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IN THE UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA

STEPHANIE BRIGHAM,

NO.

Plaintiff,

v.

COMPLAINT

HEATMAX, INC., a Georgia corporation;
WALMART STORES, INC., a Delaware
corporation,

(Personal Injury - Product Liability)

Defendants.

Plaintiff respectfully files her Complaint against Defendants, as follows.

PARTIES

1. Stephanie Brigham, an adult woman of sound mind, was at all times material hereto a resident of Maricopa County, Arizona.

2. Defendant Wal-Mart Stores, Inc. ("Wal-Mart") is a Delaware corporation with a principal place of business at 702 SW 8th Street, Bentonville, Arkansas 72716-8611. At all time material hereto, it marketed and sold a product known as "Hothands Hand Warmers" ("Hothands").

3. Defendant Heatmax, Inc. is a Georgia corporation with its primary place of business in Dalton, Georgia. At all time material hereto, it designed, tested, manufactured, marketed, packaged and sold the Hothands product.

JURISDICTION

4. Jurisdiction is proper in this Court under 28 U.S.C. § 1332(a)(1). Plaintiff is a resident of Arizona and the events at issue occurred in Arizona. Defendants are corporations incorporated in other states, with their primary place of business in other states. The amount in

1 controversy exceeds the jurisdictional minimum.

2 5. The minimum contacts required by *International Shoe Co. v. Washington*, 326 U.S.
3 310 (U.S. 1945) and its progeny are easily satisfied here. Both Defendants do substantial
4 amounts of business in Arizona and have for many years. Defendant Wal-Mart has numerous
5 stores located in Arizona. Defendant Heatmax employs a 1-800 number accessible in Arizona
6 and actively generates hits, calls, sales, income and consummates numerous transactions with
7 Arizonans, marketing through at least nine different web sites. See,
8 http://heatmax.com/where_to_buy.html.

9 **VENUE**

10 6. Venue is proper under 28 U.S.C. § 1391(b)(2) and/or (b)(3).

11 **GENERAL ALLEGATIONS**

12 7. Heatmax manufactures Hothands and Wal-Mart sells the product. Hothands is a
13 hand warmer product that advertises itself on the front of its package as a “safe, natural heat.”
14 In fact, it can reach 158 degrees fahrenheit or higher and has a history of causing severe burns.

15 8. Unlike, for instance, a space heater, a stove or a barbecue grill, the product is not
16 supposed to reach temperatures which cause contact burns; it is only advertised as providing
17 comforting warmth to extremities.

18 9. In 2000, Heatmax became aware of Hothands’ propensity to cause burns when they
19 were sued in Chattanooga, Tennessee by Pamela Goodman. A year later, Jesse Gilbert brought
20 suit for burns in Ft. Wayne, Indiana. Five years later, Harold Huff sued for burns in Andover,
21 Massachussetts. Three years later, Earlene Goins brought suit for burns in Indianapolis. Mark
22 Cross brought a similar suit in Wichita and Gerald Tolve brought suit in Nutley, New Jersey,
23 both in 2010. Two years later, Rose Marie Coppolla brought suit in Frederick, Maryland. In
24 addition, there were numerous customer complaints and additional state court suits. Heatmax
25 took no steps to make the product safer.

26 10. Stephanie Brigham (DOB 1/2/67) is a nurse and a non smoker, non drinker with no
27 drug issues whose husband died on April 5, 2013, leaving her a widow. On April 18, 2013, she
28 underwent a previously scheduled implant exchange and mastopexy on her breasts. On the

1 way back to Arizona the following day, she stopped at the Wal Mart in El Cajon, California
2 and purchased three sets of Hothands (she still has the receipt and original products). The
3 product prominently states that it provides “safe, natural heat.”

4 11. At a later time, she read the instructions, activated the product as instructed and
5 placed them on her thighs to see if they became warm, which they did. She then placed them
6 between her bra and outer garments. They provided relief from pain and she moved them
7 around over time.

8 12. Because of the death of her husband, her son Ryan Fahey, a certified burn
9 technician, moved in to help her with her care. After a short time, she noticed that her pain was
10 increasing, not decreasing and the skin on her breasts was coming off. She realized that the
11 Hothands had burned two large holes in each of her breasts and presented to the emergency
12 department on May 3, 2013.

13 13. She was then admitted to the Grossman Burn Unit for intravenous antibiotics and
14 wound care under Dr. Bonillas. She was inpatient for three days and underwent wound
15 debridement on day three. She was given discharge instructions, including home debridement,
16 which she followed with Ryan’s assistance.

17 14. Stephanie again presented to the emergency department due to uncontrolled pain, on
18 May 14, 2013. She was given pain medication and an appointment was set with Dr. Bonillas.

19 15. Still in disbelief that a warming product had burned large holes in both her breasts
20 and wondering if perhaps the problems had arisen secondary to her earlier surgery somehow,
21 Stephanie consulted plastic and reconstructive surgeon Dr. Mehdi Mazaheri, M.D.

22 16. Dr. Mazaheri provided her with a signed letter which states, in relevant part, “these
23 breast scars are consistent with a contact burn. There appeared to be no infection based on the
24 pictures I saw. There did not appear to be delayed healing secondary to surgery. The wounds
25 were in locations that were not consistent with wound complications secondary to surgery.”

26 **CAUSES OF ACTION**

27 **COUNT ONE - NEGLIGENT DESIGN (Heatmax and Wal Mart)**

28 17. Plaintiff repeats the allegations as if set forth herein.

1 18. Defendant Heatmax manufactured and Defendant Wal-Mart sold a product which
2 fell below the standard of care for product design.

3 19. This failure to meet the standard of care includes but is not limited to, designing a
4 product whose sole purpose is to provide comforting warmth to extremities in such a way that
5 on many occasions, it has inflicted severe burns on users' extremities when used in a
6 foreseeable manner. It would have been easy to design the product so that it became warm,
7 without becoming hot enough to inflict second degree burns.

8 20. Said breach of the standard of care proximately caused damages to Plaintiff.

9 **COUNT TWO - NEGLIGENT WARNINGS AND INSTRUCTIONS (Heatmax and Wal-**
10 **Mart)**

11 21. Plaintiff repeats the allegations as if set forth herein.

12 22. Defendant Heatmax manufactured and Defendant Wal-Mart sold a product whose
13 warnings fell below the standard of care. While an internal page of the Heatmax web site states
14 that the product should not be in direct contact with the skin, nothing on the product, including
15 the instructions and warnings, states this. The front of the package prominently states that the
16 product provides safe heat and even the more specific warnings in small type on the back do
17 not describe or warn of the injuries that can and did occur here and had been occurring at
18 regular intervals previously.

19 23. The failure to meet the standard of care proximately caused severe damages to
20 Plaintiff.

21 **COUNT THREE - STRICT LIABILITY: DESIGN DEFECT (Heatmax and Wal Mart)**

22 24. Plaintiff repeats the allegations as if set forth herein.

23 25. Defendant Heatmax and Defendant Wal-Mart designed, manufactured and sold a
24 defective and unreasonably dangerous product into the stream of commerce, specifically the
25 Hothands at issue. Said product's harmful characteristics and consequences outweigh the
26 benefits of its design, specifically its regularly heating to temperatures sufficient to cause
27 second and third degree burns, when it is only sold as a product providing comforting warmth.
28 It would have been technologically and financially feasible to have designed an acceptably safe,

1 non defective product and this was known at the time of design.

2 26. Said defects proximately caused Plaintiff's severe damages.

3 **COUNT FOUR - STRICT LIABILITY: INFORMATION DEFECT (Heatmax and Wal-**
4 **Mart)**

5 27. Plaintiff repeats the allegations as if set forth herein.

6 28. Defendants had actual knowledge that foreseeable uses of the product it was
7 designing, manufacturing, marketing and/or selling into the stream of commerce were
8 unreasonably dangerous and failed to provide adequate warnings and instructions for safe use.

9 29. Said failure proximately caused severe damages to Plaintiff.

10 **PRAYER FOR RELIEF**

11 WHEREFORE, Plaintiff respectfully requests that the Court grant her judgment
12 against Defendants for:

13 A. Compensatory damages;

14 B. Costs;

15 C. Post judgment interest on all sums and any other relief that the Court sees fit to grant.

16 DATED this 3rd day of June, 2014.

17 THE ENTREKIN LAW FIRM

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