

IN THE SUPREME COURT OF THE STATE OF NEVADA

FIRST STREET FOR BOOMERS &
BEYOND, INC.; AITHR DEALER,
INC.;

Petitioner,

v.

THE EIGHTH JUDICIAL DISTRICT
COURT, IN AND FOR THE COUNTY
OF CLARK, STATE OF NEVADA,
AND THE HONORABLE CRYSTAL
ELLER, 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; 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

CASE NO.

Electronically Filed
Aug 17 2021 01:33 p.m.

District Court No. Elizabeth A. Brown
A-16-731244-C Clerk of Supreme Court

Dept. No. XIX

MANUFACTURERS 1 through 20;
DOE 20 INSTALLERS 1 through 20;
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 Crystal Eller District Judge**

APPENDIX VOLUME 4 TO PETITION FOR WRIT OF MANDAMUS

Philip Goodhart
Nevada Bar No. 5332
Meghan M. Goodwin
Nevada Bar No. 11974
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Dealer, Inc.;*


INDEX

<u>Document Name</u>	<u>Date Filed</u>	<u>Page</u>
Plaintiffs' Complaint	02/03/2016	PA0001 – PA0013
Plaintiffs' Fourth Amended Complaint	06/20/2017	PA0014 – PA0029
Plaintiffs' Order Striking Defendant Jacuzzi Inc. d/b/a Jacuzzi Luxury Bath's Answer as to Liability Only	11/18/2020	PA0030 – PA0063
Plaintiffs' Renewed Motion to Strike Defendant First Street for Boomers & Beyond, Inc.'s & AITHR Dealer, Inc.'s Answer to Plaintiffs' Fourth Amended Complaint	10/09/2020	PA0064 – PA0096
Appendix to Plaintiffs' Renewed Motion to Strike Defendant First Street for Boomers & Beyond, Inc.'s & AITHR Dealer, Inc.'s Answer to Plaintiffs' Fourth Amended Complaint	10/09/2020	PA0097 – PA0385
Court Minutes Regarding Motions to Strike	03/04/2019	PA0386 – PA0388
Court Minute Order Regarding Motions to Strike	03/12/2019	PA0389 – PA0390
Defendants First Street and AITHR's Opposition to Plaintiffs' Renewed Motion to Strike Defendants First Street and AITHR's Answer to Plaintiff's Fourth Amended Complaint	11/06/2020	PA0391 – PA0711
Plaintiffs' Reply in Support of Plaintiffs' Renewed Motion to Strike Defendant First Street for Boomers & Beyond, Inc.'s & AITHR Dealer, Inc.'s Answer to Plaintiffs' Fourth Amended Complaint	11/13/2020	PA0712 – PA0917
Transcript of Hearing Regarding Motion to Strike	12/16/2020	PA0918 – PA1005
Court Minute Order Regarding Plaintiffs' Renewed Motion to Strike Defendants First Street and AITHR's Answer to Plaintiff's Fourth Amended Complaint	12/28/2020	PA1006 – PA1009

Plaintiffs' Order Striking First Street for Boomers & Beyond, Inc.'s & AITHR Dealer, Inc.'s Answer to Plaintiffs' Fourth Amended Complaint	12/31/2020	PA1010 – PA1024
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DATED this 16th day of August, 2021.

THORNDAL ARMSTRONG DELK
BALKENBUSH & EISINGER



PHILIP GOODHART, ESQ. (#5332)
MEGHAN M. GOODWIN, ESQ. (#11974)
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Las Vegas, Nevada 89101
Attorneys for Petitioners firstSTREET For
Boomers & Beyond, Inc. and AITHR Dealer, Inc.

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 August 16, 2021, I caused to be served a true and correct copy of the foregoing APPENDIX VOLUME 4 TO PETITION FOR WRIT OF MANDAMUS upon the following by the method indicated:

- × **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 Crystal Eller
Eighth Judicial District Court, Dept. XIX
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 Plaintiffs

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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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WILLIAM BUDD and BUDDS PLUMBING*


An employee of RICHARD HARRIS LAW FIRM



**THORNDAL
ARMSTRONG**
DELK BALKENBUSH & EISINGER

A PROFESSIONAL CORPORATION

ATTORNEYS

www.thorndal.com

EXHIBIT 6

DISTRICT COURT CIVIL COVER SHEET

A-16-731244-C

County, Nevada

I

Case No.

(Assigned by Clerk's Office)

I. Party Information (provide both home and mailing addresses if different)

Plaintiff(s) (name/address/phone):	Defendant(s) (name/address/phone):
ROBERT ANDARA, as Special Administrator of the Estate of SHERRY LYNN CUMMISON, Deceased	FIRST STREET FOR BOOMERS & BEYOND, INC.
MICHAEL SMITH individually, and heir to the Estate of SHERRY LYNN CUMMISON, Deceased;	AITHR DEALER, INC.; HALE BENTON, HOMECLOCK, LLC.
DEBORAH TAMANTINI individually, and heir to the Estate of SHERRY LYNN CUMMISON, Deceased.	JACUZZI BRANDS LLC; BESTWAY BUILDING & REMODELING, INC.;
	WILLIAM BUDD, BUDDS PLUMBING
Attorney (name/address/phone):	Attorney (name/address/phone):
BENJAMIN P. CLOWARD, ESQ.	
CLOWARD HICKS & BRASIER, PLLC	
721 South 6th Street Las Vegas, NV 89101	
Telephone: (702) 628-9888	

II. Nature of Controversy (please select the one most applicable filing type below)**Civil Case Filing Types**

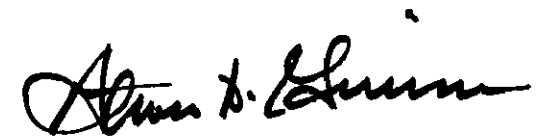
Real Property Landlord/Tenant <input type="checkbox"/> Unlawful Detainer <input type="checkbox"/> Other Landlord/Tenant Title to Property <input type="checkbox"/> Judicial Foreclosure <input type="checkbox"/> Other Title to Property Other Real Property <input type="checkbox"/> Condemnation/Eminent Domain <input type="checkbox"/> Other Real Property	Negligence <input type="checkbox"/> Auto <input type="checkbox"/> Premises Liability <input type="checkbox"/> Other Negligence Malpractice <input type="checkbox"/> Medical/Dental <input type="checkbox"/> Legal <input type="checkbox"/> Accounting <input type="checkbox"/> Other Malpractice	Torts Other Torts <input checked="" type="checkbox"/> Product Liability <input type="checkbox"/> Intentional Misconduct <input type="checkbox"/> Employment Tort <input type="checkbox"/> Insurance Tort <input type="checkbox"/> Other Tort
Probate Probate (select case type and estate value) <input type="checkbox"/> Summary Administration <input type="checkbox"/> General Administration <input type="checkbox"/> Special Administration <input type="checkbox"/> Set Aside <input type="checkbox"/> Trust/Conservatorship <input type="checkbox"/> Other Probate Estate Value <input type="checkbox"/> Over \$200,000 <input type="checkbox"/> Between \$100,000 and \$200,000 <input type="checkbox"/> Under \$100,000 or Unknown <input type="checkbox"/> Under \$2,500	Construction Defect & Contract Construction Defect <input type="checkbox"/> Chapter 40 <input type="checkbox"/> Other Construction Defect Contract Case <input type="checkbox"/> Uniform Commercial Code <input type="checkbox"/> Building and Construction <input type="checkbox"/> Insurance Carrier <input type="checkbox"/> Commercial Instrument <input type="checkbox"/> Collection of Accounts <input type="checkbox"/> Employment Contract <input type="checkbox"/> Other Contract	Judicial Review/Appeal Judicial Review <input type="checkbox"/> Foreclosure Mediation Case <input type="checkbox"/> Petition to Seal Records <input type="checkbox"/> Mental Competency Nevada State Agency Appeal <input type="checkbox"/> Department of Motor Vehicle <input type="checkbox"/> Worker's Compensation <input type="checkbox"/> Other Nevada State Agency Appeal Other <input type="checkbox"/> Appeal from Lower Court <input type="checkbox"/> Other Judicial Review/Appeal
Civil Writ <input type="checkbox"/> Writ of Habeas Corpus <input type="checkbox"/> Writ of Mandamus <input type="checkbox"/> Writ of Quo Warrant <input type="checkbox"/> Writ of Prohibition <input type="checkbox"/> Other Civil Writ	Other Civil Filing <input type="checkbox"/> Compromise of Minor's Claim <input type="checkbox"/> Foreign Judgment <input type="checkbox"/> Other Civil Matters	

Business Court filings should be filed using the Business Court civil coversheet.

2/3/16
Date

Signature of initiating party or representative

See other side for family-related case filings.



CLERK OF THE COURT

1 COMP
2 BENJAMIN P. CLOWARD, ESQ.
3 Nevada Bar No. 11087
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10 *Attorneys for Plaintiff*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

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

16 Plaintiffs,

17 vs.

18 FIRST STREET FOR BOOMERS &
19 BEYOND, INC.; AITHR DEALER, INC.;
20 HALE BENTON, Individually,
21 HOMECCLICK, LLC.; JACUZZI BRANDS
22 LLC.; BESTWAY BUILDING &
23 REMODELING, INC.; WILLIAM BUDD,
24 Individually and as BUDDS PLUMBING;
25 DOES 1 through 20; ROE CORPORATIONS
26 1 through 20; DOE EMPLOYEES 1 through
27 20; DOE MANUFACTURERS 1 through 20;
28 DOE 20 INSTALLERS 1 through 20; DOE
CONTRACTORS 1 through 20; and DOE
21 SUBCONTRACTORS 1 through 20,
inclusive

Defendants.

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

COMPLAINT

1 COME NOW, Plaintiffs ROBERT ANSARA, as Special Administrator of the Estate of
2 SHERRY LYNN CUNNISON, Deceased; MICHAEL SMITH individually, and heir to the Estate of
3 SHERRY LYNN CUNNISON, Deceased; and DEBORAH TAMANTINI individually, and heir to the
4 Estate of SHERRY LYNN CUNNISON, Deceased by through their attorneys BENJAMIN P.
5 CLOWARD, ESQ. and for their causes of action against all Defendant's, and each of them, alleges as
6 follows:
7

8 I.

9 **PARTIES AND JURISDICTION**

10
11 1. That at all times relevant to these proceedings, Plaintiff, ROBERT ANSARA the
12 Special Administrator of the Estate of SHERRY LYNN CUNNISON, was and is a resident of
13 Nevada.

14 2. That at all times relevant to these proceedings, SHERRY LYNN CUNNISON,
15 deceased (hereinafter "SHERRY") was a resident of Clark County, Nevada.
16

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

20 4. That at all times relevant to these proceedings, Plaintiff, MICHAEL SMITH
21 (hereinafter "MICHAEL") individually, and heir to the Estate of SHERRY LYNN CUNNISON, was
22 and is a resident of Nevada.
23

24 5. That at all times relevant to these proceedings, Plaintiff, DEBORAH TAMANTINI
25 (hereinafter "DEBORAH") individually, and heir to the Estate of SHERRY LYNN CUNNISON, was
26 and is a resident of the state of California.
27
28

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

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

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

12 9. 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

16 10. That at all times relevant hereto, upon information and belief, Defendant JACUZZI
17 BRANDS LLC., (hereinafter "JACUZZI") is and was a foreign Corporation doing business in Clark
18 County, Nevada,
19

20 11. That at all times relevant hereto, upon information and belief, Defendant, BESTWAY
21 BUILDING & REMODELING, INC., a Domestic Limited-Liability Company; (hereinafter
22 "BESTWAY"), doing business in the State of Nevada.
23

24 12. At all times mentioned, Defendant WILLIAM BUDD was and is a resident of Clark
25 County, Nevada and was the business owner of Defendant, BUDD'S PLUMBING an unincorporated
26 business, (hereinafter "BUDD and BUDD'S PLUMBING"), and doing business in the State of
27 Nevada.
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II.

GENERAL FACTUAL ALLEGATIONS

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

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

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

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

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

1 18. 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 19. 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 20. 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.
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26 21. 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.

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

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

24. On or about February 19, 2014, deceased SHERRY was in the Jacuzzi walk-in tub, when she attempted exit the Jacuzzi walk-in tub by pulling the plug to let the water drain, allowing her to open the Jacuzzi walk in tub's door and exit. The drain would not release trapping SHERRY in the tub for 48 hours.

25. On or about February 21, 2014 and after several unanswered telephone calls to the deceased SHERRY, a well check was performed to ensure the deceased SHERRY'S safety. Upon which, SHERRY was discovered trapped in the Jacuzzi walk-in tub.

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

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

FIRST CAUSE OF ACTION
Negligence as to All Defendants

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

1 29. Defendants owed a duty to Plaintiffs, and others similarly situated, to ensure that their
2 product, and particularly the Jacuzzi walk-in tub was properly functioning and safe for use by the end
3 consumer.

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

7 31. Defendants, and each of them, knew or should have known that unreasonably
8 dangerous conditions existed with the Jacuzzi walk-in tub, being used by Plaintiff, namely the
9 defective plug and drain system.

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

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

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

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

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

1 35. That upon information and belief, Defendants, and/or DOE/ROE Defendants, are and
2 were a component part manufacturer, installer, owner, distributor, repairer, maintainer, warned for use,
3 retailer, and/or warrantor of said defective product as set forth herein.
4

5 36. That the true names and capacities, whether individual, corporate, agents, association or
6 otherwise of the DOE and ROE, are unknown to Plaintiff, who therefore sues said Defendants by such
7 fictitious names. Plaintiff is informed and believes, and thereupon alleges, that each of the Defendants
8 designated herein as DOE and/or ROE are responsible in some manner for the events and happenings
9 herein referred to, and in some manner caused the injuries and damages proximately thereby to the
10 Plaintiff as herein alleged; that the Plaintiff will ask leave of this court to amend this Complaint to
11 insert the true names and capacities of said DOE and/or ROE Defendants, when the same have been
12 ascertained by the Plaintiff, together with appropriate charging allegations, and to join such Defendants
13 in this action.
14

15 37. That said DOE and ROE Defendants are the manufacturers, designers, component part
16 manufacturers, installers, owners, distributors, repairers, maintainers, retailers, warned for use,
17 warrantors of said defective product as set forth herein.
18

19 38. That upon information and belief, Defendants, and each of them, sold the subject
20 product and failed to warn Plaintiffs of the hazards of the use of the subject product.
21

22 39. At the time of this incident, the product had a design and/or manufacturing defect that
23 rendered the product unreasonably dangerous and potentially deadly.

24 40. The defect, which rendered it unreasonably dangerous, existed at the time the subject
25 product and its component parts left the care, custody and control of the above named Defendants
26 and/or ROE/DOE Defendants
27

28 41. The Defendants and/or ROE/DOE Defendants, knew or should have known of the
subject product's defect which rendered it unreasonably dangerous at the time of placing the subject

1 product into the stream of commerce and failed to undertake measures to prohibit it from entering into
2 the stream of commerce and into the hands of users in the State of Nevada, including warnings of the
3 risks for product failure, proper use and maintenance of the product and proper inspection of the
4 product for potential hazards and/or defects.
5

6 42. That the subject product was defective due to Defendants, and each of their failure to
7 warn of the potential dangers associated with using said product.

8 43. That said product was defective due to a manufacturers' defect, design defect, or defect
9 due to lack of adequate warnings.
10

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

13 45. That said product's manufacturing and/or design defect was the proximate cause of
14 SHERRY'S injuries and resulting death.
15

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

18 47. The Defendants and/or DOE/ROE Defendants are strictly liable to the Plaintiffs jointly
19 and severally for the damages they have sustained.
20

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

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

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

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

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

4. For punitive damages in excess of \$10,000.00;
5. For reasonable attorney's fees, pre-judgment interest and costs of incurred herein;
6. For such other and further relief as the Court may deem just and proper in the premises.

CLOWARD, HICKS & BRASIER, PLLC

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2 BENJAMIN P. CLOWARD, ESQ.
3 Nevada Bar No. 11087
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10
11 **DISTRICT COURT**
12
13 **CLARK COUNTY, NEVADA**

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

22 Plaintiffs,

23 vs.

24 FIRST STREET FOR BOOMERS &
25 BEYOND, INC.; AITHR DEALER, INC.;
26 HALE BENTON, Individually,
27 HOMECLICK, LLC.; JACUZZI BRANDS
28 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; DOE
CONTRACTORS 1 through 20; and DOE
21 SUBCONTRACTORS 1 through 20,
22 inclusive

23 Defendants.

CASE NO.
DEPT. NO.

INITIAL APPEARANCE FEE
DISCLOSURE

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Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for fees

ROBERT ANSARA, as Special Administrator of the Estate of SHERRY LYNN CUNNISON, Deceased	\$270.00
--	----------

MICHAEL SMITH individually, and heir to the Estate of SHERRY LYNN CUNNISON	\$30.00
---	---------

DEBORAH TAMANTINI individually,	
and heir to the Estate of SHERRY LYNN CUNNISON, Deceased	\$30.00

TOTAL REMITTED: \$330.00

DATED this 3RD day of February, 2016

CLOWARD HICKS & BRASIER, PLLC

BENJAMIN P. CLOWARD, ESQ.

Nevada Bar No. 11087

721 South 6th Street

Las Vegas, NV 89101

Attorneys for Plaintiffs



**THORNDAL
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EXHIBIT 7

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Location : All Courts [Help](#)

REGISTER OF ACTIONS

CASE No. A-16-731244-C

Robert Ansara, Plaintiff(s) vs. First Street for Boomers & Beyond
Inc, Defendant(s)

§
§
§
§
§
§

Case Type: **Product Liability**
Date Filed: **02/03/2016**
Location: **Department 2**
Cross-Reference Case Number: **A731244**

PARTY INFORMATION

Lead Attorneys

Defendant **Aithr Dealer Inc**

Christopher John Curtis

Defendant **Benton, Hale**

Philip Goodhart

Defendant **First Street for Boomers & Beyond Inc**

Christopher John Curtis

PA0530

Defendant	Homeclick LLC	Michael E Stoberski
Defendant	Jacuzzi Inc <i>Doing Business</i> As Jacuzzi Luxury Bath	Vaughn A. Crawford <i>Retained</i>
Plaintiff	Ansara, Robert <i>Now Known</i> As Robert Ansara Personal Rep of the Estate of Michael Smith	Benjamin P. Cloward <i>Retained</i> 702-385-1400(W)
Plaintiff	Estate of Sherry Lynn Cunnison	Benjamin P. Cloward
Plaintiff	Tamantini, Deborah	Benjamin P. Cloward
Trust	Estate of Sherry Lynn Cunnison	Benjamin P. Cloward

EVENTS & ORDERS OF THE COURT

03/04/2019 **Minute Order** (10:00 AM) (Judicial Officer Scotti, Richard F.)

Minutes

03/04/2019 10:00 AM

- Order RE: Pending Motions The Court sets down an Evidentiary Hearing on the issue of sanctions for March 28, 2019, 10:30 AM (3 hours). The Court hereby lifts any Stay that existed in this case. The parties should proceed with any further discovery until and unless the Court Orders otherwise. In the upcoming sanctions order the Court is inclined to impose some monetary sanctions, at the very least, and re-allocate the fees and costs related to discovery. A tentative new Discovery Deadline is March 21. The Court shortens Notice for any further Depositions that either side needs to take to one week. Protective orders, if really necessary, may be sought on one day notice and heard by telephone conference. Plaintiff is permitted to take a further deposition of the corporate representatives of Jacuzzi and First Street, regarding Chopper, marketing and advertising, and the First Street dealers that existed between 2008 and the date of the incident. Plaintiff is entitled to locate and depose Chopper if that has not been done already. Plaintiff is entitled to take the depositions of the First Streets Dealers. The parties are directed to again cooperate in good faith to conduct the forensic review previously ordered by the Discovery Commissioner-if it still has not been complete-and, of course, the scope shall be all incidents involving a Jacuzzi walk-in tub with inward opening doors, for the time period of January 1, 2008, through the date of filing of the complaint, where a person slipped and fell, whether or not there was an injury, whether or not there was any warranty claim, and whether or not there was a lawsuit. This case is still set to be tried on the Court's April 22 five-week stack. The Court will entertain a Stipulation to continue if the parties collectively want a continuance. The Court requests the parties to identify, by filed brief (no more than two (2) pages); (1) What discovery has been conducted in this case since February 4, 2019; (2) The names of any relevant customers of Jacuzzi/First Street that have died; (3) What additional discovery Plaintiff would need to conduct if the Court were not to strike Defendants Answers; and (4) any new developments that the Court should know about. Please provide this by Thursday March 8, 2019. At this time the Court believes that an

PA0531

Evidentiary Hearing is necessary to determine whether, and the extent to which, sanctions might be assessed against Jacuzzi and/or First Street for failure to timely disclose the Chopper incident. The Court will elaborate on this more in the upcoming sanctions Order. CLERK'S NOTE: This Minute Order has been electronically served to all registered parties for Odyssey File & Serve. /lg

[Return to Register of Actions](#)



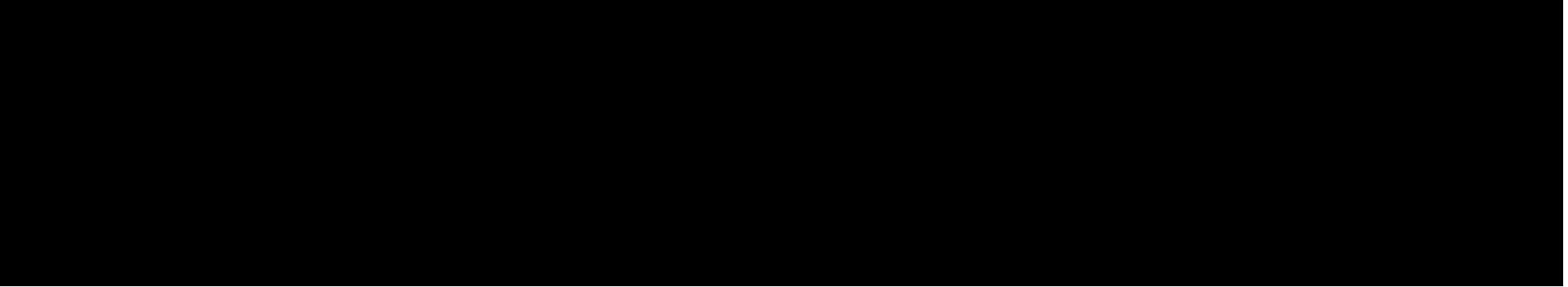
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EXHIBIT 8



From: Nick Fawkes [mailto:nick.fawkes@aihremodelers.com]
Sent: Thursday, May 01, 2014 3:12 PM
To: DAVE MODENA; STACY HACKNEY
Subject: FW: Cunnison:

From: Nick Fawkes [mailto:nick.fawkes@aihremodelers.com]
Sent: Thursday, May 01, 2014 1:10 PM
To: STACY HACKNEY (STACY.HACKNEY@firstSTREETonline.com)
Subject: Cunnison:

Stacy,

Here is everything we have .

All LP note have been scanned so that they can be read all the way to the margins.
Installer agreement for Joe Tilt attached.

- Electrician vendors agreements as necessary.
- All communication (emails, recorded calls etc.)
- There was no further communication from sales rep after initial sales call.
- Necessary permits and inspection documents attached.
- Buds plumbing installed new ADA handle as Mrs. Cunnison could not install herself.
- Tub was shipped from Jacuzzi to Joe Tilt residence in Salt Lake City
- The handle was a Gerbert Manufacture. We purchased ADA ergonomic Handle from Home Click.. It was shipped to us and from Home Click. We mailed it to Mrs. Cunnison. She attempted to install but struggled. That is why we offered to send out Bud's plumbing to help her..

- I also wanted to make sure everyone understood, the Jacuzzi Walk in tub did not fail. The client simply struggled to maneuver the drain handle. That is why we offered to provide her a degree of assistance with the modified handle. It was not a failure of product. It was user weakened limitation.

Annie and I contacted the coroner's office and was advised that Mrs. Cunnison died as a result of:

- A. Cause A: Dehydration and Rhabdomyolysis
 - B. Cause B: Fall, Left humerus Fracture,
 - C. Cause C: Hypertensive Heart disease, Morbid obesity
- I received information from the recording of the Insurance adjuster who claimed Mrs. Cunnison got stuck trying to get out of tub. Ashley, the insurance adjuster stated Mrs. Cunnison was wedged between the interior and exterior of the tub for multiple days.

Let me know if there is anything else you need..

Regards,

Nick Fawkes,
General Manager
firstSTREET Jacuzzi
nick.fawkes@aihremodelers.com
303.953.7080





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EXHIBIT 9

Job Detail









General Dates Service Prints To Do Comments Notes Docs Permits Commissions Job Cost Chg Orders Financing

Cunnison, Sherry #12116 Status: Complete/Paid Stat Dt: 01/31/2014 Sale Batch Inst Batch

Job Cost Sheet Invoice ZZNew

Entered On	Entered By	Updated On	Updated By	Notes
4/11/2014 12:09:06 PM	Dierkens, Tracey	4/11/2014 12:10:21 PM	Dierkens, Tracey	<p>We received a call from Ashley Smith who is the claims adjuster for All State.</p> <p>She stated the customer was in the tub and the drain malfunctioned and she couldn't get out and passed away in the tub.</p> <p>She said the customers attorneys and our attorneys are working on this, but she needs information from us.</p> <p>She would like a copy of all the paperwork.</p> <p>Do you know about this, and what would you like me to do?</p> <p>Thank you!</p> <p>Ashley Smith - 866-234-0284</p> <p>Ashley Smith from Allstate called in regarding the tub- customer got stuck in it and passed away- Allstate would like at the paperwork from the job. Asked Tracey for help- she is emailing corporate.</p> <p>Hello Haley,</p> <p>The phone number for customer Sherry Cunnison in Las Vegas, NV, is (702) 435-5790. No alternate phone number was listed. Sorry, that's all the contact info we were given.</p> <p>Thank you, Rose Johnson</p> <p>The electrician and USA Services has been trying to contact Sherry Cunnison since her tub install date to schedule the final inspection. The last we heard from a family member was that she has been in the hospital, that was over a month ago and we have not been able to reach her. We need to get our electrician reimbursed because the permit has already been pulled. Let me</p>
4/11/2014 12:00:41 PM	Davidson, Ashley	4/11/2014 12:01:33 PM	Davidson, Ashley	
3/7/2014 9:32:06 AM	Johnson, Rose	3/7/2014 9:32:09 AM	Johnson, Rose	
3/6/2014 3:57:29 PM	Johnson, Rose	3/6/2014 3:57:36 PM	Johnson, Rose	
			New	















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Entered On	Entered By	Updated On	Updated By	Notes	
2/18/2014 9:07:04 AM	Johnson, Rose	2/18/2014 9:09:08 AM	Johnson, Rose	know if you can help? Haley Herelovich Permit Manager USA Services Inc.	
2/17/2014 10:51:15 AM	Johnson, Rose	2/17/2014 10:51:49 AM	Johnson, Rose	Rec'd W-9 from Budd's Plumbing via fax. I will submit W-9 to Debbie Bragg at corporate today so repair invoice #6847 can be paid in a timely manner. Faxed the below letter and a blank W-9 form to Budd's Plumbing at (702) 294-1060. They will sign form and fax back to our office. February 17th, 2014 Budd's Plumbing 1624 Carse Boulder City, VN 89005	
2/17/2014 10:50:37 AM	Johnson, Rose	2/17/2014 10:50:53 AM	Johnson, Rose	Hello, I've enclosed a blank W-9 form with instructions on how to fill this form out. Please provide the required information, then sign and date the W-9 form. Please fax the completed form back to our office at (303) 953-7084 so that corporate can pay your invoice #6847 for \$135.00 in a timely manner. Thank you, Rose Johnson Production Coordinator	
2/12/2014 11:20:30 AM	Doubek, Annette	2/12/2014 11:22:59 AM	Doubek, Annette	Sherry - called to get Shane's number, the electrician. the county inspector was there and was very rude, but he could not get the panel off the front of the tub to inspect. I called Caitlin and she is calling Shane to call Sherry	
2/11/2014 12:35:50 PM	Yeatts, Katy	2/11/2014 12:36:31 PM	Yeatts, Katy	Approved Second Half Commission. \$715.05 to be paid this week.	
2/10/2014 10:33:00 AM	Doubek, Annette	2/10/2014 10:34:49 AM	Doubek, Annette	called to check in - heater is working, tempering valve could turned up. I will have Joe stop by next time he is in Vegas.	
2/10/2014 7:13:17 AM	Doubek, Annette	2/10/2014 7:14:25 AM	Doubek, Annette	Ms. Cunnison called Saturday about the temperature of her water, I reminded her that the heater will only work if the jets are running, she could not recall if the jets were on or not. She is going to try it again, she also said she did not get a manual with the tub. I mailed one to her today.	
2/6/2014 8:35:03 AM	Davidson, Ashley	2/6/2014 8:35:16 AM	Davidson, Ashley	Joe, Good morning. May I please get updates on the following warranties. I do not have any schedule dates for them so if you have some please let me know, if not may we get them scheduled as soon as possible please?	
			<u>New</u>		












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Entered On	Entered By	Updated On	Updated By	Notes	
1/31/2014 3:33:59 PM	Britton, Mardia	1/31/2014 3:34:06 PM	Britton, Mardia	<ul style="list-style-type: none"> Borgaard, Mary in Las Vegas, NV- Issue is caulking. I have requested many updates on this and have not received a schedule date back. Last time I talked to you, you thought she had an open Jacuzzi warranty but there is not one that I know of. Please let me know when you can get this scheduled. Cunnison, Sherry in Las Vegas, NV- Issue is the drain; customer cannot turn the handle. We will need to install a handle on the drain for easier turning. Please let me know when you can get this scheduled. Compton, Jaqueline in Las Vegas, NV- Issue is the front panel; electrical inspector needs the caulking removed to do the inspection and then the skirt will need to be re-caulked. Please let me know when you can get this scheduled. <p>I know we are shooting for you to be in Vegas the week of 2/17 for a couple installs (Howe and Norton) - as of right now they look like they have only been ordered. Maybe you could get these warranty jobs done while you are down there if you don't have them scheduled or completed already?</p> <p>If I don't hear back from you on the above warranties by 2/10/14 I will be hiring someone local to do the work. If the issue was due to installation issues, I may have to charge you back, just so you are aware.</p>	
1/31/2014 8:57:40 AM	Doubek, Annette	1/31/2014 8:58:27 AM	Doubek, Annette	<p>Best Regards, Ashley Davidson Customer Care Coordinator</p> <p>Joe,</p> <p>My apologies it looks like Ms. Sherry Cunnison has already been taken care of. We just need dates for the Borgaard's and Compton's. ?</p>	
1/30/2014 7:54:02 AM	Doubek, Annette	1/30/2014 7:54:31 AM	Doubek, Annette	<p>Best Regards, Ashley Davidson Customer Care Coordinator</p> <p>Job is closed</p>	
1/29/2014 2:56:10 PM	Doubek, Annette	1/29/2014 3:17:43 PM	Doubek, Annette	<p>Mrs. called me last night to say she could not get the lever attached for the drain, I called Bill at Bud's plumbing and he said he would call her to set up an appointment to install for her. I will let her know.</p> <p>Joe went over and took the screen off the faucet and cleaned it out, now the sink works fine.</p>	

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Entered On	Entered By	Updated On	Updated By	Notes	
1/29/2014 2:05:33 PM	Doubek, Annette	1/29/2014 2:14:51 PM	Doubek, Annette	Ms Cunnison called again, she does not have any water pressure in her kitchen sink. LM for Joe to call me, hoping he can go over and check it out for her. Joe is going to call her	
1/28/2014 10:14:40 AM	Johnson, Rose	1/28/2014 10:15:08 AM	Johnson, Rose	Ms. Cunnison called and said she could not the drain opener to turn, I am sending her a lever overnight, I will call her tomorrow to make sure it works for her. tub serial #8DHVDW	
1/27/2014 3:23:28 PM	Doubek, Annette	1/27/2014 3:28:30 PM	Doubek, Annette	Called Mrs. and confirmed electrician completed all work on 1/27/2014.	
1/27/2014 3:21:51 PM	Doubek, Annette	1/27/2014 3:22:25 PM	Doubek, Annette	satisfaction call - looks good, not happy with holes where the shower was, screw holes filled with putty / caulking. Rest of it looks good. Will get shower curtain, will look nice. She will call me after she uses the tub.	
1/27/2014 11:43:48 AM	Doubek, Annette	1/27/2014 11:44:52 AM	Doubek, Annette	Joe called - job is complete, customer signed and paid balance. Joe thinks we will be hearing from her til the end of time.	
1/27/2014 10:13:22 AM	Doubek, Annette	1/27/2014 10:14:20 AM	Doubek, Annette	customer called to confirm balance due and she is a nervous wreck. thinks they are tearing her house apart and will not leave a professional job, I assured her that Joe will take good care of her home and leave a nice finished product. she will call again.	
1/27/2014 8:52:11 AM	Doubek, Annette	1/27/2014 8:59:41 AM	Doubek, Annette	Joe called, said that Ms Cunnison could barely get in and out of the tub, but she is going ahead with the installation, Joe thinks it could be a troublesome customer, I would agree from past communications with her.	
1/24/2014 9:14:55 AM	Doubek, Annette	1/24/2014 9:19:02 AM	Doubek, Annette	arrival call - not there yet - texted Joe for ETA will let Mrs know. Joe says about 8:30. notified customer	
1/13/2014 10:55:21 AM	Doubek, Annette	1/13/2014 10:55:32 AM	Doubek, Annette	confirmation call - arrival between 8-10. Worried about everything, her tile floor, leaks, etc... gave her my number again so she can call with questions.	
1/13/2014 10:54:08 AM	Doubek, Annette	1/13/2014 10:55:10 AM	Doubek, Annette	sent revised pics and measure to Joe.	
1/10/2014 12:47:37 PM	Doubek, Annette	1/10/2014 12:47:47 PM	Doubek, Annette	need LH white tub - we got down to Vegas without the revised pics and docs, for the changed bathroom. I will investigate to find out how this happened. checked with Joe to see if he has a LH White, told Mrs we will try to get it by end of month.	
1/10/2014 10:04:51 AM	Doubek, Annette	1/10/2014 10:17:00 AM	Doubek, Annette	We have the permit, all the wires are ran but since it's a shower we need to be there same day as install for final inspection. We'll have our tech there on 1/13	
1/7/2014 1:49:10 PM	Stout, Sebastian	1/7/2014 1:49:13 PM	Stout, Sebastian New	Jamin Pollack confirmation call for Monday 1/13. LM - annuity paperwork was not correct, will be 7-10 days from yesterday for her to get her money. She assures me balance due will be paid prior to month end. We are going ahead with the install on 1/13.	
				FYI, the garage has a shear wall that goes to the roof and no attic access to fish wires in garage. Customer refused conduit so we are cutting and trimming out	

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Entered On	Entered By	Updated On	Updated By	Notes	
1/7/2014 1:45:16 PM	Doubek, Annette	1/7/2014 1:46:09 PM	Doubek, Annette	an access in the garage. Please notate in your system, we'll have the customer sign off approving it, I guess shes' quite the fireball.	
1/7/2014 12:16:09 PM	Stout, Sebastian	1/7/2014 12:16:54 PM	Stout, Sebastian	Please call the customer and let her know ASAP and update me.	
1/7/2014 12:12:08 PM	Stout, Sebastian	1/7/2014 12:12:13 PM	Stout, Sebastian	Thanks Jamin Pollack USA Services Inc. called to remind her of her install date for 1/13. after a while she did recall talking with Joe - she is concerned that her annuity money will not be in the bank by the 13th - I told her I would call and check with her on the 10th. Approved based on distances on line asked for pics Bathroom changed from the guest bathroom to the master bathroom, therefore the run of wire increased to 78ft. The panel is on the exterior of the home, we'll have to run conduit into the garage and pipe around some cabinets to get into the attic and then run 60ft over to the master bedroom bathroom and drop down to the shower area and wire up our outlets, we need an extended run and to come back on day of install to complete final connections.	
12/31/2013 1:09:18 PM	Stout, Sebastian	12/31/2013 1:09:23 PM	Stout, Sebastian	Jamin Pollack USA Services Inc. Emailed USA	
12/31/2013 12:55:03 PM	Doubek, Annette	12/31/2013 12:55:20 PM	Doubek, Annette	Joe confirmed install date with customer for 1/13	
12/27/2013 2:05:06 PM	Doubek, Annette	12/27/2013 2:09:06 PM	Doubek, Annette	sent draw, measure and pics to Joe - will give to Tracey to order if Joe does not have a White Right on hand	
12/2/2013 11:34:55 AM	Doubek, Annette	12/2/2013 11:35:31 AM	Doubek, Annette	created WO based on revised contract and photos - did not e-mail Joe or hand file to Sebastian customer has requested January installation.	
11/5/2013 2:11:55 PM	Yeatts, Katy	11/5/2013 2:12:07 PM	Yeatts, Katy	Approved First Half Commission. \$699.65 to be paid this week.	
10/30/2013 11:32:21 AM	Ortiz, Chrystal	10/30/2013 11:32:40 AM	Ortiz, Chrystal	Okay to release first half commission	
10/21/2013 11:06:02 AM	Doubek, Annette	10/21/2013 11:06:53 AM	Doubek, Annette	created folder, uploaded docs into LP, processed down payment in TC and LP, put status on hold, customer requests January install date. did not order tub.	
10/21/2013 8:35:15 AM	Stout, Todd	10/21/2013 8:35:18 AM	Stout, Todd	10/19/13: TUB: Price=13993.00, Sale, \$13,993, cash deal, paint back wall. didn't leave deposit amount on voice mail. (8:23 am MST - rep left vm) TRT	

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EXHIBIT 10

1 **ANTD**

2 BENJAMIN P. CLOWARD, ESQ.
3 Nevada Bar No. 11087

4 **RICHARD HARRIS LAW FIRM**

5 801 South Fourth Street

6 Las Vegas, Nevada 89101

7 Phone: (702) 444-4444

8 Fax: (702) 444-4455

9 E-Mail: Benjamin@RichardHarrisLaw.com

10 *Attorneys for Plaintiffs*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

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

21 Plaintiffs,

22 vs.

23 FIRST STREET FOR BOOMERS &
24 BEYOND, INC.; AITHR DEALER, INC.;
25 HALE BENTON, Individually,
26 HOMECLICK, LLC.; JACUZZI LUXURY
27 BATH, doing business as JACUZZI INC;
28 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,
22 inclusive

23 Defendants.

CASE NO. A-16-731244-C

DEPT. NO. I

**FIFTH AMENDED NOTICE TO
TAKE VIDEOTAPED
DEPOSITION(S) OF 30(b)(6) OF
FIRST STREET FOR BOOMERS &
BEYOND, INC.**

Date of Deposition: 12/11/18

**Time of Deposition: 9:00 a.m. EST /
6:00 a.m. PST**



**FIFTH AMENDED NOTICE TO TAKE VIDEOTAPED DEPOSITION(S) OF 30(b)(6)
OF FIRST STREET FOR BOOMERS & BEYOND, INC.**

TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on **December 11, 2018 at 9:00 a.m. EST** (6:00 a.m. PST), Plaintiffs will take the **videotaped** deposition of Defendant, **FIRST STREET FOR BOOMERS & BEYOND, INC.’s** (hereinafter known as “Defendant” or “First Street”) **designated NRCP 30(b)(6) witness(es)** at **Regus – Sun Trust Center Downtown**, 919 E. Main St., Suite 1000, Richmond, Virginia 23219, pursuant to Rules 26 and 30(b)(6) of the Rules of Civil Procedure, upon oral examination, before a Notary Public, or before some other officer authorized by law to administer oaths.

Oral examination will continue from day to day until completed. You are invited to attend and cross-examine.

SUBJECTS TO BE COVERED – See Exhibit A, attached hereto.

DATED THIS 7th day of November, 2018.

RICHARD HARRIS LAW FIRM

/s/ Benjamin P. Cloward
BENJAMIN P. CLOWARD, ESQ.
Nevada Bar No. 11087
801 South Fourth Street
Las Vegas, Nevada 89101
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), the amendment to EDCR 7.26, and Administrative Order 14-2, I hereby certify that on this 7th day of November, 2018, I caused to be served a true copy of the foregoing **FIFTH AMENDED NOTICE TO TAKE VIDEOTAPED DEPOSITION(S) OF 30(b)(6) OF FIRST STREET FOR BOOMERS & BEYOND, INC.** as follows:

☐ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below; and/or

☐ Facsimile—By facsimile transmission pursuant to EDCR 7.26 to the facsimile number(s) shown below; and/or

☐ Hand Delivery—By hand-delivery to the addresses listed below; and/or

☒ Electronic Service — in accordance with Administrative Order 14-2 and Rule 9 of the Nevada Electronic Filing and Conversion Rules (N.E.F.C.R.).

Meghan M. Goodwin, Esq.
THORNDAL ARMSTRONG DELK
BALKENBUSH & EISINGER
1100 East Bridger Avenue
Las Vegas, NV 89101-5315
Telephone: 702-366-0622
Facsimile: 702-366-0327

Mail to:
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Las Vegas, NV 89125-2070
*Attorneys for Defendants/Cross-Defendants
firstStreet for Boomers and Beyond, Inc. and
Aithr Dealer, Inc.*

Vaughn A. Crawford, Esq.
Joshua D. Cools, Esq.
SNELL & WILMER LLP
3883 Howard Hughes Pkwy, Suite 1100
Las Vegas, NV 89159
Telephone: 702-784-5200
Facsimile: 702-784-5252
*Attorneys for Defendant/Cross-Defendant
Jacuzzi Brands, LLC*

/s/ Catherine Barnhill
An employee of the Richard Harris Law Firm

EXHIBIT A

1. Items on which examination is sought. PLEASE TAKE NOTICE that the video-taped oral deposition of Defendant(s) will be taken through the person or persons designated by Defendant(s) to testify concerning matters shown on the attached list of items on which examination is sought. You are notified that the party giving this notice wishes to examine the witness or witnesses so designated by Defendant(s) on the matters shown on the attached list of items on which examination is sought.
2. Items to be brought to the deposition. You are further notified that the person or persons designated by Defendant(s) are to bring with them the items in the attached list of items to be brought to the deposition.
3. Time and place. The deposition will be taken at the Zahn Court Reporting, 101 North Fifth Street, Richmond, Virginia 23219 at the time and date listed in the notice.
4. Your designation of persons. Pursuant to NRCP 30(b)(6) Defendant(s) is/are hereby notified to designate the person or persons to testify on behalf of the deponent organization. Defendant(s) is/are further notified that the witness or witnesses so designated by them must be prepared to testify to matters known or reasonably available to Defendant(s). The designation should be served on the undersigned deposing attorney on a reasonable date before the date of the deposition. If Defendant'(s)' organization so desires, Defendant(s) may designate the separate matters on which each person designated by Defendant(s) will testify. To expedite the questioning of witnesses by their separate subject matters, the designation:
 - (A) should be by name and job title or other description and specify the separate matters on which each will testify; and
 - (B) should be served on the undersigned deposing attorney on a reasonable date before the date of the deposition.
5. Defendant(s), not individuals, being deposed. Pursuant to the provision of NRCP 30(b)(6) the rules of civil procedure, is/are on notice that it is Defendant(s) being deposed, not individual officers, employees or agents of Defendant(s). Therefore, Defendant(s) has/have a duty to prepare their designated witness or witnesses to testify on not only the information personally known by their designated witness, but also on all the information known by Defendant(s) through its officers, employees, and agents. The designated witness should be able to answer with reasonable particularity, everything Defendant(s) knows/know on the Matters on Which Examination is sought, unlimited by how little the designed witness or other individual officer, employees, and agents personally know.
6. Duty mandated by rules. Pursuant to NRCP 30(b)(6) Defendant(s) is/are on notice that Defendant(s) must search for, and inform itself, of all matters known or reasonably available, and who in Defendant'(s)' organization has the information. If no one single

person has the information requested, Defendant(s) must produce at the deposition the number of witnesses needed to testify on all the matters requested in the list of items on which examination is sought.

LIST OF TOPICS ON WHICH EXAMINATION IS SOUGHT

NOTICE: in this list, "premises" means the area where the incident took place, and "incident" means the incident occurring on or about February 27, 2014, that is the subject of this litigation.

EXAMINATION WILL BE SOUGHT ON THE FOLLOWING SUBJECTS

1. Defendant'(s)' understanding of the incident and injury in this case, and events involved therewith on that date.

NOTE: Plaintiff is not seeking to obtain scientific or medical opinions, rather is simply trying to learn of Defendant'(s)' understanding of basic facts pursuant to: *United States EEOC v. Caesars Entm't, Inc*, 237 F.R.D. 428 (D. Nev. 2006); *Taylor v. Shaw*, 2007 U.S. Dist. LEXIS 16305 (D. Nev. Mar. 5, 2007); *Great Am. Ins. Co. of N.Y. v. Vegas Constr. Co.*, 251 F.R.D. 534 (D. Nev. 2008).

2. Who are the witnesses known to Defendant(s), to the incident, injury, and events involved, and what they know, as currently known by Defendant(s).

NOTE: This seeks witnesses that are known to Defendant and were discovered even after the Complaint was filed. This is not simply confined to witnesses that may have observed the Plaintiff's use of the subject tub, but also witnesses who may have knowledge about any aspect of this incident.

3. Incident reports of the incident.
4. On the date of the incident and to the date of the deposition: who was the person in charge of safety of persons purchasing Jacuzzi products, what he/she did and learned on the day of the injury, and facts that he/she has subsequently learned regarding the incident and injury of Plaintiff.
5. The incident ***as further defined as the Plaintiff slipping off of the seat and falling into the bottom of the Jacuzzi walk in tub and being unable to get out of the tub afterwards*** and its causes, including Defendant'(s)' position on what caused the incident, and the facts supporting that position.

NOTE: Plaintiff is not seeking to obtain scientific or medical opinions, rather is simply trying to learn of Defendant'(s)' understanding of basic facts pursuant to: *United States EEOC v. Caesars Entm't, Inc*, 237 F.R.D. 428 (D. Nev. 2006); *Taylor v. Shaw*, 2007 U.S. Dist. LEXIS 16305 (D. Nev. Mar. 5, 2007); *Great Am. Ins. Co. of N.Y. v. Vegas Constr. Co.*, 251 F.R.D. 534 (D. Nev. 2008).

6. Defendant'(s)' position on what Plaintiff did carelessly or wrongfully that contributed to cause the injuries that Plaintiff received, and the facts supporting that position, as set forth in Defendant'(s)' Answer and any Amendments thereto.

NOTE: Plaintiff is not seeking to obtain scientific or medical opinions, rather is simply trying to learn of Defendant'(s)' understanding of basic facts pursuant to: *United States EEOC v. Caesars Entm't, Inc*, 237 F.R.D. 428 (D. Nev. 2006); *Taylor v. Shaw*, 2007 U.S. Dist. LEXIS 16305 (D. Nev. Mar. 5, 2007); *Great Am. Ins. Co. of N.Y. v. Vegas Constr. Co.*, 251 F.R.D. 534 (D. Nev. 2008).

7. Defendant'(s)' position on what any person or entity other than Defendant(s) or Plaintiff did carelessly or wrongfully that contributed to cause the injuries that Plaintiff received, and the facts supporting that position.

NOTE: Plaintiff seeks to know the factual basis for each alleged affirmative defense. Even if a fact is conveyed to a corporation by the attorney that does not automatically protect the document pursuant to attorney-client or other privileges. To the contrary, Plaintiff asserts she is entitled to know the facts that are conveyed even by the attorneys retained by Jacuzzi.

NOTE: Plaintiff is not seeking to obtain scientific or medical opinions, rather is simply trying to learn of Defendant'(s)' understanding of basic facts pursuant to: *United States EEOC v. Caesars Entm't, Inc*, 237 F.R.D. 428 (D. Nev. 2006); *Taylor v. Shaw*, 2007 U.S. Dist. LEXIS 16305 (D. Nev. Mar. 5, 2007); *Great Am. Ins. Co. of N.Y. v. Vegas Constr. Co.*, 251 F.R.D. 534 (D. Nev. 2008).

8. Instructions and warnings ***known by Defendants that are either given or supposed to be given to end users like Plaintiff at any time regarding the proper and safe use of the Jacuzzi walk in tub model at issue in this case.***

9. Conversations and statements ***known by Defendants that are given or supposed to be given to end users like Plaintiff regarding the proper and safe use of the Jacuzzi walk in tub model at issue in this case.***

10. Defendant(s) system, rules and regulations for the reporting of incidents or collection of data regarding incidents involving ***any Jacuzzi products whether they be the walk in models or not***, and the identity of all other incidents ***involving slips and falls while using or while exiting or entering any Jacuzzi products.***

11. All inspections, not invoking attorney work-product, in the area at issue and reasonable proximity thereto (defined as ***any inspection of the bathroom where the Jacuzzi tub at issue was installed***) after the incident and to the date of this deposition, of the premises, equipment, or processes involved in the incident.

NOTE: This includes inspections conducted after suit was filed or before suit was filed of either the bathroom or of the Jacuzzi tub itself.

12. Factual information and sources of such facts, and information supporting Defendant'(s)' affirmative defenses as set forth and reflected in Defendant'(s)' Answer and amendments thereto.

NOTE: Plaintiff is not seeking to obtain scientific or medical opinions, rather is simply trying to learn of Defendant'(s)' understanding of basic facts pursuant to: *United States EEOC v. Caesars Entm't, Inc*, 237 F.R.D. 428 (D. Nev. 2006); *Taylor v. Shaw*, 2007 U.S. Dist. LEXIS 16305 (D. Nev. Mar. 5, 2007); *Great Am. Ins. Co. of N.Y. v. Vegas Constr. Co.*, 251 F.R.D. 534 (D. Nev. 2008). ***The case authority cited above imposes an obligation upon the deponent to be prepared to discuss the topics identified in the instant notice and discussion of facts, even if conveyed by a party's legal counsel, is an appropriate topic of discussion.***

GENERAL TESTIMONY

13. The authenticity, existence and completeness of all documents produced in response to Plaintiff's discovery requests in this case.
14. Any and all document/record retention policies ***regarding preservation of incidents involving the personal injury or death of an end user of any of Jacuzzi's products whether they be the walk in model or not.***
15. The name, address (home and work) and phone numbers (home and work) for all custodians of the documents produced in response to Plaintiff's discovery requests in this case.
16. Defendant's responses to Plaintiff's interrogatories in this case.
17. The factual basis for all denials to the allegations raised in Plaintiff's Complaint.
18. All insurance agreements (including self-insurance fund or risk pool fund) that exist under the terms of which the person or company issuing the same may be called upon to satisfy all or part of any judgment against you which may be entered in favor of the Plaintiff in this action.
19. The nature of all responsive documents, communications, or things that have been withheld, in response to discovery in this case and this Notice, on the grounds of privilege or protection, including:
- (a) A description of any documents;
 - (b) The author of any documents and his or her address (home and work) and phone number (home and work);
 - (c) The identity of the custodian of any documents and things and his or her address (home and work) and phone number (home and work);

(d) The date the document was created and the person(s) to whom the document or copies were transmitted; and,

(e) A summary of the contents of each document, communication or thing.

NOTE: Unless and until Defendant produces a privilege log, Plaintiff will seek to obtain testimony regarding these topics and sub-topics.

SALES AND MARKETING TESTIMONY GENERAL

20. Testimony regarding the policies and procedures used by First Street to advertise and sell Jacuzzi walk in tubs.

21. First Street's, sales department, generally, concerning the advertising, marketing, sale and post-sale matters concerning the identification of the consumers that would likely use Jacuzzi's walk in tubs.

22. First Street's, sales department, generally, concerning the advertising, marketing, sale and post-sale matters concerning the subject Jacuzzi design of walk in tubs.

23. Identification of all persons known to Defendant who trained, directed or supervised to advise end users of the safety of Jacuzzi tubs.

24. Identification of all persons known to Defendant who trained, directed or supervised individuals to design *the* walk in tubs *models manufactured by Jacuzzi including any discussion, training or planning regarding the potential that an end user could become unable to remove themselves from a tub after falling inside the tub while either entering, using or exiting the tub.*

25. Discussion of how independent contractors such as Hale Benton were paid.

26. Discussion of how call center employees or contractors were paid.

27. Discussion of bonus or incentive pay for any and all individuals employed directly by or otherwise involved in the sales of walk-in tubs.

28. The number of Walk-In Tubs sold over the last ten (10) years including:

- a. Model
- b. Style
- c. Manufacturer
- d. Distributor
- e. Price, both sales and purchase

NOTE: This topic is intended to identify those individuals who were involved in the design of the walk in tubs.

SALE AND MARKETING WITH END USER TESTIMONY

29. Any and/or all conversations with Sherry Lynn Cunnison, concerning the purchase of the subject Jacuzzi, any subsequent use and maintenance on the subject Jacuzzi.
30. Any and/or all Sales and Marketing materials concerning the purpose and use of Jacuzzi walk in tubs.
- a. Any policies and procedures of Defendant with regard to training or education of consumers as to the safe use walk in tubs.
- b. The existence and location of plaintiff's discovery request.

COMMUNICATION BETWEEN FIRST STREET AND JACUZZI AND INSTALLERS TESTIMONY

31. Communications between defendants concerning the elements and/or components manufactured or designed by Jacuzzi, included but not limited to, the design, changes, testing, manufacturing of said elements and components of the Jacuzzi walk-in tub.
32. What, if any, resources were available to First Street, to notify, research, or otherwise learn and/or disclose information to/from Jacuzzi; Bestway Building and Remodeling; William Budd; and/ or Budds Plumbing; regarding the subject Jacuzzi *walk in tub and specifically with regard to the potential that an end user could become unable to remove themselves from a tub after falling inside the tub while either entering, using or exiting the tub.*
33. Identification of all of Defendant's officers, directors, employees or other personnel who at any time prior to the purchase of Plaintiff Cunnison's tub had any communication with Jacuzzi; Bestway Building and Remodeling; William Budd; and/ or Budds Plumbing, regarding the safety of the user of Jacuzzi walk in tubs.

NOTE: Plaintiff is attempting to ascertain whether certain information is provided to the distributors, installers, salesforce, marketing companies or any other company involved in the chain of distribution and whether any materials are intended by Defendant to be produced to the end user by any other entity other than Defendant itself.

34. All contracts, agreements and/or other documents entered into and/or exchanged between Jacuzzi, Inc., First Street for Boomers & Beyond, Inc.; Bestway Building and Remodeling; William Budd; and/ or Budds Plumbing, *including the expectations of Jacuzzi of the other defendants and Jacuzzi's understanding of the other defendants' expectations of Jacuzzi.*
35. Any policies and procedures of Defendant with regard to training or supervising temporary employees or contractor as to *education of the end user of the safety features or proper use* of the tub.

36. Any policies and procedures of Defendant with regard to training or supervising temporary employees or contractor as to the safe installation of Jacuzzi walk in tubs ***to ensure that the tubs are properly installed.***

37. Defendant's communications with Jacuzzi, Inc, or any other entity relating to and/or concerning the subject Jacuzzi design of walk in tubs ***with regard to the potential that an end user could become unable to remove themselves from a tub after falling inside the tub while either entering, using or exiting the tub.***

DESIGN OF TUB

38. Defendant First Street's policies, procedures and practices, concerning designs, modifications, alterations, for the subject Jacuzzi design of walk in tubs.

39. Identification of all of Defendant's officers, directors, employees or other personnel who participated or had any role in the planning of designs, modifications, alterations, for the subject Jacuzzi design of walk in tubs.

40. Identification of all of Defendant's officers, directors, employees or other personnel who participated or had any role the planning of designs, modifications, alterations, for the subject Jacuzzi design of walk in tubs.

41. Identification of all files and documents relating to the facts and circumstances of the safety of Jacuzzi walk in tub users.

42. Identification of all persons known to Defendant who trained, directed or supervised individuals to design walk in tubs ***with regard to the potential that an end user could become unable to remove themselves from a tub after falling inside the tub while either entering, using or exiting the tub.***

43. The engineering and design of the Jacuzzi walk-in tub and its elements.

44. All systems designs ***and*** technical specifications ***Defendants had in effect*** for the design testing and manufacturing ***of*** the walk-in Jacuzzi tub ***at issue or similar models.***

42. The organizational structure of any and all departments and individuals involved in design testing and manufacture of the Jacuzzi walk-in tubs. Any design failure models ***Defendant had in effect and any*** analysis for the Jacuzzi walk-in tub and components manufactured and/or designed by Jacuzzi.

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

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

- 1
- 2 45. The identification, location and contact information of persons with the most knowledge
- 3 concerning the design, manufacture and/or changes to the design and manufacturing of
- 4 the components of the Jacuzzi walk-in tub.
- 5
- 6 46. The identification, location and contact information of persons with the most knowledge
- 7 concerning the retrofit recall, service and/or otherwise fix regarding any alleged defect
- 8 in the design of the Jacuzzi walk-in tub.
- 9
- 10 47. The cost of retrofitting, recalling, servicing or otherwise fixing the alleged defect design
- 11 of the Jacuzzi walk-in tub and the components manufactured by Jacuzzi.
- 12

13 **NOTE:** *TOPICS 35-47 request among other things a witness knowledgeable to discuss*

14 *the design of an inward door entrance as opposed to an outward door entrance;*

15 *design of the seat pan and angulation of the seat pan; design of the seat height; design*

16 *of the control reach for the end user; design of the placement of the grab bars; design*

17 *of the drain location and operation; design of the standing surface including the slip*

18 *resistance of the surface; design of the width of the tub; and design of the overall tub*

19 *dimensions.*

20 **OTHER SIMILAR INCIDENTS TESTIMONY**

- 21 48. Any and all product investigations by First Street regarding damages or injuries resulting
- 22 from Jacuzzi walk-in tubs including the elements and components manufactured by
- 23 Jacuzzi.

24 **NOTE:** *Plaintiff seeks to obtain information regarding prior incidents involving slips*

25 *and falls while using or while exiting or entering any Jacuzzi products including not only the*

26 *fall itself but also the inability of an end user to remove themselves after having had fallen*

27 *inside the tub.*

- 28 49. First Street's financial net worth, assets, debts and financial status including subsidiaries,
- partners and/or affiliations.
50. Testimony identifying all lawsuits, claims, dealer bulletins, complaints, incident reports
- or other documents where someone has alleged that a Jacuzzi Walk In tub was not
- properly designed contributing to injury of the user.

NOTE: *Plaintiff seeks to obtain information regarding prior incidents involving slips*

and falls while using or while exiting or entering any Jacuzzi products including not only the

fall itself but also the inability of an end user to remove themselves after having had fallen

inside the tub.

51. Testimony regarding First Street'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: *Plaintiff seeks to obtain any information related to a claim made by an end user that a Jacuzzi product was unsafe.*

52. Testimony and documents regarding any lawsuits filed against First Street 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: *Plaintiff seeks to obtain any information related to a claim made by an end user that a Jacuzzi product was unsafe.*

53. Testimony regarding the procedures used by First Street to collect, receive, record, respond, and store customer complaints, lawsuits, and incident reports.

1 **ANTD**

2 BENJAMIN P. CLOWARD, ESQ.

3 Nevada Bar No. 11087

4 **RICHARD HARRIS LAW FIRM**

5 801 South Fourth Street

6 Las Vegas, Nevada 89101

7 Phone: (702) 444-4444

8 Fax: (702) 444-4455

9 E-Mail: Benjamin@RichardHarrisLaw.com

10 *Attorneys for Plaintiffs*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

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

21 Plaintiffs,

22 vs.

23 FIRST STREET FOR BOOMERS &
24 BEYOND, INC.; AITHR DEALER, INC.;
25 HALE BENTON, Individually,
26 HOMECLICK, LLC.; JACUZZI LUXURY
27 BATH, doing business as JACUZZI INC;
28 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,
22 inclusive

23 Defendants.

CASE NO. A-16-731244-C

DEPT. NO. I

**SECOND AMENDED NOTICE TO
TAKE VIDEOTAPED
DEPOSITION(S) OF 30(b)(6) OF
AITHR DEALER, INC.**

Date of Deposition: 12/10/18

**Time of Deposition: 9:00 a.m. EST /
6:00 a.m. PST**

**SECOND AMENDED NOTICE TO TAKE VIDEOTAPED DEPOSITION(S)
OF 30(b)(6) OF AITHR DEALER, INC.**

TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on **December 10, 2018 at 9:00 a.m. EST** (6:00 a.m. PST), Plaintiffs will take the **videotaped** deposition of Defendant, **AITHR DEALER, INC.’s** (hereinafter known as “Defendant” or “AITHR”) **designated NRCP 30(b)(6) witness(es)** at **Regus – Sun Trust Center Downtown**, 919 E. Main St., Suite 1000, Richmond, Virginia 23219, pursuant to Rules 26 and 30(b)(6) of the Rules of Civil Procedure, upon oral examination, before a Notary Public, or before some other officer authorized by law to administer oaths.

Oral examination will continue from day to day until completed. You are invited to attend and cross-examine.

SUBJECTS TO BE COVERED – See Exhibit A, attached hereto.

DATED THIS 7th day of November, 2018.

RICHARD HARRIS LAW FIRM

/s/ Benjamin P. Cloward
BENJAMIN P. CLOWARD, ESQ.
Nevada Bar No. 11087
801 South Fourth Street
Las Vegas, Nevada 89101
Attorney for Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), the amendment to EDCR 7.26, and Administrative Order 14-2, I hereby certify that on this 7th day of November, 2018, I caused to be served a true copy of the foregoing **SECOND AMENDED NOTICE TO TAKE VIDEOTAPED DEPOSITION(S) OF 30(b)(6) OF AITHR DEALER, INC.** as follows:

☐ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below; and/or

☐ Facsimile—By facsimile transmission pursuant to EDCR 7.26 to the facsimile number(s) shown below; and/or

☐ Hand Delivery—By hand-delivery to the addresses listed below; and/or

☒ Electronic Service — in accordance with Administrative Order 14-2 and Rule 9 of the Nevada Electronic Filing and Conversion Rules (N.E.F.C.R.).

Meghan M. Goodwin, Esq.
THORNDAL ARMSTRONG DELK
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Aithr Dealer, Inc.*

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*Attorneys for Defendant/Cross-Defendant
Jacuzzi Brands, LLC*

/s/ Catherine Barnhill
An employee of the Richard Harris Law Firm

EXHIBIT A

1. Items on which examination is sought. PLEASE TAKE NOTICE that the video-taped oral deposition of Defendant(s) will be taken through the person or persons designated by Defendant(s) to testify concerning matters shown on the attached list of items on which examination is sought. You are notified that the party giving this notice wishes to examine the witness or witnesses so designated by Defendant(s) on the matters shown on the attached list of items on which examination is sought.
2. Items to be brought to the deposition. You are further notified that the person or persons designated by Defendant(s) are to bring with them the items in the attached list of items to be brought to the deposition.
3. Time and place. The deposition will be taken at the Zahn Court Reporting, 101 North Fifth Street, Richmond, Virginia 23219 at the time and date listed in the notice.
4. Your designation of persons. Pursuant to NRCP 30(b)(6) Defendant(s) is/are hereby notified to designate the person or persons to testify on behalf of the deponent organization. Defendant(s) is/are further notified that the witness or witnesses so designated by them must be prepared to testify to matters known or reasonably available to Defendant(s). The designation should be served on the undersigned deposing attorney on a reasonable date before the date of the deposition. If Defendant'(s)' organization so desires, Defendant(s) may designate the separate matters on which each person designated by Defendant(s) will testify. To expedite the questioning of witnesses by their separate subject matters, the designation:
 - (A) should be by name and job title or other description and specify the separate matters on which each will testify; and
 - (B) should be served on the undersigned deposing attorney on a reasonable date before the date of the deposition.
5. Defendant(s), not individuals, being deposed. Pursuant to the provision of NRCP 30(b)(6) the rules of civil procedure, is/are on notice that it is Defendant(s) being deposed, not individual officers, employees or agents of Defendant(s). Therefore, Defendant(s) has/have a duty to prepare their designated witness or witnesses to testify on not only the information personally known by their designated witness, but also on all the information known by Defendant(s) through its officers, employees, and agents. The designated witness should be able to answer with reasonable particularity, everything Defendant(s) knows/know on the Matters on Which Examination is sought, unlimited by how little the designed witness or other individual officer, employees, and agents personally know.
6. Duty mandated by rules. Pursuant to NRCP 30(b)(6) Defendant(s) is/are on notice that Defendant(s) must search for, and inform itself, of all matters known or reasonably

1 available, and who in Defendant'(s)' organization has the information. If no one single
2 person has the information requested, Defendant(s) must produce at the deposition the
3 number of witnesses needed to testify on all the matters requested in the list of items on
4 which examination is sought.

5 LIST OF TOPICS ON WHICH EXAMINATION IS SOUGHT

6 NOTICE: in this list, "premises" means the area where the incident took place, and "incident"
7 means the incident occurring on or about February 27, 2014, that is the subject of this litigation.

8 EXAMINATION WILL BE SOUGHT ON THE FOLLOWING SUBJECTS

- 9 1. Defendant'(s)' understanding of the incident and injury in this case, and events involved
10 therewith on that date.

11 NOTE: Plaintiff is not seeking to obtain scientific or medical opinions, rather is simply trying to
12 learn of Defendant'(s)' understanding of basic facts pursuant to: *United States EEOC v.*
13 *Caesars Entm't, Inc*, 237 F.R.D. 428 (D. Nev. 2006); *Taylor v. Shaw*, 2007 U.S. Dist.
14 LEXIS 16305 (D. Nev. Mar. 5, 2007); *Great Am. Ins. Co. of N.Y. v. Vegas Constr. Co.*,
15 251 F.R.D. 534 (D. Nev. 2008).

- 16 2. Who are the witnesses known to Defendant(s), to the incident, injury, and events
17 involved, and what they know, as currently known by Defendant(s).

18 **NOTE: *This seeks witnesses that are known to Defendant and were discovered even after the***
19 ***Complaint was filed. This is not simply confined to witnesses that may have observed***
20 ***the Plaintiff's use of the subject tub, but also witnesses who may have knowledge***
21 ***about any aspect of this incident.***

- 22 3. Incident reports of the incident.

- 23 4. On the date of the incident and to the date of the deposition: who was the person in
24 charge of safety of persons purchasing Jacuzzi products, what he/she did and learned on
25 the day of the injury, and facts that he/she has subsequently learned regarding the
26 incident and injury of Plaintiff.

- 27 5. The incident ***as further defined as the Plaintiff slipping off of the seat and falling into***
28 ***the bottom of the Jacuzzi walk-in tub and being unable to get out of the tub afterwards***
and its causes, including Defendant'(s)' position on what caused the incident, and the
facts supporting that position.

NOTE: Plaintiff is not seeking to obtain scientific or medical opinions, rather is simply trying to
learn of Defendant'(s)' understanding of basic facts pursuant to: *United States EEOC v.*
Caesars Entm't, Inc, 237 F.R.D. 428 (D. Nev. 2006); *Taylor v. Shaw*, 2007 U.S. Dist.

LEXIS 16305 (D. Nev. Mar. 5, 2007); *Great Am. Ins. Co. of N.Y. v. Vegas Constr. Co.*, 251 F.R.D. 534 (D. Nev. 2008).

6. Defendant'(s)' position on what Plaintiff did carelessly or wrongfully that contributed to cause the injuries that Plaintiff received, and the facts supporting that position, as set forth in Defendant'(s)' Answer and any Amendments thereto.

NOTE: Plaintiff is not seeking to obtain scientific or medical opinions, rather is simply trying to learn of Defendant'(s)' understanding of basic facts pursuant to: *United States EEOC v. Caesars Entm't, Inc*, 237 F.R.D. 428 (D. Nev. 2006); *Taylor v. Shaw*, 2007 U.S. Dist. LEXIS 16305 (D. Nev. Mar. 5, 2007); *Great Am. Ins. Co. of N.Y. v. Vegas Constr. Co.*, 251 F.R.D. 534 (D. Nev. 2008).

7. Defendant'(s)' position on what any person or entity other than Defendant(s) or Plaintiff did carelessly or wrongfully that contributed to cause the injuries that Plaintiff received, and the facts supporting that position.

NOTE: Plaintiff seeks to know the factual basis for each alleged affirmative defense. Even if a fact is conveyed to a corporation by the attorney that does not automatically protect the document pursuant to attorney-client or other privileges. To the contrary, Plaintiff asserts she is entitled to know the facts that are conveyed even by the attorneys retained by Jacuzzi.

NOTE: Plaintiff is not seeking to obtain scientific or medical opinions, rather is simply trying to learn of Defendant'(s)' understanding of basic facts pursuant to: *United States EEOC v. Caesars Entm't, Inc*, 237 F.R.D. 428 (D. Nev. 2006); *Taylor v. Shaw*, 2007 U.S. Dist. LEXIS 16305 (D. Nev. Mar. 5, 2007); *Great Am. Ins. Co. of N.Y. v. Vegas Constr. Co.*, 251 F.R.D. 534 (D. Nev. 2008).

8. Instructions and warnings ***known by Defendants that are either given or supposed to be given to end users like Plaintiff at any time regarding the proper and safe use of the Jacuzzi walk-in tub model at issue in this case.***

9. Conversations and statements ***known by Defendants that are given or supposed to be given to end users like Plaintiff regarding the proper and safe use of the Jacuzzi walk-in tub model at issue in this case.***

10. Defendant(s) system, rules and regulations for the reporting of incidents or collection of data regarding incidents involving ***any Jacuzzi products whether they be the walk-in models or not***, and the identity of all other incidents ***involving slips and falls while using or while exiting or entering any Jacuzzi products.***

11. All inspections, not invoking attorney work-product, in the area at issue and reasonable proximity thereto (defined as ***any inspection of the bathroom where the Jacuzzi tub at***

1 *issue was installed*) after the incident and to the date of this deposition, of the premises,
2 equipment, or processes involved in the incident.

3 ***NOTE: This includes inspections conducted after suit was filed or before suit was filed of***
4 ***either the bathroom or of the Jacuzzi tub itself.***

- 5 12. Factual information and sources of such facts, and information supporting
6 Defendant'(s)' affirmative defenses as set forth and reflected in Defendant'(s)' Answer
7 and amendments thereto.

8 NOTE: Plaintiff is not seeking to obtain scientific or medical opinions, rather is simply trying to
9 learn of Defendant'(s)' understanding of basic facts pursuant to: *United States EEOC v.*
10 *Caesars Entm't, Inc*, 237 F.R.D. 428 (D. Nev. 2006); *Taylor v. Shaw*, 2007 U.S. Dist.
11 LEXIS 16305 (D. Nev. Mar. 5, 2007); *Great Am. Ins. Co. of N.Y. v. Vegas Constr. Co.*,
12 251 F.R.D. 534 (D. Nev. 2008). ***The case authority cited above imposes an obligation***
13 ***upon the deponent to be prepared to discuss the topics identified in the instant notice***
14 ***and discussion of facts, even if conveyed by a party's legal counsel, is an appropriate***
15 ***topic of discussion.***

16 **GENERAL TESTIMONY**

- 17 13. The authenticity, existence and completeness of all documents produced in response to
18 Plaintiff's discovery requests in this case.

- 19 14. Any and all document/record retention policies ***regarding preservation of incidents***
20 ***involving the personal injury or death of an end user of any of Jacuzzi's products***
21 ***whether they be the walk-in model or not.***

- 22 15. The name, address (home and work) and phone numbers (home and work) for all
23 custodians of the documents produced in response to Plaintiff's discovery requests in
24 this case.

- 25 16. Defendant's responses to Plaintiff's interrogatories in this case.

- 26 17. The factual basis for all denials to the allegations raised in Plaintiff's Complaint.

- 27 18. All insurance agreements (including self-insurance fund or risk pool fund) that exist
28 under the terms of which the person or company issuing the same may be called upon to
satisfy all or part of any judgment against you which may be entered in favor of the
Plaintiff in this action.

19. The nature of all responsive documents, communications, or things that have been
withheld, in response to discovery in this case and this Notice, on the grounds of
privilege or protection, including:

- (a) A description of any documents;
- (b) The author of any documents and his or her address (home and work) and phone number (home and work);
- (c) The identity of the custodian of any documents and things and his or her address (home and work) and phone number (home and work);
- (d) The date the document was created and the person(s) to whom the document or copies were transmitted; and,
- (e) A summary of the contents of each document, communication or thing.

NOTE: Unless and until Defendant produces a privilege log, Plaintiff will seek to obtain testimony regarding these topics and sub-topics.

SALES AND MARKETING TESTIMONY GENERAL

20. Testimony regarding the policies and procedures used by First Street to advertise and sell Jacuzzi walk-in tubs.
21. AITHR's sales department, generally, concerning the advertising, marketing, sale and post-sale matters concerning the identification of the consumers that would likely use Jacuzzi's walk-in tubs.
22. AITHR's sales department, generally, concerning the advertising, marketing, sale and post-sale matters concerning the subject Jacuzzi design of walk-in tubs.
23. Identification of all persons known to Defendant who trained, directed or supervised to advise end users of the safety of Jacuzzi tubs.
24. Identification of all persons known to Defendant who trained, directed or supervised individuals to design ***the*** walk-in tubs ***models manufactured by Jacuzzi including any discussion, training or planning regarding the potential that an end user could become unable to remove themselves from a tub after falling inside the tub while either entering, using or exiting the tub.***
25. Discussion of how independent contractors such as Hale Benton were paid.
26. Discussion of how call center employees or contractors were paid.
27. Discussion of bonus or incentive pay for any and all individuals employed directly by or otherwise involved in the sales of walk-in tubs.
28. The number of Walk-In Tubs sold over the last ten (10) years including:

- a. Model
- b. Style
- c. Manufacturer
- d. Distributor
- e. Price, both sales and purchase

NOTE: This topic is intended to identify those individuals who were involved in the design of the walk-in tubs.

SALE AND MARKETING WITH END USER TESTIMONY

29. Any and/or all conversations with Sherry Lynn Cunnison, concerning the purchase of the subject Jacuzzi, any subsequent use and maintenance on the subject Jacuzzi.
30. Any and/or all Sales and Marketing materials concerning the purpose and use of Jacuzzi walk-in tubs.
 - a. Any policies and procedures of Defendant with regard to training or education of consumers as to the safe use walk-in tubs.
 - b. The existence and location of plaintiff's discovery request.

COMMUNICATION BETWEEN FIRST STREET AND JACUZZI AND INSTALLERS TESTIMONY

31. Communications between defendants concerning the elements and/or components manufactured or designed by Jacuzzi, included but not limited to, the design, changes, testing, manufacturing of said elements and components of the Jacuzzi walk-in tub.
32. What, if any, resources were available to AITHR, to notify, research, or otherwise learn and/or disclose information to/from Jacuzzi; Bestway Building and Remodeling; William Budd; and/ or Budds Plumbing; regarding the subject Jacuzzi ***walk-in tub and specifically with regard to the potential that an end user could become unable to remove themselves from a tub after falling inside the tub while either entering, using or exiting the tub.***
33. Identification of all of Defendant's officers, directors, employees or other personnel who at any time prior to the purchase of Plaintiff Cunnison's tub had any communication with Jacuzzi; Bestway Building and Remodeling; William Budd; and/ or Budds Plumbing, regarding the safety of the user of Jacuzzi walk-in tubs.

NOTE: Plaintiff is attempting to ascertain whether certain information is provided to the distributors, installers, salesforce, marketing companies or any other company involved in the chain of distribution and whether any materials are intended by Defendant to be produced to the end user by any other entity other than Defendant itself.

- 1
2 **34.** All contracts, agreements and/or other documents entered into and/or exchanged
3 between Jacuzzi, Inc., First Street for Boomers & Beyond, Inc.; AITHR, Bestway
4 Building and Remodeling; William Budd; and/ or Budds Plumbing, *including the*
5 *expectations of Jacuzzi of the other defendants and Jacuzzi's understanding of the*
6 *other defendants' expectations of Jacuzzi.*
7
8 **35.** Any policies and procedures of Defendant with regard to training or supervising
9 temporary employees or contractor as to *education of the end user of the safety*
10 *features or proper use* of the tub.
11
12 **36.** Any policies and procedures of Defendant with regard to training or supervising
13 temporary employees or contractor as to the safe installation of Jacuzzi walk-in tubs *to*
14 *ensure that the tubs are properly installed.*
15
16 **37.** Defendant's communications with Jacuzzi, Inc, or any other entity relating to and/or
17 concerning the subject Jacuzzi design of walk-in tubs *with regard to the potential that*
18 *an end user could become unable to remove themselves from a tub after falling inside*
19 *the tub while either entering, using or exiting the tub.*
20

21 **DESIGN OF TUB**

- 22 **38.** Defendant AITHR's policies, procedures and practices, concerning designs,
23 modifications, alterations, for the subject Jacuzzi design of walk-in tubs.
24
25 **39.** Identification of all of Defendant's officers, directors, employees or other personnel who
26 participated or had any role in the planning of designs, modifications, alterations, for the
27 subject Jacuzzi design of walk-in tubs.
28
29 **40.** Identification of all of Defendant's officers, directors, employees or other personnel who
30 participated or had any role the planning of designs, modifications, alterations, for the
31 subject Jacuzzi design of walk-in tubs.
32
33 **41.** Identification of all files and documents relating to the facts and circumstances of the
34 safety of Jacuzzi walk-in tub users.
35
36 **42.** Identification of all persons known to Defendant who trained, directed or supervised
37 individuals to design walk-in tubs *with regard to the potential that an end user could*
38 *become unable to remove themselves from a tub after falling inside the tub while*
39 *either entering, using or exiting the tub.*
40
41 **43.** The engineering and design of the Jacuzzi walk-in tub and its elements.
42
43 **44.** All systems designs *and* technical specifications *Defendants had in effect* for the design
44 testing and manufacturing *of* the walk-in Jacuzzi tub *at issue or similar models.*

- 1
- 2 42. The organizational structure of any and all departments and individuals involved in
- 3 design testing and manufacture of the Jacuzzi walk-in tubs. Any design failure models
- 4 ***Defendant had in effect and any*** analysis for the Jacuzzi walk-in tub and components
- 5 manufactured and/or designed by Jacuzzi.
- 6
- 7 43. Any design work orders, billed work orders, test work orders, engineer change request,
- 8 engineering change orders related to the design and manufacture of the Jacuzzi walk-in
- 9 tub.
- 10
- 11 44. Any and all cost benefit and/or value analysis regarding the design of the Jacuzzi walk-
- 12 in tub and components.
- 13 45. The identification, location and contact information of persons with the most knowledge
- 14 concerning the design, manufacture and/or changes to the design and manufacturing of
- 15 the components of the Jacuzzi walk-in tub.
- 16
- 17 46. The identification, location and contact information of persons with the most knowledge
- 18 concerning the retrofit recall, service and/or otherwise fix regarding any alleged defect
- 19 in the design of the Jacuzzi walk-in tub.
- 20
- 21 47. The cost of retrofitting, recalling, servicing or otherwise fixing the alleged defect design
- 22 of the Jacuzzi walk-in tub and the components manufactured by Jacuzzi.
- 23

24 ***NOTE: TOPICS 35-47 request among other things a witness knowledgeable to discuss the***

25 ***design of an inward door entrance as opposed to an outward door entrance; design of***

26 ***the seat pan and angulation of the seat pan; design of the seat height; design of the***

27 ***control reach for the end user; design of the placement of the grab bars; design of the***

28 ***drain location and operation; design of the standing surface including the slip***

resistance of the surface; design of the width of the tub; and design of the overall tub

dimensions.

OTHER SIMILAR INCIDENTS TESTIMONY

48. Any and all product investigations by First Street or AITHR regarding damages or injuries resulting from Jacuzzi walk-in tubs including the elements and components manufactured by Jacuzzi.

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

49. AITHR's financial net worth, assets, debts and financial status including subsidiaries, partners and/or affiliations.

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

4 ***NOTE: Plaintiff seeks to obtain information regarding prior incidents involving slips and***
5 ***falls while using or while exiting or entering any Jacuzzi products including not only***
6 ***the fall itself but also the inability of an end user to remove themselves after having***
7 ***had fallen inside the tub.***

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

11 ***NOTE: Plaintiff seeks to obtain any information related to a claim made by an end user that***
12 ***a Jacuzzi product was unsafe.***

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

19 ***NOTE: Plaintiff seeks to obtain any information related to a claim made by an end user that***
20 ***a Jacuzzi product was unsafe.***

21 53. Testimony regarding the procedures used by AITHR to collect, receive, record, respond,
22 and store customer complaints, lawsuits, and incident reports.
23
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ARMSTRONG**
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EXHIBIT 11

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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.

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

FIRST STREET FOR BOOMERS &
BEYOND, INC.; AIHR DEALER, INC.;
HALE BENTON, Individually, HOMELICK,
LLC.; JACUZZI LUXURY BATH, d/b/a
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.

* * * * *

VIDEOTAPED DEPOSITION OF DAVID MODENA

* * * * *

December 11, 2018

Richmond, Virginia

Job No. 508962

Reported By: Angela N. Sidener, CCR, RPR

1 Videotaped deposition of DAVID MODENA, Rule
2 30(b)(6) Designee for Defendants FIRST STREET FOR BOOMERS
3 AND BEYOND, INC. and AITHR DEALER, INC., taken by and before
4 Angela N. Sidener, CCR, RPR, and Notary Public in and for
5 the Commonwealth of Virginia at large, pursuant to Rules 26
6 and 30(b)(6) of the Rules of Civil Procedure, and by Notice
7 to Take Deposition; commencing at 10:31 a.m., December 11,
8 2018, at Regus, 919 East Main Street, Suite 1000, Richmond,
9 Virginia 23219.

10

11 Appearances:

12 RICHARD HARRIS LAW FIRM
13 By: BENJAMIN P. CLOWARD, ESQ.
14 801 South Fourth Street
Las Vegas, Nevada 89101
Counsel for Plaintiffs

15 THORNDAL ARMSTRONG
16 By: PHILIP GOODHART, ESQ.
17 1100 East Bridger Avenue
Las Vegas, Nevada 89101-5315
18 Counsel for Defendants
First Street for Boomers and Beyond, Inc.
and AITHR Dealer, Inc.

19 STACY LANDIS HACKNEY, ESQ.
20 In-House Counsel for First Street for Boomers
and Beyond, Inc. and AITHR Dealer, Inc.

21 SNELL & WILMER, LLP
22 By: JOSHUA D. COOLS, ESQ.
23 3883 Howard Hughes Parkway, Suite 1100
Las Vegas, Nevada 89159
Attorney for Defendant Jacuzzi Brands, LLC

24 Also Present:

25 Laura Cooney, Videographer

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I N D E X

DEPONENT

DAVID MODENA

Examination By:		Page
Direct	Mr. Cloward	4

EXHIBITS RETAINED BY PLAINTIFFS' COUNSEL

No.	Description	Page
1	Binder of Documents Produced by First Street for Boomers and Beyond	65
2	Electronic PDF File of Original Contents in Leave-Behind Folder	113

1 THE VIDEOGRAPHER: This is the beginning of
2 disc number 1 in the videotaped deposition of David Modena.
3 We are on the record on December 11, 2018, at 10:31 a.m.
4 Counsel have agreed to waive the usual videographer's
5 introduction.

6 Would you please introduce yourselves,
7 starting with Plaintiff's Counsel, and the court reporter
8 will please swear in the witness.

9 MR. CLOWARD: My name is Ben Cloward, and I
10 represent the plaintiff.

11 MR. GOODHART: This is Philip Goodhart, and I
12 represent First Street and AITHR Dealers.

13 MS. HACKNEY: Stacy Hackney, counsel for
14 AITHR Dealer and First Street.

15 MR. COOLS: Joshua Cools, counsel for
16 Jacuzzi, Inc.

17 DAVID MODENA,
18 having been duly sworn, testified as follows:

19 DIRECT EXAMINATION

20 BY MR. CLOWARD:

21 Q Good to go. How are you today, sir?

22 A Very good. Thanks.

23 Q What -- what do you prefer to be called?

24 A Just call me Dave.

25 Q Okay.

1 normal channels of the customer service department just are
2 not seemingly getting it done, or they needed to make an
3 exception of some sort. They knew we had a good
4 relationship with Jacuzzi. I did. You know, I knew the
5 folks from top to bottom, could get to the right people if
6 we needed some extra assistance or just some pushing to help
7 get a customer taken care of, so they would come to me
8 sometimes just, you know -- just need a little extra help,
9 but not often because Jacuzzi normally was very responsive.

10 **Q Okay. You indicated when it's something**
11 **reasonably significant. Does that apply to all different**
12 **types of claims that may come in?**

13 **A** Yes. Yes, because -- because it could -- it could
14 be the situation like with the Cunnisons that was extremely
15 serious and very rare. I don't -- I can't -- I'm not sure
16 if we -- I can remember one even prior to that like that,
17 but there might be an attorney general issue on -- that a --
18 that a customer had contacted and that always got our
19 attention, for whatever the reason, it was just -- it was
20 just not getting the service you wanted quick enough, so
21 they would go that route.

22 And so that would normally, obviously, come to me,
23 like I said before. But it was -- normally, it was just a
24 situation that had gotten to the point where we just -- they
25 couldn't handle it. They just couldn't quite get the

1 resolution they needed, and so, you know, see if I could
2 help.

3 **Q** Okay. Say, for instance, when someone would
4 contact the attorney general, what are those claims usually
5 about?

6 A Typically, it's probably about a -- they -- the
7 tub has been installed. It's not working properly or not to
8 their satisfaction, and we're still trying to -- you know,
9 we've sold it, installed it, and we think we've completed
10 the work as agreed to in the contract.

11 And they would be objecting to -- to something and
12 not wanting to pay, and we're still trying to get them to
13 pay, so we're in this little, you know, discussion, urging
14 them to pay, so -- and they're pushing back so they want to
15 then use legal counsel like a state attorney general to come
16 up with some reason to push back, just so they wouldn't have
17 to pay, you know, because normally in those situations, the
18 product ends up staying in the house.

19 They were using it and it stayed in the house.
20 They just ended up not paying the full amount for some
21 reason. It could have been some issues where it didn't
22 quite work properly or the workmanship in the installation
23 was done not to their expectation, didn't finish the job,
24 the caulking wasn't as neat. I mean, a lot of issues would
25 come up that weren't necessarily big issues, but they would

1 push back and not want to make the final payment.

2 That was --

3 Q Sure.

4 A -- most of them.

5 Q What are some serious issues that came up -- that
6 have come up?

7 A I mean, I -- the Cunnison, obviously, was a very
8 serious one, which we -- I didn't hear about until I told
9 you, and then that was handled quickly, or by inside
10 counsel. It was more just those. Those -- I mean, those
11 were just ones that just escalated that -- that we couldn't
12 resolve and -- and so we just needed to try to come to some
13 resolution.

14 And so we would try to -- and if it hasn't
15 escalated to, like, the attorney general, I would try to get
16 with the customer and talk to them myself and just see what
17 we could resolve so it didn't turn into something that ended
18 up -- get lawyers involved where we could hopefully resolve
19 it ourselves.

20 Q Okay. When lawyers have been involved, what are
21 some of the -- some of the issues that you recall?

22 A It's normally those same ones that I'm talking
23 about now. It's just -- it's just issues where customers
24 didn't feel the workmanship was -- you know, they -- somehow
25 we fell short on delivering the promise of the product's

1 performance or installation. It's, you know, one of those
2 two things.

3 And we would go back time and time again, say
4 we'll send someone back in. No, we're tired of it. We
5 don't want anyone coming back in. We're done. They'd get
6 frustrated.

7 Q Yeah.

8 A And we were trying to do our best, you know, to in
9 some cases even put a new product in, you know, and just
10 replacing it if we couldn't get it fixed, and they'd then
11 say, no, I'm done. I want that product out, where, even
12 though we're willing to replace it with a new product, no,
13 we want all of our money back.

14 And by this time, we've obviously invested a lot
15 of time and money. We're trying to deliver on our promise,
16 and -- and -- and so your -- those type of issues, they
17 were -- they were serious in our mind because we didn't --
18 we didn't get it done the way we -- you know, the way they
19 would have liked for us to do it, so we tried everything we
20 could and sometimes your -- attorneys would get involved.

21 Q Okay. Now, initially, there was an objection, was
22 kind of some parameters about different types of claims that
23 might come in, like warranty versus, you know, injury and
24 different things like that, so --

25 A Uh-huh.

1 Q -- you've done a nice job addressing kind of the
2 warranty claims or the, you know, performance issues.

3 A Uh-huh.

4 Q How about we focus now on kind of the safety
5 aspect of the tub. How often and what types of claims are
6 called in on that?

7 A Very, very few that I can -- I just don't remember
8 many at all, honestly. I don't -- I just -- the issues were
9 normally the warranty or the installation. I just didn't
10 hear about those. There may -- there may have been a couple
11 of -- I mean, there's just -- that wasn't an occurrence that
12 happened very often at all.

13 Q So if it -- I mean, if it didn't happen often at
14 all, you would probably remember the ones that did happen,
15 right? They would kind of --

16 A You would think so.

17 Q So they didn't stand out when you --

18 A Well, I just -- I honestly just can't think of
19 particular ones in general because it just did not happen
20 that -- I mean, you would have people raising concerns about
21 certain things, but an actual injury? I just don't -- I'm
22 just not -- I can't recall. I don't remember incidents,
23 anything like this that come up to that point.

24 Q So is it fair to say that -- that the Cunnison
25 case is the only incident you recall?

1 A To this level, for sure. But I -- I feel like
2 there must have been a couple, but, as honest I can be, I
3 just don't recall incidents like this. I -- concerns -- you
4 know, people addressing maybe other concerns about their tub
5 or something like that, you'd get into those, but an actual
6 injury? I don't -- I -- I feel like there must have been
7 one or two. I just -- I couldn't tell you who they were and
8 when they were, if it was before that point in time.

9 **Q Were you informed of, say, for instance, when a**
10 **lawsuit is filed?**

11 A Normally. Normally, I would have -- I would have
12 known. I would -- normally it would have come in. It would
13 always go into our in-house legal counsel. That's where it
14 went first. And then typically our in-house counsel would
15 approach me with making sure we had all the information in
16 our files and turned over to the right people, so, normally,
17 yes.

18 **Q Okay. And is this the only -- the only case that**
19 **First Street is aware of?**

20 A I can't answer that, because, again, legal -- our
21 in-house counsel would probably be -- probably could answer
22 that better than myself. I'm just not able to tell you that
23 there were two or three more that I can think of like this.

24 **Q Okay. Well, I'm entitled to have the most -- I**
25 **guess, the information.**

1 A Sure.

2 MR. CLOWARD: If you're relying on your
3 memory, maybe what we could do is take a break and have
4 Ms. Hackney testify. Is that -- is that okay?

5 MR. GOODHART: Or I can -- we can take a
6 break and I can re-educate my witness on certain things.

7 MR. CLOWARD: I mean, that's -- if that's
8 what's -- what's necessary.

9 MR. GOODHART: Yeah. That's fine with me.

10 MR. CLOWARD: It's a topic in the --

11 MR. GOODHART: I understand. I just have not
12 been objecting and have not been trying to coach the witness
13 in any way, shape, or form. But you know as well as I do,
14 you know, sometimes memories fade and things like that, but
15 I can certainly have a discussion with Mr. Modena and
16 Ms. Hackney, and we can clear this up for you.

17 MR. CLOWARD: Yeah.

18 MR. GOODHART: And just so I'm clear on your
19 question, you're asking him even up through to today --

20 MR. CLOWARD: Yeah.

21 MR. GOODHART: -- about any type of claims of
22 any injuries that have taken place --

23 MR. CLOWARD: Yeah.

24 MR. GOODHART: -- in a Jacuzzi product?

25 MR. CLOWARD: Correct.

1 A After the Cunnison is -- because I think I was
2 working a little bit prior -- prior to the Cunnison -- up to
3 that point, I think I was more concerned about that, but --
4 in answering that, but there -- there had been two, one in
5 Texas, Baez or something, and I was -- I wasn't directly
6 notified on that one, but eventually so -- and that went to
7 legal counsel, and -- not even sure that was an injury --
8 we're not sure that's even an injury case.

9 The -- probably the more significant one is Max
10 Smith, I believe, which is in Georgia, and that was well
11 after the fact, as well, so that was something that would
12 have gone to our legal counsel. First Street was notified
13 and then, thus, I would have been notified at that time.

14 **Q Okay. So --**

15 A Those are the two situations, which, one, we're
16 not even sure was an injury incident.

17 **Q Okay. So it's fair to say you now recall, I**
18 **guess, those -- those incidents. You recall being told**
19 **about those incidents at some point?**

20 A Well, the one -- certainly the one in Georgia.
21 That's probably the one that would -- the more significant
22 issue that was obviously an injury-related type issue. The
23 one in Texas, we weren't sure about, so to say I absolutely
24 a hundred percent remember that one, it sounds familiar.

25 You know, it -- the -- I was -- and I've looked at

1 it since then, too, since -- in prepping for this, too, as
2 well, and the notes were even unclear on it, as well, so it
3 was -- it's one that I could see if I was notified of -- it
4 was relatively unclear what had even happened so it --

5 **Q So you reviewed some notes about that prior to the**
6 **deposition?**

7 A We looked at it just recently. I was -- this was
8 just going through probably those two situations and -- and,
9 actually, our notes were relatively -- they were not that
10 forthcoming on what had actually happened.

11 **Q Is there a reason you weren't able to recall**
12 **reviewing those notes five minutes ago?**

13 A Well, I thought we were -- actually, I was going
14 to bring that up, because that's the Baez thing, the one --
15 that's -- because that is the one that I remember that,
16 because I looked at it recently, but when I looked at the
17 notes, and -- it wasn't in our -- in our LP system that I
18 talked about earlier. There really wasn't much in there, so
19 that's why I was having a hard time.

20 We didn't -- it didn't show up as a -- as a -- you
21 know, an injury report, so I was like -- I knew that that
22 was potentially an issue that we could discuss, but I
23 couldn't find anything in the note that even shows it as an
24 injury, so I didn't -- didn't designate it as an injury type
25 of an incident --

1 Q Okay. And did you --

2 A -- in my mind.

3 Q Did you review notes in the system, as well,
4 regarding the Smith case?

5 A Yes. But there, again, in our system, because
6 most of this, once it gets turned over -- once Denver sort
7 of turns it over, there's not much in there, as well.

8 Q Okay. You knew there was a death, though, right?

9 A Yes.

10 Q You were informed --

11 A Yes.

12 Q -- of that?

13 A Yes. Yes.

14 Q Is there a reason why you didn't remember that
15 five minutes ago?

16 A Well, again, I was thinking about up to that
17 point. I thought that's how I'd answered it. I thought we
18 were just trying to -- up to that point, what we were aware
19 of.

20 Q Okay. So why don't you tell me all of the
21 incidents that you're aware of at any point, safety
22 incidents.

23 A Those would be it.

24 Q Just those three?

25 A That I would be aware of.

1 THE DEPONENT: I -- if it's okay --

2 MR. GOODHART: Wait until there's a question
3 pending.

4 THE DEPONENT: Okay.

5 MR. GOODHART: So, you know, Ben, we work
6 well together. I'm not going to object to you -- we're
7 going to have to come back for a second day anyway, so if
8 you would like me to go through those in greater detail with
9 the witness, then I certainly will, but I believe he does
10 have knowledge of -- or some knowledge of that. It just may
11 be miscommunication as to definitions that are being used by
12 you and what he is interpreting that to be, as we are here
13 for a deposition concerning a wrongful death case.

14 MR. CLOWARD: Okay.

15 BY MR. CLOWARD:

16 Q Sir, let me ask you this question: Do you
17 consider a slippery floor to be a danger to the elderly that
18 buy your tub?

19 A That's such a relative question, because my
20 response to you earlier was about injuries, not about
21 concerns of a customer. Did Jacuzzi ever bring us a
22 concern. I was strictly talking about injuries.

23 A slippery floor is such a relative thing to try
24 to determine is that dangerous or not. Is it any more
25 dangerous than a regular tub? It's -- it's -- it's always a

1 concern that you -- that you -- if you -- if you have a
2 concern like that, you -- you try to address it one way or
3 the other. But how you determine what's dangerous versus is
4 it just -- you know, I --

5 **Q So is it fair to say you're unable to tell me**
6 **whether a slippery floor is dangerous to the elderly that**
7 **purchase your tub?**

8 MR. GOODHART: Object to form. Asked and
9 answered. Argumentative.

10 MR. COOLS: Join.

11 MR. GOODHART: You can answer the question,
12 if you can.

13 A A slippery floor can be dangerous to an elderly
14 person as well as a -- as a person like myself or any other
15 person. To what level, how dangerous it is, that's -- I
16 don't know how you define that. I don't now how you -- how
17 you make that determination, and -- and it was certainly an
18 issue that had been discussed, you know, a couple of times
19 with Jacuzzi and trying to make sure it was -- you know, met
20 all the standards.

21 BY MR. CLOWARD:

22 **Q How many times was that addressed with Jacuzzi?**

23 A I don't know how many times, but certainly a
24 number of times. It would -- it would come up in -- in
25 either direct conversation, maybe if it's -- especially if

1 they had referred a concern to us, if they did, which is --

2 I think we did, in preparation for this, was
3 provided some documentation I had not seen before, because
4 it had come through Jacuzzi, and -- but some of that I had,
5 so -- the slippery floor issue, but it's -- it's a -- these
6 would come up from time to time.

7 It would -- a customer would bring it up to one of
8 our installers, and they would make a comment. They were
9 just concerned. It wasn't over an incident, necessarily.
10 It was just they had a concern, so we would address it from
11 time to time with Jacuzzi and -- and acknowledge that there
12 was -- had been expressed concerns by customers. Is there
13 something we should do, something they should do? And so
14 there were discussions on that.

15 I couldn't tell you exactly how many times, but
16 I'm sure more than once or twice, probably, you know, half a
17 dozen times, I would say.

18 **Q What's the time period of those complaints?**

19 A In reviewing and looking back, it was -- I don't
20 know exactly for sure. We -- probably in the 2014 time
21 frame, somewhere in there. It seemed we had probably more
22 coherent conversations about that. Maybe -- maybe late '13,
23 early '14 there were discussions about that. Again, there
24 may have been some that came through Jacuzzi earlier, but I
25 don't recall those.

1 Q What documents did you review?

2 A As far as what Jacuzzi had done?

3 Q You represented you had two -- two sources of
4 information that you reviewed, one, documentation from
5 Jacuzzi and, two, documentation that you had internally, so
6 let's talk about Jacuzzi first.

7 A Well, the -- as a far as -- as far as slippery
8 floors? As far as --

9 Q Yeah. That's where we're going to keep the focus
10 on right now.

11 A Right. So what I -- what I recall was when this
12 issue came up, the -- Ray Torres was the -- a product
13 engineer at the time, came back and provided us information
14 that showed that the -- the floor was to the standards of
15 whatever the -- I don't know if it's IMO, because it's a
16 public standard, but within the tub industry, whatever the
17 standard was, they showed -- gave evidence of a -- that
18 their tub was standard, as far as the floor and the way it
19 was done.

20 Q So it's fair to say we can -- we can determine
21 based on when Mr. Torres was employed, that's the operative
22 time period?

23 A He was -- it may have carried on past him, but,
24 yes, he was employed at the time that Jacuzzi addressed that
25 issue, as far as providing evidence of their tub being

1 manufactured to the appropriate specs relative to the floor.

2 **Q What did he provide?**

3 A It would have been a document. I don't know if I
4 got it in the form of email or whatever that showed the
5 coefficient or whatever the terminology they would have used
6 for what the floor needed to -- how it needed to be
7 constructed so it's sort of slip resistant. I don't know
8 what the technical term of that would have been, but they
9 did provide us documentation.

10 **Q Coefficient of friction?**

11 A I don't know if that's the right term or not, but
12 it was -- it is -- it was specifically an engineering design
13 element that I believe is a tub industry standard that
14 Jacuzzi had met, relative to their floor of the tub.

15 **Q Do you know what that is?**

16 A No. I have no idea. I can't remember what that
17 number would have been, no.

18 **Q Is that the only information that you received**
19 **from Jacuzzi?**

20 A From the documentation point of view, yes, that
21 would have been the only documentation as far as what -- how
22 it met the standards.

23 **Q I'm not limiting it to just the standards. I'm**
24 **talking broadly about the slippery issue. Is that the only**
25 **document that you received from Jacuzzi, or were there other**

1 **emails about that?**

2 MR. COOLS: Object to form.

3 MR. GOODHART: Are you talking -- is there a
4 time frame again, Ben? Ever? Like, post Cunnison incident?
5 Pre Cunnison incident?

6 MR. CLOWARD: Ever.

7 MR. GOODHART: Ever, okay.

8 MR. CLOWARD: His response was he reviewed
9 information internally, and he reviewed information from
10 Jacuzzi. So what I'm trying to do is find out the universe
11 of information that he reviewed in this aspect of his
12 testimony.

13 A Yeah. We -- once we -- once the discussion was
14 sort of ongoing, then we would have -- I would have received
15 a couple of different emails for sure, because we went about
16 trying to find additional solutions, if you will, if someone
17 was -- wanted to be provided additional assurance or
18 comfort, their floor could be made even more slip resistant,
19 you know, they were looking for other solutions that they --
20 just on an exception basis, if we wanted to do that.

21 So Jacuzzi went and actually worked and developed
22 and found other products that could be used to -- to, you
23 know -- for people that just had additional concerns, if --
24 similar to people, what they, I guess, do in their regular
25 tub. They want to put additional stuff, they can put

1 additional stuff down in their tub.

2 BY MR. CLOWARD:

3 Q What was the additional stuff they put down in the
4 tub?

5 A It's called Kahuna Grip, I believe, is what it
6 was.

7 Q What was it?

8 A Kahuna Grip, I think, is what the name of it. It
9 was -- it's a product that's already out there and it can be
10 adhered to the tub. It just gives it more grip. It's was
11 provided after-market and upon request.

12 Q And, certainly, there were emails about that?

13 A Uh-huh.

14 Q Is that a yes?

15 A Yes. I'm sorry.

16 Q And those emails have been provided in this case?

17 A Yes.

18 MR. GOODHART: As you and I have discussed,
19 Ben, the only emails that my office has provided to you so
20 far predate the death of Ms. Cunnison.

21 I believe what Mr. Modena is talking about
22 are emails, as he indicated and testified earlier, that were
23 from early 2014, which have postdated the death. So First
24 Street has not produced those emails, given the discussions
25 that we have had in the past. I know you've raised an

1 objection to that, and I've provided you with a response to
2 that.

3 So I can represent those particular emails
4 that Mr. Modena was just testifying about have not been
5 produced by First Street to Plaintiffs, because they
6 postdate Ms. Cunnison's death. Any emails relative to
7 slipperiness of surfaces and things like that that predated
8 Ms. Cunnison's death, if there are any, have been produced.

9 MR. CLOWARD: Okay. Counsel would just ask
10 that you produce all the emails regarding slipperiness of
11 the tub.

12 MR. GOODHART: Again, we have a dispute over
13 that, as to what relevance an email about the slipperiness
14 of the tub that postdated Ms. Cunnison's death has, with
15 respect to First Street, as claims against First Street are
16 based entirely upon the allegations that Ms. Cunnison relied
17 upon advertising, sales, and marketing materials that it
18 provided to her.

19 And I have used Ms. Cunnison's death as the
20 time point where there is absolutely no way that
21 Ms. Cunnison could have relied upon an email or a
22 conversation that was generated after she had passed away.

23 MR. CLOWARD: Okay. And my position, I'll
24 state it for the record, I believe I've shared it with you,
25 but we can just use this as the 2.3 forum. Is that okay?

1 MR. GOODHART: That's fine.

2 MR. CLOWARD: Our position is those emails
3 would be relevant for whether or not the tub is actually
4 dangerous, okay? So we believe that they're relevant,
5 similar to the subsequent similar incidents for the same
6 reason that Commissioner Buella has compelled production of
7 that information, it's the same -- same reasoning.

8 MR. GOODHART: And just to respond to that,
9 Ben, I didn't mean to cut you off. Those have dealt with
10 the design and manufacturing of the tub, which is directed
11 at Jacuzzi. The claims against First Street and AITHR, as
12 neither of them designed nor manufactured that tub, I
13 believe are quite different than those claims and that issue
14 has not been brought before discovery commissioner.

15 MR. CLOWARD: But if there are internal
16 communications and complaints from consumers, and that's
17 generating conversation within First Street, as well as
18 between First Street and Jacuzzi, and I'm including AITHR in
19 this as well, then that would be relevant on whether or not
20 that the product is dangerous, so I understand your
21 objection. I think you understand my position.

22 MR. GOODHART: Right.

23 MR. CLOWARD: Fair to say you won't provide
24 those without further court intervention?

25 MR. GOODHART: Correct. I'm assuming that --

1 MR. CLOWARD: Okay.

2 MR. GOODHART: -- Jacuzzi will provide the
3 emails, since they have been ordered to provide those emails
4 about post-death --

5 MR. CLOWARD: We would ask you --

6 MR. GOODHART: -- discussions.

7 MR. CLOWARD: We would ask that First Street
8 provide them as well, because there may be internal
9 communications within the folks at First Street who have the
10 boots on the ground, who are in actually installing the
11 product in consumers' homes. I think a better source of
12 that information would actually be First Street, to be quite
13 honest with you.

14 So we'd ask that you produce those. If not,
15 I'm happy to take it up with the commissioner.

16 MR. GOODHART: I think we're going to have
17 to, Ben. I apologize. It's --

18 MR. CLOWARD: Not a problem.

19 MR. GOODHART: We can agree to disagree on
20 that one.

21 MR. CLOWARD: Not a problem. We'll move on.
22 Thank you.

23 MR. GOODHART: Thanks.

24 BY MR. CLOWARD:

25 Q Okay. Sir, so why don't you just tell me as much

1 And further this deponent saith not.

2 (Whereupon this deposition was suspended at 1:18 p.m.)

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1 COMMONWEALTH OF VIRGINIA AT LARGE, to wit:

2 I, Angela N. Sidener, CCR, RPR, and Notary
3 Public in and for the Commonwealth of Virginia at large, and
4 whose commission expires November 30, 2022, do certify that
5 the aforementioned appeared before me, was sworn by me, and
6 was thereupon examined by counsel; and that the foregoing is
7 a true, correct, and full transcript of the testimony
8 adduced.

9 I further certify that I am neither related
10 to nor associated with any counsel or party to this
11 proceeding, nor otherwise interested in the event thereof.

12 Given under my hand and notary seal at
13 Richmond, Virginia, this 14th day of December, 2018.

14
15 
16

17 Angela N. Sidener, CCR, RPR
18 Notary Registration No. 7378859
19
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22
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24
25



**THORNDAL
ARMSTRONG**
DELK BALKENBUSH & EISINGER
A PROFESSIONAL CORPORATION
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EXHIBIT 12

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16 Attorneys for Defendants/Cross-
17 Defendants, FIRSTSTREET FOR
18 BOOMERS AND BEYOND, INC.,
19 and AITHR DEALER, INC.

20 **DISTRICT COURT**

21 **CLARK COUNTY, NEVADA**

22 ROBERT ANSARA, as Special Administrator of
23 the Estate of SHERRY LYNN CUNNISON,
24 Deceased; MICHAEL SMITH individually, and
25 heir to the Estate of SHERRY LYNN
26 CUNNISON, Deceased; and DEBORAH
27 TAMANTINI individually, and heir to the Estate
28 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,

CASE NO. A-16-731244-C
DEPT. NO. 2

**DEFENDANT, FIRSTSTREET FOR
BOOMERS AND BEYOND, INC.'S
ANSWERS TO PLAINTIFF, ROBERT
ANSARA'S FIRST SET OF
INTERROGATORIES**

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Defendants.

HOMECLICK, LLC,

Cross-Plaintiff,

vs.

FIRST STREET FOR BOOMERS & BEYOND, INC.; AITHR DEALER, INC.; HOMECLICK, LLC; JACUZZI LUXURY BATH, doing business as JACUZZI INC.; BESTWAY BUILDING & REMODELING, INC.; WILLIAM BUDD, individually, and as BUDDS PLUMBING,

Cross-Defendants.

HOMECLICK, LLC, a New Jersey limited liability company,

Third-Party Plaintiff,

vs.

CHICAGO FAUCETS, an unknown entity,

Third-Party Defendant.

BESTWAY BUILDING & REMODELING, INC.,

Cross-Claimant,

vs.

FIRST STREET FOR BOOMERS & BEYOND, INC.; AITHER DEALER, INC.; HALE BENTON, individually; HOMECLICK, LLC; JACUZZI LUXURY BATH, dba JACUZZI INC.; WILLIAM BUDD, individually and as BUDD'S PLUMBING; ROES I through X,

1	Cross-Defendants.
2	WILLIAM BUDD, individually and as BUDD'S
3	PLUMBING,
4	Cross-Claimants,
5	vs.
6	FIRST STREET FOR BOOMERS & BEYOND,
7	INC.; AITHR DEALER, INC.; HALE
8	BENTON, individually; HOMECCLICK, LLC;
9	JACUZZI INC., doing business as JACUZZI
10	LUXURY BATH; BESTWAY BUILDING &
11	REMODELING, INC.; DOES 1 through 20;
12	ROE CORPORATIONS 1 through 20; DOE
13	EMPLOYEES 1 through 20; DOE
14	MANUFACTURERS 1 through 20; DOE 20
15	INSTALLERS, 1 through 20; DOE
16	CONTRACTORS 1 through 20; and DOE 21
17	SUBCONTRACTORS 1 through 20, inclusive,
18	Cross-Defendants.
19	FIRSTSTREET FOR BOOMERS & BEYOND,
20	INC.; and AITHR DEALER, INC.,
21	Cross-Claimants,
22	v.
23	HOMECCLICK, LLC; CHICAGO FAUCETS;
24	and WILLIAM BUDD, individually and as
25	BUDD'S PLUMBING,
26	Cross-Defendants.

**DEFENDANT, FIRSTSTREET FOR BOOMERS AND BEYOND, INC.'S ANSWERS
TO PLAINTIFF, ROBERT ANSARA'S FIRST SET OF INTERROGATORIES**

TO: ROBERT ANSARA, Plaintiff; and

TO: RICHARD HARRIS LAW FIRM, attorneys for Plaintiff:

Pursuant to the requirements of Rule 33 of the Nevada Rules of Civil Procedure, Defendant, FIRSTSTREET FOR BOOMERS AND BEYOND, INC., by and through its undersigned attorneys, the law firm of THORNDAL ARMSTRONG DELK BALKENBUSH & EISINGER, hereby responds to Plaintiff's First Set of Interrogatories in the following manner:

INTERROGATORY NO.:

1. Please identify the person or persons responding to these Interrogatories. Please identify in your answer each person who has provided information in connection with these interrogatory answers.

ANSWER: Stacy Hackney, General Counsel, firstSTREET for Boomers & Beyond, Inc. 1998 Ruffin Mill Road, Colonial Heights, Virginia 23834. 804-524-9888.

2. Identify any and all persons who have knowledge of the events following the incident, or have knowledge of the facts relevant to, or are related to the incident, or who have investigated the incident, including their name, address and telephone number and, further, describe in detail how this incident occurred.

ANSWER: Objection. This Interrogatory is compound. This Answering Defendant has no personal knowledge how the subject incident occurred. Please see this Answering Defendant's NRCP 16.1 Initial Document Production and Witness List, and all supplements thereto, specifically, "Witness List," identified as follows:

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27 (702) 736-6200
- 28 41. Kristen Peters, Investigator
Clark County Coroner 1704 Pinto Lane
Las Vegas, NV 89106
(702) 455-3210
42. Jesse Blanchard, Paramedic
MedicWest Ambulance
9 W. Delhi Avenue
North Las Vegas, NV 89032
(702) 650-9900
43. Victor Montecerin, Paramedic
MedicWest Ambulance
9 W. Delhi Avenue
North Las Vegas, NV 89032

(702) 650-9900

44. Jimmy Chavez, Paramedic
MedicWest Ambulance
9 W. Delhi Avenue
North Las Vegas, NV 89032 (702) 650-9900
45. Luke Crawford, EMT Intermediate
MedicWest Ambulance
9 W. Delhi Avenue
North Las Vegas, NV 89032
(702) 650-9900
46. Jenna Lamperti, EMT Intermediate
MedicWest Ambulance
9 W. Delhi Avenue
North Las Vegas, NV 89032
(702) 650-9900
47. Jacob Stamer, EMT
MedicWest Ambulance 9 W. Delhi Avenue
North Las Vegas, NV 89032
(702) 650-9900
48. Corporate Representative(s) and/or Custodian of Records
Las Vegas Metropolitan Police Department
400 S. Martin Luther King Boulevard
Las Vegas, NV 89106
(702) 828-3111
49. Officer, Matthew Scanlon
Las Vegas Metropolitan Police Department
400 S. Martin Luther King Boulevard
Las Vegas, NV 89106
(702) 828-3111
50. Officer, Kevin Lemire
Las Vegas Metropolitan Police Department
400 S. Martin Luther King Boulevard
Las Vegas, NV 89106
(702) 828-3111
51. Officer, Matthew Shake
Las Vegas Metropolitan Police Department
400 S. Martin Luther King Boulevard
Las Vegas, NV 89106
(702) 828-3111

- 1 52. Officer, Keith Bryant
2 Las Vegas Metropolitan Police Department
3 400 S. Martin Luther King Boulevard
4 Las Vegas, NV 89106
5 (702) 828-3111
- 6 53. Officer, Shakeel Abdal-Karim
7 Las Vegas Metropolitan Police Department
8 400 S. Martin Luther King Boulevard
9 Las Vegas, NV 89106
10 (702) 828-3111
- 11 54. Officer, B. Van Pamel
12 Las Vegas Metropolitan Police Department
13 400 S. Martin Luther King Boulevard
14 Las Vegas, NV 89106
15 (702) 828-3111
- 16 55. Sergeant, Dana Pickerel
17 Las Vegas Metropolitan Police Department
18 400 S. Martin Luther King Boulevard
19 Las Vegas, NV 89106
20 (702) 828-3111
- 21 56. Sergeant, Allen Larsen
22 Las Vegas Metropolitan Police Department
23 400 S. Martin Luther King Boulevard
24 Las Vegas, NV 89106
25 (702) 828-3111
- 26 57. Corporate Representative(s) and/or Custodian of Records
27 Clark County Fire Department
28 575 E. Flamingo Road
Las Vegas, NV 89119
(702) 455-7311
58. Nicholas Stahlberger, Paramedic
Clark County Fire Department
575 E. Flamingo Road
Las Vegas, NV 89119
(702) 455-7311
59. William Lewis
5354 Camden Avenue
Las Vegas, NV 89122
(702) 580-0017
60. Michael Zuvar

1 746655 Willow Drive
2 Doyle, CA 96109
(775) 560-7791

3 61. Michael Showalter
4 5500 Celestial Way
5 Citrus Heights, CA 95610
(831) 595-1015 (cell)
6 (916) 903-7186 (home)

7 62. Michael Showalter
8 5500 Celestial Way
9 Citrus Heights, CA 95610
(916) 903-7186

10 63. Scott Cunnison
11 23840 Southpoint Drive
Denham Springs, LA 70726

12 64. James T. Cunnison
13 418 Burnham Street
Hampton, VA 23669

14 65. John S. Cunnison
15 501 S.W. 16th Street
16 Blue Springs, MO 64015

17 Further, Scott Meek of Forensic Engineering Consultants, LLC participated in an inspection
18 of the subject tub on October 19, 2016. 5861 Pine Avenue, Suite B, Chino Hills, CA 91709.

19 3. Identify when the subject Jacuzzi Walk-In-Tub was originally designed and
20 developed, specifying the dates of each modification thereto and the nature of the modifications.

21 **ANSWER:** Objection. The terms "design," "develop," and "modification" are vague and
22 ambiguous. This Answering Defendant did not design, develop, or modify the subject Jacuzzi Walk-
23 In Tub.
24

25 4. What are the names, present addresses, and company positions of each person
26 involved in the design and the design verification of the subject Walk-In-Tub manufactured for
27 FIRST STREET, including but not limited to, employees in engineering, quality assurance, quality
28 control, reliability, general management, sales, marketing, finance who specifically contributed to the

1 subject design.

2 **ANSWER:** Objection. This Interrogatory is compound, and vague and ambiguous with respect to
3 the phrase “specifically contributed to the subject design.”. This Answering Defendant did not
4 design, perform design verification, or contribute to the subject design of the subject Walk-In Tub.

5 5. Did any other company or individuals, who are not employees of Defendant FIRST
6 STREET or Jacuzzi, Inc. design or develop the subject Jacuzzi Walk-In-Tub or components thereof
7 for the Defendants? If so, please identify the name and address of each such company or individual.

8 **ANSWER:** Objection. The terms “design,” “develop,” and “components” are vague and
9 ambiguous. This Answering Defendant did not design or develop the subject Jacuzzi Walk-In Tub
10 or any components thereof. Therefore, this Answering Defendant has no knowledge regarding any
11 additional company or individuals who designed or developed the subject Jacuzzi Walk-in Tub or
12 components thereof, aside from Jacuzzi and the prior Defendants to this litigation.
13

14 6. Please identify all documents concerning the design and development of the subject
15 Jacuzzi Walk-In-Tub.
16

17 **ANSWER:** Objection. The terms “design” and “development” are vague and ambiguous. This
18 Answering Defendant did not design or develop the subject Jacuzzi Walk-In Tub.
19

20 7. Identify the Defendant FIRST STREET’s employee who is the most knowledgeable
21 about the design, development, and specifications of the subject Jacuzzi Walk-In-Tub.

22 **ANSWER:** Objection. The terms “most knowledgeable,” “design,” “development,” and
23 “specifications” are vague and ambiguous. The employees of this Answering Defendant did not
24 design or develop the subject Jacuzzi Walk-In Tub.
25

26 8. Please identify all tests or studies performed by the Defendant or by any independent
27 laboratory relating to the subject Jacuzzi Walk-In-Tub’s safety and design. For each such test or
28 study, state:

- (a) the date it was performed;
- (b) the name, company position, and present address of the person responsible for the test or study;
- (c) the method used;
- (d) the purpose of the test or study; and
- (e) the results of the test or study

ANSWER: Objection. This Interrogatory is vague with respect to time and subject matter. This Answering Defendant did not design or manufacture the subject Jacuzzi Walk-In Tub, therefore no tests were performed by this Answering Defendant.

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

ANSWER: N/A

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

ANSWER: Objection. The documents pertaining to this Interrogatory speak for themselves. This Answering Defendant is not in possession of any information responsive to this request, as Jacuzzi prepares said documents and packages its products. Further, Jacuzzi Walk-In-Tubs ordered through this Answering Defendant are shipped directly from Jacuzzi to the installer and/or purchaser.

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

If so, please state:

1 (a) The date of each such notice

2 (b) The name and last known address of each person giving such notice; and

3 (c) The substance of the allegations of such notice.

4 **ANSWER:** Objection. This Interrogatory is overbroad with respect to timeframe, subject matter,
5 and the term "damage." This Answering Defendant has received notice of the following incidents:

6 1. Leonard Baize, served June 28, 2016. Mr. Baize alleged he was sold a tub too small for him
7 after being advised by the sales representative that he would fit.

8 2. Mack Smith, received notice of claim January 2017. The claimants allege Mr. Smith drowned
9 in the tub. This Answering Defendant is not aware of any further facts or the current status
10 of this claim.
11

12 12. Has the Defendant FIRST STREET ever been named as a defendant, respondent or
13 other involuntary participant in a lawsuit or other proceeding arising out of personal injuries or
14 damage in connection with a Jacuzzi Walk-In-Tub?
15

16 If so, please state as to each:

17 (a) the court or other forum in which it was filed;

18 (b) the names of all parties or named participants;

19 (c) the case number or other identifying number, letters or name assigned to the
20 action or other proceeding;

21 (d) the name and last known address of each person claiming injury or damage
22 therein;

23 (e) the names and last known address of all known counsel of record
24 participating in such action or proceeding; and
25

26 (f) the date of the alleged injury or damage
27

28 **ANSWER:** This Interrogatory is overbroad with respect to timeframe, subject matter, and the term

1 “damage.” This Answering Defendant has received notice of the following incidents:

2 1. Leonard Baize, filed in the 128th Judicial District Court, Orange County, Texas on June 17,
3 2016. He named R.G. Galls, Aging in the Home Remoderlers (sic), Inc. (AIHR),
4 firstSTREET for Boomers and Beyond, Inc. (firstSTREET), and Jacuzzi, Inc. as
5 Defendants.

6 2. Walter O'Donnell, filed in the Court of Common Pleas of Allegheny County, Pennsylvania
7 in February 2016. He named firstSTREET and Aging in the Home Remodelers as
8 Defendants for a claimed tub leak causing property damage.

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

- 14
- 15 (a) the name or title of the governmental body or officer responsible for the
 - 16 establishment, enactment, or promulgation;
 - 17 (b) the title, including chapter, section, and paragraph numbers;
 - 18 (c) the date of establishment, enactment, or promulgation; and
 - 19 (d) the subject matter addressed
- 20

21 **ANSWER:** Objection. This Interrogatory calls for an expert opinion and legal conclusion. This
22 Answering Defendant did not design or manufacture the subject Jacuzzi Walk-In Tub.

23 14. If the subject Jacuzzi Walk-In-Tub was not designed and manufactured to meet
24 applicable federal standards or codes, state the reason(s) therefor.

25 **ANSWER:** Objection. This Interrogatory calls for an expert opinion and legal conclusion. This
26 Answering Defendant did not design or manufacture the subject Jacuzzi Walk-In Tub.

27 15. State whether or not the subject Jacuzzi Walk-In-Tub is or was listed by
28

1 Underwriter's Laboratories or a similar listing or approving organization. If so, please provide a copy
2 of the Underwriter's Laboratories procedures or other applicable documents or the status of such
3 listing attempts. If not, state the reasons for it not being listed.

4 **ANSWER:** Objection. This Interrogatory is vague and ambiguous with respect to "similar listing or
5 approving organization." This Answering Defendant did not design or manufacture the subject
6 Jacuzzi Walk-In Tub.

8 16. State whether any standard or code organization or body ever refused to approve or
9 list the subject Jacuzzi Walk-In-Tub. If so, provide the names of all such organizations and the
10 particulars regarding each refusal.

11 **ANSWER:** Objection. This Interrogatory calls for an expert opinion and legal conclusion. Further,
12 it is vague and ambiguous with respect to the term "standard or code organization or body." This
13 Answering Defendant did not design or manufacture the subject Jacuzzi Walk-In Tub.

15 17. State whether or not the Defendant FIRST STREET has been engaged within the
16 past 24 months, alone or with other manufacturers or organizations, in developing or attempting to
17 develop a standard for the subject Jacuzzi walk in tub or similar Jacuzzi Walk-In-Tub. If so, provide
18 the name of the anticipated listing organization, all other manufacturers, organizations and bodies
19 involved in the process, the date such attempt originated and copies of all documents Defendant
20 generated received or reviewed in connection with developing such standards.

22 **ANSWER:** Objection. This Interrogatory is vague and ambiguous with respect to the phrase
23 "developing or attempting to develop a standard for the subject jacuzzi walk in tub." Further, this
24 Interrogatory calls for expert opinion. This Answering Defendant did not design or manufacture the
25 subject Jacuzzi Walk-In Tub and has not been engaged within the past 24 months in developing any
26 "standards" for the subject tub.

28 18. State the year the Defendant FIRST STREET first entered into an agreement with

1 Jacuzzi, Inc. to manufacture a Jacuzzi Walk-In-Tub.

2 **ANSWER:** This Answering Defendant did not manufacture Jacuzzi Walk-In Tubs. Please see this
3 Answering Defendant's NRCP 16.1 Initial Document Production and Witness List, specifically
4 Exhibit "D," bates numbered FIRST00005-FIRST000022 and Exhibit "E," bates numbered
5 FIRST000023, Manufacturing Agreement, executed by Jacuzzi on September 31, 2011 and executed
6 by firstSTREET on September 29, 2011.

7
8 19. State if at any time any employee, agent, customer or end user complained of or
9 objected to the design of the subject Jacuzzi walk in tub or similar model with respect to the means
10 used to provide safety. If so, provide copies of all relevant documents in your possession.

11 **ANSWER:** Objection. This Interrogatory is vague, ambiguous and unintelligible with respect to the
12 term "means used to provide safety." This Answering Defendant seeks clarification to the term
13 "means used to provide safety" to adequately respond.

14
15 20. What are the names, present addresses, and company positions of each person
16 involved in the design and the design verification of the Walk-In-Tub, including but not limited to
17 employees in engineering, quality assurance, quality control, reliability, general management, sales,
18 marketing, finance who specifically contributed to the subject design.

19
20 **ANSWER:** This Interrogatory is duplicative. See response to Interrogatory No. 4 by this
21 Answering Defendant.

22 21. Please identify each and every law, rule, regulation, standard, statute, ordinance, or
23 other requirement or recommendation established by any Nevada state or federal governmental
24 body or officer that deals with, defines, limits or specifies the manufacture or use of the Walk-In-
25 Tub or similar products, with specific reference to:

- 26
27 (a) the name or title of the governmental body or officer responsible for the
28 establishment, enactment, or promulgation;

- (b) the title, including chapter, section, and paragraph numbers;
- (c) the date of establishment, enactment, or promulgation; and
- (d) the subject matter addressed.

ANSWER: This Interrogatory is duplicative. See response to Interrogatory No. 13 by this Answering Defendant.

22. Do you contend that the Plaintiff misused or abused the subject Jacuzzi Walk-In-Tub and/or applied a use that was neither intended nor reasonably foreseeable by you, or was otherwise contributorily negligent? If so, please state the particulars therefor.

ANSWER: Objection. This Interrogatory calls for expert opinion, legal conclusion, invades attorney-client privilege, and invades attorney work product doctrine. This Answering Defendant has no personal knowledge as to how the subject incident occurred.

23. Do you contend that the Plaintiffs subject Walk-In-Tub was altered, modified or changed in any way that you neither recommended nor expected, other than ordinary wear and tear, after it left your hands? If so, please state the particulars therefor.

ANSWER: Objection. This Interrogatory calls for an expert opinion and/or legal conclusion. This Answering Defendant was never in possession of the subject Walk-In-Tub as it was shipped directly from Jacuzzi to installer Bestway Building & Remodeling, Inc., therefore this Answering Defendant has no personal knowledge as to the condition of the tub.

24. Do you contend that any person, partnership, corporation or other entity that is not a named party in the within cause is, or may be, responsible in any way for all or part of the damages alleged by the Plaintiff? If so, please identify:

- (a) the name and last known address of each;
- (b) a brief description of the facts known to the Defendant in support of such contention as to each such party named in answer to this Interrogatory; and

1 (c) the name and last known address of each person known to you who has or
2 claims to have knowledge of any facts relating to this contention.

3 **ANSWER:** This Answering Defendant has no personal knowledge as to any "person, partnership,
4 corporation or other entity," aside from Sherry Cunnison and/or the Defendants to this litigation,
5 including Jacuzzi, Homeclick, Bestway Building, Chicago Faucet, and Budd's Plumbing.

6 25. Do you contend that any intervening or superseding act or event occurred so as to
7 relieve you of liability or responsibility for the damage sustained by the Plaintiff? If so, please state
8 the particulars therefor.

9
10 **ANSWER:** Objection. This Interrogatory calls for a legal conclusion and expert opinion. This
11 Answering Defendant contends it has no liability for the subject incident as this Answering
12 Defendant did not design, manufacture, install, or ever have possession of the subject tub. This
13 Answering Defendant has no personal knowledge of the facts pertaining to the subject incident.
14 Discovery is ongoing and this Answer to Interrogatory will be supplemented.

15
16 26. Please identify each of your employees and/or agents who has conducted any
17 analysis or investigation of subject Jacuzzi Walk-In-Tub or conducted any interviews with other
18 persons who claim to have knowledge of facts in connection with the subject incident.

19
20 **ANSWER:** Objection. This Interrogatory seeks to invade attorney-client privilege and attorney
21 work product doctrine. Scott Meek of Forensic Engineering Consultants, LLC participated in an
22 inspection of the subject tub on October 19, 2016. 5861 Pine Avenue, Suite B, Chino Hills, CA
23 91709.

24 27. Please identify each person known to you, and not otherwise previously named in
25 answers to these Interrogatories, who has, or claims to have, knowledge of any discoverable matter
26 relating to the within cause.

27
28 **ANSWER:** All such individuals have been identified in these Interrogatories and this Answering

1 Defendant's NRCP 16.1 Initial Document Production and Witness List, and all supplements
2 thereto.

3 28. If you are covered by a policy(ies) of liability insurance at the time of the incident
4 herein complained of, please state the name and address of the named insured(s), the name and
5 address of the company issuing said policy(ies), the policy number(s), the effective dates of said
6 policy(ies), and the limits of coverage provided by such policy(ies).
7

8 **ANSWER:** Please see this Answering Defendant's NRCP 16.1 Initial Document Production and
9 Witness List, specifically Exhibit "G," Commercial Liability Policy FIRST000025 – FIRST000224;
10 and Exhibit "H," Commercial Umbrella Policy, FIRST0000226 – FIRST0000279.

11 29. Please identify each and every person or entity you believe should or could be a party
12 to this action.
13

14 **ANSWER:** This Answering Defendant is not aware of any person or entity, other than the
15 Plaintiffs and the Defendants to this action, including Jacuzzi, Homeclick, Bestway Building,
16 Chicago Faucet, and Budd's Plumbing.

17 30. Please identify each and every person or entity who was involved in the creation,
18 development, or any revisions of the specifications identified as Exhibit A-1 and/or Exhibit A-2 in
19 the Manufacturing Agreement between FIRST STREET and Jacuzzi, Inc. (Bates stamped
20 JACUZZI001588 – JACUZZI001606).
21

22 **ANSWER:** On behalf of this Answering Defendant, Mark Gordon, CEO; Dave Modena, Senior
23 Vice President; and Stacy Hackney, General Counsel; firstSTREET for Boomers & Beyond, Inc.
24 1998 Ruffin Mill Road, Colonial Heights, Virginia 23834.
25

26 31. Please identify each and every person or entity who was involved in the creation,
27 development, or marketing of the phrase DESIGNED FOR SENIORS WALK-IN TUB.

28 **ANSWER:** Objection. This Interrogatory is vague, ambiguous and overbroad with respect to time

1 and subject matter. "Designed for Seniors" is a registered trademark, registered to this Answering
2 Defendant dating back to April 2008.

3 32. Please identify each and every person or entity who was involved in the creation,
4 development of any marketing or advertising for the subject Jacuzzi Walk-In-Tub in any form,
5 including but not limited to, brochures, print, internet, magazine, e-mail, trade associations, AARP,
6 or other mailers.
7

8 **ANSWER:** Objection. This Interrogatory is vague, ambiguous, and overbroad with respect to time
9 and subject entities. Within this Answering Defendant's company, the following individuals have
10 been involved in developing marketing or advertising the subject Jacuzzi Walk-In Tub:

- 11 1. Mark Gordon, CEO, firstSTREET
- 12 2. Kris Martin, Print Media Manager, firstSTREET
- 13 3. Phil Goodhart, VP Marketing, firstSTREET
- 14 4. John Fleming, VP Marketing, firstSTREET
- 15 5. Steve Parker, VP Direct Marketing Division, firstSTREET
- 16 6. Dave Modena, Senior Vice President, firstSTREET

17
18 33. Please identify each and every medical professional who endorsed or were cited in
19 any marketing or advertising in any form for the subject Jacuzzi Walk-In-Tub.
20

21 **ANSWER:** This Answering Defendant did not generate any marketing or advertising materials that
22 were endorsed by or cited any medical professionals.

23 ...

24 ...

25 ...

26 ...

27 ...

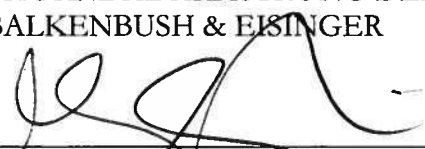
28 ...

1 34. Please identify each and every medical professional who was involved in the design
2 of the Walk-In-Tub.

3 **ANSWER:** This Answering Defendant did not design the Walk-In Tub.

4 DATED this 10th day of October, 2018.

5 THORNDAL ARMSTRONG DELK
6 BALKENBUSH & EISINGER

7 
8 _____
9 MEGHAN M. GOODWIN, ESQ.
10 Nevada Bar No. 11974
11 1100 East Bridger Avenue
12 Las Vegas, Nevada 89101
13 Attorneys for Defendants/Cross-Defendants,
14 FIRSTSTREET FOR BOOMERS AND BEYOND,
15 INC., and AITHR DEALER, INC.
16
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28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of October, 2018, service of the above and foregoing DEFENDANT, FIRSTSTREET FOR BOOMERS AND BEYOND, INC.'S ANSWERS TO PLAINTIFF, ROBERT ANSARA'S FIRST SET OF INTERROGATORIES was made upon each of the parties via electronic service through the Eighth Judicial District Court's Odyssey E-File and Serve system.

Benjamin P. Cloward, Esq.
Richard Harris Law Firm
801 South Fourth Street
Las Vegas, Nevada 89101
Attorneys for Plaintiffs

Charles Allen Law Firm, P.C.
3575 Piedmont Road, NE
Building 15, Suite L-130
Atlanta, Georgia 30305
Attorneys for Plaintiffs

Vaughn A. Crawford, Esq.
Joshua D. Cools, Esq.
Snell & Wilmer LLP
3883 Howard Hughes Pkwy., Ste. 1100
Las Vegas, Nevada 89169
Attorneys for Defendant,
JACUZZI INC. dba JACUZZI
LUXURY BATH

Hale Benton
26479 West Potter Drive
Buckeye, AZ 85396
Via U.S. Mail



An employee of THORNDAL ARMSTRONG
DELK BALKENBUSH & EISINGER

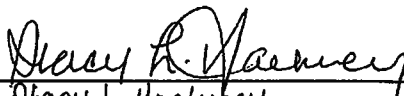
DECLARATION

Stacy L. Hackney, a representative of Defendant, FIRSTSTREET FOR BOOMERS AND BEYOND, INC., under penalty of perjury, declares and says:

That s/he is the representative of Defendant, FIRSTSTREET FOR BOOMERS AND BEYOND, INC., in the above-entitled matter, that s/he has read the foregoing Defendant, FIRSTSTREET FOR BOOMERS AND BEYOND, INC.'s Answers to Plaintiff's First Set of Interrogatories and knows the contents thereof, and that the same is true of his/her own knowledge, except for those matters therein contained upon information and belief and as to those matters, s/he believes them to be true.

Pursuant to NRS 53.045, I declare under penalty of perjury that the contents of the foregoing are true and correct.

DATED this 10th day of October, 2018.


Stacy L. Hackney, a representative of
Defendant, FIRSTSTREET FOR
BOOMERS AND BEYOND, INC.



**THORNDAL
ARMSTRONG**
DELK BALKENBUSH & EISINGER
A PROFESSIONAL CORPORATION
ATTORNEYS
www.thorndal.com

EXHIBIT 13



1 **REQT**

2 BENJAMIN P. CLOWARD, ESQ.

3 Nevada Bar No. 11087

4 **RICHARD HARRIS LAW FIRM**

5 801 South Fourth Street

6 Las Vegas, Nevada 89101

7 Phone: (702) 444-4444

8 Fax: (702) 444-4455

9 E-Mail: Benjamin@RichardHarrisLaw.com

10 *Attorneys for Plaintiffs*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

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

21 Plaintiffs,

22 vs.

23 FIRST STREET FOR BOOMERS & BEYOND,
24 INC.; AITHR DEALER, INC.; HALE BENTON,
25 Individually, HOMECCLICK, LLC; JACUZZI INC.,
26 doing business as JACUZZI LUXURY BATH;
27 BESTWAY BUILDING & REMODELING, INC.;
28 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.

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

PLAINTIFF ROBERT
ANSARA'S FIFTH SET OF
REQUESTS FOR
PRODUCTION OF
DOCUMENTS TO
DEFENDANT,
FIRST STREET FOR
BOOMERS & BEYOND, INC.

AND ALL RELATED MATTERS

**PLAINTIFF ROBERT ANSARA'S FIFTH SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS TO DEFENDANT,
FIRST STREET FOR BOOMERS & BEYOND, INC.**

Plaintiff, ROBERT ANSARA, as Special Administrator of the Estate of SHERRY LYNN CUNNISON, Deceased; by and through his Attorney, BENJAMIN P. CLOWARD, ESQ. of the RICHARD HARRIS LAW FIRM, pursuant to Rule 34, Nevada Rules of Civil Procedure, requests that Defendant, FIRST STREET FOR BOOMERS & BEYOND, INC. ("FIRST STREET"), produce for inspection and copying, within thirty (30) days of service of this Request for Production of Documents, at the RICHARD HARRIS LAW FIRM, 801 South Fourth Street, Las Vegas, Nevada 89101, all documents in the possession, custody, or control of Defendant or otherwise available to Defendant, which are responsive to the requests contained in the numbered paragraphs below. Please specify which documents are produced in response to each of the numbered paragraphs.

These requests shall be deemed continuing so as to require further and supplemental production should the requested party obtain additional documents which are responsive to this request subsequent to the time of initial production and inspection.

PREAMBLE

As used in these requests, the following terms are to be interpreted in accordance with these definitions:

1. "Plaintiff" refers to, without limitation, the above-named Plaintiffs, as well as Plaintiffs' attorney, agent, or representative.
2. "Complaint" refers to the Complaint filed by Plaintiff in this action.
3. "Defendant," "you," or "your" refers to, without limitation, Jacuzzi, Inc., and all business entities with which it is or has been affiliated, together with any predecessor, successor, parent, or subsidiary entity as well as any officer, director, employee, attorney, agent, or representative of it or any such other business entity previously described herein, and others who are in possession of or may have

obtained information for or on behalf of it with regard to the subject matter of this case.

4. "Person" means any natural person (whether living or deceased), company, corporation, partnership, proprietorship, firm, joint venture, association, governmental entity, agency, group, organization, other entity, or group of persons.
5. "Document" means every writing or record of every type and description that is or has been in your possession, custody, or control or of which you have knowledge, including but not limited to correspondence, memoranda, tapes, stenographic or handwritten notes, studies, publications, books, pamphlets, pictures, drawings and photographs, films, microfilms, voice recordings, maps, reports, surveys, minutes or statistical compilations, or any other reported or graphic material in whatever form, including copies, drafts, and reproductions. "Document" also refers to any other data compilations from which information can be obtained, and translated, if necessary, by you through computers or detection devices into reasonably usable form. The term "document(s)" also includes, but is not limited to, all duplicates, carbon copies or any other copies of original documents, including copies with handwritten notes, revisions or interlineations.
6. "Communication" means e-mail, SMS message, MMS message, fax, letter, social media post, instant message, recorded audio, or, recorded video.
7. Terms in the singular shall be deemed to include the plural and terms in the plural shall be deemed to include the singular.
8. Use of feminine pronouns shall be deemed to include the masculine and neuter; use of masculine pronouns shall be deemed to include the feminine and neuter; and use of neuter pronouns shall be deemed to include the masculine and feminine.
9. "Identify": With respect to a document means set forth the following information, regardless of whether such document is in your possession, if known: a general description thereof (e.g., letter, memorandum, report, etc.); a brief summary of its

1 contents, or a description of the subject matter it concerns; the name and address
2 of the persons, if any, who drafted, prepared, compiled or signed it; and any other
3 descriptive information necessary in order to describe it adequately in a subpoena
4 duces tecum or in a motion or request for production thereof. With regard to a
5 person, the term "identify" means set forth the person's name, last known address
6 and telephone number, occupation, last known address and telephone number of
7 the person's place of employment, and a summary of the relevant knowledge
8 possessed by such person.

9 10. "And" and "or," as used herein, shall be construed disjunctively or conjunctively
10 as necessary to bring within the scope of these interrogatories or requests any
11 information that might otherwise be construed to be outside their scope.

12 11. "Evidencing" and or "relating to," as used herein, mean and include, in whole or
13 in part, referring to, with respect to, concerning, connected with, commenting on,
14 responding to, showing, describing, analyzing, reflecting and constituting.

15 12. If any document requested formerly was in your possession or subject to your
16 control but no longer is in your possession or subject to your control, state when
17 and what disposition was made of the document or documents.

18 13. The term "occurrence" means the incident complained out in the Plaintiff's
19 complaint.

20 14. If you assert the attorney-client privilege, work-product doctrine, or other privilege
21 or exclusion as to any document requested by any of the following specific
22 interrogatories or requests, please identify the document in sufficient detail to
23 permit the Court to reach a determination in the event of a Motion to Compel.

24 15. When the terms: Jacuzzi Walk-In Bathtub, Jacuzzi Tub, Walk-In Tub, Walk-In
25 Bathtub or similarly phrased words are used, the Plaintiffs mean the 5229 Walk-
26 in Bathtub Series or the bathtub that was utilized by Sherry Cunnison.

27 The above definitions and instructions are incorporated herein by reference and should be
28 utilized in responding to the following requests.

UNLESS OTHERWISE NOTED, THE DOCUMENTS, RECORDS, AND DATA REQUESTED ARE THOSE THAT APPLY TO AND/OR COVER ANY PART OF THE TIME PERIOD FROM JANUARY 1, 2008, TO THE DATE OF YOUR RESPONSE.

DOCUMENTS TO BE PRODUCED

REQUEST NO. 95. Defendant *firstSTREET*'s NRCP 30(b)(6) witness, Dave Modena, testified at his deposition that he was aware of customer complaints or concerns regarding the slipperiness of certain Jacuzzi walk-in tubs. See generally, Deposition of Dave Modena - Vol. I, pp.40-59, December 11, 2018. Mr. Modena testified that there were e-mails exchanged between Jacuzzi and AITHR/*firstSTREET* relating to customer complaints regarding the slipperiness of the tub. See, Deposition of Dave Modena - Vol. I, 47:1-51:1, December 11, 2018. Please produce all communications between You and AITHR, Jacuzzi, or any dealer relating to customer complaints or concerns about the slipperiness of any Jacuzzi walk-in tubs. This request seeks information relating to the slipperiness of the walk-in tub surface, whether the floor or the seat.

REQUEST NO. 96. Defendant *firstSTREET*'s NRCP 30(b)(6) witness, Dave Modena, testified at his deposition that he was aware of customer complaints or concerns regarding the slipperiness of certain Jacuzzi walk-in tubs. See generally, Deposition of Dave Modena - Vol. I, pp.40-59, December 11, 2018. Mr. Modena testified that there were e-mails exchanged between Jacuzzi and AITHR/*firstSTREET* relating to customer complaints regarding the slipperiness of the tub. See, Deposition of Dave Modena - Vol. I, 47:1-51:1, December 11, 2018. Please produce all Documents relating to customer complaints or concerns made to You, directly or indirectly, regarding the slipperiness of any Jacuzzi walk-in tubs from 2008 to present. This request seeks such communications regardless of the method communication (e.g., direct communications from the user, or indirect communications from some customer service management company, marketing company, dealer, salesperson, or any other source.). This request seeks information relating to the slipperiness of the walk-in tub surface, whether the floor or the seat.

REQUEST NO. 97. Please produce all communications between You and AITHR, Jacuzzi, or any dealer relating to the decision to provide, sell, or otherwise making available the product referred to as "Kahuna Grip" by Dave Modena during his December 11, 2018 deposition.

REQUEST NO. 98. Please produce all communications between You and a customer or end-user (or family member, friend, counsel, agent, representative, or any other person acting on behalf

of a customer or end-user) of a Jacuzzi walk-in tub relating to the decision to provide, sell, or otherwise making available the product referred to as “Kahuna Grip” by Dave Modena during his December 11, 2018 deposition.

REQUEST NO. 99. Produce all communications between You and Jacuzzi, AITHR, or any dealer pertaining to the decision to provide, sell, or otherwise make available any products other than Kahuna Grip which were intended to decrease the likelihood of physical injury or bodily harm arising from the use of a Jacuzzi walk-in tub.

REQUEST NO. 100. Please produce all communications You have received, directly or indirectly, from a customer or end-user (or family member, friend, counsel, agent, representative, or any other person acting on behalf of a customer or end-user) of a Jacuzzi walk-in tub regarding the slipperiness of the tub’s **seat** and Your responses thereto. This request seeks such information regardless of the method You became aware of the communication (e.g., directly from the user, indirectly from some customer service management company, from a marketing company, a dealer, a salesperson, or any other source.).

REQUEST NO. 101. Please produce all documents **relating to** communications You have received, directly or indirectly, from a customer or end-user (or family member, friend, counsel, agent, representative, or any other person acting on behalf of a customer or end-user) of a Jacuzzi walk-in tub regarding the slipperiness of the tub’s **seat** and Your responses thereto. This request seeks such information regardless of the method You became aware of the communication (e.g., directly from the user, indirectly from a customer service management company, from a marketing company, a dealer, a salesperson, or any other source.).

REQUEST NO. 102. Please produce all Documents You created in the ordinary course of business which arose out of You becoming aware of any customer or end-user (or family member, friend, counsel, agent, representative, or any other person acting on behalf of a customer or end-user) concern or complaint regarding the slipperiness of a Jacuzzi Walk-In tub’s **seat**.

REQUEST NO. 103. Please produce all documents pertaining to a customer or end-user (or family member, friend, counsel, agent, representative, or any other person acting on behalf of a customer or end-user) slipping off of the seat (or allegedly slipping off of the seat) of a Jacuzzi walk-in tub from 2008 to present.

REQUEST NO. 104. Please produce all communications You have received, directly or indirectly, from a customer or end-user (or family member, friend, counsel, agent, representative,

or any other person acting on behalf of a customer or end-user) of a Jacuzzi walk-in tub regarding the slipperiness of the tub's **floor** and Your responses thereto. This request seeks such information regardless of the method You became aware of the communication (e.g., directly from the user, indirectly from some customer service management company, from a marketing company, a dealer, a salesperson, or any other source.).

REQUEST NO. 105. Please produce all documents **relating to** communications You have received, directly or indirectly, from a customer or end-user (or family member, friend, counsel, agent, representative, or any other person acting on behalf of a customer or end-user) of a Jacuzzi walk-in tub regarding the slipperiness of the tub's **floor** and Your responses thereto. This request seeks such information regardless of the method You became aware of the communication (e.g., directly from the user, indirectly from a customer service management company, from a marketing company, a dealer, a salesperson, or any other source.).

REQUEST NO. 106. Please produce all Documents You created in the ordinary course of business which arose out of You becoming aware of any customer or end-user (or family member, friend, counsel, agent, representative, or any other person acting on behalf of a customer or end-user) concern or complaint regarding the slipperiness of a Jacuzzi Walk-In tub's **floor**.

REQUEST NO. 107. Please produce all documents pertaining to a customer or end-user slipping on the floor (or allegedly slipping on the floor) of a Jacuzzi walk-in tub from 2008 to present.

REQUEST NO. 108. Please produce all communications You received, directly or indirectly, from a customer or end-user (or family member, friend, counsel, agent, representative, or any other person acting on behalf of a customer or end-user) of a Jacuzzi walk-in tub regarding concerns or complaints relating to any actual or potential issues pertaining the ingress and egress of the tub; and Your responses thereto. This request seeks such information regardless of the method You became aware of the communication (e.g., directly from the user, indirectly from some customer service management company, from a marketing company, a dealer, a salesperson, or any other source.).

REQUEST NO. 109. Please produce all documents **relating to** communications You have received, directly or indirectly, from a customer or end-user (or family member, friend, counsel, agent, representative, or any other person acting on behalf of a customer or end-user) of a Jacuzzi walk-in tub regarding concerns or complaints about any actual or potential risks pertaining to ingress or egress issues of the tub and Your responses thereto. This request seeks such information

1 regardless of the method You became aware of the communication (e.g., directly from the user,
2 indirectly from a customer service management company, from a marketing company, a dealer, a
3 salesperson, or any other source.).

4 **REQUEST NO. 110.** Please produce all Documents You created in the ordinary course of
5 business which arose out of You becoming aware of any customer or end-user concern or
6 complaint about any actual or potential risks pertaining to ingress or egress issues of the tub.

7 **REQUEST NO. 111.** Please produce all documents pertaining to a customer or end-use of a
8 Jacuzzi walk-in tub getting stuck (or allegedly getting stuck) in a Jacuzzi walk-in tub from 2008
9 to present.

10 **REQUEST NO. 112.** Please produce all communications You have received, directly or
11 indirectly, from a customer or end-user (or family member, friend, counsel, agent, representative,
12 or any other person acting on behalf of a customer or end-user) of a Jacuzzi walk-in tub regarding
13 the placement of the tub's grab-bars and Your responses thereto. This request seeks such
14 information regardless of the method You became aware of the communication (e.g., directly from
15 the user, indirectly from some customer service management company, from a marketing
16 company, a dealer, a salesperson, or any other source.).

17 **REQUEST NO. 113.** Please produce all documents **relating to** communications You have
18 received, directly or indirectly, from a customer or end-user (or family member, friend, counsel,
19 agent, representative, or any other person acting on behalf of a customer or end-user) of a Jacuzzi
20 walk-in tub regarding the placement of the tub's grab-bars and Your responses thereto. This
21 request seeks such information regardless of the method You became aware of the communication
22 (e.g., directly from the user, indirectly from a customer service management company, from a
23 marketing company, a dealer, a salesperson, or any other source.).

24 **REQUEST NO. 114.** Please produce all Documents You created in the ordinary course of
25 business which arose out of You becoming aware of any customer or end-user concern or
26 complaint regarding the placement of a Jacuzzi Walk-In tub's grab-bars.

27 **REQUEST NO. 115.** Please produce all documents pertaining to a customer or end-user of a
28 Jacuzzi walk-in tub being unable to reach a grab bar (or allegedly being unable to reach a grab bar)
in a Jacuzzi walk-in tub from 2008 to present.

REQUEST NO. 116. Any documents You made in the ordinary course of business in response
to, or which arose out of, any customer or end-user contending or alleging that a Jacuzzi Walk-In

1 tub was defective (or somehow did not meet the user's expectations) due to the slipperiness of the
2 tub surface (whether the floor or seat).

3 **REQUEST NO. 117.** Any documents You made in the ordinary course of business in response
4 to, or which arose out of, any customer or end-user contending or alleging that a Jacuzzi Walk-In
5 tub was defective (or somehow did not meet the user's expectations) in any way the customer or
6 end user's ability to ingress or egress in or out of the tub.

7 **REQUEST NO. 118.** Any documents You made in the ordinary course of business in response
8 to, or which arose out of, any customer or end-user contending or alleging that a Jacuzzi Walk-In
9 tub presented an unexpected a risk of bodily injury or physical harm.

10 **REQUEST NO. 119.** Produce all communications You received, directly or indirectly, from any
11 customer or end-user (or family member, friend, counsel, agent, representative, or any other person
12 acting on behalf of a customer or end-user) of a Jacuzzi Walk-In bathtub in which the customer
13 or end-user contends, alleges, or states a concern that a Jacuzzi Walk-In tub was presented any
14 type of risk of bodily injury or physical harm.

15 **REQUEST NO. 120.** Produce all communications You received, directly or indirectly, from any
16 customer or end-user (or family member, friend, counsel, agent, representative, or any other person
17 acting on behalf of a customer or end-user) of a Jacuzzi Walk-In bathtub in which the customer
18 or end-user contends that a Jacuzzi walk-in tub did not meet the user's expectations due to concerns
19 regarding a risk of bodily injury or physical harm.

20 **REQUEST NO. 121.** Please produce all communications between You and Audrey Martinez of
21 Jacuzzi, Inc. regarding any complaint, allegation, or concern from a customer or user (or family
22 member, friend, representative, or agent communicating on behalf of a customer or end-user) of
23 a Jacuzzi Walk-In bathtub that a Jacuzzi Walk-In bathtub presented any actual or possible risk
24 that did cause, or could cause, bodily injury or physical harm.

25 **REQUEST NO. 122.** Please produce all communications between You and Jacuzzi, Inc.
26 regarding any complaint, allegation, or concern from a customer or user (or family member, friend,
27 representative, or agent communicating on behalf of a customer or end-user) of a Jacuzzi Walk-In
28 bathtub that a Jacuzzi Walk-In bathtub presented any actual or possible risk that did cause, or could
cause, bodily injury or physical harm.

1 **REQUEST NO. 123.** Please produce all communications between You and AITHR or any other
2 dealer regarding any complaint, allegation, or concern from a customer or user (or family member,
3 friend, representative, or agent communicating on behalf of a customer or end-user) of a Jacuzzi
4 Walk-In bathtub that a Jacuzzi Walk-In bathtub presented any actual or possible risk that did cause,
5 or could cause, bodily injury or physical harm.

6 **REQUEST NO. 124.** Please produce all Documents, informational brochures, pamphlets,
7 marketing materials, guides, instructions, manuals, warnings, or any other similar document which
8 was given to any customer or end-user regarding the 9-1-1 system – regardless of whether such 9-
9 1-1 system is a Jacuzzi product.

10 **REQUEST NO. 125.** Please produce any communications between You and any dealer relating
11 to any dealer's sales methods, procedures, or policies related to the marketing and sales of Jacuzzi
12 Walk-In tubs to customers or end-users.

13 **REQUEST NO. 126.** Please produce any communications between You and any dealer relating
14 to any dealer's sales methods pertaining to the marketing and sales of Jacuzzi Walk-In tubs to
15 customers or end-users.

16 **REQUEST NO. 127.** Please produce any communications between You and any dealer relating
17 to any dealer's sales methods pertaining the marketing and sales of Jacuzzi Walk-In tubs to
18 customers or end-users.

19 **REQUEST NO. 128.** Please produce any communications between You and Jacuzzi or any dealer
20 relating to any dealer or dealer sales representative's in-home sales methods, policies, or
21 procedures.

22 **REQUEST NO. 129.** Please produce any Documents in Your possession or control relating to
23 dealer or dealer sales representative in-home sales methods, policies, or procedures.

24 **REQUEST NO. 130.** Please produce all documents in Your possession relating to representing
25 any bonus, deferred compensation or incentive compensation plans, programs, perks or
26 agreements between any dealer and any sales-representatives.
27
28

1 **REQUEST NO. 131.** Please produce all documents in Your possession relating to any sales
2 incentive plans, contests or commission plans, including individual goals, payout targets, achieved
3 goals and payouts for dealer sales representatives.

4 DATED THIS 3rd day of July, 2019.

RICHARD HARRIS LAW FIRM

6 /s/ Benjamin P. Cloward

7 BENJAMIN P. CLOWARD, ESQ.

8 Nevada Bar No. 11087

9 801 South Fourth Street

10 Las Vegas, Nevada 89101

11 *Attorney for Plaintiffs*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), the amendment to EDCR 7.26, and Administrative Order 14-2, I hereby certify that on this 3rd day of July, 2019, I caused to be served a true copy of the foregoing, **PLAINTIFF ROBERT ANSARA'S FIFTH SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEFENDANT, FIRST STREET FOR BOOMERS & BEYOND, INC.** as follows:

☐ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below; and/or

☐ Facsimile—By facsimile transmission pursuant to EDCR 7.26 to the facsimile number(s) shown below; and/or

☒ Electronic Service — in accordance with Administrative Order 14-2 and Rule 9 of the Nevada Electronic Filing and Conversion Rules (N.E.F.C.R.).

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Philip Goodhart, Esq.
Thorndal Armstrong Delk Balkenbush & Eisinger
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Las Vegas, NV 89101-5315
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Attorneys for Defendant/Cross-Defendant, Jacuzzi, Inc. dba Jacuzzi Luxury Bath

/s/ Nicole M. Griffin
An employee of RICHARD HARRIS LAW FIRM



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DELK BALKENBUSH & EISINGER

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ATTORNEYS

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EXHIBIT 14



1 **REQT**

2 BENJAMIN P. CLOWARD, ESQ.
3 Nevada Bar No. 11087

4 **RICHARD HARRIS LAW FIRM**

5 801 South Fourth Street
6 Las Vegas, Nevada 89101
7 Phone: (702) 444-4444
8 Fax: (702) 444-4455
9 E-Mail: Benjamin@RichardHarrisLaw.com
10 *Attorneys for Plaintiffs*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

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

21 Plaintiffs,

22 vs.

23 FIRST STREET FOR BOOMERS & BEYOND,
24 INC.; AITHR DEALER, INC.; HALE BENTON,
25 Individually, HOMECCLICK, LLC; JACUZZI INC.,
26 doing business as JACUZZI LUXURY BATH;
27 BESTWAY BUILDING & REMODELING, INC.;
28 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.

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

PLAINTIFF ROBERT
ANSARA'S SIXTH SET OF
REQUESTS FOR
PRODUCTION OF
DOCUMENTS TO
DEFENDANT,
FIRST STREET FOR
BOOMERS & BEYOND, INC.

AND ALL RELATED MATTERS

**PLAINTIFF ROBERT ANSARA'S SIXTH SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS TO DEFENDANT,
FIRST STREET FOR BOOMERS & BEYOND, INC.**

Plaintiff, ROBERT ANSARA, as Special Administrator of the Estate of SHERRY LYNN CUNNISON, Deceased; by and through his Attorney, BENJAMIN P. CLOWARD, ESQ. of the RICHARD HARRIS LAW FIRM, pursuant to Rule 34, Nevada Rules of Civil Procedure, requests that Defendant, FIRST STREET FOR BOOMERS & BEYOND, INC. ("FIRST STREET"), produce for inspection and copying, within thirty (30) days of service of this Request for Production of Documents, at the RICHARD HARRIS LAW FIRM, 801 South Fourth Street, Las Vegas, Nevada 89101, all documents in the possession, custody, or control of Defendant or otherwise available to Defendant, which are responsive to the requests contained in the numbered paragraphs below. Please specify which documents are produced in response to each of the numbered paragraphs.

These requests shall be deemed continuing so as to require further and supplemental production should the requested party obtain additional documents which are responsive to this request subsequent to the time of initial production and inspection.

PREAMBLE

As used in these requests, the following terms are to be interpreted in accordance with these definitions:

1. "Plaintiff" refers to, without limitation, the above-named Plaintiffs, as well as Plaintiffs' attorney, agent, or representative.
2. "Complaint" refers to the Complaint filed by Plaintiff in this action.
3. "Defendant," "you," or "your" refers to, without limitation, Jacuzzi, Inc., and all business entities with which it is or has been affiliated, together with any predecessor, successor, parent, or subsidiary entity as well as any officer, director, employee, attorney, agent, or representative of it or any such other business entity previously described herein, and others who are in possession of or may have

obtained information for or on behalf of it with regard to the subject matter of this case.

4. "Person" means any natural person (whether living or deceased), company, corporation, partnership, proprietorship, firm, joint venture, association, governmental entity, agency, group, organization, other entity, or group of persons.
5. "Document" means every writing or record of every type and description that is or has been in your possession, custody, or control or of which you have knowledge, including but not limited to correspondence, memoranda, tapes, stenographic or handwritten notes, studies, publications, books, pamphlets, pictures, drawings and photographs, films, microfilms, voice recordings, maps, reports, surveys, minutes or statistical compilations, or any other reported or graphic material in whatever form, including copies, drafts, and reproductions. "Document" also refers to any other data compilations from which information can be obtained, and translated, if necessary, by you through computers or detection devices into reasonably usable form. The term "document(s)" also includes, but is not limited to, all duplicates, carbon copies or any other copies of original documents, including copies with handwritten notes, revisions or interlineations.
6. "Communication" means e-mail, SMS message, MMS message, fax, letter, social media post, instant message, recorded audio, or, recorded video.
7. Terms in the singular shall be deemed to include the plural and terms in the plural shall be deemed to include the singular.
8. Use of feminine pronouns shall be deemed to include the masculine and neuter; use of masculine pronouns shall be deemed to include the feminine and neuter; and use of neuter pronouns shall be deemed to include the masculine and feminine.
9. "Identify": With respect to a document means set forth the following information, regardless of whether such document is in your possession, if known: a general description thereof (e.g., letter, memorandum, report, etc.); a brief summary of its

1 contents, or a description of the subject matter it concerns; the name and address
2 of the persons, if any, who drafted, prepared, compiled or signed it; and any other
3 descriptive information necessary in order to describe it adequately in a subpoena
4 duces tecum or in a motion or request for production thereof. With regard to a
5 person, the term "identify" means set forth the person's name, last known address
6 and telephone number, occupation, last known address and telephone number of
7 the person's place of employment, and a summary of the relevant knowledge
8 possessed by such person.

9 10. "And" and "or," as used herein, shall be construed disjunctively or conjunctively
10 as necessary to bring within the scope of these interrogatories or requests any
11 information that might otherwise be construed to be outside their scope.

12 11. "Evidencing" and or "relating to," as used herein, mean and include, in whole or
13 in part, referring to, with respect to, concerning, connected with, commenting on,
14 responding to, showing, describing, analyzing, reflecting and constituting.

15 12. If any document requested formerly was in your possession or subject to your
16 control but no longer is in your possession or subject to your control, state when
17 and what disposition was made of the document or documents.

18 13. The term "occurrence" means the incident complained out in the Plaintiff's
19 complaint.

20 14. If you assert the attorney-client privilege, work-product doctrine, or other privilege
21 or exclusion as to any document requested by any of the following specific
22 interrogatories or requests, please identify the document in sufficient detail to
23 permit the Court to reach a determination in the event of a Motion to Compel.

24 15. When the terms: Jacuzzi Walk-In Bathtub, Jacuzzi Tub, Walk-In Tub, Walk-In
25 Bathtub or similarly phrased words are used, the Plaintiffs mean the 5229 Walk-
26 in Bathtub Series or the bathtub that was utilized by Sherry Cunnison.

27 The above definitions and instructions are incorporated herein by reference and should be
28 utilized in responding to the following requests.

1 UNLESS OTHERWISE NOTED, THE DOCUMENTS, RECORDS, AND DATA
2 REQUESTED ARE THOSE THAT APPLY TO AND/OR COVER ANY PART OF THE
3 TIME PERIOD FROM JANUARY 1, 2008, TO THE DATE OF YOUR RESPONSE.

4 **DOCUMENTS TO BE PRODUCED**

5 **REQUEST NO. 132.** Please produce all documents reflecting that you provided, offered, or sold,
6 bathmats to customers of any and all Jacuzzi walk-in tub produced from January 1, 2008 to
7 present.

8 **REQUEST NO. 133.** Please produce all documents reflecting items, including bathmats or other
9 accessories or product modifications like Kahuna grip, LX07000, Cajun grip, etc., that you sold
10 or provided or are aware were sold, provided, offered or marketed to customers using any/all
11 Jacuzzi walk-in tub products.

12 **REQUEST NO. 134.** Please produce all customer satisfaction surveys (front and back) left with
13 customers to fill out from January 1, 2008 to present, regardless of content of survey.

14 **REQUEST NO. 135.** Please produce all customer satisfaction cards (front and back) left with
15 customers to fill out from January 1, 2008 to present, regardless of content of survey.

16
17 DATED THIS 26th day of July, 2019.

18
19 **RICHARD HARRIS LAW FIRM**

20 /s/ Benjamin P. Cloward

21 BENJAMIN P. CLOWARD, ESQ.

22 Nevada Bar No. 11087

23 801 South Fourth Street

24 Las Vegas, Nevada 89101

25 *Attorney for Plaintiffs*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), the amendment to EDCR 7.26, and Administrative Order 14-2, I hereby certify that on this 28th day of July, 2019, I caused to be served a true copy of the foregoing, **PLAINTIFF ROBERT ANSARA'S SIXTH SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS TO DEFENDANT, FIRST STREET FOR BOOMERS & BEYOND, INC.** as follows:

☐ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below; and/or

☐ Facsimile—By facsimile transmission pursuant to EDCR 7.26 to the facsimile number(s) shown below; and/or

☒ Electronic Service — in accordance with Administrative Order 14-2 and Rule 9 of the Nevada Electronic Filing and Conversion Rules (N.E.F.C.R.).

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/s/ Nicole M. Griffin

An employee of RICHARD HARRIS LAW FIRM



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EXHIBIT 15



From: Jerrod Butler [mailto:jbutler@guildquality.com]

Sent: Thursday, March 19, 2015 4:54 PM

To: DAVE MODENA; Norm Murdock; todd.stout@aihremodelers.com; nick.fawkes@aihremodelers.com; SIMONA ROBERTSON

Subject: [CudaMailTagged] GuildQuality Follow up

Importance: Low

Dave/Todd/Norm/Simona,

Thank you for your time this morning. First, here's the [recording of the call/meeting](#) so that you can share with any others on your team. Attached is the spreadsheet that you can use as a guideline for your export of 100 recent installs for our trial.

The survey I generally provide as a starting point is at the link below:

http://gq20.guildquality.com/surveys/_sg.php?_t=cs&_k=VIEW3848&mid=619

I'd like to see your current survey and get your feedback on the final questions we'll use. Once the list is complete, please send it back my along with a high-res logo that I'll have included on the mailers and a list of those on your team who should receive/have access to the feedback (full names & emails).

Should you have any outstanding questions, please don't hesitate to contact me direct. We look forward to bringing you results!

Best Regards,

Jerrold Butler

[\(404\) 961-6134](tel:(404)961-6134) -- Direct

[\(706\) 207-4015](tel:(706)207-4015) -- Mobile

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EXHIBIT 16

1 **TRAN**

2
3 **EIGHTH JUDICIAL DISTRICT COURT**
4 **CIVIL/CRIMINAL DIVISION**
5 **CLARK COUNTY, NEVADA**

6 ROBERT ANSARA, et al,) CASE NO. A-16-731244
7 Plaintiffs,) DEPT. NO. II
8 vs.)
9 FIRST STREET FOR BOOMERS)
10 & BEYOND, INC., et al,)
11 Defendants.)

12 BEFORE THE HONORABLE BONNIE BULLA, DISCOVERY COMMISSIONER

13 WEDNESDAY, SEPTEMBER 19, 2018

14 ***TRANSCRIPT RE:***
15 DEFENDANT JACUZZI, INC. dba JACUZZI LUXURY BATH'S
16 MOTION FOR PROTECTIVE ORDER ON OST

17 **APPEARANCES:**

18 For the Plaintiffs: BENJAMIN P. CLOWARD, ESQ.

19 For Defendant Jacuzzi, Inc.: JOSHUA D. COOLS, ESQ.

20 For Defendants First Street for Boomers
21 & Beyond, Inc. and Aithr Dealer, Inc.: MEGHAN M. GOODWIN, ESQ.

22
23
24 RECORDED BY: Francesca Haak, Court Recorder

PA0645

1 LAS VEGAS, NEVADA, WEDNESDAY, SEPTEMBER 19, 2018, 10:04 A.M.

2 * * * * *

3 DISCOVERY COMMISSIONER: Ansara.

4 MR. CLOWARD: Good morning, Your Honor.

5 DISCOVERY COMMISSIONER: Good morning. Everyone state their
6 appearances for the record, please.

7 MR. CLOWARD: Ben Cloward for the plaintiff.

8 MR. COOLS: Joshua Cools for defendant Jacuzzi, Inc.

9 MS. GOODWIN: Meghan Goodwin on behalf of defendant First Street
10 and AITHR.

11 DISCOVERY COMMISSIONER: So what I have is defendant's motion for
12 a protective order and then I did receive the opposition late yesterday, which I've
13 reviewed in part. And I don't know if you were able to reach any agreement at all
14 on some of the issues that you have apparently not been able to resolve. Here's
15 what I'm really concerned about, is that we don't get too far afield, but that the
16 information that I think that the plaintiff really would like to have is made available
17 to them. I know -- and I appreciate the opposition and the chart that was put
18 together on the different claims where the information was produced following the
19 last hearing, so that was helpful. I think with regard to -- and I'm not sure how you
20 want to start in tackling some of the discovery, but I'd like to talk a little bit about
21 Request No. 39 and 40.

22 MR. CLOWARD: You got it, Judge.

23 DISCOVERY COMMISSIONER: Let's see, I'm not sure I'm right on that.
24 I apologize, I think -- No, I'm sorry, it's Request No. 17, the forensic hard drives of

1 the two employees. I think what I was looking for specifically from last time as it
2 relates to Request No. 17 was a motion on why the forensic analysis --

3 MR. CLOWARD: Sure.

4 DISCOVERY COMMISSIONER: -- of the records was relevant. I think
5 I have a better understanding of that now based on the subsequent production that
6 took place. But what I would like both sides to do is to contact an expert in the field
7 and give me a cost of what it would take. I'm not really excited about mirroring hard
8 drives because I think we run into too much difficulty, but what I am considering is
9 a forensic analysis of the computers to do the search terms that the plaintiff had
10 previously requested so that we make sure that there are no additional incidents or
11 documents that would be relative -- or relevant to this case. But I'd like both sides
12 to put together a proposal, so then I can make a reasoned decision --

13 MR. CLOWARD: Sure.

14 DISCOVERY COMMISSIONER: -- on who should be doing it and what the
15 scope of the forensic inquiry would be. I think as I understand the plaintiff --

16 MR. CLOWARD: May I sit down, Your Honor?

17 DISCOVERY COMMISSIONER: Yes. Everybody can have a seat.

18 MR. CLOWARD: Thank you.

19 DISCOVERY COMMISSIONER: I think as I understand the plaintiff, the
20 real concern is do we have all the incident reports or complaints or problems related
21 to this tub and have they been produced.

22 MR. CLOWARD: Correct.

23 DISCOVERY COMMISSIONER: And, defense counsel, I am not faulting
24 you, so I don't want you to take this as a personal affront, but I do think that there is

1 a good faith basis for making the argument that they don't have everything because
2 of how the information was produced, or they may or may not have everything,
3 depending on what's in the computer and how it was stored and who did what to
4 address the issues.

5 MR. CLOWARD: Your Honor, may I just briefly?

6 DISCOVERY COMMISSIONER: Yes.

7 MR. CLOWARD: We never, ever thought that Mr. Cools or his firm -- we
8 have a great relationship, Mr. Cools has always been very, very good to work with,
9 and any intimation at all that we've inferred that it's him or his firm, we have not tried
10 to make that at all because we've never felt that that was the case at all.

11 DISCOVERY COMMISSIONER: That's why I want both sides to put
12 together a proposal.

13 MR. CLOWARD: Sure.

14 DISCOVERY COMMISSIONER: And maybe you can even work together
15 on it. I just want to know -- I mean, I might be willing to let you spend up to \$5,000
16 or 7,500, depending on how extensive the search has to be, to have an independent
17 forensic guy or gal come in and look at the computer and tell us I did these search
18 terms. I think we're going to have to get better search terms and parameters
19 because I think I do agree with defense counsel if we just do slip, fall, elderly,
20 overweight, we're going to have to put some additional parameters in place, and
21 that's what I'd like you to work on.

22 MR. CLOWARD: Okay.

23 DISCOVERY COMMISSIONER: I mean, this tub has to be somehow
24 defined within that subset of categories. Having said that, I was really surprised,

1 I guess, at the number of incidents. I mean, it sounds like it isn't that many, but
2 eleven and the extent of some the injuries and what happened, I'm not saying it's
3 identical to this one, but that's not a reasonable basis for not disclosing.

4 MR. CLOWARD: Yeah.

5 DISCOVERY COMMISSIONER: The truth of the matter is there were
6 problems with this tub and it caused injury. Maybe not in the exact way that the
7 injury occurred here, but there were enough issues that might suggest, hey, we have
8 a problem. So that's what concerns me and until we had the last hearing we didn't
9 have the production of that information.

10 MR. CLOWARD: Yeah. In fairness to counsel, I have spoken to one of the
11 claimants. I found the name of one of the claimants and spoke to the son of that
12 claimant and the information that I received from him was that they provided a whole
13 bunch of information to Jacuzzi, and none of that's been produced. So that's a
14 whole another reason -- you know, that will be information that, you know, we hope
15 to go and depose him so that they have equal access to that information. But I'm
16 not trying to create an issue, I'm not trying to harass them. I have a good faith belief
17 and basis for what I'm trying to pursue, Your Honor.

18 DISCOVERY COMMISSIONER: Well, the products liability cases are
19 complex and they're difficult. And as you point out, the person that has the
20 information is on the defense side.

21 MR. CLOWARD: Yeah.

22 DISCOVERY COMMISSIONER: So you are relying on them to give you
23 this information. And I am concerned, I want to make sure it's all disclosed.
24 Whether or not it ultimately plays a role in terms of supporting or denying liability,

1 I don't know.

2 MR. CLOWARD: Sure.

3 MR. COOLS: Your Honor, if I could just -- the issue that I see, one of the
4 main issues with these requests is that there's kind of a -- I don't know that it's
5 intentional, but there's this false premise that Jacuzzi has made representations
6 about subsequent incidents throughout this litigation. That is just not true. You
7 can see from the meet and confer letter that is attached to my affidavit, you know,
8 Mr. Cloward and I's meet and confer in February of this year in which Jacuzzi
9 had agreed to produce -- to do that search with those terms for prior incidents,
10 not subsequent incidents.

11 So while he can go through the subsequent incidents and say, yeah,
12 these terms show up, but that was never the agreement that that's what we were
13 going to search. And he never -- he never made it apparent to me that that was
14 a sufficient -- he never met and conferred over production of subsequent incidents.
15 So to say that these should have been produced earlier, when the agreement
16 between the parties that we were going to produce prior incidents and the fact that
17 now these subsequent incidents have been produced, there's a big leap there that
18 just isn't warranted.

19 And I understand your desire to make sure that they have all of the
20 information, but, you know, as you see from the list of those terms -- you know, this
21 is a bathtub company. There are -- you know, if you're searching the term tub or
22 slip or a handful of these terms, it's going to, I mean --

23 DISCOVERY COMMISSIONER: We have to somehow define the
24 parameters of the search to the tub at issue or a similar type of tub, but really the

1 products liability case, I guess the design is one of the issues. But it's not just what
2 happened before this event, it's actually, you know, what is relevant to the design
3 of the product that it could also be what occurs after the event.

4 MR. COOLS: Certainly. But the admissibility of those is on a different
5 basis.

6 DISCOVERY COMMISSIONER: Absolutely. I agree with that.

7 MR. COOLS: So my point, Your Honor, is that that's what we did. We
8 searched not only this tub but other walk-in tubs for anything prior to this incident
9 using those search terms and there's nothing related -- no personal injuries related
10 to plaintiff's claim.

11 DISCOVERY COMMISSIONER: Okay.

12 MR. COOLS: So I guess it seems very vague to me to say, you know, do
13 the forensic analysis -- of whose computer? I mean, he lists Mr. Dominguez and
14 Mr. Demeritt. Mr. Dominguez wasn't involved in this. He's a 30(b)(6) designated
15 on other topics and is the Director of Engineering but does not have anything to do
16 with customer complaints. Mr. Demeritt is the Director of Risk Management and a
17 vice-president of Jacuzzi, Inc., but he is not the person that reviewed those. It was
18 counsel. You know, I've seen the spreadsheet that was generated. It was Jacuzzi's
19 internal counsel that actually reviewed the claims.

20 DISCOVERY COMMISSIONER: So in the ordinary course of business,
21 where does the complaint go? If there is a complaint that's made on a tub, I slip
22 and fall in the tub and I get wedged between the door and I can't get out of it
23 because of the way the tub is designed and I get injured, where do I make my
24 complaint?

1 MR. COOLS: Well, the complaints would go into Jacuzzi's call center --

2 DISCOVERY COMMISSIONER: Okay.

3 MR. COOLS: -- and then, you know, stored in whatever particular --

4 DISCOVERY COMMISSIONER: So can we look at one of the computers
5 in the call center? Is there a main computer there that would have -- that somebody
6 could actually look at what's saved in that computer for complaints?

7 MR. COOLS: I can get that information. That is not something that was
8 asked of the 30(b)(6) at his deposition, to explain how those -- the process for those
9 calls or what was done with them when they came in.

10 DISCOVERY COMMISSIONER: So that seems to me a logical place to
11 start if we have to figure out which computers to look at. And it seems to me in the
12 ordinary course of business we're looking at the call-in center computers or whoever
13 is taking the initial claim as part of the ordinary course of business before it gets to
14 the lawyer. The lawyer is a different issue and we'll have to talk about that in a
15 minute. But I think that for now we have to have some way of searching the initial
16 claims that were made or reported to Jacuzzi that were documented in the computer
17 system. Now, it's possible if you go back to that computer system, you, without the
18 assistance of an I.T. person, although I would probably have one do it, just search
19 and find out what's on there. And I think we need to put them in a particular time
20 frame and I think I had actually done that at the last hearing.

21 MR. COOLS: 2008 to the present is what you previously indicated.

22 DISCOVERY COMMISSIONER: Okay. So can we use that time frame
23 and find out in searching the computers in the call center or a call center computer?
24 And again, I don't know how you're linked or your systems are linked, but I would

1 think there would be one main computer, a mainframe or some -- you know --

2 MR. COOLS: At some --

3 DISCOVERY COMMISSIONER: -- some host computer that all of these
4 calls would be saved in or, you know, records would be saved.

5 MR. COOLS: Sure. To the -- and I don't have an exact answer. I know
6 that at some point it was even just paper documents that were kept and then if there
7 was something that warranted opening a claim, then a claim was opened.

8 DISCOVERY COMMISSIONER: Where they scan the paper documents in?

9 MR. COOLS: But I don't know the status. I know that that was part of what
10 was reviewed initially when we did the initial review based on the meet and confer
11 with Mr. Cloward.

12 DISCOVERY COMMISSIONER: How long do they keep the paper
13 documents for?

14 MR. COOLS: I don't -- I mean, obviously they wouldn't have destroyed
15 anything since this litigation, but I don't know what the normal --

16 DISCOVERY COMMISSIONER: Don't know if we can go back to '08?

17 MR. COOLS: Yeah. Right.

18 DISCOVERY COMMISSIONER: Well, see what you have.

19 MR. COOLS: Okay.

20 DISCOVERY COMMISSIONER: And report it to Mr. Cloward so he has
21 a better understanding. For now I'm going to protect Request to Produce No. 17,
22 but with the idea that alternative relief will be provided in that the defendant will
23 work to isolate what computer or computers were used to take complaints over the
24 phone or document complaints as they came in to the company. And we need to

1 do a search of all those complaints from 2008 to the present, to the extent that they
2 exist, and that would include both documents on computers as well as any hard
3 copies that were maintained separately of letters, letter complaints or whatever else
4 you have. I mean, what your client needs to understand, defense counsel, is it's
5 their knowledge that becomes relevant, what they knew about this particular product
6 prior to the fall.

7 MR. COOLS: Right.

8 DISCOVERY COMMISSIONER: And so we don't know the answer to that
9 right now. A lot of what we have, as you indicate, the incidents were after the fall.
10 So we don't know with any certainty exactly what specific knowledge was known
11 before the fall. And I usually have this with me and I don't, when did this fall actually
12 take place? February 14th -- or February 19th of 2014. Okay. So we don't know
13 from like '08 to '14 --

14 MR. COOLS: Well, we've run that. We have searched that and it's
15 Jacuzzi's position that there are none.

16 DISCOVERY COMMISSIONER: Oh, okay.

17 MR. COOLS: So, I mean, that is our representation in discovery responses
18 and to counsel. So I understand that you're saying that that may not be enough,
19 but --

20 DISCOVERY COMMISSIONER: Well, I'm saying I don't know because
21 one of the things -- it may be correct, but I think what is concerning to me is what
22 occurs in the regular course of business. Where does a complaint get filed or
23 made? To whom it gets made, have we searched those computers, those call in
24 or intake computers to make sure that we've gotten all the information off that might

1 be relevant. And that's something that I am going to require the defendant to
2 follow up on.

3 Then when I get to Request No. 24, 25, 41, 42 and 43, which were
4 basically grouped together as well, I think part of the concern was it was overly-
5 broad. I think we need to limit them, those requests to this particular tub, 2008
6 to the present. And I think I had already defined serious bodily injury or wrongful
7 death. I think instead of putting the serious in front of it I'm just going to say bodily
8 injury or wrongful death. I think somebody broke a toe or something.

9 MR. CLOWARD: Yeah.

10 DISCOVERY COMMISSIONER: I mean, I think that's something that
11 would have been or should have been disclosed and it was now disclosed. It's
12 a subsequent accident, though, it's not a previous one.

13 MR. CLOWARD: Sure.

14 DISCOVERY COMMISSIONER: But I think to the extent that somebody
15 had an injury in one of these tubs and/or wrongful death, I think that's your
16 parameter. And the time frame is from 2008 to the present. So with those two
17 conditions in place, I think if you need to you need to supplement Request to
18 Produce 24, 25, 41, 42 and 43.

19 MR. COOLS: To be clear, Your Honor, are you -- I mean, the information
20 about the individuals involved in this, it would be our position that that's private
21 information that should not be disclosed.

22 DISCOVERY COMMISSIONER: If you're making a call-in complaint,
23 I don't think you have any expectation of privacy of your name and your information.
24 I'm happy to put it under a Rule 26(c) protective order.

1 MR. CLOWARD: Sure.

2 DISCOVERY COMMISSIONER: And that way it needs to be protected
3 within the confines of the litigation, but no redaction. That information needs to be
4 disclosed.

5 MR. CLOWARD: So, could we --

6 DISCOVERY COMMISSIONER: If there are 100 people prior to this
7 incident that had injuries in this tub that turn out to be reported in complaints that
8 were not disclosed, Commissioner Bulla is not going to be happy.

9 MR. COOLS: Sure. I understand.

10 DISCOVERY COMMISSIONER: I'm just going to say that so there's no
11 misunderstanding of where I'm coming from.

12 MR. CLOWARD: Could we just get the eleven that have been already
13 produced to be in unredacted form? Because none of those had the forms -- or
14 had the names.

15 DISCOVERY COMMISSIONER: Is that before me in one of the requests
16 today, do you think?

17 MR. CLOWARD: Well, they were -- I would --

18 DISCOVERY COMMISSIONER: They should be unredacted except for
19 Social Security numbers or --

20 MR. CLOWARD: Sure.

21 DISCOVERY COMMISSIONER: You know, the problem is, again, I would
22 put that under a protective order --

23 MR. CLOWARD: And we're happy to do that.

24 DISCOVERY COMMISSIONER: -- so it could not be, you know, put in a

1 public document. It would be maintained privileged and confidential until such time
2 as otherwise ordered by the district court judge. And then I'm fine with unredacted
3 incident reports. Again, I think part of my viewpoint is that somebody making a
4 complaint doesn't have an expectation of privacy.

5 MR. CLOWARD: Sure.

6 DISCOVERY COMMISSIONER: They expect the company to follow up
7 on their complaint.

8 MR. CLOWARD: Okay, thank you.

9 DISCOVERY COMMISSIONER: So, yes, the answer is yes, you may have
10 the unredacted version, except I will allow the defendant to maintain redaction of
11 Social Security numbers --

12 MR. CLOWARD: Certainly.

13 DISCOVERY COMMISSIONER: -- or any other personal identifying
14 information in that regard. But the name and the address and the phone number
15 or anything else should be disclosed to the plaintiff and we'll put it under a 26(c)
16 protective order. And obviously if you feel differently about that, you're welcome to
17 object to the district court judge, but I think that's reasonable because you have to
18 be able to follow up.

19 MR. CLOWARD: Thank you.

20 DISCOVERY COMMISSIONER: All right. So I've dealt with 17, which
21 I'm protecting for now but I'm providing that alternative relief.

22 Requests 24 to 43, some of these requests do have time frames in
23 them. I'll leave those alone. But for the ones that don't, it's 2008 to the present
24 and it's where there is wrongful death or bodily injury. So with those parameters

1 in place, I do expect supplements to the extent there are any.

2 Request to Produce 26, 27 and 36, I understand that similar requests
3 have already been answered. Fortunately we live in the computer era; cut and
4 paste to answer them, even if it's the same answer.

5 Request to Produce No. 39 and 40, I think to me there's not a big
6 difference between post-incident protocols, post-incident root cause analysis and
7 subsequent remedial measures. I mean, I think that's what it is. But to the extent
8 that there's some concern that it might involve lawyer analysis or something to that
9 extent, I would say disclose your subsequent remedial measures on this particular
10 tub.

11 MR. COOLS: Well, there are no subsequent remedial measures in terms
12 of the design. I mean, the design of the tub is the same. The labels, warnings are
13 the same.

14 DISCOVERY COMMISSIONER: Did you all do anything differently? Did
15 you change a warning?

16 MR. COOLS: I don't believe so.

17 MR. CLOWARD: Your Honor --

18 MR. COOLS: But my point was that, you know, subsequent remedial
19 measures are relevant for product liability cases to show feasibility of a change.
20 So, you know --

21 DISCOVERY COMMISSIONER: They can be relevant in negligence cases,
22 too.

23 MR. COOLS: Sure. But there's nothing here that would suggest, you
24 know, that that has any relevance to anything that they did in terms of an analysis

1 afterwards. If it didn't result in a subsequent remedial measure, it hasn't any
2 bearing on the plaintiff's case whatsoever.

3 DISCOVERY COMMISSIONER: Then how would it be privileged?

4 MR. COOLS: It's just not relevant.

5 DISCOVERY COMMISSIONER: It's not relevant that they discussed the
6 incident or they came up with a protocol or --

7 MR. COOLS: If it's not --

8 DISCOVERY COMMISSIONER: -- made some policy change as a result?
9 It could be a policy change. It doesn't even have to be necessarily with the product.
10 It could be a policy change.

11 MR. CLOWARD: And, Your Honor, I didn't mean to cut anyone off earlier.
12 Our understanding is that they actually did implement a 9-1-1 alert system after that
13 nobody else has had. Some of the incident reports, the lady calls in and says, you
14 know, the 9-1-1 alert system that they talked about wouldn't have helped me in this
15 situation because I, you know, fell down. So we do believe that there have been
16 things that have been changed, and we'd like to know in addition to that what else
17 was done.

18 DISCOVERY COMMISSIONER: So why don't we do this. I'm going to
19 protect 39 and 40 right now as written. Can you send out another request for
20 production of documents that deal both with that 9-1-1 alert system as well as --
21 just call it subsequent remedial measures or changes --

22 MR. CLOWARD: Okay.

23 DISCOVERY COMMISSIONER: -- and let him answer those requests for
24 production. I think the problem with some of this is they have in-house counsel,

1 so it's possible that this falls into the realm of attorney-client or work product.

2 MR. CLOWARD: Sure.

3 DISCOVERY COMMISSIONER: And I just -- I don't know the answer to
4 that. But I also think it would be better to try to really focus on what you know,
5 the information you know. So have them produce information on this 9-1-1 new
6 protocol.

7 MR. CLOWARD: You got it, Judge. Thank you.

8 DISCOVERY COMMISSIONER: And re-write or send another request on
9 subsequent remedial measures.

10 MR. CLOWARD: You got it.

11 DISCOVERY COMMISSIONER: Okay. And then on No. 46, these are the
12 photos of the tub. And I know I didn't sanction the party. That's not the question.
13 But what they want is all documents to show any efforts you made to preserve or
14 protect. I'm not sure if you're asking for the records retention policies or what the
15 investigative policies are; what type of photographs have to be taken with the
16 investigative policies. It almost seems to me that 46 could be re-written as a topic
17 area in a 30(b)(6) deposition.

18 MR. CLOWARD: Okay, fair enough.

19 DISCOVERY COMMISSIONER: I think I would do that --

20 MR. CLOWARD: Fair enough, Judge.

21 DISCOVERY COMMISSIONER: -- because I think I know what you're
22 looking for. I think you'll get it more efficiently in a 30(b)(6) deposition.

23 MR. COOLS: Your Honor, they already know that the only photos that
24 we have are those taken by counsel, which was the subject of the previous motion

1 in front of you.

2 DISCOVERY COMMISSIONER: I think they're looking for your policies
3 and procedures on records retention and investigation, but I think that that could be
4 easily formatted in terms of a 30(b)(6) deposition topic. So I think that's -- or if you
5 are really looking for the policies and procedures, Mr. Cloward, can you send out
6 separate requests for production for both of those?

7 MR. CLOWARD: I can rewrite that, Your Honor.

8 DISCOVERY COMMISSIONER: All right. So working our way backwards,
9 then, I think I've dealt with quite a bit of the outstanding discovery. I think what
10 I have not dealt with yet is what deals with the lawyer, and that's Request 11, 12,
11 13, 14, 15 and 16. I think, again, the distinction is what's done in your ordinary
12 course of business versus what is legally related. And to me, all of these really fall
13 into the category of wanting to know what the records retention policies are, what
14 the investigative policies are. I think some of these topics are perfect for a 30(b)(6)
15 deposition.

16 MR. CLOWARD: Yeah. And that was part of the reason what we brought
17 -- that we filed this was that we asked those questions of William Demeritt. We
18 said, hey, you know, what did you do, what kind of documents did you get? And
19 his answer was basically I don't know; I know that it was voluminous but what they
20 contained and what they were, I don't know, I passed them on to Ron Templer.
21 So we did try to inquire through the 30(b)(6) and we did have a topic on that issue,
22 but his response was kind of like I don't know. And so that's why we sent out the
23 additional requests, based on his testimony. And that's why we also set the
24 depositions of the other three folks.

1 MR. COOLS: Your Honor, but that's as to prior incidents, not what you're
2 talking about, what are the policies and procedures. Those questions were not
3 asked. And --

4 DISCOVERY COMMISSIONER: I think what I'd like to do just for now,
5 because I think I understand what the information is that's being desired, but I think
6 it could be done either in a second 30(b)(6) deposition, which I would permit --

7 MR. CLOWARD: Okay.

8 DISCOVERY COMMISSIONER: -- as it relates to policies and procedures
9 of, you know, investigating claims and/or retaining --

10 MR. COOLS: I believe that was already a topic in their deposition that they
11 already took and they just didn't ask those questions.

12 DISCOVERY COMMISSIONER: Well --

13 MR. CLOWARD: Your Honor, we did ask the questions but his response
14 was ultimately I don't know; I gave a voluminous group of documents to Ron
15 Templer.

16 MR. COOLS: That's not about the policies and procedures, that's about
17 what did you discover when you tried to look for prior incidents with these tubs.

18 DISCOVERY COMMISSIONER: So I think what needs to happen is maybe
19 some follow up. I'm going to protect 11, 12, 13, 14, 15 and 16 for now. I've given
20 some alternative relief in that we are already going to check the intake computers,
21 I hope, for the complaints that happened, using some search terms or protocol. But
22 I also think maybe another 30(b)(6) deposition on, you know, what are the policies
23 and procedures for investigating a claim? What do you do? What is your records
24 retention policy? How do you handle that? When information comes in on a claim,

1 what happens to it, where does it go? But I'm really not willing to do more than that.
2 If you want to ask separate requests for production of documents for the records
3 retention policies or the investigation of a claim policies and procedures, that's fine.
4 Send new requests for production on those issues. But right now what my concern
5 is with any communications is it necessarily may involve work product and/or
6 attorney client privilege, as I understand the way these are written. So I'm --

7 MR. COOLS: And we've already produced a privilege log for all prelitigation
8 communications regarding this claim. So the only thing left is specifically, you know,
9 litigation communications.

10 DISCOVERY COMMISSIONER: Okay. So for now I'm going to protect any
11 further response, with the understanding that I am recommending some alternative
12 relief in that we either do a second 30(b)(6) deposition regarding, you know, how is
13 a complaint made, how does it get processed in the ordinary course of business,
14 what do you do? You know, what do you do in terms of an investigation; what are
15 the policies and procedures? What is your records retention policy and procedure?
16 You know, and then you can ask in relation to the photographs in this case if --
17 you know, if that is an issue. But that's what I think needs to happen here.

18 In terms of the depositions that are set currently, I am going to protect
19 the deposition of the corporate counsel, which I believe is --

20 MR. CLOWARD: Ron Templer.

21 DISCOVERY COMMISSIONER: I'm sorry?

22 MR. CLOWARD: Ron Templer.

23 DISCOVERY COMMISSIONER: Ron Templer. Well, who do we have left
24 to depose? Is that -- I'm sorry.

1 MR. COOLS: They depose seven individuals over the next two days. Four
2 of them are prior Jacuzzi employees. I don't know if counsel served them.

3 DISCOVERY COMMISSIONER: Which ones are you moving for protection
4 on? Let me ask that.

5 MR. COOLS: Just the three current employees. Jess Castillo --

6 DISCOVERY COMMISSIONER: Give me their names.

7 MR. COOLS: Jess Castillo, Curt Bachmeyer and Regina Reyes.

8 DISCOVERY COMMISSIONER: Okay. And who's the lawyer?

9 MR. COOLS: Ron Templer is the lawyer.

10 DISCOVERY COMMISSIONER: Okay, so these three are not lawyers.

11 MR. COOLS: They're not.

12 DISCOVERY COMMISSIONER: Why are you moving to protect them?

13 MR. COOLS: Because their involvement in the litigation was only doing the
14 search at the direction of counsel. They don't have any knowledge about the claim,
15 other than what they did for counsel at, you know, my direction, essentially. And
16 so I think it would be a waste of everyone's time to even have these depositions.

17 DISCOVERY COMMISSIONER: So I'm going to grant protection but
18 without prejudice to the plaintiff renewing the deposition request, depending on
19 what we find out in terms of the intake of different claims. And then I think we need
20 to have somebody search -- you know, my thought was to have an independent I.T.
21 person do the searching --

22 MR. CLOWARD: Sure.

23 DISCOVERY COMMISSIONER: -- on the computer and let's wait and
24 see what they find. If they don't find anything else, if this is it, then I don't think the

1 depositions of these three individuals are necessary. If they do find more information,
2 then we'll cross that bridge when we come to it.

3 MR. CLOWARD: Okay. And just, Your Honor, I wanted to explain just
4 briefly why I wanted to depose these folks. We asked Bill Demeritt during the
5 deposition, you know, what was done to search for these documents? And he said
6 Ron Templer instructed me to ask these three folks to search for these things. This
7 person, this person, this person. They all had different -- one was over I.T., one was
8 over warranty and so forth. So they asked for that. Bill Demeritt then got voluminous
9 documents on the search terms and passed those through to Ron Templer. And we
10 asked Bill, well, tell me what the claims were; how many documents. And he had
11 no knowledge at all whatsoever, the 30(b)(6), about those.

12 And so my attempt was to, well, okay, Mr. Demeritt, if you don't have
13 information, if you can't testify about these things, if you're not prepared to testify
14 about these things pursuant to the Rule 30(b)(6) notice, then I'm going to depose the
15 folks that were instructed to do it and ask them what do those documents contain,
16 how many pages were there, how many incidents were there, what were the types
17 of incidents? Because as the Court just said, they have an obligation to testify
18 about those things. If he's unable to testify about those things -- that was the whole
19 purpose of setting that deposition was to get testimony from somebody that does
20 know. His position was I got the stack of stuff; I gave the stack of stuff.

21 DISCOVERY COMMISSIONER: What was the stack of stuff?

22 MR. COOLS: There's a spreadsheet of claims with -- or hits, essentially,
23 with the terms. Most of that with the bathtub company is warranty claims, so
24 involving leaks with the door or something breaking on the faucet.

1 DISCOVERY COMMISSIONER: How many pages?

2 MR. COOLS: And I believe Mr. Demeritt even testified to that.

3 DISCOVERY COMMISSIONER: How many pages is that spreadsheet?

4 MR. COOLS: I don't know, Your Honor.

5 DISCOVERY COMMISSIONER: All right. Can you produce it for in camera
6 inspection, please?

7 MR. COOLS: Sure.

8 DISCOVERY COMMISSIONER: Because I take it that spreadsheet has
9 obviously not been given to plaintiff's counsel.

10 MR. CLOWARD: No, it has not.

11 DISCOVERY COMMISSIONER: But it is a result of the searches that were
12 done by these three individuals?

13 MR. COOLS: Yes. And for the purpose of then determining if there was
14 anything -- any injury claims or any claims related to plaintiff's claims in this case.

15 DISCOVERY COMMISSIONER: So I'm going to grant protection of these
16 depositions for now, Mr. Cloward, but without prejudice to you moving to renew them
17 should it become necessary. Let me review the in camera spreadsheet of all the
18 claims that they did find and see if -- and I have the eleven that have been produced,
19 plus your claim, plus the other subsequent case that apparently is in litigation. So let
20 me take a look at the spreadsheet and see what's on it and then we'll go from there.
21 But I'll go ahead and protect those three depositions for now, but again, without
22 prejudice to the plaintiff renewing to take the depositions should it be necessary.

23 I would like to see what the additional computer searches yield from
24 the computers that take the intake information. I don't know if they're on the same

1 set, I don't know if they're connected. So I don't know if in the prior search they
2 should have shown up anyway. I don't know the answer to those questions. And
3 I also want to make sure you double check to see, if you had any written complaints
4 that came in, where those are because I think that's something that you need to take
5 a look at again with fresh eyes. You know, 2008 to the present, was there a physical
6 injury involved or a wrongful death.

7 MR. CLOWARD: And then did you want us to just get you a quote, I guess,
8 of an independent --

9 DISCOVERY COMMISSIONER: Right.

10 MR. CLOWARD: -- just by a supplement, by a letter? How do you want
11 that information presented?

12 DISCOVERY COMMISSIONER: I think we should do a supplement and
13 file it with the Court and I'll bring you back in a couple of weeks, maybe, and we
14 can take a look at it.

15 MR. CLOWARD: Okay.

16 DISCOVERY COMMISSIONER: I'll give you a couple of weeks. I've got
17 to give the defendant time to supplement some of the answers that I've ordered
18 supplemented.

19 MR. COOLS: We actually haven't even responded to this discovery yet
20 because we --

21 DISCOVERY COMMISSIONER: Okay.

22 MR. COOLS: -- filed the motion as soon as we got the request, so.

23 DISCOVERY COMMISSIONER: Okay. So what I did tell you, I hope you
24 can recall. I don't want to have to go back through all of it. You need to supplement

1 -- I think the ones that are just duplicative you just need to supplement those, even if
2 you give the same answers. I'm protecting the three depositions for now. I'm going
3 to look at your spreadsheet in camera. I'm protecting Request to Produce 11, 12,
4 13, 14, 15 and 16 for now. And then, again, I'm going to look at the in camera on
5 the spreadsheets.

6 We're also going to get a quote on what it's going to take -- and
7 defendant's counsel, you'll need to get one as well for somebody to go through
8 whatever the intake computers are -- and again, I don't know if the whole system
9 is networked or if they're separate -- to do a computer search with terms that make
10 sense. I think the terms that were given are a little bit concerning, but maybe you
11 all can work together to try to provide some better parameters. I think they're okay.
12 I just think we've got to deal with the tub or a similar design tub at issue.

13 Request to Produce No. 17, again, I'm protecting that for now but
14 we've got the alternative relief in searching the computers where initial complaints
15 would have been documented. For No. 24, 25, 41, 42 and 43, you need to answer
16 those with the parameters of if there is not a date given in the request, it's from 2008
17 to the present. Any of the requests that involve wrongful death or serious bodily --
18 not serious, must bodily injury. Bodily injury; wrongful death.

19 Request 26, 27 and 36, you need to answer, even if it's duplicative.
20 39 and 40 are going to be rewritten to ask for the policies and procedures and
21 subsequent remedial measures. And Request No. 46 is going to possibly be placed
22 in a separate 30(b)(6) deposition; a second one which I will allow as alternative
23 relief, and/or another request for production of documents that deal with the policies
24 and procedures at issue. And I think I've covered everything, I hope.