IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF IOWA
CENTRAL DIVISION

DEBORAH INNIS, n/k/a DEE LANDRY DAWSON, on behalf of the Telligen, Inc. Employee Stock Ownership Plan, and on behalf of a class of all other persons similarly situated, Plaintiff, v. BANKERS TRUST COMPANY OF SOUTH DAKOTA, a South Dakota Corporation, Defendant.	**No. 4:16-cv-00650-RGE-SBJ** **ORDER GRANTING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT**

I. INTRODUCTION

For eighteen years, Plaintiff Deborah Innis worked at Telligen, Inc., and its various predecessors. During Innis's time at Telligen, Telligen created an Employee Stock Ownership Plan, allowing employees to invest in the company. Defendant Bankers Trust Company of South Dakota served as trustee of the Employee Stock Ownership Plan. In July 2014, Innis's employment with Telligen was terminated. She signed a severance agreement and received severance pay and job transition services. Now, Innis alleges Bankers Trust breached its fiduciary duty in violation of ERISA. Bankers Trust moves for summary judgment, arguing Innis may not pursue her claims because she released her claims in the severance agreement.

As further explained below, Bankers Trust is entitled to summary judgment. Viewing the evidence in the light most favorable to Innis, Innis knowingly and voluntarily entered into the severance agreement. That agreement released Innis's claims against Bankers Trust. Innis may not pursue these claims, including claims she purports to bring on behalf of the Employee Stock Ownership Plan. Accordingly, the Court grants Bankers Trust's motion.

II. SUMMARY OF RELEVANT FACTS

The following facts are either uncontested or, if contested, viewed in the light most favorable to Innis. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587−88 (1986); *Munz v. Michael*, 28 F.3d 795, 796 (8th Cir. 1994).

Telligen is an Iowa corporation. Def.'s App. Supp. Def.'s Mot. Summ. J. at DEF APP 1–2, Sturm Decl. ¶¶ 5, 7, ECF No. 95-3. Telligen previously operated under different names and business structures, but on December 31, 2013, through a series of mergers, Telligen transitioned from a non-profit corporation to a for-profit corporation. Sturm Decl. ¶¶ 4–7, ECF No. 95-3 at DEF APP 1–2; *see* Pl.'s Resp. Def.'s Statement Undisputed Material Facts Supp. Def.'s Mot. Summ. J. ¶ 5, ECF No. 109-1. Around the same time, Telligen adopted the Telligen, Inc. Employee Stock Ownership Plan (the Plan). *See* Def.'s Resp. Pl.'s Statement Undisputed Material Fact Supp. Pl's Mot. Partial Summ. J. ¶¶ 1, 6, ECF No. 110-1. The Plan is a defined contribution pension plan governed by the Employee Retirement Income Security Act (ERISA), 29 U.S.C. §§ 1001–1461. *Id.* ¶¶ 4–5.[1] On December 31, 2013, the Plan purchased 1,000,000 shares of Telligen common stock. *Id.* ¶ 2. Bankers Trust was the trustee of the Plan in the December 2013 transaction and the ongoing trustee of the Plan after the transaction. ECF No. 110-1 ¶ 9.

Innis was employed by Telligen for eighteen years. ECF No. 109-1 ¶ 4.[2] At Telligen, Innis first worked as a secretary. *Id.* ¶ 7. Innis then worked in consumer education and later in internal

[1] Some courts cite sections of ERISA as they appear in the Statutes at Large, *see* Pub. L. No. 93-406, 88 Stat. 829, and others cite them as codified in the United States Code, *see* 29 U.S.C. §§ 1001–1461. This Order will cite to the United States Code provisions.

[2] While this case was pending, the plaintiff's name changed from Deborah Innis to Dee Landry Dawson. *See* Pl.'s Mot. Re-Caption Case, ECF No. 51. This case's caption reflects the plaintiff's name. *See* Order Granting Pl.'s Mot., ECF No. 53. For consistency with previous orders and because the plaintiff's name was Deborah Innis at the time of the relevant events, the Court refers to the plaintiff as "Innis" in this Order.

quality improvement. *Id.* Innis eventually assumed the position of Senior Marketing Communications Specialist. *Id.* Innis participated in the Plan. *See* Def.'s Resp. Pl.'s Statement Add'l Facts Resp. Def.'s Mot. Summ. J. ¶ 14, ECF No. 115-1 (noting Innis received ESOP distributions). Prior to joining Telligen, Innis did clerical work at an insurance agency, worked in patient scheduling and admissions at a hospital, and was secretary to the dean at Illinois Central College. ECF No. 109-1 ¶ 3. Innis graduated from high school and has taken college-level classes on marketing and communication topics. *Id.* ¶¶ 1–2.

In July 2014, Telligen terminated Innis's employment. ECF No. 109-1 ¶ 8. Telligen's Vice President of Human Resources, Doug Ventling, notified Innis of her termination. ECF No. 115-1 ¶¶ 5, 7–8. When Innis's employment was terminated, she signed a Severance Agreement and General Release ("Agreement"). ECF No. 95-3 at DEF APP 6–8; *see also* ECF No. 109-1 ¶ 10. In her deposition, Innis testified she did not consult an attorney about the Agreement. ECF No. 109-1 ¶ 18. Under the terms of the Agreement, Telligen paid Innis $16,580.76 in severance compensation and provided her with career transition services, and "[i]n consideration of the payments and services by" Telligen, Innis released legal claims identified in the Agreement. ECF No. 95-3 at DEF APP 6–8. Just above where Innis signed, the Agreement provided, "[b]y signing this document you are releasing all known claims. You have a period of at least forty[-]five (45) days to consider this release. If you sign this severance agreement and release you will have up to seven (7) days following the date you sign it to revoke your signature." *Id.* at DEF APP 8.

Innis brought this action on behalf of the Plan, alleging Bankers Trust breached its fiduciary duty by engaging in prohibited transactions related to the ESOP transaction in violation of 29 U.S.C. §§ 1106(a) and (b), 1110, and 1104(a)(1)(A) and (B). *See* Am. Compl. ¶¶ 33–49,

ECF No. 59.[3] In essence, Innis alleges Bankers Trust breached its fiduciary duty when it authorized the Plan's purchase of Telligen stock, when it authorized the Plan to take on a loan to finance the stock purchase, and when it accepted payment from Telligen for Bankers Trust's trustee services. *Id.* Innis also alleges Bankers Trust breached its fiduciary duty by entering into an indemnification agreement with Telligen. *Id.* Innis brings the action under 29 U.S.C. § 1132(a)(2), which allows a plan participant to bring an action on behalf of a plan to recover for a breach of fiduciary duty. *Id.* ¶ 9; *see also LaRue v. DeWolff, Boberg & Assocs., Inc.*, 552 U.S. 248, 253 (2008).

Bankers Trust moves for summary judgment on all of Innis's claims, arguing Innis released her claims in the Agreement. Def.'s Mot. Summ. J., ECF No. 95; *see* Def.'s Br. Supp. Def.'s Mot. Summ. J., ECF No. 123. Innis resists, arguing the Agreement was not knowing and voluntary and arguing it does not cover her claims against Bankers Trust. Pl.'s Br. Resp. Def.'s Mot. Summ. J., ECF No. 109.

The motion came before the Court for hearing on February 28, 2019. Mot. Hr'g Mins., ECF No. 133. Attorneys Patrick Muench and Ann Gronlund appeared on behalf of Innis. *Id.* Attorneys Jason Michael Craig and Lars Golumbic appeared on behalf of Bankers Trust. *Id.* Additional facts are discussed below as necessary.

III. LEGAL STANDARD

Under Federal Rule of Civil Procedure 56, a court must grant a party's motion for summary judgment if there are no genuine issues of material fact in dispute and the moving party is entitled to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322−23 (1986). A genuine

[3] Innis included class action allegations in her Amended Complaint. ECF No. 59 ¶¶ 50–57. She has not moved to certify a class and argues class certification is not required in this action. *See* Pl.'s Resp. Def.'s Mot. Dismiss 6–9, ECF No. 102. The Court discusses the implications of Innis's failure to certify a class in Section IV.D.

issue of fact exists where the issue "may reasonably be resolved in favor of either party." *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250 (1986). To preclude summary judgment, a genuine dispute must relate to a material fact—that is, a fact "that might affect the outcome of the suit under the governing law." *Id.* at 248. "Factual disputes that are irrelevant or unnecessary will not be counted." *Id.* Where there is a genuine dispute of facts, those "facts must be viewed in the light most favorable to the nonmoving party." *Ricci v. DeStefano*, 557 U.S. 557, 586 (2009) (quoting *Scott v. Harris*, 550 U.S. 372, 380 (2007)). A court does not "weigh the evidence or attempt to determine the credibility of the witnesses." *Kammueller v. Loomis, Fargo & Co.*, 383 F.3d 779, 784 (8th Cir. 2004); *see also Anderson*, 477 U.S. at 255. At this stage, the court's role is to "determine whether a dispute about a material fact is genuine." *Quick v. Donaldson Co.*, 90 F.3d 1372, 1377 (8th Cir. 1996).

To defeat a motion for summary judgment, the non-moving party "may not rest upon mere allegation or denials of [the] pleading, but must set forth specific facts showing that there is a genuine issue for trial." *Anderson*, 477 U.S. at 256. "Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial" and the moving party is entitled to judgment as a matter of law. *Torgerson v. City of Rochester*, 643 F.3d 1031, 1042–43 (8th Cir. 2011) (quoting *Ricci*, 557 U.S. at 586).

IV. DISCUSSION

Innis released her claims against Bankers Trust and cannot proceed with this action. As a preliminary matter, Innis may not use a late, self-serving declaration to create a dispute of material fact. Next, as a matter of law, Innis's release of her claims was knowing and voluntary. Bankers Trust is a releasee under the Agreement, and the release provision covers Innis's ERISA claims. Finally, although Innis has not released the Plan's claims—indeed she cannot release the Plan's

claims without the Plan's consent—Innis has relinquished her ability to bring these claims. Accordingly, Bankers Trust is entitled to judgment as a matter of law, and the Court grants its motion for summary judgment.

A. Innis's Declaration

Innis offers a declaration in support of her response to Banker Trust's motion for summary judgment. *See* Pl.'s App. Resp. Def.'s Mot. Summ. J. at PL APP 50–54, Innis Decl., ECF No. 128. The Court does not consider the information in the declaration that contradicts Innis's prior deposition testimony. On a motion for summary judgment, a court generally considers an otherwise admissible declaration or affidavit, including those that restate or elaborate on prior deposition testimony. *Popoalii v. Corr. Med. Servs.*, 512 F.3d 488, 498 (8th Cir. 2008). However, a party may not manufacture an issue of fact or credibility by contradicting the party's own earlier testimony with a declaration or affidavit. *Camfield Tires, Inc. v. Michelin Tire Corp.*, 719 F.2d 1361, 1365–66 (8th Cir. 1983). If a declaration or affidavit contradicts prior deposition testimony, a court may consider the evidence only if "the prior deposition testimony shows confusion, and the subsequent affidavit helps explain the contradiction." *Popoalii*, 512 F.3d at 498.

Here, Innis's declaration contradicts her prior deposition testimony. In her deposition, Innis was asked about the meeting during which Telligen terminated her employment:

> Q: And can you tell me, if you recall what [Ventling] said in that conversation?
>
> A: Not really, no. I don't really recollect like that—that conversation. It was kind of a—an emotional experience, I guess.
>
> Q: I'm sure. Do you remember if he told you a reason why you were being laid off?
>
> A: I don't know what he told me.
>
> . . .
>
> Q: Do you recall signing a severance agreement and release around the time you left Telligen?

A: I don't know if I did or not.

. . .

Q: Do you have any recollection of receiving [the severance agreement]?

A: I don't.

Innis Dep. 18:16–25, 19:18–21, 20:14–16, ECF No. 95-3 at DEF APP 60–62. Innis's deposition testimony does not show confusion or contain contradictions. She testified she did not recollect the conversation in which Telligen terminated her employment or the documents she signed at the time.

Her declaration contradicts this deposition testimony. In her deposition, Innis stated she had no recollection of her conversation with Ventling. In her declaration, Innis describes that conversation. She states, "I was told by Doug Ventling at that meeting that I was being terminated and had to leave that day. . . . I was told in that meeting that I could not even pack up my things before leaving. I was only allowed to gather up my items after pleading with Doug Ventling." Innis Decl. ¶ 15, ECF No. 128 at PL APP 52.

In her deposition, Innis stated she had no recollection of signing the Agreement. In her declaration, she asserts, "In that meeting, Mary Alice Hill put documents in front of me and told me where to sign." Innis Decl. ¶ 19, ECF No. 128 at PL APP 52. She continues, "I felt in that meeting that whatever documents they wanted me to sign, had to be signed at that meeting." Innis Decl. ¶ 21, ECF No. 128 at PL APP 53. Innis's declaration contradicts her prior testimony that she had no recollection of her conversation in the meeting and no recollection of signing the Agreement. *Cf. Clay v. Lafarge N. Am.*, 985 F. Supp. 2d 1009, 1024–25 (S.D. Iowa 2013) (declining to consider an affidavit that alleged a further factual basis for plaintiff's claim, was

detailed and substantial in nature, and would have been directly responsive to the inquiries made repeatedly during a deposition).

Innis's declaration also discloses medical information. When asked in discovery to "[s]tate all facts surrounding [her] termination from Telligen," Innis did not disclose any health conditions that would have impaired her ability to understand the meeting or the documents she signed. Def.'s App. Supp. Def.'s Reply Supp. Def.'s Mot. Summ. J. at DEF APP 193–94, ECF No. 115-2. In her declaration, Innis asserts that she becomes "confused and anxious under stressful situations" due to a brain injury and that "[i]n July 2014, [she] was taking prescription pain medication on a daily basis." Innis Decl. ¶¶ 25, 27, ECF No. 128 at PL APP 53. Bankers Trust contends the medical information in Innis's declaration "is inconsistent with [Innis's] response to Bankers Trust's [i]nterrogatory." ECF No. 115-1 ¶¶ 16–20. This medical information is less contradictory to Innis's interrogatory response than the declaration's details are to her deposition testimony. However, Innis does not assert her previously undisclosed health conditions impaired her ability to understand the Agreement, nor does she otherwise demonstrate the information is material to Bankers Trust's motion for summary judgment. Because the information about Innis's health conditions is not material to whether the release was knowing and voluntary or any other issue before the Court, the Court does not consider that portion of Innis's declaration.

Innis's disclosure of details about her termination in her declaration contradicts her deposition testimony that she did not recollect details about the meeting at which her employment was terminated. As a result, the Court cannot consider the information Innis failed to disclose during discovery. To the extent Innis's declaration restates or elaborates on previously disclosed material information, the Court considers those assertions. *See Popoalii*, 512 F.3d at 498.

B. Enforceability of the Release

Innis knowingly and voluntarily entered in to the Agreement. A participant in a plan governed by ERISA may release a fiduciary from liability if the release is knowing and voluntary. *Leavitt v. Nw. Bell Tel. Co.*, 921 F.2d 160, 162 (8th Cir. 1990).[4] In determining whether a plaintiff knowingly and voluntarily released claims, a court considers general principles of contract law. *Id.* But because ERISA involves trust law principles, a court "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." *Id.*

Specifically, a court considers: 1) the plaintiff's education and business experience; 2) the plaintiff's input in negotiating the terms of the release; 3) the clarity of the release language; 4) the length of time the plaintiff had to deliberate before signing the release; 5) whether the plaintiff read the release and considered its terms before signing; 6) whether the plaintiff knew his or her rights and the relevant facts before signing the release; 7) whether the plaintiff was given an opportunity to consult with an attorney before signing the release; 8) whether the plaintiff received adequate consideration for the release; and 9) whether the release was induced by improper conduct. *Id.* Because Bankers Trust asserts the Agreement's release as an affirmative defense, it bears the burden of establishing the Agreement was knowing and voluntary. *See Martino-Catt v. E.I. duPont Nemours & Co.*, 317 F. Supp. 2d 914, 922 (S.D. Iowa 2004). To satisfy this burden, Bankers Trust need not demonstrate every factor weighs in its favor because whether the Agreement was knowing and voluntary is determined by considering the totality of

[4] In this instance, Bankers Trust did not obtain the release. The release was part of the Agreement obtained by Telligen. Under ERISA, an employer may owe a fiduciary duty to an employee participant. *See, e.g.*, *Leavitt*, 921 F.2d at 161–62; *see also* 29 U.S.C. § 1002(21)(A). The parties have not addressed whether Telligen was a fiduciary. The Court therefore considers the *Leavitt* factors to ensure the release was not obtained in violation of any fiduciary duty owed to Innis.

the circumstances. *See Seman v. FMC Corp. Ret. Plan for Hourly Emps.*, 334 F.3d 728, 732 (8th Cir. 2003) (observing that one factor was dispositive under the circumstances presented).

1. Innis's education and business experience

The first factor, Innis's education and business experience, weighs in Bankers Trust's favor. For support of her position, Innis looks to *Gorman v. Earmark, Inc.*, in which the court concluded the knowing and voluntary nature of a release was genuinely disputed. 968 F. Supp. 58, 61–64 (D. Conn. 1997); *see* ECF No. 109 at 11. In *Gorman*, the court considered factors similar to the *Leavitt* factors, including the plaintiff's education and business experience. *Id.* In *Gorman*, the plaintiff had a college degree, had taken financial management and personnel relations classes, and was vice-president of the defendant corporation. *Id.* at 60, 61. Innis argues she has less formal education and business experience than the plaintiff in *Gorman*. ECF No. 109 at 11. However, the plaintiff's education and business experience were not the basis for the *Gorman* court's holding. The court noted the "plaintiff certainly is an experienced businessperson with a college degree," but concluded a jury could nonetheless find "the release was an eleventh-hour addition to the agreement, extracted from [the plaintiff] without negotiation and additional consideration, and thus not enforceable." *Id.* at 63, 64. The time afforded to the plaintiff, the plaintiff's role in negotiations, and the consideration—not the plaintiff's education and business experience—were the bases for the *Gorman* court's holding. Therefore the case is of limited relevance on this issue.

Innis has a high school degree and has pursued college-level coursework. ECF No. 109-1 ¶¶ 1, 2. She had multiple jobs over several decades and worked at Telligen and its various predecessors for eighteen years, eventually working as a Senior Marketing Communications Specialist. *Id.* ¶¶ 3, 7; *cf. Caban Hernandez v. Philip Morris USA, Inc.*, 486 F.3d 1, 9 (1st Cir. 2007) (noting plaintiffs' education and business experience supported

concluding a waiver was knowing and voluntary where each plaintiff had fifteen or more years of work experience, "held responsible supervisory positions, and each applied for a new position that required substantial business acumen"). Although Innis does not have a college degree or experience negotiating contracts, she had lengthy work experience at Telligen, and her education and work experience do not suggest she did not understand the scope of the Agreement. This factor weighs in Bankers Trust's favor.

2. Innis's input in negotiating the terms of the Agreement

The parties do not dispute Telligen drafted the Agreement. *See* ECF No. 123 at 9. They offer no evidence Innis negotiated or attempted to negotiate any terms of the Agreement. *Cf. Caban Hernandez*, 486 F.3d at 9 (observing a similar factor "might have cut more sharply in the [plaintiffs'] favor had there been evidence that they attempted to negotiate the terms of the release but were rebuffed"). This factor weighs somewhat in Innis's favor.

3. Clarity of release language

The release language is clear about its breadth. The Agreement was entitled "Severance Agreement and General Release." ECF No. 95-3 at DEF APP 6. The Agreement indicates Innis releases all claims "of any nature whatsoever, in law or equity, which [she] ever had, now has, or [she] or [her] heirs, executors and administrators hereafter may have, from the beginning of time to the date of this Agreement, arising from, or otherwise related to, [Innis's] employment relationship with [Telligen]." *Id.* And in capital, bold letters above Innis's signature, the Agreement indicates, "**YOU ARE RELEASING ALL KNOWN CLAIMS**." *Id.* at DEF APP 8. The release provision does not specifically identify ERISA claims by name. Nonetheless, the language is sufficiently clear (and expansive) to indicate Innis released those claims. *Cf. Martino-Catt*, 317 F. Supp. 2d at 922 ("Although the release does not specifically mention ERISA, it need not do so, as general 'any-and-all language covers a claim for ERISA

benefits.'" (quoting *Chaplin v. NationsCredit Corp.*, 307 F.3d 368, 373 (5th Cir. 2002))). This factor favors Bankers Trust.

4. Time afforded Innis for deliberation

By the terms of the Agreement, Innis was afforded forty-five days to consider the Agreement before signing it, and she was afforded seven days following her signature to revoke it. ECF No. 95-3 at DEF APP 8. No evidence indicates Telligen did not afford Innis forty-five days to consider the terms of the Agreement. Even if Innis in fact deliberated for less time, this factor considers the time *afforded* to Innis, not the amount of time she chose to use. *Cf. Martino-Catt*, 317 F. Supp. 2d at 923 (noting the twenty-six days "provided by the Defendants [was] more than sufficient to allow a full consideration of the terms of the [release]"); *Caban Hernandez*, 486 F.3d at 9 ("The company then gave the [plaintiffs] a significant amount of time—forty-five days—within which to decide whether to sign the releases."). This factor weighs in Bankers Trust's favor.

5. Innis's review of the release

Other than the Agreement itself, the parties offer no evidence as to whether Innis read the Agreement before signing it. The Agreement required Innis to certify she read and understood the Agreement. *See* ECF No. 95-3 at DEF APP 7 ("Employee represents and certifies that he/she has carefully read, and fully understands, all of the provisions and effects of this Severance Agreement."). This factor weighs in Bankers Trust's favor.

6. Innis's knowledge of rights and relevant facts

Innis had sufficient knowledge of her rights and the relevant facts when she signed the Agreement. Innis argues she did not know "the many ways in which [Bankers Trust's] process was inadequate." ECF No. 109 at 17. However, Innis was aware of the ESOP transaction, and she was knew Bankers Trust was involved in the ESOP transaction and had an obligation to the plan

participants. Innis Dep. 23:20–23, 58:9–59:4, ECF No. 95-3 at DEF APP 65, 70–71. In fact, Innis "doubted the wisdom" of the ESOP transaction because she "had concerns about the value of" Telligen. Innis Dep. 60:2–7, ECF No. 95-3 at DEF APP 72. Innis therefore knew the basic facts relevant to her claim, and she does not allege Bankers Trust obscured or misrepresented those facts. *Cf. Martino-Catt*, 317 F. Supp. 2d at 925–26 (considering the plaintiff's allegations the defendants misrepresented facts regarding the plaintiff's rights). Innis knew Bankers Trust had an obligation to the participants, and she knew she was releasing claims based on that obligation because the Agreement was clear about her release of *all* claims. Innis had knowledge of the relevant facts, and the Agreement clearly stated Innis was releasing all claims. This factor weighs in Bankers Trust's favor.

7. Innis's opportunity to consult with an attorney

The parties do not dispute Innis testified she did not consult with an attorney before signing the Agreement. ECF No. 109-1 ¶ 18. However, the Agreement indicated that "Employee represents and certifies that he/she . . . has thoroughly discussed all aspects of this Severance Agreement and General Release with his/her attorney." ECF No. 95-3 at DEF APP 7. Moreover, Innis was given forty-five days to consider and sign the Agreement and seven days to revoke her signature. *See id.* at DEF APP 8. Innis therefore had the opportunity to consult with an attorney, even if she chose not to do so. *Cf. Leavitt*, 921 F.2d at 163 ("The release advised [the plaintiff] of his right to consult an attorney, but [the plaintiff] chose to sign the release without obtaining legal advice."). This factor favors Bankers Trust.

8. Adequate consideration

In exchange for the release, Innis received $16,580.76 and "outplacement career transition services." ECF No. 109-1 ¶ 12; *cf. Leavitt*, 921 F.2d at 163 (concluding release was knowing and voluntary where plaintiff received $15,000 to settle a disputed claim);

Caban Hernandez, 486 F.3d at 9 (describing the consideration as "substantial" where each employee received a lump sum equal to three months' salary and other benefits including career transition services). Innis cites *Brasley v. Fearless Farris Serv. Stations, Inc.*, in support of her argument that the adequacy of the consideration is a question of fact. ECF No. 109 at 18 (citing No. V–08–173–S–BLW, 2009 WL 631460, at *5 (D. Idaho Mar. 9, 2009)). In *Brasley*, the court noted, "[t]he record indicates that [the plaintiffs'] potential benefits under the Plan significantly outweighed the compensation they received in exchange for the releases." 2009 WL 631460, at *5. Here, Innis released a disputed claim of breach of fiduciary duty, not a claim to benefits under the Plan. *See Martino-Catt*, 317 F. Supp. 2d at 924 (distinguishing cases in which plaintiffs released potential claims with only speculative value in exchange for severance benefits or other consideration from cases in which plaintiffs were eligible for or already entitled to additional benefits). *Brasley* does not support Innis's position. This factor weighs in Bankers Trust's favor.

9. Inducement based on improper conduct

Neither party offers evidence of improper conduct to induce Innis to sign the Agreement. *See* ECF No. 123 at 14; ECF No. 109 at 18–19. This factor weighs in Bankers Trust's favor.

In light of the totality of the circumstances, the release was knowing and voluntary as a matter of law. Innis testified the meeting during which her employment was terminated was "an emotional experience." Innis Dep. 18:20, ECF No. 95-3 at DEF APP 60. This is insufficient to create a genuine dispute as to whether the release provision of the Agreement was knowing and voluntary. Innis was aware of the facts relevant to the ESOP transaction, and the release was clear about its breadth. Innis had forty-five days to consider the Agreement and the opportunity to consult with an attorney. Innis's decision to sign the Agreement the day it was provided to her and before consulting an attorney does not render the release involuntary. Even after signing the

Agreement, Innis had seven days to reconsider. Although Innis does not have a college degree, this lack of degree does not suggest she did not understand the release. She has extensive work experience, and the Agreement clearly communicated that Innis was releasing "all known claims" and that she had time to consider the Agreement. *See* ECF No. 95-3 at DEF APP 8. She received more than $16,000 in severance pay in consideration for the release, and Innis has not offered any evidence creating a dispute that the consideration was inadequate. Bankers Trust meets its burden to establish that Innis's release was knowing and voluntary as a matter of law.

C. Scope of the Release

Innis released her ERISA claims against Bankers Trust because Bankers Trust acted on behalf of Telligen's stockholders and because Innis released all claims related to her employment with Telligen, including those arising under federal law. The Court looks to Iowa law in interpreting the release because the Agreement provides that it "is made and entered into in the State of Iowa, and shall in all respects be interpreted, enforced and governed under the laws of Iowa." ECF No. 95-3 at DEF APP 7; *Peak v. Adams*, 799 N.W.2d 535, 543 (Iowa 2011) ("The release [the plaintiff] signed is a contract, and its enforcement is governed by principles of contract law."); *see also Seman*, 334 F.3d at 732 (looking to state law to interpret a release of ERISA claims). Under Iowa law, the intent of the parties controls, and, to determine that intent, a court looks to the language of the contract. *Peak*, 799 N.W.2d at 544. As evidenced by the language of the Agreement, Telligen and Innis intended a broad release of claims arising from Innis's employment. The release unambiguously discharges the ERISA claims Innis brings against Bankers Trust.

1. Bankers Trust is a releasee

Because Bankers Trust acted on behalf of Telligen's stockholders, Bankers Trust is a releasee. In the Agreement, Innis released claims against "[Telligen] and each of [Telligen's]

owners, members, stockholders, . . . affiliates, . . . and all persons acting on behalf of, by, through, under or in concert with any of them." ECF No. 95-3 at DEF APP 6.

Bankers Trust and Innis dispute the identity of Telligen's owners and stockholders. *See* ECF No. 123 at 5–6; ECF No. 109 at 3–4. Bankers Trust argues the Plan is the "sole owner and 100 percent stockholder of Telligen." ECF No. 123 at 6. In addition, Bankers Trust argues the Plan established a Loan Suspense Account, which held financed shares of Telligen before those shares were transferred to individual participants' accounts. *See* Def.'s Reply Def.'s Mot. Summ. J. 1 n.1, ECF No. 115. Bankers Trust argues the Plan was therefore a stockholder of Telligen, and because Bankers Trust acted on behalf of the Plan, it is a releasee. ECF No. 123 at 5–6.

Innis appears to agree in her Amended Complaint, alleging "Telligen is wholly owned by the Plan." ECF No. 59 ¶ 21. However, in her response to Bankers Trust's motion for summary judgment, Innis argues "the 'owners' and 'stockholders' listed in the Release are the Plan's participants, and not the Plan." ECF No. 109 at 3. Innis argues "employee ownership was the purpose of the Plan and that's how ownership was presented to and understood by employees." *Id.* at 4. Innis argues Telligen employees—the plan participants—are the "owners" and "stockholders" contemplated by the Agreement. *Id.*

The Court does not need to resolve this dispute. Innis argues the participants are the owners and stockholders of Telligen because under trust law, the participants are the "beneficial owners." *Id.* (quoting Iowa Code § 490.1301(2)). Accepting this argument, Bankers Trust acted on behalf of the owners and stockholders because—as Innis argues—trustees act "for the benefit of the beneficiaries" or "on the beneficial owner's behalf." *Id.* (citing Restatement (Third) of Trusts § 2 (Am. Law Inst. 2003) and Iowa Code § 490.1301(2)). ERISA itself commands that a fiduciary "shall discharge his duties with respect to a plan solely in the interest of the participants and

beneficiaries." 29 U.S.C. § 1104(a)(1). The Court need not resolve whether the parties to the Agreement intended "owners" and "stockholders" to refer to the Plan or its participants. The dispute is immaterial because under either interpretation, Bankers Trust acted on behalf of Telligen's owners and stockholders and is therefore a releasee. Similarly, because Bankers Trust is a releasee by acting on behalf of Telligen's owners and stockholders, the Court need not resolve the parties' dispute as to whether the Plan is an "affiliate" of Telligen. *See, e.g.*, ECF No. 109 at 5–8.

2. The release covers ERISA claims

The Agreement releases a broad range of claims, including Innis's claims under ERISA. In the Agreement, Innis released:

> any and all actions, causes of action, suits, debts, charges, complaints, claims, liabilities, obligations, promises, agreements, controversies, damages, and expenses (including attorneys' fees and costs), of any nature whatsoever, in law or equity, which [she] ever had, now has, or [she] or [her] heirs, executors and administrators hereafter may have, from the beginning of time to the date of this Agreement, arising from, or otherwise related to, [Innis's] employment relationship with [Telligen] or the termination thereof, including, but not limited to, any claims arising from any alleged violation by [Telligen] of any federal, state or local statutes, ordinances or common laws, including but not limited to [several state and federal statutes].

ECF No. 95-3 at DEF APP 6–7.

ERISA is not identified in the list of several state and federal statutes. Bankers Trust argues this broad release nonetheless covers claims under ERISA. ECF No. 123 at 4–5 (citing *He v. Cigna Life Ins. Co.*, No. 14-cv-2180 (KBF), 2017 WL 4350570, at *3 (S.D.N.Y. July 7, 2017) ("Although a specific waiver of ERISA claims would have been clearer, such claims are also validly waived by a more general release of the sort signed by [the plaintiff].")).

In support of her position that the release does not cover claims under ERISA, Innis argues "[s]he did not and was not alleged to have released her claims for benefits." ECF No. 109 at 8.

Other than this cursory argument by Innis, the parties have not addressed whether Innis released any claims for benefits, and understandably so. Innis brings this case alleging breach of fiduciary duty under 29 U.S.C. § 1132(a)(2). *See* ECF No. 59 ¶ 9. In contrast, 29 U.S.C. § 1132(a)(1)(B) permits a participant to bring an action to recover benefits due under a plan. These are distinct legal concepts. *See Hakim v. Accenture U.S. Pension Plan*, 718 F.3d 675, 681–82 (7th Cir. 2013) (distinguishing between pension entitlements and contested pension claims, which include claims that more benefits would have accrued under the terms of the plan if not for a breach of fiduciary duty). Bankers Trust's failure to allege Innis has released any claims to benefits does not support Innis's position that the release—which covers "any and all . . . claims . . . of any nature whatsoever . . . arising from . . . [Innis's] employment relationship with [Telligen]"—does not cover breach of fiduciary duty claims under ERISA. *See* ECF No. 95-3 at DEF APP 6.

Here, this general release is sufficient to cover breach of fiduciary duty claims under ERISA. The release language is broad and purports to cover all claims. *Cf. Chaplin*, 307 F.3d at 373 (concluding a general release of all claims covered claims under ERISA); *He*, 2017 WL 4350570, at *3 (same); *Martino-Catt*, 317 F. Supp. 2d at 922 (same). Nothing in the language of the Agreement suggests ERISA claims are excluded from the release. The release states it is not limited to claims arising from alleged violations of the identified state and federal statutes by Telligen. Because the Agreement covers all claims against Bankers Trust, including claims under ERISA, Innis released the claims she attempts to assert in this action.

D. Claims of the Plan

The release prevents Innis from bringing the claims she asserts in this action, including those brought on behalf of the Plan. Innis argues she "did not and could not release the claims of the Plan she asserts in this lawsuit." ECF No. 109 at 3. Actions brought under 29 U.S.C. § 1132(a)(2) are brought on behalf of a plan to recover for breaches of fiduciary

duty. *LaRue*, 552 U.S. at 253. Therefore, Innis's claims must be brought on behalf of the Plan, and Innis's agreement to the release—signed without the Plan's consent—does not divest the Plan of its ability to recover for a breach of fiduciary duty. However, this does not mean Innis is entitled to pursue those claims on behalf of the Plan.

In support of her position, Innis cites cases addressing the impact of individual releases on class certification. ECF No. 109 at 2–3 (citing *In re Aquila ERISA Litig.*, 237 F.R.D. 202, 210 (W.D. Mo. 2006) and *Leber v. Citigroup 401(k) Plan Inv. Comm.*, 323 F.R.D. 145, 161 (S.D.N.Y. 2017)). In addition, Innis cites a case in which a Plan's fiduciary was brought into the litigation as a plaintiff to represent the plan, *Bowles v. Reade*, and a district court opinion that relies on *Bowles*. ECF No. 109 at 2–3 (citing 198 F.3d 752, 759–60 (9th Cir. 1999) and *Creyer v. Franklin Templeton Res. Inc.*, No. C 16-4265 CW, 2017 WL 818788 (N.D. Cal. Jan. 17, 2017)). The cases Innis cites are distinguishable from the action here. They also illustrate why Innis may not proceed on behalf of the Plan.

First, the class certification cases Innis cites have a significantly different posture than this case. In the class certification cases, the courts had not yet determined whether the individual releases are enforceable. For example, the *Aquila* court noted, "this issue of the validity of the releases is not properly before the Court at this time," but "[t]he parties are free, however, to litigate that issue and request decertification of class members who signed the releases, if such an action becomes appropriate." 237 F.R.D. at 210–11. Similarly, the court in *Leber* concluded only that releases signed by prospective class members "do[ ] not preclude certification." 323 F.R.D. at 161. Although an unresolved release issue does not necessarily prevent class certification, these cases contemplate that class members who have validly released their ERISA claims may be excluded from the class of litigants bringing claims on behalf of a plan. In contrast, Innis has not moved for class certification, and the Court has concluded Innis validly released her claims against Bankers

Trust. *See* Pl.'s Resp. Def.'s Mot. Dismiss 6–8, ECF No. 102. This posture is significantly different than that of a proposed class that includes members who may have signed a valid and enforceable release.

Second, when plaintiffs seek to certify a class of plan participants, the class action rules offer protections for absent participants. As discussed in the cases cited by Innis, plaintiffs seeking to sue on behalf of a class must demonstrate they "will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4); *see also Leber*, 323 F.R.D. at 163–64; *Aquila*, 237 F.R.D. at 209–11. Innis argues not only that ERISA does not require her to certify a class to bring claims on behalf of the Plan, but also that she "does not have to take any affirmative action to seek to maintain this action on behalf of the Plan." ECF No. 102 at 8.

Some courts have, at various stages of litigation, permitted ERISA § 1132(a)(2) plaintiffs to proceed without class certification or other formal joinder. *See, e.g.*, *Blankenship v. Chamberlain*, 695 F. Supp. 2d 966, 972–73 (E.D. Mo. 2010) (denying motion to dismiss for failure to join indispensable parties where the twenty-four plaintiffs claimed to be beneficial owners of 80% of the ESOP's assets); Mots. Hr'g Tr. 4:4–9:22, *Brundle v. Wilmington Tr., N.A.*, No. 1:15cv1494–LMB–IDD (E.D. Va. Apr. 15, 2016), ECF No. 108 (denying a motion to certify a class after the plaintiff argued the requirements of Federal Rule of Civil Procedure 23(a)(4) were met, based on the understanding certification was unnecessary and inefficient for the claims). However, in those cases, the plaintiffs bringing claims on behalf of a plan took steps to protect the interests of the absent participants, either by joining other participants as plaintiffs or by demonstrating the requirements of Rule 23(a)(4) were met.

Other courts have required some procedural safeguards—although not necessarily class certification—before a plaintiff may proceed on behalf of a plan. *See, e.g.*, *Coan v. Kaufman*, 457 F.3d 250, 259 (2d Cir. 2006) ("[W]e do not see how an action can brought in a 'representative

capacity on behalf of the plan' if the plaintiff does not take any steps to become a bona fide representative of other interested parties."); *see also Perez v. Bruister*, 823 F.3d 250, 258 (5th Cir. 2016) (discussing the need for procedural safeguards, but not deciding whether an individual plaintiff sufficiently met those safeguards, in part because the Secretary of Labor's involvement in the litigation "eliminate[d] concerns about protecting the absent participants' interests"). Innis, who seeks to litigate the claims of the Plan even though she has released her claims, has taken no steps to protect the interests of the other participants. When asked at the hearing what steps Innis has taken to involve other participants or to protect their interests, Innis's counsel failed to describe any meaningful steps.[5] Innis's position as a sole plaintiff who has released her claims and has taken no steps to protect the interests of other participants further distinguishes this case from the class actions in which courts have permitted certification despite unresolved release issues.

Finally, the same concerns about protecting absent participants distinguishes *Bowles*, 198 F.3d at 759–60. In *Bowles*, the court held a settlement agreement signed by the participant plaintiff did not settle the plan's claim. *Id.* And although the participant plaintiff "remained as a plaintiff in her representative capacity on behalf of [the plan]," an amended complaint joined the plan's fiduciary "to represent the plan participants' interests in seeking a remedy for [the] alleged breach of fiduciary duty." *Id.* at 761. Here, there is no other plaintiff to represent the Plan, nor has Innis proposed an alternative or additional plaintiff to represent the participants' interests.

[5] In response to the question of what steps Innis had taken to protect absent participants' interests, Innis's counsel first responded that Innis had sued on behalf of the Plan. Given Innis's argument that no procedural safeguards are required to sue on behalf of the Plan, *see* ECF No. 102 at 6–8, this does not demonstrate any protection for the interests of absent participants. When asked if Innis had taken other steps, Innis's counsel indicated that his law firm had been involved in other ERISA cases without class certification, that the case has been in the news, and that the case is discussed on the firm's website.

Cases in which courts have assumed a plaintiff who has released ERISA claims against the defendant cannot pursue breach of fiduciary duty claims—individually or on behalf of a plan—are more applicable to the facts of this case. *See, e.g.*, *Howell v. Motorola, Inc.*, 633 F.3d 552, 559 (7th Cir. 2011); *Halldorson v. Wilmington Tr. Ret. & Inst. Servs. Co.*, 182 F. Supp. 3d 531, 546 (E.D. Va. 2016). For example, in *Halldorson*, the plaintiff purported to bring the case on behalf of a plan. 182 F. Supp. 3d at 533. The court denied the plaintiff's motion for class certification and concluded the plaintiff had released his ERISA claims against the defendant in a severance agreement. *Id.* at 535 n.9, 538–46. The court concluded, "Th[e] Release prevents plaintiff from pursuing this litigation further, and therefore summary judgment has been granted in favor of defendant." *Id.* at 546.

Similarly, in *Howell*, a plaintiff brought a breach of fiduciary duty claim under ERISA on behalf of a plan. *Howell v. Motorola, Inc.*, No. 03 C 5044, 2005 WL 2420410, at *1 (N.D. Ill. Sept. 30, 2005). The district court granted summary judgment for the defendant on the basis of a release signed by the plaintiff. 633 F.3d at 557–58. On appeal, the Seventh Circuit noted, "unless [the plaintiff] can show that one or the other exception set forth in the release applies to him, or that his agreement to the release was somehow not made knowingly and voluntarily, then the language barring claims that arise under ERISA disposes of the present case." *Id.* at 559. The Seventh Circuit concluded the district court properly granted summary judgment based on the release. *Id.* at 561. The plaintiff was not permitted to continue to litigate the claims of the plan despite his own release, as Innis argues she should be permitted to do.

The Court finds these cases—cases with a single plaintiff, no class certification, and an enforceable release of the plaintiff's ERISA claims—analogous to this case. Innis released the claims she is now pursuing in exchange for severance benefits and job placement services. She has taken no steps to protect the interests of the Plan and the other participants. Allowing Innis to

pursue these claims on behalf of the Plan would undermine the intent of the parties as expressed in the Agreement. *See Peak*, 799 N.W.2d at 543. The release prevents Innis from pursuing this litigation further, both for any individual relief she seeks and for relief on behalf of the Plan.

V. CONCLUSION

In light of the totality of the circumstances, the release was knowing and voluntary as a matter of law. Because Innis released her ERISA claims against Bankers Trust, she may not pursue her claims. And although Innis has not released the Plan's claims, she has relinquished her ability to bring the claims as she has here. Therefore, Bankers Trust is entitled to judgment as a matter of law.

IT IS ORDERED that Defendant Bankers Trust's Motion for Summary Judgment, ECF No. 95, is **GRANTED**.

Dated this 30th day of April, 2019.

REBECCA GOODGAME EBINGER
UNITED STATES DISTRICT JUDGE