

## **CONCILIATION AGREEMENT**

Between

THE U. S. DEPARTMENT OF LABOR  
OFFICE OF FEDERAL CONTRACT COMPLIANCE PROGRAMS

and

FASTENAL COMPANY  
6445 FULTON INDUSTRIAL BOULEVARD SW  
ATLANTA, GEORGIA 30336

### **PART I. PRELIMINARY STATEMENT**

The Office of Federal Contract Compliance Programs ("OFCCP") evaluated Fastenal Company's ("Fastenal") facility located at 6445 Fulton Industrial Boulevard SW, Atlanta Georgia and found that Fastenal was not in compliance with the Executive Order 11246, as amended ("E.O. 11246"), and its implementing regulations at 41 C.F.R. Section(s) 60-1, 60-2, 60-3. OFCCP notified Fastenal of the specific violations found and the corrective actions required in a Notice of Violations issued on March 18, 2015. In the interest of resolving the violations without engaging in further legal proceedings and in exchange for the good and valuable consideration described in this document, OFCCP and Fastenal enter this contract ("Conciliation Agreement" or "Agreement") and agree to all the terms stated below.

### **PART II. GENERAL TERMS AND CONDITIONS**

1. In exchange for Fastenal's fulfillment of all obligations in Parts III and IV of the Agreement, OFCCP agrees not to institute administrative or judicial enforcement proceedings under E.O. 11246 based on the violations described in more detail in Part III below. However, OFCCP has the right to initiate legal proceedings to enforce the Agreement itself or to correct and obtain relief for the violations described in Part III if Fastenal violates this Agreement. Nothing in this Agreement precludes OFCCP from initiating enforcement proceedings based on future compliance evaluations or complaint investigations.
2. Fastenal agrees that OFCCP may review its compliance with this Agreement at the Atlanta establishment. As part of such review, OFCCP may require written reports, inspect the premises, interview witnesses, and examine and copy documents. Fastenal will permit access to its premises at the Atlanta establishment during normal business hours for these purposes and will provide OFCCP with all reports and documents requested.
3. Fastenal understands that nothing in this Agreement relieves Fastenal of its obligation to fully comply with the requirements of E.O. 11246, Section 503, VEVRAA, their implementing regulations, and other applicable equal employment laws.
4. Fastenal promises not to harass, intimidate, threaten, discriminate, or otherwise retaliate against any individual because the individual: benefits from this Agreement, files a complaint

or participates in any investigation or proceeding under E.O. 11246, Section 503, and/or VEVRAA, or engages in any activity listed at 41 C.F.R. § 60-1.32(a).

5. The parties understand the terms of this Agreement and enter into it voluntarily.
6. This document and its attachments contain the complete and final understanding of the parties with respect to the matters referenced herein. This Agreement contains all terms by which the parties are bound and it supersedes all prior written or oral negotiations and agreements. There will be no modifications or amendments to this Agreement unless they are in writing, signed by all parties.
7. If one or more provisions of this Agreement are rendered unlawful or unenforceable, the remaining provisions will remain in full force and effect.
8. This Agreement becomes effective on the day it is signed by the Regional Director of the Southeast Region (the "Effective Date") unless the Director of OFCCP indicates otherwise within 45 calendar days of the date the Regional Director signs the Agreement.
9. This Agreement will expire sixty (60) days after Fastenal submits the final progress report required in Part IV (D), below, unless OFCCP notifies Fastenal in writing prior to the expiration date that Fastenal has not fulfilled all of its obligations under the Agreement, in which case the Agreement is automatically extended until the date that OFCCP determines Fastenal has met all of its obligations under the Agreement.
10. If Fastenal violates this Conciliation Agreement,
  - A. The procedures set forth at 41 C.F.R. § 60-1.34 will govern:
    - 1) If OFCCP believes that Fastenal violated any term of the Agreement while it was in effect, OFCCP will send Fastenal a written notice stating the alleged violations and summarizing any supporting evidence.
    - 2) Fastenal will have 15 calendar days from receipt of such notice to demonstrate in writing that it has not violated the Conciliation Agreement, unless such a delay would result in irreparable injury to the employment rights of affected employees or applicants.
    - 3) If Fastenal is unable to demonstrate that it has not violated the Agreement, or if OFCCP alleges irreparable injury, enforcement proceedings may be initiated immediately without issuing a show cause notice or proceeding through any other requirement.
    - 4) OFCCP may seek enforcement of this Agreement itself and is not required to present proof of any underlying violations resolved by this Agreement.
  - B. Fastenal may be subject to the sanctions set forth in Section 209 of the Executive Order and/or other appropriate relief for violation of this Agreement.
11. This Agreement does not constitute an admission by Fastenal of any violation of E.O. 11246, Section 503, VEVRAA, or other laws, nor has there been an adjudicated finding that Fastenal violated any laws.

### **PART III. SPECIFIC VIOLATIONS AND REMEDIES**

#### **1. HIRING DISCRIMINATION: GENDER**

- A. **STATEMENT OF VIOLATION.** Personnel activity data provided by Fastenal covering its Atlanta facility for the period August 1, 2011 through July 31, 2012, revealed that from a qualified pool of 7e Female applicants, Fastenal hired 7e Females (7e%) for General Warehouse positions. There was a qualified pool of 7e Male applicants; Fastenal hired 7e Males (7e%) This disproportionate hiring pattern is statistically significant at the level of 7e standard deviations, with a shortfall of 15 Female hires.

Accordingly, while there has been no administrative merits determination that Fastenal has violated any laws, OFCCP finds that Fastenal is not in compliance with the nondiscrimination requirements of the equal opportunity clause of E.O. 11246 § 202 and 41 C.F.R. § 60-1.4(a)(1) in regards to 1,180 qualified Female applicants that were not hired into the General Warehouse part-time positions at the Atlanta establishment because of their gender.

- B. **REMEDY FOR AFFECTED CLASS.** Fastenal must agree to: (a) attempt to locate all 1,180 Female applicants<sup>1</sup> who were not hired ("Class Members") and are listed in Attachment A of the terms of the Agreement and provide all located Class Members with a make whole remedy, including back pay and interest; (b) Make job offers to Class Members until 2 Female Class Members are placed in General Warehouse part-time positions at Atlanta establishment or until the list of eligible Class Members is exhausted, whichever occurs first, at the current rate of pay with a company service date of August 1, 2011; (c) prevent retaliation, harassment, and any other form of reprisal or adverse action to the Class Members based on or in relation to the terms of this Remedy; (d) review Fastenal's selection process and eliminate those practices at the Atlanta establishment that led to the discrimination; (e) develop procedures to review, at least annually, the selection process for ensuring nondiscrimination; and (f) take action to assure that this violation ceases and does not recur.

- 1) Notice. Within 30 calendar days of the Effective Date of this Agreement, Fastenal must notify the Female applicants listed in Attachment A of the terms of this Agreement by mailing by first class mail (and by email, where available) to each individual in the affected class the: Notice to Affected Class (Attachment B, "Notice"), Information Verification & Employment Interest Form (Attachment C, "Interest Form"), the Release of Claims under Executive Order 11246 (Attachment D, "Release") and a postage paid return envelope or [claims@FastenalAtlantaSettlement.com](mailto:claims@FastenalAtlantaSettlement.com). Fastenal will notify OFCCP of all correspondence returned as undeliverable either by letter or email 30 calendar days after the response deadline. In addition, within 30 calendar days after

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<sup>1</sup> The number of "Affected" class members differ from the total number of actual class members in Attachment A to account for duplicate applicants and class members affected in both race and gender.

expiration of the response deadline set out in the Interest Form, Fastenal will provide OFCCP with a list of the individuals in the affected class who have not yet responded to the Notice and/or have not returned a signed Interest Form. OFCCP will then attempt to obtain and provide updated addresses to Fastenal within 90 calendar days of receiving the list from Fastenal. Fastenal agrees to mail by first class mail a second Notice, Interest Form, and postage paid return envelope to all individuals for whom updated addresses were obtained within 10 calendar days of receiving the updated addresses.

- 2) Eligibility. All members of the affected class (listed on Attachment A) who sign and return the Release and Interest Form to Fastenal within 30 calendar days of the postmarked date of the envelope containing the first or second Notice and Interest Form (“Eligible Class Members”) will receive an equal share<sup>2</sup> of the monetary settlement and, if indicating an interest in employment, will be eligible to be considered for an entry level General Warehouse part-time position at the Atlanta establishment, provided they pass a substance abuse screening test and present documents establishing that they are eligible to work in the United States.<sup>3</sup> If an individual receives, but does not return the Release and Interest Form to Fastenal within 30 calendar days of the postmarked date on the envelope containing the second Notice and Interest Form, he/she will no longer be entitled to a payment or consideration for a job under this Agreement.

Within 15 calendar days after the response deadline set out in the Interest Form, Fastenal will provide OFCCP with a list of the Eligible Class Members (individuals who returned the Interest Form by the respective deadline). Within 15 calendar days after receiving the list, OFCCP will approve the final list of Eligible Class Members or discuss with Fastenal any issues necessary to finalize the list, such as (but not limited to) the inclusion or exclusion of certain individuals.

All Eligible Class Members who appear on the final list of Eligible Class Members approved by OFCCP are entitled to an equal share of the monetary settlement regardless of whether they are interested in employment with Fastenal.

- 3) Monetary Settlement. Fastenal agrees to distribute \$13,616.14 (\$12,549.99 in back pay and \$1,066.15 in interest), less legal deductions required by law from back pay only (such as federal, state and/ or local taxes and the Eligible Class Members’ share of FICA taxes), in equal shares among all eligible class members on the final approved list. Fastenal will pay the Internal Revenue

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<sup>2</sup> “Equal share” shall mean identical payments regardless of the class affiliation of the individual victim. Female and Black victims shall receive a financial remedy of the same amount.

<sup>3</sup> OFCCP understand that part-time maintenance positions require the possession of a valid driver’s license. Nothing in this Agreement negates Fastenal’s ability to uniformly insist on this requirement for the part-time maintenance position.

Service ("IRS") the employer's share of social security withholdings and will mail each Eligible Class Member an IRS W-2 Form reporting the portion of the payment representing back pay and an IRS Form 1099 for the portion of the payment representing interest. These IRS forms will be mailed at the end of the year. Fastenal will disburse the monetary settlement within 30 calendar days after OFCCP approves the final list of Eligible Class Members.

Within 15 calendar days of Fastenal's receipt of a check to an Eligible Class Member returned as undeliverable, Fastenal will notify OFCCP of this fact via e-mail sent to Assistant District Director William Glisson at [glisson.william@dol.gov](mailto:glisson.william@dol.gov). OFCCP will have 15 calendar days to attempt to locate the Eligible Class Member and if OFCCP obtains an alternate address in the designated time period, Fastenal will re-mail the check within 15 calendar days of receiving an alternate or corrected address. Any check that remains uncashed 120 calendar days after the initial date the check was mailed to the Eligible Class Member will be void. With respect to any uncashed funds, Fastenal will make a second distribution in equal shares to all Eligible Class Members who cashed their first check, if the total amount of the undelivered checks would result in a payment of \$20.00 or more to each of the located Eligible Class Members who cashed at least one of their checks from the first mailing. The second distribution of uncashed funds will be mailed within 120 calendar days after the first distributions were mailed (if there is a need). If there is any remainder after the second distribution, Fastenal will use the amount of the remainder to conduct internal EEO training in the Atlanta establishment.

- 4) Employment. As positions become available, Fastenal will consider and make offers in writing to qualified Eligible Class Members not currently employed by Fastenal who express an interest in employment with Fastenal at the Atlanta establishment until 2 Eligible Class Members are hired into General Warehouse part-time positions at the Atlanta establishment or until the list of Eligible Class Members expressing an interest in employment is exhausted, whichever occurs first. OFCCP recognized that there were victims included in the Eligible Class for gender that were also included in the Eligible class for race. OFCCP is including these persons in the remedy for the Eligible class for race and reducing the number of cross-counted females from the hiring portion of the remedy for the Eligible Class of female victims (from 15 to 2) to eliminate the possibility that a victim is remedied under both classes and receives more than make whole relief.

Eligible Class Members will be considered in the order that Fastenal receives their Interest Forms. If Fastenal receives more than one response on any given day, those Eligible Class Members will be considered for employment based on the date of their original application. Employment is contingent on the Eligible Class Member's successfully completing Fastenal's post-offer

selection and screening process.<sup>4</sup> The criteria for selecting or rejecting any Eligible Class Member will be no more stringent than those used by Fastenal during the review period August 1, 2011, through July 31, 2012.<sup>5</sup> All Class Members interested in employment with Fastenal at the Atlanta establishment must complete an online application, pass a drug test, be willing to report to work within 14 calendar days and provide evidence that they are eligible/authorized to work in the U.S. Fastenal must initiate its hiring of Eligible Class Members within 60 days after the response deadline set out in the interest form and must complete its hiring obligations under this section within 2 years of the Effective Date of this Agreement. If Fastenal is not able to hire 2 Eligible Class Members or exhaust the list of Eligible Class Members expressing an interest in employment within 2 years, OFCCP may extend the term of this Agreement for up to 24 months or until Fastenal satisfies its hiring requirement(s), whichever occurs first.

Eligible Class Members will be allowed at least 14 calendar days to report for work after receiving a written job offer from Fastenal. The Eligible Class Members hired into General Warehouse part-time positions at the Atlanta establishment pursuant to this Agreement must be paid \$10.00/hr or the current wage rate for the General Warehouse part-time position at the Atlanta establishment, whichever is higher, and must be provided with the same benefits and opportunity to earn overtime and shift differentials as other General Warehouse part-time employees at the Atlanta establishment. In addition, all Eligible Class Members hired must receive retroactive seniority using the date of their original application as their hire date for all purposes, including job retention, job bidding and benefits.

C. NON-MONETARY REMEDIES. Fastenal will ensure that all applicants are afforded equal employment opportunities. Fastenal agrees to immediately cease using the selection procedures, practices, and/or policies which negatively affected the hiring of Female applicants for General Warehouse part-time positions at the Atlanta establishment. Fastenal agrees to continue and/or to implement the corrective actions detailed below at the Atlanta establishment:

- 1) Revised Hiring Process – OFCCP recognizes that Fastenal has taken steps since OFCCP’s review to address hiring process issues raised during OFCCP’s evaluation. Fastenal has hired a Director of Compliance and has revised its hiring processes and made extensive improvements to its online applicant tool. However, as part of this Agreement, Fastenal agrees to continue its effort at revising its Hiring Processes as follows at the Atlanta establishment:
  - a) Eliminate Discriminatory Selection Procedures: Fastenal agrees to immediately cease use of the **7e** test and initial screening

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<sup>4</sup> See footnote #3, above.

<sup>5</sup> See footnote, #3, above.

procedures until they are validated in accordance with 41 C.F.R. Part 60-3. Fastenal agrees to comply with all OFCCP regulations concerning selection procedures, including 41 C.F.R. Part 60-3. Fastenal will not use any selection procedure that has an adverse impact, as defined in 41 C.F.R. § 3.4D, on applicants of a particular sex unless it properly validates the procedure pursuant to these regulations.

- b) Review and Revisions Required: Within 60 calendar days of the Effective date of this Agreement, Fastenal will revise, in writing, the practices, policies and procedures it uses to select applicants for General Warehouse part-time positions (hereinafter “Revised Hiring Process”). Specifically, Fastenal will:
  - i. create a job description and selection process for General Warehouse part-time positions which describes the essential functions; the minimum qualifications including required skills and certifications; and the criteria used in each step of the hiring process, including those used in any application screens, interviews, tests, credit checks, reviews of criminal history, reference checks, testing, or other selection procedures;
  - ii. develop specific, job-related qualification standards for General Warehouse part-time positions that reflect the duties, functions, and competencies of the position to minimize the potential for gender stereotyping or other unlawful discrimination;
  - iii. ensure all policies and qualification standards are uniformly applied to all applicants regardless of gender; and
  - iv. list clearly on its recruiting materials and job postings the minimum qualifications, including required skills and certifications.
- c) Recordkeeping and Retention: Fastenal will write and continue to implement procedures to ensure that applicants are tracked and decisions are documented at each step in the hiring process. Fastenal will ensure that these procedures are conducted and that all documents pertaining to these procedures are retained in accordance with 41 C.F.R. § 60-1.12(a) and Part 60-3.
- d) Training: Within six months of the Effective Date of this Agreement, Fastenal must train all individuals involved in any way in recruiting, selecting, or tracking applicants for General Warehouse part-time positions on the Revised Hiring Process. The training will include (but is not limited to) instruction in: the proper implementation of recruitment, tracking and selection procedures; neutral application of specified qualifications and criteria that will be used at each step in the hiring process; procedures to be used to document the decisions made at each step in the hiring process; and the procedures to be used to ensure that documents are retained in accordance with 41 C.F.R. § 60-

1.12(a) and Part 60-3. Fastenal will meet with management and all individuals responsible for the selection process at the Atlanta establishment and review its equal employment obligations and nondiscrimination policies related to hiring. Specific attention will be directed to ensure that female applicants, who benefit from the provisions of this Agreement, are not retaliated against.

- e) Monitoring: Fastenal agrees to monitor selection rates at each step of its selection process for General Warehouse part-time positions. Where it is determined that a selection procedure has an adverse impact, as defined in 41 C.F.R. §60- 3.4D, on the hiring of applicants of a particular gender, Fastenal will eliminate the procedure, choose an alternative procedure, or validate the procedure in accordance with the Uniform Guidelines on Employee Selection Procedures (hereinafter UGESP) codified at 41 C.F.R. Part 60-3. Fastenal agrees to maintain and make available to OFCCP records concerning the impact of the selection process for General Warehouse part-time jobs at the Atlanta establishment. This includes the number of persons hired by gender, the number of applicants who applied by gender, and the selection procedures utilized. This information will be maintained until the expiration of this Agreement or as long as required by the regulations, whichever is later.

## 2. HIRING DISCRIMINATION: RACE

- A. STATEMENT OF VIOLATION. Personnel activity data provided by Fastenal covering its Atlanta facility for the period August 1, 2011 through July 31, 2012, revealed that from a qualified pool of 7e Black applicants, Fastenal hired 7e Blacks (7e %) for General Warehouse positions. There was a qualified pool of 7e White applicants; Fastenal hired 7e Whites (7e %). This disproportionate hiring pattern is statistically significant at the level of 7e standard deviations, with a shortfall of 27 Black hires.

Accordingly, OFCCP finds that Fastenal is not in compliance with the nondiscrimination requirements of the equal employment clause of E.O. 11246 § 202 and 41 C.F.R. § 60-1.4(a)(1) in regards to 2,957 qualified Black applicants not hired into the General Warehouse position because of their race.

- 1) REMEDY FOR AFFECTED CLASS. Fastenal must agree to (a) attempt to locate all 2,957 Black applicants<sup>6</sup> who were not hired (“Class Members”) and are listed in Attachment A of the terms of this Agreement and provide all located Class Members with a make whole remedy, including back pay and interest; (b) Make job offers to Class Members until 27 Black Class Members are placed in General Warehouse part-time

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<sup>6</sup> The number of “Affected” class members differ from the total number of actual class members in Attachment A to account for duplicate applicants and class members affected in both race and gender.



positions at the current rate of pay with a company service date of August 1, 2011; (c) prevent retaliation, harassment, and any other form of reprisal or adverse action to the Class Members based on or in relation to the terms of this Remedy; (d) review Fastenal's selection process at the Atlanta establishment and eliminate those practices that led to the discrimination; (e) develop procedures to review, at least annually, the selection process for ensuring nondiscrimination; and (f) take action to assure that this violation ceases and does not recur.

- 2) Notice. Within 30 calendar days of the Effective Date of this Agreement, Fastenal must notify the Black applicants listed in Attachment A of the terms of this Agreement by mailing by first class mail and email to each individual in the affected class the: Notice to Affected Class (Attachment B, "Notice"), Information Verification & Employment Interest Form (Attachment C, "Interest Form"), the Release of Claims under Executive Order 11246 (Attachment D, "Release") and a postage paid return envelope or [claims@FastenalAtlantaSettlement.com](mailto:claims@FastenalAtlantaSettlement.com). Fastenal will notify OFCCP of all letters returned as undeliverable 30 calendar days after the response deadline. In addition, within 30 calendar days after expiration of the response deadline set out in the Interest Form, Fastenal will provide OFCCP with a list of the individuals in the affected class who have not yet responded to the Notice and/or have not returned a signed Interest Form. OFCCP will then attempt to obtain and provide updated addresses to Fastenal within 90 calendar days of receiving the list from Fastenal. Fastenal agrees to mail by first class mail a second Notice, Interest Form, and postage paid return envelope to all individuals for whom updated addresses were obtained within 10 calendar days of receiving the updated addresses.
- 3) Eligibility. All members of the affected class (listed on Attachment A) who sign and return the Release and Interest Form to Fastenal within 30 calendar days of the postmarked date of the second Notice and Interest Form ("Eligible Class Members") will receive an equal share of the monetary settlement and, if indicating an interest in employment, will be eligible to be considered for an entry level General Warehouse part-time position at the Atlanta establishment.

Within 15 calendar days after the response deadline set out in the Interest Form, Fastenal will provide OFCCP with a list of the Eligible Class Members (individuals who returned the Interest Form by the respective deadline). Within 15 calendar days after receiving the list, OFCCP will approve the final list of Eligible Class Members or discuss with Fastenal any issues necessary to finalize the list, such as (but not limited to) the inclusion or exclusion of certain individuals.

All Eligible Class Members who appear on the final list of Eligible Class Members approved by OFCCP are entitled to an equal share of the monetary settlement regardless of whether they are interested in employment with Fastenal.

- 4.) Monetary Settlement. Fastenal agrees to distribute \$186,396.32 (\$171,957.63 in back pay and \$14,438.69 in interest), less legal deductions required by law from back pay only (such as federal, state and/ or local taxes and the Eligible Class Members' share of FICA taxes), in equal shares among all eligible class members on the final approved list. Fastenal will pay the Internal Revenue Service ("IRS") the employer's share of social security withholdings and will mail each Eligible Class Member an IRS W-2 Form reporting the portion of the payment representing back pay and an IRS Form 1099 for the portion of the payment representing interest. These IRS forms will be mailed at the end of the year. Fastenal will disburse the monetary settlement within 30 calendar days after OFCCP approves the final list of Eligible Class Members.

Within 15 calendar days of Fastenal's receipt of a check to an Eligible Class Member returned as undeliverable, Fastenal will notify OFCCP of this fact via e-mail sent to Assistant District Director William Glisson at [glisson.william@dol.gov](mailto:glisson.william@dol.gov). OFCCP will have 15 calendar days to attempt to locate the Eligible Class Member and if OFCCP obtains an alternate address in the designated time period, Fastenal will re-mail the check within 15 calendar days of receiving an alternate or corrected address. Any check that remains uncashed 120 calendar days after the initial date the check was mailed to the Eligible Class Member will be void. With respect to any uncashed funds, Fastenal will make a second distribution in equal shares to all Eligible Class Members who cashed their first check, if the total amount of the undelivered checks would result in a payment of \$20.00 or more to each of the Eligible Class Members who cashed at least one of their checks from the first mailing. The second distribution of uncashed funds will be mailed within 120 days after the first distributions were mailed (as needed). If there is any remainder after the second distribution, Fastenal will use the amount of the remainder to conduct internal EEO training in the Atlanta establishment.

- 4) Employment. As positions become available, Fastenal will consider and make offers in writing to qualified Eligible Class Members not currently employed by Fastenal who express an interest in employment with Fastenal at the Atlanta establishment until 27 Eligible Class Members are hired as General Warehouse part-time positions or until the list of Eligible Class Members expressing an interest in employment is exhausted, whichever occurs first. Eligible Class Members will be considered in the order that Fastenal receives their Interest Forms. If Fastenal receives more

than one response on any given day, those Eligible Class Members will be considered for employment based on the date of their original application. All Class Members interested in employment with Fastenal at the Atlanta establishment must complete an online application, pass a drug test, be willing to report to work within 14 calendar days and provide evidence that they are eligible/authorized to work in the U.S. Fastenal must initiate its hiring of Eligible Class Members within 60 calendar days after the response deadline set out in the interest form and must complete its hiring obligations under this section within 2 years of the Effective Date of this Agreement. If Fastenal is not able to hire 27 Eligible Class Members or exhaust the list of Eligible Class

Members expressing an interest in employment within 2 years, OFCCP may extend the term of this Agreement for up to 24 months or until Fastenal satisfies its hiring requirement(s), whichever occurs first.

Eligible Class Members will be allowed at least 14 calendar days to report for work after receiving a written job offer from Fastenal. The Eligible Class Members hired into General Warehouse part-time positions pursuant to this Agreement must be paid \$10.00/hr or the current wage rate for the General Warehouse part-time position at the Atlanta establishment, whichever is higher, and must be provided with the same benefits and opportunity to earn overtime and shift differentials as other General Warehouse part-time employees. In addition, all Eligible Class Members hired must receive retroactive seniority using the date of their original application as their hire date for all purposes, including job retention, job bidding and benefits.

B. NON-MONETARY REMEDIES. Fastenal will ensure that all applicants are afforded equal employment opportunities. Fastenal agrees to immediately cease using the selection procedures, practices, and/or policies which negatively affected the hiring of Black applicants for General Warehouse part-time positions at the Atlanta establishment. Fastenal agrees to continue and/or to implement the corrective actions detailed below:

1) Revised Hiring Process - OFCCP recognizes that Fastenal has taken steps since OFCCP's review to address hiring process issues raised during OFCCP's evaluation. Fastenal has hired a Director of Compliance and has revised its hiring processes for the Atlanta establishment and made extensive improvements to its online applicant tool. However, as part of this Agreement, Fastenal agrees to continue its effort at revising its Hiring Processes as follows at the Atlanta establishment:

a) Eliminate Discriminatory Selection Procedures: Fastenal agrees to immediately cease use of the **7e** test and initial screening procedures until they are validated in accordance with 41 C.F.R. Part

60-3. Fastenal agrees to comply with all OFCCP regulations concerning selection procedures, including 41 C.F.R. Part 60-3. Fastenal will not use any selection procedure that has an adverse impact, as defined in 41 C.F.R. § 3.4D, on applicants of a particular sex unless it properly validates the procedure pursuant to these regulations.

- b) Review and Revisions Required: Within 60 days of the Effective Date of this Agreement, Fastenal will revise, in writing, the practices, policies and procedures it uses to select applicants for General Warehouse positions (hereinafter "Revised Hiring Process"). Specifically, Fastenal will at the Atlanta establishment:
- i. create a job description and selection process for General Warehouse part-time positions which describes the essential functions; the minimum qualifications including required skills and certifications; and the criteria used in each step of the hiring process, including those used in any application screens, interviews, tests, credit checks, reviews of criminal history, reference checks, testing, or other selection procedures;
  - ii. develop specific, job-related qualification standards for General Warehouse part-time positions that reflect the duties, functions, and competencies of the position to minimize the potential for race stereotyping or other unlawful discrimination;
  - iii. ensure all policies and qualification standards are uniformly applied to all applicants regardless of race; and
  - iv. list clearly on its recruiting materials and job postings the minimum qualifications, including required skills and certifications.
- c) Recordkeeping and Retention: Fastenal will write and continue to implement procedures to ensure that applicants are tracked and decisions are documented at each step in the hiring process. Fastenal will write and implement procedures to ensure that documents are retained in accordance with 41 C.F.R. § 60-1.12(a) and Part 60-3.
- d) Training: Within six months of the Effective Date of this Agreement, Fastenal must train all individuals involved in recruiting, selecting, or tracking applicants for General Warehouse part-time positions on the Revised Hiring Process. The training will include instruction in: the proper implementation of the recruitment, tracking and selection procedures; neutral application of specified qualifications and criteria that will be used at each step in the hiring process; procedures to be used to document the decisions made at each step in the hiring process; and the procedures to be used to ensure that documents are retained in accordance with 41 C.F.R. § 60-1.12(a) and Part 60-3. Fastenal will meet with management and all individuals responsible for the selection process and review its equal employment obligations and nondiscrimination policies related to hiring. Specific attention will be

directed to ensure that Black applicants, who benefit from the provisions of this Agreement, are not retaliated against.

- e) Monitoring: Fastenal agrees to monitor selection rates at each step of its selection process for General Warehouse part-time positions. Where it is determined that a selection procedure has an adverse impact, as defined in 41 C.F.R. § 3.4D, on the hiring of applicants of a particular race, Fastenal will eliminate the procedure, choose an alternative procedure, or validate the procedure in accordance with the UGESP codified at 41 C.F.R. Part 60-3. Fastenal agrees to maintain and make available to OFCCP records concerning the impact of the selection process for General Warehouse part-time jobs at the Atlanta establishment. This includes the number of persons hired by race, the number of applicants who applied by race, and the selection procedures utilized. This information will be maintained until the expiration of this Agreement or as long as required by the regulations, whichever is later.

### 3. RECORDKEEPING/ADVERSE IMPACT ANALYSIS VIOLATIONS

- A. STATEMENT OF VIOLATION. Fastenal failed to preserve complete and accurate records in accordance with the requirements of 41 C.F.R. § 60-1.12 (a) and (e). Specifically, during the evaluation, Fastenal failed to preserve complete application records for General Warehouse applicants that applied from August 1, 2011 through July 31, 2012 by destroying the hard copies of applications and notes used during the interview process in response to OFCCP's evaluation. The hard copy applications and notes provided alternate dispositions and were destroyed after the selection processes were completed. These actions destroyed the integrity of the application records as well as any other analysis or record that is derived from the application record. Fastenal did this despite being put on notice of their obligations in past compliance evaluations to maintain application and selection procedures in accordance with the requirements of 41 CFR 60-1.12 (a)(d). Accordingly, OFCCP presumes Fastenal destroyed or failed to preserve these records because they were unfavorable to Fastenal.

REMEDY. In accordance with 41 C.F.R. § 60-1.12(a), Fastenal must agree to preserve all personnel and employment records it makes or keeps in either electronic or hard copy format, including but not limited to all expressions of interest through the internet or related electronic data technologies, records related to internal and/or external databases, physical and online applications, completed applicant self-identification forms, resumes, testing materials, and interview records, for a period of not less than two years from the date of the making of the record or the personnel action involved, whichever occurs later. Where a compliance evaluation has been initiated by OFCCP, Fastenal must agree to preserve all employment and personnel records beyond the two-year period, if applicable, until OFCCP makes a final disposition in the matter.

- B. STATEMENT OF VIOLATION. Fastenal failed to perform in-depth analyses of its total employment process to determine whether and where impediments to equal employment opportunity exist in accordance with 41 C.F.R. § 60-2.17(b)(2). Specifically, Fastenal did not evaluate personal activity (applicant flow, hires, terminations, promotions and other personnel actions) to determine whether there are selection disparities.

REMEDY. On an annual basis, as a minimum, Fastenal must perform in-depth analyses of its total employment process at the Atlanta establishment to determine whether and where impediments to equal employment opportunity exist in accordance with 41 C.F.R. § 60-2.17(b)(2). Fastenal must evaluate personal activity (applicant flow, hires, terminations, promotions and other personnel actions) at the Atlanta establishment to determine whether there are selection disparities.

- C. STATEMENT OF VIOLATION. Pursuant to 41 C.F. R 60-2.17 (b) above, Fastenal failed to develop and execute action-oriented programs designed to correct any problem areas identified and to attain established goals and objectives. This is a violation of 41 CFR § 60-2.17(c). Specifically, Fastenal's self-conducted adverse impact analysis from the Atlanta establishment from August 1, 2011 through July 31, 2012 indicated statistically significant adverse impact. Fastenal undertook no action to investigate or mitigate the effects of its hiring process and continued to follow the same hiring procedures which had previously produced inadequate results.

REMEDY. In accordance with 41 CFR § 60-2.17(c), Fastenal must agree to develop and execute action-oriented programs designed to correct all problem areas identified and to attain established goals and objectives. Fastenal must agree to demonstrate that it has made good faith efforts to remove identified barriers and expand employment opportunities. Fastenal must agree to incorporate these analyses and determinations into Fastenal's current AAP for the Atlanta establishment. Fastenal must agree to update these action-oriented programs annually and incorporate them into Fastenal's future AAPs

- D. STATEMENT OF VIOLATION. Fastenal failed to develop and implement an auditing and reporting system that periodically measures the effectiveness of its total AAP pursuant to 41 C.F.R. § 60-2.17(d).

REMEDY. Fastenal must develop and implement an audit and reporting system at the Atlanta establishment that periodically measures the effectiveness of its total AAP pursuant to 41 C.F.R. § 60-2.17(d). Fastenal must follow the actions below:

1. Monitor records of all personnel activity, including referrals, placements, transfers, promotions, terminations and compensation, at all levels to ensure the nondiscriminatory policy is carried out;
2. Require internal reporting on a scheduled basis as to the degree to which equal employment opportunity and organizational objectives are attained;
3. Review report results with all levels of management; and

4. Advise top management of program effectiveness and submit recommendations to improve unsatisfactory performance.

E. STATEMENT OF VIOLATION. Fastenal failed to evaluate the individual components of the selection process after determining that the total selection process for a job has an adverse impact in accordance with the requirements of 41 C.F.R. § 60-3.4(c). Specifically, Fastenal's adverse impact analysis from August 1, 2011 through July 31, 2012 indicated statistically significant adverse impact against females and minorities during the period for which OFCCP has data. Fastenal failed to evaluate the causes of the adverse impact any further.

REMEDY. In accordance with 41 C.F.R. § 60-3.4(c), at the Atlanta establishment Fastenal must agree to further evaluate the individual components of the selection process after determining that the total selection process for a job has an adverse impact. Any individual components of the selection process shall be removed when: (1) where the selection procedure is a significant factor in the continuation of patterns of assignments of incumbent employees caused by prior discriminatory employment practices, (2) where the weight of court decisions or administrative interpretations hold that a specific procedure (such as aptitude testing) is not job related in the same or similar circumstances.

F. STATEMENT OF VIOLATION. Fastenal failed to validate a selection procedure that had adverse impact for both Blacks and Females as required by 41 C.F.R. § 60-3.3A. Specifically, the test validation strategy used by (b) (7) (e) is not acceptable under the Uniform Guidelines on Employee Selection Procedures. Additionally, no evidence was provided that any attempt was made to lessen the adverse impact of the test, as required by the Uniform Guidelines on Employee Selection Procedures.

REMEDY. Fastenal must agree to immediately cease using 7e as a part of its selection process. Fastenal, will ensure that any future test used as a part of its selection process adheres to the Uniform Guidelines on Employee Selection Procedures as required by 41 C.F.R. § 60-3.

#### **PART IV. REPORTS REQUIRED**

1. Fastenal must submit the documents and reports described below to: Sybil Shy-Demmons, District Director of OFCCP, 61 Forsyth Street SW, Suite 17T50, Atlanta, Georgia 30303.
  - A. Within 90 calendar days of the Effective Date of this Agreement Fastenal must submit a copy of the written Revised Hiring Process described in Part III section 1 C (1)(b) and section 2 C (1)(b).
  - B. Within 180 calendar days of the Effective Date of this Agreement, Fastenal must submit documentation that all managers, supervisors and other personnel involved in recruiting, selecting, or tracking applicants for General Warehouse part-time positions

at the Atlanta establishment have been trained on the Revised Hiring Process. The documentation must include the dates of the training, the names and job titles of all attendees, an outline of the topics discussed in the training, and the name and job title of each person who conducted the training.

- C. Within the prescribed timeframes, Fastenal must submit all documents and information referenced in Part III sections 1 B (1-2) and 2 B (1-2).<sup>7</sup>
- D. Fastenal must submit a progress report for the Atlanta establishment covering each six month period this Agreement is in effect. The first progress report will be due seven months after the Effective Date of this Agreement and must cover the six-month period beginning with the Effective Date. Each subsequent report must cover the successive six-month period, and must be submitted within 30 calendar days after the close of that six-month period. Fastenal will submit the following in each progress report:
  - 1) a. Documentation of attempts to contact all Class Members in Attachment A and the current disposition of each applicant contacted, including copies of the notification letters sent; and  
b. Copies of all letters, including Attachment C, returned by Class Members, as well as those returned as undeliverable.
  - 2) Documentation of monetary payments to all Eligible Class Members as specified in Part III sections 1 B (3) and 2 B (3). The documentation must include the names of Eligible Class Members who were paid, and, for each Eligible Class Member, the number and the amount of the check and the date the check cleared the bank. Fastenal must provide OFCCP with copies of all canceled checks upon request;
  - 3) Documentation of specific hiring activity for Eligible Class Members who were hired as General Warehouse part-time positions at the Atlanta establishment in accordance with this Agreement, including name, date of hire, job title hired into, rate of pay and proof of retroactive seniority and applicable benefits;
  - 4) For Eligible Class Members who were considered for employment as General Warehouse part-time positions at the Atlanta establishment but were not hired, Fastenal will provide the reason for non-placement along with all relevant documentation (e.g., documentation that the Eligible Class Member declined a job offer);
  - 5) The total number of applicants and hires and the breakdown by race, gender and ethnic group of applicants and hires for General Warehouse part-time positions at the Atlanta establishment during the reporting period, including all temporary, part time, and seasonal workers who were referred to and/or assigned to work at Fastenal by a staffing firm or employment agency;

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<sup>7</sup>Instruction: Such documents and information may include letters returned as undeliverable, a list of individuals in the affected class who have not returned a signed Release and Interest Form before the deadline, and a list of Eligible Class Members.



- 6) For General Warehouse part-time positions at the Atlanta establishment, the results of Fastenal's analysis as to whether its total selection process has adverse impact, as defined in 41 C.F.R. § 60-3.4D, on those members of groups set forth in 41 C.F.R. § 60-3.4B (for purposes of the adverse impact analysis, Fastenal must not include hires made of Eligible Class Members pursuant to this Agreement in that analysis; Fastenal must combine the data for the current report with the data from the previous report(s) to analyze at least a 12-month period);
  - 7) For each case where the total selection process has an adverse impact for part-time General Warehouse positions at the Atlanta establishment, as defined in 41 C.F.R. § 60-3.4D, the results of Fastenal's evaluation of the individual components of the selection process for adverse impact; and/or
  - 8) The actions taken by Fastenal upon determining that any component of the selection process for part-time General Warehouse positions at the Atlanta establishment has an adverse impact on members of groups set forth in Part III section 3 E above.
2. Fastenal will retain all records and data pertinent to the violations resolved by this Agreement and/ or used to prepare required reports until this Agreement expires or as long as required by OFCCP's regulations, whichever date occurs later (or "whichever time period is longer").

**PART V. SIGNATURES**

This Conciliation Agreement is hereby executed by and between the OFCCP and Fastenal.

7C

AARON GARMS  
General Counsel  
Fastenal Company

Date: 9/30/15

SAMUEL MAIDEN  
Regional Director-Southeast  
OFCCP

Date: \_\_\_\_\_

SYBIL SHY-DEMMONS  
District Director-Atlanta  
OFCCP

Date: \_\_\_\_\_

**PART V. SIGNATURES**

This Conciliation Agreement is hereby executed by and between the OFCCP and Fastenal.

\_\_\_\_\_  
AARON GARMS  
General Counsel  
Fastenal Company

Date: \_\_\_\_\_

\_\_\_\_\_  
SAMUEL MAIDEN  
Regional Director-Southeast  
OFCCP

Date: \_\_\_\_\_

\_\_\_\_\_  
SYBIL SHY-DEMMONS  
District Director-Atlanta  
OFCCP

Date: \_\_\_\_\_

(6), (7)(C)

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September 30, 2015

September 30, 2015

## **ATTACHMENT B**

### **NOTICE TO AFFECTED CLASS**

Dear [NAME]:

We are writing to provide information about a legal settlement between the U.S. Department of Labor and Fastenal Company ("Fastenal") that may benefit you. This settlement involves allegations of discrimination in hiring, and our records show that you are an individual that applied but was not hired for a part-time General Warehouse position from August 1, 2011 through July 31, 2012 ("review period") and you may be covered by the settlement. If you take the steps described in this notice by deadline below, and meet the requirements explained in the letter and attached documents, you may be eligible for a payment of back wages and interest from Fastenal.

#### **WHO IS AFFECTED?**

Females and Blacks who applied for part-time General Warehouse positions at Fastenal's Atlanta establishment from August 1, 2011 through July 31, 2012 are covered by this agreement.

#### **WHAT IS THE SETTLEMENT ABOUT?**

The U.S. Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) conducted an investigation of Fastenal's hiring practices during August 1, 2011 through July 31, 2012. OFCCP is the government agency responsible for enforcing the equal employment opportunity and affirmative action requirements that apply to federal contractors. OFCCP alleges that Fastenal did not afford equal employment opportunity to Female and Black applicants for part-time General Warehouse positions from August 1, 2011 through July 31, 2012.

Ultimately, OFCCP issued a Notice of Violations against Fastenal on these claims. Although Fastenal disagreed with OFCCP's findings, Fastenal has agreed to resolve the issues through a Conciliation Agreement with OFCCP. A Conciliation Agreement is a legal document that explains the terms of an agreement to settle the alleged violations.

#### **WHAT DOES THIS MEAN FOR YOU?**

Because you applied for a part-time General Warehouse position during the relevant time period, this settlement may provide you with some specific benefits.

- 1) You may be eligible to receive a monetary payment of at least \$, less taxes and other legal withholdings; and
- 2) You may be eligible for preferential hiring into a part-time General Warehouse position at Fastenal's Atlanta establishment.

The monetary payment represents your share of back wages and other payments Fastenal is making to settle with OFCCP. The final amount you receive will be reduced by legally required

deductions such as federal, state and/or local payroll taxes as well as FICA withholdings. It may take up to 12 months from the date of this letter before you receive your final distribution.

In addition to the monetary distribution, Fastenal will be making job offers for part-time General Warehouse positions at the Atlanta establishment to a limited number of individuals receiving this notification. It is not certain that you will receive a job offer. If you are still interested in employment with Fastenal, please check the appropriate box on the enclosed Information Verification and Employment Interest Form. Those receiving this notice will be considered for part-time General Warehouse positions at the Atlanta establishment in the order that Fastenal receives the Release and the Information Verification and Employment Interest Form expressing an interest in employment. If you are interested in employment, you must agree on a start date no later than 14 calendar days from the date of receiving the written job offer.

#### WHAT IS YOUR NEXT STEP?

To be eligible for a payment, you must complete, sign, and return **both** the enclosed documents, (1) Information Verification and Employment Interest Form and (2) Release of Claims Under Executive Order by[DATE TO BE DETERMINED]. **YOU SHOULD COMPLETE AND MAIL BACK THE FORMS AS SOON AS POSSIBLE; IT *MUST* BE POSTMARKED TO THE ADDRESS BELOW NO LATER THAN 30 DAYS AFTER THE DATE THIS NOTICE WAS MAILED OUT (POSTMARKED) FOR YOU TO BE ENTITLED TO PARTICIPATE IN THIS SETTLEMENT:**

(NAME)  
(POSITION)  
(CONTRACTOR)  
(ADDRESS)

You may use the enclosed postage-paid return envelope to return the completed and signed Information Verification and Employment Interest Form and Release.

#### HOW CAN YOU GET MORE INFORMATION?

If you have any questions you may call [NAME] at Fastenal at [PHONE NUMBER], or OFCCP at <http://www.dol.gov/ofccp/cml/index.htm>. Your call will be returned as soon as possible. Your call will be returned as soon as possible.

Sincerely,

Sincerely,

(NAME)

Enclosures:  
Information Verification and Employment Interest Form

Release of Claims Under Executive Order 11246

**ATTACHMENT C**  
**INFORMATION VERIFICATION & EMPLOYMENT INTEREST FORM**

**You must complete this form in order to be eligible for the monetary payment and/or employment opportunities under the terms of the Conciliation Agreement ("Agreement") between Fastenal Company ("Fastenal") and the Department of Labor's Office of Federal Contract Compliance Programs. Please print legibly, except for the signature.**

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Nos.: Home \_\_\_\_\_ Cell \_\_\_\_\_ Work \_\_\_\_\_

E-mail Address: \_\_\_\_\_

Notify Fastenal at the address below if your address or phone number changes within the next twelve months.

Your Social Security Number (to be used for tax purposes only): \_\_\_\_\_ - \_\_\_\_\_ - \_\_\_\_\_

Please indicate below whether you are currently interested in employment in a General Warehouse part-time position with Fastenal at its Atlanta establishment. If you complete, sign, and return this Information Verification and Employment Interest Form and Release, you remain eligible for the monetary payment whether or not you are interested in employment at this time.

☐ Yes, I am still interested in employment with Fastenal as a part-time General Warehouse employee at the Atlanta establishment.

☐ No, I am not currently interested in employment with Fastenal as a part-time General Warehouse employee at the Atlanta establishment.

**IF YOU FAIL TO COMPLETE AND RETURN THE ENCLOSED DOCUMENTS TO THE ADDRESS BELOW WITHIN 30 DAYS OF THE DATE THE ENVELOPE CONTAINING THIS NOTICE WAS POSTMARKED, YOU WILL NOT BE ELIGIBLE TO RECEIVE A PAYMENT OR TO BE CONSIDERED FOR A JOB OFFER.**

**(NAME)** \_\_\_\_\_

**(ADDRESS)** \_\_\_\_\_

I, \_\_\_\_\_, certify the above is true and correct.  
(print name)

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

## ATTACHMENT D

### RELEASE OF CLAIMS UNDER EXECUTIVE ORDER 11246

This Release of Claims under Executive Order 11246 ("Release") is a legal document. This document states that in return for Fastenal Company "Fastenal" paying you money, you agree that you will not file any lawsuit against Fastenal for allegedly violating Executive Order 11246 in connection with its selection procedures for applicants for part-time General Warehouse positions. It also says that Fastenal does not admit it violated any laws. This Release says you had sufficient time to look at the document, to talk with others about the document, including an attorney if you choose, and that no one pressured you into signing the document. Finally, it says that if you do not sign and return the document by a certain date, you will not receive any money or be eligible for preferential hiring treatment.

In consideration of the payment of at least (less deductions required by law) by Fastenal to me, which I agree are acceptable, and in consideration of the Conciliation Agreement between Fastenal and the Office of Federal Contract Compliance Programs ("OFCCP") I, \_\_\_\_\_ agree to the following: (print name)

#### I.

I hereby waive, release and forever discharge Fastenal, its predecessors, successors, related entities, parents, subsidiaries, affiliates and organizations, and its and their shareholders, directors, officers, employees, agents, successors, and assigns, of and from any and all actions, causes of action, damages, liabilities, and claims arising out of or actionable under Executive Order 11246, as amended, which I or my representatives (heirs, executors, administrators, or assigns) have or may have which relate in any way to my non-selection for employment as a General Warehouse part-time position on the basis of my Race or Gender at any time through the effective date of this Release.

#### II.

I understand that Fastenal denies that it treated me unlawfully or unfairly in any way and that Fastenal entered into a Conciliation Agreement with the U.S. Department of Labor, Office of Federal Contract Compliance Programs ("OFCCP") and agreed to make the payment described above to resolve alleged disparities in hiring and to resolve the matter without further legal proceedings in the compliance review initiated by OFCCP on December 20, 2012. I further agree that the payment of the aforesaid sum by Fastenal to me is not to be construed as an admission of any liability by Fastenal.

#### III.

I declare that I have read this Release and that I have had a full opportunity to consider and understand its terms and to consult with my advisors and seek legal advice. I further declare that I have decided of my own free will to sign this Release.

#### IV.

I understand that if I do not sign this Release and return it to Fastenal within 30 days of the date the envelope containing this release was postmarked, I will not be entitled to receive any payment (less deductions required by law) from Fastenal.

IN WITNESS WHEREOF, I have signed this document on this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.



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Signature

**Be sure to attach this form to the Information Verification & Employment Interest Form included with this notice and return both documents together by the deadline.**

ATTACHMENT A  
FEMALE ACM CLASS MEMBERS  
ATLANTA

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ATTACHMENT A  
FEMALE ACM CLASS MEMBERS  
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FEMALE ACM CLASS MEMBERS  
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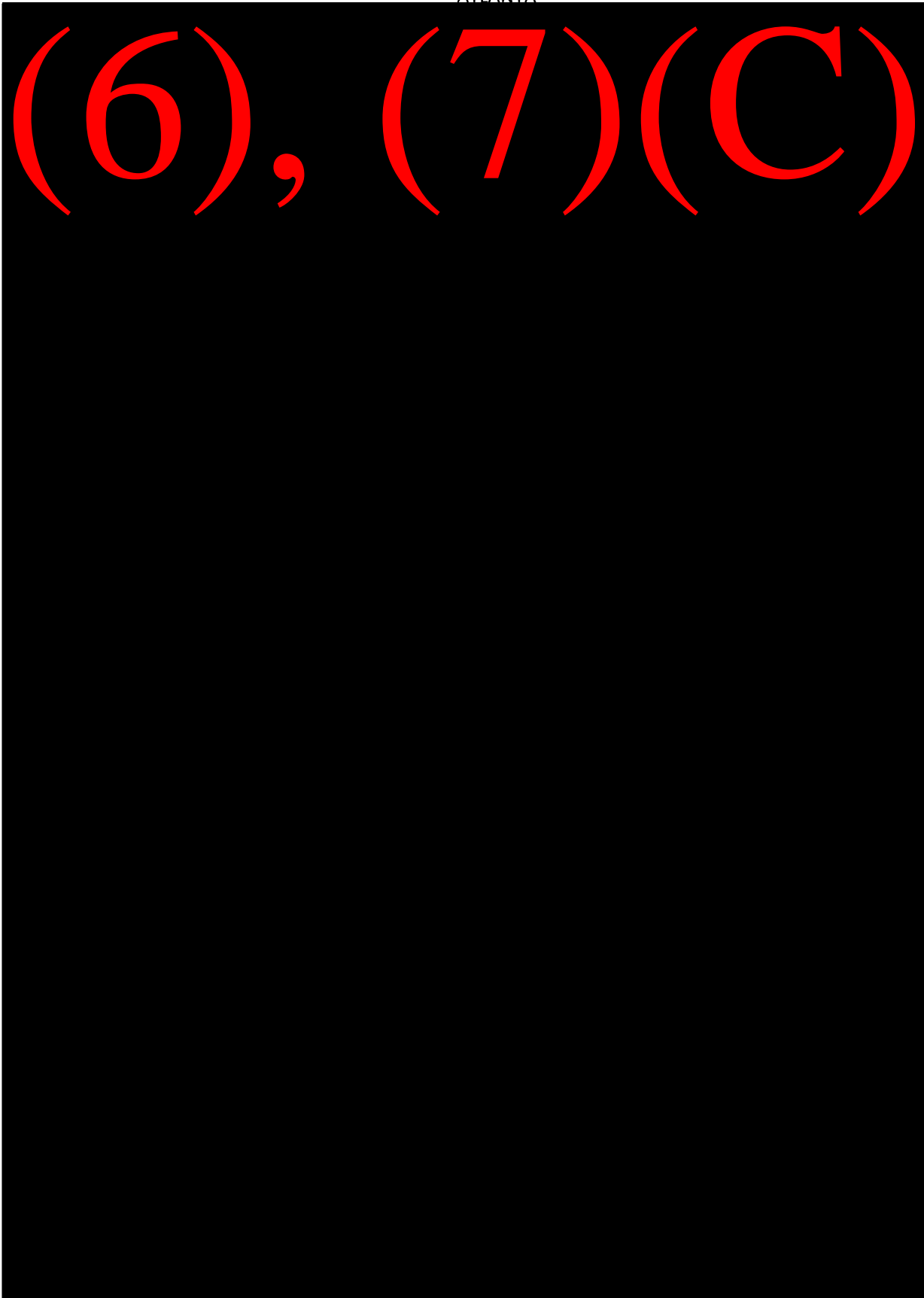
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