

United States District Court
For the Northern District of California

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

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

THOMAS FERNANDEZ, LORA SMITH, and
TOSHA THOMAS, individually and on
behalf of a class of all other
persons similarly situated,

No. C 06-7339 CW

Plaintiffs,

ORDER DIRECTING
FURTHER BRIEFING

v.

K-M INDUSTRIES HOLDING CO., INC., et
al.,

Defendants.

_____ /


Plaintiffs seek to hold Defendant North Star Trust Company
liable for failing to remedy alleged breaches of fiduciary duties
committed by other Defendants before North Star became the trustee
of the Employee Stock Ownership Plan. Plaintiffs' theory of
liability is based on 29 U.S.C. § 1105, which provides that a
fiduciary "shall be liable for a breach of fiduciary responsibility
of another fiduciary with respect to the same plan . . . if he has
knowledge of a breach by such other fiduciary, unless he makes
reasonable efforts under the circumstances to remedy the breach."

1 In its reply in support of its motion for summary judgment,
2 North Star argues that it cannot be held liable under § 1105
3 because that statute applies only to co-fiduciaries, not to
4 successor fiduciaries. North Star asserts that liability for
5 successor fiduciaries is governed instead by 29 U.S.C. § 1109,
6 which provides, "No fiduciary shall be liable with respect to a
7 breach of fiduciary duty under this subchapter if such breach was
8 committed before he became a fiduciary or after he ceased to be a
9 fiduciary."

10 Because this argument was raised in North Star's reply,
11 Plaintiffs have not had an opportunity to respond to it.
12 Accordingly, Plaintiffs shall, by 12:00 p.m. on October 29, 2008,
13 file a supplemental brief, not exceeding five pages in length,
14 responding to this argument.

15 IT IS SO ORDERED.

16
17 Dated: October 27, 2008



CLAUDIA WILKEN
United States District Judge

18
19
20
21
22
23
24
25
26
27
28