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12
13 IN THE UNITED STATES DISTRICT COURT
14 FOR THE DISTRICT OF ARIZONA

15 JOAN KAZAKEVICIUS, an unmarried
16 woman,

17 Plaintiff,

18 vs.

19 HSN, INC., a Delaware corporation; HSNI,
20 LLC., a Delaware limited liability company;
21 W.P. APPLIANCES, INC., a Florida
22 corporation; WOLFGANG PUCK
23 WORLDWIDE, INC. a Delaware
24 corporation; W.P. PRODUCTIONS, INC., a
25 Florida corporation; ZHANJIANG
26 HALLSMART ELECTRICAL
27 APPLIANCES CO., LTD, a corporation of
28 China; GUANGDONG CHUANG SHENG
STAINLESS STEEL PRODUCTS CO. LTD.,
a corporation of China *d/b/a* CHARM
STAINLESS STEEL CO. LTD.; and
BUSINESS ENTITIES 1-10,

Defendants.

Case No.: _____

COMPLAINT

- 1. Negligence
- 2. Breach of Warranty
- 3. Strict Product Liability

For her Complaint against Defendants, Joan Kazakevicuis (hereafter "Plaintiff") alleges as follows:

JURISDICTION, PARTIES, and VENUE

1. This is a strict product liability case arising from a 11/18/12 explosion of a Wolfgang Puck pressure cooker which seriously injured Plaintiff. This Court has diversity jurisdiction over the parties under 28 U.S.C. § 1332(a) because the suit involves a controversy between parties of diverse citizenship and the amount in controversy exceeds \$75,000.00, exclusive of interest and costs.

1 2. Plaintiff Joan Kazakevicius is, and was at all relevant times an Arizona resident with
2 her home located in Maricopa County, Arizona.

3 3. Defendant HSN, Inc., known as the Home Shopping Network, is a Delaware
4 corporation that conducts business in Arizona. Its home office is located at 1 HSN Drive, St.
5 Petersburg, Pinellas County, Florida 33729. It may be served with process by serving its registered
6 agent Corporation Service Company at 2711 Centerville Road, Ste. 400, Wilmington, Delaware
7 19808.

8 4. Defendant HSNI, LLC, known as Home Shopping Network International, is a
9 Delaware corporation that conducts business in Arizona. Its home office is located at 1 HSN Drive,
10 St. Petersburg, Pinellas County, Florida 33729. It may be served with process by serving its
11 registered agent Corporation Service Company at 2711 Centerville Road, Ste. 400, Wilmington,
12 Delaware 19808. Defendants HSN, Inc. and HSNI, LLC will hereafter be referred to as “HSN.”)

13 5. Defendant W.P. Appliances, Inc. is a Florida corporation that conducts business in
14 Arizona. Its principal address is 2475 Hollywood Blvd, Hollywood, Florida 33020. It may be
15 served with process by serving its registered agent Sydney Silverman at 2475 Hollywood Blvd,
16 Hollywood, Florida 33020.

17 6. Wolfgang Puck Worldwide, Inc. is a Delaware corporation that conducts business in
18 Arizona. Its principal address is 100 N. Crescent Drive, Ste. 100, Beverly Hills, California 90210. It
19 may be served with process by serving its registered agent Robert L. Kahan at 1620 26th Street, 4th
20 Floor, Santa Monica, CA 90404.

21 7. Defendant W.P. Productions, Inc. is a Florida corporation that conducts business in
22 Arizona. Its principal address is 2475 Hollywood Blvd, Hollywood, Florida 33020. It may be
23 served with process by serving its registered agent Sydney Silverman at 2475 Hollywood Blvd,
24 Hollywood, Florida 33020.

25 8. Zhanjiang Hallsmart Electrical Appliances Co. Ltd. is a Chinese corporation that
26 conducts business in Arizona.

27 9. Guangdong Chuang Sheng Stainless Steel Products Co. Ltd. *dba* Charms Stainless
28 Steel Co. Inc. is a Chinese corporation whose principal address is at Erzhang Road, Caitang Town,

1 Chaoan, Guangdong, China (Mainland)/515644. It may be served with process pursuant to the
2 Hague Convention on the Service Abroad of Judicial Documents in Civil or Commercial Matters,
3 through the Bureau of International Judicial Assistance, Ministry of Justice of the People’s Republic
4 of China, 10 Chaoyangmen Nandajie, Chaoyang District, Beijing 100020.

5 10. Defendants Business Entities 1-10 are entities whose identities are presently unknown
6 and who may have some liability to Plaintiff arising out of the events described in this Complaint.
7 At such time as their true identities are ascertained, Plaintiff will seek leave to amend this Complaint.

8 11. The District of Arizona is the proper venue for this action pursuant to 28 U.S.C.A. §
9 1391(a)(2) since a substantial part of the events or omissions giving rise to the lawsuit occurred in
10 Maricopa County, Arizona. This is also the district where Plaintiff resided at the time the subject
11 incident occurred.

12 FACTUAL BACKGROUND

13 12. Upon information and belief, in approximately March, 2012 Plaintiff watched an
14 infomercial on the Home Shopping Network channel (“HSN”) featuring celebrity chef, Wolfgang
15 Puck, and one of his endorsed products, an automatic 7-quart “Bistro” pressure cooker (“the product”
16 or “pressure cooker” or “cooker”).

17 13. Upon information and belief, Defendants are the designers, manufactures, producers,
18 distributors, vendors, sellers, and marketing entities of the product featured in the infomercial and
19 operate under contractual agreements relating to the design, manufacture, production, distribution,
20 sale, testing, inspection, and marketing of the Wolfgang Puck-branded product at issue.

21 14. The pressure cooker is an electric kitchen appliance designed to be used to the
22 preparation of food. The cooking process uses high temperatures and the creation of pressure within
23 a sealed pot to reduce cooking time and capture more water-soluble nutrients than would occur with
24 conventional cooking methods.

25 15. During Wolfgang Puck’s demonstration, a HSN hostess who was also in the infomercial
26 encouraged viewers to call HSN and purchase the product.

27 16. During the infomercial, the HSN hostess and Wolfgang Puck made several assurances
28 about the product’s safety. In particular, the HSN hostess and Mr. Puck represented that the product

1 could not open while still under pressure.

2 17. Based upon the representations of the HSN hostess and Mr. Puck, Joan ordered the 7-
3 quart Bistro pressure cooker, model# BPCRM040.

4 18. Joan used the product and relied on the representations made by HSN and Mr. Puck that
5 the product was safe, functional, and easy to use.

6 19. Over the following six months, Joan used the pressure cooker on four occasions. Before
7 each use, Joan would review the operating instructions and check the recommended cooking time
8 chart in the product manual. Joan followed the instructions each time and experienced no problems.

9 20. On November 18, 2012, Joan was using the product for the fifth time to prepare
10 vegetables for a Thanksgiving holiday party. Joan reviewed the manual and instructions, as she had
11 done on each previous occasion. She followed the instructions in the owner's manual and set the
12 dish to cook based on the recommendation cooking time chart.

13 21. Several minutes later, while passing through the kitchen, Joan noticed that the pressure
14 cooker's "warm" light was on, indicating that the pressure cooking process was complete.

15 22. Joan unplugged the pressure cooker from its electrical power source per the instructions
16 of the manual.

17 23. Approximately forty minutes later, Joan turned the steam release dial to the "vent"
18 position and heard no steam escaping. The steam release dial markings had been washed away after
19 the few previous uses of the cooker, and the markings were no longer obvious. To be safe, Joan
20 turned the steam release dial to every possible position and listened closely in order to assure that no
21 additional steam needed to escape. The cooker was silent.

22 24. The product manual explains that pressure is completely reduced when the cooker's
23 steam release dial is in the vent position, steam can no longer be heard escaping from the valve, and
24 the lid opens freely with no force.

25 25. The pressure cooker manual also states "As a safety feature, the lid will not open unless
26 all pressure is reduced."

27 26. At that point, Joan believed it was safe to open the pressure cooker. The lid opened with
28 ease as it had done the four previous times, without force or struggle. Immediately, upon opening

1 the cooker lid, the cooker exploded sending its scalding hot liquid contents all over the front of
2 Joan's body and arms.

3 27. Defendants' failure to take reasonable care in developing, designing, manufacturing,
4 testing, selling, inspecting, and marketing a pressure cooker free from defects and safe for consumer
5 use, as well as failure to adequately warn consumers of the dangers related to the product at issue
6 proximately caused Joan's injuries and damages.

7 COUNT ONE

8 (Negligence & Gross Negligence)

9 28. Plaintiff incorporates the facts and allegations contained in paragraphs 1-27 of this
10 Complaint as if fully set forth herein.

11 29. Defendants, and each of them, were negligent in developing, designing, manufacturing,
12 testing, selling, testing, and marketing the Wolfgang Puck pressure cooker at issue.

13 30. Defendants, and each of them, owed a duty to develop, design, manufacture, test, sell, and
14 market a pressure cooker free from design (including warnings) and manufacturing defects that is
15 safe and functional for consumer use.

16 31. Defendants, and each of them, failed to take reasonable care in developing, designing,
17 manufacturing, testing, selling, and marketing the subject pressure cooker, and placed it into the
18 stream of commerce in an unsafe condition.

19 32. The product was defective in that it failed to conform to safe product design and
20 specifications of such pressure cookers, and its defective design failed to prevent the sudden and
21 unexpected explosion of scalding hot liquids when used by the consumer according to the product's
22 instructions.

23 33. The product was defective and unreasonably dangerous because there was a lack of
24 adequate warnings, notices, and/or instructions that the product could explode despite being
25 unplugged, properly vented, and opened without force. The product was also defective and
26 unreasonably dangerous because it was manufactured from materials that were not suitable for
27 this type of product and operation/use of the product under the reasonably anticipated conditions of
28 consumer use. Each of these defects are a proximate cause of Plaintiff's injuries and damages.

1 34. Defendants are liable for failing to exercise reasonable care in determining accuracy of
2 representations made to consumers regarding the safety and functionality of the pressure cooker,
3 which Joan relied on and such reliance was foreseeable by Defendants.

4 35. The acts and omissions of the Defendants taken singularly or in combination were a
5 proximate cause of Plaintiff's injuries and damages.

6 36. The specific acts of negligent manufacturing or design on the part of each Defendant rests
7 in facts that are peculiarly within the knowledge of the Defendants. Plaintiff relies on the doctrine of
8 *Res Ipsa Loquitor*. Plaintiff will show that the character of the occurrence giving rise to this
9 litigation is such that it would not happen in the absence of negligence and that the design and
10 manufacture of the subject pressure cooker was within the exclusive control of Defendants at the
11 time the negligence occurred.

12 37. Joan has no control over the method or manner in which the product was designed,
13 manufactured, or cautioned and it came to Plaintiff's possession in the same condition it was in when
14 it left the control of Defendants.

15 38. Defendants were negligent in the design and or manufacture of the pressure cookers,
16 which negligence was the proximate cause of the injuries and damages sustained by Joan.

17 COUNT TWO

18 (Breach of Warranty)

19 39. Plaintiff incorporates the facts and allegations contained in paragraphs 1-38 of this
20 Complaint as if fully set forth herein.

21 40. On the infomercials Defendants used to market the pressure cooker, both Wolfgang Puck
22 and the HSN hostess made express representations about the safety of the subject pressure cooker.

23 41. Defendants, and each of them, utilized the celebrity status and credibility of Wolfgang
24 Puck as a well-known chef in order to sell the subject pressure cooker.

25 42. The express warranties made by Defendants about the product's safety were part of the
26 basis of the bargain between Plaintiff and Defendants at the time of the product's sale/purchase.

27 43. Defendants implicitly warranted to the public generally and specifically to Plaintiff that
28 the pressure cooker was of merchantable quality, that it was fit for a particular purpose, and that it

1 was safe for use under ordinary, foreseeable circumstances by the consumer. Defendants were
2 merchants with respect to the product in question, and the product was not merchantable as
3 warranted. Plaintiff relied upon all representations made about the product, implied or express,
4 particularly about its safety in deciding to purchase and use the subject pressure cooker.

5 44. Defendants knew or reasonably should have known of the purpose for which Plaintiff
6 purchased and used the pressure cooker.

7 45. Defendants knew or reasonably should have known that Plaintiff would rely on the
8 Defendant's skill, knowledge, and judgment to select and furnish suitable, safe products to be sold to
9 the consuming public, including Plaintiff.

10 46. Defendants knew or should have known that the product in question was unfit for the
11 purpose for which it was intended to be used. Upon information and belief, at a minimum,
12 Defendants were aware prior to this lawsuit, that the subject product had exploded and injured
13 numerous other consumers who used the product in accordance with the product use instructions
14 and/or in a reasonably foreseeable manner.

15 47. The product sold to Plaintiff was not of the quality or condition expressly warranted by
16 Defendants' representations, was defective and unreasonably dangerous.

17 48. Defendants' breach of warranty, taken singularly or in combination, are a proximate
18 cause of Plaintiff's injuries and damages.

19 49. Plaintiff is entitled to and seeks all recoverable damages including reasonable attorney
20 fees incurred in the prosecution of this suit.

21 COUNT THREE

22 (Strict Product Liability)

23 50. Plaintiff incorporates the facts and allegations contained in paragraphs 1-49 of this
24 Complaint as fully set forth herein.

25 51. Defendants designed, researched, developed, manufactured, tested, advertised, promoted,
26 marketed, sold, and/or distributed the subject pressure cooker. The pressure cooker as designed,
27 researched, developed, manufactured, tested, advertised, promoted, marketed, sold, and/or
28 distributed by Defendants, and each of them, was in an unsafe, defective, and unreasonably

1 dangerous condition which was hazardous to users. The cooker was in this unsafe condition at the
2 time it left Defendants' possession.

3 52. Defendants' product was expected to, and did, reach the usual consumers (including
4 Plaintiff), handlers, and persons coming into contact with the pressure cooker without substantial
5 change in the condition in which it was designed, produced, manufactured, sold, distributed, and
6 marketed by Defendants.

7 53. At the time of the explosion, Plaintiff was using the pressure cooker for its intended
8 purpose, in accordance with the instructions that accompanied the product, and in a manner
9 foreseeable to Defendants.

10 54. However, the pressure cooker failed to perform as safely as an ordinary consumer would
11 reasonably expect.

12 55. The explosion of the pressure cooker was reasonably foreseeable to the Defendants.

13 56. Plaintiff's injuries from the explosion were reasonably foreseeable to the Defendants.

14 57. The pressure cooker posed a serious risk of danger inherent in the design which
15 outweighed the benefits of that design

16 58. The Defendants' failure to design, manufacture, market, and sell a safe pressure cooker
17 was the proximate cause of Plaintiff's injuries and damages.

18 59. Additionally, as a direct and proximate result of Defendants' placement of the defective
19 pressure cooker into the stream of commerce, Plaintiff suffered severe injuries including, but not
20 limited to, trauma, severe pain, partial loss of mobility, loss of range of motion, scarring,
21 disfigurement, anxiety, nightmares, emotion/psychological injury, and other personal injuries which
22 are permanent and lasting in nature, including diminished enjoyment of life.

23 60. Defendants knew or had reason to know that the pressure cooker was defective and
24 unsafe, especially when used in the form and manner Defendant's intended and demonstrated.
25 Specifically, Defendants knew that the design of the pressure cooker was defective for several
26 reasons, including but not limited to the possibility of the lid's lock mechanism could release while
27 the contents were still under pressure.

28 61. Defendants had a duty to create a product that was not unreasonably dangerous for its

1 normal, intended use.

2 62. Defendants knew or should have known that the cooker was defective and unsafe, and
3 with this knowledge, Defendants voluntarily designed their products in a defective condition for use
4 by the public.

5 63. Because Defendants designed, researched, developed, manufactured, tested, advertised,
6 promoted, marketed, sold, and distributed a defective product, which when used in its intended or
7 reasonably foreseeable manner, created an unreasonable risk to consumers and to Plaintiff.
8 Defendants are strictly liable for the injuries Joan sustained.

9 COUNT FOUR

10 (Warning Defect; Strict Product Liability)

11 64. Plaintiff incorporates the facts and allegations contained in paragraphs 1-63 of this
12 Complaint as if fully set forth herein.

13 65. Defendants designed, manufactured, tested, marketed, and distributed the pressure cooker
14 into the stream of commerce without adequate warnings or instructions.

15 66. Joan removed the lid of the pressure cooker in a manner consistent with the instructions
16 provided by Defendants.

17 67. Defendants did not warn or instruct Joan about the possibility that the lid would “unlock”
18 while the contents of the cooker remained under pressure. This warning defect was a proximate
19 cause of the injuries Joan sustained.

20 68. Defendants knew or had reason to know of the pressure cooker’s potential harm to users.

21 69. Defendants’ failure to provide adequate warnings and instructions rendered the cooker
22 unreasonably dangerous, and thus Defendants are strictly liable for the injuries Plaintiff suffered.

23 DAMAGES

24 70. As a direct and proximate result of Defendants’ conduct, Plaintiff suffered damages
25 including severe emotional pain, physical and mental pain, suffering, anguish, inconvenience,
26 scarring, disfigurement, and loss of enjoyment of life.

27 71. As a result of Defendants’ conduct, Plaintiff incurred reasonable and customary doctors’
28 and medical expenses.

1 72. Defendants acted with gross negligence, as described above, and such conduct constitutes
2 the type of conduct for which exemplary damages may be awarded in that it was willful and
3 malicious. These damages should be awarded in order to deter those similarly situated from
4 engaging in similar conduct as that of the Defendants in this matter.

5 73. Plaintiff seeks exemplary damages in an amount to be determined by the trier of fact.

6 JURY DEMAND

7 74. Plaintiff requests a jury trial.

8 PRAYER

9 WHEREFORE, Plaintiff Joan Kazakevicius prays for the entry of judgment against
10 Defendants jointly and severally as follows:

- 11 A. For actual, general, and consequential damages;
12 B. For exemplary damages against Defendants as allowed by law and to be determined
13 by the trier of fact;
14 C. For pre-judgment and post-judgment interest as allowed by law;
15 D. For costs of suit;
16 E. For such other and further relief as the Court may deem just and proper.

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19 DATED this 17th day of October, 2014.

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21 JENNINGS, HAUG & CUNNINGHAM, LLP

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23 By : /s/ Lisa Lewallen, Esq
24 Lisa G. Lewallen
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