



CALIFORNIA DEPARTMENT OF
FOOD & AGRICULTURE

Karen Ross, Secretary

March 27, 2015

DMS NOTICE
W - 15 - 01
DISCARD: RETAIN

TO: WEIGHTS AND MEASURES OFFICIALS

SUBJECT: Settlement – Alco Iron & Metal Company, a California Corporation

Enclosed is a copy of the Stipulated Final Judgment and Permanent Injunction issued against Alco Iron & Metal Company, a California Corporation. The case was filed on March 4, 2015, by the Alameda County District Attorney's Office for knowingly issuing a false weight, measure, or count on a weighmaster certificate; issuing weighmaster certificates that do not contain all of the information required by law; and, failing to maintain a commercial device that is used for measuring weight, measure or count in accordance with device requirements in violation of California Business and Professions Code Sections 12107, 12713, 12714, 12714.5, 12715, and, 12718.

The California Department of Food and Agriculture, Division of Measurement Standards (Department) worked with weights and measures investigators from Alameda County on this case. The total settlement was for \$750,000. Civil penalties amounted to \$350,000, agency costs were \$350,000, and a \$50,000 one-time credit to the defendant to partially offset expenses incurred to institute compliance measures to correct and prevent future violations.

Alameda County should be sure to report these penalties and separately record their individual investigative cost reimbursements in the appropriate columns of the County Monthly Report.

The Department appreciates the fine work done by the Alameda County District Attorney's Office along with the state and county investigators that documented and caused to be prosecuted these violations. If you have any questions, please contact Katherine de Contreras, Supervising Special Investigator, Enforcement Branch at (916) 229-3047, or katherine.decontreras@cdfa.ca.gov.

Sincerely,

Kristin J. Macey
Director

Enclosure

cc: Gary Leslie, County/State Liaison, CDFA





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FILED
 ALAMEDA COUNTY

MAR 04 2015

CLERK OF THE SUPERIOR COURT
 By *[Signature]* Deputy

Attorneys for Plaintiff

SUPERIOR COURT OF THE STATE OF CALIFORNIA
 IN AND FOR THE COUNTY OF ALAMEDA
 HAYWARD HALL OF JUSTICE

13 PEOPLE OF THE STATE OF CALIFORNIA,
 14
 15 Plaintiff,
 16 vs.
 17 ALCO IRON & METAL COMPANY, a
 18 California Corporation,
 19 Defendant.

Case No.: *HG 15759704*

STIPULATED FINAL JUDGMENT AND
 PERMANENT INJUNCTION

21 Plaintiff, the People of the State of California, represented by Nancy E. O'Malley, District
 22 Attorney of Alameda County, by Anthony P. Douglas and Matthew L. Beltramo, Deputy District
 23 Attorneys, and Defendant, ALCO IRON & METAL COMPANY, a California Corporation (hereinafter
 24 "Defendant"), represented by Wolf, Pennella & Stevens, LLP, by Paul D. Wolf and James Stevens,
 25 Attorneys-at-Law, having stipulated to entry of this Stipulated Final Judgment and Permanent Injunction
 26 (hereinafter "Stipulated Final Judgment") without the taking of proof and without this Stipulated Final
 27 Judgment constituting evidence of or an admission by any party regarding any issue of fact or law

1 alleged in the Complaint, and Defendant having waived the right to appeal, and good cause appearing,
2 IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

- 3
- 4 1. The Court has jurisdiction over the parties and subject matter of this case;
- 5
- 6 2. The District Attorney for the County of Alameda has the authority under the laws of the State
7 of California to bring this action for the protection of the People of the State of California
8 concerning the conduct alleged in the Complaint;
- 9
- 10 3. As set forth in the parties' Stipulation for Entry of Judgment, the complaining party in this
11 matter, Pick-N-Pull Auto Dismantlers, has certified in writing that Defendant fully
12 compensated it for any loss suffered as a result of conduct alleged in the Complaint,
13 including costs;
- 14
- 15 4. This Stipulated Final Judgment has been reviewed by the Court, and the Court finds that it
16 has been entered into in good faith and is in all respects just, reasonable, equitable and
17 adequate.

18 **INJUNCTIVE RELIEF**

- 19
- 20 5. Pursuant to Business and Professions Code Section 17203, Defendant, its employees, agents,
21 officers, directors, managers, representatives, and all persons who are acting in concert with
22 or at the direction of any of these entities or individuals and with actual or constructive
23 knowledge of this Stipulated Final Judgment¹ are hereby permanently enjoined and
24 restrained from directly or indirectly doing any of the following acts or practices in the State
25 of California:

26

27 ¹ As used hereafter, the terms "ALCO" or "Defendant" collectively refer to all such individuals or
28 entities.

- 1 a. Providing false information regarding the weight of metals delivered to or received by
2 Defendant for recycling and redemption, including but not limited to any of the
3 following acts:
- 4 i. misrepresenting the gross weight of recycled metals and their container;
 - 5
 - 6 ii. misrepresenting the tare weight of the container;
 - 7
 - 8 iii. misrepresenting the net weight of any recycled metals;
 - 9
 - 10 iv. including any false information regarding the gross, tare or net weights of any
11 recycled metals or containers on any weighmaster certificate;
 - 12
 - 13 b. Violating Business & Professions Code section 12718 and any of its subparts,
14 including but not limited to subpart (e), which prohibits the knowing issuance of a
15 weighmaster certificate giving "a false weight, measure, or count";
 - 16
 - 17 c. Violating Business & Professions Code section 12713, 12714, 12714.5 and 12715 by
18 issuing a weighmaster certificate that does not contain all the information required by
19 those statutes in the manner so provided.
 - 20
 - 21 d. Violating Penal Code sections 484 or 487 by intentionally misrepresenting the weight
22 of recycled metals and thereby the amount paid to customers for such metals;
 - 23
 - 24 e. Violating Business & Professions Code section 17200 by violating any law or
25 regulation pertaining to weighmasters or the weighing of and payment for recycled
26 metals;
 - 27
 - 28 f. Failing to maintain any commercial device that is used for measuring weight,
measure or count, including any commercial scale, in accordance with Division 5 of
the California Business and Professions Code, and any regulations promulgated
thereunder; and

1 g. Employing as a weighmaster, deputy weighmaster or agent thereof any individual
2 who was found or deemed to have been responsible for any of the acts alleged in the
3 Complaint.

4
5 6. To ensure that the acts alleged in the Complaint do not recur, within thirty (30) days of entry
6 of this Stipulated Final Judgment, Defendant shall have fully instituted the following
7 remedial measures:

8 a. Consumer Display: Defendant shall install and maintain in good working condition a
9 supplemental electronic readout (hereinafter the "Consumer Display") adjacent to the
10 non-ferrous truck scale located at 2350 Davis Street, San Leandro, California
11 (hereinafter the "San Leandro non-ferrous truck scale"). The Consumer Display shall
12 be easily visible to any customer or other person who wishes to move a loaded
13 vehicle or other container onto the San Leandro non-ferrous truck scale and shall be
14 protected against tampering and exposure to the elements. The Consumer Display
15 shall be electronically linked to and show the same information contained on the
16 display in the weighmaster's office at the San Leandro non-ferrous truck scale
17 (hereinafter the "Primary Display") and at a minimum, shall display the following
18 information:

19
20 i. The weight of the non-ferrous truck scale immediately prior to a loaded
21 vehicle or other container being moved onto the scale (hereinafter the "Pre-
22 Load Weight"). In the event the Pre-Load Weight is anything other than zero
23 ("000"), ALCO shall immediately: (a) suspend the weighing process, (b)
24 notify the Manager of Corporate Security (whose duties are more fully set
25 forth in Part 6.e, below); (c) take steps to determine the source of the
26 discrepancy and (d) correct the problem, all prior to resuming commercial use
27 of the scale. A non-zero Pre-Load weigh is permissible if, and only if, ALCO
28

1 has disclosed the exact non-zero Pre-Load Weight to the customer prior to the
2 weighing process and the Customer has agreed to it in writing.

3
4 ii. After the initial loading process is complete, the Consumer Display shall show
5 the gross weight of the loaded vehicle or container, rendered in pounds.

6
7 iii. After the metal to be recycled is off-loaded and the empty vehicle or container
8 returned to the scale, the Consumer Display shall show the tare weight of the
9 container, rendered in pounds.

10 b. Corporate Displays: Defendant shall install and maintain in good working condition
11 computer or other electronic displays (the "Corporate Displays") within its corporate
12 offices showing the same information contained on the Primary Display. At least one
13 Corporate Display shall be maintained in Defendant's executive offices and shall be
14 visible at all times to the Manager of Corporate Security or his or her designee.

15 c. Video Surveillance: ALCO shall install and maintain video surveillance equipment in
16 the locations described below:

17
18 i. inside the weighmaster's office at the San Leandro non-ferrous truck scale
19 located at 2350 Davis Street, San Leandro, California, in a manner capable of
20 observing the operator of the scale and the Primary Display;

21
22 ii. adjacent to the San Leandro non-ferrous truck scale, in a manner capable of
23 observing both the scale itself and the Consumer Display; and

24
25 iii. all other locations at the Davis Street facility in San Leandro in which non-
26 ferrous materials are weighed.

27 The locations listed above are not intended to be exclusive and ALCO may choose to
28 install and maintain video surveillance cameras at other locations.

1 ALCO shall employ a video surveillance system capable of recording and retaining at
2 least thirty (30) days of surveillance video in digital format and shall ensure that the
3 maximum number of days of surveillance are stored at any given time. The Manager
4 of Corporate Security (or his or her designee) shall make any video surveillance or
5 portion thereof available to the Alameda County District Attorney's Office upon
6 request.

7
8 d. Weighmaster Certificate: In addition to the information required by Business and
9 Professions Code section 12715, any weighmaster certificate generated by ALCO in
10 connection with the weighing of non-ferrous materials at the San Leandro non-ferrous
11 truck scale shall have the Pre-Load Weight printed on it. The Pre-Load Weight shall
12 be printed by computer process, except in the event the scale software does not offer
13 that functionality, in which case the weighmaster shall otherwise legibly indicate the
14 Pre-Load weight, together with his or her initials, on each weighmaster certificate. In
15 the event the Pre-Load weight is anything other than zero ("0000") and the customer
16 has not agreed to a non-zero Pre-Load Weight in writing, ALCO shall immediately
17 take the steps identified in Part 6.a.i., above.

18 e. Manager of Corporate Security: Defendant shall create a new executive position
19 entitled "Manager of Corporate Security" and hire a person to fill that position on a
20 full-time basis. The Manager of Corporate Security shall be an individual with at
21 least three (3) years prior experience in corporate security or law enforcement. Said
22 individual shall report directly to the Defendant's president or general counsel and
23 shall have the following duties and responsibilities:

24
25 i. Prevention of all types of theft related to recycled metals at Defendant's
26 facilities or by Defendant's employees, including but not limited to
27 acceptance of stolen metals, short-weighting customers, and underpaying
28 customers;

- 1 ii. Surveillance and auditing of Defendant's operations, procedures and
2 personnel in order to address and limit the potential for theft or other
3 malfeasance;
4
5 iii. Investigation of suspicions of theft or other violations of law or regulations;
6
7 iv. Overseeing any weighmasters, deputy weighmasters or their agents to ensure
8 compliance with the terms of this Stipulated Final Judgment and to further
9 ensure that metal loads are being weighed properly;
10 v. Reporting to law enforcement any theft or other violations of law that involve
11 potential loss to customers;
12 vi. Recommending to Defendant's president or his or her designee any discipline,
13 including but not limited to immediate termination, of any employee found to
14 have engaged in theft of any kind;
15
16 vii. Overseeing the purchasing, installation and maintenance of security systems
17 designed to detect and prevent theft from customers or Defendant, including
18 those described in Part 6.c., above; and
19 viii. Cooperation with the Alameda County District Attorney's Office, the
20 Division of Measurement Standards, Alameda County Weights and Measures
21 Department, or any other law enforcement or regulatory body having
22 jurisdiction over Defendant's activities.

23
24 Defendant shall maintain a full-time Manager of Corporate Security so long as the
25 terms of this injunction remain in effect.

26 **CONTINUATION OF CERTAIN PRIOR INJUNCTIVE TERMS**

1 7. On or about September 24, 2009, this Court entered Judgment against Defendant in *People v.*
2 *ALCO Iron & Metal Company*, Hayward Hall of Justice, Docket HG09475788 (September
3 24, 2009) (hereinafter the "First Judgment"). As the parties anticipate filing a "Stipulation
4 for Termination of Injunctive Terms" as to the First Judgment, in which they stipulate that
5 the injunctive provisions in that judgment may be terminated, and to ensure continuing
6 compliance with the subject matter of the First Judgment, Defendant shall continue to abide
7 by the following provisions:

- 8
- 9 a. Defendant shall comply with and not violate Business & Professions Code sections
10 21606(a), 21606(c), 21608.5, 21609.5 or Penal Code section 496a [First Judgment
11 paragraphs 4(A), (D), (G)];
- 12 b. Defendant shall not dismantle automobiles without a license as required by Vehicle
13 Code section 11500 or in violation of Vehicle Code section 5500 [First Judgment
14 paragraphs 4(B), (C)];
- 15 c. Defendant shall retain photographs of every person from whom scrap metal is
16 purchased, as well as the materials purchased, through Defendant's walk-in service
17 and shall make such photographs available to law enforcement upon request.
18 Defendant shall post a conspicuous notice notifying customers that their photographs
19 are being taken and stored in such a manner [First Judgment paragraph 4(H)];
- 20
- 21 d. Defendant shall refuse to purchase scrap metal from any individual identified by law
22 enforcement on a "do not buy list" and shall maintain a list containing the names,
23 addresses and driver license numbers of individuals who sell scrap metal more than
24 five (5) times in any given month. The list shall be made available to law
25 enforcement upon request [First Judgment paragraph 4(I)]; and
- 26
- 27 e. Defendant shall continue its scrap metal recycling training program specified in
28 paragraph 4(E) of the First Judgment.

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COMPLIANCE WITH STIPULATED FINAL JUDGMENT

8. To ensure compliance with this Stipulated Final Judgment, Defendant shall within thirty (30) days of entry of judgment, or within two weeks of any new hire, provide a copy of the injunctive provisions of this Stipulated Judgment to all its weighmasters, deputy weighmasters, yard supervisors, and any other employee responsible for or involved in accepting, weighing, transporting, transferring, or paying for non-ferrous recycled metals. Each person who receives a copy of the injunctive provisions of this Stipulated Final Judgment shall sign a form stating that he or she has received, read and understood the Injunctive Terms contained herein and Defendant shall retain copies of these forms in accordance with the terms of this Stipulated Final Judgment.
9. To further ensure compliance with this Stipulated Final Judgment, any inspector or peace officer employed by or working in conjunction with the Alameda County District Attorney's Office shall have the right to (a) conduct unannounced site visits at any location within Alameda County where Defendant receives, weighs or pays for recycled non-ferrous recycled metals, with or without probable cause, and (b) immediately obtain copies of any of the documents, records or surveillance footage described in this Stipulated Final Judgment. Nothing in the foregoing paragraph is intended to limit the People's ability to employ other valid investigatory techniques at any location where Defendant operates or does business.
10. Any and all records made or kept pursuant to this Stipulated Final Judgment shall be retained for a period of four (4) years after creation. In addition to the requirements set forth in paragraph 9 above, upon request by the People, Defendant shall furnish any such record within thirty (30) days after the request is made, unless another date is agreed upon in writing.

MONETARY RELIEF

1 11. Pursuant to Business & Professions Code Section 17203 and 17206, Defendant shall pay the
2 total amount of SEVEN HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS
3 (\$750,000.00), allocated as follows:

4 a. Defendant shall receive a one-time credit of FIFTY THOUSAND AND 00/1000
5 DOLLARS (\$50,000.00) to partially offset expenses incurred in instituting the
6 remedial measures set forth in Part 6, above;

7
8 b. Defendant shall pay a total of THREE HUNDRED FIFTY THOUSAND AND
9 00/100 DOLLARS (\$350,000.00) in investigate costs, said amount to be paid as set
10 forth below:

11 i. One check, in the amount of TWO THOUSAND THREE HUNDRED SIXTY
12 AND 00/100 DOLLARS (\$2360.00) shall be made payable to the "California
13 Department of Food and Agriculture – Reference PCA 54001";

14
15 ii. One check in the amount of TWO THOUSAND SIX HUNDRED FORTY
16 AND 00/100 DOLLARS (\$2640.00) shall be made payable to the "County of
17 Alameda, Office of Weights & Measures"; and

18
19 iii. One check in the amount of THREE HUNDRED FORTY FIVE THOUSAND
20 AND 00/100 DOLLARS (\$345,000) shall be made payable to the "Alameda
21 County District Attorney's Office – Investigative Costs".

22 c. Defendant shall pay THREE HUNDRED FIFTY THOUSAND AND 00/100
23 DOLLARS (\$350,000) as civil penalties, said amount to be paid by check made
24 payable to the "Alameda County Treasurer f/b/o District Attorney's Office."

25
26 12. All four checks described above shall be delivered to the Alameda County District
27 Attorney's Office, Consumer and Environmental Protection Division, 7677 Oakport Street,
28 Suite 650, Oakland, CA 94621, ATTN: Matthew Beltramo, no later than **May 29, 2015.**

1 Failure to deliver said checks on or before this date shall be deemed a violation of the terms
2 of this Final Judgment and shall subject Defendant to all remedies available under the law.

3
4 13. Further, in the event Defendant fails to timely deliver the checks as set forth above, the total
5 amount of penalties made payable under this Final Judgment shall immediately increase from
6 THREE HUNDRED FIFTY THOUSAND AND 00/100 DOLLARS (\$350,000) to SEVEN
7 HUNDRED THOUSAND AND 00/100 DOLLARS (\$700,000.00).

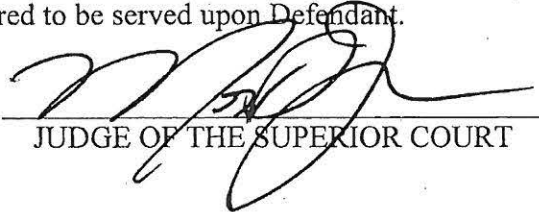
8 **RETENTION OF JURISDICTION AND OTHER TERMS**

9
10 14. This Court will retain jurisdiction to allow either party to apply at any time for any orders
11 and directions that may be necessary to understand and carry out this Stipulated Final
12 Judgment, or to seek modification or termination of any of the injunctive terms, or to seek
13 enforcement of any of those terms, or to obtain penalties or other punitive measures for any
14 violations. If the People prove any violations of this Stipulated Final Judgment in a court of
15 law, they may recover reasonable attorney's fees pursuant to Code of Civil Procedure section
16 685.040 and 1033.5(a)(10)(A).

17 15. The parties will bear their own costs in this action, including any first appearance filing fees.

18
19 16. This Stipulated Final Judgment becomes effective upon entry, which is ordered forthwith.
20 No notice of entry of judgment is required to be served upon Defendant.

21 DATED: 3/4/15

22 
23 _____
24 JUDGE OF THE SUPERIOR COURT