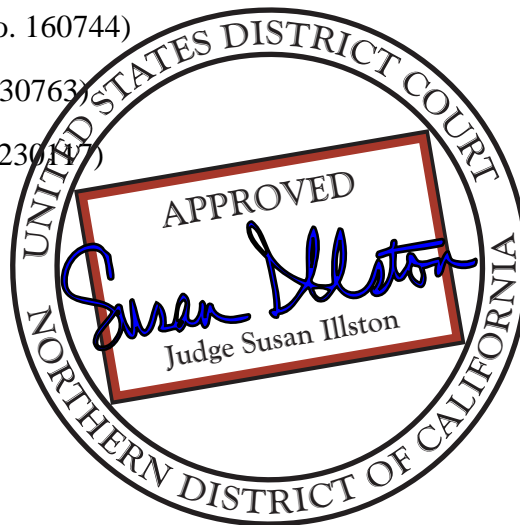


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17 **UNITED STATES DISTRICT COURT**  
 18 **NORTHERN DISTRICT OF CALIFORNIA**  
 19 **SAN FRANCISCO DIVISION**

20 KRISTOPHER DEANE, and MICHAEL  
 21 ROMANO, individually, and on behalf of all  
 others similarly situated,

22 Plaintiff,

24 vs.

26 FASTENAL COMPANY,

27 Defendants.

Case No. CV11-0042 SI (DMR)

**JOINT RECOMMENDATION AS TO  
 FORM OF NOTICE FOR FLSA OPT-IN  
 MEMBERS**

Complaint Filed: January 4, 2011  
 Trial Date: None

1 Pursuant to the Court's Order Granting Conditional Collective Action Certification dated  
2 November 14, 2011, Plaintiffs Kristopher Deane and Michael Romano, and Defendant Fastenal  
3 Company, hereby submit, as Exhibit A hereto, their joint recommendation as to the form of notice  
4 to be sent to putative FLSA collective action opt-in members, to be processed through a third party  
5 administrator.  
6

7 DATED: December 2, 2011

OGLETREE, DEAKINS, NASH, SMOAK &  
8 STEWART, P.C.

9  
10 By: /s/ Erica Rocush  
11 A. CRAIG CLELAND  
12 EVAN R. MOSES  
13 ERICA ROCUSH  
14 Attorneys for Defendant  
FASTENAL COMPANY

15 DATED: December 2, 2011

SCOTT COLE & ASSOCIATES, APC

16  
17 By: /s/ Hannah R. Salassi  
18 SCOTT EDWARD COLE  
19 MOLLY A. DESARIO  
20 HANNAH R. SALASSI  
Attorneys for Representative Plaintiffs and the  
Plaintiff Classes

21 11389060.1 (OGLETREE)  
22  
23  
24  
25  
26  
27  
28

## **Exhibit A**

1 **UNITED STATES DISTRICT COURT**  
2 **NORTHERN DISTRICT OF CALIFORNIA**  
3 **OFFICIAL COURT-ORDERED NOTICE**

4 KRISTOPHER DEANE and MICHAEL  
5 ROMANO, individually, and on behalf of all  
6 others similarly situated,

6 Plaintiffs,

7 v.

8 FASTENAL COMPANY,

9 Defendant.

Case No. CV11-0042 SI (DMR)

**NOTICE OF RIGHT TO PARTICIPATE  
IN LAWSUIT**

10  
11 **TO: ALL GENERAL MANAGERS EMPLOYED BY FASTENAL FROM**  
12 **NOVEMBER 12, 2008 TO THE DATE OF THIS NOTICE.**

13 **NOTICE OF RIGHT TO PARTICIPATE IN LAWSUIT**

14 The purpose of this Notice is to inform you of a collective-action lawsuit, alleging unpaid  
15 overtime wages in violation of the Fair Labor Standards Act of 1938 (FLSA). You have been  
16 identified as a current or former employee who worked in the position of General Manager for  
17 Fastenal Company from November 12, 2008, through the date of this Notice. Because this lawsuit  
18 could affect your legal rights, this Notice instructs you on the procedure for joining this lawsuit and  
19 becoming a party plaintiff, should you choose to do so.

20 This Notice and its contents have been authorized by The Honorable Susan Illston, Federal  
21 Judge for the U.S. District Court for the Northern District of California. The federal court has  
22 taken no position in this case on the merits of Plaintiffs' claims or on Fastenal Company's  
23 defenses. Please do not contact the Court or the Clerk of Court about this case, and do not return  
24 signed Consent-to-Join forms to the Court or Clerk of Court.

25 **What Is This Lawsuit About?**

26 Two former General Managers who worked for Fastenal Company, Plaintiffs Kristopher  
27 Deane and Michael Romano, sued Fastenal Company in January 2011, claiming that the Company  
28 failed to pay them overtime wages that they were allegedly owed under federal law. The lawsuit is

1 *Deane, et al. v. Fastenal Company*, U.S.D.C. Case No. CV11 00042 SI. Specifically, Plaintiffs  
2 allege that they and other General Managers worked in excess of forty hours per week without  
3 being paid overtime compensation as required by the FLSA. This lawsuit seeks to recover  
4 overtime wages, liquidated damages, and attorneys' fees.

5 Fastenal Company denies the Plaintiffs' allegations and also denies that it is liable to them  
6 or any other General Managers for any damages or other relief. Specifically, Fastenal claims that  
7 Plaintiffs and any other General Managers are not entitled to overtime wages under the FLSA. It  
8 also asserts that it properly paid all its General Managers all wages that they were lawfully owed.  
9 Fastenal also denies that Plaintiffs and any putative opt-ins are "similarly situated" under  
10 applicable law.

11 The Court has not yet decided who is right or wrong in this lawsuit. However, your legal  
12 rights to participate in the lawsuit may be affected by any such decision.

13 The Court has ordered this Notice so that you and other individuals besides Mr. Deane and  
14 Mr. Romano, who may be "similarly situated" to them, will know about your rights to join—or not  
15 to join—this lawsuit at your choice.

16 **Am I Eligible To Join This Lawsuit?**

17 If you are or were a General Manager who worked for Fastenal Company at any time from  
18 November 12, 2008, to the date of this Notice, you are eligible to join this lawsuit. If you do not  
19 meet these criteria, you are not eligible to join this lawsuit.

20 **What Happens If I Join Or Do Not Join This Lawsuit?**

21 If you join this lawsuit, you will become a party plaintiff, and you will be bound by any  
22 ruling, judgment, or settlement, whether favorable or unfavorable to you. If you join, you may be  
23 required to provide information, be deposed, testify in court, or any combination of these. In  
24 addition, if Fastenal ultimately prevails, you may be liable to pay a portion of its court costs.  
25 Conversely, if Plaintiffs ultimately prevail, you may be entitled to damages, penalties, and interest  
26 on any unpaid back wages. The law prohibits Fastenal from retaliating against you for exercising  
27 your right to join or not join this case. Because retaliation is also against Fastenal's policy, if you  
28 believe you have been retaliated against, you should promptly contact Fastenal's Human Resources

1 Department at (507) 453-8112, or Plaintiffs' counsel at the address below.

2 You also have the right not to join this lawsuit. If you do not join this lawsuit, you will not  
3 be affected by any judgment, ruling, or settlement in this case, whether favorable or unfavorable.

4 You also will not be entitled to share in any damages that may be recovered in this lawsuit, you  
5 will not be required to pay any court costs if Plaintiffs lose, and you are free to file you own  
6 lawsuit. However, your failure to join now may result in a loss of your right to damages later.

7 **Who Will Represent Me If I Join This Lawsuit?**

8 You may choose Plaintiffs' attorneys to represent you if you choose to join this lawsuit.

9 These attorneys are representing Plaintiffs and any other opt-ins who agree to their representation.

10 Plaintiffs' attorneys will represent you on a contingency fee basis. This means that if Plaintiffs and  
11 any opt-ins do not recover any damages or relief in this case, there will be no attorneys' fees. If,

12 however, there is a recovery and if you have elected to be represented by Plaintiffs' counsel, then

13 these lawyers will receive a part of any money judgment or settlement obtained in favor of

14 Plaintiffs and any opt-ins.

15 You also have the right to seek and obtain independent legal counsel to represent you if you  
16 join this lawsuit. Finally, you have the right to represent yourself if you join this lawsuit.

17 **How Do I Join This Lawsuit?**

18 You may join this lawsuit and become a party plaintiff by signing a consent-to-join form,

19 which is attached (entitled "Consent to Join Collective (Class) Action"). To take part in the

20 lawsuit, you must sign and send the attached consent form to the lawyers listed below, postmarked

21 no later than **90 days from date of this Notice**. Or you may fax or mail the consent form to **[name**

22 **of Third Party Administrator/address]**. The enclosed return envelope is pre-addressed and

23 postage-paid for your convenience. Should the enclosed consent form be lost or misplaced, please

24 contact Plaintiffs' lawyers to obtain another copy. If you have any questions, you may contact the

25 Plaintiffs' lawyers:

26 Scott Edward Cole, Esq.  
27 Molly A. DeSario, Esq.  
28 Hannah R. Salassi, Esq.  
**SCOTT COLE & ASSOCIATES, APC**  
1970 Broadway, Ninth Floor

1 Oakland, California 94612  
2 Telephone: (510) 891-9800  
3 Facsimile: (510) 891-7030  
4 E-mail: scole@scalaw.com  
5 E-mail: mdesario@scalaw.com  
6 E-mail: hsalassi@scalaw.com  
7 Web: www.scalaw.com

8 **May I Contact Fastenal's Attorneys?**

9 You are also free to contact Fastenal's attorneys if you would like to do so. You may reach  
10 them at:

11 Craig Cleland, Esq.  
12 Evan Moses, Esq.  
13 Leslie Wallis, Esq.  
14 Erica Rocush, Esq.  
15 **OGLETREE, DEAKINS, NASH, SMOAK & STEWART, P.C.**  
16 Steuart Tower, Suite 1300  
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23 Email: leslie.wallis@ogletreedeakins.com  
24 Email: erica.rocush@ogletreedeakins.com  
25 Web: www.ogletreedeakins.com

26 Dated: \_\_\_\_\_ [Month Day, Year]

27 The Hon. Susan Illston  
28 United States District Court  
Northern District of California  
San Francisco Division

11389760.1 (OGLETREE)