



CALIFORNIA DEPARTMENT OF  
FOOD & AGRICULTURE

Karen Ross, Secretary

DMS NOTICE  
QC – 11 – 05

October 10, 2011

Discard: Retain

TO: WEIGHTS AND MEASURES OFFICIALS

SUBJECT: Fastenal Company Settlement

Attached is a final judgment and permanent injunction pursuant to stipulation issued by the District Attorney's Office of San Diego County, in conjunction with the District Attorney's Offices of the City of San Diego and Stanislaus County. The case was filed against Fastenal Company on September 13, 2011 for overcharging customers pursuant to California Business and Professions Codes (BPC) 12024.2; charging shipping and handling fees to consumers without disclosure, BPC 17200 and 17500; using point of sale systems without a customer display, BPC 13300; selling a commodity in less quantity than represented, BPC 12024; and improper labeling of packaged goods, BPC 12602 and BPC 12603.

We appreciate the excellent work done on behalf of the people, by the prosecution team representing the various District Attorneys' Offices as well as the State and county investigators that documented and caused to be prosecuted these violations. Fastenal Company was assessed civil penalties and cost recovery of \$292,558 of which \$168,000 was for civil penalties, \$34,000 cy pres, and \$90,558 for weights and measures investigative costs. Cy Pres of \$12,000 each was given to the Counties of San Diego and Stanislaus to their Weights and Measures Programs and \$10,000 went to the Californian Consumer Protection Prosecution Fund.

Sincerely,

Kristin J. Macey  
Director

cc: Edmund E. Williams, Director, CDFA County Liaison Office



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CLERK-SUPERIOR COURT  
SAN DIEGO COUNTY, CA

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**SUPERIOR COURT OF THE STATE OF CALIFORNIA  
FOR THE COUNTY OF SAN DIEGO**

THE PEOPLE OF THE STATE OF  
CALIFORNIA,  
  
Plaintiff,  
  
v.  
  
FASTENAL COMPANY, a Minnesota  
corporation, and DOES 1 through 10,  
inclusive,  
  
Defendants.

Case No. 37-2011-00097788-CU-PT-CTL  
  
FINAL JUDGMENT AND  
PERMANENT INJUNCTION  
PURSUANT TO STIPULATION

Plaintiff, the People of the State of California, having filed its Complaint; and Defendant  
Fastenal Company, a Minnesota corporation, having accepted service of the Complaint; and  
Plaintiff, appearing through its attorneys, Bonnie M. Dumanis, San Diego County District  
Attorney, by Stephen M. Spinella, Deputy District Attorney (TEP); Jan I. Goldsmith, San Diego  
City Attorney, by Tricia Pummill, Assistant City Attorney; and Birgit Fladagar, Stanislaus  
County District Attorney, by Douglas K. Raynaud, Deputy District Attorney; and Defendant  
Fastenal Company, appearing through its attorneys Ogletree, Deakins, Nash, Smoak & Stewart  
by Daphne Bishop; and  
///

1 Plaintiff and Defendant having stipulated and consented to the entry of this Judgment in  
2 its Entirety and Permanent Injunction ("Judgment") prior to the taking of any proof, and without  
3 trial or adjudication of any fact or law herein; and

4 The Court, having considered the pleadings;

5 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED as follows:

6 **JURISDICTION**

7 1. This action is brought under California law and this Court has jurisdiction of its  
8 subject matter and parties.

9 **APPLICABILITY**

10 2. The provisions of this Judgment are applicable to Defendant Fastenal Company, a  
11 Minnesota corporation, and to its officers, directors, employees, agents, servants and  
12 representatives acting within the course and scope of their agency and employment, and to  
13 successors and assignees of Defendant, and to all persons, partnerships, corporations, and other  
14 entities acting for, through, on behalf of or in concert with Defendant with actual or constructive  
15 notice of this Judgment. Unless otherwise stated, all obligations imposed upon Defendant  
16 Fastenal Company by the terms of this Judgment are ordered pursuant to Business and  
17 Professions Code sections 17203 and 17535.

18 **INJUNCTIONS**

19  
20 3. Defendant Fastenal Company, and all persons and entities set forth in Paragraph 3,  
21 above, are hereby permanently enjoined and restrained, pursuant to Business and Professions  
22 Code sections 17203 and 17535, from intentionally engaging in any of the following acts or  
23 practices:

- 24 A. Making or causing to be made any false or misleading statement to the public of  
25 the State of California with the intent to sell goods or services, in violation of  
26 Business and Professions Code section 17500;
- 27 B. Engaging in any act of unfair competition in violation of Business and Professions  
28 Code section 17200;

- 1 C. Representing a price on an item, store shelf or sign near the item and charging a  
2 greater price at the time the product is purchased;
- 3 D. Charging shipping and handling fees to consumers without disclosing these  
4 charges before the time of checkout; and
- 5 E. Using a point-of-sale system to sell goods or services to consumers and failing to  
6 ensure that the price of each good or service to be paid by the consumer is  
7 conspicuously displayed to the consumer at the time that the price is interpreted by  
8 the system.
- 9 F. Hindering or obstructing a sealer in the performance of his official duties, in  
10 violation of Business and Professions Code section 12016.
- 11 G. Selling a commodity in less quantity than represented, in violation of Business and  
12 Professions Code section 12024.
- 13 H. Engaging in the packaging or labeling of a commodity for distribution or sale and  
14 failing to affix to the package a label that specifies the identity of the commodity,  
15 name and place of business of the manufacturer, packer or distributor, and net  
16 quantity of contents, in violation of Business and Professions Code sections 12602  
17 and 12603.
- 18

19 **MONETARY RELIEF**

20 4. Pursuant to Business and Professions Code sections 17206 and 17536,  
21 Defendant, Fastenal Company, a Minnesota corporation, shall on the date of the filing of this  
22 Judgment, pay to Plaintiff penalties of one hundred sixty-eight thousand dollars (\$168,000), in  
23 the form of three checks in the amount of fifty-six thousand dollars payable to the "San Diego  
24 District Attorney," the "Stanislaus District Attorney," and the "City Attorney of San Diego."

25 5. Defendant Fastenal Company, shall on the date of the filing of this Judgment pay  
26 to Plaintiff *cy pres* restitution in the total amount of thirty-four thousand dollars (\$34,000),  
27 payable in three certified checks as follows: twelve thousand dollars (\$12,000) to the "San  
28 Diego County Weights and Measures"; twelve thousand dollars (\$12,000) to the "Stanislaus



1 County Weights and Measures”; and ten thousand dollars (\$10,000) to the “California  
2 Consumer Protection Prosecution Trust Fund.”

3 6. Defendant Fastenal Company, shall on the date of the filing of this Judgment pay  
4 to Plaintiff consumer agency costs totaling ninety thousand five hundred fifty-eight dollars  
5 (\$ 90,558), by certified checks made payable as follows:

6	San Diego District Attorney.....	\$15,000
7	San Diego City Attorney.....	\$15,000
8	Stanislaus District Attorney .....	\$15,000
9	California Dept. of Food & Agriculture .....	\$12,007
10	Alameda County Dept. of Agriculture/Weights & Measures.....	\$5113
11	Contra Costa Agricultural Commissioner.....	\$1731
12	Humboldt County Dept. of Agriculture .....	\$430
13	Kern County Dept. of Agriculture and Measurement Standards.....	\$1104
14	Kings County Agricultural Commissioner .....	\$1063
15	Los Angeles Dept. of Agriculture.....	\$4221
16	Madera Dept. of Weights and Measures.....	\$712
17	Marin County Weights and Measures.....	\$3404
18	Merced Dept. of Agriculture.....	\$109
19	Monterey Agricultural Commissioner .....	\$249
20	Napa Agricultural Commissioner .....	\$649
21	Orange Agricultural Commissioner.....	\$1008
22	San Bernardino Agricultural Commissioner.....	\$2016
23	San Diego Dept. of Agriculture .....	\$1318
24	San Joaquin Agricultural Commissioner .....	\$2068
25	San Mateo Agricultural Commissioner .....	\$388
26	Santa Barbara Agricultural Commissioner .....	\$440
27	Santa Clara Agricultural Commission .....	\$3613
28	Solano Dept. of Agriculture.....	\$887

1 Sonoma Weights & Measures .....\$1030  
2 Stanislaus Sealer of Weights & Measures.....\$2387

3 7. All checks shall be delivered to the attention of Assistant City Attorney Tricia  
4 Pummill, Office of the San Diego City Attorney, Consumer and Environmental Protection Unit,  
5 1200 Third Avenue, Suite 700, San Diego, California, 92101-4103.

6 **RETENTION OF JURISDICTION**

7 8. Jurisdiction is retained for the purpose of enabling any party to this Judgment to  
8 apply to the Court at any time for such further orders and directions as may be necessary and  
9 appropriate for the construction or carrying out of this Judgment, for the modification of any of  
10 its injunctive provisions, and for the enforcement of, compliance with, and punishment of  
11 violations of the Judgment.

12 9. All allegations as to Does 1 through 10, inclusive, are dismissed.

13 10. The clerk is directed to immediately enter this Judgment.

14  
15 IT IS SO ORDERED.

16  
17 Dated: 9/13/11

  
\_\_\_\_\_  
Judge of the Superior Court  
**Michael S. Groch**