. Civ. P. 23(b)(1)(A). class has acted or refused to act on grounds that apply generally to the class, so that final

injunctive relief or corresponding declaratory relief is appropriate respecting the class a

questions affecting only individual members, and . . . a class action is superior to other available See Fed. R. Civ. P. 23(b)(3). To determine whether a putative class action satisfies the requirements of Rule 23(b)(3), courts consider:

prosecution or defense of separate actions; (B) the extent and nature of any litigation concerning the controversy already begun by or against class members; (C) the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and (D) the likely difficulties in managing a class action. Fed. R. Civ. P. 23(b)(3)(A) (D).

- Amgen Inc. v. Connecticut Ret. Plans & Trust Funds, 568 U.S. 455, 465 66 (2013) (citing Dukes, 564 U.S. 350 51 grants courts no license to engage in free- but only to the extent that they are relevant to determining whether the Rule 2 Id. at 1194 95; see also Ellis v. Costco Wholesale Corp.

must ue to be See Dukes, 564 U.S. at 348.

III. DISCUSSION

As noted above, Plaintiffs move to certify a class of approximately 200 former employees of Atmel Corporation who were terminated without cause after Atmel was acquired by Microchip. See Dkt. No. 107 at 8, & n.5. Plaintiffs seek certification of both their claims for breach of fiduciary duty under ERISA Section 502(a)(3) and their claims for improper denial of benefits under Section 502(a)(1)(B). In response, Defendants assert that Plaintiffs have failed to meet the requirements of Federal Rules of Civil Procedure 23(a) and Federal Rule of Civil Procedure 23(b) because: (1) resolution of the action will turn on individualized inquiries into the validity of the ; (2) Plaintiffs Schuman and Coplin, as director-level employees, were knowledgeable about the Atmel Plan and its limitations, and even worked to disseminate information about the Atmel Plan and the releases; and (3) requested relief for

equitable surcharge as part of their fiduciary duty claim will require individualized inquiries into class . See Dkt. No. 108. The Court addresses each argument in turn as part of its analysis below.

A. Rule 23(a)

i. Numerosity l members is See Fed R. Civ. P. 23(a)(1). Here, the parties do not dispute, and the Court agrees, that the approximately 200-person putative class satisfies the numerosity requirement. See Dkt. No. 108 at 7.

iii. Commonality Rule 23(a)(2) req See Fed R. Civ. P. 23(a)(2). resolution which means that determination of its truth or falsity will resolve an issue that is

Dukes, 564 U.S. at 350. , 536 F.3d

975, 978 fication . . . is not the raising of common even in droves but rather the capacity of a classwide proceeding to generate Dukes, 564 U.S at 350 (emphasis omitted).

Here, Plaintiffs cite five common questions: (1) whether the Dialog merger agreement whether Microchip was a fiduciary of the Atmel Plan; (3) whether Microchip violated its fiduciary duty by claiming that the Atmel Plan had expired; (4) whether Microchip obtained claims releases from Plaintiffs in violation of its fiduciary duty; and (5) what equitable and monetary relief Plaintiffs may be entitled to as a result. See Dkt. No. 107 at 9. In response, Defendants sidestep the first three questions entirely, noting that the Court addressed similar questions in Berman v. Microchip, Case No. 17-cv-01864. See Dkt. No. 108 at 8. Without conceding that Berman action were correct, Defendants See id. Defendants provide no support for the novel idea that as part of its class certification analysis the Court should ignore merits questions that have common answers. These questions, which will undisputedly generate common answers for the class, are sufficient to satisfy the commonality requirement. Dukes, 564 U.S. at 359 (alterations in original) (quotation

omitted).

iv. Typicality

Fed R. Civ. P. 23(a)(3). typicality is whether other members have the same or similar injury, whether the action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the Hanon v. Dataproducts Corp., 976 F.2d 497, 508 (9th Cir. 1992)

- Hanlon v. Chrysler Corp., 150 F.3d 1011, 1020 (9th Cir. 1998). In other words,

Rodriguez v. Hayes, 591 F.3d 1105, 1124 (9th Cir. 2010) (quotation omitted). Gen. Tel. Co. of Sw. v. Falcon, 457 U.S. 147, 157 158, & n.13 (1982). However, typicality like adequacy looks at whether

Plaintiffs are proper

parties to proceed with the suit. Id.

proposed class because they are subject to unique defenses given their director-level positions.

First, Defendants argue that Plaintiffs Schuman and Coplin have different bases for seeking invalidation of their releases because, as a result of their positions, they were not intimidated or coerced into signing their releases. See Dkt. No. 108 at 12 13. Defendants repeatedly frame claims as turning on individualized allegations that Defendants intimidated or coerced them into signing releases. See id. at 2, 5, 8, 12, 14, 16, 18. Defendants then argue in response Plaintiff Coplin purportedly disclaimed feeling coerced and was familiar with ERISA given his background in human resources. See Dkt. No. 108-1, Ex. 2 at 54 55. And Plaintiff Schuman consulted an attorney before signing his release. See Dkt. No. 108-1, Ex. 6 at 76.

Although in the operative complaint see FAC at ¶ theory is more nuanced. Plaintiffs allege that Defendants intimidated and coerced Plaintiffs by making

under the Atmel Plan should Plaintiffs fail to sign a release. See id. at ¶¶ 52, 57 58, 61 62, 87. In short, Plaintiffs explain that it was coercive for Defendants to repeatedly state that the Atmel Plan had expired as of November 1, 2015, and that Defendants did not owe any benefits under the Plan.

interpretation of the Atmel Plan than other class members does not alter their legal arguments. Plaintiffs have proffered evidence that Defendants repeatedly and seemingly uniformly expressed their stance that the Atmel Plan had expired without an Initial Triggering Event and corresponding Change of Control on November 1, 2015, including to both named Plaintiffs. See, e.g., Dkt. No. 107-1, Ex. D at 106 14; id., Ex. G at 370 73; Dkt. No. 107-2, Ex. H at 2 5, 9 12; Schuman Decl. at ¶¶ 7 9. -hands meeting that Microchip would not pay any severance benefits under the Atmel Plan. See Dkt. No. 107-1, Ex. D at 10 11, 113 14; id., Ex. G at 225 27, 233 36, 370 73. Indeed, believed the Atmel Plan had, by its terms, expired . . . and Microchip communicated that belief to 2

See Dkt. No. 108 at 4.

2 To the extent that Defendants further argue that the named Plaintiffs may be responsible for some coercion or intimidation, there is simply no support for this in the record. To the contrary,

The Court understands that Defendants disagree that sharing their interpretation of the Atmel Plan and its expiration date may be considered coercive, misleading, or fraudulent. Yet the evaluate the veracity of Plai . It is sufficient to satisfy typicality that informed Plaintiffs that they were not entitled to benefits under the Atmel Plan. Their claims

prove See Rodriguez, 591 F.3d at 1124 (quotation omitted).

Second, Defendants contend that Plaintiffs Schuman and Coplin were parties to additional, director-level severance agreements not challenged in this action which subject them to unique defenses. See Dkt. No. 108 at 3; see also Dkt. No. 108-1, Ex. 3. Defendants assert that these agreements provided for benefits upon termination without cause any change of control before August 30, 2016, and Defendants therefore paid them. Id. (emphasis in original). However, Defendants acknowledge that these director-level agreements were made in addition to the benefits detailed in the Atmel Plan. See Dkt. No. 108 at 3. Moreover, when Plaintiffs Schuman and Coplin submitted their claims for benefits to the plan administrator, she did not refer to any other severance agreement, but rather concluded that the Atmel Plan had expired on November 1, 2015. See Dkt. No. 107-1, Ex. D at 76 78, 102 05; see Dkt. No. 107-1, Ex. F at 191 92, 209 10.

Understanding these limitations, Defendants suggest that because the named Plaintiffs knew about these director-level agreements, they could not have been misled by FAQs about the merger. See Dkt. No. 108 at 13. Defendants contend that Plaintiffs Schuman and Coplin knew that there were some severance agreements Microchip would honor (i.e., the director-level agreements), so they could readily harmonize this knowledge with the FAQs that stated Microchip agreed to honor severance agreements with Atmel. See Schuman Decl., Ex. B at 12 13; Coplin Decl., Ex. B at 10 12. The Court is not persuaded that this should defeat

Plaintiff Coplin explained during his deposition that

-1, Ex. 2 at 54. typicality See Hanlon, 150 F.3d at 1020. The FAQs were distributed to all employees, not just those at the director level. And they honor each of your employment and compensatory contracts (including . . . severance . . . not just director-level severance agreements. Schuman Decl., Ex. B at 12 13 (emphasis added). misinterpretation of the Atmel Plan and their wide circulation of this misinformation namely, that the Atmel Plan expired. Plaintiffs Schuman and Coplin received this same information from Microchip, before signing releases. fiduciary duty and improperly denied benefits simply by refusing to honor the Atmel Plan.

The Court finds that Plaintiffs have thus satisfied the typicality requirement.

v. Adequacy of Representation present Fed. R. Civ. P. 23(a)(4). On the question of adequacy, the Court must address two legal questions: (1) whether the named plaintiffs and their counsel have any conflicts of interest with other putative class members, and (2) whether the named plaintiffs and their counsel will prosecute the action vigorously on behalf of the proposed class. See In re Mego Fin. Corp. Sec. Litig., 213 F.3d 454, 462 (9th Cir. 2000). This inquiry too commonality and typicality criteria. See Falcon, 457 U.S. at 158, n.13.

In arguing that the named Plaintiffs have conflicts of interest with other putative class members,

Defendants reiterate that they are subject to unique defenses by virtue of their director- level positions. Defendants again urge that the named Plaintiffs were not coerced and suggest that

FAQ. See Dkt. No. 108 at 14 15. Yet as the Court has already explained, there is evidence in the record that Microchip told even the named Plaintiffs that it would not pay benefits under the Plan. director-level positions did not somehow insulate them from this alleged misinformation, as Plaintiffs proffer evidence and Defendants acknowledge that Defendants consistently stated that the Atmel Plan had expired. And to the extent that Defendants posit that see Dkt. No. 108 at 12, Defendants have not provided any reason to believe such a conflict exists, and the Court declines to credit such unsupported conjecture. Such speculation is particularly unwarranted here where the evidence before the Court indicates that Microchip approved of the FAQs before they were circulated, see Dkt. No. 107-1, Ex. D at 106 114, and Microchip conveyed its position during the all-hands meeting and subsequent emails, see Coplin Decl. at ¶¶ 5 6.

Defendants next argue that Plaintiffs cannot establish adequacy of representation because the named Plaintiffs have not suffered actual harm warranting equitable surcharge. See Dkt. No. 108 at 14. However, Plaintiffs have explained that surcharge would [] be determined on a class-wide basis, using would not require any individualized findings regarding the extent See Dkt. No. 107 at 13. This theory applies equally to class members.

The Court therefore concludes that Plaintiffs have satisfied the adequacy of representation requirement under Rule 23(a).

B. Rule 23(b) Having found that Plaintiffs meet the requirements of Rule 23(a), the Court next addresses contention that class certification is appropriate under Rule 23(b).

i. Rule 23(b)(1)(A)

against individual class members would create a risk of . . . inconsistent or varying adjudications with respect to individual class members that would establish incompatible standards of conduct is particularly appropriate in cases involving ERISA fiduciaries who must apply uniform standards

Wit v. United Behavioral Health, 317 F.R.D. 106, 132 33 (N.D. Cal. 2016).

Plaintiffs contend that their breach of fiduciary duty claim, and their corresponding request for equitable relief, should be certified under Rule 23(b)(1)(A). Plaintiffs argue that adjudicating the breach of fiduciary duty claim will not require individualized inquiries, and pursuing only the claims of the named Plaintiffs here risks inconsistent adjudications that would prevent Defendants from treating all plan beneficiaries alike. See Dkt. No. 107 at 11 12. In response, Defendants challenge both whether certification is appropriate as to liability and whether it is appropriate as to request for equitable surcharge. See Dkt. No. 108 at 15 17.

a. Liability for Breach of Fiduciary Duty Defendants contend individualized proof, including the specific communications between Defendants and class

members. See Dkt. No. 108 at 16. Defendants repeatedly argue uniform communications about the at- See id.

Defendants urge instead that members of the human resources department were having daily conversations with class members. Id. Defendants conclude that determining whether these communications were coercive so as to make requires an individualized inquiry, and Defendants may have to treat class members differently depending on whether their releases may be enforced. Id.

The Court finds that Defendants again have misstated or of liability. Plaintiffs argue that Defendants breached their fiduciary duty just by asserting that the Atmel Plan expired, stating that Microchip owed no benefits under the Plan, and offering reduced benefit severance plans in exchange for claims releases. CEO held - had expired, and Microchip would not pay any severance benefits under its terms. See Dkt. No. 107-1, Ex. D at 10 11, 113 14; id., Ex. G at 225 27, 233 36, 370 73. Defendants do not suggest, individualized conversations with human resources. Even now, Defendants consistently maintain

that the Atmel Plan expired in November 2015. See Dkt. No. 108 at 6. Even assuming there were some individual differences in the conversations among class members about the Plan, the [i]ndividual differences should not bar a Rule 23(b)(1) or Rule 23(b)(2) class, so Dukes, 564 U.S. at 376. The Court has already found the requirements of Rule 23(a) to be met. And if Plaintiffs succeed on their theory of liability, the invalidity of any releases and the applicability of the Atmel Plan would apply uniformly to all class members. 3

b. Relief for Breach of Fiduciary Duty: Equitable Surcharge Putting aside liability, request for equitable surcharge renders the breach of fiduciary duty claim inappropriate for class certification under Rule 23(b)(1)(A). Under ERISA § 502(a)(3), a plan participant or beneficiary may bring a civil action to obtain other appropriate equitable relief . . . to redress such violations. § 1132(a)(3)(B) (emphasis added). Appropriate equitable relief under ERISA may include

surcharge. See Gabriel v. Alaska Elec. Pension Fund, 773 F.3d 945, 955 58 (9th Cir. 2014). And here, as part of their fiduciary duty claim, Plaintiffs seek several types of equitable relief, including equitable surcharge. See FAC at ¶¶ 82 97; see also id. ¶ 10. During the hearing on the motion for class certification, Plaintiffs clarified that this theory of surcharge is premised on the profit and benefit that Defendants received from use of the unpaid benefits that should have been paid out.

Defendants reason that this equitable surcharge constitutes monetary relief, which the not appropriate See Zinser v. Accufix Research Inst., Inc., 253 F.3d 1180, 1193 (9th Cir. 2001). Defendants posit that even if multiple courts were to calculate different surcharges for plaintiffs in different

actions, that does not preclude Defendants from abiding by such orders. See id. requires more . . . than a risk that separate judgments would oblige the opposing party to pay damages to some class members but not to others or to pay them different amounts . . (quotation omitted)).

Plaintiffs respond that their request for equitable surcharge is only incidental monetary relief for its breach of fiduciary duty claim, which does not preclude certification under Rule 23(b)(1)(A). See Dkt. No. 110 at 7. They suggest that they are primarily seeking injunctive relief

3 23(b)(2), and the Court finds it similarly unavailing. to prevent Defendants from enforcing any releases and from denying their entitlement to severance benefits. See Dkt. No. 107 at 8, 12 14. Plaintiffs further argue that there is a Id. at 12. In support of their argument that any monetary surcharge is de minimis, Plaintiffs rely

s opinion in Ellis v. Costco Wholesale Corp., 657 F.3d 970, 986 (9th Cir. 2011). But Ellis was discussing the requirements for certifying a class under Rule 23(b)(2) and offered no insight into whether let alone under what circumstances monetary relief may be considered immaterial for purposes of certification under Rule 23(b)(1)(A). See id. at 977, 987 88 (citing Dukes, 564 U.S. at 360). And the Ninth Circuit acknowledged in Ellis that even under Rule 23(b)(2), the Supreme Court has questioned the viability of evaluating whether monetary relief is incidental to injunctive relief. See id. at 986 (citing Dukes, 564 U.S. at 364 66).

Even assuming incidental monetary relief would not defeat class certification under Rule 23(b)(1)(A), Plaintiffs have not provided any support for their argument that the equitable surcharge at issue here would only be incidental to the equitable relief requested. During the hearing on this motion Plaintiffs acknowledged that they have not done discovery as to Defendan and so could not specify what unjust enrichment Defendants did or did not receive from any breach of fiduciary duty and what equitable surcharge they would request as a result. In Wit, the court found that the plaintiffs had satisfied the requirements of Rule 23(b)(1) despite the plaintiffs seeking an equitable surcharge as part of their breach of fiduciary duty claim. 317 F.R.D. at 134. Yet in finding that the surcharge was incidental to the injunctive relief requested, the c surcharge Plaintiffs seek is miniscule in comparison with the amount Plaintiffs may be able to

Id. There is simply no way for the Court to evaluate on the record here whether the magnitude of any monetary relief from equitable surcharge would eclipse any requested injunctive relief. Plaintiffs must meet their burden for class certification with evidentiary proof, and they have not proffered any.

Accordingly, on the record before it, t surcharge defeats its request for certification under Rule(b)(1)(A).

ii. Rule 23(b)(2) Plaintiffs alternatively argue that certification of their breach of fiduciary duty claim is appropriate under Rule 23(b)(2). Dukes certifiability the notion that the conduct is such that it can

be enjoined . . . only as to all of the class members or

as to none Id. (quotation omitted) (emphasis added). The Ninth Circuit has previously held that primary relief Zinser, 253 F.3d at 1195 (quotation omitted) (emphasis added); accord Kanter v. Warner-Lambert Co., 265 F.3d 853, 860 (9th Cir. 2001) 23(b)(2) cases, monetary damage requests are generally allowable only if they are merely

Plaintiffs first contend that Rule 23(b)(2) certification is appropriate here because Defendants took the same core actions as to all class members, a single injunction would provide relief, and they seek predominately injunctive relief for breach of fiduciary duty. See Dkt. No. 107 at 13 14. But a evidence that the equitable surcharge they seek is incidental monetary relief. See Section III.B.i.

However, as noted above, the Supreme Court in Dukes has called into doubt whether this standard remains applicable for certification under Rule 23(b)(2). See Ellis, 657 F.3d at 986 (citing Dukes, 564 U.S. at 364 66). The Supreme Court raised concerns about requests for any monetary relief on behalf of Rule 23(b)(1) and 23(b)(2) classes given the diminished procedural protections these provisions offer absent class members. Dukes, 564 U.S. at 361 62. Such classes are mandatory and class members are not required to receive notice. Id. For now, however, the Supreme Court has for [] injunctive or declaratory relief and does not authorize the class certification of monetary

Dukes, 564 U.S. at 360. Following Dukes, the Ninth Circuit explained that . . . to determine if injunctive relief due process Ellis, 657 F.3d at 986 87. As the Supreme Court emphasized in Dukes, due process does not authorize class certification under Rule 23(b)(2) where individualized Id. at 360 61 (emphasis added).

Plaintiffs respond that their request for equitable surcharge does not constitute individualized monetary relief. See Dukes, 564 U.S. at 360 61. Plaintiffs explain that under their theory, both the harm and injury are the same for all class members, because their claim is based Under ERISA, a

Gabriel, 773 F.3d at 957 (quoting Cigna Corp. v. Amara, 563 U.S. 421, 441 42 (2011)). Accordingly

Id. at 957 58 (quotation omit of actual harm proved (under the default rule for civil cases) by a preponderance of the Cigna, 563 at 444.

m the loss of a right protected by See

id. And under Plaintiffs information about the expiration and enforceability of the Atmel Plan, they were all harmed in the same way. See FAC at ¶¶ 85 92. As to damages, Plaintiffs disavow a claim for equitable See, e.g., Dkt. No. 110 at 11 12. Instead, Plaintiffs state that the question is what benefit Defendants received from their use of the unpaid benefits, distributed equally to class members.

. . . with respect to whether each putative class member experienced actual harm in excess of the denial of their benefits, and what amount of surcharge would be appropriate to compensate each See Dkt. No. 108 at 19. But as noted above, Plaintiffs actual damages above and beyond their loss of benefits. Rather, a enefit by breaching his or her duty must return that benefit to See Skinner v. Northrop Grumman Ret. Plan B, 673 F.3d 1162, 1167 (9th Cir. 2012) (finding for purposes of summary judgment that the plaintiffs had not presented any evidence that the defendant gained a benefit); cf. Restatement (Third) of Restitution and Unjust Enrichment § 51 (2011) ( . . . is the net increase in the assets of the wrongdoer, to the extent that this increase is att Plaintiffs acknowledge that they have not yet presented evidence of what benefit Defendants received by breaching their fiduciary duty, but in any event, it is based on common proof rather than individualized damage calculations. Whether fiduciary duty claim will ultimately succeed and whether surcharge will be an appropriate remedy under the circumstances of this case remains to be seen. But at this stage, the Court is not tasked with evaluating the likelihood of fiduciary duty claim or request for equitable surcharge.

The Court therefore appropriate under Rule 23(b)(2).

iii. Rule 23(b)(3) Plaintiffs also ask the Court to certify both the fiduciary duty claim and the improper denial of benefits claim under Rule 23(b)(3). See Dkt. No. 107 at 11. Rule 23(b)(3) requires that

only individual members, and that a class action is superior to other available methods for fairly and efficient Fed. R. Civ. P (23)(b)(3).

a. Predominance The predominance inquiry tests whether proposed classes are sufficiently cohesive to Tyson Foods, Inc. v. Bouaphakeo, 136 S. Ct. 1036, 1045 members of a proposed class will need to present evidence that varies from member to member,

while a common question is one where the same evidence will suffice for each member to make a prima facie showing [or] the issue is susceptible to generalized, class-Id. (quotation -enabling, issues in the case are more prevalent or important than the non-common, aggregation- Id. (quotation omitted).

With respect to the monetary relief sought by a putative class, predominance requires that whole class

Just Film, Inc. v. Buono, 847 F.3d 1108, 1120 (9th Cir. 2017) (quoting Comcast Corp. v. Behrend, 569 U.S. 27, 34 (2013)) (internal qu purporting to serve as evidence of damages in [a] class action must measure only those damages Comcast, 569 U.S. at 35. While a proffered model Id. (quotation omitted); see also Cal. v. Infineon Techs. AG, No. C 06-4333 PJH,

that . . . injury can be proven on a class-

Comcast own is insufficient to defeat class certification, Just Film, 847 F.3d at 1120 (quoting Leyva v. Medline Indus. Inc., 716 F.3d 510, 514 (9th Cir. 2013)).

1. Denial of Benefits Plaintiffs argue that their eligibility for benefits under the Atmel Plan can be determined in a single adjudication because their entitlement to benefits turns on the same interpretation of the Atmel Plan and whether the Dialog merger agreement constitute under the plain meaning of the Plan. See Dkt. No. 107 at 16. And once liability is established, Plaintiffs argue that the amount of benefits due can be easily determined. Id. at 16 17. They reason that under the Atmel Plan, terminated employees were entitled to a certain percentage of their base salary; health insurance premiums; and a prorated portion of their annual incentive bonus. The signed releases offered just 50% of these benefits, so calculating what more they are owed will be simple: it is equal to the amount Defendants already paid them. See id. at 17.

Defendants do not appear to challenge whether Plaintiffs have provided a model for payment of benefits. Rather, Defendants respond that resolving whether liability is established for the denial of benefits in the first instance will require consideration of each of the individual releases signed by class members. See Dkt. No. 108 at 20. Defendants urge that the releases are valid and cover nearly all the putative class members. See id. position that these releases are valid and preclude a finding of liability as to almost all class members. The existence of these releases, however, does not appear to be contested by Plaintiffs. In fact, they have proffered them here as part of the class certification motion. See Dkt. No. 107- 2, Ex. H at 13 1341. But critically, response to this asserted defense does not require individualized determinations.

see Dkt. No. 108 at 20, Plaintiffs argument that the releases are invalid is based on class-wide communications that misrepresented the terms of the Atmel Plan. The Court finds that common issues therefore predominate

2. Breach of Fiduciary Duty Plaintiffs next explain that common questions predominate for purposes of their breach of

whether it accurately informed Plaintiffs of their ERISA rights under the Atmel Plan, or instead misled them about its enforceability. See Dkt. No. 107 at 15. is premised on Defendants representations including at the all-hands meeting that the Atmel ion was consistent, even when seeking releases from Atmel employees. Despite asserting throughout its brief that there were no uniform statements from Defendants about the Atmel Plan, Defendants proffer no evidence to suggest otherwise, and in their brief still maintain that the Atmel Plan expired before any Change of Control. Based on the expiration of the Plan, Plaintiffs seek to enjoin Defendants from enforcing the releases; estop them from denying payment of benefits; and require them to disgorge any profits as an equitable surcharge. Plaintiffs will succeed in proving the invalidity of the releases and their interpretation of the Atmel Plan, but Plaintiffs do not need to prove their case at the class certification stage.

To the extent Defendants suggest that liability may turn on whether the plan administrator could rely on the releases that the class members signed, the Court notes that the plan administrator did not base its determination of denial of benefits on the releases, but instead said See, e.g., Dkt. No. 107-1, Ex. D at 76 78, 102 05. And to the extent Defendants simply repeat their arguments that determining the surcharge owed to each class member will require individualized assessments, the Court has already explained in Section

theory. Furthermore, class certification. Just Film, 847 F.3d at 1120. The Court finds that common issues therefore

b. Superiority Lastly, the Court considers In doing so, the Court considers four non-exclusive factors: (1) the interest of each class member in individually controlling the prosecution or defense of separate actions; (2) the extent and nature of any litigation concerning the controversy already commenced by or against the class; (3) the desirability of concentrating the litigation of the claims in the particular forum; and (4) the difficulties likely to be encountered in the management of a class action. Id. litigation of common issues will reduce litigation costs and promote greater efficiency, a class

Valentino v. Carter-Wallace, Inc., 97 F.3d. 1227, 1234 35 (9th Cir. 1996).

Here, Plaintiffs contend that a class action is superior because pursuing individual actions would be cost-prohibitive, this is the proper forum, and resolving liability and determining individualized damages will be manageable as discussed in the predominance discussion above. See Dkt. No. 107 at 17 18. Rather than respond to these individual arguments, Defendants again emphasize that their defense to liability will turn on the releases, and this action will require 200 mini- concern is based on the faulty premise that Plaintiffs have no evidence that Defendants made any common communications to induce class members into signing these releases. Defendants may contest the nature of these communications even on a classwide basis.

* * * The Cour for denial of benefits. Having already found that class certification is appropriate under Rule Court finds in the alternative that certification is also appropriate under Rule 23(b)(3). IV. CONCLUSION

Accordingly, the Court GRANTS the motion for class certification. The Court further SETS a further case management conference for March 17, 2020, at 2:00 p.m. The parties are DIRECTED to meet and confer and submit a joint case management statement by March 10, 2020. The joint statement should include a proposed schedule through trial.

IT IS SO ORDERED. Dated: _____

HAYWOOD S. GILLIAM, JR. United States District Judge