

1 OGLETREE, DEAKINS, NASH,
 2 SMOAK & STEWART, P.C., SBN 00504800
 3 Mark G. Kisicki (CA SBN 150057)
 4 mark.kisicki@ogletreedeakins.com
 Elizabeth M. Soveranez (AZ SBN 024009)
 5 admitted *pro hac vice*
 6 elizabeth.soveranez@ogletreedeakins.com
 7 2415 E. Camelback Road, Suite 800
 Phoenix, AZ 85016
 Telephone: 602.778.3700
 Fax: 602.778.3750

8 Mark Schmidtke (IN SBN 1733-45)
 admitted *pro hac vice*
 9 mark.schmidtke@ogletreedeakins.com
 10 56 S. Washington Street, Suite 302
 Valparaiso, IN 46383
 11 Telephone: 219.242.8668
 12 Fax: 219.242.8669

Erika L. Leonard (GA SBN 565965)
 admitted *pro hac vice*
 erika.leonard@ogletree.com
 301 Congress Avenue, Suite 1150
 Austin, TX 78701
 Tel.: 512.344.4700
 Fax: 512.344.4701

Attorneys for Defendants

(Attorneys for Plaintiffs listed on following page)

15 **UNITED STATES DISTRICT COURT**
 16 **NORTHERN DISTRICT OF CALIFORNIA**
 17 **OAKLAND DIVISION**

18 ROBIN BERMAN, et al.,
 19 Plaintiffs,

v.

21 MICROCHIP TECHNOLOGY
 INCORPORATED, et al.,
 22 Defendants.

Case No. 4:17-CV-01864-HSG

23 PETER SCHUMAN, et al.,
 24 Plaintiffs,

v.

25 MICROCHIP TECHNOLOGY
 INCORPORATED, et al.,
 26 Defendants.

Case No. 4:16-CV-05544-HSG

**STIPULATED REQUEST AND ORDER RE:
 SUMMARY JUDGMENT MOTIONS AND
 CASE SCHEDULES**

Judge: Hon. Haywood S. Gilliam, Jr.

1 **PLAINTIFFS' COUNSEL:**

2 Michael Rubin (SBN 80618)
3 Matthew J. Murray (SBN 271461)
4 ALTSHULER BERZON LLP
5 177 Post Street, Suite 300
6 San Francisco, CA 94108
7 Telephone: (415) 421-7151
8 Facsimile: (415) 362-8064
9 Email: mrubin@altber.com
10 mmurray@altber.com

11 Cliff Palefsky (SBN 77683)
12 Keith Ehrman (SBN 106985)
13 MCGUINN, HILLSMAN & PALEFSKY
14 535 Pacific Avenue
15 San Francisco, CA 94133
16 Telephone: (415) 421-9292
17 Facsimile: (415) 403-0202
18 Email: cp@mhpsf.com
19 keith@mhpsf.com

20 William B. Reilly (SBN 177550)
21 LAW OFFICE OF WILLIAM REILLY
22 86 Molino Avenue
23 Mill Valley, CA 94941
24 Telephone: (415) 225-6215
25 Facsimile: (415) 634-2897
26 Email: bill@williambreilly.com
27
28

1 WHEREAS, the parties filed a joint status conference statement on April 9, 2021 in these
2 related cases, *Berman et al v. Microchip Technology Inc.*, No. 4:17-cv-01864-HSG (*Berman*), and
3 *Schuman et al v. Microchip Technology, Inc.*, No. 4:16-cv-05544-HSG (*Schuman*), which addressed
4 how to move these cases forward efficiently following the Ninth Circuit’s memorandum disposition
5 in *Berman* (*Berman* Dkt. 137; *Schuman* Dkt. 154);

6 WHEREAS, the Court on April 14, 2021 terminated the parties’ then pending cross-motions
7 for summary judgment in *Schuman* (*Schuman* Dkt. 156), pursuant to agreement of the parties;

8 WHEREAS, the Amended Scheduling Order in *Berman* and *Schuman* set a dispositive motion
9 hearing deadline of January 13, 2022 (*Berman* Dkt. 140; *Schuman* Dkt. 157);

10 WHEREAS, the parties filed and briefed cross-motions for partial summary judgment in
11 *Berman* in the fall of 2021, which the Court took under submission on October 6, 2021 (Dkts. 145,
12 163, 165, 166, 168);

13 WHEREAS, Defendants contend that they interpreted the Court’s standing order on successive
14 summary judgment motions as applying only to motions addressing the same claim, and that before
15 the Ninth Circuit appeal and remand, Plaintiffs had previously filed, and the Court entertained, two
16 motions for partial summary judgment in *Berman* addressing different claims.¹ Accordingly, on
17 December 9, 2021, 35 days before the dispositive motion hearing deadline per Civil Local Rule 7-
18 2(a), Defendants in *Berman* filed a Motion for Partial Summary Judgment on Plaintiffs’ First Cause
19 of Action – For Equitable Relief (Dkt. 171), as to which Defendants contend they had not previously
20 moved for summary judgment, and Defendants in *Schuman* filed a Motion for Summary Judgment
21 (Dkt. 163), noticing both motions for hearing on January 13, 2022;

22 WHEREAS, on December 10, 2021, Plaintiffs in *Berman* filed an Administrative Motion to
23

24 ¹ Plaintiffs continue to maintain that their pre-appeal motions in *Berman* did not address different
25 claims and were filed with prior notice to the Court. Plaintiffs first moved for partial summary
26 judgment in *Berman* on both claims for relief, and the Court granted judgment on Plaintiffs’ denial of
27 benefits claim and granted judgment as to liability on their breach of fiduciary duty claim. Then, after
28 Plaintiffs’ counsel discussed with Defendants’ counsel how to resolve the remaining remedy issues
and informed the Court of their intention, Plaintiffs filed a subsequent motion for summary judgment
seeking interest and surcharge as a remedy for the breach of fiduciary duty claim.

1 Strike Defendants’ Second Motion for Partial Summary Judgment or in the Alternative to Stay
2 Briefing before Defendants had responded to Plaintiffs’ meet and confer voicemails and email sent
3 earlier that afternoon² (Dkt. 172);

4 WHEREAS, the parties conferred the following Monday after an exchange of emails over the
5 weekend, and reached an agreement in principle to file a Stipulated Request and Proposed Order
6 regarding Summary Judgment Motions and Case Schedules, under which Plaintiffs would withdraw
7 their “Motion for Administrative Relief” and the parties would request the Court stay further briefing
8 and hearing on Defendants’ December 9, 2021 motions in both cases and would request a modification
9 of the Scheduling Order to vacate the currently pending dates in both cases, and then, after the Court
10 resolved the parties’ submitted cross-motions for partial summary judgment in *Berman*, the parties
11 would meet and confer to propose a schedule for filing and briefing dispositive motions as to any
12 remaining issues in *Berman* and *Schuman*;

13 WHEREAS, on December 13, 2021, while the parties were exchanging drafts of the Stipulated
14 Request and Proposed Order regarding Summary Judgment Motions and Case Schedules in both cases,
15 the Court in *Berman* granted Plaintiffs’ Administrative Motion to Strike Defendants’ Second Motion
16 for Partial Summary Judgment or in the Alternative to Stay Briefing (Dkt. 173);

17 WHEREAS, the parties have been in discussions regarding possible mediation, which are still
18 ongoing;

19 WHEREAS, the parties have met and conferred regarding the pending summary judgment
20 motions and case schedules in these two related cases and have agreed that the most efficient way to
21 proceed, subject to the Court’s approval, is: (1) for the Court to vacate the deadlines set forth in the
22 Amended Scheduling Order in these cases (*Berman* Dkt. 140; *Schuman* Dkt. 157) and to stay further
23 briefing or proceedings on Defendants’ December 9, 2021 summary judgment motion in *Schuman*
24 until after it decides the parties’ pending cross-motions for summary judgment in *Berman* (Dkts. 145,
25 163, 165, 166); and (2) for the parties to meet and confer promptly after the Court rules on the cross-

26
27 ² Defendants contend they did not have the opportunity to meet and confer prior to the filing as
28 they were in the process of researching and drafting a written response to the unexpected two
voicemails (left 2.5 hours before the filing) and one email (sent 2 hours before the filing), which they
still sent shortly after the filing.

1 motions in *Berman*, and to propose to the Court a new briefing schedule: (a) in *Berman*, to the extent
2 any issues remain to be decided that can be resolved by further motions for summary judgment, which
3 the parties have agreed not to oppose as improperly successive; and (b) in *Schuman*, with the parties
4 either filing new cross-motions for summary judgment or, if Defendants choose to stand on their
5 December 9, 2021 motion (Dkt. 163), for the filing of plaintiffs' opposition and cross-motion and the
6 parties' subsequent reply and opposition briefs.

7 THEREFORE, the parties stipulate and request the Court to order as follows, based on the
8 good cause described above:

- 9 1. Defendants' Motion for Summary Judgment in *Schuman* (Dkt. 163) is taken off
10 calendar. All further summary judgment motions and briefing in *Berman* and *Schuman*
11 are stayed until after the Court resolves the cross-motions in *Berman* that are currently
12 under submission (Dkts. 145, 163, 165, 166);
- 13 2. All deadlines in the Amended Scheduling Order in *Berman* and *Schuman* (*Berman* Dkt.
14 140; *Schuman* Dkt. 157) are vacated; and
- 15 3. Within 14 days after the Court resolves the currently pending cross-motions for
16 summary judgment in *Berman*, the parties shall meet and confer and propose a case
17 schedule for such further proceedings, including a schedule for briefing dispositive
18 motions in both cases based on any issues that may remain in both cases after the
19 Court's decision on the pending cross-motions for summary judgment in *Berman*.

1 Dated: December 16, 2021

Respectfully submitted,

2 OGLETREE, DEAKINS, NASH, SMOAK &
3 STEWART, P.C.

4 By: /s/Mark G. Kisicki

Mark G. Kisicki

5 Elizabeth M. Soveranez, admitted *pro hac vice*

2415 E. Camelback Road, Suite 800

6 Phoenix, Arizona 85016

7 Mark Schmidtke, admitted *pro hac vice*

8 56 S. Washington Street, Suite 302

Valparaiso, IN 46383

9 Erika L. Leonard, admitted *pro hac vice*

10 301 Congress Avenue, Suite 1150

11 Austin, TX 78701

12 *Attorneys for Defendants*

13 Dated: December 16, 2021

Respectfully submitted,

14 ALTSHULER BERZON LLP

15 By: /s/ Michael Rubin (with permission)

16 Michael Rubin

17 Matthew J. Murray

177 Post Street, Suite 300

18 San Francisco, CA 94108

19 MCGUINN, HILLSMAN & PALEFSKY

20 Cliff Palefsky

Keith Ehrman

535 Pacific Avenue

21 San Francisco, CA 94133

22 LAW OFFICE OF WILLIAM REILLY

23 William B. Reilly

86 Molino Avenue

24 Mill Valley, CA 94941

25 *Attorneys for Plaintiffs*

26
27
28

1 **ORDER**

2 Pursuant to the parties' stipulation, it is **SO ORDERED**.

- 3 1. Defendants' Motion for Summary Judgment in *Schuman* (Dkt. 163) is taken off
4 calendar. All further summary judgment motions and briefing in *Berman* and *Schuman*
5 are stayed until further order of this Court.
- 6 2. All deadlines in the Amended Scheduling Order in both *Berman* and *Schuman* (*Berman*
7 Dkt. 140; *Schuman* Dkt. 157) are vacated.
- 8 3. Within 14 days after the Court resolves the currently pending cross-motions for
9 summary judgment in *Berman* (Dkts. 145, 163, 165, 166), the parties will meet and
10 confer and propose a case schedule for further proceedings in both cases, including
11 dispositive motions on any issues that may remain in both cases.

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14 Dated: 12/17/2021


THE HONORABLE HAYWOOD S. GILLIAM, JR.
United States District Court Judge
Northern District of California

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