

IN THE SUPREME COURT OF THE STATE OF NEVADA

JACUZZI INC., doing business as
JACUZZI LUXURY BATH,

Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT
COURT, IN AND FOR THE COUNTY OF
CLARK, STATE OF NEVADA, AND THE
HONORABLE RICHARD SCOTTI,
DISTRICT JUDGE,

Respondents,

And

ROBERT ANSARA, as Special
Administrator of the Estate of SHERRY
LYNN CUNNISON, Deceased; ROBERT
ANSARA, as Special Administrator of the
Estate of MICHAEL SMITH, Deceased
heir to the Estate of SHERRY LYNN
CUNNISON, Deceased; and DEBORAH
TAMANTINI individually, and heir to the
Estate of SHERRY LYNN CUNNISON,
Deceased; FIRST STREET FOR
BOOMERS & BEYOND, INC.; AITHR
DEALER, INC.; HALE BENTON,
individually; HOMECLICK, LLC;
BESTWAY BUILDING & REMODELING,
INC.; WILLIAM BUDD, individually and
as BUDDS PLUMBING; DOES 1 through
20; ROE CORPORATIONS 1 through 20;
DOE EMPLOYEES 1 through 20;
DOE MANUFACTURERS 1 through 20;
DOE 20 INSTALLERS 1 through 20;

Case No. Electronically Filed
Dec 10 2018 08:41 a.m.
Elizabeth A. Brown
Clerk of Supreme Court

District Court No.
A-16-731244-C
Dept. No. II

DOE CONTRACTORS 1 through 20; and
DOE 21 SUBCONTRACTORS 1 through
20, inclusive,

Real Parties in Interest.

**From the Eighth Judicial District Court
The Honorable Richard Scotti District Judge**

APPENDIX TO PETITION FOR WRIT OF PROHIBITION

VOLUME I

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DATED: December 7, 2018

SNELL & WILMER L.L.P.

/s/ Kelly H. Dove
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CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On December 7, 2018, I caused to be served a true and correct copy of the foregoing **APPENDIX TO PETITION FOR WRIT OF PROHIBITION - VOLUME I** upon the following by the method indicated:

- ☒ **BY E-MAIL:** by transmitting via e-mail the document(s) listed above to the e-mail addresses set forth below and/or included on the Court's Service List for the above-referenced case.

VIA EMAIL

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Defendant Pro Per

- ☒ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below:

Honorable Richard Scotti
Eighth Judicial District Court, Dept. II
Regional Justice Center
200 Lewis Avenue
Las Vegas, NV 89155



BY ELECTRONIC SUBMISSION: submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

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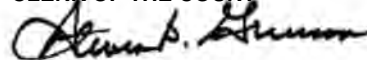
Attorneys for Defendants/Cross-Defendants

First Street for Boomers & Beyond, Inc.

and AITHR Dealer, Inc.

/s/ Ruby Lengsavath

An Employee of SNELL & WILMER L.L.P.



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11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 ROBERT ANSARA, as Special
14 Administrator of the Estate of SHERRY
15 LYNN CUNNISON, Deceased; ROBERT
16 ANSARA, as Special Administrator of the
17 Estate of MICHAEL SMITH, Deceased heir
18 to the Estate of SHERRY LYNN
19 CUNNISON, Deceased; and DEBORAH
20 TAMANTINI individually, and heir to the
21 Estate of SHERRY LYNN CUNNISON,
22 Deceased;

23 **Plaintiffs,**

24 **vs.**

25 FIRST STREET FOR BOOMERS &
26 BEYOND, INC.; AITHR DEALER, INC.;
27 HALE BENTON, Individually,
28 HOMECLICK, LLC.; JACUZZI INC., doing
business as JACUZZI LUXURY BATH;
BESTWAY BUILDING & REMODELING,
INC.; WILLIAM BUDD, Individually and as
BUDDS PLUMBING; DOES 1 through 20;
ROE CORPORATIONS 1 through 20; DOE
EMPLOYEES 1 through 20; DOE
MANUFACTURERS 1 through 20; DOE 20
INSTALLERS 1 through 20; DOE
CONTRACTORS 1 through 20; and DOE
21 SUBCONTRACTORS 1 through 20,
inclusive

CASE NO. A-16-731244-C
DEPT. NO. XVIII

FOURTH AMENDED COMPLAINT

Defendants.

COME NOW, Plaintiffs ROBERT ANSARA, as Special Administrator of the Estate of
SHERRY LYNN CUNNISON, Deceased; ROBERT ANSARA, as Special Administrator of the Estate
of MICHAEL SMITH Deceased and heir to the Estate of SHERRY LYNN CUNNISON, Deceased;
and DEBORAH TAMANTINI individually, and heir to the Estate of SHERRY LYNN CUNNISON,
Deceased by through their attorneys BENJAMIN P. CLOWARD, ESQ. and for their causes of action
against all Defendant's, and each of them, alleges as follows:

I.

PARTIES AND JURISDICTION

1. That at all times relevant to these proceedings, Plaintiff, ROBERT ANSARA the
Special Administrator of the Estate of SHERRY LYNN CUNNISON, was and is a resident of
Nevada.

2. That at all times relevant to these proceedings, SHERRY LYNN CUNNISON,
deceased (hereinafter "SHERRY") was a resident of Clark County, Nevada.

3. That at all times relevant to these proceedings, Plaintiff, ROBERT ANSARA, as Special Administrator of the Estate of SHERRY LYNN CUNNISON, Deceased was and is a resident of Clark County, Nevada.

4. That at all times relevant to these proceedings, Plaintiff, MICHAEL SMITH, Deceased
heir to the Estate of SHERRY LYNN CUNNISON, was and is a resident of Nevada.

5. That at all times relevant to these proceedings, Plaintiff, ROBERT ANSARA the
Special Administrator of the Estate of MICHAEL SMITH, Deceased, and heir to the Estate of
SHERRY LYNN CUNNISON was and is a resident of Nevada.

1 6. That at all times relevant to these proceedings, Plaintiff, DEBORAH TAMANTINI
2 (hereinafter "DEBORAH") individually, and heir to the Estate of SHERRY LYNN CUNNISON, was
3 and is a resident of the state of California.

4 7. That at all times relevant hereto, upon information and belief, Defendant, FIRST
5 STREET FOR BOOMERS & BEYOND, INC., (hereinafter "FIRST STREET") is and was a foreign
6 Corporation doing business in the State of Nevada.

7 8. That at all times relevant hereto, upon information and belief, Defendant, AITHR
8 DEALER, INC., (hereinafter "AITHR") is and was a foreign Corporation doing business in the State
9 of Nevada.

10 9. That at all times relevant hereto, upon information and belief, Defendant HALE
11 BENTON, was and is a resident of Clark County, Nevada.

12 10. That at all times relevant hereto, upon information and belief, Defendant
13 HOMECLICK, LLC., (hereinafter "HOMECLICK") is and was a foreign Corporation doing business
14 in the State of Nevada,

15 11. That at all times relevant hereto, upon information and belief, Defendant JACUZZI
16 INC., doing business as JACUZZI LUXURY BATH (hereinafter "JACUZZI") is and was a foreign
17 Corporation doing business in Clark County, Nevada,

18 12. That at all times relevant hereto, upon information and belief, Defendant, BESTWAY
19 BUILDING & REMODELING, INC., a Domestic Limited-Liability Company; (hereinafter
20 "BESTWAY"), doing business in the State of Nevada.

21 13. At all times mentioned, Defendant WILLIAM BUDD was and is a resident of Clark
22 County, Nevada and was the business owner of Defendant, BUDD'S PLUMBING an unincorporated
23 business, (hereinafter "BUDD and BUDD'S PLUMBING"), and doing business in the State of
24 Nevada.

1 II.

2 **GENERAL FACTUAL ALLEGATIONS**

3 14. At all times mentioned, Defendant FIRST STREET FOR BOOMERS & BEYOND,
4 INC. upon information and belief was and is a retailer of home improvement products and unique gifts
5 and the manufacturer, supplier and/or installer of the Jacuzzi walk-in tub, being utilized by the
6 deceased, SHERRY in her residence.
7

8 15. At all times mentioned Defendant, AITHR DEALER, INC., upon information and
9 belief was and is was a general contractor supplier and/or installer of the Jacuzzi walk- in tub, being
10 utilized by the deceased, SHERRY in her residence.
11

12 16. At all times mentioned Defendant, HALE BENTON was an employee of AITHR
13 DEALER, INC., and upon information and belief was the consultant and/or sales person of the Jacuzzi
14 walk-in tub, being utilized by the deceased, SHERRY in her residence.
15

16 17. At all times mentioned, Defendant, HOMECLICK, LLC., upon information and belief
17 was an online retailer of home improvement products primarily as a retailer of bath and kitchen
18 products and the manufacturer, supplier and/or installer of the Jacuzzi walk-in tub, being utilized by
19 the deceased, SHERRY in her residence.
20

21 18. That Defendant JACUZZI INC. doing business as JACUZZI LUXURY BATH through
22 its subsidiaries, upon information and belief was a global manufacturer and distributor of branded bath
23 and plumbing products for the residential, commercial and institutional markets. These include but are
24 not limited to whirlpool baths, spas, showers, sanitary ware and bathtubs, as well as professional grade
25 drainage, water control, commercial faucets and other plumbing products, and the manufacturer,
26 supplier and/or installer of the Jacuzzi walk-in tub, being utilized by the deceased, SHERRY in her
27 residence, and who marketed its product to the elderly and individuals who were overweight or had
28 physical limitation.

1 19. At all times mentioned Defendant BESTWAY BUILDING & REMODELING, INC.,
2 was a general contractor and the manufacturer, supplier and/or installer of the Jacuzzi walk in tub,
3 being utilized by the deceased, SHERRY in her residence
4

5 20. That Defendant, WILLIAM BUDD, individually and as BUDDS PLUMBING upon
6 information and belief was the manufacturer, supplier and/or installer of the Jacuzzi walk-in tub, being
7 utilized by the deceased, SHERRY in her residence.

8 21. That the true names and capacities, whether individual, corporate, association or
9 otherwise of the Defendants, DOES 1 through 20 and/or ROE CORPORATIONS I through 20, and/or
10 DOE EMPLOYEES 1 through 20, and/or DOE MANUFACTURERS 1 through 20 and/or DOE
11 INSTALLERS 1 through 20, and/or DOE CONTRACTORS 1 through 20, and or ROE
12 SUBCONTRACTORS 1 through 20, inclusive, are unknown to Plaintiff, who therefore sues said
13 Defendants by such fictitious names. Plaintiff is informed and believes, and thereupon alleges, that
14 each of the Defendants designated herein as DOES and/or ROES is responsible in some manner for
15 the events and happenings herein referred to, and in some manner caused the injuries and damages
16 proximately thereby to the Plaintiff, as herein alleged; that the Plaintiff will ask leave of this Court to
17 amend this Complaint to insert the true names and capacities of said Defendants, DOES 1 through 20
18 and/or ROE CORPORATIONS 1 through 20, and/or DOE EMPLOYEES 1 through 20, and/or DOE
19 MANUFACTURERS 1 through 20 and/or DOE INSTALLERS 1 through 20, and/or DOE
20 CONTRACTORS 1 through 20, and or ROE SUBCONTRACTORS 1 through 20, inclusive, when the
21 same have been ascertained by Plaintiff, together with the appropriate charging allegations, and to join
22 such Defendants in this action.
23
24
25

26 22. That said DOE and ROE Defendants are the employees, manufacturers, designers,
27 component part manufacturers, installers, owners, distributors, repairers, maintainers, warned for use,
28 retailers, and/or warrantors of said defective product as set forth herein.

1 23. Plaintiff is informed and believes, and based upon such information and belief, alleges
2 that each of the Defendants herein designated as DOES and ROES are in some manner responsible for
3 the occurrences and injuries sustained and alleged herein.
4

5 24. Plaintiff is informed and believes and thereon alleges that at all relevant times herein
6 mentioned Defendants, and each of them, were the agents and/or servants and/or employees and/or
7 partners and/or joint venture partners and/or employers of the remaining Defendants and were acting
8 within the course and scope of such agency, employment, partnership or joint venture and with the
9 knowledge and consent of the remaining Defendants.
10

11 25. In October of 2013, SHERRY entered into a contract to for purchase and installation of
12 a Jacuzzi walk-in tub.

13 26. On January 27, 2014, the installation was completed and an installation checklist was
14 completed.
15

16 27. Just over 20 days later on or about February 19, 2014, deceased SHERRY was in the
17 Jacuzzi walk-in tub, when she fell down in the tub.

18 28. Because of the dangerous design of the tub, SHERRY was unable to stand back up.

19 29. Because of the dangerous design of the tub, SHERRY was unable to exit the tub.
20

21 30. SHERRY struggled valiantly for several days trying to get up or exit the tub, but could
22 not because the tub was so horribly designed.

23 31. On or about February 21, 2014 and after several unanswered telephone calls to the now
24 deceased SHERRY, a well check was performed to check on her, which revealed that she was trapped
25 inside the Jacuzzi walk-in tub and could neither get up nor exit the tub.
26

27 32. That SHERRY had been trapped in the Jacuzzi walk-in tub for at least forty-eighty (48)
28 hours.

1 33. That even the firefighters and help that arrived were unable to safely remove her from
2 the tub and broke her arm attempting to pull her up out of the tub.

3 34. Ultimately, because of the tub's horrible design preventing even trained emergency
4 personnel from safely removing SHERRY from the tub, the firefighters had to literally cut off the door
5 to remove SHERRY from the tub.
6

7 35. That SHERRY was transported immediately to Sunrise Hospital where even after
8 lifesaving measures were performed, SHERRY ultimately succumbed to her injuries and died.
9

10 36. That all the facts and circumstances that give rise to the subject lawsuit occurred in the
11 County of Clark, Nevada.

12 **FIRST CAUSE OF ACTION**
13 ***Negligence as to All Defendants***

14 37. That Plaintiffs incorporate by reference each and every allegation previously made in
15 this Complaint, as if fully set forth herein.

16 38. Defendants owed a duty to Plaintiffs, and others similarly situated, to ensure that their
17 product, and particularly the Jacuzzi walk-in tub was properly functioning and safe for use by the end
18 consumer.
19

20 39. Defendants, and each of them, while in the course and scope of their employment
21 and/or agency with other Defendants, negligently failed to failed to warn Plaintiff of safety hazards
22 which resulted in SHERRY'S injuries and resulting death.

23 40. Defendants, and each of them, knew or should have known that unreasonably
24 dangerous conditions existed with the Jacuzzi walk-in tub, being used by Plaintiff, namely the inability
25 to get back up or exit the tub if Plaintiff fell.
26
27
28

41. Defendants owed a duty of due care to Plaintiffs, and others similarly situated, in the design, testing, manufacture, installation, assembly, marketing, instructions for use and warnings for the subject Jacuzzi walk-in tub.

42. Defendants breached their duty of due care by their negligent, careless, wanton, willful, and indifferent failure to act including, but not limited to:

- a. The negligent and improper design, testing, manufacture, installation assembly, instructions for use and warnings for the Jacuzzi walk-in tub; and
- b. The failure to provide adequate, accurate, and effective warnings and instructions to owners, operators, and users of the subject Jacuzzi walk-in tub.

SECOND CAUSE OF ACTION
***Strict Product Liability Defective Design,
Manufacture and/or Failure to Warn
as to all Defendants***

43. That Plaintiffs incorporate by reference each and every allegation previously made in this Complaint, as if fully set forth herein.

44. That upon information and belief, Defendants, and/or DOE/ROE Defendants, are and were a component part manufacturer, installer, owner, distributor, repairer, maintainer, warned for use, retailer, and/or warrantor of said defective product as set forth herein.

45. That the true names and capacities, whether individual, corporate, agents, association or otherwise of the DOE and ROE, are unknown to Plaintiff, who therefore sues said Defendants by such fictitious names. Plaintiff is informed and believes, and thereupon alleges, that each of the Defendants designated herein as DOE and/or ROE are responsible in some manner for the events and happenings herein referred to, and in some manner caused the injuries and damages proximately thereby to the Plaintiff as herein alleged; that the Plaintiff will ask leave of this court to amend this Complaint to insert the true names and capacities of said DOE and/or ROE Defendants, when the same have been

1 ascertained by the Plaintiff, together with appropriate charging allegations, and to join such Defendants
2 in this action.

3 46. That said DOE and ROE Defendants are the manufacturers, designers, component part
4 manufacturers, installers, owners, distributors, repairers, maintainers, retailers, warned for use,
5 warrantors of said defective product as set forth herein.
6

7 47. That upon information and belief, Defendants, and each of them, sold the subject
8 product and failed to warn Plaintiffs of the hazards of the use of the subject product.
9

10 48. At the time of this incident, the product had a design and/or manufacturing defect that
11 rendered the product unreasonably dangerous and potentially deadly.

12 49. The defect, which rendered it unreasonably dangerous, existed at the time the subject
13 product and its component parts left the care, custody and control of the above named Defendants
14 and/or ROE/DOE Defendants
15

16 50. The Defendants and/or ROE/DOE Defendants, knew or should have known of the
17 subject product's defect which rendered it unreasonably dangerous at the time of placing the subject
18 product into the stream of commerce and failed to undertake measures to prohibit it from entering into
19 the stream of commerce and into the hands of users in the State of Nevada, including warnings of the
20 risks for product failure, proper use and maintenance of the product and proper inspection of the
21 product for potential hazards and/or defects.
22

23 51. That the subject product was defective due to Defendants, and each of their failure to
24 warn of the potential dangers associated with using said product.

25 52. That said product was defective due to a manufacturers' defect, design defect, or defect
26 due to lack of adequate warnings.
27

28 53. That the Jacuzzi walk-in tub was defective as a result of its design which rendered the
product unreasonably dangerous.

1 54. That the Jacuzzi walk-in tub was unreasonably dangerous and defective because it
2 lacked suitable and adequate warnings concerning its safe and proper use which rendered the product
3 unreasonably dangerous.

4 55. That the Jacuzzi walk-in tub failed to perform in the manner reasonably expected in
5 light of its nature and intended function, and was more dangerous than would be contemplated by the
6 ordinary user, including SHERRY having the ordinary knowledge available in the community, which
7 rendered the product unreasonably dangerous.
8

9 56. That Defendants, and each of their failure to warn was a proximate cause of
10 SHERRY'S injuries and death.
11

12 57. That said product's manufacturing and/or design defect was the proximate cause of
13 SHERRY'S injuries and resulting death.

14 58. The Defendants and/or DOE/ROE Defendant' conduct was the direct and proximate
15 cause of SHERRY'S injuries and damages.
16

17 59. The Defendants and/or DOE/ROE Defendants are strictly liable to the Plaintiffs jointly
18 and severally for the damages they have sustained.

19 60. That Plaintiffs have been forced to retain the service of an attorney to represent them in
20 this action, and as such is entitled to reasonable attorney's fees and litigation costs.
21

22 **THIRD CAUSE OF ACTION**

23 ***Breach of Express Warranties as to as to Jacuzzi Inc., doing business as Jacuzzi Luxury Bath,
24 First Street for Boomers & Beyond, Inc., AITHR Dealer, Inc., and Homeclick, LLC***

25 61. That Plaintiffs incorporate by reference each and every allegation previously made in
26 this Complaint, as if fully set forth herein.

27 62. Defendants JACUZZI INC., doing business as JACUZZI LUXURY BATH, FIRST
28 STREET FOR BOOMERS & BEYOND, INC., AITHR DEALER, INC., and HOMECCLICK, LLC,

1 and/or ROE/DOE Defendants, expressly warranted that the walk-in bathtub was free from defects and
2 was safe for use.

3 63. Defendants breached the express warranties, and these breaches of warranty were the
4 proximate and legal cause of the failure of the walk-in bathtub.
5

6 64. Plaintiffs sustained injuries and damages as a result of the Defendants' breach.

7 **FOURTH CAUSE OF ACTION**

8 ***Breach of Implied Warranty of Fitness for a Particular Purpose as to as to Jacuzzi Inc.,***
9 ***doing business as Jacuzzi Luxury Bath, First Street for Boomers & Beyond, Inc., AITHR***
10 ***Dealer, Inc., and Homeclick, LLC***

11 65. That Plaintiffs incorporate by reference each and every allegation previously made in
12 this Complaint, as if fully set forth herein.

13 66. Defendants JACUZZI INC., doing business as JACUZZI LUXURY BATH, FIRST
14 STREET FOR BOOMERS & BEYOND, INC., AITHR DEALER, INC., and HOMECLICK, LLC,
15 and/or ROE/DOE Defendants, impliedly warranted that the walk-in bathtub was fit to be used for a
16 particular purpose and was safe for use.

17 67. Defendants had reason to know:

- 18 a. The particular purpose for which the walk-in bathtub would be used, and;
19 b. That SHERRY was relying on Defendants' skill and judgment to provide a suitable
20 product.
21

22 68. Defendants implicitly warranted that the walk-in bathtub was fit for the particular
23 purpose for which it was required and that it was safe for SHERRY to use in the manner
24 contemplated.
25

26 69. Defendants breached their implied warranty of fitness for a particular purpose, and the
27 breaches of warranty were the proximate and legal cause of the failure of the walk-in bathtub.

28 70. Plaintiffs sustained injuries and damages as a result of Defendants' breach.

1 **FIFTH CAUSE OF ACTION**

2 ***Breach of Implied Warranty of Merchantability as to as to Jacuzzi Inc., doing business***
3 ***as Jacuzzi Luxury Bath, First Street for Boomers & Beyond, Inc., AITHR Dealer, Inc.,***
4 ***and Homeclick, LLC***

5 71. That Plaintiffs incorporate by reference each and every allegation previously made in
6 this Complaint, as if fully set forth herein.

7 72. Defendants JACUZZI INC., doing business as JACUZZI LUXURY BATH, FIRST
8 STREET FOR BOOMERS & BEYOND, INC., AITHR DEALER, INC., and HOMECLICK, LLC,
9 and/or ROE/DOE Defendants, breached the implied warranty of merchantability, and their breach of
10 warranty was the proximate and legal cause of the failure of the walk-in bathtub.

11 73. Plaintiffs sustained injuries and damages as a result of Defendants' breach.

12 **PUNITIVE DAMAGES**

13 ***As to Jacuzzi Inc., doing business as Jacuzzi Luxury Bath,***
14 ***First Street for Boomers & Beyond, Inc., AITHR Dealer, Inc., and Homeclick, LLC***

15 74. That Plaintiffs incorporate by reference each and every allegation previously made in
16 this Complaint, as if fully set forth herein.

17 75. The Defendants JACUZZI INC., doing business as JACUZZI LUXURY BATH,
18 FIRST STREET FOR BOOMERS & BEYOND, INC., AITHR DEALER, INC., and HOMECLICK,
19 LLC, and/or ROE/DOE Defendants, knew or should have known of the subject product's defect which
20 rendered it unreasonably dangerous at the time of placing the subject product into the stream of
21 commerce and failed to undertake measures to prohibit it from entering into the stream of commerce
22 and into the hands of users in the State of Nevada, including warnings of the risks for product failure,
23 proper use and maintenance of the product and proper inspection of the product for potential hazards
24 and/or defects.
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1 76. Defendants conduct was wrongful because Defendants engaged in oppression, malice
2 and with a conscious disregard toward individuals like SHERRY who purchased and used the walk-in
3 bathtub and said conduct was despicable.

4 77. Specifically, Defendants market the walk-in tub to elderly individuals like SHERRY
5 who are weak, feeble and at a significant risk for falling down.

6 78. Defendants advertise that millions of Americans with mobility concerns know that
7 simply taking a bath can be a hazardous experience.

8 79. Defendants advertise that the solution to having a hazardous experience while taking a
9 bath is the Jacuzzi Walk-in Tub.

10 80. Defendants advertise that those who purchase a walk-in tub can feel safe and feel better
11 with every bath.

12 81. Defendants advertise that the Jacuzzi bathtub is an industry leader with regard to safety
13 of those who use the walk-in tub.

14 82. Defendants advertise that the unique bathtubs can make the user's experience a pain
15 and stress reducing pleasure.

16 83. Defendants advertise that the tall tub walls allow neck-deep immersion and the same
17 full body soak as in a natural hot spring or regular hot tub.

18 84. Defendants advertise that getting out of the tub is easy like getting out of a chair and
19 that it is nothing like climbing up from the bottom of the user's old tub.

20 85. Despite knowing that the users of the Jacuzzi walk-in bathtub are weak, feeble and at a
21 significant risk for falling down, Defendants did nothing to plan for the foreseeable event of having a
22 user like SHERRY fall down inside the walk-in bathtub.

23 86. Defendants did not use reasonable care in the design of the bathtub by providing a safe
24 way for users who fell while using the Jacuzzi walk-in bathtub to safely exit the bathtub.

1 87. Defendants knew of the heightened risk of having users like SHERRY fall down inside
2 the Jacuzzi walk-in bathtub, and have difficulties getting back up or out of the bathtub, but did nothing
3 to alleviate that risk.

4 88. Defendants knew of the heightened risk of having users like SHERRY fall down inside
5 the Jacuzzi walk-in bathtub, and have difficulties getting back up or out of the bathtub, but did nothing
6 to mitigate that risk.

7 89. Defendants knew of the heightened risk of having users like SHERRY fall down inside
8 the Jacuzzi walk-in bathtub, and have difficulties getting back up or out of the bathtub, but did nothing
9 to reduce that risk.

10 90. In fact, Defendants knew of alternative designs for a walk-in bathtub that were much
11 safer to users like SHERRY who were at a substantial risk of falling down inside the Jacuzzi walk-in
12 bathtub and were unable to get back up or out of the bathtub but chose against implementing
13 alternative designs for increased profitability.

14 91. Because of Defendants conscious choices to put profits before safety, the Jacuzzi walk-
15 in bathtub is a deathtrap for nearly any elderly person who happens to fall down inside the bathtub
16 because there are no grab bars positioned in a way that someone can get back up if they fall down and
17 because the door opens inward and traps the elderly person inside the bathtub.

18 WHEREFORE, Plaintiffs respectfully pray that Judgment be entered as set forth below

19 1. General damages for Plaintiffs pain, suffering, disfigurement, emotional distress, shock
20 and agony in an amount in excess of \$10,000.00;

21 2. Compensatory damages in an amount in excess of \$10,000.00;

22 3. Special damages for Plaintiffs medical expenses in an amount to be proven at trial;

23 4. For punitive damages in excess of \$10,000.00;

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the RICHARD HARRIS LAW FIRM and that on the 24 day of June 2017, I caused the foregoing **FOURTH AMENDED COMPLAINT** to be served as follows:

☒ pursuant to N.E.F.C.R. 9 by serving it via electronic service

to the attorneys listed below:

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Cross-Claimant
BESTWAY BUILDING & REMODELING,
INC.*

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WILLIAM BUDD and BUDDS PLUMBING*



An employee of RICHARD HARRIS LAW FIRM



1 **AANS**
2 Vaughn A. Crawford, Nevada Bar No. 7665
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11 Email: jcools@swlaw.com

12 Attorneys for Defendant/Cross-Defendant
13 JACUZZI INC. doing business
14 as JACUZZI LUXURY BATH

15 **DISTRICT COURT**

16 **CLARK COUNTY, NEVADA**

17 ROBERT ANSARA, as Special Administrator
18 of the Estate of SHERRY LYNN CUNNISON,
19 Deceased; ROBERT ANSARA, as Special
20 Administrator of the Estate of MICHAEL
21 SMITH, Deceased heir to the Estate of
22 SHERRY LYNN CUNNISON, Deceased; and
23 DEBORAH TAMANTINI individually, and
24 heir to the Estate of SHERRY LYNN
25 CUNNISON, Deceased,

26 Plaintiffs,

27 vs.

28 FIRST STREET FOR BOOMERS &
BEYOND, INC.; AITHR DEALER, INC.;
HALE BENTON, individually; HOMELICK,
LLC; JACUZZI INC., doing business as
JACUZZI LUXURY BATH; BESTWAY
BUILDING & REMODELING, INC.;
WILLIAM BUDD, individually and as
BUDDS PLUMBING; DOES 1 through 20;
ROE CORPORATIONS 1 through 20; DOE
EMPLOYEES 1 through 20; DOE
MANUFACTURERS 1 through 20; DOE 20
INSTALLERS 1 through 20; DOE
CONTRACTORS 1 through 20; and DOE 21
SUBCONTRACTORS 1 through 20, inclusive,

Defendants.

AND ALL RELATED CLAIMS.

Case No.: A-16-731244-C

Dept. No.: II

**DEFENDANT JACUZZI INC.'S
AMENDED ANSWER TO
PLAINTIFFS' FOURTH AMENDED
COMPLAINT**

Snell & Wilmer

LLP
LAW OFFICES
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, Nevada 89169
702.784.5200

**DEFENDANT JACUZZI INC.'S ANSWER TO
PLAINTIFFS' FOURTH AMENDED COMPLAINT**

Defendant JACUZZI INC. doing business as JACUZZI LUXURY BATH ("Jacuzzi"), answers Plaintiffs' Fourth Amended Complaint and admits, denies and alleges, as follows:

Jacuzzi denies each and every allegation of Plaintiffs' Fourth Amended Complaint, except those allegations that are specifically admitted, qualified, or otherwise answered.

I.

PARTIES AND JURISDICTION

1. In response to paragraphs 1 through 10 of Plaintiffs' Fourth Amended Complaint, Jacuzzi lacks sufficient knowledge or information to form a belief as to truth of the allegations and therefore denies the same.

2. In response to paragraph 11 of Plaintiffs' Fourth Amended Complaint, Jacuzzi admits that it is a foreign corporation that does business in the State of Nevada.

3. In response to paragraphs 12 through 13 of Plaintiffs' Fourth Amended Complaint, Jacuzzi lacks sufficient knowledge or information to form a belief as to truth of the allegations and therefore denies the same.

II.

GENERAL FACTUAL ALLEGATIONS

4. In response to paragraphs 14 through 17 of Plaintiffs' Fourth Amended Complaint, Jacuzzi lacks sufficient knowledge or information to form a belief as to truth of the allegations and therefore denies the same.

5. In response to paragraph 18 of Plaintiffs' Fourth Amended Complaint, Jacuzzi admits that it was, at all relevant times, a manufacturer and distributor of bath and plumbing products for the residential market. Jacuzzi further admits that it was, in part, the manufacturer of the Jacuzzi walk-in tub claimed to have been used by Sherry Lynn Cunnison. All other allegations in paragraph 18 are denied.

6. In response to paragraphs 19 through 20 of Plaintiffs' Fourth Amended Complaint, Jacuzzi lacks sufficient knowledge or information to form a belief as to truth of the allegations

1 and therefore denies the same.

2 7. In response to paragraphs 21 through 23 of Plaintiffs' Fourth Amended Complaint,
3 they pertain to Doe and Roe defendants, requiring no response. Jacuzzi therefore denies all
4 allegations contained therein.

5 8. In response to paragraph 24 of Plaintiffs' Fourth Amended Complaint, Jacuzzi
6 denies the allegations contained therein.

7 9. In response to paragraphs 25 through 27 of Plaintiffs' Fourth Amended Complaint,
8 Jacuzzi lacks sufficient knowledge or information to form a belief as to truth of the allegations
9 and therefore denies the same.

10 10. In response to paragraphs 28 through 30 of Plaintiffs' Fourth Amended Complaint,
11 Jacuzzi denies the allegations contained therein.

12 11. In response to paragraphs 31 through 33 of Plaintiffs' Fourth Amended Complaint,
13 Jacuzzi lacks sufficient knowledge or information to form a belief as to truth of the allegations
14 and therefore denies the same.

15 12. In response to paragraph 34 of Plaintiffs' Fourth Amended Complaint, Jacuzzi
16 denies the allegations contained therein.

17 13. In response to paragraphs 35 through 36 of Plaintiffs' Fourth Amended Complaint,
18 Jacuzzi lacks sufficient knowledge or information to form a belief as to truth of the allegations
19 and therefore denies the same.

20 **FIRST CAUSE OF ACTION**

21 ***Negligence as to All Defendants***

22 14. In response to paragraph 37 of Plaintiffs' Fourth Amended Complaint, Jacuzzi
23 incorporates by reference its responses to each and every allegation contained in paragraphs 1
24 through 36, as though fully set forth herein.

25 15. In response to paragraph 38 of Plaintiffs' Fourth Amended Complaint, the
26 allegations contained therein call for legal conclusions, requiring no response. Jacuzzi therefore
27 denies all allegations contained therein.

28 ///

1 16. In response to paragraphs 39 and 40 of Plaintiffs' Fourth Amended Complaint,
2 Jacuzzi denies the allegations contained therein.

3 17. In response to paragraph 41 of Plaintiffs' Fourth Amended Complaint, the
4 allegations contained therein call for legal conclusions, requiring no response. Jacuzzi therefore
5 denies all allegations contained therein.

6 18. In response to paragraph 42 of Plaintiffs' Fourth Amended Complaint, Jacuzzi
7 denies the allegations contained therein.

8 **SECOND CAUSE OF ACTION**

9 ***Strict Product Liability Defective Design,***
10 ***Manufacture and/or Failure to Warn***
11 ***as to all Defendants***

12 19. In response to paragraph 43 of Plaintiffs' Fourth Amended Complaint, Jacuzzi
13 incorporates by reference its responses to each and every allegation contained in paragraphs 1
14 through 42, as though fully set forth herein.

15 20. In response to paragraph 44 of Plaintiffs' Fourth Amended Complaint, Jacuzzi
16 denies the allegations contained therein.

17 21. In response to paragraphs 45 through 46 of Plaintiffs' Fourth Amended Complaint,
18 they pertain to Doe and Roe defendants, requiring no response. Jacuzzi therefore denies all
19 allegations contained therein.

20 22. In response to paragraphs 47 through 60 of Plaintiffs' Fourth Amended Complaint,
21 Jacuzzi denies the allegations contained therein.

22 **THIRD CAUSE OF ACTION**

23 ***Breach of Express Warranties as to Jacuzzi Inc., doing business as Jacuzzi Luxury Bath,***
24 ***First Street for Boomers & Beyond, Inc., AITHER Dealer, Inc., and Homeclick, LLC***

25 23. In response to paragraph 61 of Plaintiffs' Fourth Amended Complaint, Jacuzzi
26 incorporates by reference its responses to each and every allegation contained in paragraphs 1
27 through 60, as though fully set forth herein.

28 24. In response to paragraph 62 of Plaintiffs' Fourth Amended Complaint, Jacuzzi
admits that it the subject tub was covered by a limited express warranty. All other allegations in
paragraph 62 are denied.

25. In response to paragraphs 63 through 64 of Plaintiffs' Fourth Amended Complaint, Jacuzzi denies the allegations contained therein.

FOURTH CAUSE OF ACTION

Breach of Implied Warranty of Fitness for a Particular Purpose as to Jacuzzi Inc., doing business as Jacuzzi Luxury Bath, First Street for Boomers & Beyond, Inc., AITHR Dealer, Inc., and Homeclick, LLC

26. In response to paragraph 65 of Plaintiffs' Fourth Amended Complaint, Jacuzzi incorporates by reference its responses to each and every allegation contained in paragraphs 1 through 64, as though fully set forth herein.

27. In response to paragraphs 66 through 70 of Plaintiffs' Fourth Amended Complaint, Jacuzzi denies the allegations contained therein.

FIFTH CAUSE OF ACTION

Breach of Implied Warranty of Merchantability as to Jacuzzi Inc., doing business as Jacuzzi Luxury Bath, First Street for Boomers & Beyond, Inc., AITHR Dealer, Inc., and Homeclick, LLC

28. In response to paragraph 71 of Plaintiffs' Fourth Amended Complaint, Jacuzzi incorporates by reference its responses to each and every allegation contained in paragraphs 1 through 71, as though fully set forth herein.

29. In response to paragraphs 72 through 73 of Plaintiffs' Fourth Amended Complaint, Jacuzzi denies the allegations contained therein.

PUNITIVE DAMAGES

As to Jacuzzi Inc., doing business as Jacuzzi Luxury Bath, First Street for Boomers & Beyond, Inc., AITHR Dealer, Inc., and Homeclick, LLC

30. In response to paragraph 74 of Plaintiffs' Fourth Amended Complaint, Jacuzzi incorporates by reference its responses to each and every allegation contained in paragraphs 1 through 73, as though fully set forth herein.

31. In response to paragraphs 75 through 76 of Plaintiffs' Fourth Amended Complaint, Jacuzzi denies the allegations contained therein.

32. In response to paragraph 77, Jacuzzi denies the allegations contained therein, insofar as they pertain to Jacuzzi.

///

33. In response to paragraphs 78 and 79, Jacuzzi lacks sufficient information to form a belief as to the truth of the matter asserted and therefore denies the same.

34. In response to paragraph 80, Jacuzzi admits that it advertises that its walk-in tubs are safe. Jacuzzi lacks sufficient information to form a belief as to the truth of the remaining allegations in paragraph 80 and therefore denies the same.

35. In response to paragraph 81, Jacuzzi admits that advertises that Jacuzzi is an industry leader with regard to safety of those who use the walk-in tub and that Jacuzzi is an industry leader regarding tub safety. Jacuzzi lacks sufficient information to form a belief as to the truth of the remaining allegations in paragraph 81 and therefore denies the same.

36. In response to paragraphs 82 through 84, Jacuzzi lacks sufficient information to form a belief as to the truth of the allegations and therefore denies the same.

37. In response to paragraph 85 through 91, Jacuzzi denies the allegations therein.

ADDITIONAL DEFENSES

As separate additional defenses to Plaintiffs' Fourth Amended Complaint, Jacuzzi alleges as follows:

FIRST ADDITIONAL DEFENSE

Plaintiffs' Fourth Amended Complaint fails to state a claim upon which relief can be granted against Jacuzzi.

SECOND ADDITIONAL DEFENSE

Jacuzzi avers that the Plaintiffs' and Cunnison's injuries and damages, if any, were solely and proximately caused or contributed to by Plaintiffs' and Cunnison's failure to exercise ordinary care for their own safety and by Plaintiffs' and Cunnison's negligence and were not caused by or through any fault or negligence on the part of Jacuzzi, and therefore, Plaintiffs are not entitled to recover from Jacuzzi.

THIRD ADDITIONAL DEFENSE

Jacuzzi avers that the Plaintiffs' and Cunnison's injuries and damages, if any, were not caused by or as a result of any defect in the subject walk-in tub, and, therefore, Plaintiffs are not entitled to recover from Jacuzzi.

1 **FOURTH ADDITIONAL DEFENSE**

2 Jacuzzi avers that the Plaintiffs' and Cunnison's injuries and damages, if any, were
3 proximately caused or contributed to, by, or through the fault or negligence of persons or entities
4 other than Jacuzzi and therefore, Plaintiffs are not entitled to recover from Jacuzzi.

5 **FIFTH ADDITIONAL DEFENSE**

6 Jacuzzi avers that any product allegedly designed, marketed, manufactured and sold by
7 Jacuzzi was designed, marketed, manufactured and sold in accordance and consistent with the
8 state of the art and free of any defect.

9 **SIXTH ADDITIONAL DEFENSE**

10 Jacuzzi avers that in the event the product at issue in this lawsuit is identified as having
11 caused or contributed to Plaintiffs' alleged damages, which is expressly denied, said damages
12 were the result of the product having been used in a manner not intended by Jacuzzi and not in
13 accordance with the instructions and labels provided by Jacuzzi or with known safety practices.

14 **SEVENTH ADDITIONAL DEFENSE**

15 Jacuzzi avers that if there was any defect or deficiency in the product as of the time of the
16 incident alleged in Plaintiffs' Fourth Amended Complaint, such being expressly denied, such
17 defect or deficiency did not relate to the design, manufacture, warnings or sale of the product but
18 was the result of abnormal use, misuse, abuse, improper installation, improper maintenance,
19 substantial alteration, change or modification, or other actions on the part of Plaintiffs or others
20 for whom Defendant is not responsible.

21 **EIGHTH ADDITIONAL DEFENSE**

22 Jacuzzi denies all negligence in the design, manufacture, warnings, or sale of the product
23 in question.

24 **NINTH ADDITIONAL DEFENSE**

25 Jacuzzi avers that Plaintiffs' claims are barred, in whole or part, because the product in
26 question was at all material times consistent with industry customs, applicable standards, and
27 available technological, scientific, and industrial state-of-the-art.

28 ///

TENTH ADDITIONAL DEFENSE

Jacuzzi avers that Plaintiffs' claims are barred, in whole or part, because Plaintiffs' spoliated evidence.

ELEVENTH ADDITIONAL DEFENSE

Jacuzzi avers that it did not owe Plaintiffs or Cunnison a legal duty to protect Plaintiffs or Cunnison from the particular risk of harm that caused, or was the substantial factor in causing, the subject incident.

TWELFTH ADDITIONAL DEFENSE

Jacuzzi avers that Plaintiffs' alleged damages, if any, are the result, in whole or in part, of Plaintiffs' or Cunnison's failure to exercise reasonable care to reduce or mitigate their damages.

THIRTEENTH ADDITIONAL DEFENSE

Jacuzzi avers that Plaintiffs' damages, if any, were caused, in whole or in part, by the acts and omissions of Plaintiffs, other defendants, and other unnamed individuals, and, as a result, any recovery against Jacuzzi must be diminished in proportion to the relative degree of negligence or fault of Plaintiffs and the other responsible parties under the applicable comparative negligence statutes.

FOURTEENTH ADDITIONAL DEFENSE

Jacuzzi avers that Plaintiffs have unclean hands in the matters alleged in the Fourth Amended Complaint and, by virtue of their acts, conduct, representation and omissions, Plaintiffs have waived their right to the relief sought.

FIFTEENTH ADDITIONAL DEFENSE

Jacuzzi avers that Plaintiffs' claims are barred because Cunnison assumed the risk of any damages alleged in the Complaint.

SIXTEENTH ADDITIONAL DEFENSE

Pursuant to Rule 11 of Nevada Rules of Civil Procedure, as amended, all possible additional defenses may not have been alleged herein insofar as sufficient facts are not available after reasonable inquiry upon the filing of Plaintiffs' Fourth Amended Complaint and, therefore, Jacuzzi reserves the right to amend its Answer to allege additional defenses if subsequent

1 investigation warrants.

2 WHEREFORE, Jacuzzi prays for judgment as follows:

3 1. That Plaintiffs take nothing by their Fourth Amended Complaint and that this
4 action be dismissed in its entirety with prejudice;

5 2. For costs incurred in defense of this action;

6 3. For reasonable attorneys' fees incurred in defense of this action; and

7 4. For such other relief as the Court may deem just and proper.

8 DATED this 7th day of March, 2018.

9 SNELL & WILMER L.L.P.

10
11 By: 

Vaughn A. Crawford
Nevada Bar No. 7665

12 Joshua D. Cools
13 Nevada Bar No. 11941

Alexandria L. Layton
Nevada Bar No. 14228

14 3883 Howard Hughes Parkway, Suite 1100
15 Las Vegas, NV 89169

16 Attorneys for Defendant
17 JACUZZI INC. doing business
as JACUZZI LUXURY BATH
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CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **DEFENDANT JACUZZI INC.'S AMENDED ANSWER TO PLAINTIFFS' FOURTH AMENDED COMPLAINT** by the method indicated below, addressed to the following:

XXXXX Odyssey E-File & Serve

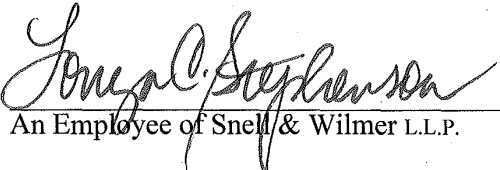
Benjamin P. Cloward, NV Bar No. 11087
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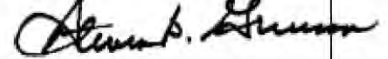
Stephen J. Erigero, NV Bar No. 11562
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Attorneys for Defendants/Cross-Defendants
FIRST STREET FOR BOOMERS &
BEYOND, INC. and AITHR DEALER, INC.

DATED this 7th day of March, 2018.


An Employee of Snell & Wilmer LLP.

4835-2108-3471.2



Vaughn A. Crawford, Nevada Bar No. 7665
Joshua D. Cools, Nevada Bar No. 11941
Alexandria L. Layton, Nevada Bar No. 14228
SNELL & WILMER L.L.P.
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Email: alayton@swlaw.com

*Attorneys for Defendant/Cross-Defendant
Jacuzzi Inc. doing business as Jacuzzi Luxury Bath*

DISTRICT COURT

CLARK COUNTY, NEVADA

ROBERT ANSARA, as Special Administrator
of the Estate of SHERRY LYNN CUNNISON,
Deceased; ROBERT ANSARA, as Special
Administrator of the Estate of MICHAEL
SMITH, Deceased heir to the Estate of
SHERRY LYNN CUNNISON, Deceased; and
DEBORAH TAMANTINI individually, and
heir to the Estate of SHERRY LYNN
CUNNISON, Deceased,

Plaintiffs,

vs.

FIRST STREET FOR BOOMERS &
BEYOND, INC.; AITHR DEALER, INC.;
HALE BENTON, individually; HOMECLICK,
LLC; JACUZZI INC., doing business as
JACUZZI LUXURY BATH; BESTWAY
BUILDING & REMODELING, INC.;
WILLIAM BUDD, individually and as
BUDDS PLUMBING; DOES 1 through 20;
ROE CORPORATIONS 1 through 20; DOE
EMPLOYEES 1 through 20; DOE
MANUFACTURERS 1 through 20; DOE 20
INSTALLERS 1 through 20; DOE
CONTRACTORS 1 through 20; and DOE 21
SUBCONTRACTORS 1 through 20, inclusive,

Defendants.

AND ALL RELATED CLAIMS.

CASE NO.: A-16-731244-C
DEPT. NO.: II

**DEFENDANT JACUZZI INC. DBA
JACUZZI LUXURY BATH'S MOTION
FOR PROTECTIVE ORDER ON AN
ORDER SHORTENING TIME**

9/19/18

9:30 am

Snell & Wilmer

L.L.P.
LAW OFFICES
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, Nevada 89169
(702) 784-5200

1 Defendant Jacuzzi Inc. doing business as Jacuzzi Luxury Bath submits the following
2 Motion for Protective Order, pursuant to NRCP 26(c)(1), on Order Shortening Time. This
3 Motion is made and based upon the attached points and authorities attached, along with all papers
4 and pleadings in file herein, and oral argument at time of hearing.

5
6 DATED this 11th day of September, 2018.

7 SNELL & WILMER L.L.P.

8
9 By: 

10 Vaughn A. Crawford
11 Nevada Bar No. 7665
12 Joshua D. Cools
13 Nevada Bar No. 11941
14 Alexandria L. Layton
15 Nevada Bar No. 14228
16 3883 Howard Hughes Parkway, Suite 1100
17 Las Vegas, NV 89169

18 *Attorneys for Defendant/Cross-Defendant*
19 *Jacuzzi Inc. doing business as Jacuzzi Luxury Bath*
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ORDER SHORTENING TIME

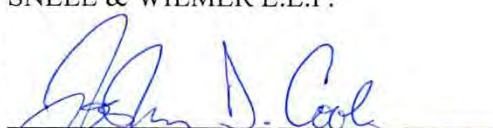
Good cause appearing therefore, it is hereby ordered that the time for hearing of the foregoing Motion be, and the same will be heard on the 19 day of September, 2018 at 9:30 a.m., before the Discovery Commissioner.

DATED this 12 day of September, 2018.


Discovery Commissioner

Prepared and Submitted by:

SNELL & WILMER L.L.P.


Vaughn A. Crawford
Nevada Bar No. 7665
Joshua D. Cools
Nevada Bar No. 11941
Alexandria L. Layton
Nevada Bar No. 14228
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, NV 89169

*Attorneys for Defendant/Cross-Defendant
Jacuzzi Inc. doing business as Jacuzzi Luxury Bath*

**DECLARATION OF JOSHUA D. COOLS, ESQ. IN SUPPORT OF
DEFENDANT JACUZZI INC. DBA JACUZZI LUXURY BATH'S MOTION FOR
PROTECTIVE ORDER ON AN ORDER SHORTENING TIME**

Joshua D. Cools, Esq., declares as follows:

1. I am an attorney with the law firm of Snell and Wilmer L.L.P., counsel of record for Jacuzzi Inc. in the above-entitled action. I have personal knowledge of all matters stated herein and would competently be able to testify to them and make this declaration under the penalty of perjury.

2. I make this declaration in support of Defendant's Motion for Protective Order on an Order Shortening Time.

3. Pursuant to EDCR 2.26, an Order Shortening Time is warranted for the following reasons.

4. Defendant's Motion seeks a protective order related to deposition notices and written discovery. The depositions are scheduled for September 20 and 21, 2018. The responses to the written discovery is due on October 1, 2018

5. An order shortening time is warranted to allow the Court to address these important issues before the written discovery is due and the depositions are scheduled.

6. On August 27, 2018, I received Plaintiffs' Second Request for Production of Documents to Jacuzzi Inc.

7. On August 29, 2018, I first contacted Mr. Cloward to meet and confer over these issues. We exchanged a couple of emails, but were unable to meet and confer over the phone at that time.

8. On September 6, 2018, I called Mr. Cloward to meet and confer over the issues raised in this motion. Despite the parties' discussion of each request for production and the depositions that have been noticed, the parties were unable to reach an acceptable compromise on any of the issues pertinent to this Motion. Mr. Cloward and I did agree to treating certain requests for production as interrogatories and to produce experts' files at the time of their depositions, but those parts of Plaintiffs' discovery requests are not at issue in this Motion.

1 9. Several of these issues were subject to earlier meet and confer conversations. In
2 particular, Mr. Cloward and I spoke on February 23, 2018, about the acceptable scope of
3 identified internal communications about this claim, whether produced or identified on a privilege
4 log. During that call, Mr. Cloward confirmed his agreement to specific search terms for Jacuzzi's
5 internal email communications. Additionally, Jacuzzi agreed to use Plaintiffs' search terms to
6 search its records for other incidents involving walk-in tubs prior to Cunnison's claim and to
7 produce similar claims, if any.

8 10. On April 3, 2018, I sent Mr. Cloward a letter regarding the scope for Jacuzzi's
9 review of internal communications related to this case and the results of that search. A true and
10 correct copy of that letter is attached as **Exhibit 1**.

11 11. On April 23, 2018, I sent Mr. Cloward a letter regarding the scope for Jacuzzi's
12 search for prior other similar incidents involving walk-in tubs and the results of that search. A
13 true and correct copy of that letter is attached as **Exhibit 2**.

14 12. Pursuant to the foregoing, NRCP 26(c), and EDCR 2.34, I certify that, after good
15 faith effort to meet and confer with counsel for Plaintiffs, I have been unable to resolve this
16 matter without court action.

17 13. This Motion is made in good faith and will not result in prejudice to the parties.

18 I hereby certify and affirm under penalties of perjury that the information contained within
19 this Declaration is true, complete and accurate to the best of my knowledge.

20 EXECUTED this 11th day of September, 2018.

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23 Joshua D. Cools, Esq.
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MEMORANDUM OF POINTS AND AUTHORITIES**I. INTRODUCTION**

A protective order is needed in this case because Plaintiffs are seeking discovery that is disproportionate to the case, harassing, irrelevant, and protected by various privileges. Plaintiffs are unhappy with this Court's recent treatment of their sanctions motions and are now trying to harass Jacuzzi with the discovery that is subject to this Motion. Importantly, Jacuzzi has complied with this Court's order and produced records showing all incidents from 2008 to the present involving personal injury or claims of death, regardless of similarity to Plaintiffs' claims. This is not good enough for Plaintiffs who continue to claim that Jacuzzi is "lying" and hiding documents. This is wrong and Plaintiffs harassing and disproportionate discovery should not be allowed. Ultimately, the claims against Jacuzzi are about whether a specific product—a Jacuzzi® model 5229 Walk-In Tub installed in 2013—was defective. Plaintiffs' discovery is not about this—it is about the litigation itself and Plaintiffs' frustration that they cannot find a smoking gun that does not exist. Accordingly, a protective order is necessary to limit Plaintiffs' improper use of discovery, which the court warned Plaintiffs' counsel about at the August 29, 2018, hearing.

II. FACTUAL BACKGROUND**A. The Incident.**

This is a product liability action involving vague claims (which have materially changed since first asserted) that a Jacuzzi® Walk-In Tub was defectively designed or that the warnings related to the tub were insufficient. On January 27, 2014, Sherry Cunnison had a Jacuzzi® Walk-In Tub installed in her home in Las Vegas, Nevada. She selected the tub a couple months earlier. Plaintiffs allege that about a month after installation Cunnison was using the bathtub and somehow became stuck in the tub, and unable to exit. Plaintiffs' Fourth Am. Compl., ¶ 27-29. On February 21, 2014, a well-being check was performed and Cunnison was found in the bathtub. *Id.* at ¶ 31. Cunnison died at the hospital on February 27, 2014. *Id.* at ¶ 35. Plaintiffs are the surviving heirs of Cunnison and allege causes of action against all defendants for negligence and strict product liability for defective design, manufacture, or failure to warn, claiming that the defendants' actions were the cause of Cunnison's death. *See generally, id.*

B. Relevant discovery to date.

This case has been pending since 2016 and the parties have engaged in significant discovery. The parties have taken 16 depositions and served several sets of written discovery. Pursuant to Plaintiffs' written requests and its own discovery obligations, Jacuzzi has identified over 2,900 pages of documents. But discovery has been contentious. Two areas of dispute have been the scope of "other incident" discovery and Jacuzzi's communications about this claim (internally and with outside counsel).

1. Prior discovery regarding Jacuzzi's communications related to Plaintiffs' claim.

In early 2018, counsel for both parties conferred regarding the scope of what claim communications would be identified. Significantly, Jacuzzi had no notice of the claim until a letter of representation from Plaintiffs' counsel. On February 23, 2018, the parties agreed that it would be for communications from the date of the incident (February 21, 2014) up to the filing of suit (February 3, 2016) and Jacuzzi agreed to use the specific search terms (suggested by Plaintiffs' counsel).¹ On April 3, 2018, Jacuzzi's counsel sent Plaintiffs' counsel the privilege log identifying those communications.²

2. Prior discovery regarding Jacuzzi's search for "other incidents."

Also in early 2018, counsel for both parties conferred regarding the scope of other incident discovery. Jacuzzi agreed to search its records for prior incidents using search terms provide by Plaintiffs' counsel.³ Upon review of the results from those searches, all of which were "false positives"—they did not contain any prior incidents of personal injury even remotely related to the claims Plaintiffs have asserted—Jacuzzi's counsel sent Plaintiffs' counsel a letter confirming that there were no prior similar incidents involving walk-in tubs.⁴ This was consistent with Jacuzzi's discovery responses related to prior incidents.⁵

¹ Cools Aff. ¶ 8.

² See April 3, 2018 Letter; Cools Aff. ¶¶ 8-9.

³ Cools Aff. ¶ 8.

⁴ Cools Aff. ¶¶ 8 & 10.

⁵ Jacuzzi's Responses to Plaintiffs' First Set of Interrogatories, 9:21-28; 10:1-9; Jacuzzi's Responses to Plaintiffs' First Set of Requests for Production, 13:1-12; 16:18-28; 17:1-3; 18:8-20 (excerpts collectively attached as **Exhibit 3**).

On May 24, 2018, Bill Demeritt testified as one of Jacuzzi's corporate representatives. He was designated to testify regarding prior incidents and Jacuzzi's search of its records regarding such incidents if any.⁶ He testified that there were no such incidents and identified the individuals that assisted him and counsel in searching Jacuzzi's records.⁷ Plaintiffs' counsel then expanded the scope of inquiry and asked Mr. Demeritt if there were any subsequent incidents and Mr. Demeritt denied that he was aware of any.⁸ Subsequently, Plaintiffs' filed a motion to strike Jacuzzi's answer. This Court ordered Jacuzzi to do another search of its records and produce any personal injury claims involving walk-in tubs from 2008 to the present. Jacuzzi complied with the Court's order and identified a few post-incident claims, producing the incident reports for each claims.⁹

On August 27, 2018, Jacuzzi received Plaintiffs' Second Request for Production of Documents to Jacuzzi Inc.¹⁰

III. ARGUMENT

A. **Discovery is limited in scope and should not be unreasonably duplicative, unduly burdensome, or disproportional to the needs of the case.**

It is axiomatic that discovery is limited in scope and should not be used to harass.¹¹ Nevada Rule of Civil Procedure 26 provides that the Court may "make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden,"¹² upon a showing of "good cause."¹³ Additionally, discovery is limited by rule to "any matter, not privileged, which is relevant to the subject matter involved in the pending action."¹⁴ Nevada's current version of the Rules of Civil Procedure further establishes that discovery "shall

⁶ Jacuzzi's Objection to Plaintiffs' Fifth Amended Notice to Take Videotaped Depositions of 30(b)(6) for Jacuzzi at 26:13-28; 27:1-27; 29:1-28; 30:1-3, excerpts attached as **Exhibit 4**.

⁷ Deposition of Bill Demeritt (May 24, 2018) at 16:1-25:25, excerpts attached as **Exhibit 5**.

⁸ *Id.* at 76:1-77:2.

⁹ August 17, 2018 Letter, attached as **Exhibit 6**.

¹⁰ Plaintiffs' Second Request for Production of Documents to Jacuzzi Inc., attached as **Exhibit 7**.

¹¹ See *Oppenheimer Fund v. Sanders*, 437 U.S. 340, 353 (1978) ("Discovery should be denied when a party's aim is to ... harass the person from whom he seeks discovery," *Heidelberg Americas, Inc. v. Tokyo Kikai Seisakusho*, 333 F.3d 38, 42 (1st Cir. 2003) (upholding the quashing of a subpoena based on issues of scope.)).

¹² Nev. R. Civ. P. 26(c).

¹³ *Okada v. Eighth Jud. Dist. Ct.*, 131 Nev. Adv. Op. 83, 359 P.3d 1106, 1111 (2015) (citing *Cadent Ltd. v. 3M Unitek Corp.*, 232 F.R.D. 625, 629 (C.D.Cal.2005) (recognizing that FRCP 26(c), which is the analog to NRCP 26(c), requires the party seeking the protective order to establish "good cause")).

¹⁴ Nev. R. Civ. P. 26(a)(1).

1 be limited by the court if it determines that: (i) the discovery sought is *unreasonably cumulative*
2 *or duplicative*, . . . or (iii) the discovery is *unduly burdensome* or expensive, taking into account
3 the *needs of the case*, the amount in controversy, limitations on the parties, resources, and the
4 importance of the issues at stake in the litigation.”¹⁵ The latter part of this rule is often referred to
5 as proportionality in discovery and is one of the focus points for the proposed revisions to the
6 Nevada Rules of Civil Procedure. In the proposed rule changes, the Committee has
7 recommended the adoption of proportionality language used in the Federal Rules of Civil
8 Procedure. That proposed language states “Parties may obtain discovery regarding any
9 nonprivileged matter that is relevant to any party’s claims or defenses and *proportional* to the
10 needs of the case.”¹⁶ While more explicit in the proposed rules and the current Federal Rules of
11 Civil Procedure, these limitations are consistent with Nevada’s Rules of Civil Procedure.¹⁷
12 Courts have regularly limited or prohibited discovery that are not proportional to the needs of the
13 case and were outside the scope of discovery.¹⁸ As one court noted, “[i]f the requirement for
14 proportionality in discovery means anything, however, it must mean that burdensome, tangential
15 discovery should not be permitted based on the mere possibility that something may turn up to
16 support what is otherwise only speculation.”¹⁹

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¹⁵ Nev. R. Civ. P. 26(a)(2) (emphasis added).

19 ¹⁶ Petition to Amend the Nevada Rules of Civil Procedure, the Nevada Rules of Appellate Procedure, and the Nevada
20 Electronic Filing and Conversion Rules, ADKT 0522 (Aug. 17, 2018),
https://nvcourts.gov/Supreme/Rules/Amendments/Proposed/ADKT_0522__In_re__Committee_Update_and_Revise_NRCP/.

21 ¹⁷ See *Guerrero v. Wharton*, No. 216CV01667GMNNJK, 2017 WL 7314240, at *2 (D. Nev. Mar. 30, 2017)
22 (“Proportionality focuses on the marginal utility of the discovery being sought. At bottom, proportionality is a
23 “common-sense concept” that should be applied to establish reasonable limits on discovery.”) (citing *In re Methyl*
Tertiary Butyl Ether Prods. Liab. Litig., 180 F. Supp. 3d 273, 280 n.43 (S.D.N.Y. 2016); *Sprint Comm’s Co. v. Crow*
Creek Sioux Tribal Court, 316 F.R.D. 254, 263 (D.S.D. 2016)).

24 ¹⁸ *Wilson v. Wal-Mart Stores, Inc.*, No. 2:15-CV-1791-RCJ-VCF, 2016 WL 526225, at *8 (D. Nev. Feb. 9, 2016)
25 (“Any benefit derived from information about subsequent, third-party investigations of the incident or third-party
26 claims arising out of the incident is outweighed by the expense and burden imposed on Wal-Mart to collect
27 responsive documents.”); *McCall v. State Farm Mut. Auto. Ins. Co.*, No. 216CV01058JADGWF, 2017 WL 3174914,
28 at *9 (D. Nev. July 26, 2017) (“If the requirement for proportionality in discovery means anything, however, it must
mean that burdensome, tangential discovery should not be permitted based on the mere possibility that something
may turn up to support what is otherwise only speculation.”); *Eagle Air Med Corp. v. Sentinel Air Med. All.*, No.
218CV00680JCM PAL, 2018 WL 3370528, at *5 (D. Nev. July 10, 2018) (“The pretrial process must provide parties
with efficient access to what is needed to prove a claim or defense, but eliminate unnecessary or wasteful
discovery.”).

¹⁹ *McCall*, 2017 WL 3174914, at *9.

1 **B. Plaintiffs are seeking depositions that are duplicative of other testimony, irrelevant**
2 **to this litigation, protected by attorney client and work product privileges,**
3 **disproportional, and harassing to Jacuzzi.**

4 Despite Plaintiffs having already deposed a corporate representative regarding other prior
5 incidents and what Jacuzzi did to search for those prior incidents, Plaintiffs are now seeking
6 deposition testimony that is unreasonably duplicative and irrelevant to this litigation and
7 harassing to Jacuzzi. Plaintiffs unilaterally noticed seven depositions for September 20 and 21,
8 2018. Three of the depositions involve individuals that, at the direction of counsel, were involved
9 in discovery: Kurt Bachmeyer, Regina Reyes, and Jess Castillo. Importantly, Plaintiffs are not
10 seeking these depositions because the deponents have any information relevant to Plaintiffs'
11 claims against Jacuzzi. Rather, the depositions are predicated on the supposition that Jacuzzi or
12 Jacuzzi's counsel is hiding documents from Plaintiffs. Jacuzzi previously produced Bill Demeritt
13 to testify regarding prior similar incidents.²⁰ Demeritt testified that Bachmeyer, Reyes, and
14 Castillo participated in the search for prior similar incidents.²¹ As indicated in Jacuzzi's counsel's
15 April 23, 2018 letter to Mr. Cloward, Jacuzzi performed a search of prior incidents using
16 Plaintiffs' proposed search terms and did not identify any responsive incidents.²² Plaintiffs are
17 now seeking to depose Bachmeyer, Reyes, and Castillo about the litigation assistance they
18 provided to counsel.

19 Any information that Bachmeyer, Reyes, and Castillo have related to this search is subject
20 to attorney client privilege and the attorney work product doctrine.²³ Their involvement was at
21 the specific direction of counsel and in response to discovery dialogue with opposing counsel and
22 this Court.²⁴ Furthermore, Plaintiffs have already deposed a corporate representative on these
23 specific issues.²⁵ Plaintiffs' entire basis for noticing these depositions is an ill-conceived
24 conspiracy theory that Jacuzzi is hiding documents—something this Court has explicitly warned
25 against. Put differently, the focus is how Jacuzzi has litigated the case, not obtaining information

26 ²⁰ Jacuzzi's Objection to Plaintiffs' Fifth Amended Notice to Take Videotaped Depositions of 30(b)(6) for Jacuzzi at
27 26:13-28; 27:1-27; 29:1-28; 30:1-3.

28 ²¹ Demeritt Dep. at 19:7-20:2.

²² April 23, 2018 letter.

²³ NRCP 26(b)(3); NRS 49.035 *et. seq.*

²⁴ Cools Affidavit at ¶ 8 & 10.

²⁵ Demeritt Dep. at 16:1-25:25.

relevant to Plaintiffs' claims. Moreover, in addition to being objectionable on the basis of privilege and thus a complete waste of the parties' time, the depositions would be disproportionate to the needs of the case as they are unreasonably duplicative of Mr. Demeritt's testimony and, considering the privilege issues, unduly burdensome and harassing to Jacuzzi. Despite all substantive testimony being privileged, Jacuzzi will have to undergo the unnecessary expense of preparing each of these witnesses for deposition, defending these depositions and likely instructing the witnesses not to answer most of the questioned posed based on the attorney client and/or work product privileges. For these reasons the depositions ought to be prohibited with a protective order. At a minimum, Plaintiffs' counsel should be ordered to make an offer of proof regarding the purpose of the depositions, questions and that will be asked of the witnesses, and why the witnesses' responses are not privileged.

C. Plaintiffs' written discovery is harassing, disproportional, and unduly burdensome.

Similar to Plaintiffs' deposition notices, Plaintiffs have served requests for production that are abusive and disproportional because they seek documents that are, at best, tangentially related to the subject matter of this case, patently privileged, and unduly burdensome to Jacuzzi. The discovery is harassing and should not be permitted.

1. Plaintiffs' Requests for Production 11-15 improperly seek communications made during this litigation to or at the direction of counsel.

Jacuzzi has already produced or listed on a privilege log all communications about the incident, up to the date that Plaintiffs' filed suit.²⁶ In fact, Jacuzzi's counsel conferred with Plaintiffs' counsel to confirm that the parameters of Jacuzzi's search for internal communications about the incident were acceptable to Plaintiffs.²⁷ Jacuzzi then performed a search of its communications for any correspondence about this incident, up to the date of Plaintiffs' filing suit.²⁸ This was due to the obvious fact that any communication about the incident following the suit would be subject to attorney client privilege and work product privileges. Despite this

²⁶ April 3, 2018 Letter.

²⁷ See Cools Aff. at ¶ 8-9; April 3, 2018 Letter.

²⁸ Cools Aff. at ¶ 8-9; April 3, 2018 Letter.

1 production, and based on Plaintiffs' misguided conspiracy theory, Plaintiffs' now seek the
2 following discovery:

3 **REQUEST NO. 11.**

4 Any communications between William B. Demeritt and one or
5 more of the Identified Persons regarding preserving, saving,
6 reloading of any documents related to the Subject Incident.

6 **REQUEST NO. 12.**

7 Any communications between Michael A. Dominguez and one or
8 more of the Identified Persons regarding preserving, saving,
9 reloading of any documents related to the Subject Incident.

9 **REQUEST NO. 13.**

10 Any communications between Ron Templer and one or more of the
11 Identified Persons regarding preserving, saving, reloading of any
12 documents related to the Subject Incident.

12 **REQUEST NO. 14.**

13 Any communications between Anthony Lovallo and one or more of
14 the Identified Persons regarding preserving, saving, reloading of
15 any documents related to the Subject Incident.

15 **REQUEST NO. 15.**

16 Any communications between Nicole Simetz and one or more of
17 the Identified Persons regarding preserving, saving, reloading of
18 any documents related to the Subject Incident.

18 **REQUEST NO. 16.**

19 All communications exchanged by the Identified Persons in native
20 format discussing and/or relating in any way to the subject incident
21 that include one or more of the following terms identified below in
22 sub-section i) to xxii). (Note: the "!" is used below as a root
23 expander in order to retrieve words with variant endings. For
24 instance, "fall!" would retrieve "fall," "falls", and, "falling.").

- 23 i) Fall!
24 ii) Slip!
25 iii) Elderly
26 iv) Overweight
27 v) Enter!
28 vi) Exit!
vii) Door
viii) Stab!
ix) Body
x) Position
xi) Water
xii) Control

xiii) Faucet
xiv) Seat
xv) Bathtub
xvi) Walk-in
xvii) Tub
xviii) Handhold!
xix) Grab
xx) Rail!
xxi) Grip
xxii) Bar!
xxiii) Cunnison
xxiv) Smith
xxv) Cullen
xxvi) Baize

It is important to note that three of these individuals identified in requests 11-13 are attorneys or part of Jacuzzi's legal department: General Counsel Anthony Lovallo, Corporate Counsel Ron Templer, and Nicole Simetz. Mike Dominguez is the Director of Engineering and one of the designated corporate representatives for testimony pursuant to NRCP 30(b)(6). Bill Demeritt is Vice President and Director of Risk Management (as well as an officer of several other companies that are unrelated to the subject bathtub or subject incident) and the other designated corporate representative for testimony pursuant to NRCP 30(b)(6). Further, the "Identified Persons" are these five individuals, three individuals involved in identifying any similar incidents, and four former employees who have nothing to do with this litigation.²⁹

Plaintiffs' requests suggests that Jacuzzi is obligated to search all litigation communication for the last two and a half years and produce or include on a privilege log any communications regarding "preserving, saving, or reloading any documents" related to the case or referencing Plaintiffs' list of terms. Notably, this includes a term like "tub." (Jacuzzi is in the business of making tubs and related products. In addition to the overbreadth, nearly all, if not all, such communication was made subject to attorney work product or attorney client privilege. The "Identified Persons" only communication about this claim would be at the direction of counsel or to counsel. Jacuzzi has already produced all pre-filing documents related to the Subject Incident

²⁹ Former employee Ray Torres did participate in some pre-litigation activity, but all communications he had about the claim have already been listed on Jacuzzi's privilege log.

1 or identified them on the privilege log. These new requests are disproportional and create a
2 significant undue burden on Jacuzzi. They should be subject to a protective order.

3 2. *Plaintiffs' Request for Production 17 seeks copies of the hard drives of Mr.*
4 *Dominguez and Mr. Demeritt without any justification for the same.*

5 Two of the most egregious discovery requests are the requests for hard drives of Jacuzzi's
6 Director of Engineering and Vice President and Director of Risk Management:

7 **REQUEST NO. 17.**

8 Production of forensic duplicates ("mirror images") of the computer
9 hard drives used by the following individuals in the course of
Defendant's business from January 1, 2012 to the present:

10 i) William B. Demeritt

11 ii) Michael A. Dominguez

12 Plaintiff proposes that said forensic duplicates shall be produced to
13 an independent forensic vendor (Evidence Solutions, Inc.) that will
14 analyze the duplicates for discoverable information at Plaintiffs cost
using mutually agreeable search terms.

15 This is a brazen grab for materials that are obviously irrelevant and intended to create
16 litigation costs for Jacuzzi. Plaintiffs have no articulable justification for such a request—Jacuzzi
17 has already produced any relevant, non-privileged materials these hard drives would contain.
18 Further, the offer to submit to an independent vendor at Plaintiffs' cost does not assuage the
19 disproportionality of this request or the undue burden that it puts on Jacuzzi. Plaintiff has not
20 even finished its 30(b)(6) deposition of Mr. Dominguez. And tellingly, Plaintiffs have proposed
21 no "mutually agreeable search terms." This is more evidence that Plaintiffs are seeking to make
22 this case about the litigation itself, not subject matter of their claims. As noted earlier, "[i]f the
23 requirement for proportionality in discovery means anything, however, it must mean that
24 burdensome, tangential discovery should not be permitted based on the mere possibility that
25 something may turn up to support what is otherwise only speculation."³⁰ The Court should not
26 permit such an abuse of discovery.

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28 ³⁰ *McCall*, 2017 WL 3174914, at *9.

1 3. *Requests 24-25 and 41-43 seek information that is intrusive and seeks to*
2 *improperly expand discovery beyond what the Court has already ordered.*

3 Jacuzzi complied with the Court's directive to identify personal injury or death claims
4 related to Jacuzzi's walk-in tub products from 2008 to the present. Plaintiffs are now trying to get
5 around this ruling by expanding the scope of their discovery and for requesting more than what
6 the Court deemed appropriate:

7 **REQUEST NO. 24.**

8 All documents containing information pertaining to any other
9 lawsuit to which you were a named party regarding a consumer's
10 use of one of your walk-In tubs.

11 **REQUEST NO. 25.**

12 All documents containing information pertaining to any other
13 insurance claim to which you were a named party regarding a
14 consumer's use of one of your walk-In tubs.

15 **REQUEST NO. 41.**

16 All reports, logs, etc. memorializing any incident involving
17 consumer use of any of your Walk-in Tubs, for the period from
18 January 1, 2012 to the present.

19 **REQUEST NO. 42.**

20 All reports that you received from the U.S. Consumer Product
21 Safety Commission regarding your Walk-in Tubs from January 1,
22 2012 to the present.

23 **REQUEST NO. 43.**

24 All documents relating to complaints made to you about your
25 Walk-In Tubs from January 1, 2012 to the present.

26 Besides conflicting with this Court's ruling, there are several other defects in these requests.
27 First, they go beyond personal injury claims, thereby including every sort of warranty claim and
28 other unrelated "claims" related to walk-in tubs. This is evident in Plaintiffs' use of "any incident
involving consumer use"³¹ and "complaints."³² Plaintiffs requests are so overly broad that they
arguably would include every call that Jacuzzi has received from a consumer regarding a walk-in-

³¹ Pls.' Request for Production Nos. 24, 25, & 41.

³² Pls.' Request for Production No. 43.

tub, and every complaint relating to a warranty claim. For example, if a customer called in to complain that the tub was leaking, a pump was not working or the finish on the faucet was peeling would be included, despite the fact such complaints have no relevance to the claims asserted in this action. This is why the Court properly limited the search to claims of personal injury or death. Second, Requests 24 and 25 have no date range, despite the Court explicitly limiting the time frame that Jacuzzi needed to search for responsive documents. And third, even if limiting the scope to personal injury claims, Plaintiffs have not established that they are entitled to all of Jacuzzi's documents related to other incidents. As already represented to this Court, Jacuzzi searched its records for personal injury claims involving walk-in tubs from 2008 to the present and has produced an incident report or complaint for each incident. Notably, every single incident was after Cunnison's incident, so the only possible admissibility would be for substantially similar incidents and to prove a "dangerous condition." Plaintiffs have no basis for the intrusive and disproportional request for all documents related to these claims, which inevitably involves communications with counsel or its insurers. Such requests are unduly burdensome and unwarranted in this case.

4. *Request No. 26, 27, and 36 duplicative of RFP 7, 17, and 20.*

This litigation has now been pending for over two years and Plaintiffs have already served written discovery in this case. Despite Jacuzzi having already responded to similar discovery, Plaintiffs are now making duplicative requests. Requests 26, 27, and 36 are such requests:

REQUEST NO. 26.

All statements or reports by any person who investigated the subject incident.

REQUEST NO. 27.

Copies of any incident report prepared by you, or on your behalf, concerning the subject incident or any claim or potential claim arising out of the subject incident.

REQUEST NO. 36.

Your entire investigation file regarding the subject incident to include documents gathered by your insurer and/or insurance/claims/third-party administrator.

Jacuzzi has already responded to substantially similar requests. For instance, Plaintiffs already served requests for production seeking “[a]ll written, recorded and/or signed statement” of any Jacuzzi employee concerning this action, “[a]ny documents prepared during the regular course o[f] business as a result of the incident complained of in Plaintiffs’ Complaint,” and “the entire claims and investigation file or files”³³ These discovery requests are entirely duplicative of what Plaintiffs have already sought through other Requests for Production. Moreover, Plaintiffs have been informed over and over again that Jacuzzi’s first notice of this claim was when Plaintiffs’ counsel sent Jacuzzi a letter of representation suggesting litigation was imminent. Such cumulative discovery is unnecessary and unduly burdensome.

5. *Plaintiffs’ discovery requests regarding Jacuzzi’s post-incident conduct is irrelevant and should not be subject to discovery.*

Plaintiffs also seek discovery regarding Jacuzzi’s protocols and conduct after Cunnison’s incident:

REQUEST NO. 39.

Documents showing your “post-incident protocols” in force on January 1, 2012 and any revisions thereto up to the present time.

REQUEST NO. 40.

Documents from any post-incident root cause analysis or other analysis intended to promote product safety conducted by you related to the subject incident.

The portion of the requests that seek information about Jacuzzi’s conduct or policies following Cunnison’s incident (February 21, 2014) are irrelevant and should not be subject to discovery. This does not involve subsequent remedial measure evidence—that would involve changes to the design of the product or warnings, etc. Rather, Plaintiffs’ requests seek irrelevant information about Jacuzzi’s internal policies or conduct following the incident, which has no bearing whatsoever on Plaintiffs’ negligence or product liability claims. There is no justification for such discovery. Further, responding to such irrelevant discovery merely increases litigation costs on Jacuzzi. It is an undue burden, disproportional to this litigation, and should not be permitted.

³³ Plaintiff D. Tamantini’s First Set of Requests for Production Nos. 7, 17, & 20.

1 Accordingly, Jacuzzi requests that Requests 39 and 40 be limited to pre-incident documents.

2 7. *Plaintiffs' Request 46 seeking documents to show efforts made to preserve photos*
3 *is harassing because this Court already determined that the photos taken by*
4 *counsel or at the direction of counsel were subject to attorney work product*
5 *privilege.*

6 Plaintiffs have already sought sanctions for a "failure to disclose" photos taken by counsel
7 and that motion was denied. Significantly, Jacuzzi provided a privilege log for the photos and the
8 Court determined that they were privileged and not subject to Plaintiffs' discovery. Also, it is
9 important to note that the Plaintiffs have had control and custody of the subject bath tub for the
10 entire pendency of this claim. Jacuzzi's only access to the tub was when permitted, arranged, *and*
11 *accompanied* by Plaintiffs' counsel or his representative. Despite these facts, Plaintiffs make the
12 following request:

13 **REQUEST NO. 46.**

14 All documents that show any efforts you made to preserve, protect,
15 safeguard, sequester, or store the photos you took of the subject tub
16 following the subject incident.

17 This is not a case where the Defendant has surveillance videos of a slip and fall and has an
18 opportunity to destroy evidence. This is a product that was purchased and installed in Cunnison's
19 home and has not been in the custody or control of Jacuzzi since it was shipped from the
20 manufacturing facility. The only conceivable purpose of this frivolous request is to harass
21 Jacuzzi and increase litigation cost.

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IV. CONCLUSION

A protective order is needed to prevent abusive discovery by Plaintiffs. Accordingly, and based on the reasons set forth in this Motion, Jacuzzi respectfully requests that the Court enter a protective order barring the depositions of Kurt Bachmeyer, Regina Reyes, and Jess Castillo and relieving Jacuzzi of any obligation to respond to Plaintiffs' Requests for Production Nos. 11-17, 24-27, 36, 41-43, and 46, and limiting the responses to Requests for Production Nos. 39-40 to pre-incident documents.

DATED this 11th day of September, 2018.

SNELL & WILMER L.L.P.

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*Attorneys for Defendant/Cross-Defendant
Jacuzzi Inc. doing business as Jacuzzi Luxury Bath*

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **DEFENDANT JACUZZI, INC. DBA JACUZZI LUXURY BATH'S MOTION FOR PROTECTIVE ORDER ON AN ORDER SHORTENING TIME** by the method indicated below, addressed to the following:

- ☐ **BY E-MAIL:** by transmitting via e-mail the document(s) listed above to the e-mail addresses set forth below and/or included on the Court's Service List for the above-referenced case.
- ☒ **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.
- ☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below:

Via Electronic Service & Personal Service

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Richard Harris Law Firm
 801 S. Fourth Street
 Las Vegas, NV 89101
 (702) 444-4444; (702) 444-4455 fax
Benjamin@RichardHarrisLaw.com
Attorneys for Plaintiffs

Via Electronic Service

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 Atlanta, GA 30305
 (404) 419-6674; (866) 639-0287 fax
callen@charlesallenlawfirm.com
Attorneys for Plaintiffs

Via Electronic Service & Personal Service

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 Las Vegas, NV 89101-5315
 Mail to: P.O. Box 2070
 Las Vegas, NV 89125-2070
 (702) 366-0622; (702) 366-0327 fax
mmg@thorndal.com

Attorneys for Defendants/Cross-Defendants First Street for Boomers & Beyond, Inc. and Aithr Dealer, Inc.

Via Personal Service

Hale Benton
 26479 West Potter Drive
 Buckeye, AZ 85396
Defendant Pro Per

DATED this 13th day of September, 2018.

4827-6136-3012

/s/ Julia M. Diaz

 An Employee of Snell & Wilmer L.L.P.

EXHIBIT 1

Snell & Wilmer

LLP
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LOS CABOS
ORANGE COUNTY
PHOENIX
RENO
SACRAMENTO
TUCSON

April 3, 2018

Via Email

Benjamin@RichardHarrisLaw.com

Benjamin P. Cloward, Esq.
RICHARD HARRIS LAW FIRM
801 S. Fourth Street
Las Vegas, NV 89101

Re: Cunnison, et al. v. Jacuzzi Luxury Bath, et al., Case No. A-16-731244-C

Dear Mr. Cloward:

Pursuant to our agreement, please see the attached privilege log. This log identifies pre-internal communications related to Ms. Cunnison's claim between the date of the incident (February 21, 2014) and the date that Plaintiffs filed suit (February 3, 2016) and the basis for why the communication is privileged. This is in addition to any applicable objections asserted in Jacuzzi's responses to the applicable discovery requests. In addition to Jacuzzi's attorneys, several individuals are identified on the log:

Kurt Bachmeyer – Director of Warranty & Technical Services
William Demeritt – Vice President and Director of Risk Management
Ray Torres – Vice President of Operations & Engineering
Pamela Penksa – Gallagher Bassett Third Party Administrator
Bob Rowan – Chief Executive Officer
Joseph Davis – President, Jacuzzi Luxury Bath
Brandon Riseling – Data Center and Server Administration Manager
Elenita Jaramillo – Legal assistant
Mark Allen – Vice President of Information Technology

Snell & Wilmer
L.L.P.

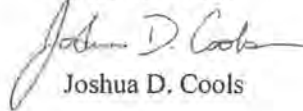
Benjamin P. Cloward, Esq.
April 3, 2018
Page 2

In addition, Jacuzzi identified one document that is not privileged. We will serve a supplemental production, but I have attached a copy of the non-privileged document as well.

Please contact me if you have any questions.

Very truly yours,

Snell & Wilmer



Joshua D. Cools

JDC:tes
Attachments
4815-6507-2736.1

ATTACHMENT

Cunnison v Jacuzzi
Jacuzzi Privilege Log re Internal Communication File

| BATES NUMBER | DATE | AUTHOR | RECIPIENT | DESCRIPTION | PRIVILEGE |
|--------------------|----------|--------------------------|--|--|--|
| JACUZZI002039-2449 | | Jacuzzi in-house counsel | Defense counsel | Electronic mail re communications between Jacuzzi and defense counsel. | Attorney Client Privilege / Work Product |
| JACUZZI002450-2452 | 5/13/14 | Jacuzzi in-house counsel | Bachmeyer, Kurt cc: Jacuzzi in-house counsel Demeritt, William | Electronic Mail re claim and tub identification and installation. | Attorney Client Privilege / Work Product |
| JACUZZI002453-2456 | 5/29/14 | Jacuzzi in-house counsel | Bachmeyer, Kurt cc: Demeritt, William Jacuzzi in-house counsel Jacuzzi in-house counsel | Electronic Mail re claim and tub identification and installation. | Attorney Client Privilege / Work Product |
| JACUZZI002457-2458 | 5/20/14 | Jacuzzi in-house counsel | Jacuzzi in-house counsel Torres, Ray cc: Demeritt, William Jacuzzi in-house counsel | Electronic Mail re claim and tub inspection. | Attorney Client Privilege / Work Product |
| JACUZZI002459 | 5/1/14 | Jacuzzi in-house counsel | Jacuzzi in-house counsel | Electronic Mail re claim and tub inspection. | Attorney Client Privilege / Work Product |
| JACUZZI002460-2463 | 5/13/14 | Jacuzzi in-house counsel | Torres, Ray cc: Demeritt, William Jacuzzi in-house counsel | Electronic Mail re claim and tub information. | Attorney Client Privilege / Work Product |
| JACUZZI002464 | 11/20/14 | Jacuzzi in-house counsel | Torres, Ray | Electronic Mail re tub inspection. | Attorney Client Privilege / Work Product |
| JACUZZI002465 | 11/25/14 | Jacuzzi in-house counsel | Jacuzzi in-house counsel | Electronic Mail re tub inspection | Attorney Client Privilege / Work Product |
| JACUZZI002466 | 6/13/14 | Jacuzzi in-house counsel | Jacuzzi in-house counsel Torres, Ray Demeritt, William | Electronic Mail re tub identification and installation. | Attorney Client Privilege / Work Product |

Cunnison v Jacuzzi
Jacuzzi Privilege Log re Internal Communication File

| BATES NUMBER | DATE | AUTHOR | RECIPIENT | DESCRIPTION | PRIVILEGE |
|--------------------|----------|--------------------------|---|---|--|
| JACUZZI002467-2473 | 5/8/14 | Jacuzzi in-house counsel | Jacuzzi in-house counsel | Electronic Mail re communication from First Street re claim. | Attorney Client Privilege / Work Product |
| JACUZZI002474 | 5/8/14 | Jacuzzi in-house counsel | Jacuzzi in-house counsel cc: Demeritt, William Jacuzzi in-house counsel | Electronic Mail re tub inspection. | Attorney Client Privilege / Work Product |
| JACUZZI002475 | 5/15/14 | Jacuzzi in-house counsel | Torres, Ray | Electronic Mail re claimant information. | Attorney Client Privilege / Work Product |
| JACUZZI002476 | 5/6/14 | Demeritt, William | Jacuzzi in-house counsel Jacuzzi in-house counsel | Electronic Mail re customer service / warranty files. | Attorney Client Privilege / Work Product |
| JACUZZI002478 | 6/13/14 | Demeritt, William | Jacuzzi in-house counsel Jacuzzi in-house counsel | Electronic Mail re tub inspection. | Attorney Client Privilege / Work Product |
| JACUZZI002479 | 5/7/14 | Jacuzzi in-house counsel | FirstStreet in-house counsel cc: Demeritt, William | Electronic Mail re tub identification and installation. | Attorney Work Product / Joint Defense |
| JACUZZI002480-2514 | 7/24/15 | Jacuzzi in-house counsel | Jacuzzi in-house counsel cc: Jacuzzi in-house counsel | Electronic Mail re case pleadings and communication with Plaintiff's counsel. | Attorney Client Privilege / Work Product |
| JACUZZI002515 | 6/1/15 | Jacuzzi in-house counsel | Penksa, Pamela cc: Jacuzzi in-house counsel Demeritt, William | Electronic Mail re attorney retention. | Attorney Client Privilege / Work Product |
| JACUZZI002516-2521 | 12/10/14 | Jacuzzi in-house counsel | Jacuzzi in-house counsel | Electronic Mail re claim. | Attorney Client Privilege / Work Product |

Cunnison v Jacuzzi
Jacuzzi Privilege Log re Internal Communication File

| BATES NUMBER | DATE | AUTHOR | RECIPIENT | DESCRIPTION | PRIVILEGE |
|--------------------|----------|--------------------------|---|---|--|
| JACUZZI002522 | 2/18/15 | Jacuzzi in-house counsel | Jacuzzi in-house counsel | Electronic Mail re tub photographs. | Attorney Client Privilege |
| JACUZZI002523-2532 | 5/27/14 | Jacuzzi in-house counsel | Jacuzzi in-house counsel cc: Demeritt, William Jacuzzi in-house counsel | Electronic Mail re walk-in tub warranty and installation information. | Attorney Client Privilege / Work Product |
| JACUZZI002533-2535 | 5/2/14 | Jacuzzi in-house counsel | Jacuzzi in-house counsel | Electronic Mail re claim. | Attorney Client Privilege / Work Product |
| JACUZZI002536 | 5/14/14 | Jacuzzi in-house counsel | Jacuzzi in-house counsel cc: Demeritt, William Jacuzzi in-house counsel | Electronic Mail re tub inspection update. | Attorney Client Privilege / Work Product |
| JACUZZI002537-2538 | 5/13/14 | Jacuzzi in-house counsel | Torres, Ray cc: Jacuzzi in-house counsel Demeritt, William | Electronic Mail re tub and installation information. | Attorney Client Privilege / Work Product |
| JACUZZI002539-2545 | 5/12/14 | Jacuzzi in-house counsel | Rowan, Bob Davis, Joseph cc: Jacuzzi in-house counsel | Electronic Mail re communication from First Street re claim. | Attorney Client Privilege / Work Product |
| JACUZZI002546-2547 | 5/13/14 | Jacuzzi in-house counsel | Jacuzzi in-house counsel | Electronic Mail re First Street communication re claim. | Attorney Client Privilege / Work Product |
| JACUZZI002548-2565 | 11/21/14 | Demeritt, William | Penksa, Pamela Jacuzzi in-house counsel | Electronic Mail re claim. | Attorney Client Privilege / Work Product |

Cunnison v Jacuzzi
Jacuzzi Privilege Log re Internal Communication File

| BATES NUMBER | DATE | AUTHOR | RECIPIENT | DESCRIPTION | PRIVILEGE |
|--------------------|----------|--------------------------|--|--|--|
| JACUZZI002566-2569 | 4/29/14 | Jacuzzi in-house counsel | Rowan, Bob Davis, Joseph cc: Jacuzzi in-house counsel Jacuzzi in-house counsel Demeritt, William | Electronic Mail re Notice of Claim from claimant counsel and tub inspection. | Attorney Client Privilege / Work Product |
| JACUZZI002570-2574 | 4/30/14 | Jacuzzi in-house counsel | Demeritt, William cc: Jacuzzi in-house counsel Jacuzzi in-house counsel | Electronic Mail re Notice of Claim and retention of counsel. | Attorney Client Privilege / Work Product |
| JACUZZI002575 | 12/10/14 | Jacuzzi in-house counsel | Jacuzzi in-house counsel Jacuzzi in-house counsel cc: Jaramillo, Elenita Demeritt, William | Electronic Mail re litigation file. | Attorney Client Privilege / Work Product |
| JACUZZI002576 | 12/5/14 | Riseling, Brandon | Jacuzzi in-house counsel cc: Allen, Mark | Electronic Mail re R. Torres file re claim. | Attorney Client Privilege / Work Product |
| JACUZZI002577 | 12/3/14 | Jacuzzi in-house counsel | Allen, Mark cc: Jacuzzi in-house counsel | Electronic Mail re R. Torres file re claim. | Attorney Client Privilege / Work Product |
| JACUZZI002578-2584 | 5/29/14 | Jacuzzi in-house counsel | Jacuzzi in-house counsel cc: Demeritt, William Jacuzzi in-house counsel | Electronic Mail re tub inspection. | Attorney Client Privilege / Work Product |

Cunnison v Jacuzzi
Jacuzzi Privilege Log re Internal Communication File

| BATES NUMBER | DATE | AUTHOR | RECIPIENT | DESCRIPTION | PRIVILEGE |
|--------------------|---------|--------------------------|---|--|--|
| JACUZZI002585-2606 | 5/29/14 | Jacuzzi in-house counsel | Demeritt, William Jacuzzi in-house counsel Jacuzzi in-house counsel | Electronic Mail re claim and tub installation information. | Attorney Client Privilege / Work Product |
| JACUZZI002607-2641 | 5/28/14 | Jacuzzi in-house counsel | Jacuzzi in-house counsel Jacuzzi in-house counsel cc: Demeritt, William | Electronic Mail re claim and tub installation information. | Attorney Client Privilege / Work Product |
| JACUZZI002642-2646 | 5/27/14 | Reyes, Regina | Bachmeyer, Kurt | Electronic Mail re claim and warranty information. | Attorney Client Privilege / Work Product |
| JACUZZI002647-2658 | 5/27/14 | Jacuzzi in-house counsel | Bachmeyer, Kurt | Electronic Mail re claim and tub installer information. | Attorney Client Privilege / Work Product |
| JACUZZI002659-2663 | 5/29/14 | Bachmeyer, Kurt | Jacuzzi in-house counsel cc: Jacuzzi in-house counsel Demeritt, William Jacuzzi in-house counsel | Electronic Mail re claim and tub installer information. | Attorney Client Privilege / Work Product |
| JACUZZI002664-2665 | 5/21/14 | Jacuzzi in-house counsel | Torres, Ray Jacuzzi in-house counsel cc: Demeritt, William Jacuzzi in-house counsel | Electronic Mail re claim and tub inspection. | Attorney Client Privilege / Work Product |
| JACUZZI002666-2667 | 5/20/14 | Torres, Ray | Jacuzzi in-house counsel Jacuzzi in-house counsel cc: Demeritt, William Jacuzzi in-house counsel | Electronic Mail re claim and tub inspection. | Attorney Client Privilege / Work Product |
| JACUZZI002668-2669 | 5/20/14 | Jacuzzi in-house counsel | Jacuzzi in-house counsel Torres, Ray cc: Demeritt, William Jacuzzi in-house counsel | Electronic Mail re claim and tub inspection. | Attorney Client Privilege / Work Product |

Cunnison v Jacuzzi
Jacuzzi Privilege Log re Internal Communication File

| BATES NUMBER | DATE | AUTHOR | RECIPIENT | DESCRIPTION | PRIVILEGE |
|--------------------|---------|--------------------------|--|--|--|
| JACUZZI002670-2672 | 5/21/14 | Jacuzzi in-house counsel | Jacuzzi in-house counsel cc: Demeritt, William Jacuzzi in-house counsel Torres, Ray | Electronic Mail re claim and tub inspection. | Attorney Client Privilege / Work Product |
| JACUZZI002673-2675 | 5/5/14 | Jacuzzi in-house counsel | Demeritt, William cc: Jacuzzi in-house counsel | Electronic Mail re claim and subject tub. | Attorney Client Privilege / Work Product |
| JACUZZI002676-2685 | 5/2/14 | Jacuzzi in-house counsel | Demeritt, William cc: Jacuzzi in-house counsel | Electronic Mail re claim and subject tub. | Attorney Client Privilege / Work Product |
| JACUZZI002686-2690 | 5/2/14 | Jacuzzi in-house counsel | Jacuzzi in-house counsel | Electronic Mail re call with counsel. | Attorney Client Privilege / Work Product |
| JACUZZI002691 | 6/13/14 | Jacuzzi in-house counsel | Demeritt, William cc: Jacuzzi in-house counsel | Electronic Mail re tub inspection. | Attorney Client Privilege / Work Product |
| JACUZZI002692-2699 | 5/29/14 | Jacuzzi in-house counsel | FirstStreet in-house counsel | Electronic Mail re walk-in tub and installation information. | Attorney Work Product / Joint Defense |
| JACUZZI002700-2701 | 5/13/14 | Jacuzzi in-house counsel | Torres, Ray cc: Jacuzzi in-house counsel Demeritt, William | Electronic Mail re walk-in tub and installation information. | Attorney Client Privilege / Work Product |
| JACUZZI002702-2708 | 5/13/14 | Torres, Ray | Jacuzzi in-house counsel cc: Jacuzzi in-house counsel Demeritt, William | Electronic Mail re walk-in tub information. | Attorney Client Privilege / Work Product |
| JACUZZI002709-2711 | 7/24/15 | Jacuzzi in-house counsel | Jacuzzi in-house counsel cc: Jacuzzi in-house counsel Demeritt, William | Electronic Mail re case materials. | Attorney Client Privilege / Work Product |

Cunnison v Jacuzzi
Jacuzzi Privilege Log re Internal Communication File

| BATES NUMBER | DATE | AUTHOR | RECIPIENT | DESCRIPTION | PRIVILEGE |
|--------------------|----------|--------------------------|---|---|--|
| JACUZZI002712-2725 | 6/4/14 | Jacuzzi in-house counsel | Jacuzzi in-house counsel Jacuzzi in-house counsel | Electronic Mail re inspection status. | Attorney Client Privilege / Work Product |
| JACUZZI002726-2727 | 6/1/15 | Penksa, Pamela | Jacuzzi in-house counsel cc: Jacuzzi in-house counsel Demeritt, William | Electronic Mail re attorney retention. | Attorney Client Privilege / Work Product |
| JACUZZI002728-2744 | 5/13/14 | Jacuzzi in-house counsel | Rowan, Bob Davis, Joseph cc: Jacuzzi in-house counsel | Electronic Mail re First Street's communication re claim. | Attorney Client Privilege / Work Product |
| JACUZZI002745-2755 | 5/13/14 | Jacuzzi in-house counsel | Jacuzzi in-house counsel | Electronic Mail re response to First Street communication re claim. | Attorney Client Privilege / Work Product |
| JACUZZI002756 | 6/13/14 | Torres, Ray | Jacuzzi in-house counsel cc: Jacuzzi in-house counsel Demeritt, William | Electronic Mail re tub installation. | Attorney Client Privilege / Work Product |
| JACUZZI002757-2779 | 6/18/14 | Jacuzzi in-house counsel | Jacuzzi in-house counsel Torres, Ray | Electronic Mail re tub installation. | Attorney Client Privilege / Work Product |
| JACUZZI002780-2791 | 6/18/14 | Jacuzzi in-house counsel | Jacuzzi in-house counsel Torres, Ray | Electronic Mail re tub installation. | Attorney Client Privilege / Work Product |
| JACUZZI002792-2795 | 12/11/14 | Jacuzzi in-house counsel | Jacuzzi in-house counsel Jacuzzi in-house counsel cc: Jaramillo, Elenita Demeritt, William | Electronic Mail re litigation file. | Attorney Client Privilege / Work Product |
| JACUZZI002796-2797 | 12/11/14 | Jacuzzi in-house counsel | Riseling, Brandon cc: Allen, Mark | Electronic Mail re R. Torres file re claim. | Attorney Client Privilege / Work Product |

Cunnison v Jacuzzi
Jacuzzi Privilege Log re Internal Communication File

| BATES NUMBER | DATE | AUTHOR | RECIPIENT | DESCRIPTION | PRIVILEGE |
|--------------------|---------|--------------------------|---|---|--|
| JACUZZI002798-2799 | 12/3/14 | Jacuzzi in-house counsel | Jacuzzi in-house counsel Allen, Mark | Electronic Mail re R. Torres file re claim. | Attorney Client Privilege / Work Product |
| JACUZZI002800-2848 | 4/30/14 | Jacuzzi in-house counsel | Jacuzzi in-house counsel cc: Demeritt, William Jacuzzi in-house counsel | Electronic Mail re counsel retention. | Attorney Client Privilege / Work Product |
| JACUZZI002849-2853 | 4/30/14 | Jacuzzi in-house counsel | Jacuzzi in-house counsel cc: Demeritt, William Jacuzzi in-house counsel | Electronic Mail re claim and tub information. | Attorney Client Privilege / Work Product |

From: Simetz, Nicole </O=JACUZZI ORGANIZATION/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=NSIMETZ>
To: benjamin@richardharrislaw.com
Sent: 5/5/2014 1:42:25 PM
Subject: Cunnison Claim
Attachments: image003.jpg

Dear Mr. Cloward,

I just wanted to follow up with you regarding our telephone call last week. You mentioned that your office has requested medical reports as well as a fire report from the local fire department regarding this case. With that said, I just wanted to touch base with you and see if you have received any of this requested information to date, and if not, whether or not you have a status as to when we could expect to receive the same.

Thank you in advance and we look forward to your response.

Best regards,

Nicole

Nicole Simetz-Young J.D.
Legal Department

<<http://www.jacuzzi.com/>> www.jacuzzi.com

13925 City Center Drive, Suite 200 / Chino Hills, CA 91709

(o) 909.247.2106 (c) 909.217.4887 (f) 909.247.2588

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JACUZZI002477

PA059

EXHIBIT 2

Snell & Wilmer

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DENVER
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ORANGE COUNTY
PHOENIX
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SALT LAKE CITY
TUCSON

April 23, 2018

Via Email

Benjamin@RichardHarrisLaw.com

Benjamin P. Cloward, Esq.
RICHARD HARRIS LAW FIRM
801 S. Fourth Street
Las Vegas, NV 89101

Re: Cunnison, et al. v. Jacuzzi Luxury Bath, et al., Case No. A-16-731244-C

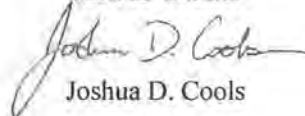
Dear Mr. Cloward:

This letter addresses Jacuzzi Luxury Bath's search for prior incidents related to the claims asserted in this case, in light of Plaintiffs' expanded design criticisms in this case. As agreed, Jacuzzi has performed a search for prior incidents, using the search terms you proposed. As part of this search, the company looked not only for incidents involving the Jacuzzi® 5229 Walk-In Bathtub, but also other Jacuzzi® walk-in bathtub models that have different designs, dimensions and characteristics. While Jacuzzi does not concede that other models of bathtubs with different design characteristics are similar to the subject bathtub, and objects to any claim of relevance or admissibility regarding other designs, these other models were part of the search to avoid any dispute on the issue at this time. The search is now complete and no responsive documents were discovered.

Please contact me with any questions.

Best regards,

Snell & Wilmer



Joshua D. Cools

JDC:tcs
4847-0944-8803.1

Snell & Wilmer is a member of LEX MUNDI, The Leading Association of Independent Law Firms.

PA061

EXHIBIT 3

Snell & Wilmer
LLP

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Las Vegas, Nevada 89169
(702) 784-5200

Vaughn A. Crawford, Nevada Bar No. 7665
Joshua D. Cools, Nevada Bar No. 11941
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Email: vcrawford@swlaw.com
Email: jcools@swlaw.com

Attorneys for Defendant/Cross-Defendant
JACUZZI INC. doing business
as JACUZZI LUXURY BATH

DISTRICT COURT

CLARK COUNTY, NEVADA

ROBERT ANSARA, as Special Administrator
of the Estate of SHERRY LYNN CUNNISON,
Deceased; MICHAEL SMITH individually,
and heir to the Estate of SHERRY LYNN
CUNNISON, Deceased; and DEBORAH
TAMANTINI individually, and heir to the
Estate of SHERRY LYNN CUNNISON,
Deceased,

Plaintiffs,

vs.

FIRST STREET FOR BOOMERS &
BEYOND, INC.; AITHR DEALER, INC.;
HALE BENTON, individually; HOMECCLICK,
LLC; JACUZZI INC. doing business as
JACUZZI LUXURY BATH; BESTWAY
BUILDING & REMODELING, INC.;
WILLIAM BUDD, individually and as
BUDDS PLUMBING; DOES 1 through 20;
ROE CORPORATIONS 1 through 20; DOE
EMPLOYEES 1 through 20; DOE
MANUFACTURERS 1 through 20; DOE 20
INSTALLERS 1 through 20; DOE
CONTRACTORS 1 through 20; and DOE 21
SUBCONTRACTORS 1 through 20, inclusive,

Defendants.

AND ALL RELATED CLAIMS.

Case No.: A-16-731244-C
Dept. No.: XVIII

**DEFENDANT/CROSS-DEFENDANT
JACUZZI INC.'S RESPONSE TO
PLAINTIFF DEBORAH TAMANTINI'S
FIRST SET OF INTERROGATORIES**

Defendant/Cross-Defendant JACUZZI INC. doing business as Jacuzzi Luxury Bath
("Defendant"), by and through its attorneys of record, Snell & Wilmer L.L.P., responds to Plaintiff

3. Test Standards
 - i. UL 1795 UL Standard for Safety Hydromassage Bathtubs
 - ii. CSA C22.2 No. 218.2:2015 Hydromassage Bathtub Appliances
- (c) Co-efficiency of Friction Test: ASTM F 462-79 (R2007).pdf
 - a. June 2013
 - b. IAPMO R&T Lab, 5001 East Philadelphia Street, Ontario, California 91761
 - c. Test protocol ASTM F 462-79 (R2007)
 - d. Complied with test standard
- (d) Door Mechanism Life Cycle Test: Door Life Cycle.pdf
 1. December 2012
 2. SCO Monte Vista Ave, Chino, CA 91710
 3. Test Protocol: Force Failure Analysis/Life Cycle Testing
 4. First Article Accepted

Upon entry of an appropriate protective order, Defendant will produce the following:

| | |
|--------------------------------------|--------------------|
| Door Life Cycle | JACUZZI001372-1375 |
| ETL Certification Listing | JACUZZI001376-1441 |
| IAPMO Certification Listing | JACUZZI001442-1446 |
| IAMPO Lab Test Report _ASTM F 462-79 | JACUZZI001447-1449 |

Defendant objects to this Interrogatory as overbroad because it is seeking information beyond the implication of the subject incident and claims outside the scope of NRCP 26(b). Defendant has limited its response to those tests it believes are relevant to Plaintiffs' claims. If Plaintiff seeks additional responses, they must clarify design elements or a scope of tests at issue, which are relevant to the subject incident and claims.

///

///

1 **INTERROGATORY NO. 9:**

2 If the tests or studies identified in your answer to the foregoing interrogatory resulted in
3 any change or modifications to the subject Jacuzzi Walk-In-Tub's, please state the nature of the
4 change or modification and the reason for such change or modification.

5 **RESPONSE:**

6 No changes or modifications were needed.

7 Defendant objects to this Interrogatory as overbroad because it is seeking information
8 beyond the implication of the subject incident and claims and outside the scope of NRCP 26(b).
9 Defendant has limited its response to those modifications it believes are relevant to Plaintiffs'
10 claims. If Plaintiff seeks additional responses, they must clarify design elements or a scope of
11 modifications at issue, which are relevant to the subject incident and claims.

12 **INTERROGATORY NO. 10:**

13 State verbatim the content of any warnings or instructions on all written material that is
14 included in the packaging of a new Jacuzzi Walk-In-Tub which is the subject of this litigation.
15 Alternatively, provide a copy of such written material.

16 **RESPONSE:**

17 Pursuant to NRCP 33(d), Defendant directs Plaintiff to Installation and Operation
18 Instructions Manual, Jacuzzi 5229 Walk-In Bathtub Series, 2013, produced in Defendant's Initial
19 Disclosure Statement as JACUZZI 000001-20. Additional warnings are posted on the bathtub,
20 but are not related to the vague defect claims that have been asserted.

21 **INTERROGATORY NO. 11:**

22 Please state whether the Defendant has ever received notice, either verbal or written, from
23 or on behalf of any person claiming injury or damage from his use of a Jacuzzi Walk-In Tub
24 which is the subject of the litigation.

25 If so, please state:

- 26 (a) the date of each such notice;
27 (b) the name and last known address of each person giving such notice; and
28 (c) the substance of the allegations of such notice

1 **RESPONSE:**

2 Defendant is only aware of the claims of injury brought by Plaintiffs' attorney. This
3 response is limited to injury claims made prior to the subject incident and to the subject Jacuzzi®
4 Walk-In Bathtub model that are similar to the vague claims that have been asserted in this action.

5 Defendant objects because the interrogatory is overly broad without reasonable limitation
6 in scope, unduly burdensome, and seeks information irrelevant to the subject matter of this action
7 and is not likely to lead to the discovery of relevant or admissible evidence. The interrogatory is
8 vague and ambiguous. The interrogatory seeks information protected from disclosure by the right
9 of privacy of third parties.

10 **INTERROGATORY NO. 12:**

11 Has the Defendant ever been named as a defendant, respondent or other involuntary
12 participant in a lawsuit or other proceeding arising out of personal injuries or damage in
13 connection with a Jacuzzi Walk-In-Tub?

14 If so, please state as to each:

- 15 (a) the court or other forum in which it was filed;
- 16 (b) the names of all parties or named participants;
- 17 (c) the case number or other identifying number, letters or name assigned to the action
18 or other proceeding;
- 19 (d) the name and last known address of each person claiming injury or damage
20 therein;
- 21 (e) the names and last known address of all known counsel of record participating in
22 such action or proceeding; and
- 23 (f) the date of the alleged injury or damage

24 **RESPONSE:**

25 Other than this suit, Defendant has never been named as a defendant, respondent or other
26 involuntary participant in a lawsuit or other proceeding arising out of personal injury in
27 connection with the subject Jacuzzi® Walk-In Bathtub involving claims similar to the claims
28 presented in this action. This response is limited to information potentially relevant to the vague

1 defect claims asserted by plaintiffs.

2 Defendant objects to this interrogatory because it is overly broad without reasonable
3 limitation in scope, unduly burdensome, and seeks information irrelevant to the subject matter of
4 this action and is not likely to lead to the discovery of relevant or admissible evidence. The
5 interrogatory is vague and ambiguous. Defendant objects to this request as overbroad to the
6 extent it would include unrelated claims, such as property damage claims or claims unrelated to
7 the vague defects claimed to have caused plaintiffs' injuries. Such claims are outside the scope of
8 Rule 26(b) and not included in Defendant's response.

9 **INTERROGATORY NO. 13:**

10 Please identify each and every law, rule, regulation, standard, statute, ordinance, or other
11 requirement or recommendation established by any Nevada state or federal governmental body or
12 officer that deals with, defines, limits or specifies the manufacture, design or use of the subject
13 Jacuzzi Walk-In-Tub or similar products, with specific reference to:

- 14 (a) the name or title of the governmental body or officer responsible for the
15 establishment, enactment, or promulgation;
- 16 (b) the title, including chapter, section, and paragraph numbers;
- 17 (c) the date of establishment, enactment, or promulgation; and
- 18 (d) the subject matter addressed

19 **RESPONSE:**

20 The subject Jacuzzi® Walk-In Tub is subject to:

- 21 1. Specification Use Jacuzzi® Walk-In-Tub: Clark County Building Code.pdf
 - 22 a. Clarke County, Nevada
 - 23 b. Administrative Code, Chapter 22.02
 - 24 i. 22.02.475 Required Electrical Inspections
 - 25 ii. 22.02.480 Required Plumbing Inspections
 - 26 iii. 22.02.485 Required Mechanical Inspections
 - 27 c. 2014
 - 28 d. Inspection Requirements

1 RESPONSE:

2 Defendant contends that Plaintiffs' claims are meritless and is unaware, at this time, of any
3 person or entity that should be named as a party.

4 DATED this 19th day of June, 2017.

5 SNELL & WILMER L.L.P.

6
7 By: 

Vaughn A. Crawford

Nevada Bar No. 7665

8 Joshua D. Cools

Nevada Bar No. 11941

9 3883 Howard Hughes Parkway, Suite 1100

10 Las Vegas, NV 89169

11 Attorneys for Defendant/Cross-Defendant

JACUZZI INC. doing business

12 as JACUZZI LUXURY BATH

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **DEFENDANT/CROSS-DEFENDANT JACUZZI INC.'S RESPONSE TO PLAINTIFF DEBORAH TAMANTINI'S FIRST SET OF INTERROGATORIES** by the method indicated below, addressed to the following:

XXXXXX Odyssey E-File & Serve

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11 Email: cjc@thorndal.com
12 Email: mmg@thorndal.com
13 Attorneys for Defendants/Cross-Defendants
14 FIRST STREET FOR BOOMERS &
15 BEYOND, INC. AND AITHR DEALER,
16 INC.

17 DATED this 19th day of June, 2017.

18 
19 An Employee of Snell & Wilmer L.L.P.

20 4817-5709-3191.5

VERIFICATION

I, William Demeritt, declare as follows:

1. I am the Vice President and Director of Risk Management for Jacuzzi Inc.
2. I verify that I have read **DEFENDANT/CROSS-DEFENDANT JACUZZI INC.'S RESPONSE TO PLAINTIFF DEBORAH TAMANTINI'S FIRST SET OF INTERROGATORIES**, and know the contents thereof; that based on information and belief the responses contained therein are, just and true.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

DATED this 13 day of ~~June~~ June, 2017.


WILLIAM DEMERITT

4840-8233-7098

Snell & Wilmer

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JACUZZI INC. doing business
as JACUZZI LUXURY BATH

DISTRICT COURT

CLARK COUNTY, NEVADA

ROBERT ANSARA, as Special Administrator
of the Estate of SHERRY LYNN CUNNISON,
Deceased; MICHAEL SMITH individually,
and heir to the Estate of SHERRY LYNN
CUNNISON, Deceased; and DEBORAH
TAMANTINI individually, and heir to the
Estate of SHERRY LYNN CUNNISON,
Deceased,

Plaintiffs,

vs.

FIRST STREET FOR BOOMERS &
BEYOND, INC.; AITHR DEALER, INC.;
HALE BENTON, individually; HOMECCLICK,
LLC; JACUZZI INC. doing business as
JACUZZI LUXURY BATH; BESTWAY
BUILDING & REMODELING, INC.;
WILLIAM BUDD, individually and as
BUDDS PLUMBING; DOES 1 through 20;
ROE CORPORATIONS 1 through 20; DOE
EMPLOYEES 1 through 20; DOE
MANUFACTURERS 1 through 20; DOE 20
INSTALLERS 1 through 20; DOE
CONTRACTORS 1 through 20; and DOE 21
SUBCONTRACTORS 1 through 20, inclusive,

Defendants.

AND ALL RELATED CLAIMS.

Case No.: A-16-731244-C
Dept. No.: XVIII

**DEFENDANT/CROSS-DEFENDANT
JACUZZI INC.'S RESPONSE TO
PLAINTIFF DEBORAH TAMANTINI'S
FIRST SET OF REQUEST FOR
PRODUCTION OF DOCUMENTS**

Defendant/Cross-Defendant JACUZZI INC. doing business as Jacuzzi Luxury Bath
("Defendant"), by and through its attorneys of record, Snell & Wilmer L.L.P., responds to Plaintiff

1 expected to be called to trial.

2 **RESPONSE:**

3 Defendant directs Plaintiff to Defendant's Initial Disclosure Statement and all subsequent
4 supplemental disclosures.

5 Defendant objects to this Request as premature, as discovery is in its early stages and
6 Defendant does not yet know who will testify at trial. Defendant will disclose any witnesses
7 consistent with the discovery plan and scheduling order in place in this case and as required by
8 NRCP 16.1 and 26.

9 **REQUEST FOR PRODUCTION NO. 24:**

10 Any and all documents and communications containing the name and home and business
11 addresses of all individuals contacted as *potential* witnesses.

12 **RESPONSE:**

13 Defendant directs Plaintiff to Defendant's Initial Disclosure Statement and all subsequent
14 supplemental disclosures.

15 Defendant objects to this Request as premature, as discovery is in its early stages and
16 Defendant does not yet know who will testify at trial. Defendant will disclose any witnesses
17 consistent with the discovery plan and scheduling order in place in this case and as required by
18 NRCP 16.1 and 26.

19 **REQUEST FOR PRODUCTION NO. 25:**

20 Any and all documents and communication substantiating any defense to Plaintiffs'
21 Complaint.

22 **RESPONSE:**

23 Defendant directs Plaintiff to Defendant's Initial Disclosure Statement and all subsequent
24 supplemental disclosures. Additionally, Defendant directs Plaintiff to the depositions taken in
25 this action.

26 Defendant objects to the request to the extent that it seeks communications that are
27 protected by the attorney work product doctrine or the attorney-client privilege.

28 ///

1 REQUEST FOR PRODUCTION NO. 26:

2 Any all videotapes, photographs, notes, memorandums, technical data, and internal
3 documents of any and all testing conducted by this Defendant's research and design experts on
4 the same model as the subject Jacuzzi Walk In Tub.

5 RESPONSE:

6 Defendant directs Plaintiff to Defendant's Response to Plaintiff's Interrogatory No. 8.
7 Defendant objects to this Request as overly broad, unduly burdensome, and seeking irrelevant
8 information because it is not limited to a reasonable or relevant time frame and is not limited to a
9 particular component or the subject Walk-In Bathtub at issue in this case. Therefore, Defendant's
10 response is limited to the design components at issue prior to the subject incident. The Request
11 seeks confidential and proprietary documents which will not be disclosed or produced without a
12 protective order.

13 REQUEST FOR PRODUCTION NO. 27:

14 Any sales material provided to elderly folks (over the age of 55) concerning the safety
15 features of the Jacuzzi Walk In Tub. (These should be documents that were used prior to the date
16 of loss of February 27, 2014).

17 RESPONSE:

18 Defendant is unaware of any specific sales materials provided to "elderly folks." Jacuzzi
19 did not produce marketing materials related to this tub.

20 Defendant objects to the use of the phrase "sales material provided to elderly folks (over
21 the age of 55)" because it implies that Jacuzzi knows the age or identity of individual people or
22 population groups that received specific materials. Therefore, Defendant's Response is limited to
23 sales material concerning the safety features of the Jacuzzi® Walk-In Bathtub.

24 REQUEST FOR PRODUCTION NO. 28:

25 Any sales material provided to elderly folks (over the age of 55) concerning the ease of
26 use features of the Jacuzzi Walk In Tub. (These should be documents that were used prior to the
27 date of loss of February 27, 2014).

28 ///

1 **RESPONSE:**

2 Defendant is unaware of any specific sales materials provided to "elderly folks." Jacuzzi
3 did not produce marketing materials related to this tub. Defendant objects to the use of the phrase
4 "sales material provided to elderly folks (over the age of 55)" because it implies that Jacuzzi
5 knows the age or identity of individual people or population groups that received specific
6 materials. Therefore, Defendant's Response is limited to sales material concerning the ease of
7 use features of the Jacuzzi® Walk-In Bathtub.

8 **REQUEST FOR PRODUCTION NO. 29:**

9 Any sales material provided to overweight folks concerning the safety features of the
10 Jacuzzi Walk In Tub. (These should be documents that were used prior to the date of loss of
11 February 27, 2014).

12 **RESPONSE:**

13 Defendant is unaware of any specific sales materials provided to "overweight folks."
14 Jacuzzi did not produce marketing materials related to this tub.

15 Defendant objects to the use of the phrase "sales material provided to overweight folks"
16 because it implies that Jacuzzi knows the weight or identity of individual people or population
17 groups that received specific materials. Therefore, Defendant limits its Response to sales material
18 concerning the safety features of the Jacuzzi® Walk-In Bathtub.

19 **REQUEST FOR PRODUCTION NO. 30:**

20 Any sales material provided to overweight folks (over the age of 55) concerning the ease
21 of use features of the Jacuzzi Walk In Tub. (These should be documents that were used prior to
22 the date of loss of February 27, 2014).

23 **RESPONSE:**

24 Defendant is unaware of any specific sales materials provided to "overweight folks."
25 Jacuzzi did not produce marketing materials related to this tub.

26 Defendant objects to the use of the phrase "sales material provided to overweight folks
27 (over the age of 55)" because it implies that Jacuzzi knows the weight or identity of individual
28 people or population groups that received specific materials. Therefore, Defendant limits its

1 Response to sales material concerning the ease of use features of the Jacuzzi® Walk-In Bathtub.

2 **REQUEST FOR PRODUCTION NO. 31:**

3 Any sales material provided to folks with mobility issues regarding the safety features of
4 the Jacuzzi Walk In Tub. (These should be documents that were used prior to the date of loss of
5 February 27, 2014).

6 **RESPONSE:**

7 Defendant is unaware of any specific sales materials provided to "folks with mobility
8 issues." Jacuzzi did not produce marketing materials related to this tub.

9 Defendant objects to the use of the phrase "sales material provided to folks with mobility
10 issues" because it implies that Jacuzzi knows the specific mobility issues of individual people or
11 population groups that received specific materials. Therefore, Defendant limits its Response to
12 sales material concerning the safety features of the Jacuzzi® Walk-In Bathtub.

13 **REQUEST FOR PRODUCTION NO. 32:**

14 Any sales material provided to folks with mobility issues regarding the ease of use
15 features of the Jacuzzi Walk In Tub. (These should be documents that were used prior to the date
16 of loss of February 27, 2014).

17 **RESPONSE:**

18 Defendant is unaware of any specific sales materials provided to "folks with mobility
19 issues." Jacuzzi did not produce marketing materials related to this tub.

20 Defendant objects to the use of the phrase "sales material provided to folks with mobility
21 issues" because it implies that Jacuzzi knows the specific mobility issues of individual people or
22 population groups that received specific materials. Therefore, Defendant limits its response to
23 sales material concerning the ease of use features of the Jacuzzi® Walk-In Bathtub.

24 **REQUEST FOR PRODUCTION NO. 33:**

25 Please produce all documents pertaining to the design and function of the door.

26 **RESPONSE:**

27 Upon entry of an appropriate protective order, Defendant will produce the following:

28 ///

| | |
|--|--------------------|
| Drawing LW19000_Shell FS5229 RH Walk In | JACUZZI001349 |
| Drawing LW32827_Grab Bar Assembly | JACUZZI001350 |
| Drawing LW47000RevD_SHL T&D FS 5229 RH SLN | JACUZZI001351-1352 |
| Drawing LW48000RevB_SHL Bond FS 5229 RH | JACUZZI001353-1354 |
| Drawing LX27000_Two Pt Quarter Turn Door Latch | JACUZZI001361-1368 |
| Drawing LX62000_Door Assembly | JACUZZI001369 |
| Drawing LX82000_Skirt Access Panel | JACUZZI001370 |
| Drawing LX91827A_Handle_Sub | JACUZZI001371 |

Defendant objects to this Request as overbroad because it seeks documents that are unrelated and not relevant to the subject incident and claims. Accordingly, Defendant's response is limited to materials relevant to the design components it believes are at issue in this case. The Request seeks confidential and proprietary documents which will not be disclosed or produced without a protective order.

REQUEST FOR PRODUCTION NO. 34:

Please produce all documentation, emails, memorandums, technical data, and internal documents of any and all discussion, communication or otherwise pertaining to safety considerations regarding the inward opening door versus an outward opening door.

RESPONSE:

Defendant does not have any responsive documents.

Jacuzzi objects to the Request to the extent it is not limited in time or scope. Accordingly, it has limited its response to any responsive documents from prior to February 27, 2014. Defendant objects to this Request as overly broad, unduly burdensome, and seeking irrelevant information because it is not limited to a reasonable or relevant time frame and is not limited to the subject Walk-In Bathtub at issue in this case. Therefore, Defendant's response is limited to

1 the design components of the subject Jacuzzi® Walk-In Bathtub at issue prior to the subject
2 incident. The Request seeks confidential and proprietary documents which will not be disclosed
3 or produced without a protective order.

4 **REQUEST FOR PRODUCTION NO. 35:**

5 Please produce all scientific research validating or supporting the safety claims made by
6 Jacuzzi regarding the increased safety of the tub at issue.

7 **RESPONSE:**

8 Defendant did not market the subject tub. However, the safety claim regarding the
9 increased safety of the subject Jacuzzi® Walk-In Bathtub is that it is safer to step directly into a
10 bathtub than to over a higher threshold and into a bathtub. Likewise, being able to sit on a seat in
11 the tub is safer than having to sit on the floor of the tub. These claims are supported by common
12 sense. Further, Defendant directs Plaintiff to the Response to Plaintiff's Interrogatory No. 8.
13 Defendant will supplement this response consistent with its obligation under NRCP 26(e).

14 Jacuzzi objects to the Request to the extent it is not limited in time or scope. Defendant
15 objects to this Request as overly broad, unduly burdensome, and seeking irrelevant information
16 because it is not limited to a reasonable or relevant time frame and is not limited to claims related
17 to the vague defect claims Plaintiffs have asserted in this case, which have changed over time.
18 The Request seeks confidential and proprietary documents which will not be disclosed or
19 produced without a protective order.

20 **REQUEST FOR PRODUCTION NO. 36:**

21 Please produce all scientific research validating or supporting the ease of use claims made
22 by Jacuzzi regarding the tub at issue.

23 **RESPONSE:**

24 Defendant did not market the subject tub. However, the safety claim regarding the
25 increased safety of the subject Jacuzzi® Walk-In Bathtub is that it is easier to step directly into a
26 bathtub than to step over a higher threshold and into a bathtub. Similarly, it is easier to sit on a
27 seat in the tub than on the floor of a tub. These claims are supported by common sense. Further,
28 Defendant directs Plaintiff to the Response to Plaintiff's Interrogatory No. 8. Defendant will

1 supplement this response consistent with its obligation under NRCP 26(e).

2 Jacuzzi objects to the Request to the extent it is not limited in time or scope. Defendant
3 objects to this Request as overly broad, unduly burdensome, and seeking irrelevant information
4 because it is not limited to a reasonable or relevant time frame and is not limited to claims related
5 to the vague defect claims Plaintiffs have asserted in this case, which have changed over time.
6 The Request seeks confidential and proprietary documents which will not be disclosed or
7 produced without a protective order.

8 **REQUEST FOR PRODUCTION NO. 37:**

9 Please produce all technical, architectural, and design documents pertaining to the inward
10 opening door of the tub at issue.

11 **RESPONSE:**

12 Defendant directs Plaintiff to Defendant's Response to Plaintiff's Request for Production
13 No. 33.

14 Jacuzzi objects to the Request to the extent it is not limited in time or scope. Accordingly,
15 it has limited its response to any responsive documents from prior to February 27, 2014.
16 Defendant objects to this Request as overly broad, unduly burdensome, and seeking irrelevant
17 information because it is not limited to a reasonable or relevant time frame and is not limited to
18 claims related to the vague defect claims Plaintiffs have asserted in this case, which have changed
19 over time. The Request seeks confidential and proprietary documents which will not be disclosed
20 or produced without a protective order.

21 **REQUEST FOR PRODUCTION NO. 38:**

22 Please produce any and all documents produced by any other claimant who claimed injury
23 or death in any and all tubs designed, manufactured, distributed, marketed or sold by Jacuzzi.

24 **RESPONSE:**

25 Defendant has no responsive documents related to injury claims substantially similar to
26 the vague defect claims that have been presented by Plaintiffs in this action, which have changed
27 over time, involving the subject Jacuzzi® Walk-In Bathtub, other than those produced by
28 Plaintiffs and their attorney.

1 Defendant objects to this Interrogatory as overbroad and unduly burdensome, as it
2 requests documents related to any claimant who claimed injury or death in all Jacuzzi tubs, and is
3 not limited in scope to the subject Walk-In Bathtub or Plaintiff's allegations. The Request seeks
4 documents that if they existed would be protected from disclosure by the right of privacy of third
5 parties. Therefore, Defendant limits its response to claims that are substantially similar to the
6 allegations in this case and involve the subject Jacuzzi® Walk-In Bathtub.

7 **REQUEST FOR PRODUCTION NO. 39:**

8 Please produce any and all documentation in support of the safety statistics pertaining to
9 falls; that are used in any marketing materials (whether those materials be written, oral, video or
10 otherwise) that are distributed by Jacuzzi.

11 **RESPONSE:**

12 Jacuzzi did not create or distribute marketing materials for this tub.

13 Jacuzzi objects to the Request to the extent it is not limited in time or scope. Defendant
14 objects to this Request as overly broad, unduly burdensome, and seeking irrelevant information
15 because it is not limited to a reasonable or relevant time frame and is not limited to claims related
16 to the vague defect claims Plaintiffs have asserted in this case, which have changed over time.
17 The Request seeks confidential and proprietary documents which will not be disclosed or
18 produced without a protective order.

19 **REQUEST FOR PRODUCTION NO. 40:**

20 Please produce any documentation in support of the claim by Jacuzzi that "bathing, for
21 seniors is one of the most common causes of injury."

22 **RESPONSE:**

23 Defendant did not make the claim that "bathing, for seniors is one of the most common
24 causes of injury." To the extent that the Request relates to the video referenced in Request
25 Nos. 43 and 45, this video was not created by or for Defendant.

26 Jacuzzi objects to the Request to the extent it is not limited in time or scope. Defendant
27 objects to this Request as overly broad, unduly burdensome, and seeking irrelevant information
28 because it is not limited to a reasonable or relevant time frame and is not limited to claims related

1 the injury claims that have been asserted.

2 **REQUEST FOR PRODUCTION NO. 49:**

3 Please produce all documentation regarding the dangers associated with bathing Jacuzzi
4 had in its possession on or prior to February 27, 2014.

5 **RESPONSE:**

6 The dangers associated with bathing are commonly known. Drowning and falling are
7 risks commonly associated with bathing. Plaintiff's Request is unclear as to what documentation
8 for these risks it is seeking.

9 Jacuzzi objects to the Request to the extent it is not limited in time or scope. Defendant
10 objects to this Request as overly broad, unduly burdensome, and seeking irrelevant information
11 because it is not limited to a reasonable or relevant time frame and is not limited to claims related
12 to the vague defect claims Plaintiffs have asserted in this case, which have changed over time.

13 DATED this 19th day of June, 2017.

14 SNELL & WILMER L.L.P.

15 By: 

16 Vaughn A. Crawford
17 Nevada Bar No. 7665
18 Joshua D. Cools
19 Nevada Bar No. 11941
20 3883 Howard Hughes Parkway, Suite 1100
21 Las Vegas, NV 89169

22 Attorneys for Defendant/Cross-Defendant
23 JACUZZI INC. doing business
24 as JACUZZI LUXURY BATH
25
26
27
28

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **DEFENDANT/CROSS-DEFENDANT JACUZZI INC.'S RESPONSE TO PLAINTIFF DEBORAH TAMANTINI'S FIRST SET OF REQUEST FOR PRODUCTION OF DOCUMENTS** by the method indicated below, addressed to the following:

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14 FIRST STREET FOR BOOMERS &
15 BEYOND, INC. AND AITHR DEALER,
16 INC.

17 DATED this 17th day of June, 2017.


An Employee of Snell & Wilmer L.L.P.

4821-7665-4663.4

EXHIBIT 4

Snell & Wilmer

LLP
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*Attorneys for Defendant/Cross-Defendant
Jacuzzi Inc. doing business as Jacuzzi Luxury Bath*

**DISTRICT COURT
CLARK COUNTY, NEVADA**

ROBERT ANSARA, as Special Administrator
of the Estate of SHERRY LYNN CUNNISON,
Deceased; ROBERT ANSARA, as Special
Administrator of the Estate of MICHAEL
SMITH, Deceased heir to the Estate of
SHERRY LYNN CUNNISON, Deceased; and
DEBORAH TAMANTINI individually, and
heir to the Estate of SHERRY LYNN
CUNNISON, Deceased,

Plaintiffs,

vs.

FIRST STREET FOR BOOMERS &
BEYOND, INC.; AITHR DEALER, INC.;
HALE BENTON, individually; HOMECLICK,
LLC; JACUZZI INC., doing business as
JACUZZI LUXURY BATH; BESTWAY
BUILDING & REMODELING, INC.;
WILLIAM BUDD, individually and as
BUDDS PLUMBING; DOES 1 through 20;
ROE CORPORATIONS 1 through 20; DOE
EMPLOYEES 1 through 20; DOE
MANUFACTURERS 1 through 20; DOE 20
INSTALLERS 1 through 20; DOE
CONTRACTORS 1 through 20; and DOE 21
SUBCONTRACTORS 1 through 20, inclusive,

Defendants.

AND ALL RELATED CLAIMS.

Case No.: A-16-731244-C
Dept. No.: II

**DEFENDANT/CROSS-DEFENDANT
JACUZZI INC.'S OBJECTIONS TO
PLAINTIFFS' FIFTH AMENDED
NOTICE TO TAKE VIDEOTAPED
DEPOSITION(S) OF 30(b)(6) FOR
JACUZZI**

**Date of Deposition: May 24, 2018
Time of Deposition: 10:00 a.m.**

1 **RESPONSE:**

2 Jacuzzi will produce a witness to testify regarding the general organizational structure
3 related to the design, testing, and manufacture of the subject Jacuzzi® Walk-In Bathtub model.

4 **Topic 43**

5 Any design work orders, billed work orders, test work orders, engineer change request,
6 engineering change orders related to the design and manufacture of the Jacuzzi walk-in tub.

7 **RESPONSE:**

8 Jacuzzi will produce a witness to testify regarding design work orders, billed work orders,
9 test work orders, engineer change requests, and engineering changes, if any, related to the subject
10 model tub and Jacuzzi's understanding of the claims in this action.

11 **Topic 44**

12 Any and all cost benefit and/or value analysis regarding the design of the Jacuzzi walk-in
13 tub and components.

14 **RESPONSE:**

15 Jacuzzi will produce a witness to testify regarding the cost benefit or value analysis, if
16 any, regarding the design of the subject model tub. This testimony will be limited to the design
17 criticisms identified by Plaintiffs, i.e., the size of the tub, the design of the door, and the
18 placement of grab bars.

19 **Topic 45**

20 The identification, location and contact information of persons with the most knowledge
21 concerning the design, manufacture and/or changes to the design and manufacturing of the
22 components of the Jacuzzi walk-in tub.

23 **RESPONSE:**

24 Jacuzzi will produce a witness consistent with its response to topics 36 and 37.

25 **Topic 46**

26 The identification, location and contact information of persons with the most knowledge
27 concerning the retrofit recall, service and/or otherwise fix regarding any alleged defect in the
28 design of the Jacuzzi walk-in tub.

1 **Topic 47**

2 The cost of retrofitting, recalling, servicing or otherwise fixing the alleged defect design
3 of the Jacuzzi walk-in tub and the components manufactured by Jacuzzi.

4 *NOTE: Topics 35-47 request among other things a witness knowledgeable to discuss the design*
5 *of an inward door entrance as opposed to an outward door entrance; design of the seat pan*
6 *and angulation of the seat pan; design of the seat height; design of the control reach for the*
7 *end user; design of the placement of the grab bars; design of the drain location and operation;*
8 *design of the standing surface including the slip resistance of the surface; design of the width*
9 *of the tub; and design of the overall tub dimensions.*

10 **RESPONSE:**

11 In response to Topics 46 and 47, Jacuzzi will not produce a witness to testify regarding
12 these topics as there have been no recall, service or fix regarding the vague and unsubstantiated
13 defect allegations plaintiffs have alleged. The topic is overly broad without limitation in scope,
14 time or issues relevant to the claims in this action.

15 **OTHER SIMILAR INCIDENTS TESTIMONY**

16 **Topic 48**

17 Any and all product investigations by Jacuzzi regarding damages or injuries resulting
18 from Jacuzzi walk-in tubs including the elements and components manufactured by Jacuzzi.

19 *NOTE: Plaintiffs seek to obtain information regarding prior incidents involving slips and falls*
20 *while using or while exiting or entering any Jacuzzi products including not only the fall itself*
21 *but also the inability of an end user to remove themselves after having had fallen inside the*
22 *tub.*

23 **RESPONSE:**

24 Jacuzzi will produce a witness to testify generally regarding investigations by Jacuzzi into
25 other similar incidents of injury or damage, if any, prior to the incident that is the subject of this
26 action. This response is limited to injury claims made for a period of 5 years prior to the subject
27 incident and involving the subject Jacuzzi® Walk-In Bathtub model or similar models and
28 involving claims similar to Plaintiffs' claims in this action. Jacuzzi objects to the topic because it
is not limited in time and therefore seeks testimony that is irrelevant to this litigation. Finally,
Jacuzzi objects to this request because the "Note" is inconsistent with the topic, making the entire
topic confusing.

1 **Topic 49**

2 Jacuzzi's financial net worth, assets, debts and financial status including subsidiaries,
3 partners and/or affiliations.

4 **RESPONSE:**

5 Jacuzzi will not produce a witness to testify as to this topic. Jacuzzi objects to the topic as
6 harassing and that the topic is seeking irrelevant testimony. Plaintiffs have demonstrated no facts
7 supporting their claim for punitive damages and any testimony regarding Jacuzzi's financial status
8 is irrelevant to their claims as it is unrelated to the adequacy of the bathtub design. Jacuzzi further
9 objects to this topic of testimony as it seeks the disclosure of confidential and proprietary
10 information, including commercially sensitive information that could cause harm to Jacuzzi if
11 disclosed publicly, without any corresponding benefit to Plaintiffs.

12 **Topic 50**

13 Testimony identifying all lawsuits, claims, dealer bulletins, complaints, incident reports or
14 other documents where someone has alleged that a Jacuzzi Walk In tub was not properly designed
15 contributing to injury of the user.

16 ***NOTE: Plaintiffs seek to obtain information regarding prior incidents involving slips and falls***
17 ***while using or while exiting or entering any Jacuzzi products including not only the fall itself***
18 ***but also the inability of an end user to remove themselves after having had fallen inside the***
19 ***tub.***

19 **RESPONSE:**

20 Jacuzzi will produce a witness to testify generally regarding lawsuits, claims, dealer
21 bulletins, complaints, or incident reports related to other substantially similar incidents of injury
22 or damage as Ms. Cunnison's, if any, prior to the incident that is the subject of this action. This
23 response is limited to injury claims made during the five years prior to the subject incident and to
24 the subject Jacuzzi® Walk-In Bathtub and similar tubs. Jacuzzi objects to the topic because it is
25 not limited in time and therefore seeks testimony that is irrelevant to this litigation. Finally,
26 Jacuzzi objects to this request because the "Note" is inconsistent with the topic, making the entire
27 topic confusing.

Topic 51

Testimony regarding Jacuzzi's actions related to any customer complaint, lawsuits, warranty claims or incident reports wherein it was alleged that a Jacuzzi Walk In tub was not properly designed contributing to injury of the user.

NOTE: Plaintiffs seek to obtain any information related to a claim made by an end user that a Jacuzzi product was unsafe.

RESPONSE:

In response to Topic 51, Jacuzzi will produce a witness to testify generally regarding lawsuits, claims, dealer bulletins, complaints, or incident reports related to other substantially similar incidents of injury or damage as Ms. Cunnison's, if any, prior to the incident that is the subject of this action. This response is limited to injury claims made for five years prior to the subject incident and to the subject Jacuzzi® Walk-In Bathtub and similar tubs. Jacuzzi objects to the topic because it is not limited in time therefore seeks testimony that is irrelevant to this litigation. Finally, Jacuzzi objects to this request because the "Note" is inconsistent with the topic, making the entire topic confusing.

Topic 52

Testimony and documents regarding any lawsuits filed against Jacuzzi, Inc during the use of a Jacuzzi Walk in tub allegedly causing injury or death, including the county and state in which the action was brought or is pending, including the names of each party, the name of each party's attorney with their address and telephone number, the disposition of each lawsuit and the date and place of the occurrence complained of in each lawsuit, as well as a copy of each such complaint.

NOTE: Plaintiffs seek to obtain any information related to a claim made by an end user that a Jacuzzi product was unsafe.

RESPONSE:

Jacuzzi will produce a witness to testify regarding lawsuits, if any, involving claims of injury similar to the claims that have been asserted in this action, alleging that the subject model tub "caus[ed] injury or death." This response is limited to a period of five years prior to the subject incident and to the subject Jacuzzi® Walk-In Bathtub and similar tubs. Jacuzzi objects to

1 the topic as overbroad because it is not limited in time or scope, thereby seeking information that
2 is irrelevant to this litigation. Finally, Jacuzzi objects to this request because the "Note" is
3 inconsistent with the topic, making the entire topic confusing.

4 **Topic 53**

5 Testimony regarding the procedures used by Jacuzzi to collect, receive, record, respond,
6 and store customer complaints, lawsuits, and incident reports.

7 **RESPONSE:**

8 Jacuzzi will produce a witness to testify regarding this topic that is familiar with Jacuzzi's
9 procedures for handling customer complaints, lawsuits, and incident reports.

10
11 DATED this 17th day of May, 2018.

12 SNELL & WILMER L.L.P.

13
14 By: /s/ Joshua D. Cools
15 Vaughn A. Crawford
16 Nevada Bar No. 7665
17 Joshua D. Cools
18 Nevada Bar No. 11941
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20 Las Vegas, NV 89169

21 *Attorneys for Defendant/Cross-Defendant*
22 *Jacuzzi Inc. doing business as Jacuzzi Luxury Bath*
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CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **DEFENDANT/CROSS-DEFENDANT JACUZZI INC.'S OBJECTIONS TO PLAINTIFFS' THIRD AMENDED NOTICE TO TAKE VIDEOTAPED DEPOSITION(S) OF 30(b)(6) FOR JACUZZI** by the method indicated below, addressed to the following:

- ☐ **BY E-MAIL:** by transmitting via e-mail the document(s) listed above to the e-mail addresses set forth below and/or included on the Court's Service List for the above-referenced case,
- ☒ **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.
- ☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below:

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First Street for Boomers & Beyond, Inc. and
Aithr Dealer, Inc.

DATED this 17th day of May, 2018.

/s/ Julia M. Diaz
An Employee of Snell & Wilmer L.L.P.

4845-6654-8067

EXHIBIT 5

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DISTRICT COURT

CLARK COUNTY, NEVADA

ROBERT ANSARA, as Special
Administrator of the Estate of
SHERRY LYNN CUNNISON, Deceased;
et al.,
Plaintiffs,

vs.

FIRST STREET FOR BOOMERS & BEYOND,
INC.; et al.,
Defendants.

No. A-16-731244-C

(Pages 1 - 120)

AND RELATED CROSS-ACTIONS.

(Complete Caption On Following Page)

VOLUME I

Videotaped deposition of WILLIAM B.
DEMERITT, Rule 30(b)(6) Corporate Designee
for Jacuzzi, taken on behalf of the Plaintiffs,
at 600 Anton Boulevard, Suite 1400, Costa Mesa,
California, commencing at 9:49 a.m., on Thursday,
May 24, 2018, before Kathleen Mary O'Neill,
CSR 5023, RPR.

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DISTRICT COURT
CLARK COUNTY, NEVADA

ROBERT ANSARA, as Special
Administrator of the Estate of
SHERRY LYNN CUNNISON, Deceased;
MICHAEL SMITH individually, and
heir to the Estate of SHERRY LYNN
CUNNISON, Deceased; and DEBORAH
TAMANTINI individually, and heir
to the Estate of SHERRY LYNN
CUNNISON, Deceased;

Plaintiffs,

vs.

FIRST STREET FOR BOOMERS & BEYOND,
INC.; AITHR DEALER, INC.; HALE
BENTON, Individually, HOMELICK,
LLC.; JACUZZI LUXURY BATH, doing
business as JACUZZI INC.; BESTWAY
BUILDING & REMODELING, INC;
WILLIAM BUDD, Individually and as
BUDDS PLUMBING; DOES 1 through 20;
ROE CORPORATIONS 1 through 20; DOE
EMPLOYEES 1 through 20; DOE
MANUFACTURERS 1 through 20; DOE 20
INSTALLERS 1 through 20; DOE
CONTRACTORS 1 through 20; and
DOE 21 SUBCONTRACTORS 1 through
20, inclusive,

Defendants.

AND RELATED CROSS-ACTIONS.

No. A-16-731244-C

1 APPEARANCES:

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10 -and-

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12 Videographer:

13 DEAN JONES

14 OASIS REPORTING SERVICES

15 702/476-4500

16

17 Also present:

18 RON TEMPLER

19 (Corporate representative for Jacuzzi)

20

21

22

23

24

25

1 I N D E X

2 DEPONENT EXAMINED BY PAGE

3 William B. Demeritt Mr. Cloward 7

4

5 Videotape No. 1 Page 6

6 Videotape No. 2 Page 92

7

8 EXHIBITS FOR IDENTIFICATION: PAGE

9 1 Saferproducts.gov Incident Report, 92

10 3 pages

11 2 6/17/16 Plaintiff's Original Petition, 96

12 13 pages

13 3 "Chicago Woman Sues: Stuck in Bathtub 104

14 30 Hours," 2 pages

15 4 Homeability.com "Walk-in Tubs: 105

16 Homeability Uncovers Scams & Shady

17 Practices," 10 pages

18 5 Ohio Department of Developmental 110

19 Disability, "Safety Is Not an

20 Accident It's Everyone's Business,"

21 2 pages

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23

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25

1 personal injury or death of the plaintiff in the case.

2 The response -- and I'm not reading the whole
3 -- for the record, I'm not reading the entire request or
4 category, just to shorten things up.

5 The response is that:

6 "After performing a diligent
7 search, Jacuzzi has no documents
8 responsive to this request that
9 are not subject to the attorney-client
10 privilege or work product doctrine.
11 A privilege log is being prepared
12 and will be produced for all privileged
13 documents covering the time span of
14 when Jacuzzi was made aware of the
15 incident up until plaintiff filed suit.
16 Plaintiff [sic] further objects to
17 the request as confusing, compound, and,
18 in part, nonsensical."

19 Are you prepared to discuss the privilege log
20 that is being produced?

21 MR. COOLS: Just one objection in that the
22 privilege log was produced.

23 MR. CLOWARD: Okay. So it was a mistake where
24 it indicated "a privilege log is being prepared"?

25 MR. COOLS: Yeah. The privilege log has been