

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

Public Service Commission
Shalom International Market LLC
W & M Enforcement

Case No. WM-23-67

AFFIDAVIT OF SERVICE BY CERTIFIED AND REGULAR MAIL

STATE OF NORTH DAKOTA
COUNTY OF BURLEIGH

Shelly A. Bauske deposes and says that:

she is over the age of 18 years and not a party to this action and, on the **30th day of March 2023** she deposited in the United States Mail at Bismarck, North Dakota, **one** envelope with certified postage, return receipt requested, fully prepaid, securely sealed and containing a photocopy of:

- **Order on Consent Agreement**

The envelope was addressed as follows:

Paul Nketia
Shalom International Market LLC
325 28th Ave SW Ste A
Minot ND 58701-7058
Cert. No. 7020 1290 0001 6150 9405

Shelly A. Bauske further deposes and says that on the **30th day of March 2023**, she deposited in the United States Mail, Bismarck, North Dakota, **one** envelope by regular mail, with postage fully prepaid, securely sealed, each containing a photocopy of the same.

The envelope was addressed as follows:

Paul Nketia
Shalom International Market LLC
2031 33rd St NW Apt 208
Minot ND 58703

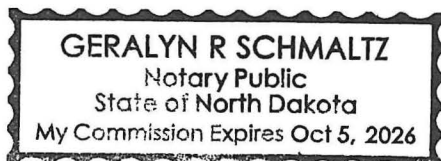
Each address shown is the respective addressee's last reasonably ascertainable post office mail address.

Subscribed and sworn to before me
this **30th day of March 2023**.

Shelly A Bausk

Geraldyn R Schmalz
Notary Public

SEAL



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WM-23-67 Filed: 3/30/2023 Pages: 11
Affidavit of Service by Certified and Regular Mail -
Order on Consent Agreement

Public Service Commission

STATE OF NORTH DAKOTA
PUBLIC SERVICE COMMISSION

**Public Service Commission
Shalom International Market LLC
W & M Enforcement**

Case No. WM-23-67

ORDER ON CONSENT AGREEMENT

March 29, 2023

Preliminary Statement

On September 27, 2022, a Commission Weights and Measures Inspector (Inspector) conducted an inspection at Shalom International Market LLC's (Shalom) principal place of business which is located at 325 28th Avenue Southwest, Minot, North Dakota 58701.

During the inspection, the Inspector identified an ACS System Electronic Scale (ACS Scale) being used commercially which did not conform to state laws and rules. The ACS Scale was not National Type Evaluation Program (NTEP) certified and it was not a Legal for Trade scale. The Inspector affixed a "Non-Commercial Device" tag (number 30209) to the ACS Scale which stated the device is illegal to use in commerce. The Inspector informed a Shalom employee and the owner, Paul Nketia, that commercial use of the device must cease immediately. The owner was instructed how to obtain a scale that would conform to state laws and rules and would be Legal for Trade.

On October 24, 2022, the Inspector conducted a follow-up inspection at Shalom and observed Shalom actively using the ACS Scale affixed with the "Non-Commercial Device" tag, a violation of North Dakota Century Code (N.D.C.C.) § 64-03-02. When questioned about the use of the non-compliant ACS Scale, a Shalom employee stated that the new scale had not arrived. The Inspector spoke to the owner and informed both the owner and the employee that using the device is a violation of state laws and rules and must cease immediately.

On November 9, 2022, the Inspector conducted an inspection of Shalom's new scale, a Shanghai DLP-300 Scale (Shanghai Scale), which did conform to state laws and rules and is Legal for Trade. The Inspector tested the device and determined it did not meet acceptance tolerance as required by paragraph G-T.1. of the National Institute of Standards and Technology (NIST) Handbook 44 (2020 edition), adopted by reference.

However, since the Shanghai Scale met maintenance tolerance, paragraph G-T.2. of NIST Handbook 44 (2020 edition), the Inspector affixed a "Repair Notice" to the Shanghai Scale tag which authorized Shalom temporary use of the device for 60 days. The steps required to bring the Shanghai Scale into compliance were explained to the employee at Shalom. The owner was not available; however, the employee texted him a picture of the "Repair Notice."

On February 6, 2023, the Inspector followed up on the 60-day "Repair Notice" tag and noted the Shanghai Scale had not been repaired and was still being used commercially. The 60-day temporary variance period provided by the "Repair Notice" tag expired on January 9, 2023; therefore, the "Repair Notice" tag defaulted to a "Rejected for Repair" tag and in accordance with N.D. Admin. Code § 69-10-01-05, the Shanghai Scale was illegal to use in commerce. The Inspector affixed a "Non-Commercial Device" tag (number 30468) and explained the situation to Mr. Nketia over the phone that he must contact a Registered Service Company to have the Shanghai Scale calibrated and placed into service.

On February 23, 2023, a Consent Agreement between Public Service Commission Advocacy Staff (Staff) and Shalom was filed for the resolution of the violation.

Discussion

Shalom International Market LLC is a domestic limited liability company with a principal address of 325 28th Avenue Southwest Suite A, Minot, North Dakota 58701.

N.D.C.C. § 64-02-13 provides that an owner of any weighing or measuring device is responsible for its accuracy. Additionally, it is unlawful for any person to knowingly and fraudulently use a weighing or measuring device, or keep a device for public use, which does not conform to the legal standard of weights and measures of this state in accordance with N.D.C.C. § 64-03-02.

Furthermore, an operator of a commercial weighing and measuring device shall ensure that the device is designed, constructed, operated, and maintained to meet applicable standards in the North Dakota Century Code and the North Dakota Administrative Code. Finally, the Commission may require proof of compliance as required by N.D. Admin. Code § 69-10-01-13.

Shalom violated N.D.C.C. § 64-02-13 and N.D. Admin. Code § 69-10-01-13 by using a weighing device that does not conform to the legal standards of weights and measures of the state and then continuing to use a non-conforming device between September 27, 2022, and October 24, 2022.

Pursuant to N.D. Admin. Code §§ 69-10-01-03.2 and 69-10-01-05, an equipment repair notice tag defaults to a rejection seal if the device is not repaired or modified to a

compliant state within sixty days. Once a weighing or measuring device has been rejected, the device may not be used in commerce.

Furthermore, Shalom violated N.D. Admin. Code §§ 69-10-01-03.2 and 69-10-01-05 by using a scale in commerce that had been rejected for repair.

Shalom and Staff engaged in good faith settlement discussions resulting in a Consent Agreement intended to avoid further administrative proceedings or litigation.

Under the Consent Agreement, Shalom agrees to be assessed a civil penalty of \$300 made payable to the North Dakota Public Service Commission within ten (10) business days of service of the Order accepting or approving the Consent Agreement (Order).

Having considered this matter, the Commission finds the February 23, 2023, Consent Agreement is reasonable and acceptable. Therefore, the Commission issues the following:

Order

The Commission Orders:

1. The Consent Agreement, filed with the Commission on February 23, 2023, between Shalom and Staff is approved. A copy of the Consent Agreement is attached to and made a part of this Order on Consent Agreement.
2. Shalom is assessed a civil penalty of \$300, payable to the North Dakota Public Service Commission within ten (10) business days of service of this Order.
3. For identification of Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), the performance is restitution, remediation, or an amount paid to come into compliance with the law. Shalom shall provide the Commission with a U.S. Department of the Treasury Internal Revenue Service Form W-9 for the purpose of the identification requirement of 26 U.S.C. § 162(f)(2)(A)(ii) within ten (10) days of the issuance of the Order.

PUBLIC SERVICE COMMISSION


Sheri Haugen-Hoffart
Commissioner


Randy Christmann
Chair


Julie Fedorchak
Commissioner

BEFORE THE PUBLIC SERVICE COMMISSION OF NORTH DAKOTA

Public Service Commission
Shalom International Market LLC
W & M Enforcement

Case No. WM-23-67

PUBLIC SERVICE COMMISSION,)	
)	
Complainant,)	
)	
vs.)	CONSENT AGREEMENT
)	
Shalom International Market LLC)	
)	
Respondent.)	

This Consent Agreement is entered into by and between Shalom International Market LLC (Shalom) and the Public Service Commission (Commission) Advocacy Staff (Staff) (together, the Parties) for resolution of Case No. WM-23-67.

Discussion

On September 27, 2022, a Commission Weights and Measures Inspector (Inspector) conducted an inspection at Shalom's principal place of business which is located at 325 28th Avenue Southwest, Minot, North Dakota 58701. During the inspection, the Inspector identified an ACS System Electronic Scale (ACS Scale) being used commercially which did not conform to state laws and rules. The ACS Scale was not National Type Evaluation Program (NTEP) certified and it was not a Legal for Trade scale. The Inspector affixed a "Non-Commercial Device" tag (number 30209) to the ACS Scale which stated the device is illegal to use in commerce. The Inspector informed a

Shalom employee and the owner, Paul Nketia, that commercial use of the device must cease immediately. The owner was instructed how to obtain a scale that would conform to state laws and rules and would be Legal for Trade.

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On February 6, 2023, the Inspector followed up on the 60-day "Repair Notice" tag and noted the Shanghai Scale had not been repaired. The 60-day temporary variance period provided by the "Repair Notice" tag expired on January 9, 2023; therefore, the "Repair Notice" tag defaulted to a "Rejected for Repair" tag and in accordance with N.D. Admin. Code § 69-10-01-05, the Shanghai Scale was illegal to use in commerce. The Inspector affixed a "Non-Commercial Device" tag (number 30468) and explained the situation to Mr. Nketia over the phone that he must contact a Registered Service Company to have the Shanghai Scale calibrated and placed into service.

Violation 1. Use of Non-Conforming Device

N.D.C.C. § 64-02-13 provides that an owner of any weighing or measuring device is responsible for its accuracy. Additionally, it is unlawful for any person to knowingly and fraudulently use a weighing or measuring device, or keep a device for public use, which does not conform to the legal standard of weights and measures of this state in accordance with N.D.C.C. § 64-03-02.

Furthermore, an operator of a commercial weighing and measuring device shall ensure that the device is designed, constructed, operated, and maintained to meet applicable standards in the North Dakota Century Code and the North Dakota Administrative Code. Finally, the Commission may require proof of compliance as required by N.D. Admin. Code § 69-10-01-13.

Shalom violated N.D.C.C. § 64-02-13 and N.D. Admin. Code § 69-10-01-13 by using a weighing device that does not conform to the legal standards of weights and measures of the state and then continuing to use a non-conforming device between September 27, 2022 and October 24, 2022.

Violation 2. Using a Scale Rejected for Repair

Pursuant to N.D. Admin. Code §§ 69-10-01-03.2 and 69-10-01-05, an equipment repair notice tag defaults to a rejection seal if the device is not repaired or modified to a compliant state within sixty days. Once a weighing or measuring device has been rejected, the device may not be used in commerce.

Furthermore, Shalom violated N.D. Admin. Code §§ 69-10-01-03.2 and 69-10-01-05 by using a scale in commerce that had been rejected for repair.

Agreement

The Parties engaged in good faith settlement discussions resulting in this Consent Agreement. Staff's impression was that this was Shalom's first violation and since Shalom agreed to their culpability, the matter resulted in a reduced penalty amount. However, subsequent violations will likely result in an escalation of the penalty. Having agreed that settlement of this proceeding will avoid further administrative proceedings or litigation and that entry of this Consent Agreement is the most appropriate means of resolving this administrative action, the Parties agree to the following, subject to the approval and acceptance of the Commission:

1. Shalom violated N.D.C.C. § 64-02-13 and N.D. Admin. Code § 69-10-01-13 by using a weighing device that does not conform to the legal standards of weights and measures of the state and then continuing to use a non-conforming device between September 27, 2022 and October 24, 2022. Furthermore, Shalom violated N.D. Admin. Code §§ 69-10-01-03.2 and 69-10-01-05 by using a scale that had been rejected for repair.

2. Shalom agrees to be assessed a civil penalty of \$300, payable to the North Dakota Public Service Commission within ten (10) business days of service of an Order accepting or approving the Consent Agreement.
3. Staff agrees no other proceeding will be initiated and no other remedy or penalty will be sought based on the violations alleged in this case.
4. Shalom consents to the filing of the Consent Agreement and an Order and hereby waives any further procedural requirements with respect to the Order's issuance. Provided the Commission adopts this Consent Agreement and issues an Order consistent with it, Shalom understands and agrees to waive all rights to contest the violation, the right to be represented by counsel, the right to present evidence and arguments to the Commission, the right to cross-examine witnesses, or contest the validity of this Consent Agreement and Order, including all rights to administrative or judicial hearings or appeals.
5. For purposes of the identification requirement of Internal Revenue Code, 26 U.S.C. § 162(f)(2)(A)(ii), the performance is restitution, remediation, or an amount paid to come into compliance with the law. Accordingly, Shalom agrees to provide the Commission with a U.S. Department of the Treasury Internal Revenue Service Form W-9 for this purpose.
6. There are no covenants, promises, undertakings, or understandings other than specifically set forth in this Consent Agreement and Order.
7. This agreement may be executed in counterparts and duplicate copies, each which shall be deemed to be an original, and which, when taken together, shall constitute one and the same instrument.

8. The undersigned is authorized to act on behalf of Shalom and bind Shalom for purposes of this Consent Agreement and knows and fully understands the content and effect.

Dated this 23rd day of February, 2023

PUBLIC SERVICE COMMISSION
ADVOCACY STAFF – WEIGHTS & MEASUERS

By: _____



John Schuh
Special Assistant Attorney General, Bar ID 08138
North Dakota Public Service Commission
600 E Boulevard Ave., Dept. 408
Bismarck, ND 58505-0480
701-328-2421

Dated this 23rd day of February, 2023

Shalom International Market LLC

By: _____



Paul Nketia, Owner

Request for Taxpayer Identification Number and Certification

**Give Form to the
requester. Do not
send to the IRS.**

▶ Go to www.irs.gov/FormW9 for instructions and the latest information.

See Specific Instructions on page 3.

1 Name (as shown on your income tax return). Name is required on this line; do not leave this line blank.	
2 Business name/disregarded entity name, if different from above	
3 Check appropriate box for federal tax classification of the person whose name is entered on line 1. Check only one of the following seven boxes.	4 Exemptions (codes apply only to certain entities, not individuals; see instructions on page 3):
<input type="checkbox"/> Individual/sole proprietor or single-member LLC <input type="checkbox"/> C Corporation <input type="checkbox"/> S Corporation <input type="checkbox"/> Partnership <input type="checkbox"/> Trust/estate	Exempt payee code (if any) _____
<input type="checkbox"/> Limited liability company. Enter the tax classification (C=C corporation, S=S corporation, P=Partnership) ▶ _____ Note: Check the appropriate box in the line above for the tax classification of the single-member owner. Do not check LLC if the LLC is classified as a single-member LLC that is disregarded from the owner unless the owner of the LLC is another LLC that is not disregarded from the owner for U.S. federal tax purposes. Otherwise, a single-member LLC that is disregarded from the owner should check the appropriate box for the tax classification of its owner.	Exemption from FATCA reporting code (if any) _____
<input type="checkbox"/> Other (see instructions) ▶	<small>(Applies to accounts maintained outside the U.S.)</small>
5 Address (number, street, and apt. or suite no.) See instructions.	Requester's name and address (optional)
6 City, state, and ZIP code	
7 List account number(s) here (optional)	

Part I Taxpayer Identification Number (TIN)

Enter your TIN in the appropriate box. The TIN provided must match the name given on line 1 to avoid backup withholding. For individuals, this is generally your social security number (SSN). However, for a resident alien, sole proprietor, or disregarded entity, see the instructions for Part I, later. For other entities, it is your employer identification number (EIN). If you do not have a number, see *How to get a TIN*, later.

Note: If the account is in more than one name, see the instructions for line 1. Also see *What Name and Number To Give the Requester* for guidelines on whose number to enter.

Social security number						
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		-		-		
or						
Employer identification number						
<table style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 25%; border: 1px solid black; height: 20px;"></td> <td style="width: 25%; border: 1px solid black; height: 20px;"></td> <td style="width: 5%; text-align: center;">-</td> <td style="width: 25%; border: 1px solid black; height: 20px;"></td> <td style="width: 5%; text-align: center;">-</td> <td style="width: 20%; border: 1px solid black; height: 20px;"></td> </tr> </table>			-		-	
		-		-		

Part II Certification

Under penalties of perjury, I certify that:

1. The number shown on this form is my correct taxpayer identification number (or I am waiting for a number to be issued to me); and
2. I am not subject to backup withholding because: (a) I am exempt from backup withholding, or (b) I have not been notified by the Internal Revenue Service (IRS) that I am subject to backup withholding as a result of a failure to report all interest or dividends, or (c) the IRS has notified me that I am no longer subject to backup withholding; and
3. I am a U.S. citizen or other U.S. person (defined below); and
4. The FATCA code(s) entered on this form (if any) indicating that I am exempt from FATCA reporting is correct.

Certification instructions. You must cross out item 2 above if you have been notified by the IRS that you are currently subject to backup withholding because you have failed to report all interest and dividends on your tax return. For real estate transactions, item 2 does not apply. For mortgage interest paid, acquisition or abandonment of secured property, cancellation of debt, contributions to an individual retirement arrangement (IRA), and generally, payments other than interest and dividends, you are not required to sign the certification, but you must provide your correct TIN. See the instructions for Part II, later.

Sign Here	Signature of U.S. person ▶	Date ▶
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General Instructions

Section references are to the Internal Revenue Code unless otherwise noted.

Future developments. For the latest information about developments related to Form W-9 and its instructions, such as legislation enacted after they were published, go to www.irs.gov/FormW9.

Purpose of Form

An individual or entity (Form W-9 requester) who is required to file an information return with the IRS must obtain your correct taxpayer identification number (TIN) which may be your social security number (SSN), individual taxpayer identification number (ITIN), adoption taxpayer identification number (ATIN), or employer identification number (EIN), to report on an information return the amount paid to you, or other amount reportable on an information return. Examples of information returns include, but are not limited to, the following.

- Form 1099-INT (interest earned or paid)

- Form 1099-DIV (dividends, including those from stocks or mutual funds)
- Form 1099-MISC (various types of income, prizes, awards, or gross proceeds)
- Form 1099-B (stock or mutual fund sales and certain other transactions by brokers)
- Form 1099-S (proceeds from real estate transactions)
- Form 1099-K (merchant card and third party network transactions)
- Form 1098 (home mortgage interest), 1098-E (student loan interest), 1098-T (tuition)
- Form 1099-C (canceled debt)
- Form 1099-A (acquisition or abandonment of secured property)

Use Form W-9 only if you are a U.S. person (including a resident alien), to provide your correct TIN.

If you do not return Form W-9 to the requester with a TIN, you might be subject to backup withholding. See What is backup withholding, later.