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JOHANSON, AND ROBERT E. EDDY  
6

7  
8 UNITED STATES DISTRICT COURT  
9 EASTERN DISTRICT OF CALIFORNIA  
10

11 GREGORY JOHNSON, WILLIAM  
RODWELL AND EDWARD RANGEL,

12 Plaintiffs,  
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14 vs.

15 CLAIR R. COUTURIER, JR., DAVID R.  
JOHANSON, ROBERT E. EDDY AND  
16 THE NOLL MANUFACTURING  
COMPANY EMPLOYEE STOCK  
OWNERSHIP PLAN AND TRUST,  
17

Defendants.  
18

Case No. 2:05-cv-02046 DFL KJM

**ANSWER OF DEFENDANTS  
COUTURIER, JOHANSON, AND EDDY  
TO PLAINTIFFS' COMPLAINT**

19 COME NOW Defendants CLAIR R. COUTURIER, JR. ("Courtier"), DAVID R  
20 JOHANSON ("Johanson"), and ROBERT E. EDDY ("Eddy"), by and through their counsel, and  
21 for their Answer to the allegations set forth in the Complaint (the "Complaint") of Plaintiffs  
22 GREGORY JOHNSON ("Johnson"), WILLIAM RODWELL ("Rodwell"), and EDWARD  
23 RANGEL ("Rangel"), state as follows:

24 1. Defendants are without sufficient information to either admit or deny the  
25 allegations contained in the first sentence of Paragraph 1 of the Complaint, and on that ground  
26 deny each and every such allegation. Defendants deny the allegations contained in the second  
27 sentence of Paragraph 1 of the Complaint, except admit that Plaintiff Johnson was an employee of  
28 Noll Manufacturing Company ("Noll") at one time. The statements in the third sentence of said

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1 paragraph constitute legal argument rather than factual allegations, thereby requiring no answer,  
2 but to the extent said statements could be construed as containing factual allegations, Defendants  
3 deny each and every such allegation, except admit and allege that Johnson at one time was a  
4 participant in The Employee Ownership Holding Company Employee Stock Ownership Plan (the  
5 “ESOP”) (successor to the Noll Manufacturing Company Employee Stock Ownership Plan),  
6 which is administered pursuant to The Employee Ownership Holding Company Employee Stock  
7 Ownership Trust (the “ESOT”) (successor to the Noll Manufacturing Company Employee Stock  
8 Ownership Trust).

9 2. Defendants are without sufficient information to either admit or deny the  
10 allegations contained in the first sentence of Paragraph 2 of the Complaint, and on that ground  
11 deny each and every such allegation. Defendants deny each and every allegation contained in the  
12 second sentence of said paragraph, except admit and allege that Rodwell was at one time an  
13 employee of Noll and a participant in the ESOP.

14 3. Defendants are without sufficient information to either admit or deny the  
15 allegations contained in the first sentence of Paragraph 3 of the Complaint, and on that ground  
16 deny each and every such allegation. Defendants deny each and every allegation contained in the  
17 second sentence of said paragraph, except admit and allege that Rangel was at one time an  
18 employee of Noll and a participant in the ESOP.

19 4. Defendants deny each and every allegation contained in Paragraph 4 of the  
20 Complaint.

21 5. Defendants admit the allegations contained in the first sentence of Paragraph 5 of  
22 the Complaint. The statements set forth in the second sentence of said Paragraph constitute legal  
23 argument rather than factual allegations, thereby requiring no answer, but to the extent said  
24 statements could be construed as containing factual allegations, Defendants deny and every such  
25 allegation.

26 6. Defendants deny each and every allegation contained in Paragraph 6 of the  
27 Complaint.

28 7. Defendants deny each and every allegation contained in the first sentence of

1 Paragraph 7 of the Complaint, except admit and allege that the ESOP is an employee stock  
2 ownership plan governed by the Employee Retirement Income Security Act of 1974, as amended,  
3 29 U.S.C. §§ 1001, et seq. ("ERISA"). The statements set forth in the second sentence of said  
4 paragraph constitute legal argument rather than factual allegations, thereby requiring no answer,  
5 but to the extent said statements could be construed as containing factual allegations, Defendants  
6 deny each and every such allegation.

7 8. The statements set forth in paragraph 8 of the Complaint constitute legal argument  
8 rather than factual allegations, thereby requiring no answer, but to the extent said statements  
9 could be construed as containing factual allegations, Defendants deny each and every such  
10 allegation. Defendants do not contest, however, that this Court has subject matter jurisdiction  
11 over this matter pursuant to 28 U.S.C. § 1331 and Section 502(a) of ERISA, 29 U.S.C. §1132(a).

12 9. The statements set forth in paragraph 9 of the Complaint constitute legal argument  
13 rather than factual allegations, thereby requiring no answer, but to the extent said statements  
14 could be construed as containing factual allegations, Defendants deny each and every such  
15 allegation.

16 10. The statements set forth in paragraph 10 of the Complaint constitute legal  
17 argument rather than factual allegations, thereby requiring no answer, but to the extent said  
18 statements could be construed as containing factual allegations, Defendants deny each and every  
19 such allegation.

20 11. The statements set forth in paragraph 11 of the Complaint constitute legal  
21 argument rather than factual allegations, thereby requiring no answer, but to the extent said  
22 statements could be construed as containing factual allegations, Defendants deny each and every  
23 such allegation, except do not contest that venue in this District is proper pursuant to ERISA  
24 Section 502(e)(2), 29 U.S.C. § 1132(e)(2).

25 12. Defendants admit the allegations contained in Paragraph 12 of the Complaint.

26 13. Defendants deny each and every allegation contained in Paragraph 13 of the  
27 Complaint, except admit and allege that the ESOP was formed on or about July 1, 1977 to benefit  
28 eligible Noll employees.

1 14. Defendants admit the allegations contained in Paragraph 14 of the Complaint, and  
2 allege that the stock was purchased from other persons in addition to Noll, Robert E. Noll,  
3 Patricia R. Noll, and that the cash contributions were used for purposes other than purchasing  
4 Noll common stock such as administrative expenses and repurchase obligations.

5 15. Defendants are without sufficient information to either admit or deny the  
6 allegations contained in Paragraph 15 of the Complaint, and on that ground deny each and every  
7 such allegation.

8 16. On information and belief, Defendants admit the allegations contained in the first  
9 sentence Paragraph 16 of the Complaint. Defendants deny each and every allegation contained in  
10 the second sentence of said paragraph, except admit and allege that Norwesco operated in Kent,  
11 Washington until in or about 1994, when it moved operations to Fife, Washington. Defendants  
12 admit the allegations contained in the third sentence of said paragraph.

13 17. Defendants admit the allegations contained in Paragraph 17 of the Complaint.

14 18. Defendants admit the allegations contained in Paragraph 18 of the Complaint.

15 19. Defendants admit the allegations contained in Paragraph 19 of the Complaint.

16 20. Defendants deny the allegations contained in Paragraph 20 of the Complaint,  
17 except admit the allegations contained in the first sentence thereof.

18 21. Defendants deny each and every allegation contained in Paragraph 21 of the  
19 Complaint, except admit that Moss Adams Advisory Services, an independent appraisal firm,  
20 began to prepare annual valuations of the shares of company stock held by the ESOP trust in  
21 2001.

22 22. Defendants are without sufficient information to either admit or deny the  
23 allegations contained in the first sentence of Paragraph 1 of the Complaint, and on that ground  
24 deny each and every such allegation, except admit the allegations contained in the fourth sentence  
25 of said paragraph.

26 23. Defendants deny each and every allegation contained in Paragraph 23 of the  
27 Complaint.

28 24. Defendants admit the allegations contained in Paragraph 24 of the Complaint.

1 25. Defendants deny each and every allegation contained in Paragraph 25 of the  
2 Complaint.

3 26. Defendants deny each and every allegation contained in Paragraph 26 of the  
4 Complaint.

5 27. Defendants deny each and every allegation contained in Paragraph 27 of the  
6 Complaint.

7 28. Defendants deny each and every allegation contained in Paragraph 28 of the  
8 Complaint.

9 29. Defendants deny each and every allegation contained in Paragraph 29 of the  
10 Complaint.

11 30. Defendants deny each and every allegation contained in Paragraph 30 of the  
12 Complaint.

13 31. Defendants admit the allegations contained in the first sentence of Paragraph 31 of  
14 the Complaint. Defendants deny each and every allegation contained in the second sentence  
15 thereof, except admit and allege that the transaction closed on June 19, 2001.

16 32. Defendants deny each and every allegation contained Paragraph 32 of the  
17 Complaint, except admit the allegations contained in the second sentence thereof.

18 33. Defendants deny the allegations contained in Paragraph 33 of the Complaint.

19 34. Defendants deny each and every allegation contained in Paragraph 34 of the  
20 Complaint.

21 35. Defendants deny each and every allegation contained in Paragraph 35 of the  
22 Complaint.

23 36. Defendants deny the allegations contained in Paragraph 36 of the Complaint and  
24 allege that Defendants do not know the expectations of the parties to all leveraged ESOP  
25 transactions.

26 37. Defendants deny each and every allegation contained in Paragraph 37 of the  
27 Complaint, except admit the allegations contained in the first sentence thereof.

28 38. Defendants deny each and every allegation contained in Paragraph 38 of the

1 Complaint, except admit the allegations contained in the first sentence thereof.

2 39. Defendants deny each and every allegation contained in Paragraph 39 of the  
3 Complaint.

4 40. Defendants deny each and every allegation contained in Paragraph 40 of the  
5 Complaint.

6 41. Defendants deny each and every allegation contained in Paragraph 41 of the  
7 Complaint.

8 42. Defendants deny each and every allegation contained in Paragraph 42 of the  
9 Complaint.

10 43. Defendants deny each and every allegation contained in Paragraph 43 of the  
11 Complaint.

12 44. Defendant deny each and every allegation contained in Paragraph 44 of the  
13 Complaint, except admit that David R. Johanson was, at one time, elected director of Noll and  
14 that he, at one time, replaced Thomas J. McIntosh as legal counsel to Noll.

15 45. Defendants deny each and every allegation contained in Paragraph 45 of the  
16 Complaint.

17 46. Defendants deny each and every allegation contained in Paragraph 46 of the  
18 Complaint.

19 47. Defendants admit the allegations contained in Paragraph 47 of the Complaint.

20 48. Defendants deny each and every allegation contained in Paragraph 48 of the  
21 Complaint, except admit the allegations contained in the first sentence thereof.

22 49. Defendants deny each and every allegation contained in Paragraph 49 of the  
23 Complaint.

24 50. Defendants deny each and every allegation contained in the second sentence of  
25 Paragraph 50 of the Complaint, except admit the allegations contained in the first sentence  
26 thereof.

27 51. Defendants deny each and every allegation contained in Paragraph 51 of the  
28 Complaint.

1 52. Defendants deny each and every allegation contained in Paragraph 52 of the  
2 Complaint.

3 53. Defendants deny each and every allegation contained in Paragraph 53 of the  
4 Complaint.

5 54. Defendants deny each and every allegation contained in Paragraph 54 of the  
6 Complaint.

7 55. Defendants deny each and every allegation contained in Paragraph 55 of the  
8 Complaint.

9 56. Defendants deny each and every allegation contained in Paragraph 56 of the  
10 Complaint.

11 57. Defendants deny each and every allegation contained in Paragraph 57 of the  
12 Complaint.

13 58. Defendants deny each and every allegation contained in Paragraph 58 of the  
14 Complaint.

15 59. Defendants deny each and every allegation contained in Paragraph 59 of the  
16 Complaint.

17 60. Defendants deny each and every allegation contained in the first and third  
18 sentences of Paragraph 60 of the Complaint. Defendants deny each and every allegation  
19 contained in the second sentence of said paragraph on the ground that the terms of the letter of  
20 intent which Zenith actually entered into in June of 2004 speak for themselves.

21 61. Defendants deny each and every allegation contained in Paragraph 61 of the  
22 Complaint.

23 62. Defendants deny each and every allegation contained in Paragraph 62 of the  
24 Complaint on the ground that the referenced complaint speaks for itself.

25 63. Defendants deny each and every allegation contained in Paragraph 63 of the  
26 Complaint.

27 64. Defendants deny each and every allegation contained in Paragraph 64 of the  
28 Complaint.

1 65. Defendants deny each and every allegation contained in Paragraph 65 of the  
2 Complaint on the ground that the referenced complaint speaks for itself.

3 66. Defendants admit the allegations contained in Paragraph 66 of the Complaint.

4 67. Defendants deny each and every allegation contained in Paragraph 67 of the  
5 Complaint on the ground that the terms of the letter of intent which Zenith actually entered into in  
6 June of 2004 speak for themselves.

7 68. Defendants deny each and every allegation contained in Paragraph 68 of the  
8 Complaint.

9 69. Defendants deny each and every allegation contained in Paragraph 69 of the  
10 Complaint.

11 70. Defendants deny each and every allegation contained in Paragraph 70 of the  
12 Complaint.

13 71. Defendants deny each and every allegation contained in Paragraph 71 of the  
14 Complaint.

15 72. Defendants deny each and every allegation contained in Paragraph 72 of the  
16 Complaint.

17 73. Defendants deny each and every allegation contained in Paragraph 73 of the  
18 Complaint.

19 74. Defendants deny each and every allegation contained in Paragraph 74 of the  
20 Complaint.

21 75. Defendants deny each and every allegation contained in Paragraph 75 of the  
22 Complaint, except admit the allegations contained in the second sentence thereof, and allege that  
23 the board of directors of The Employee Ownership Holding Company, Inc. ("TEOHC")  
24 appointed Eddy to serve as special trustee in the fall of 2003 and in January 2004 and that Eddy  
25 has been an independent trustee acting solely in the interest of the ESOP and its participants and  
26 beneficiaries since the fall of 2003.

27 76. Defendants deny each and every allegation contained in Paragraph 76 of the  
28 Complaint.



1           77. Defendants deny each and every allegation contained in Paragraph 77 of the  
2 Complaint.

3           78. Responding to Paragraph 78 of the Complaint, Defendants incorporate by  
4 reference their responses to Paragraphs 1 through 78 of the Complaint as though said responses  
5 were fully set forth herein.

6           79. The statements set forth in paragraph 79 of the Complaint constitute legal  
7 argument rather than factual allegations, thereby requiring no answer, but to the extent said  
8 statements could be construed as containing factual allegations, Defendants deny each and every  
9 such allegation.

10          80. The statements set forth in paragraph 80 of the Complaint constitute legal  
11 argument rather than factual allegations, thereby requiring no answer, but to the extent said  
12 statements could be construed as containing factual allegations, Defendants deny each and every  
13 such allegation.

14          81. Defendants deny each and every allegation contained in Paragraph 81 of the  
15 Complaint.

16          82. The statements set forth in paragraph 82 of the Complaint constitute legal  
17 argument rather than factual allegations, thereby requiring no answer, but to the extent said  
18 statements could be construed as containing factual allegations, Defendants deny each and every  
19 such allegation.

20          83. The statements set forth in paragraph 83 of the Complaint constitute legal  
21 argument rather than factual allegations, thereby requiring no answer, but to the extent said  
22 statements could be construed as containing factual allegations, Defendants deny each and every  
23 such allegation.

24          84. The statements set forth in paragraph 84 of the Complaint constitute legal  
25 argument rather than factual allegations, thereby requiring no answer, but to the extent said  
26 statements could be construed as containing factual allegations, Defendants deny each and every  
27 such allegation.

28          85. The statements set forth in paragraph 85 of the Complaint constitute legal

1 argument rather than factual allegations, thereby requiring no answer, but to the extent said  
2 statements could be construed as containing factual allegations, Defendants deny each and every  
3 such allegation.

4 86. Defendants deny each and every allegation contained in Paragraph 86 of the  
5 Complaint.

6 87. The statements set forth in paragraph 87 of the Complaint constitute legal  
7 argument rather than factual allegations, thereby requiring no answer, but to the extent said  
8 statements could be construed as containing factual allegations, Defendants deny each and every  
9 such allegation.

10 88. The statements set forth in paragraph 88 of the Complaint constitute legal  
11 argument rather than factual allegations, thereby requiring no answer, but to the extent said  
12 statements could be construed as containing factual allegations, Defendants deny each and every  
13 such allegation.

14 89. The statements set forth in paragraph 89 of the Complaint constitute legal  
15 argument rather than factual allegations, thereby requiring no answer, but to the extent said  
16 statements could be construed as containing factual allegations, Defendants deny each and every  
17 such allegation.

18 90. The statements set forth in paragraph 90 of the Complaint constitute legal  
19 argument rather than factual allegations, thereby requiring no answer, but to the extent said  
20 statements could be construed as containing factual allegations, Defendants deny each and every  
21 such allegation.

22 91. The statements set forth in paragraph 91 of the Complaint constitute legal  
23 argument rather than factual allegations, thereby requiring no answer, but to the extent said  
24 statements could be construed as containing factual allegations, Defendants deny each and every  
25 such allegation.

26 92. The statements set forth in paragraph 92 of the Complaint constitute legal  
27 argument rather than factual allegations, thereby requiring no answer, but to the extent said  
28 statements could be construed as containing factual allegations, Defendants deny each and every

1 such allegation.

2 93. Defendants deny each and every allegation contained in Paragraph 93 of the  
3 Complaint.

4 94. The statements set forth in paragraph 94 of the Complaint constitute legal  
5 argument rather than factual allegations, thereby requiring no answer, but to the extent said  
6 statements could be construed as containing factual allegations, Defendants deny each and every  
7 such allegation.

8 95. Defendants deny each and every allegation contained in Paragraph 95 of the  
9 Complaint.

10 96. Defendants deny each and every allegation contained in Paragraph 96 of the  
11 Complaint.

12 97. The statements set forth in paragraph 97 of the Complaint constitute legal  
13 argument rather than factual allegations, thereby requiring no answer, but to the extent said  
14 statements could be construed as containing factual allegations, Defendants deny each and every  
15 such allegation.

16 98. Defendants deny each and every allegation contained in the Complaint except as  
17 specifically admitted hereinabove.

18 **FIRST AFFIRMATIVE DEFENSE**

19 Plaintiffs' Complaint, and each purported cause of action contained therein, fails to state a  
20 claim upon which relief can be granted.

21 **SECOND AFFIRMATIVE DEFENSE**

22 Plaintiffs' Complaint, and each purported cause of action contained therein, fails to state a  
23 claim because Plaintiffs lack standing to bring this lawsuit.

24 **THIRD AFFIRMATIVE DEFENSE**

25 The Complaint, and each purported cause of action contained therein, is barred as to  
26 Plaintiff Johnson by the release provisions of a Settlement Agreement signed by him on or about  
27 October 20, 2003.

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1 **FOURTH AFFIRMATIVE DEFENSE**

2 The Complaint, and each purported cause of action contained therein, is barred by the doctrine  
3 of accord and satisfaction.

4 **FIFTH AFFIRMATIVE DEFENSE**

5 Plaintiffs' demand for jury trial should be stricken because there is no right to trial by jury  
6 under ERISA.

7 **SIXTH AFFIRMATIVE DEFENSE**

8 Plaintiffs' Complaint, and each purported cause of action therein, fails to state a claim  
9 because the allegations of breach of fiduciary duty do not involve plan assets.

10 **SEVENTH AFFIRMATIVE DEFENSE**

11 Plaintiffs' Complaint, and each purported cause of action therein, fails to state a claim  
12 upon which the relief sought can be granted because there is no allegation of a "taking" of plan  
13 assets.

14 **EIGHTH AFFIRMATIVE DEFENSE**

15 Plaintiffs' Complaint, and each purported cause of action therein, fails to state a claim  
16 because the actions it challenges are not actions that are fiduciary in nature as defined under  
17 ERISA.

18 **NINTH AFFIRMATIVE DEFENSE**

19 Defendants are not liable for any breach that occurred before or after their respective  
20 service as a fiduciary.

21 **TENTH AFFIRMATIVE DEFENSE**

22 Plaintiffs' Complaint, and each purported cause of action therein, fails to state a claim  
23 upon which the relief sought can be granted, and maintenance of this action is barred, because  
24 Plaintiffs have failed to exhaust their administrative remedies pursuant to ERISA § 503, 29  
25 U.S.C. § 1133.

26 **PRAYER FOR RELIEF**

27 WHEREFORE, Defendants pray for judgment as follows:


28 A. That Plaintiffs take nothing by their Complaint;

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- B. That judgment be entered for Defendants;
- C. That the Court award to Defendants and against Plaintiffs the amount of Defendants' attorneys' fees and costs, pursuant to ERISA Section 502(g), 29 U.S.C. § 1132(g); and
- D. That the Court award such other and further relief in favor of Defendants and against Plaintiffs as it deems just and proper.

Dated: November 28, 2005

MORGAN, LEWIS & BOCKIUS LLP

By   
\_\_\_\_\_  
D. W. Kallstrom  
Attorneys for Defendants  
CLAIR R. COUTURIER, JR., DAVID R  
JOHANSON, ROBERT E. EDDY