

**IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF TEXAS
BROWNSVILLE DIVISION**

**NINFA VASQUEZ and
JOSE VASQUEZ**
Plaintiffs,

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V.

Civil Action No. _____

TRISTAR PRODUCTS, INC.
Defendant.

JURY DEMAND

PLAINTIFFS' ORIGINAL COMPLAINT

TO THE HONORABLE JUDGE OF SAID COURT:

COME NOW, NINFA VASQUEZ and JOSE VASQUEZ, Plaintiffs in the above-styled and numbered cause, complaining of Defendant, TRISTAR PRODUCTS, INC., and in support thereof would respectfully show unto this Honorable Court the following:

I. DISCOVERY LEVEL

1. Plaintiffs intend to conduct Discovery pursuant to a Level 3 Discovery Control Plan, as set forth in TEX. R. CIV. P. 190.4, and Plaintiffs hereby request that the Court enter a Level 3 Discovery Control Plan.

II. PARTIES

2. Plaintiffs, NINFA VASQUEZ (hereinafter "Mrs. Vasquez") and JOSE VASQUEZ (hereinafter "Mr. Vasquez"), collectively "Plaintiffs," are individuals and citizens of the State of Texas who reside in Cameron County, Texas.

3. Defendant, TRISTAR PRODUCTS, INC., (hereinafter "Defendant") is a foreign for-profit corporation, organized and existing under the laws of the State of Pennsylvania.

Defendant has its principal office in the State of Pennsylvania, which is located at 2620 Westview Drive, Wyomissing, Pennsylvania 19610. Defendant may be served with process by serving the Texas Secretary of State at 1019 Brazos Street, Austin, Texas, as its agent for service, because Defendant engages in business in Texas but does not maintain a regular place of business in Texas or a designated agent for service of process in Texas. Pursuant to TEX. CIV. PRAC. & REM. CODE § 17.044, service of citation on this Defendant may be accomplished by serving the Secretary of State of Texas, who will then forward the citation by certified mail, return receipt requested, to its registered agent for service of process, The Corporation Trust Company, 820 Bear Tavern Road, West Trenton, New Jersey 08628.

III. JURISDICTION

4. This Court has personal jurisdiction over Defendant pursuant to the Texas Long Arm Statute, TEX. CIV. PRAC. & REM. CODE § 17.042, as this lawsuit arises out of a tort committed by Defendant in whole or in part in Texas. Defendant purposefully availed itself of the privileges and benefits of conducting business in Texas by directing its product sales to this State, maintaining such minimum contacts with this State that the assumption of jurisdiction by this Court does not offend traditional notions of fair play and substantial justice.
5. This Court has jurisdiction over the lawsuit under 28 U.S.C. § 1332(a)(1), as the Plaintiffs and the Defendant are citizens of different states and the amount in controversy exceeds \$75,000, excluding interest and costs.

IV. VENUE

6. Venue is proper in this district under 28 U.S.C. § 1391(a)(2), because all or a substantial part of the events or omissions giving rise to this claim occurred in this district.

V. CONDITIONS PRECEDENT

7. All conditions precedent have been performed or have occurred.

VI. FACTUAL BACKGROUND

8. On July 3, 2014, Plaintiffs ordered and paid for a “Power Cooker” 6-quart digital pressure cooker (hereinafter, “the cooker”) from an advertisement that aired on their home television. Upon information and belief, Defendant is the designer, manufacturer, producer, distributor, vendor, and seller of and/or marketing entity for the cooker.
9. The cooker is an electric kitchen appliance designed to be used for efficient preparation of food. The product is designed to prepare full meals from scratch by boiling liquids inside a sealed pot that produces steam, which is trapped inside of the appliance to create pressure. The resulting temperatures produced are supposed to cook meals more efficiently, while maintaining more nutrients than conventional cooking methods.
10. Mrs. Vasquez used the cooker for the first time on August 2, 2014 and followed all instructions enclosed with the cooker. She intended to prepare pinto beans for her family’s dinner that evening. Approximately two hours after unplugging the cooker, suddenly and without warning, the lid blew off of the cooker, and the pinto beans burst out of the cooker onto Mrs. Vasquez, resulting in extensive and severe burns to her body.
11. Mr. Vasquez rushed Mrs. Vasquez to the hospital following the incident, where she underwent treatment of her severe injuries for 20 days. To date, Mrs. Vasquez continues to endure severe pain and the permanent scarring associated with her burns.

12. Plaintiffs did not modify the cooker in any way before using it. The counter on which the cooker was being used was level, nothing was obstructing or surrounding the cooker, and nothing was atop the lid of the cooker.
13. Defendant's failure to take reasonable care in developing, designing, manufacturing, testing, selling, and/or marketing a product free from defects and safe for consumer use, and Defendant's failure to adequately warn consumers of foreseeable dangers related to its product, proximately caused Plaintiffs' injuries and damages.

VII. CAUSE OF ACTION: NEGLIGENCE

14. Plaintiffs incorporate the facts and allegations explained above as if fully set forth herein.
15. Defendant was negligent in developing, designing, manufacturing, testing, selling, and/or marketing the cooker.
16. At all times material hereto, the cooker was being used by Mrs. Vasquez for the foreseeable intended purposes for which it was developed, designed, manufactured, tested, sold, and/or marketed. Plaintiffs were foreseeable intended users of the cooker.
17. Defendant owed a duty to Plaintiffs to use reasonable care in developing, designing, manufacturing, testing, selling, and/or marketing a product free from defects in material or workmanship that was safe and functional for consumer use and did not pose a foreseeable risk of harm to consumers. Defendant failed to exercise such reasonable care.
18. Defendant owed a duty to Plaintiffs to adequately warn of the dangers inherent in the use of the product it developed, designed, manufactured, tested, sold, and/or marketed. Defendant failed to adequately warn consumers of the dangers inherent in its product that is the subject of this suit.

19. Plaintiffs' injuries and damages are the direct and proximate result of the Defendant's negligence, as well as that of its agents, servants, employees, and apparent agents acting within and during the scope of their employment, authority, or apparent authority. Plaintiffs' injuries and damages are not due to any act or failure on the part of Plaintiffs.
20. Defendant was negligent in one or more of the following respects:
 - a. Failing to take appropriate steps to ensure the cooker could not explode;
 - b. Failing to conduct an appropriate inspection of the cooker;
 - c. Marketing, selling, and shipping the cooker in an unsafe condition;
 - d. Failing to provide users of the cooker with adequate instructions for its safe use;
 - e. Failing to provide users of the cooker with adequate warnings concerning its use;
 - f. Failing to thoroughly and adequately test the cooker to ensure that the lid could not be discharged from the cooker in the course of cooking;
 - g. Designing and/or selling the cooker with the capacity to pressurize and reach a high temperature even if the lid was only partially engaged;
 - h. Failing to equip the cooker with properly functioning safety features which would prevent the lid from opening while contents were under pressure;
 - i. Failing to equip the cooker with properly functioning safety features which would prevent the cooker from operating when the lid was not fully sealed;
 - j. Failing to prevent damage to, or sticking or malfunction of, the cooker's safety features;
 - k. Failing to provide a safe, appropriate, and effective mechanism for securing the lid of the cooker;
 - l. Designing the lid and housing in such a way that it is not apparent to the user that the lid is not fully sealed;
 - m. Failing to design the cooker with a warning mechanism that would allow a user to recognize that the lid was not fully sealed;
 - n. Failing to discover defects in, and the dangerous condition of, the cooker;

- o. Failing to remedy the defects in, and the dangerous condition of, the cooker;
 - p. Failing to discover defects in, and dangerous inadequacies of, the instructions and warnings provided with the cooker;
 - q. Failing to properly test, evaluate, inspect, and assemble the cooker;
 - r. Failing to properly design, manufacture, and advertise the cooker to ensure that it was not unreasonably dangerous;
 - s. Failing to warn the public in general, and Plaintiffs in particular, of the dangers presented by the use of Defendant's product;
 - t. Failing to exercise due care and act with regard for the safety of those using its products; and
 - u. Such other and further acts and/or omissions as may be shown by the evidence at the trial of this cause.
21. Each of the above-listed acts and/or omissions, taken singularly or in combination, was a proximate cause of Plaintiffs' injuries and damages. The above and foregoing acts and omissions of Defendant constitute negligence, which was the proximate cause of Plaintiffs' resulting injuries and damages. Nothing Plaintiffs did or failed to do caused or contributed to cause the occurrence made the basis of this suit.

VIII. CAUSE OF ACTION: STRICT LIABILITY

22. Plaintiffs incorporate the facts and allegations explained above as if fully set forth herein.
23. Defendant is the manufacturer, designer, distributor, and/or seller of the cooker.
24. The cooker was sold and delivered to Plaintiffs. At all times prior to delivery, the cooker was in the exclusive control of Defendant, its agents, servants, employees, and/or apparent agents, and was delivered to Plaintiffs without substantial change in its condition.

25. The cooker was used by Mrs. Vasquez as designed and intended by the Defendant, without any change in its condition from the time it left the control of the Defendant until it was used by the Plaintiffs.
26. The cooker, which was sold and delivered to Plaintiffs by Defendant and ultimately used by Mrs. Vasquez, was, at the time of sale and delivery, in a defective condition and unreasonably dangerous to the ultimate user.
27. The product was defective and unreasonably dangerous in that it failed to conform to the product design and specifications of other pressure cookers, where it failed to prevent the sudden and unexpected ejection of boiling hot liquids when used in accordance with the instructions provided. Such defect(s) constituted a producing cause of Plaintiffs' injuries and damages.
28. The product was defective and unreasonably dangerous, because there was a lack of adequate warnings and notices that the product could inadvertently eject boiling hot liquids in a way not warned of or contemplated by the ordinary user of the product. Such defect(s) constituted a producing cause of Plaintiffs' injuries and damages.
29. The product was defective and unreasonably dangerous due to the hazard created by the ability of the lid to come off while its contents were under pressure and by the ability of the device to function with the lid only partially engaged. Such defect(s) constituted a producing cause of Plaintiffs' injuries and damages.
30. As a direct result of the defective condition of the cooker, Plaintiffs sustained the injuries and losses described herein. Had the cooker not been manufactured, designed, distributed, or sold by Defendant in such an unreasonably dangerous condition, Plaintiffs' injuries would not have occurred.

IX. CAUSE OF ACTION: BREACH OF EXPRESS WARRANTY

31. Plaintiffs incorporate the facts and allegations explained above as if fully set forth herein.
32. Defendant is the designer, manufacturer, assembler, distributor, and/or seller of the cooker. Defendant sold and shipped the cooker to Plaintiffs.
33. Defendant expressly warranted that its product was safe for ordinary use when used in compliance with the instructions provided.
34. Defendant's affirmations regarding the safety of its product formed a basis of the bargain for Plaintiffs, without which the Plaintiffs would not have purchased Defendant's product.
35. The product did not conform to the Defendant's affirmations regarding the safety of its product.
36. As a direct and proximate result of Defendant's breach of express warranties, Plaintiffs sustained the injuries and losses described herein.

X. CAUSE OF ACTION: BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY

37. Plaintiffs incorporate the facts and allegations explained above as if fully set forth herein.
38. Defendant is the designer, manufacturer, assembler, distributor, and/or seller of the cooker. Defendant sold and shipped the cooker to Plaintiffs.
39. Defendant impliedly warranted that its product was merchantable, fit for the ordinary purpose for which it was sold or used, was of fair average quality so as to pass without objection in the trade, and conformed to Defendant's own affirmations regarding the cooker's safety features and overall safe condition.
40. Defendant breached its implied warranty of merchantability, as the product did not conform to the Defendant's affirmations regarding the safety features and overall safe

condition of the product, the product was not fit for the ordinary purpose for which it was sold or used, and was not of fair average quality so as to pass without objection in the trade.

41. As a direct and proximate result of Defendant's breach of the implied warranty of merchantability, Plaintiffs sustained the injuries and losses described herein.

XI. CAUSE OF ACTION: BREACH OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE

42. Plaintiffs incorporate the facts and allegations explained above as if fully set forth herein.
43. Defendant is the designer, manufacturer, assembler, distributor, and/or seller of the cooker. Defendant sold and shipped the cooker to Plaintiffs.
44. In selling its product to Plaintiffs, Defendant, through its agents, servants, employees, and apparent agents acting within the scope of their employment, authority, or apparent authority, made representations and promotions concerning the particular purpose to which Plaintiffs would put the product to use and knew or should have known of the particular purpose to which Plaintiffs would put the product to use. Defendant impliedly warranted that the product would be fit for such particular purpose.
45. Defendant breached its implied warranty of fitness for a particular purpose, as the product did not conform to the Defendant's affirmations regarding its product being fit for such particular purpose. The cooker's malfunctioning safety features and overall unsafe condition rendered it unfit for that purpose.
46. As a direct and proximate result of Defendant's breach of the implied warranty of fitness for a particular purpose, Plaintiffs sustained the injuries and losses described herein.

XII. DAMAGES

47. As a direct and proximate result of Defendant's conduct, Plaintiff Ninfa Vasquez suffered the following injuries and damages:
- a. Medical expenses in the past and future;
 - b. Physical pain and mental anguish in the past and future;
 - c. Disfigurement in the past and future;
 - d. Physical impairment in the past and future; and
 - e. Past lost wages and loss of future earning capacity.
48. As a direct and proximate result of Defendant's conduct, Plaintiff Jose Vasquez suffered the following injuries and damages:
- a. Loss of consortium in the past and future;
 - b. Loss of services in the past and future;
 - c. Mental anguish in the past and future; and
 - d. Past lost wages.

XIII. PRAYER

49. For the above reasons, Plaintiffs Ninfa Vasquez and Jose Vasquez pray that Defendant be cited to appear and answer herein and that upon final trial, Plaintiffs have judgment against Defendant for the following:
- a. Actual damages within the jurisdictional limits of the Court;
 - b. Pre-judgment and Post-judgment interest at the lawful rate;
 - c. Costs of suit; and
 - d. All such other and further relief to which Plaintiffs may show themselves justly entitled under law or in equity.

Respectfully submitted,

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