No. 25-514

IN THE Supreme Court of the United States

MICROCHIP TECHNOLOGY INCORPORATED, 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

BRIEF IN OPPOSITION OF RESPONDENTS PETER SCHUMAN AND WILLIAM COPLIN

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QUESTION PRESENTED

Whether a court evaluating the enforceability of an ERISA beneficiary's release of claims may consider, as one of many factors potentially relevant to its totality-of-the-circumstances review, evidence demonstrating that the fiduciary breached its duties of loyalty and against self-dealing by the manner in which it induced the release—here, by refusing to pay severance benefits that it knew it owed under its self-funded ERISA Plan, while forcing its beneficiaries to choose between suing for those owed benefits or signing a sweeping claims release in exchange for just half that amount.

CORPORATE DISCLOSURE STATEMENT

Respondents Peter Schuman and William Coplin have no parent corporations, and no corporation or other entity owns any stock in Respondents.

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INTRODUCTION

Defendant Microchip Technology Inc. et al.'s petition rests upon a materially inaccurate and incomplete description of the facts and decision below. Microchip suggests that this case involves a run-of-the-mill settlement and release of claims for unpaid benefits under the Employee Retirement Income Security Act (ERISA), and that the Ninth Circuit's decision, if not reviewed, will prevent the enforcement of such routine releases going forward. That suggestion completely ignores the factual and procedural context of this case and the nature of the multi-factor test the Ninth Circuit applied to those facts. Nothing in that totality-of-the-circumstances test, nor in any of the other circuits' materially identical tests, would prevent or dissuade ERISA plan administrators and their beneficiaries from settling *good-faith* disputes concerning entitlement to plan benefits.

What ERISA fiduciaries may *not* do, under the Ninth Circuit's or any other circuit's governing test, is what defendant fiduciaries sought to do here: extract a release of ERISA benefits claims from their beneficiaries, despite a prior "conclusive and binding" determination that those benefits were due and fully owed, by informing plan beneficiaries that unless they release all claims for pennies on the dollar, those beneficiaries would have to sue their fiduciaries to recover those owed benefits.

The underlying issue in this case is whether an administrator of a self-funded ERISA plan may immunize itself from liability for payment of benefits it knowingly owes, through an intentional breach of its duties of loyalty and against self-dealing. Unlike the typical case involving an ERISA claims release, here the evidence presented by plaintiffs on summary judgment shows that the defendant fiduciary deliberately and callously acted in its own financial self-interest by refusing to pay plan benefits that it *knew* plaintiff beneficiaries were entitled to be paid, while demanding that those beneficiaries either sign a comprehensive claims release in exchange for initially 25 cents and then 50 cents on the dollar, or pursue years of costly litigation to attempt to enforce their ERISA rights.

In granting summary judgment to defendants, the district court acknowledged the extensive record evidence that defendants had knowingly breached their fiduciary duties in this manner. Nonetheless, the district court found this evidence legally irrelevant under the mistaken belief that under the governing standard, those claims releases would be enforceable even if defendants had breached their fiduciary duties of loyalty and against self-dealing in obtaining them.

Unsurprisingly, the Ninth Circuit reversed that extreme conclusion. Applying a common-sense totality-of-the-circumstances test, it held that evidence that an ERISA fiduciary breached its duties to beneficiaries by the very act of obtaining claims releases is at least one factor relevant to a court's evaluation of the enforceability of the release.

That ruling is entirely consistent with the holdings of every other court of appeals to address the enforceability of ERISA releases. It also necessarily flows from the basic principles of trust law underlying and incorporated into ERISA. *See Tibble v. Edison Int'l*, 575 U.S. 523, 528–29 (2015) ("In determining the contours of an ERISA fiduciary's duty, courts often must look to the law of trusts.").

Trust law has long recognized that a release "is not effective to discharge [a] trustee's liability" to its beneficiary if "the release . . . was induced by improper conduct of the trustee," even if the beneficiary knew his rights and the material facts when signing it. Restatement (Second) of Trusts § 217(2) (1959); *accord* Restatement (Third) of Trusts § 97 (2012). Such "fiduciary abuse," making a release of claims unenforceable, "may result if the trustee brings unwarranted pressure to bear on the beneficiary, *for example, by threatening to withhold a distribution to which the beneficiary is entitled unless the beneficiary executes a release*." Restatement (Third) of Trusts § 97(c), cmt. f (2012) (emphasis added). That is precisely what the evidence showed that defendants did here.

There is no substantive split of authority requiring this Court's review. No circuit court has adopted a materially different test than the Ninth Circuit's, even though the number of non-exclusive factors and their precise descriptions may vary. Moreover, no circuit has adopted a test like the district court's, which precluded consideration of the defendant fiduciary's breaches of duty in determining the enforceability of the disputed releases.

As the Ninth Circuit and every other circuit to address the issue has concluded, evidence that a fiduciary breached its duties of loyalty and against self-dealing by knowingly lying to beneficiaries about their entitlement to ERISA benefits and insisting that they could only obtain the full amount of promised benefits by filing and pursuing an expensive, time-consuming

ERISA lawsuit—or alternatively, by executing a comprehensive claims release for half the amount the fiduciary knows it owes, i.e., for no valid consideration at all—is at minimum a relevant consideration in evaluating the enforceability of the resulting releases.

Because there is no circuit conflict and nothing remarkable about the Ninth Circuit's formulation of the non-exhaustive list of factors relevant to a district court's assessment of the enforceability of an ERISA claims release, the petition should be denied.

STATEMENT OF THE CASE

A. Background

1. Plaintiffs/Respondents Peter Schuman and William Coplin are former employees of petitioner Atmel Corporation, which in July 2015—after deciding to pursue a potential sale of the company—created an ERISA severance plan (the Atmel Plan) that guaranteed all U.S.-based Atmel employees generous severance benefits if they: (1) continued to work for Atmel while it searched for a change-in-control merger partner; and (2) were later terminated without cause by an acquiring company after the merger close date and before the Plan expired. Pet. App. 7a–9a, 26a–28a. Atmel's executives drafted the Plan to create a substantial economic incentive for key employees to remain in their jobs through the completion of any merger. Pet. App. 26a; *see* 2-ER-69–71, 119–22.[1]

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[1] Citations to "ER" are to the Excerpts of Record filed in the Ninth Circuit (9th Cir. Dkt. 21.1 to 21.10).

The Plan provided that it was effective beginning July 1, 2015 (shortly after Atmel decided to seek to be acquired) and would terminate on November 1, 2015 "unless an Initial Triggering Event" occurred by that date, which would cause the Plan to "remain in effect for 18 (eighteen) months following that Initial Triggering Event." Pet. App. 7a–8a, 27a. The Plan defined an Initial Triggering Event as one in which "the Company enters into a definitive agreement . . . on or before November 1, 2015, that will result in a Change of Control of the Company." Pet. App. 27a.

In September 2015, such an "Initial Triggering Event" occurred, as Atmel entered into a definitive agreement with Dialog Semiconductor by which Dialog would acquire Atmel, thus triggering the 18-month extension of the Plan through mid-March 2017. Pet. App. 8a, 28a; 4-ER-767–75. Several months later, petitioner Microchip made Atmel a more attractive acquisition offer; and on January 19, 2016, as permitted by the agreement between Atmel and Dialog, Atmel entered into a change-in-control merger agreement with Microchip. Pet. App. 8a, 28a; 9-ER-1712–13. Microchip's acquisition of Atmel closed on April 4, 2016. Pet. App. 9a, 30a; 9-ER-1713.

The district court record contains extensive evidence that the drafters of the Atmel Plan understood that Atmel's "definitive agreement" with Dialog constituted an Initial Triggering Event within the meaning of the Plan, thereby extending the life of the Plan through mid-March 2017 (even though it was not the same agreement that ultimately resulted in the change of control). For example, Atmel's Senior Vice President of Human Resources Suzanne Zoumaras, the Plan's principal drafter, testified that she "carefully worded [the Plan] to ensure that if there was a superior bid or some other bid," the Plan would remain in effect, and that it was "obvious" that the acquisition by Microchip had the effect of extending the life of the Plan. 2-ER-75–76, 80–99, 105–06, 113–14. Atmel's CEO Steve Laub, who worked with Zoumaras in drafting the Plan, similarly confirmed that because the Initial Triggering Event with Dialog had occurred before the November deadline, the Plan remained in effect until March 2017, even though Microchip rather than Dialog ended up being the acquiring company. 2-ER-131–38, 141, 147, 149, 150–53; Pet. App. 29a.

2. Any doubt concerning the Plan's continued applicability was resolved by the undisputed fact—which petitioners completely ignore—that the Atmel Plan expressly provided that "[a]ny decision made or other action taken" by Atmel before the merger close date with respect to the Plan, and "any interpretation" by Atmel by that date "of any term or condition of" the Plan, including what constitutes an Initial Triggering Event, "will be *conclusive and binding* on all persons," including the acquiring company. 2-ER-68 (emphasis added).

The Plan's drafters deliberately granted themselves this sweeping pre-merger interpretive authority to prevent exactly what happened here—a successor company (Microchip) later depriving Atmel's hardworking employees of the ERISA severance plan benefits that Atmel intended them to receive in exchange for their continued loyalty. 2-ER-85–90.

Atmel (acting through its senior executives who drafted the Plan, and others) made several pre-merger "conclusive and binding" decisions interpreting the

Plan language they had drafted. They also took a series of "conclusive and binding" actions adopting and confirming that interpretation, including by repeatedly informing plaintiffs and other Atmel employees that the Plan would remain in effect following Atmel's acquisition by Microchip and that those employees would thereafter be entitled to severance benefits under the Plan if Microchip terminated them without cause before March 2017. Under the plain language of the Plan (which again, petitioners ignore), Microchip had no post-merger authority to dispute that "conclusive and binding" pre-merger construction of the Plan.

There were many instances in the months before the April 4, 2016 merger in which Atmel's senior management—including the senior executives who had been delegated responsibility for drafting and implementing the Plan—explained to Atmel's employees, including plaintiffs, that under Atmel's interpretation, the Plan remained in effect and that they would be entitled to the Plan's severance benefits following the upcoming merger with Microchip if terminated without cause. *See* Pet. App. 8a–9a, 28a–29a; 2-ER-80–82, 91–94, 110, 113–14, 116–17, 119–27, 136–38, 141, 147; 4-ER-656–59, 741–43, 748–49; 8-ER-1429–32, 1466–67, 1488–89, 1511–12, 1538–39, 1567–68, 1596–97, 1618–19.

For example, on January 14, 2016, Atmel expressly informed plaintiffs and other employees in writing that under Atmel's binding pre-merger construction of the Plan, their severance rights would not be affected by Atmel's choice of merger partners. Atmel's letter—approved by Atmel's senior management, signed by Zoumaras, and sent to plaintiffs Schuman and Coplin and many others—was written "to remind you [the

Atmel employees] of the benefits for which you may be eligible in the event that your employment is . . . terminated . . . in connection with a Change of Control . . . *including an acquisition by Dialog* ***or*** *Microchip*," and it confirmed that the Atmel Plan "continues to remain in place" and had not expired in November 2015. 2-ER-91–93, 127, 137–38 (emphasis added); 4-ER-656–60; 8-ER-1429–32, 1438; Pet. App. 8a, 29a. By the date of the merger, Microchip senior management had received and was aware of these written confirmations of Atmel's pre-merger interpretation of the Plan. 2-ER-184–85, 215.

Atmel also distributed a "Frequently Asked Questions" memorandum to its employees in February 2016—which Microchip's CEO and other senior executives had reviewed before its distribution—"stating that Microchip would honor the Atmel Plan." Pet. App. 8a–9a; *see* Pet. App. 29a; 2-ER-95–98, 186–88, 228–33; 3-ER-276–78, 329–30.

Atmel and Microchip also jointly drafted a Proxy Statement regarding the merger that they filed with the SEC in February 2016, stating, "*Microchip has agreed* . . . *to honor* and perform all employment or compensatory contracts between Atmel . . . and any Atmel employee . . . (*including all* . . . *severance*, . . . change in control and termination *contracts disclosed to Microchip* . . . .)." 2-ER-141–44; 7-ER-1395 (emphases added). The Atmel Plan was disclosed to Microchip months before the merger closed and was the severance agreement that applied to most of Atmel's U.S. employees. 2-ER-77, 171–75; 3-ER-260–62.

3. Microchip acquired Atmel in April 2016. Pet. App. 9a. By the merger close date, Microchip *knew*

that Atmel had made pre-merger interpretations that were conclusive and binding under the terms of the Plan and that the Plan's drafters and other Atmel executives had repeatedly communicated that binding interpretation to Atmel's employees, assuring them orally and in writing of their right to receive Plan benefits if subsequently terminated without cause by Microchip following its acquisition of Atmel. 2-ER-184–85, 215; 3-ER-272–73, 280–84, 288–95, 309–12, 318–28; 5-ER-1072–74, 1078–79.

Microchip therefore knew it would owe severance under that Plan to any former Atmel employee whom it terminated without cause before March 19, 2017. Nonetheless, it refused to comply with its severance Plan obligations, despite Atmel's conclusive and binding decisions, actions, and interpretations. Pet. App. 9a, 30a.

Almost immediately after Microchip took control and began terminating 200+ former Atmel employees, Microchip's CEO Steve Sanghi revealed his previously undisclosed intention to withhold the millions of dollars in severance benefits that those loyal Atmel employees had been repeatedly promised. Sanghi refused to pay these benefits from the company's self-funded Atmel Plan because he believed the Plan's benefit provisions (which would have to be funded by Microchip, as the acquiring company) were "overly generous" and "unnecessary." 2-ER-67–68, 145; 3-ER-260–63, 265–66, 275.

As the plaintiffs' summary judgment evidence established, Microchip thereby breached its ERISA fiduciary duties by falsely informing the plan beneficiaries that the Atmel Plan had "expired" by its own terms five months before the merger close and that, as a result, none of the terminated Plan beneficiaries would receive *any* severance payments upon termination unless they released all claims against defendants for either one-quarter or one-half of the amount guaranteed by the Plan. Pet. App. 9a, 30a; 2-ER-181–91, 197–99, 219–20; 3-ER-282–86, 291–92, 304–17; 4-ER-656–59. By the merger close date, though, Microchip *knew* that Atmel had made binding pre-merger "decision[s]," "action[s]," and "interpretations" (including in the letters sent to both plaintiffs in January 2016) that the Plan had *not* expired and that the terminated employees *would* be entitled to Plan benefits if Microchip terminated them without cause before mid-March 2017 (as it did).

4. Two days after the merger, on April 6, 2016, Sanghi stated at an all-hands meeting 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." Pet. App. 30a; 1-ER-10–11; 4-ER-656–59. Their only alternative would be to accept a payment of only 50% of the amount provided in the Atmel Plan while signing a sweeping release of claims. Pet. App. 30a; 3-ER-282–86, 291–92, 304–08. After Sanghi threatened plaintiffs and other former Atmel employees that unless they signed broad claims releases they would receive nothing (other than the opportunity to engage in years-long litigation with their fiduciary over its insistence that they accept half of what was owed or fight it out in court), plaintiffs Schuman and Coplin (and 200+ class members) signed the proffered releases. Pet. App. 9a & n.1.

B. Proceedings Below

1. Plaintiffs/Respondents filed this action on September 29, 2016, and filed an amended complaint on March 31, 2017. Pet. App. 9a; 9-ER-1761–99. Those complaints alleged that Microchip et al. violated Sections 502(a)(1)(B) and 502(a)(3) of ERISA, 29 U.S.C. § 1132(a)(1)(B), (3), by: (1) improperly denying ERISA plan benefits and (2) breaching their ERISA fiduciary duties in multiple ways.

In particular, plaintiffs argued that Microchip breached its fiduciary duties to plaintiffs and other beneficiaries not just by refusing to pay benefits that were due, but also by demanding and obtaining the claims releases at issue, i.e., not only by lying about plaintiffs' entitlement to benefits but, more critically, by requiring plaintiffs (and other Plan beneficiaries) on a take-it-or-leave-it basis to execute sweeping releases waiving all potential ERISA and other employment-related claims in order to obtain *any* severance payments at all, in an amount far less than Microchip *knew* the Plan's express language and Atmel's "conclusive and binding" pre-merger construction entitled them to receive. Pet. App. 10a.

Nine other former Atmel employees who had not signed releases filed a separate, individual action. In that action, the district court initially granted summary judgment in favor of the plaintiffs based on the plain language definition of "Initial Triggering Event" in the Atmel Plan. *See Berman v. Microchip Tech. Inc.*, No. 17-cv-01864, 2019 WL 1318550 (N.D. Cal. Mar. 22, 2019); Pet. App. 10a. A panel of the Ninth Circuit reversed in an unpublished order, concluding that the particular clause the district court had relied upon in

Berman was ambiguous, precluding summary judgment on that basis. *Berman v. Microchip Tech. Inc.*, 838 F. App'x 292 (9th Cir. 2021). The Ninth Circuit did not address the separate Plan language making Atmel's pre-merger interpretations, actions, and decisions "conclusive and binding," because the district court's summary judgment order had relied exclusively upon the plain meaning of "Initial Triggering Event." *See id.* The *Berman* case settled on the eve of trial. Pet. App. 11a.

The district court in this case certified a class of similarly situated former Atmel employees who were terminated by Microchip without cause after the merger. 9-ER-1716. The certified class includes 215 former employees who signed a release and five class members who, like the nine *Berman* plaintiffs, had not signed releases. Pet. App. 9a n.1.

2. On August 23, 2023, the district court granted defendants' motion for summary judgment in part. Pet. App. 25a–65a. The court acknowledged that plaintiffs *had* presented evidence that defendants breached their fiduciary duties in the course of obtaining the releases, including by falsely instructing plaintiffs they were entitled to *nothing* and would not receive any post-termination payments unless they signed broad claims releases in exchange for significantly less than the Plan entitled them to, even though the evidence showed that defendants "knew or should have known that the Atmel Plan had not in fact expired" and that plaintiffs were entitled to the full amount of their promised severance benefits. Pet. App. 13a, 57a, 60a.

Plaintiffs' opposition to summary judgment cited additional evidence of those fiduciary breaches as well, including evidence: that defendants knew but ignored the crucial Plan language stating that Atmel's pre-merger actions, decisions, and interpretations with respect to the Plan were "conclusive and binding"; that Atmel made repeated pre-merger "conclusive and binding" determinations that the Plan would apply after the Microchip acquisition; and that defendants were on notice as of the merger close date that Atmel's senior management had made those binding determinations.[2]

Despite this evidence, the district court held that even assuming defendants *had* knowingly breached their fiduciary duties in order to secure the disputed releases, the court would limit its inquiry into the enforceability of those releases to a six-factor test that took *no* account of those release-related fiduciary breaches. Under that test, the only factors the court considered were: (1) the plaintiffs' education and business sophistication, (2) the roles of the parties in drafting the releases, (3) the clarity of the agreement, (4)

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[2] Petitioners contended below they had no duty to interpret the Atmel Plan in plaintiffs' favor because a panel of the Ninth Circuit had held in the unpublished order in *Berman v. Microchip Tech. Inc.*, 838 F. App'x 292 (9th Cir. 2021), that the definition of "Initial Triggering Event" in the Atmel Plan, when read in isolation, was ambiguous. In this case, though, plaintiffs' arguments rested on an entirely separate section of the Plan that expressly provides that "any decision made or other action taken . . . and any interpretation . . . of any term or condition of the [Plan]" made by Atmel *before* its acquisition by another company is finalized is "conclusive and binding" on the acquiring company. 2-ER-68. That separate provision was not addressed in the unpublished *Berman* decision.

the time plaintiffs had to study the agreement, (5) whether plaintiffs had independent advice, and (6) the consideration provided. Pet. App. 43a–44a. The district court drew those factors from other district court orders that had cited the Second Circuit's decision in *Finz v. Schlesinger*, 957 F.2d 78 (2d Cir. 1992), but it overlooked the Second Circuit's caution in *Finz* that although those six factors were relevant to the enforceability of a release of ERISA claims, they were "not exhaustive," *id.* at 82.

Based on its refusal to consider defendants' release-related breaches of fiduciary duty, the district court concluded that plaintiff Schuman's and Coplin's releases were enforceable, but that the summary judgment record was insufficient to evaluate the enforceability of the other class members' releases. Pet. App. 53a–54a.

On April 9, 2024, the district court issued an order staying the case. 1-ER-5–7. The court reasoned:

> As the parties acknowledge*, there has always been a threshold legal dispute as to what test the Court should apply in determining whether the releases are enforceable. If Plaintiffs are right and Defendant violated its fiduciary duties as a matter of law by even seeking the releases, that would undermine the basis on which the Court granted summary judgment against the named Plaintiffs*. On the other hand, if the general six-factor test the Court applied controls in these circumstances, then (1) summary judgment against the named Plaintiffs would remain appropriate; and (2) there clearly is no way that this case could proceed as a class

> action given the individualized inquiries inherent in applying that test.

1-ER-5–6 (emphasis added). "Given this threshold legal question," the district court concluded it was "sensible" to enter a Rule 54(b) judgment against plaintiffs Schuman and Coplin to enable them to pursue this issue on appeal, and to stay further proceedings in the interim. 1-ER-6. The court then entered judgment "against Plaintiffs Schuman and Coplin only, and not against the other members of the certified class," under Rule 54(b). 1-ER-3; *see* Pet. App. 13a.

3. On June 5, 2025, the Ninth Circuit reversed the judgment and remanded for trial. Pet. App. 1a–24a. Like every other circuit to address the same issue, the court held that to "evaluate the enforceability of a release of claims under [ERISA] . . . courts must decide whether the employee entered into the release knowingly and voluntarily by examining the totality of the circumstances including enumerated factors." Pet. App. 6a. That "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." Pet. App. 6a–7a.

The court explained that the test it announced was "[i]n accord with ERISA's purposes and guided by other circuits' approaches." Pet. App. 14a. "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." Pet. App. 15a (citing *Tibble*, 575 U.S. at 528–31, and *Varity Corp. v. Howe*, 516 U.S. 489, 497 (1996)).

The court further explained that ERISA requires a fiduciary, such as Microchip here, to discharge its responsibilities "solely in the interest of the participants and beneficiaries" and "for the exclusive purpose of . . . providing benefits" to them. Pet. App. 15a (quoting 29 U.S.C. § 1104(a)(1)). The court then followed this Court's directive that "[t]he 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.'" Pet. App. 15a (quoting *Varity Corp.*, 516 U.S. at 496). The court recognized that those duties include a duty of undivided loyalty, and that this 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."'" Pet. App. 15a–16a (quoting *Varity Corp.*, 516 U.S. at 506 (in turn quoting 29 U.S.C. § 1104(a))).

The Ninth Circuit reviewed the decisions of the four other circuits that "have adopted ERISA-specific tests for the enforceability of releases," noting that each of those circuits applied "substantially the same" analysis as it would, by focusing on the "totality of the circumstances." Pet. App. 16a. The Ninth Circuit acknowledged that "[i]n assessing the totality of the circumstances," the various circuits "have employed slightly different tests." Pet. App. 17a. While the First and Second Circuits employ a "non-exhaustive six-part test," the Seventh and Eighth Circuits have adopted "more comprehensive but still non-exhaustive eight- and nine-part tests." Pet. App. 17a. While those tests "vary slightly in wording and content," both the Seventh and Eighth Circuit's "explicitly require consideration of any improper conduct by the fiduciary." Pet. App. 17a. Consequently, the Ninth Circuit concluded that "[t]he approach of the Seventh and Eighth Circuits provides the right balance between a strictly traditional voluntariness examination and an ERISA-based analysis," and it "join[ed] their approach," holding:

> [I]n 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.

Pet. App. 17a–18a. The court further explained 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." Pet. App. 18a. The court then remanded for the district court to apply the applicable test to the facts here. *Id.*

4. The Ninth Circuit subsequently denied petitioners' motion for rehearing en banc, with no judge requesting a vote. Pet. App. 64a.

REASONS FOR DENYING THE PETITION

The petition is not worthy of this Court's review. There is no split of authority that needs to be resolved. The Ninth Circuit's decision correctly synthesizes the other circuits' "totality of the circumstances" test for evaluating the enforceability of ERISA claims releases. There is nothing remarkable or controversial about the Ninth Circuit's acknowledgment that evidence that an ERISA fiduciary breached its duties by the manner in which it induced plan beneficiaries to release claims is at least a relevant factor in evaluating the enforceability of that release. The appropriateness of that inquiry flows directly from basic principles of trust law that undergird ERISA.

This case is also is not an appropriate vehicle for considering the question presented by defendants, because the outcome (remand for consideration of the evidence of breach) would be the same under every other circuit's totality-of-the-circumstances inquiry and because, as a factual matter, the district court in this case has not yet decided whether defendants breached their fiduciary duties or whether, if they did, that breach would require invalidation of the releases under the governing multi-part test.

I. There is no split of authority, as all circuits to address the issue have applied a totality-of-the-circumstances test.

Petitioners' principal ground for seeking review is to resolve an "existing circuit split" regarding the standard for enforcing ERISA releases. Pet. 10. Every circuit to consider the issue, though, has applied the same totality-of-the-circumstances heightened scrutiny test to determine whether the disputed ERISA release was knowing and voluntary and therefore enforceable. There is no circuit split.[3]

Totality of the circumstances has been described as a "flexible, all-things-considered approach." *Florida v. Harris*, 568 U.S. 237, 244 (2013). To assess the totality of the circumstances in determining whether an ERISA release was knowing and voluntary, courts have articulated lists of factors that are meant to be "helpful rather than conclusive." *Smart v. Gillette Co. Long-Term Disability Plan*, 70 F.3d 173, 181 (1st Cir. 1995).

Petitioners contend that the Ninth Circuit's inclusion of improper fiduciary conduct as a relevant factor "significantly sharpens the existing circuit split." Pet.

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[3] *See Morais v. Cent. Beverage Corp. Union Emps.' Supplemental Ret. Plan*, 167 F.3d 709, 713 (1st Cir. 1999); *Finz v. Schlesinger*, 957 F.2d 78, 81 (2d Cir. 1992); *Jakimas v. Hoffman-La Roche, Inc.*, 485 F.3d 770, 781–82 (3d Cir. 2007); *Howell v. Motorola, Inc.*, 633 F.3d 552, 559 (7th Cir. 2011); *Leavitt v. Nw. Bell Tel. Co.*, 921 F.2d 160, 162 (8th Cir. 1990); Pet. App. 16a–17a; *Madrid v. Phelps Dodge Corp.*, 211 F. App'x 676, 679 (10th Cir. 2006); *Russell v. Harman Int'l Industries, Inc.*, 773 F.3d 253, 256 (D.C. Cir. 2014).

10. That argument mistakenly construes those non-exhaustive factors as a rigid checklist, while the cited circuit court decisions each expressly describe the factors they identify as non-exhaustive. *See Finz*, 957 F.2d at 82 (six factors "not exhaustive"); *Morais v. Cent. Beverage Corp. Union Emps.' Supplemental Ret. Plan*, 167 F.3d 709, 713 n.6 (1st Cir. 1999) (six factors "not exclusive"). The Second Circuit, for example, "emphasize[d] that any attempt to establish a checklist of all applicable factors or to insist on rigid adherence to such a list is foreclosed by the very nature of the [totality-of-the-circumstances] inquiry." *Laniok v. Advisory Comm. of the Brainerd Mfg. Co. Pension Plan*, 935 F.2d 1360, 1368 (2d Cir. 1991). By insisting that the Ninth Circuit's reference to an additional factor in a non-exhaustive list creates an irreconcilable circuit split, petitioners seek to impose on the circuit courts' decisions the very rigidity those courts expressly rejected.

The Ninth Circuit's opinion described the various other circuits' tests as only "slightly different" than the test it adopted, Pet. App. 17a, emphasizing that those "ERISA-specific tests for the enforceability of releases" are "substantially the same," Pet. App. 16a. Although petitioners assert that there is a split between the First and Second Circuits on one hand and the Seventh and Eighth on the other, the First and Second Circuits themselves have cited the Eighth Circuit in *Leavitt* in articulating the totality-of-the-circumstances standard for ERISA releases, and none of the circuits have identified any material differences between their tests and others'. *Smart*, 70 F.3d at 181 (citing *Leavitt v. Nw. Bell Tel. Co.*, 921 F.2d 160, 162 (8th Cir. 1990)); *Finz*, 957 F.2d at 81 (citing *Leavitt*, 921 F.2d at 162).

Nor have any of the other circuits precluded consideration of improper conduct by a fiduciary under the required totality-of-the-circumstances analysis. Petitioners contend that the Ninth Circuit's articulation of the test "squarely conflicts with the Second Circuit's decision in *Finz*" which "held that the alleged breach 'd[id] not nullify [the plaintiff's] waiver.'" Pet. 12 (quoting *Finz*, 957 F.2d at 83) (alteration in original). The Second Circuit in *Finz*, however, did consider the defendant fiduciary's breach as a relevant factor, ultimately arriving at the *factual* conclusion that the fiduciary's conduct in that case did not nullify the waiver under the totality of the circumstances. *Finz*, 957 F.2d at 83.

The Second Circuit expressly held that a fiduciary's improper conduct *could* serve as a dispositive factor under different circumstances: "We do not intend to suggest that a plan trustee's failure to turn over requested plan documents to a potential participant could never, in and of itself, nullify a waiver . . . . [T]he plan trustee's failure to provide a potential participant with requested information could be dispositive." *Id.* The Ninth Circuit's inclusion of improper conduct by a fiduciary as a relevant factor is thus fully in accord with the Second Circuit in *Finz*.

Petitioners' Question Presented asks whether improper conduct by a fiduciary should be weighed as one of multiple factors in assessing the enforceability of an ERISA release. The Ninth Circuit reached the modest conclusion that it should be. No circuit court, anywhere, has held to the contrary.

II. The Ninth Circuit's decision was correct and is consistent with ERISA and trust law principles

1. Petitioners also assert that review is "necessary because the Ninth Circuit's decision is wrong." Pet. 13. To the contrary, the Ninth Circuit's holding is correct and unremarkable. Like every other circuit, the court held that to "evaluate the enforceability of a release of claims under [ERISA] . . . courts must decide whether the employee entered into the release knowingly and voluntarily by examining the totality of the circumstances including enumerated factors." Pet. App. 6a. That approach is entirely consistent with ERISA, which imposes strict fiduciary duties of loyalty, good faith, and fair dealing on plan beneficiaries, duties that derive from the basic law of trusts.

ERISA's fundamental purpose is to "protect[] . . . the interests of participants in employee benefit plans and their beneficiaries." *Aetna Health Inc. v. Davila*, 542 U.S. 200, 208 (2004) (quoting 29 U.S.C. § 1001(b)). To accomplish that objective, ERISA imposes "strict standards of trustee conduct . . . derived from the common law of trusts," including a duty of loyalty to plan beneficiaries. *Cent. States, Se. & Sw. Areas Pension Fund v. Cent. Transp., Inc.*, 472 U.S. 559, 570 (1985).

Congress expressly required that "a plan fiduciary 'shall discharge his duties with respect to a plan solely in the interest of the participants and beneficiaries and . . . for the exclusive purpose of providing benefits to participants and their beneficiaries.'" *Id.* at 570–71 (quoting 29 U.S.C. § 1104(a)(1)(A)); *accord Varity Corp.*, 516 U.S. at 506.

That duty of loyalty requires an ERISA fiduciary to "deal fairly and honestly with beneficiaries." *Cunningham v. Cornell Univ.*, 604 U.S. 693, 696 (2025) (quoting *Varity Corp.*, 516 U.S. at 506 (in turn citing Restatement (Second) of Trusts § 170 (1959))). An ERISA fiduciary violates that duty when, for example, it "participate[s] knowingly and significantly in deceiving a plan's beneficiaries in order to save the employer money at the beneficiaries' expense," because doing so "is not to act 'solely in the interest of the participants and beneficiaries.'" *Varity Corp.*, 516 U.S. at 506. That is what the evidence shows Microchip did in this case.

ERISA 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 . . . shall be void as against public policy." 29 U.S.C. § 1110(a); *see* S. Rep. No. 93-127, 93rd Cong., 2d Sess. (1973), 1974 U.S.C.C.A.N. 4838, 4869–70 (1974) ("The large numbers of people and enormous amounts of money involved in [ERISA] plans coupled with the public interest in their financial soundness as expressed in the Act, require that no such exculpatory provision be permitted."). The lower courts have not read this express statutory prohibition of exculpatory agreements as precluding all releases of ERISA claims. But Congress made clear that any attempt by an ERISA fiduciary to absolve itself from liability to its beneficiaries should be carefully scrutinized to protect against fiduciaries abusing their positions of trust and power.

Basic principles of trust law require the same careful approach. ERISA "'in essence, codifies and makes applicable to [ERISA] fiduciaries certain principles developed in the evolution of the law of trusts.'" *Cent. States, Se. & Sw. Areas Pension Fund,* 472 U.S. at 570 n.10 (quoting S. Rep. No. 93-127, 1974 U.S.C.C.A.N. at 4865). That is why, "[i]n determining the contours of an ERISA fiduciary's duty, courts often must look to the law of trusts." *Tibble*, 575 U.S. at 528–29.

Trust law principles require heightened scrutiny of a beneficiary's claims releases. The Restatement (Second) of Trusts, for example, provides that a "release or contract" between a trustee and a beneficiary "is not effective to discharge the trustee's liability" to a beneficiary if:

> (a) the beneficiary was under an incapacity at the time of making such release or contract; or
>
> (b) the beneficiary did not know of his rights and of the material facts which the trustee knew or should have known and which the trustee did not reasonably believe that the beneficiary knew; or
>
> (c) the release or contract of the beneficiary was induced by improper conduct of the trustee; or
>
> (d) the transaction involved a bargain with the trustee which was not fair and reasonable

Restatement (Second) of Trusts § 217(2) (1959). The circuit courts' unanimous agreement, that when evaluating the enforceability of a release of claims under ERISA, "courts must decide whether the employee entered into the release knowingly and voluntarily by examining the totality of the circumstances," Pet. App. 6a, is entirely consistent with these fundamental trust law principles.

2. Petitioners state that "public policy favors the voluntary settlement of claims," Pet. 3, 14, but public policy under ERISA also safeguards the proper administration of employee benefits. *See Boggs v. Boggs*, 520 U.S. 833, 839, 845 (1997) ("The principal objective of the statute is to protect plan participants and beneficiaries."). While petitioners contend that ERISA "embodies a policy of promoting 'prompt and fair claims settlement,'" Pet. 3 (quoting *Am. Airlines, Inc. v. Wolens*, 513 U.S. 219, 232 (1995) (in turn quoting *Pilot Life Ins. Co. v. Dedeaux*, 481 U.S. 41, 54 (1987)), in fact, ERISA "represents a careful balancing of the need for prompt and fair claims settlement procedures against the public interest in encouraging the formation of employee benefit plans." *Pilot Life Ins. Co.*, 481 U.S. at 54. In balancing these competing public policies for ERISA releases specifically, and taking into account the underlying trust law principles, the circuit courts agree that trial judges must engage in a "close inspection of the totality of circumstances surrounding a waiver of ERISA benefits." *Finz*, 957 F.2d at 81; *supra* Part I, at 19–21.

3. Petitioners complain that the Ninth Circuit held that the totality-of-the-circumstances 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." Pet. App. 6a–7a.

ERISA's text and purposes fully support the principle that ERISA fiduciaries should not be able to immunize themselves from statutory liability by committing additional breaches of their fiduciary duties in the course of extracting one-sided claims releases from their beneficiaries. As explained above, ERISA 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 . . . shall be void as against public policy." 29 U.S.C. § 1110(a). Congress's stated public policy against ERISA fiduciaries improperly attempting to escape their duties is particularly critical in the context of self-funded plans, like the Atmel Plan at issue. *Cf. Metro. Life Ins. Co. v. Glenn*, 554 U.S. 105, 112 (2008) (discussing conflict of interest inherent in self-funded plans).

Core trust law principles also prohibit ERISA fiduciaries from committing additional, independent breaches of their fiduciary duties in order to eliminate or reduce their liability for statutory violations. As noted above, under foundational trust principles, although a beneficiary may release a trustee from potential claims, a "release or contract is not effective to discharge the trustee's liability . . . if . . . (b) the beneficiary did not know of his rights and of the material facts which the trustee knew or should have known and which the trustee did not reasonably believe that the beneficiary knew; *or* (c) *the release or contract of the beneficiary was induced by improper conduct of the trustee* . . . ." Restatement (Second) of Trusts § 217(2) (1959) (emphasis added). In other words, even where the beneficiary knew "of his rights and of the material facts," trust law principles teach that a release of claims for breach of fiduciary duty is *not* effective where "the release or contract . . . was induced by improper conduct of the trustee." *Id.*

The Restatement (Third) of Trusts makes the same point, as it provides that a beneficiary "who . . .

released the trustee from liability for . . . a breach of trust cannot hold the trustee liable for that breach, *provided*: . . . (b) the beneficiary . . . was aware of the beneficiary's rights and of all material facts and implications that the trustee knew or should have known . . . *and* (c) *the . . . release was not induced by improper conduct of the trustee*." Restatement (Third) of Trusts § 97 (2012) (emphases added).

Applying these longstanding principles, a release of claims against a fiduciary is ineffective "if the trustee induced the . . . release by abusing the fiduciary relationship," and such "[f]iduciary abuse may result if the trustee brings unwarranted pressure to bear on the beneficiary, *for example, by threatening to withhold a distribution to which the beneficiary is entitled unless the beneficiary executes a release*" *or if the release* "*involves a bargain that is not substantively fair and reasonable*." Restatement (Third) of Trusts § 97(c), cmt. f (2012) (emphasis added). Microchip engaged in just this kind of "[f]iduciary abuse" by "threatening to withhold" benefits to which it *knew*, or should have known, each plaintiff beneficiary "[wa]s entitled unless the beneficiary execute[d] a release." *Id*.

The Restatement Reporter's Notes to comment f, which pertains to "improper conduct of [a] trustee," cite *Bellows v. Bellows*, 196 Cal. App. 4th 505 (Cal. Ct. App. 2011), as an example of proper application of the governing trust principle in the context of a fiduciary "requiring a beneficiary to relieve the trustee of liability as a condition for making a required distribution." Restatement (Third) of Trusts § 97, Reporter's Notes on cmt. f (2012) (brackets and quotation marks omitted). In *Bellows*, the California Court of Appeal held that where a trustee conditioned payment of a portion of funds to which the beneficiary was entitled on the beneficiary agreeing to a "voluntary" release of disputed claims to other portions of those funds, the entire release was unenforceable—regardless of what information the beneficiary had before signing the release. 196 Cal. App. 4th at 510–12.

The *Bellows* court applied California Probate Code § 16004.5(a), which provides: "A trustee may not require a beneficiary to relieve the trustee of liability as a condition for making a distribution or payment to, or for the benefit of, the beneficiary, if the distribution or payment is required by the trust instrument." *Bellows*, 196 Cal. App. 4th at 510. While that Probate Code provision also provided that it did not "affect[] the trustee's right to . . . [s]eek a voluntary release or discharge of a trustee's liability from the beneficiary," that exception did not apply because "[a] release obtained as a condition of accepting payment to which the beneficiary is entitled is in no sense voluntary." *Id.* at 510–11. While a trustee may ask a beneficiary to enter a knowing and voluntary release of claims *for which there is a reasonable good-faith dispute*, "[w]hat the trustee may not do is extract from the beneficiary an agreement to accept a compromise concerning a disputed issue as a condition of receiving a distribution to which the beneficiary is unquestionably entitled. A trustee may not *under any circumstances* condition a required distribution on an involuntary release of liability." *Id.* (emphasis added). That is precisely what a factfinder could find Microchip did here.

As the Eighth Circuit has explained, "[b]ecause [courts] are guided by principles of trust law" in evaluating ERISA releases, they "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. The Ninth Circuit's recognition of the same basic principle is unremarkable and correct.

The crucial point here is that although an ERISA defendant may settle a disputed claim for wrongful denial of ERISA benefits or for breach of ERISA fiduciary duties when there is a good-faith dispute over that claim, under foundational trust law principles an ERISA fiduciary may not induce its beneficiaries to settle and release their ERISA claims through conduct *constituting a separate and independent breach of its fiduciary duties*, including its duty of undivided loyalty and duty to avoid self-dealing.

Petitioners ignore those basic trust law principles.

4. Petitioners contend that the Ninth Circuit's opinion would preclude parties from settling cases whenever the parties disagree about the meaning of an ERISA plan. Pet. 1–2, 16, 20–22. As explained above, in the Ninth Circuit (and in every other circuit), parties to a disputed ERISA claim may settle that claim where a good-faith dispute exists concerning defendant's compliance, as long as the settlement is knowing and voluntary when reviewed under the "heightened scrutiny" standard required by trust law principles.

Where there is no good-faith dispute, however, trust law principles prevent enforcement of a release a fiduciary extracts from its beneficiaries—as here, where the summary judgment evidence demonstrates that Microchip had no authority to reinterpret the Plan once Atmel had made a "conclusive and binding" determination of its meaning. Nonetheless, despite knowing that it owed Plan benefits to plaintiffs, Microchip obtained a release of its beneficiaries' ERISA claims through lies, deceit, and other independent breaches of its fiduciary duties, including by applying "unwarranted pressure" on its beneficiaries by insisting that the only way to receive the benefits that Microchip knew were due would be through lengthy and expensive litigation. *See* Restatement (Third) of Trusts § 97(c), cmt. f (2012). If petitioners' position were accepted, ERISA fiduciaries would have enormous incentives going forward to commit similar breaches in order to immunize themselves from statutory liability.

Petitioners mischaracterize plaintiffs' argument by asserting that the breach of fiduciary duty at issue was a mere "misinterpret[ation of] the plan to deny them coverage." Pet. 2. That is not plaintiffs' claim at all. Plaintiffs have not "repackage[d] the defendant's alleged misrepresentation of the plan as an alleged breach of fiduciary duty" that will weigh against "enforcement of any release." Pet. 17. The breach that makes the release unenforceable here was not the denial of reasonably disputed plan benefits, but Microchip's unjustified demand that plaintiffs must execute sweeping releases to be paid half the benefits Microchip *knew were due in full*, with the only alternative being to sue petitioners for the full amount in court—which thus far has been more than an eight-year journey.

Petitioners argue that only outright fraud could invalidate a release. Pet. 17–18. To the contrary, ERISA imposes duties of loyalty and against self-dealing that go far beyond prohibiting common law fraud. *See* 29 U.S.C. § 1104(a)(1); Restatement (Third) of Trusts § 78 (2007); *CIGNA Corp. v. Amara*, 563 U.S. 421, 443–44 (2011) (equitable relief under ERISA does not require "detrimental reliance"); *supra* Part II.1, at 22–24.

For all the reasons explained above, ERISA's policies, designed to prevent fiduciaries from abusing their positions of power and trust, preclude a fiduciary from placing its beneficiaries into the lose-lose position into which Microchip placed plaintiffs here. It would undercut the entire structure and purpose of ERISA to allow a fiduciary to refuse to pay benefits it knows it owes, to lie to its beneficiaries by telling them they are not entitled to any benefits (whether they detrimentally rely on that lie or not), and to force its beneficiaries to choose between releasing their ERISA rights or suing to enforce those rights in court—even where the evidence shows that the fiduciary knew that its beneficiaries were entitled to the benefits at issue.

Microchip has known at least since the merger close date in April 2016 that plaintiffs were entitled to severance benefits under the Atmel Plan. Its repeated insistence that the Plan had expired by its own terms in November 2015 was never more than a manufactured, after-the-fact justification for its CEO's callous cost-cutting scheme. If, as Microchip urges, a fiduciary could avoid paying ERISA-protected benefits by the simple expedient of forcing its beneficiaries to "choose" between filing a lawsuit or receiving less than the amount known to be due, nothing would prevent ERISA plan trustees and other fiduciaries in the future from denying benefits *they know they owe*, without recourse, as long as they can show that the beneficiaries also knew those benefits were owed yet agreed to accept pennies on the dollar rather than having to sue for the full amount owed. Such a rule would eviscerate the fiduciary duty requirements of ERISA and longstanding trust principles and would incentivize fiduciaries to demand that their beneficiaries accept less than full payment on every payable claim under a self-funded plan.

The Ninth Circuit reasonably held in this case that if the evidence at trial shows that Microchip engaged in alleged breaches of its fiduciary duties in obtaining claims releases from plaintiffs and class members, that breach would be relevant to the district court's consideration of the enforceability of those releases. To hold such evidence *irrelevant*, as Microchip urges, would make a mockery of ERISA. Even when a fiduciary makes no misrepresentations but forthrightly acknowledges its beneficiaries' right to the benefits at issue, Microchip's argument would allow fiduciaries to require their beneficiaries to accept partial payment in exchange for a comprehensive claims release, or no benefits at all. Imposing such a lose-lose choice on plan beneficiaries would be directly contrary to the rule that "requires a 'fiduciary' to 'discharge his duties with respect to a plan *solely* in the interest of the participants and beneficiaries.'" *Varity Corp.*, 516 U.S. at 506 (quoting 29 U.S.C. § 1104(a)(1)(A); emphasis added). The only meaningful remedy for that breach, if established by the facts, would be for the district court to invalidate the releases.

III. This case is a poor vehicle for addressing the question presented.

This case is also a poor vehicle for considering Microchip's proposed Question Presented. First, Microchip does not, and cannot, show that the Ninth Circuit's reversal of the district court's summary judgment order would have come out any differently under any other circuit's announced legal standard. As explained above, there is no substantive split of authority that needs to be resolved. *Supra* Part I, at 19–21. Even if there were, this case would not be an appropriate vehicle to resolve such a split, because all circuits acknowledge that the factors they enumerated as relevant to the totality of the circumstances are not exhaustive; and under any rational standard informed by basic trust law, evidence that a fiduciary breached its core duties in the course of obtaining a release is at least *relevant* to whether that release is enforceable. The district court's summary judgment order was therefore appropriately reversed, however much petitioners might quibble about the precise language of the various factors that courts should consider when evaluating the enforceability of an ERISA release.

Second, the Ninth Circuit's decision in this case simply remanded to the district court to find the facts and apply the totality-of-the-circumstances standard to those facts. Pet. App. 18a. It is not clear how this case will be resolved or the extent to which Microchip's breaches, if established, will affect the result. Addressing the Questions Presented in this abstract context would therefore be premature, as the Court would lack the benefit of considering the lower courts' application of an inherently fact-intensive totality-of-the-circumstances legal standard to concrete facts.

CONCLUSION

For the reasons stated above, the petition for certiorari should be denied.

Respectfully submitted,

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December 8, 2025