

**IN THE CIRCUIT COURT OF THE EIGHTEENTH JUDICIAL CIRCUIT
IN AND FOR BREVARD COUNTY, FLORIDA**

CASE NO:

PATRICIA MANCUSO and LUKE MANCUSO,

Plaintiffs,

vs.

**TRISTAR PRODUCTS INC., d/b/a Power Pressure
Cooker XL, a Pennsylvania Corporation and
WAL-MART STORES, INC., d/b/a Walmart, a
Delaware Corporation**

Defendants. /

COMPLAINT

Plaintiffs, **PATRICIA MANCUSO** (“Mrs. Mancuso”) and **LUKE MANCUSO** (“Mr. MANCUSO”) (collectively referred to as “Plaintiffs”), by and through undersigned counsel hereby sue Defendants, **TRISTAR PRODUCTS INC., d/b/a Power Pressure Cooker XL**, a Pennsylvania Corporation (“TRISTAR”), and **WAL-MART STORES, INC., d/b/a Walmart**, a Delaware Corporation (“WALMART”) and state:

JURISDICTION AND VENUE

1. This is an action for damages in excess of Fifteen Thousand Dollars (\$15,000) exclusive of interest, costs and attorneys’ fees.

2. Plaintiffs Patricia and Luke Mancuso are individuals who resided in Melbourne, Brevard County, FL at the time this cause of action arose and who presently resides in said jurisdiction.
3. Defendant **TRISTAR PRODUCTS, INC.**, d/b/a **Power Pressure Cooker XL** (“Tristar”) is incorporated under the laws of the State of Pennsylvania, with its principal place of business located at 492 US-46, Fairfield, New Jersey 07004.
4. Defendant TRISTAR’s registered agent for service of process is Kitty S. Barile, c/o Leisawitz Heller et al. located at 2620 Westview Drive, Wyomissing Pennsylvania 19610.
5. Defendant **WAL-MART STORES INC.**, d/b/a **Walmart** (“Walmart”) is incorporated under the laws of Delaware, with its principal place of business located at 702 SW 8th Street, Bentonville Arkansas, 72716.
6. Defendant Walmart’s registered agent for service of process is CT CORPORATION SYSTEM located at 1200 South Pine Island Road Plantation, Florida 33324.
7. Venue is proper in Brevard County because Plaintiffs reside in Brevard County and a substantial part of the events or omissions of the incident giving rise to this complaint took place in Melbourne, Brevard County, Florida.

BACKGROUND

8. On July 24, 2015 Mrs. Mancuso went to one of Defendant Walmart’s local stores located at 845 Palm Bay Rd., Palm Bay, Florida, 32907.
9. Mrs. Mancuso purchased a Power Pressure Cooker XL (the “subject pressure cooker”) from Defendant Walmart, which was designed, manufactured, assembled, tested,

inspected, labeled, developed, promoted, marketed, advertised, sold, and/or distributed by Defendant TRISTAR.

10. The subject pressure cooker is marketed by TRISTAR in a way that would intentionally mislead a consumer into believing the product was reasonably safe, with multiple safeguards that were well-tested and would function to prevent the exact kind of harmful pressured explosion that is the subject of this lawsuit including but not limited to:
 - a. “lock” on the cooker itself that is intended to prevent the top from coming off or removed until pressure had dissipated;
 - b. “spring loaded” safety pressure release which enables steam and pressure to escape around the pot lid should all other features fail by automatically separating the inner pot from the rubber gasket;
 - c. A temperature “cut-off” device that automatically shuts off power supply in the event the pressure cooker malfunctions and exceeds a safe internal temperature; and
 - d. A “back up” safety release valve to automatically release pressure build up beyond a maximum setting.
11. On September 21, 2015, Plaintiffs Patricia and Luke Mancuso were in their home and decided to use the subject pressure cooker for the first time since it was purchased in order to cook a meal.
12. At approximately 3:30 P.M. on September 21, 2015, while Plaintiffs Patricia and Luke Mancuso were making spaghetti sauce with the subject pressure cooker. When Mrs. Mancuso reached to lift the lid off, it exploded on the stovetop in the kitchen during this

ordinary use, causing scalding hot sauce and the contents of the subject pressure cooker to fly up and out onto Plaintiffs Patricia and Luke Mancuso.

13. Plaintiffs Patricia and Luke Mancuso were transported to the emergency room at Holmes Regional Medical Center in Melbourne, FL; however Holmes Regional Medical center was unable to treat Plaintiffs Patricia and Luke Mancuso due to a lack of burn treatment facilities. Plaintiffs Patricia and Luke Mancuso were ultimately transported to and treated at the Burn Unit at Orlando Regional Medical Center (ORMC).
14. While at ORMC, Plaintiffs Patricia and Luke Mancuso were treated for extensive burns; which included second and third degree burns on the arms, thighs, feet, and hands.
15. As a result of a malfunction of the subject pressure cooker, Plaintiffs Patricia and Luke Mancuso sustained severe, permanent, and life-altering second and third degree burns.
16. When Defendants sold and/or distributed the subject pressure cooker, it was expected to and did reach its eventual consumer, without substantial change in its condition.
17. At the time of the sale and distribution of the subject pressure cooker by the Defendants, it was in a defective condition, which defect was the proximate cause of the injuries and damages sustained by Plaintiffs Patricia and Luke Mancuso, and for which Defendants are strictly liable.
18. Plaintiffs Patricia and Luke Mancuso did not change or alter the condition of the subject pressure cooker from the time of its purchase at Walmart until the accident occurred on September 21, 2015; in fact, it was the first time Plaintiffs Patricia and Luke Mancuso used the subject pressure cooker.

COUNT I

STRICT LIABILITY AGAINST TRISTAR

19. All preceding paragraphs are incorporated by reference as if stated fully herein.

20. TRISTAR is in the business of designing, manufacturing, assembling, testing, inspecting, labeling, developing, promoting, marketing, advertising, selling and/or distributing the subject pressure cooker that is forms the basis of this lawsuit.
21. Defendant TRISTAR placed the subject pressure cooker on the market with knowledge that it would be used without inspecting for dangers or defects. Defendant TRISTAR knew or should have known that the ultimate users, operators or consumers, including but not limited to Plaintiffs Patricia and Luke Mancuso would not or could not properly inspect these products for dangerous conditions and that the detection of such defects and dangerous would be beyond the capabilities of such persons.
22. The subject pressure cooker failed to perform as an ordinary consumer would reasonably expect.
23. The subject pressure cooker that TRISAR designed, manufactured, assembled, tested, labeled, developed, promoted, marketed, advertised, sold, and/or distributed was in an unreasonable, unsafe, defective and dangerous condition which was hazardous to users including Plaintiffs Patricia and Luke Mancuso.
24. Specifically, the top of the subject pressure cooker was capable of (and did) explode and come off in the ordinary, foreseeable, and proper use of cooking food with the product, without any adequate warning to the consumer that such a failure would foreseeably occur.
25. Plaintiffs Patricia and Luke Mancuso were injured while using the subject pressure cooker for its intended purpose, in a foreseeable manner, and in accordance with the instructions that accompanied the subject pressure cooker.

26. Furthermore, TRISTAR marketed the subject pressure cooker in a defective manner in that TRISTAR failed to warn or inform consumers of the unreasonably dangerous properties of the subject pressure cooker and methods by which consumers such as Plaintiffs Patricia and Luke Mancuso could protect, prevent, and/or mitigate such dangers.
27. The subject pressure cooker was defective due to inadequate, or the absence of, warnings or instructions, including warning stickers, placards, or proper documentation to alert users regarding the hazardous conditions described herein.
28. The unreasonable, unsafe, defective and dangerous subject pressure cooker existed at the time it left TRISTAR's possession.
29. The subject pressure cooker was expected to, and did reach consumers (including Plaintiffs Patricia and Luke Mancuso), without substantial change in the condition in which it was designed, manufactured, assembled, tested, inspected, labeled, developed, promoted, marketed, advertised, sold, and/or distributed by TRISTAR.
30. For the reasons set forth above, the subject pressure cooker was unreasonably defective, unsafe, and dangerous to foreseeable users including Plaintiffs Patricia and Luke Mancuso.
31. As a direct and proximate cause of the foregoing conduct of Defendant TRISTAR, Plaintiffs Patricia and Luke Mancuso sustained serious and permanent bodily injuries resulting in pain and suffering, permanent impairment, disability, mental anguish, inconvenience, loss of the enjoyment of life, expense of medical care and treatment, expense of hospitalization, lost wages in the past, and the loss of ability to earn wages in the future.

WHEREFORE, Plaintiffs, **PATRICIA** and **LUKE MANCUSO** demand judgment against the Defendant **TRISTAR PRODUCTS, INC.**, for damages costs interest and other such relief this Court deems just.

COUNT II

NEGLIGENCE AGAINST TRISTAR

32. All preceding paragraphs are incorporated by reference as if stated fully herein.
33. TRISTAR knew or in the exercise of due care should have known the subject pressure cooker would be used without inspection in an unreasonably dangerous condition that would create a foreseeable risk of harm to users, including Plaintiffs Patricia and Luke Mancuso.
34. TRISTAR owed a duty to reasonably and safely design, manufacture, assemble, test, inspect, label, develop, promote, market, advertise, sell, and/or distribute the subject pressure cooker.
35. TRISTAR also owed a duty to adequately warn of dangers posed by the subject pressure cooker's design.
36. TRISTAR breached the duty owed to Plaintiffs Patricia and Luke Mancuso by negligently designing, manufacturing, assembling, testing, inspecting, labeling, developing, promoting, marketing, advertising, selling, and/or distributing the subject pressure cooker when it was not in a reasonably safe condition for foreseeable use as a reasonable consumer would expect.
37. TRISTAR was additionally negligent and breached its duty in that it failed to give adequate or proper warnings or instructions, and failed to make appropriate post-marketing efforts to prevent known incidents, such as the one that forms the basis of this lawsuit.

38. Plaintiffs Patricia and Luke Mancuso had no control over the method or manner in which the subject pressure cooker was designed, manufactured, assembled, tested, inspected, labeled, developed, promoted, marketed, advertised, sold, and/or distributed and it came to Plaintiffs Patricia and Luke Mancuso's possession in the same condition it as in when it left Defendant's control.
39. The negligence described above directly and proximately caused the incident and the injuries sustained by Plaintiffs Patricia and Luke Mancuso in that it directly and in natural continuous sequence, produced, or sustainably contributed to their injuries.
40. As a direct and proximate result of the foregoing negligence of TRISTAR, Plaintiffs Patricia and Luke Mancuso sustained serious and permanent bodily injuries, resulting in pain and suffering, permanent impairment, disability, mental anguish, loss for the capacity of enjoyment of life, expense of hospitalization, medical care and treatment in the past and to be obtained in the future, lost wages in the past, and the loss of ability to earn wages in the future.

WHEREFORE, Plaintiffs, **PATRICIA** and **LUKE MANCUSO** demand judgment against the Defendant **TRISTAR PRODUCTS, INC.**, for damages costs interest and other such relief this Court deems just.

COUNT III

BREACH OF WARRANTY AGAINST TRISTAR

41. All preceding paragraphs are incorporated by reference as if stated fully herein.
42. The defect in the subject pressure cooker does not conform to the merchantable condition impliedly represented by TRISTAR at the time that Plaintiffs Patricia and Luke Mancuso purchased the subject pressure cooker.

43. TRISTAR was a merchant with respect to the subject pressure cooker and the subject pressure cooker was not merchantable as warranted.
44. TRISTAR impliedly warranted to the public generally and to Plaintiffs Patricia and Luke Mancuso specifically that the subject pressure cooker was of merchantable quality.
45. TRISTAR impliedly warranted that the subject pressure cooker was safe and fit for the purpose intended when used under ordinary circumstances and in an ordinary manner.
46. TRISTAR knew, or reasonably should have known, of the purpose for which Plaintiffs Patricia and Luke Mancuso purchased the subject pressure cooker, that Plaintiffs Patricia and Luke Mancuso were relying upon TRISTAR's skill and judgment to select and furnish a suitable product, and that the subject pressure cooker was unfit for the purpose for which it was intended to be used.
47. TRISTAR's breaches of warranty were an actual and legal cause of the Plaintiffs Patricia and Luke Mancuso's injuries and damages.
48. As a direct and proximate result of the foregoing negligence of TRISTAR, Plaintiffs Patricia and Luke Mancuso sustained serious and permanent bodily injuries, resulting in pain and suffering, permanent impairment, disability, mental anguish, loss for the capacity of enjoyment of life, expense of hospitalization, medical care and treatment in the past and to be obtained in the future, lost wages in the past, and the loss of ability to earn wages in the future.

WHEREFORE, Plaintiffs, **PATRICIA** and **LUKE MANCUSO** demand judgment against the Defendant **TRISTAR PRODUCTS, INC.**, for damages costs interest and other such relief this Court deems just.

COUNT IV
TRISTAR'S VIOLATION OF THE FLORIDA DECEPTIVE
AND UNFAIR TRADE PRACTICES ACT

49. All preceding paragraphs are incorporated by reference as if stated fully herein.
50. Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA") prohibits "[u]nfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce...." Fla. Stat. § 501.204(1). Defendant TRISTAR participated in unfair and deceptive trade practices that violated the FDUTPA, as more fully described herein.
51. Defendant TRISTAR engaged in unfair, unconscionable, deceptive, or fraudulent acts or practices with respect to the defective subject pressure cooker in violation of The Florida Deceptive and Unfair Trade Practices Act.
52. Defendant TRISTAR's misrepresentations and omissions regarding the purported safety and reliability of the defective subject pressure cooker were likely to deceive a reasonable purchaser, like Mrs. Mancuso, and the information would have been material to a reasonable purchaser.
53. Defendant TRISTAR engaged in these fraudulent and deceptive trade practices in furtherance of its business.
54. Had Plaintiffs Patricia and Luke Mancuso known that subject pressure cooker posed a significant safety and life-threatening defect; they would not have purchased it.
55. As a direct and proximate cause result of Defendant TRISTAR's violations of the FDUPTA, Plaintiffs Patricia and Luke Mancuso suffered actual damages.
56. Defendant TRISTAR's conduct constitutes unconscionable acts or practices, and unfair or deceptive practices in violation of Fla. Stat. § 501.204(1), and this Court should award

Plaintiffs Patricia and Luke Mancuso their costs and attorneys' fees pursuant to Fla. Stat. § 501.2105.

WHEREFORE, Plaintiffs, **PATRICIA MANCUSO** and **LUKE MANCUSO**, demand judgment against Defendant, **TRISTAR PRODUCTS, INC.**, for damages, costs, interest and attorneys' fees pursuant to Fla. Stat. § 501.2105, and for such other and further relief as this Court deems just and proper.

COUNT V

STRICT LIABILITY AGAINST WALMART

57. All preceding paragraphs are incorporated by reference as if stated fully herein.
58. WALMART is in the business of testing, inspecting, labeling, promoting, marketing, advertising, selling and/or distributing the subject pressure cooker that forms the basis of this lawsuit.
59. Defendant WALMART placed the subject pressure cooker on the market with knowledge that it would be used without inspecting for dangers or defects. Defendant WALMART knew or should have known that the ultimate users, operators or consumers including but not limited to Plaintiffs Patricia and Luke Mancuso would not or could not properly inspect these products for dangerous conditions and that the detection of such defects and dangerous would be beyond the capabilities of such persons.
60. The subject pressure cooker failed to perform as an ordinary consumer would reasonably expect.
61. The subject pressure cooker that WALMART tested, inspected, labeled, promoted, marketed, advertised, sold, and/or distributed was in an unreasonable, unsafe, defective and dangerous condition which was hazardous to users including Plaintiffs Patricia and Luke Mancuso.

62. Specifically, the top of the subject pressure cooker was capable of (and did) explode and come off in the ordinary, foreseeable, and proper use of cooking food with the product, without any adequate warning to the consumer that such a failure would foreseeably occur.
63. Plaintiffs Patricia and Luke Mancuso were injured using the subject pressure cooker for its intended purpose, in a foreseeable manner, and in accordance with the instructions that accompanied the subject pressure cooker.
64. Furthermore, WALMART marketed the subject pressure cooker in a defective manner in that WALMART failed to warn or inform consumers of the unreasonably dangerous properties of the subject pressure cooker and methods by which consumers such as Plaintiffs Patricia and Luke Mancuso could protect, prevent, and/or mitigate such dangers.
65. The subject pressure cooker was defective due to inadequate, or the absence of, warnings or instructions, including warning stickers, placards, or proper documentation to alert users regarding the hazardous conditions described herein.
66. The unreasonable, unsafe, defective and dangerous subject pressure cooker existed at the time it left WALMART's possession.
67. The subject pressure cooker was expected to, and did reach consumers (including Plaintiffs Patricia and Luke Mancuso), without substantial change in the condition in which it tested, inspected, labeled, promoted, marketed, advertised, sold, and/or distributed by WALMART.

68. For the reasons set forth above, the subject pressure cooker was unreasonably defective, unsafe, and dangerous to foreseeable users including Plaintiffs Patricia and Luke Mancuso.

69. As a direct and proximate cause of the foregoing conduct of Defendant WALMART, Plaintiffs Patricia and Luke Mancuso sustained serious and permanent bodily injuries resulting in pain and suffering, permanent impairment, disability, mental anguish, inconvenience, loss of the enjoyment of life, expense of medical care and treatment, expense of hospitalization, lost wages in the past, and the loss of ability to earn wages in the future.

WHEREFORE, Plaintiffs, **PATRICIA** and **LUKE MANCUSO** demand judgment against the Defendant **WAL-MART STORES, INC.**, for damages costs interest and other such relief this Court deems just.

COUNT VI
NEGLIGENCE AGAINST WALMART

70. All preceding paragraphs are incorporated by reference as if stated fully herein.

71. WALMART knew or in the exercise of due care should have known the subject pressure cooker would be used without inspection in an unreasonably dangerous condition that would create a foreseeable risk of harm to users, including Plaintiffs Patricia and Luke Mancuso.

72. WALMART owed a duty to reasonably and safely test, inspect, label, promote, market, advertise, sell, and/or distribute the subject pressure cooker.

73. WALMART also owed a duty to adequately warn of dangers posed by the subject pressure cooker's design.

74. WALMART breached the duty owed to Plaintiffs Patricia and Luke Mancuso by negligently testing, inspecting, labeling, promoting, marketing, advertising, selling, and/or distributing the subject pressure cooker when it was not in a reasonably safe condition for foreseeable use as a reasonable consumer would expect.
75. WALMART was additionally negligent and breached its duty in that it failed to give adequate or proper warnings or instructions, and failed to make appropriate post-marketing efforts to prevent known incidents, such as the one that forms the subject of this complaint.
76. Plaintiffs Patricia and Luke Mancuso had no control over the method or manner in which the subject pressure cooker was tested, inspected, labeled, promoted, marketed, advertised, sold, and/or distributed and it came to Plaintiffs Patricia and Luke Mancuso's possession in the same condition it as in when it left Defendant's control.
77. The negligence described caused the incident and the injuries sustained by Plaintiffs Patricia and Luke Mancuso in that it directly and in natural continuous sequence, produced, or sustainably contributed to their injuries.
78. As a direct and proximate result of the foregoing negligence of WALMART, Plaintiffs Patricia and Luke Mancuso sustained serious and permanent bodily injuries, resulting in pain and suffering, permanent impairment, disability, mental anguish, loss for the capacity of enjoyment of life, expense of hospitalization, medical care and treatment in the past and to be obtained in the future, lost wages in the past, and the loss of ability to earn wages in the future.

WHEREFORE, Plaintiffs, **PATRICIA** and **LUKE MANCUSO** demand judgment against the Defendant **WAL-MART STORES, INC.**, for damages costs interest and other such

relief this Court deems just.

COUNT VII

BREACH OF WARRANTY AGAINST WALMART

79. All preceding paragraphs are incorporated by reference as if stated fully herein.
80. The defect in the subject pressure cooker does not conform to the merchantable condition impliedly represented by WALMART at the time that Plaintiffs Patricia and Luke Mancuso purchased the subject pressure cooker.
81. WALMART impliedly warranted to the public generally and to Plaintiffs Patricia and Luke Mancuso specifically that the subject pressure cooker was of merchantable quality. WALMART was a merchant with respect to the subject pressure cooker and the subject pressure cooker was not merchantable as warranted.
82. WALMART impliedly warranted that the subject pressure cooker was safe and fit for the purpose intended when used under ordinary circumstances and in an ordinary manner.
83. WALMART knew, or reasonably should have known, of the purpose for which Plaintiffs Patricia and Luke Mancuso purchased the subject pressure cooker, that Plaintiffs Patricia and Luke Mancuso were relying upon WALMART's skill and judgment to select and furnish a suitable product, and that the subject pressure cooker was unfit for the purpose for which it was intended to be used.
84. WALMART's breaches of warranty were an actual and legal cause of the Plaintiff's injuries and damages.
85. As a direct and proximate result of the foregoing negligence of WALMART, Plaintiffs Patricia and Luke Mancuso sustained serious and permanent bodily injuries, resulting in pain and suffering, permanent impairment, disability, mental anguish, loss for the capacity of enjoyment of life, expense of hospitalization, medical care and treatment in

the past and to be obtained in the future, lost wages in the past, and the loss of ability to earn wages in the future.

WHEREFORE, Plaintiffs, **PATRICIA** and **LUKE MANCUSO** demand judgment against the Defendant **WAL-MART STORES, INC.**, for damages costs interest and other such relief this Court deems just.

JURY DEMAND

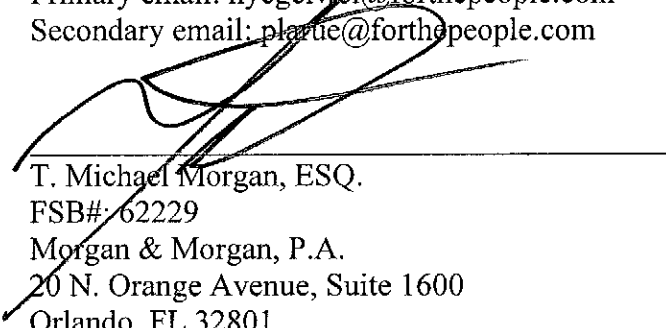
Plaintiffs, **PATRICIA MANCUSO** and **LUKE MANCUSO**, hereby demand a jury trial on all issues so triable.

WHEREFORE, Plaintiffs, **PATRICIA MANCUSO** and **LUKE MANCUSO**, demand judgment against Defendants, **TRISTAR PRODUCTS INC.**, d/b/a **Power Pressure Cooker XL**, and **WAL-MART STORES, INC.**, d/b/a **Walmart**, for pre-judgment interest as allowed by law; post-judgment interest as allowed by law; actual damages; cost of suit; and such other relief, at law or equity, to which Plaintiffs may be justly entitled.

RESPECTFULLY submitted this 10th day of OCTOBER, 2016.



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