

IN THE DISTRICT COURT

NORMA L. HINOJOSA, Individually, as §
Next Friend of RAMIRO HINOJOSA, Jr., §
Minor, and as Representative of the Estate of §
RAMIRO HINOJOSA, Deceased; CINTHYA §
HINOJOSA, Individually; BRENDA §
HINOJOSA, Individually; RAMIRO §
GARZA HINOJOSA, Individually; MARIA §
ELENA MUNOZ HINOJOSA, Individually §

and §

ROBERTO CARLOS GUERRA, §
Individually, and as Next Friend of §
NATHAN ALEXANDER GUERRA, Minor; §
ARTURO RAMOS and MARIO RAMOS, §
Individually, and as Representatives of the §
Estate of LORENA YVONNE RAMOS, §
Deceased §

And §

LAWRENCE HERNANDEZ, §
INDIVIDUALLY AND AS §
REPRESENTATIVE OF THE ESTATE §
OF LAISHA BROOKE HERNANDEZ, §
DECEASED AND LAILA ELIANA §
HERNANDEZ, DECEASED §

VS. §

UNITY 3 4 3, LTD.; WALNUT CREEK §
APARTMENTS; ALOHA HOUSEWARES, §
INC.; ALOHA WORLDWIDE; H.S.T. §
MANUFACTURING, INC.; WAL-MART §
STORES TEXAS, L.L.C.; AND WAL-MART §
STORES, INC.; W H I MFG INC.; NINGBO §
WINNER ELECTRICAL APPLIANCE §
GENERAL FACTORY; NINGBO WINNER §
ELECTRIC APPLIANCE GENERAL §
FACTORY; NINGBO WINNER ELECTRIC §
APPLIANCE CO., LTD.; XIANGXUEHAI §
GROUP NINGBO WINNER ELECTRIC §

61ST JUDICIAL DISTRICT

APPLIANCE CO., LTD.; NINGBO BESTT §
ELECTRIC APPLIANCE CO., LTD.; §
NINGBO BEST ELECTRIC APPLIANCE §
CO., LTD., W.H.I. MANUFACTURING, §
INC.; and NINGBO BESTT ELECTRIC §
CO., LTD. §

HARRIS COUNTY, TEXAS

DEFENDANT’S MOTION IN LIMINE

Defendant Wal-Mart Stores Texas, LLC (incorrectly named as Wal-Mart Stores, Inc.) (hereinafter “Defendant” or “Wal-Mart”) in the above styled and numbered cause, and before any proceedings have been conducted in the presence of the jury, before voir dire examination of the jury panel, and before the introduction of any evidence, files this Motion in Limine. Defendant respectfully moves the Court to instruct Plaintiffs, Intervenors, their respective attorneys, witnesses, and experts to refrain from mentioning within the hearing of any member of the jury panel during voir dire examinations, opening statements, while examining witnesses, during final arguments, or while making objections in the presence of the jury or otherwise any of the following matters, until such matters have been called to the Court’s attention, out of the presence and hearing of the jury, and until the Court has ruled that such matters can be told to the jury. It is further moved that Plaintiff’s counsel and Intervenors’ counsel be ordered to warn their client and each of their respective witnesses and experts and to instruct them not to disclose or speak about any of these matters in the jury’s presence. The matters subject to this motion are as follows:

1. Any mention, comment or inference of the financial status or net worth of the Defendant and any of its subsidiaries, including but not limited to, remarks or references regarding the disparity in wealth or financial condition between the Plaintiffs, Intervenors and the Defendant. Such collateral financial matters are not relevant to any material issue in this lawsuit and would be solely for the purpose of prejudice and inflammation of the jury.

2. That the Plaintiffs and Intervenors are entitled to any monetary damages based on future income or money received from the decedent, Lorena Ramos. There has been no evidence that Ms. Ramos was working in the year prior to the fire, there is no evidence she provided financial support to any family member, and the only testimony regarding loans and payments involve those made TO Lorena Ramos.
3. Any testimony, photographs, or physical and tangible item(s) which mention or make reference to any subsequent remedial measures which may have been taken by Defendants. Such testimony, photographs, or physical and tangible item(s) which mention or make reference to any subsequent remedial measure is prohibited by the TEXAS RULES OF CIVIL EVIDENCE. “When, after an event, measures are taken which, if taken previously, would have made the event less likely to occur, evidence of the subsequent remedial measures is not admissible to prove negligence or culpable conduct in connection with the event.”
4. Any testimony from any of Plaintiffs’ or Intervenors’ experts that is outside the scope of their expertise and outside the scope of the matters on which each has been designated to testify, and includes testimony that is not based on reliable principles or that incorrectly applies reliable principles to the facts and evidence in this case.
5. Any mention, comment or reference to the recall of milk house heaters by the CPSC in December of 2010. The recall was a subsequent remedial measure as it occurred 10 months after the incident made the basis of this suit. Further, the recall failed to identify a particular defect in the heater or its cord and thus, should not be used as proof of a defect in the cord plug connection of the subject heater. Therefore, any mention of this is irrelevant, prejudicial and will confuse and mislead the jury.
6. Any mention, comment or reference to any documents involving correspondence with the CPSC. Any and all correspondence with the CPSC is privileged under the following federal statutes:
 - Section 6(a)(2) of the CPSA, incorporating Exemption 4 of FOIA
 - 5 USC section 552(b)(4)
 - 15 USC section 2005(a)(2)
 - 15 USC section 255(b)(5)
7. Any mention, comment or reference to the “exemplar” heaters examined by Plaintiffs’ and Intervenor’s expert Erik Anderson. Mr. Anderson examined two heaters manufactured one year prior to the subject Comfort Essentials milk house heater, from an undetermined Chinese manufacturer, created in an undetermined Chinese factory, and having a different brand name (Aloha Breeze) to the Comfort Essentials brand heater made the basis of this lawsuit. Any reference to the heaters or to results from the

examination of these heaters is irrelevant, prejudicial and will confuse and mislead the jury.

8. Any mention, comment or reference to the notion that Chinese manufacturers of electrical products are inferior, perform improper work, and are more likely to produce a defective product. Plaintiffs' and Intervenor's expert has relied on the idea that China manufactures inferior products to form the basis of his opinion without providing any of the data, information, publications, or documentation to support these assertions as required under the relevant legal principles and case law. Any reference to manufacturers or factories in China creating inferior or defective products is prejudicial, and would confuse and mislead the jury.
9. Any mention, comment or reference of any prior incident involving a milk house space heater sold by Wal-Mart, unless such incident involves a Comfort Essentials brand heater. Any incident or claim involving a milk house heater sold by Wal-Mart that was likely manufactured by a different company at a different factory, using different component parts, is irrelevant to the issues in this case and would confuse and mislead the jury.
10. Any mention, comment or reference of any prior incident involving a milk house space heater sold by Wal-Mart that involved an alleged fire or heat incident arising from the body of the heater. The allegations in this case are specifically as to the plug and cord connection, and testing of the heater, when attached to a power source, showed it still worked after the fire. Any incident or prior claim involving a milk house heater due to issues related to the main body of the heater is prejudicial, and would confuse and mislead the jury.
11. Any mention, comment or reference of any prior incident involving a milk house space heater sold by Wal-Mart that involved the plug or cord of the heater, unless it can be shown that the incident arose out of resistive heating due a defective crimp and solder at the plug and cord connection. Prior incidents, including claims involving fires allegedly occurring at the cord and plug, wherein no defect was found to have occurred, are irrelevant, and would confuse and mislead the jury.
12. Any testimony, comments, references, photographs, or physical and tangible item(s) which mention or make reference to any **wrongful death** damages which Plaintiffs and Intervenor have pled, but for which there is no evidence. This includes, but is not limited to, any testimony, comments, references, photographs, or physical and tangible item(s) which mention or make reference to the following:
 - A. Pecuniary loss in the past or future by Plaintiffs or Intervenor as a result of this incident;
 - B. Loss of inheritance by Plaintiffs or Intervenor as a result of this incident; and
 - C. Loss of community estate by Plaintiffs or Intervenor as a result of this incident

Respectfully submitted,

DAW & RAY, LLP

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ATTORNEYS FOR DEFENDANT

WAL-MART STORES TEXAS, LLC

**(INCORRECTLY NAMED AS WAL-MART
STORES, INC.)**

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a true and correct copy of the above and foregoing instrument has been served upon all known counsel of record by Certified Mail, Return Receipt Requested, Facsimile, E-Filing Notification and/or Hand Delivery on this the 31st day of October, 2014.

Mikal C. Watts
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Edinburg, Texas 78539

Via Email

Joe Cone
JOE J. CONE & ASSOCIATES, P.C.
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Via Email

Willie Ben Daw, III/Benjamin S. Carpenter

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Minor, and as Representative of the Estate of
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 CO., LTD. §

HARRIS COUNTY, TEXAS

ORDER IN LIMINE

The Court, having considered Defendant Wal-Mart Stores Texas, LLC's (incorrectly named as Wal-Mart Stores, Inc.) Motion in Limine and having heard the arguments of counsel, hereby orders Plaintiffs and their counsel and witnesses, to refrain from any mention or interrogation, directly or indirectly, including offering documentary evidence, about any of the following matters without first requesting and obtaining a ruling from the Court outside the presence and hearing of all prospective jurors and jurors ultimately selected in this cause concerning any alleged theory of admissibility of the matters:

No. 1:	_____	_____	_____
	AGREED	GRANTED	DENIED
No. 2:	_____	_____	_____
	AGREED	GRANTED	DENIED
No. 3:	_____	_____	_____
	AGREED	GRANTED	DENIED
No. 4:	_____	_____	_____
	AGREED	GRANTED	DENIED
No. 5:	_____	_____	_____
	AGREED	GRANTED	DENIED

No. 6:	<u>AGREED</u>	<u>GRANTED</u>	<u>DENIED</u>
No. 7:	<u>AGREED</u>	<u>GRANTED</u>	<u>DENIED</u>
No. 8:	<u>AGREED</u>	<u>GRANTED</u>	<u>DENIED</u>
No. 9:	<u>AGREED</u>	<u>GRANTED</u>	<u>DENIED</u>
No. 10:	<u>AGREED</u>	<u>GRANTED</u>	<u>DENIED</u>
No. 11:	<u>AGREED</u>	<u>GRANTED</u>	<u>DENIED</u>
No. 12:	<u>AGREED</u>	<u>GRANTED</u>	<u>DENIED</u>

SIGNED this _____ day of _____, 2014.

PRESIDING JUDGE

**APPROVED AS TO FORM
AND ENTRY REQUESTED:**

DAW & RAY, LLP

By: _____

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**ATTORNEYS FOR DEFENDANT
WAL-MART STORES TEXAS, LLC
(INCORRECTLY NAMED AS WAL-MART STORES, INC.)**