

State of California - Department of Justice - Attorney General's Office - Proposition 65 Enforcement Reporting

Attention: Prop 65 Coordinator, 1515 Clay Street, Suite 2000, Oakland, CA 94612

FORM JUS 1502
(03-01)

PRIVATE ENFORCEMENT FILING - Health and Safety Code section 25249.7(e) and (f)

REPORT OF ENTRY OF JUDGMENT

Original Filing Supplemental Filing Corrected Filing

Please print or type required information

PARTIES TO THE ACTION	PLAINTIFF(S) Shefa LMV Inc.		
	DEFENDANT(S) INVOLVED IN JUDGMENT IWiss Tool Co., Ltd.		
CASE INFO	COURT DOCKET NUMBER RG18915675		COURT NAME SUPERIOR COURT OF CA, Alameda Co
	SHORT CASE NAME Shefa LMV, Inc. v. IWiss Electric Co., Ltd		
REPORT INFO	INJUNCTIVE RELIEF COMPLIANT PRODUCTS AND WARNINGS		
	PAYMENT: CIVIL PENALTY \$2,500	PAYMENT: ATTORNEYS FEES \$16,000	PAYMENT: OTHER 0
	DATE SUBMITTED TO COURT 8 / 13 / 2019	IS JUDGMENT PURSUANT TO SETTLEMENT? <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	IF YES, DATE SETTLEMENT WAS REPORTED TO ATTORNEY GENERAL 8 / 27 / 2019
	COPY OF JUDGMENT MUST BE ATTACHED		
FILER INFO	NAME OF CONTACT Daniel N. Greenbaum		
	ORGANIZATION Law Office of Daniel Greenbaum		TELEPHONE NUMBER ((818)) 809-2199
	ADDRESS 7120 Hayvenhurst Ave., Suite 320		FAX NUMBER ((424)) 243-7698
	CITY Van Nuys	STATE ZIP CA 91406-0000	E-MAIL ADDRESS dgreenbaum@greenbaumlawfirm.com

FILING INSTRUCTIONS: This form can be completed online and printed. If electronic filing is not available, mail the completed form with a copy of the judgment to the attention of the Prop 65 Coordinator at the address shown above. If you need additional space to complete this form please use an attachment.



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LAW OFFICE OF DANIEL N. GREENBAUM
Daniel N. Greenbaum, Esq. (SBN 268104)
The Hathaway Building
7120 Hayvenhurst Avenue, Suite 320
Van Nuys, CA 91406
Telephone: (818) 809-2199
Facsimile: (424) 243-7689
Email: dgreenbaum@greenbaumlawfirm.com

FILED
ALAMEDA COUNTY

OCT 6 3 2019

CLERK OF THE SUPERIOR COURT
By _____ Deputy

Attorney for Plaintiff SHEFA LMV, INC.

SUPERIOR COURT OF THE STATE OF CALIFORNIA

COUNTY OF ALAMEDA

SHEFA LMV, INC.,)	Case No. RG18915675
)	
Plaintiff,)	PROPOSED CONSENT JUDGMENT
)	AS TO IWISS TOOL CO., LTD.
vs.)	
)	Action Filed: August 6, 2018
IWISS ELECTRIC CO., LTD.; IWISS TOOL)	
CO., LTD.; and DOES 1 through 100,)	
Inclusive,)	
)	
Defendant.)	
)	
)	
)	

Received
AUG 13 2019

PDH

~~PROPOSED~~ CONSENT JUDGMENT AS TO DEFENDANT
IWISS TOOL CO., LTD.

1 **1. INTRODUCTION**

2 **1.1 Parties**

3 This consent judgment ("**Consent Judgment**") is entered into by and between plaintiff
4 Shefa LMV, Inc. ("**Shefa**" or "**Plaintiff**") and Iwiss Tool Co., Ltd. ("**Defendant**," with Shefa and
5 **Defendant** individually referred to as a "**Party**" and collectively as the "**Parties.**")

6 **1.2 Plaintiff**

7 Shefa is a public benefit, non-profit corporation that seeks to promote awareness of
8 exposures to toxic chemicals and to improve human health by reducing or eliminating hazardous
9 substances contained in consumer products.

10 **1.3 Settling Defendant**

11 Defendant employs ten (10) or more persons and is a persons in the course of doing business
12 for purposes of the Safe Drinking Water and Toxic Enforcement Act of 1986, Health and Safety
13 Code §25249.6 *et seq.* ("**Proposition 65**").

14 **1.4 Products Covered**

15 The products covered by this Consent Judgment are plastic handled tool products, including,
16 but not limited to, Iwiss F2098 Pex Clamp Tool 1", Part # KG1096-KITS, that are manufactured,
17 sold, or distributed for sale in California by Defendant that contain Di-[2-Ethylhexyl] Phthalate
18 ("**DEHP**") (collectively, the "**Covered Products**").

19 **1.5 General Allegations**

20 Shefa alleges that Defendant manufactures, imports, sells, or distributes, for sale in the state
21 of California, the Covered Products without first providing a clear and reasonable warning required
22 by Proposition 65. DEHP (CAS # 68515-48-0) is a chemical listed under Proposition 65 as a
23 chemical known to the state to cause cancer or reproductive toxicity.

24 **1.6 Notice of Violation**

25 On August 29, 2017, Shefa served Iwiss Tool Co., Ltd., and the requisite public
26 enforcement agencies with a 60-Day Notice of Violation (the "**Notice**") alleging that Defendant
27 violated Proposition 65 when they failed to warn its customers and consumers in California that the

1 Covered Products expose users to DEHP. To the best of the Parties' knowledge, no public enforcer
2 has commenced and is diligently prosecuting the allegations set forth in the Notice.

3 **1.7 Complaint**

4 On August 6, 2018, Shefa filed the instant complaint in the Superior Court in and for the
5 County of Alameda against Defendant Iwiss Tool Co., Ltd. and Iwiss Electric Co., Ltd.¹ and DOES
6 1-100, alleging violations of California Health & Safety Code § 25249.6, based on exposures to
7 DEHP contained in the Covered Products sold in the State of California (the "Complaint").

8 **1.8 No Admission**

9 Defendant denies the material, factual, and legal allegations contained in the Notice and
10 Complaint and maintains that all the products it has manufactured, sold, or distributed for sale in
11 California, including the Covered Products, have been, and are, in compliance with all laws.
12 Nothing in this Consent Judgment shall be construed as an admission by Defendant of any fact,
13 finding, conclusion of law, issue of law, or violation of law; nor shall compliance with this Consent
14 Judgment constitute or be construed as an admission by Defendant of any fact, finding, conclusion
15 of law, issue of law, or violation of law, the same being specifically denied by Defendant. This
16 section shall not, however, diminish or otherwise affect Defendant's obligations, responsibilities,
17 and duties under this Consent Judgment.

18 **1.9 Consent to Jurisdiction**

19 For purposes of this Consent Judgment only, the Parties stipulate that this Court has
20 jurisdiction over Defendant as to the allegations in the Complaint, that venue is proper in the
21 County of Alameda, the Defendant agrees that they employ or have employed ten or more persons
22 during time periods relevant to the Complaint and that this Court has jurisdiction over the Parties to
23 enter and enforce the provisions of this Consent Judgment pursuant to Proposition 65.

24 **1.10 Effective Date**

25 For purposes of this Consent Judgment, the term "Effective Date" shall mean the date the
26

27 ¹ Yueqing Iwiss Electric Co., Ltd. (erroneously sued as "Iwiss Electric Co., Ltd.") is a foreign
28 company registered in China and disputes that it is subject to general or specific jurisdiction in the
State of California or the U.S.

1 Consent Judgment is approved and entered by the Court.

2 **2. INJUNCTIVE RELIEF: COMPLIANT PRODUCTS AND WARNINGS**

3 **2.1 Reformulation Standards**

4 As of the Effective Date, Defendant shall not manufacture for sale in California any Covered
5 Products unless such Covered Products contain DEHP in concentrations less than or equal to 1000
6 parts per million ("ppm") when analyzed pursuant to U.S. Environmental Protection Agency testing
7 methodologies 3580A and 8270C or any other scientifically reliable methodology for determining
8 the concentration of DEHP in the Covered Products.

9 **2.2 Warning Standards**

10 Defendant agrees, promises, and represents that, as of the Effective Date, to the extent they
11 ship or sell Covered Products that do not meet the reformulation standards set forth above in
12 Section 2.1, Defendant will provide warnings on such Covered Products that comply with
13 Proposition 65. The warnings shall be provided in a conspicuous and prominent manner such that
14 they will be likely to be read or seen by the consumer prior to or at the time of the sale or purchase.
15 The Parties agree that the warning set forth below shall constitute compliance with Proposition 65
16 with respect to any Covered Products that are not reformulated:

17 (a) the text, **"WARNING This product can expose you to chemicals, including**
18 **DEHP, which is known to the State of California to cause cancer, birth defects or other**
19 **reproductive harm. For more information go to www.P65Warnings.ca.gov."**
20 accompanied by and placed to the right of a symbol consisting of a black exclamation point
21 in a yellow equilateral triangle with a bold black outline sized to be no smaller than the
22 word, "WARNING" as provided by regulations adopted on or about August 30, 2016; or

23 (b) the text, **"WARNING Cancer and Reproductive Harm -**
24 **www.P65Warnings.ca.gov."** accompanied by and placed to the right of a symbol consisting
25 of a black exclamation point in a yellow equilateral triangle with a bold black outline sized
26 to be no smaller than the word, "WARNING" as provided by regulations adopted on or
27

1 about August 30, 2016.

2 The triangular warning symbol specified in Section 2.2(a) and 2.2(b) shall be in yellow with a black
3 exclamation mark; *provided however*, the symbol may be printed in black and white if the Covered
4 Product label is not printed against a yellow background.

5 **2.3 Covered Products in the Stream of Commerce.**

6 Any Covered Products that have been distributed, shipped, or sold by Defendant prior to the
7 Effective Date, shall not be subject to the requirements of Section 2.1.

8 **3. MONETARY SETTLEMENT TERMS**

9 **3.1 Payment from Defendant.** Within fifteen (15) business days of the Effective Date,
10 Defendant shall make the Total Settlement Payment of \$18,500.00.

11 **3.2 Allocation of Payments.** The Total Settlement Payment shall be paid in three (3)
12 separate checks made payable and allocated as follows:

13 **3.2.1 Civil Penalty.** Defendant shall pay \$2,500.00 as a civil penalty
14 pursuant to Health & Safety Code § 25249.7(b). The civil penalty shall be apportioned in
15 accordance with Health & Safety Code § 25249.12 (25% to Shefa and 75% to the State of
16 California's Office of Environmental Health Hazard Assessment ("OEHHA")). Accordingly, the
17 OEHHA portion of the civil penalty payment in the amount of \$1,875.00 shall be made payable to
18 OEHHA and associated with taxpayer identification number 68-0284486. This payment shall be
19 delivered as follows:

20 For United States Postal Service Delivery:

21 Attn: Mike Gyurics
22 Fiscal Operations Branch Chief
23 Office of Environmental Health Hazard Assessment
24 P.O. Box 4010, MS #19B
25 Sacramento, CA 95812-4010

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27
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1 For Non-United States Postal Service Delivery:

2 Attn: Mike Gyurics
3 Fiscal Operations Branch Chief
4 Office of Environmental Health Hazard Assessment
5 1001 I Street, MS #19B
6 Sacramento, CA 95814

7 The Shefa portion of the civil penalty payment in the amount of \$625.00 shall be made
8 payable to Shefa LMV, Inc. and associated with taxpayer identification number 81-0907002.
9 This payment shall be delivered to the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst
10 Ave, Suite 320, Van Nuys, CA 91406.

11 **3.2.2 Attorney's Fees and Costs.** A reimbursement of Shefa's attorney's
12 fees and costs in the amount of \$16,000.00 payable to the "Law Office of Daniel N. Greenbaum,"
13 and associated with taxpayer identification number 46-4580172. This payment shall be delivered to
14 the Law Office of Daniel N. Greenbaum, 7120 Hayvenhurst Ave, Suite 320, Van Nuys, CA 91406.

15 **4. CLAIMS COVERED AND RELEASED**

16 **4.1 Public Release**

17 This Consent Judgment is a full, final, and binding resolution between Shefa and Defendant
18 of any violation of Proposition 65 that was or could have been asserted by Shefa, acting on behalf of
19 itself and in a representative capacity in the public interest under Health & Safety Code § 25249.7,
20 against Defendant, its parents, subsidiaries, affiliated entities (including, but not limited to Yueqing
21 Iwiss Electric Co., Ltd. erroneously named "Iwiss Electric Co., Ltd."), manufacturers, suppliers,
22 directors, officers, employees, attorneys, and the predecessors, successors, or assigns of each of
23 them, and each entity to whom Defendant directly or indirectly export, distribute or sell the Covered
24 Products, including, without limitation, distributors, wholesalers, customers, retailers, franchisees,
25 cooperative members, and licensees, including but not limited to Amazon.com ("**Releasees**"), based
26 on failure to warn of alleged exposures to DEHP from Covered Products manufactured, sold, or
27 distributed for sale in California by Defendants prior to the Effective Date. The release in this
28 Section 4.1 applies to all Covered Products that Defendant manufactured, distributed, or sold prior
to the Effective Date, regardless of the date any other Releasee distributes or sells the Covered

1 Products.

2 Compliance with the terms of this Consent Judgment shall constitute compliance with
3 Proposition 65 by Defendant and the Releasees with respect to DEHP in Covered Products
4 manufactured, sold, or distributed on and after the Effective Date.

5 Upon entry of this Consent Judgment by the Court, Shefa shall dismiss "Iwiss Electric Co.,
6 Ltd." from this lawsuit with prejudice.

7 **4.2 Shefa's Individual Release of Claims**

8 In further consideration of the promises and agreements herein contained, Shefa, on its own
9 behalf and on behalf of its past and current agents, representatives, attorneys, successors, and/or
10 assignees, hereby waives all rights to institute or participate in, directly or indirectly, any form of
11 legal action, and releases all claims that it may have against Defendant and Releasees, including,
12 without limitation, all actions and causes of action, suits, liabilities, demands, obligations, damages,
13 costs, fines, penalties, losses, or expenses, including, without limitation, investigation fees, expert
14 fees, and attorneys' fees arising under Proposition 65 for unwarned exposures to DEHP from
15 Covered Products manufactured, sold, or distributed for sale by Defendant prior to the Effective
16 Date. The releases in Section 4.2 are provided in Shefa's individual capacity and are not releases on
17 behalf of the public.

18 **4.3 Defendant's Release of Shefa**

19 Defendant, on its own behalf and on behalf of their past and current agents, representatives,
20 attorneys, successors, and assignees, hereby waives any and all claims that it may have against
21 Shefa and its attorneys and other representatives, for any and all actions taken or statements made
22 by Shefa and its attorneys and other representatives in the course of investigating the claims set
23 forth in the Complaint or otherwise seeking to enforce Proposition 65 against it in this matter.

24 **4.4 Release of Unknown Claims**

25 It is possible that other claims not known to the Parties arising out of the facts contained in
26 the Notice, or alleged in the Complaint, relating to the Covered Products, will hereafter be
27 discovered or developed. Shefa, on behalf of itself only, acknowledges that this Consent Judgment

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1 is expressly intended to cover and include all such claims through and including the Effective Date,
2 including all rights of action therefor. Shefa acknowledges that the claims released in Sections 4.1
3 and 4.2 may include unknown claims, and nevertheless Shefa intends to release such claims, and in
4 doing so waives California Civil Code § 1542, which reads as follows:

5 **A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT**
6 **THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR**
7 **SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF**
8 **EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR**
9 **HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER**
10 **SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

11 Shefa understands and acknowledges that the significance and consequence of this waiver of
12 California Civil Code § 1542 is that, even if Shefa suffers future damages arising out of or resulting
13 from, or related directly or indirectly to, in whole or in part, the Covered Products, including but not
14 limited to any exposure to, or failure to warn with respect to exposure to, the Covered Products,
15 Shefa will not be able to make any claim for those damages against Defendants or any of the
16 Releasees.

17 **5. COURT APPROVAL**

18 This Consent Judgment is not effective until it is approved and entered by the Court.

19 **6. GOVERNING LAW**

20 The terms of this Consent Judgment shall be governed by the laws of the State of California
21 and apply within the State of California. In the event that Proposition 65 is repealed or is otherwise
22 rendered inapplicable by reason of law generally, or as to the Covered Products, then Defendant
23 may provide written notice to Shefa of any asserted change in the law, and with the exception of
24 Sections 3.1 and 3.2 above, have no further obligations pursuant to this Consent Judgment, with
25 respect to, and to the extent that, the Covered Products are so affected. None of the terms of this
26 Consent Judgment shall have any application to Covered Products sold outside of the State of
27 California.

1 **7. NOTICE**

2 Unless specified herein, all correspondence and notices required to be provided pursuant to
3 this Consent Judgment shall be in writing and sent by: (i) personal delivery; (ii) first-class,
4 registered or certified mail, return receipt requested; or (iii) a recognized overnight courier on any
5 Party by the other at the following addresses:

6 To Defendant:

7 Roger A. Cerda, Esq.
8 ALSTON & BIRD LLP
9 333 South Hope Street
10 16th Floor
11 Los Angeles, CA, 90071

To Shefa:

Daniel N. Greenbaum
Law Office of Daniel N. Greenbaum
7120 Hayvenhurst Ave., Suite 320
Van Nuys, CA 91406

11 Any Party may, from time to time, specify in writing to the other Party a change of address to which
12 all notices and other communications shall be sent.

13 **8. COUNTERPARTS; FACSIMILE AND PDF SIGNATURES**

14 This Consent Judgment may be executed in counterparts, and by facsimile or portable
15 document format (PDF) signature, each of which shall be deemed an original, and all of which,
16 when taken together, shall constitute one and the same document.

17 **9. COMPLIANCE WITH HEALTH & SAFETY CODE § 25249.7(f)**

18 Plaintiff agrees to comply with the reporting form requirements referenced in California
19 Health & Safety Code § 25249.7(f).

20 **10. POST EXECUTION ACTIVITIES**

21 The Parties acknowledge that, pursuant to California Health & Safety Code § 25249.7(f),
22 Shefa is obligated to file a noticed motion to obtain judicial approval of this Consent Judgment.
23 Upon the Parties' execution of this Consent Judgment, Shefa promptly shall proceed to submit this
24 Consent Judgment to the Court with a motion seeking Court approval.

25 **11. MODIFICATION**

26 This Consent Judgment may only be modified by a written instrument executed by the Party
27 or Parties to be bound thereby, and after approval by the Court upon a noticed motion. Any motion
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1 to modify shall be served on all Parties and the Office of the Attorney General.

2 **12. DISPUTE RESOLUTION**

3 If Shefa determines at a future date that a violation of this Consent Judgment has occurred,
4 Shefa shall provide notice to Defendant. Prior to bringing any action to enforce any requirement of
5 this Consent Judgment, the party alleging a violation of this Consent Judgment shall provide the
6 other party with written notice of the grounds for such allegation together with all supporting
7 information as well as a complete demand for the relief sought. The Parties shall then meet and
8 confer regarding the basis for the allegation to resolve the matter informally, including providing
9 the party alleged to be in violation with a reasonable opportunity of at least thirty (30) days to cure
10 any alleged violation. Should such attempt at informal resolution fail, the party alleging a violation
11 may file its lawsuit seeking the proposed relief.

12 **13. AUTHORIZATION**

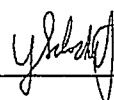
13 The undersigned are authorized to execute this Consent Judgment on behalf of their
14 respective Parties and have read, understood, and agree to all of the terms and conditions of this
15 Consent Judgment.

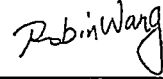
17 AGREED TO:

AGREED TO:

18
19 Date: 6/20/2019

Date: JUN 19 2019

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22 By: 


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22 By: 

23 SHEFA LMV, INC.

IWISS TOOL CO., LTD.

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~~PROPOSED~~ JUDGMENT

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Please note that on 10/03, 2019 at 3:00 am/pm, Plaintiff Shefa LMV Inc.'s ("Plaintiff") Motion for Court Approval of Settlement Agreement and Entry of Consent Judgment as to Defendant, Iwiss Tool Co., Ltd., came for hearing before this Court in Department 20, the Honorable Paul D. Herbert presiding. Counsel for Plaintiff did [not] appear; counsel for Defendants did [not] appear.

After full consideration of the points and authorities and related pleadings submitted, the Court GRANTED Plaintiff's Motion pursuant to and in accordance with Health & Safety Code §25249.7(f)(4). The Court reviewed the above Settlement Agreement and makes the following findings pursuant to Health & Safety Code § 25249.7(f)(4):

- a. The injunctive relief required by the Settlement Agreement complies with Health & Safety Code § 25249.7;
- b. The reimbursement of fees and costs to be paid pursuant to the Settlement Agreement is reasonable under California law; and
- c. The civil penalty amount to be paid pursuant to Settlement Agreement is reasonable.

IT IS SO ORDERED, ADJUDGED AND DECREED.

10/03/2019
Date

Paul D. Herbert
Judge of the Superior Court

PAUL D. HERBERT

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