

CAUSE NO. _____

DEBORAH ZINK, an individual.	§	IN THE DISTRICT COURT
	§	
v.	§	OF HARRIS COUNTY, TEXAS
	§	
SUNBEAM PRODUCTS, INC., a	§	
Delaware corporation; and DOES 1-50,	§	_____ JUDICIAL DISTRICT
inclusive.	§	

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW DEBORAH ZINK, complaining of Defendants SUNBEAM PRODUCTS, INC., a Delaware corporation; and DOES 1-50, inclusive, and files this, her Original Petition.

1. Plaintiff DEBORAH ZINK at all relevant times was a resident of the State of Texas, County of Harris.
2. Plaintiff is informed and believes, and based upon such information and belief alleges that at all times relevant hereto Defendants SUNBEAM PRODUCTS, INC., a Delaware corporation; and DOES 1-50, inclusive, are, and at all times herein mentioned where individuals, corporations, sole proprietors, shareholders, associations, partners and partnerships, joint venturers, and/or business entities unknown.
3. At all times mentioned in this Complaint, Defendants SUNBEAM PRODUCTS, INC., a Delaware corporation; and DOES 1-50, inclusive, were engaged in the business of manufacturing, sale, development, testing, inspecting, packaging, labeling, advertising, merchandising, and distribution of Sunbeam electric blankets.
4. Plaintiff is informed and believes and thereupon alleges, that at all times herein relevant, Defendants and DOES 1 through 50 ("DOES"), and each of them, were the agents, partners, joint venturers, joint employers, representatives, servants, employees, successors-in interest, alter egos, co-conspirators and assigns, each of the other, and at all times relevant hereto were acting with the authority and ratification of one another and within the course and scope of their authority as such agents, partners, joint venturers, representatives, servants, employees, successors, co-conspirators and/or assigns, alter egos, and all acts or omissions alleged herein were duly committed with the ratification, knowledge, permission, encouragement, authorization and/or consent of each Defendant designated as a DOE herein.

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5. Plaintiff is informed and believes and thereupon alleges, that at all times herein relevant, Defendants and DOES 1 through 50, and each of them, were the distributors, manufacturers, and/or sellers of the Sunbeam electric blankets that Defendants sold to Plaintiff and the public who are in some manner liable for the damages complained of herein.

6. Defendants and DOES 1 through 50, and each of them, were the designers, manufacturers, suppliers, installers, inspectors, repairers of the Sunbeam electric blankets that Defendants, sold to Plaintiff and the public who are in some manner liable for the damages complained of herein.

7. The true names and capacities, whether corporate, associate, individual or otherwise, of DOES 1 through 50, inclusive, are unknown to Plaintiff who sues said DOE Defendants by such fictitious names. Plaintiff is informed and believes, and based on that information and belief alleges, that each of the Defendants designated as a DOE are legally responsible for the events and happenings referred to in this Complaint, and unlawfully caused the injuries and damages to Plaintiff as alleged in this Complaint. Plaintiff will seek leave of court to amend this Complaint to show the true names and capacities when the same have been ascertained.

JURISDICTION AND VENUE

8. At all times herein mentioned, the incident on which this action is based occurred within the boundaries of the Superior Court of the State of Texas, County of Harris, said incident occurring at or near 5000 Gulf Bank Rd., Houston, TX 77088.

GENERAL ALLEGATIONS

9. Plaintiff hereby incorporates by reference paragraphs 1 through 9 as though fully set forth herein.

10. At all times mentioned herein, Defendants, and each of them, were engaged in the business of manufacturing, fabricating, designing, packaging, assembling, distributing, leasing, buying, selling, inspecting, servicing, installing, repairing, marketing, warranting, supervising and providing the subject product to the general public for purchase.

11. On or about March 10, 2019, Plaintiff was in her home and using her Sunbeam electric blanket purchased from Defendants. As Plaintiff slept, the electric blanket overheated and/or malfunctioned and caused burns to Plaintiff's person, thereby causing Plaintiff to endure severe injury and pain.

12. Plaintiff immediately experienced substantial pain and injury throughout her body. Plaintiff has received and continues to receive medical treatment and care.

13. On information and belief, Defendants' Sunbeam electric blankets are improperly designed and/or manufactured for their intended use and do not contain adequate instructions and/or warnings regarding these hazards and dangers.

FIRST CAUSE OF ACTION
Negligence
(Against All Defendants and DOES 1-50)

14. Paragraphs 1 through 13 are realleged and incorporated by this reference.
15. At all times relevant times to this action, Defendants and Does 1-50, inclusive, had a duty to exercise reasonable care, and to comply with the existing standards of care, in the preparation, design, development, formulation, manufacture, testing, packaging, promotion, labeling, advertising, marketing, instruction on use, warnings, distribution, supply and/or sale of products and electric blankets marketed under the Sunbeam brand name, which Defendants introduced into the stream of commerce to be used as electric blankets. This included a duty to ensure that users would not suffer from unreasonable dangerous accidents while using the blanket.
16. At all times relevant to this action, Defendants had a duty to ensure their products did not pose a significant risk of bodily harm and adverse events.
17. At all relevant times, Defendants, knew or reasonably should have known that their products were unreasonably dangerous and defective when utilized for the products' intended use and purpose.
18. At all relevant times, Defendants knew or reasonably should have known that its products were unreasonably dangerous and defective when used for its intended purpose, and that Plaintiff, being among foreseeable users who could be exposed to harm, would foreseeably suffer injury as a result of Defendants' failure to exercise reasonable care.
19. Defendants failed to modify or otherwise retrofit its products, including to make it safe for use, and otherwise failed to warn consumers of the dangers which Defendants knew or should have known existed to such consumers or anyone who would use the blanket.
20. The likelihood and gravity of the harm presented by the Sunbeam electric blanket outweigh the utility of the design of the product.
21. The product defects alleged were substantial factors contributing to the cause of injuries and damages suffered by Plaintiff.
22. As a direct and proximate cause of the negligence of Defendants, Plaintiff suffered, and will continue to suffer, personal injuries, including but not limited to, medical bills, loss of past earnings, severe emotional distress and anxiety, general damages and other economic and noneconomic damages in an amount to be proven at trial.

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SECOND CAUSE OF ACTION
Strict Products Liability – Failure to Warn
(Against All Defendants and DOES 1-50)

23. Paragraphs 1 through 22 are realleged and incorporated by this reference.

24. At all relevant times, Defendants and Does 1-50 were in the business of and did design, develop, formulate, manufacture, test, package, promote, label, advertise, market, instruct on, distribute, supply and/or sell products and electric blankets marketed under the Sunbeam brand name.

25. Defendants placed the Sunbeam electric blankets, including the blanket used by Plaintiff, into the stream of commerce.

26. The Sunbeam electric blankets were defective at the time they were placed into the stream of commerce by Defendants in that:

- 1) the electric blankets had inadequate warnings or instructions;
- 2) Defendants knew about but failed to inform consumers of the risks presented, thereby preventing consumer, including Plaintiff, from eliminating or reducing the risk;
- 3) the Sunbeam electric blankets failed to provide adequate safe-use instructions; and
- 4) Defendants knew or should have known that the Sunbeam electric blankets were unreasonably dangerous in that it created a substantially increased risk of serious bodily harm to reasonably foreseeable consumers, including Plaintiff, and Defendants failed to adequately warn of such increased risk.

27. The Sunbeam electric blankets were also defective because of inadequate post-marketing warnings or instructions because Defendants failed to provide adequate warnings to consumers after Defendants knew or should have known of the risk of serious bodily harm from the intended or foreseeable use of the products.

28. As a direct and proximate cause of the negligence of Defendants, Plaintiff suffered, and will continue to suffer, personal injuries, including but not limited to, medical bills, loss of past earnings, severe emotional distress and anxiety, general damages and other economic and noneconomic damages in an amount to be proven at trial.

THIRD CAUSE OF ACTION
Strict Liability – Manufacturing Defect
(Against All Defendants and DOES 1-50)

29. Paragraphs 1 through 28 are realleged and incorporated by this reference.

30. At all relevant times, Defendants and Does 1-50 were in the business of and did design, develop, formulate, manufacture, test, package, promote, label, advertise, market, instruct on, distribute, supply and/or sell products and electric blankets marketed under the Sunbeam brand name.

31. Defendants placed the Sunbeam electric blankets, including the blanket used by Plaintiff, into the stream of commerce.

32. The Sunbeam electric blankets contained a manufacturing defect at the time it left Defendants' possession. Specifically, the Sunbeam electric blanket used by Plaintiff had a manufacturing defect in that it overheated and/or malfunctioned in normal use without warning to the user. This defect caused Plaintiff's severe injuries.

33. Plaintiff was harmed by the Sunbeam electric blanket when slept with the blanket on and it overheated and/or malfunctioned and caused Plaintiff's severe injuries.

34. The manufacturing defects in the Sunbeam electric blankets were the direct and proximate cause of Plaintiff's injuries described herein.

35. As a direct and proximate cause of the negligence of Defendants, Plaintiff suffered, and will continue to suffer, personal injuries, including but not limited to, medical bills, loss of past earnings, severe emotional distress and anxiety, general damages and other economic and noneconomic damages in an amount to be proven at trial.

FOURTH CAUSE OF ACTION
Strict Liability – Design Defect
(Against All Defendants and DOES 1-50)

36. Paragraphs 1 through 35 are realleged and incorporated by this reference.

37. At all relevant times, Defendants and Does 1-50 were in the business of and did design, develop, formulate, manufacture, test, package, promote, label, advertise, market, instruct on, warn about, distribute, supply and/or sell products and electric blankets marketed under the Sunbeam brand name.

38. Defendants placed the Sunbeam electric blankets, including the blanket used by Plaintiff, into the stream of commerce.

39. The Sunbeam electric blankets and the component parts contained a design defect when the electric blankets left Defendants' possession because the electric blankets would not operate safely as an ordinary consumer would have expected at the time of use.

40. An ordinary consumer would not have expected the Sunbeam electric blankets to overheat and/or malfunction.

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41. Plaintiff was harmed by the Sunbeam electric blanket when she slept with the blanket on and it overheated and/or malfunctioned and caused Plaintiff's severe injuries.

42. The design defect, described above, in the Sunbeam electric blankets was the direct and proximate cause of Plaintiff's injuries described herein.

43. As a direct and proximate cause of the negligence of Defendants, Plaintiff suffered, and will continue to suffer, personal injuries, including but not limited to, medical bills, loss of past earnings, severe emotional distress and anxiety, general damages and other economic and noneconomic damages in an amount to be proven at trial.

FIFTH CAUSE OF ACTION
Breach of Implied Warranty of Merchantability
(Against All Defendants and DOES 1-50)

44. Paragraphs 1 through 43 are realleged and incorporated by this reference.

45. At all relevant times, Defendants and Does 1-50 were in the business of and did design, develop, formulate, manufacture, test, package, promote, label, advertise, market, instruct on, distribute, supply and/or sell products and electric blankets marketed under the Sunbeam brand name.

46. Plaintiff is informed and believes Defendants impliedly warranted to Plaintiff that the Sunbeam electric blankets, including Plaintiff's Sunbeam electric blanket, was of merchantable quality and safe for the use for which it was intended.

47. Plaintiff relied on the skill and judgment of Defendants in using the Sunbeam electric blanket, in a manner in which it was reasonably intended to be used and, as a direct and proximate result of the breach of the implied warranties by Defendants, and each of them, Plaintiff sustained the injuries and damages described herein.

48. The product was unsafe for its intended use, and it was not of merchantable quality, as warranted by Defendants, in that it had very dangerous propensities when put to its intended use and may cause severe injury to the user during normal use. The Sunbeam electrical blanket was unaccompanied by warning of its dangerous propensities that were either known or reasonably knowable at the time of distribution.

49. On or about March 10, 2019, Plaintiff's Sunbeam electric blanket involved in this incident was in substantially the same condition as when it was originally designed, developed, tested, packaged, labeled and sold by Defendants.

50. Plaintiff was injured while using the Sunbeam electric blanket in a foreseeable manner for its intended uses.

51. As a proximate and legal result of the defective and unreasonably dangerous condition of the Sunbeam electric blankets, manufactured and supplied by Defendants, Plaintiff suffered severe injuries.

52. That as a direct and proximate cause of the negligence of Defendants, Plaintiffs suffered, and will continue to suffer personal injuries, including but not limited to, medical bills, loss of past income, severe emotional distress and anxiety, general damages and other economic and noneconomic damages in an amount to be proven at trial.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for judgment against Defendants SUNBEAM PRODUCTS, INC., a Delaware corporation; and DOES 1-50, inclusive, as follows:

ON ALL CAUSES OF ACTION

1. For special damages including medical expenses, both past and future, and all other related special damages incurred by and on behalf of Plaintiff DEBORAH ZINK in an amount to be proven at trial;
2. For general damages including for personal injury and pain and suffering and emotional distress by Plaintiff in an amount in excess of the minimum subject matter jurisdiction of this Court;
3. For loss of earnings and earning capacity both past and future, and all other related special damages incurred by and on behalf of Plaintiff DEBORAH ZINK;
4. For pre- and post-judgment interest and costs of suit incurred herein;
5. For such other and further relief as this Court may deem just and proper.

Respectfully submitted,

DOWNTOWN L.A. LAW GROUP

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