

1 OGLETREE, DEAKINS, NASH, SMOAK &
 2 STEWART, P.C., SBN 00504800
 3 Mark G. Kisicki (CA SBN 150057)
 4 mark.kisicki@ogletreedeakins.com
 5 2415 E. Camelback Road, Suite 800
 6 Phoenix, AZ 85016
 7 Telephone: 602.778.3700
 8 Fax: 602.778.3750

Attorneys for Defendants

*Additional counsel for Defendants on the following page

*Counsel for Plaintiffs and the Proposed Class on the following page

9
 10 **UNITED STATES DISTRICT COURT**
 11 **NORTHERN DISTRICT OF CALIFORNIA**

12
 13 PETER SCHUMAN, an individual, and,
 14 WILLIAM COMPLIN, an individual, on behalf
 15 of themselves and on behalf of others similarly
 16 situated,

Plaintiffs,

v.

17 MICROCHIP TECHNOLOGY
 18 INCORPORATED, a corporation; ATMEL
 19 CORPORATION, a corporation; and ATMEL
 20 CORPORATION U.S. SEVERANCE
 21 GUARANTEE BENEFIT PROGRAM, an
 22 employee benefit plan,

Defendants.

No. 4:16-CV-05544-HSG

CLASS ACTION

**JOINT STIPULATION TO WITHDRAW
 DEFENDANTS' MOTION TO DISMISS
 AND FOR PLAINTIFFS TO FILE
 AMENDED COMPLAINT; JOINT
 REQUEST TO VACATE CASE
 MANAGEMENT CONFERENCE; AND
 ORDER**

CMC Date: January 10, 2017
 Hearing Date: February 9, 2017
 Time: 2:00 p.m.
 Courtroom: 10, 19th Floor
 Action Filed: September 29, 2016
 Trial Date: None

27 JOINT STIPULATION TO WITHDRAW DEFENDANTS' MOTION TO DISMISS AND FOR PLAINTIFFS TO
 28 FILE AMENDED COMPLAINT; JOINT REQUEST TO VACATE CASE MANAGEMENT CONFERENCE; AND
~~PROPOSED~~ ORDER
 4:16-CV-05544-HSG

1 **ADDITIONAL DEFENDANTS' COUNSEL:**

2 Mark Schmidtke (IN SBN 1733-45) admitted *pro hac vice*
3 mark.schmidtke@ogletreedeakins.com
4 56 S. Washington Street, Suite 302
5 Valparaiso, IN 46383
6 Telephone: 219.242.8668
7 Fax: 219.242.8669

8 *Attorneys for Defendants*

9 **PLAINTIFFS' COUNSEL:**

10 Michael Rubin (SBN 80618)
11 Connie K. Chan (SBN 284230)
12 Raphael N. Rajendra (SBN 255096)
13 ALTSHULER BERZON LLP
14 177 Post Street, Suite 300
15 San Francisco, CA 94108
16 Telephone: (415) 421-7151
17 Facsimile: (415) 362-8064
18 mrubin@altber.com
19 cchan@altber.com
20 rrajendra@altber.com

21 Cliff Palefsky (SBN 77683)
22 Keith Ehrman (SBN 106985)
23 MCGUINN, HILLSMAN & PALEFSKY
24 535 Pacific Avenue
25 San Francisco, CA 94133
26 Telephone: (415) 421-9292
27 Facsimile: (415) 403-0202
28 CP@mhpsf.com
keith@mhpsf.com

Attorneys for Plaintiffs and the Proposed Class

21

22

23

24

25

26

27

28

1 On November 16, 2016, Defendants Microchip Technology, Inc. (“Microchip”), Atmel
2 Corporation (“Atmel”) and Atmel Corporation U.S. Severance Guarantee Benefit Program
3 (“Severance Program” or “Plan” and, collectively with Microchip and Atmel, “Defendants”) filed a
4 Motion to Dismiss Plaintiffs’ Complaint. [Dkt. # 17.]

5 On November 30, 2016, the Court granted the parties’ Stipulation to extend the Motion to
6 Dismiss briefing deadlines, making Plaintiffs’ response due by December 21, 2016 and
7 Defendants’ reply due by January 4, 2017. Since then, Defendants’ counsel and Plaintiffs’ counsel
8 have agreed to a schedule that will avoid burdening the Court and the parties with litigating an
9 issue asserted in the Motion to Dismiss; namely, whether Plaintiffs’ action should be dismissed for
10 failing to exhaust the administrative claims process required by Section 502(a)(1)(B) of the
11 Employee Retirement Income Security Act of 1974 (“ERISA”). In particular, the parties agreed
12 that:

- 13 1. Defendants will withdraw their Motion to Dismiss;
- 14 2. The Named Plaintiffs (Schuman and Coplin) will exhaust ERISA’s administrative claims
15 process, including appealing any adverse claims determination;
- 16 3. The Plan Administrator will take no more than 90 days total to resolve the named Plaintiffs’
17 claims, meaning that the Plan Administrator will respond to Plaintiff Schuman’s claim on
18 or before December 30, 2016 and Plaintiff Coplin’s claim on or before January 2, 2017;
- 19 4. The Named Plaintiffs will promptly appeal any denial of benefits by the Plan
20 Administrator;
- 21 5. The Plan will resolve any such appeal in no more than 60 days from the date the appeal is
22 taken;
- 23 6. Defendants will not assert that the failure to exhaust by any individual who is “similarly
24 situated” to the Named Plaintiffs (any employee who was or is terminated without cause
25 between April 4, 2016 and March 19, 2017 and agreed to sign or did sign a Severance
26 Agreement and Release, even if it is/was not the exact same Severance Agreement and

27 JOINT STIPULATION TO WITHDRAW DEFENDANTS’ MOTION TO DISMISS AND FOR PLAINTIFFS TO
28 FILE AMENDED COMPLAINT; JOINT REQUEST TO VACATE CASE MANAGEMENT CONFERENCE; AND
~~PROPOSED~~ ORDER
4:16-CV-05544-HSG

1 Release form that Schuman or Coplin signed) bars that individual's claims or gives rise to
2 an affirmative defense to that individual's claim;

3 7. The parties anticipate that this administrative exhaustion process will be completed no later
4 than mid-March 2017, at which time Plaintiffs will file an amended complaint, which shall
5 be filed no later than March 31, 2017.

6
7 The parties also jointly request that the Court vacate the Case Management Conference
8 currently set for January 10, 2017 (and the other dates established by the Court's Order Setting
9 Initial Case Management Conference and Deadlines) and reset the Case Management Conference
10 (and related deadlines) after Plaintiffs have filed an amended complaint.

11 DATED: December 21, 2016

12 OGLETREE, DEAKINS, NASH, SMOAK &
13 STEWART, P.C.

14 By: /s/ Mark G. Kisicki
15 Mark G. Kisicki
16 2415 East Camelback Road, Suite 800
17 Phoenix, Arizona 85016
18 Mark Schmidtke
19 56 S. Washington Street, Suite 302
20 Valparaiso, IN 46383

21 Attorneys for Defendants

22 ALTSHULER BERZON LLP

23 By: /s/ Michael Rubin (with permission)
24 Michael Rubin
25 Connie K. Chan
26 Raphael N. Rajendra
27 ALTSHULER BERZON LLP
28 177 Post Street, Suite 300
San Francisco, CA 94108

JOINT STIPULATION TO WITHDRAW DEFENDANTS' MOTION TO DISMISS AND FOR PLAINTIFFS TO
FILE AMENDED COMPLAINT; JOINT REQUEST TO VACATE CASE MANAGEMENT CONFERENCE; AND
~~PROPOSED~~ ORDER
4:16-CV-05544-HSG

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Cliff Palefsky
Keith Ehrman
MCGUINN, HILLSMAN & PALEFSKY
535 Pacific Avenue
San Francisco, CA 94133

Attorneys for Plaintiffs

JOINT STIPULATION TO WITHDRAW DEFENDANTS' MOTION TO DISMISS AND FOR PLAINTIFFS TO
FILE AMENDED COMPLAINT; JOINT REQUEST TO VACATE CASE MANAGEMENT CONFERENCE; AND
~~PROPOSED~~ ORDER
4:16-CV-05544-HSG

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

SIGNATURE ATTESTATION

In accordance with Civil Local Rule 5-1(i)(3), I attest that concurrence in the filing of this document has been obtained from the signatories on this e-filed document, and that this attestation was executed on December 21, 2016.

By: /s/ Mark G. Kisicki


1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

ORDER

IT IS SO ORDERED that:

1. Defendants' Motion to Dismiss [Dkt. # 17] is deemed withdrawn;
2. Plaintiffs may file an amended complaint once they have exhausted their administrative remedies; and
3. The Case Management Conference currently set for January 10, 2017 (and each other date established by the Order Setting the Initial Case Management Conference) is vacated and will be reset after Plaintiffs file an amended complaint.

Dated: December 22, 2016



JUDGE HAYWOOD S. GILLIAM, JR.
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

27936040.1

JOINT STIPULATION TO WITHDRAW DEFENDANTS' MOTION TO DISMISS AND FOR PLAINTIFFS TO FILE AMENDED COMPLAINT; JOINT REQUEST TO VACATE CASE MANAGEMENT CONFERENCE; AND

~~PROPOSED~~ ORDER
4:16-CV-05544-HSG
