

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 01:34 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 5 TO PETITION FOR WRIT OF MANDAMUS

Philip Goodhart
Nevada Bar No. 5332
Meghan M. Goodwin
Nevada Bar No. 11974
THORNDAL ARMSTRONG DELK
BALKENBUSH & EISINGER
1100 East Bridger Avenue
Las Vegas, NV 89101-5315
Mail To:
P.O. Box 2070
Las Vegas, NV 89125-2070
Tel.: (702) 366-0622
png@thorndal.com
mmg@thorndal.com

*Attorneys for Petitioner, firstSTREET For Boomers & Beyond, Inc.; AITHR
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
--	------------	-----------------

DATED this 16th day of August, 2021.

THORNDAL ARMSTRONG DELK
BALKENBUSH & EISINGER



PHILIP GOODHART, ESQ. (#5332)
MEGHAN M. GOODWIN, ESQ. (#11974)
1100 East Bridger Avenue
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 5 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.

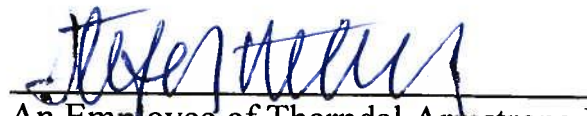
Benjamin P. Cloward, NV Bar No. 11087
RICHARD HARRIS LAW FIRM
801 S. Fourth Street
Las Vegas, NV 89101
(702) 444-4444
Benjamin@RichardHarrisLaw.com
catherine@richardharrislaw.com
Attorneys for Plaintiffs

Graham Reese Scofield, Esq., *Admitted Pro Hac Vice*
CHARLES ALLEN LAW FIRM
3575 Piedmont Road NE
Building 15, Suite L-130

Atlanta, GA 30305
(404) 419-6674
graham@charlesallenlawfirm.com
Attorneys for Plaintiff Robert Ansara

D. Lee Roberts, Jr., NV Bar No. 8877
Brittany M. Llewellyn, NV Bar No 13527
Johnathan T. Krawcheck, *Admitted Pro Hac Vice*
WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC
6385 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
(702) 938-3838
lroberts@wwhgd.com
bllewellyn@wwhgd.com
jkrawcheck@wwhgd.com
Attorneys for Defendant Jacuzzi Inc. dba
Jacuzzi Luxury Bath

Daniel F. Polsenberg, Esq.
Joel D. Henriod, Esq.
Abraham G. Smith, Esq.
LEWIS ROCA ROTHGERBER CHRISTIE LLP
3993 Howard Hughes Pkwy, Suite 600
Las Vegas, NV
(702) 949-8200
DPolsenberg@LRRC.com
JHenriod@LRRC.com
ASmith@LRRC.com
Attorneys for Defendant Jacuzzi Inc. dba
Jacuzzi Luxury Bath


An Employee of Thorndal Armstrong Delk
Balkenbush & Eisinger

1 MR. CLOWARD: I think so.

2 MR. COOLS: Can I just clarify something in regards to something like 43?
3 All documents relating to complaints made to you about your walk-in tubs from
4 January 1, 2012 to the present.

5 DISCOVERY COMMISSIONER: I don't have 43 on my list.

6 MR. COOLS: Okay. It's in the 24 through 25 and then 41 through 43.

7 DISCOVERY COMMISSIONER: Okay, got it.

8 MR. COOLS: My question is obviously, you know, that could also pertain
9 to internal communications via email about that. Are you requiring us to also do an
10 ESI search and privilege log for all privileged communications about those claims
11 as well?

12 DISCOVERY COMMISSIONER: Ordinary course of business is what I'm
13 talking about.

14 MR. COOLS: Okay.

15 DISCOVERY COMMISSIONER: Okay? To the extent that the complaint
16 gets passed on to the lawyer and the lawyer is making opinions about it, I would
17 say you need to do a privilege log.

18 MR. COOLS: That's just extremely costly and burdensome to have to go
19 through and do --

20 DISCOVERY COMMISSIONER: Okay, but we're limiting it to the time
21 frame, and this one is January 1st of 2012 and it deals with wrongful death or bodily
22 injury. So it wouldn't involve any of the warranties, it wouldn't involve anything
23 where there's no injury. How many claims could you possibly have?

24 MR. COOLS: I'm just saying even doing the search based off of the ten

1 or eleven claims, subsequent claims that have been produced, having to go through
2 and find all the custodians that may have touched that claim do a search, have
3 counsel review for privilege, those are just very burdensome and costly endeavors.
4 If that's part of your ruling, I understand.

5 DISCOVERY COMMISSIONER: Well, I don't want this to be overly
6 burdensome and costly for the defendant, but you cannot hide behind a privilege
7 not to produce documents that were in the ordinary course of business. And when
8 you say something like that, it worries me.

9 MR. COOLS: I don't know that -- frankly, Your Honor, I don't know that
10 any exist. I'm just saying I'm sure there's emails about it. So, you know, if a claim
11 came in and it's escalated or whatever --

12 DISCOVERY COMMISSIONER: Well, then I think you just need to
13 identify --

14 MR. COOLS: I mean, these aren't about our claim, so we're getting into
15 a granular level on these other claims that --

16 DISCOVERY COMMISSIONER: All documents related to complaints
17 made to you about your walk-in tubs from January 1st, 2012 to the present. The
18 complaints have to be about wrongful death or bodily injury. So any warranty
19 claims, any non-injury claims are not part of this production. Documents that are
20 produced or prepared in the ordinary course of business have to be produced. If
21 some point the claim goes to the legal department, you just need to identify the fact
22 that any other documents are part of the legal -- it went to legal and are covered by
23 work product privilege or whatever it is. I mean, I don't know how many we're talking
24 about. I don't expect you to do this for every warranty claim.

1 MR. COOLS: I guess is it possible to -- you know, since we've already
2 given, for instance, the subsequent incident claims, is it possible to have plaintiff
3 identify which ones they're arguing are substantially similar, which is the criteria
4 for any admissibility of subsequent claims, and then have us drill down on those
5 particular claims versus, you know any claims? And I use that one as an example,
6 but, you know, even like Request No. 24, which would involve prior and subsequent.

7 DISCOVERY COMMISSIONER: I don't know the answer because I don't
8 know the scope of the information we're dealing with. So what I think you need to
9 do is a little bit of research and tell me exactly what we're dealing with. In terms
10 of the other information on the eleven claims, Mr. Cloward, take a look, find out
11 which claims you want information on. I wouldn't ask for information on all eleven
12 because I don't think that's really that exciting. All of them are not that exciting for
13 you. But I think you can, you know, pare down what you need.

14 MR. CLOWARD: Okay.

15 MR. COOLS: Thank you, Your Honor.

16 DISCOVERY COMMISSIONER: All right. I really can't do any more today.

17 MR. CLOWARD: Thank you, Judge.

18 DISCOVERY COMMISSIONER: So the motion to compel -- or the motion
19 for a protective order, I'm sorry, is granted in part and denied in part within the
20 parameters discussed. If you start -- defense counsel, if you start looking at things
21 and it's going to be overly burdensome or difficult, then have a conference call with
22 me with plaintiff's counsel and we'll figure out a plan.

23 MR. COOLS: And can we also, if we're unable to -- hopefully we can come
24 to agreement regarding which computers are searched and so forth, but if we're not,

1 can we have a call with you?

2 DISCOVERY COMMISSIONER: Have a conference call with me.

3 MR. COOLS: Okay.

4 DISCOVERY COMMISSIONER: And I do want you to both get bids. I want
5 to keep the cost of it down and make it reasonable. So I think we need to see what
6 we're dealing with. And it could be, defense counsel, that you can have your
7 company run a search. I just don't know. Again, you know, is this call center
8 separate and apart? What about the 9-1-1 call center, did you search the complaints
9 or the calls that came in on that? I know it was enacted after this incident, but did
10 you search for whether or not complaints or calls came in on that?

11 MR. COOLS: I'm not familiar with that product, so I don't know.

12 DISCOVERY COMMISSIONER: So, plaintiff's counsel said that was a
13 product that was implemented by your company, but you're not familiar with it?

14 MR. COOLS: No.

15 DISCOVERY COMMISSIONER: Then you'll need to follow up with your
16 company to see what that was and if there are any claims that came in, how can
17 you search for those.

18 Plaintiff's counsel, I need you to prepare my Report and
19 Recommendation, please, and run it by defense counsel --

20 MR. CLOWARD: You got it.

21 DISCOVERY COMMISSIONER: -- to approve as to form and content,
22 and I need it in ten days.

23 MR. CLOWARD: You got it. I'm going to request a copy of the transcript.

24 DISCOVERY COMMISSIONER: That's fine. Thank you very much.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24

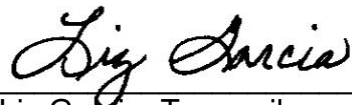
MR. CLOWARD: Thank you, Judge.

MR. COOLS: Thank you, Your Honor.

(PROCEEDINGS CONCLUDED 10:49 A.M.)

* * * * *

ATTEST: I do hereby certify that I have truly and correctly transcribed the audio/video proceedings in the above-entitled case to the best of my ability.



Liz Garcia, Transcriber
LGM Transcription Service



**THORNDAL
ARMSTRONG**
DELK BALKENBUSH & EISINGER

A PROFESSIONAL CORPORATION

ATTORNEYS
www.thorndal.com

EXHIBIT 17

1 **RSPN**

2 PHILIP GOODHART, ESQ.

3 Nevada Bar No. 5332

4 MICHAEL C. HETHEY, ESQ.

5 Nevada Bar No. 5668

6 MEGHAN M. GOODWIN, ESQ.

7 Nevada Bar No. 11974

8 THORNDAL ARMSTRONG DELK

9 BALKENBUSH & EISINGER

10 Mailing Address: PO Box 2070

11 Las Vegas, Nevada 89125-2070

12 1100 East Bridger Avenue

13 Las Vegas, NV 89101-5315

14 Mail To:

15 P.O. Box 2070

16 Las Vegas, NV 89125-2070

17 Tel.: (702) 366-0622

18 Fax: (702) 366-0327

19 png@thorndal.com

20 mch@thorndal.com

21 mmg@thorndal.com

22 Attorneys for Defendants/Cross-

23 Defendants, FIRSTSTREET FOR

24 BOOMERS AND BEYOND, INC.,

25 AITHR DEALER, INC., and HALE BENTON

26 **DISTRICT COURT**

27 **CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

FIRST STREET FOR BOOMERS & BEYOND,
INC.; AITHR DEALER, INC.; HALE
BENTON, Individually; HOMECCLICK, LLC;
JACUZZI INC., doing business as JACUZZI
LUXURY BATH; BESTWAY BUILDING &
REMODELING, INC.; WILLIAM BUDD,
Individually and as BUDDS PLUMBING; DOES
1 through 20; ROE CORPORATIONS 1

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

**DEFENDANT, FIRSTSTREET FOR
BOOMERS AND BEYOND, INC.'S
RESPONSE TO PLAINTIFF
ROBERT ANSARA'S FIFTH SET OF
REQUESTS FOR PRODUCTION OF
DOCUMENTS**

1 through 20; DOE EMPLOYEES 1 through 20;
2 DOE MANUFACTURERS 1 through 20; DOE
3 20 INSTALLERS 1 through 20; DOE
4 CONTRACTORS 1 through 20; and DOE 21
5 SUBCONTRACTORS 1 through 20, inclusive,

6 Defendants.

7 HOMECLICK, LLC,

8 Cross-Plaintiff,

9 vs.

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

17 Cross-Defendants.

18 HOMECLICK, LLC, a New Jersey limited
19 liability company,

20 Third-Party Plaintiff,

21 vs.

22 CHICAGO FAUCETS, an unknown entity,

23 Third-Party Defendant.

24 BESTWAY BUILDING & REMODELING,
25 INC.,

26 Cross-Claimant,

27 vs.

28 FIRST STREET FOR BOOMERS & BEYOND,
INC.; AITHER DEALER, INC.; HALE

1 BENTON, individually; HOMECLICK, LLC;
2 JACUZZI LUXURY BATH, dba JACUZZI
3 INC.; WILLIAM BUDD, individually and as
4 BUDD'S PLUMBING; ROES I through X,

5 Cross-Defendants.

6 WILLIAM BUDD, individually and as BUDDS
7 PLUMBING,

8 Cross-Claimants,

9 vs.

10 FIRST STREET FOR BOOMERS & BEYOND,
11 INC.; AITHR DEALER, INC.; HALE
12 BENTON, individually; HOMECLICK, LLC;
13 JACUZZI INC., doing business as JACUZZI
14 LUXURY BATH; BESTWAY BUILDING &
15 REMODELING, INC.; DOES 1 through 20;
16 ROE CORPORATIONS 1 through 20; DOE
17 EMPLOYEES 1 through 20; DOE
18 MANUFACTURERS 1 through 20; DOE 20
19 INSTALLERS, 1 through 20; DOE
20 CONTRACTORS 1 through 20; and DOE 21
21 SUBCONTRACTORS 1 through 20, inclusive,

22 Cross-Defendants.

23 FIRSTSTREET FOR BOOMERS & BEYOND,
24 INC.; and AITHR DEALER, INC.,

25 Cross-Claimants,

26 v.

27 HOMECLICK, LLC; CHICAGO FAUCETS;
28 and WILLIAM BUDD, individually and as
BUDD'S PLUMBING,

Cross-Defendants.

1 **DEFENDANT, FIRSTSTREET FOR BOOMERS AND BEYOND, INC.'S RESPONSE**
2 **TO PLAINTIFF ROBERT ANSARA'S FIFTH SET OF REQUESTS FOR**
3 **PRODUCTION OF DOCUMENTS**

4 TO: ROBERT ANSARA, Plaintiff; and

5 TO: RICHARD HARRIS LAW FIRM, attorneys for Plaintiff:

6 COMES NOW Defendant, FIRSTSTREET FOR BOOMERS AND BEYOND, INC., by
7 and through its attorneys, the law firm of THORNDAL ARMSTRONG DELK BALKENBUSH
8 & EISINGER, and hereby responds to Plaintiff's Fifth Set of Requests for Production of
9 Documents as follows:

10 **REQUEST NO.:**

11 95. Defendant firstSTREET's NRCP 30(b)(6) witness, Dave Modena, testified at his
12 deposition that he was aware of customer complaints or concerns regarding the slipperiness of
13 certain Jacuzzi walk-in tubs. See generally, Deposition of Dave Modena – Vol. I, pp.40-59,
14 December 11, 2018. Mr. Modena testified that there were e-mails exchanged between Jacuzzi and
15 AITHR/firstSTREET relating to customer complaints regarding the slipperiness of the tub. See
16 Deposition of Dave Modena – Vol. I, 47:1-51:1, December 11, 2018. Please produce all
17 communications between You and AITHR, Jacuzzi, or any dealer relating to customer complaints
18 or concerns about the slipperiness of any Jacuzzi walk-in tubs. This request seeks information
19 relating to the slipperiness of the walk-in tub surface, whether the floor or the seat.

20 **RESPONSE:** All documents responsive to this request that Defendant firstSTREET has been
21 able to locate have previously been produced as part of Defendant firstSTREET's NRCP 16.1
22 Early Case Conference Production and all Supplements thereto.

23 96. Defendant firstSTREET's NRCP NRCP 30(b)(6) witness, Dave Modena, testified
24 at his deposition that he was aware of customer complaints or concerns regarding the slipperiness
25 of certain Jacuzzi walk-in tubs. See generally, Deposition of Dave Modena – Vol. I, pp.40-59,
26 December 11, 2018. Mr. Modena testified that there were e-mails exchanged between Jacuzzi and
27 AITHR/firstSTREET relating to customer complaints regarding the slipperiness of the tub. See
28 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,

1 regarding the slipperiness of any Jacuzzi walk-in tubs from 2008 to present. This request seeks such
2 communications regardless of the method communication (e.g., direct communications from the
3 user, or indirect communications from some customer service management company, marketing
4 company, dealer, salesperson, or any other source.). This request seeks information relating to the
5 slipperiness of the walk-in tub surface, whether the floor or the seat.

6 **RESPONSE:** All documents responsive to this request that Defendant firstSTREET has been
7 able to locate have previously been produced as part of Defendant firstSTREET's NRCP 16.1
8 Early Case Conference Production and all Supplements thereto.

9 97. Please produce all communications between You and AITHR, Jacuzzi, or any
10 dealer relating to the decision to provide, sell, or otherwise making available the product referred to
11 as "Kahuna Grip" by Dave Modena during his December 11, 208 deposition.

12 **RESPONSE:** All documents responsive to this request that Defendant firstSTREET has been
13 able to locate have previously been produced as part of Defendant firstSTREET's NRCP 16.1
14 Early Case Conference Production and all Supplements thereto.

15 98. Please produce all communications between You and a customer or end-user (or
16 family member, friend, counsel, agent, representative, or any other person acting on behalf of a
17 customer or end-user) of a Jacuzzi walk-in tub relating to the decision to provide, sell, or otherwise
18 making available the product referred to as "Kahuna Grip" by Dave Modena during his December
19 11, 2018 deposition.

20 **RESPONSE:** All documents responsive to this request that Defendant firstSTREET has been
21 able to locate have previously been produced as part of Defendant firstSTREET's NRCP 16.1
22 Early Case Conference Production and all Supplements thereto.

23 99. Produce all communications between You and Jacuzzi, AITHR, or any dealer
24 pertaining to the decision to provide, sell, or otherwise making available any products other than
25 Kahuna Grip which were intended to decrease the likelihood of physical injury or bodily harm
26 arising from the use of a Jacuzzi walk-in tub.

27 **RESPONSE:** All documents responsive to this request that Defendant firstSTREET has been
28 able to locate have previously been produced as part of Defendant firstSTREET's NRCP 16.1

1 Early Case Conference Production and all Supplements thereto.

2 100. Please produce all communications You have received, directly or indirectly, from a
3 customer or end-user (or family member, friend, counsel, agent, representative, or any other person
4 acting on behalf of a customer or end-user) of a Jacuzzi walk-in tub regarding the slipperiness of
5 the tub's seat and Your responses thereto. This request seeks such information regardless of the
6 method You became aware of the communication (e.g., directly from the user, indirectly from
7 some customer service management company, from a marketing company, a dealer, a salesperson,
8 or any other source).

9 **RESPONSE:** All documents responsive to this request that Defendant firstSTREET has been
10 able to locate have previously been produced as part of Defendant firstSTREET's NRCP 16.1
11 Early Case Conference Production and all Supplements thereto.

12 101. Please produce all documents relating to communications You have received,
13 directly or indirectly, from a customer or end-user (or family member, friend, counsel, agent,
14 representative, or any other person acting on behalf of a customer or end-user) of a Jacuzzi walk-in
15 tub regarding the slipperiness of the tub's seat and Your responses thereto. This request seeks such
16 information regardless of the method You became aware of the communication (e.g., directly from
17 the user, indirectly from a customer service management company, from a marketing company, a
18 dealer, a salesperson, or any other source).

19 **RESPONSE:** All documents responsive to this request that Defendant firstSTREET has been
20 able to locate have previously been produced as part of Defendant firstSTREET's NRCP 16.1
21 Early Case Conference Production and all Supplements thereto.

22 102. Please produce all Documents You created in the ordinary course of business which
23 arose out of You becoming aware of any customer or end-user (or family member, friend, counsel,
24 agent, representative, or any other person acting on behalf of a customer or end-user) concern or
25 complaint regarding the slipperiness of a Jacuzzi Walk-In tub's seat.

26 **RESPONSE:** All documents responsive to this request that Defendant firstSTREET has been
27 able to locate have previously been produced as part of Defendant firstSTREET's NRCP 16.1
28 Early Case Conference Production and all Supplements thereto.

1 103. Please produce all documents pertaining to a customer or end-user (or family
2 member, friend, counsel, agent, representative, or any other person acting on behalf of a customer
3 or end-user) slipping off of the seat (or allegedly slipping off of the seat) of a Jacuzzi walk-in tub
4 from 2008 to present.

5 **RESPONSE:** All documents responsive to this request that Defendant firstSTREET has been
6 able to locate have previously been produced as part of Defendant firstSTREET's NRCP 16.1
7 Early Case Conference Production and all Supplements thereto.

8 104. Please produce all communications You have received, directly or indirectly, from a
9 customer or end-user (or family member, friend, counsel, agent, representative, or any other person
10 acting on behalf of a customer or end-user) of a Jacuzzi walk-in tub regarding the slipperiness of
11 the tub's floor and Your responses thereto. This request seeks such information regardless of the
12 method You became aware of the communication (e.g., directly from the user, indirectly from
13 some customer service management company, from a marketing company, a dealer, a salesperson,
14 or any other source).

15 **RESPONSE:** All documents responsive to this request that Defendant firstSTREET has been
16 able to locate have previously been produced as part of Defendant firstSTREET's NRCP 16.1
17 Early Case Conference Production and all Supplements thereto.

18 105. Please produce all documents relating to communications You have received,
19 directly or indirectly, from a customer or end-user (or family member, friend, counsel, agent,
20 representative, or any other person acting on behalf of a customer or end-user) of a Jacuzzi walk-in
21 tub regarding the slipperiness of the tub's floor and Your responses thereto. This request seeks
22 such information regardless of the method You became aware of the communication (e.g., directly
23 from the user, indirectly from some customer service management company, from a marketing
24 company, a dealer, a salesperson, or any other source).

25 **RESPONSE:** All documents responsive to this request that Defendant firstSTREET has been
26 able to locate have previously been produced as part of Defendant firstSTREET's NRCP 16.1
27 Early Case Conference Production and all Supplements thereto.

28 / / /

1 106. Please produce all Documents You created in the ordinary course of business which
2 arose out of You becoming aware of any customer or end-user (or family member, friend, counsel,
3 agent, representative, or any other person acting on behalf of a customer or end-user) concern or
4 complaint regarding the slipperiness of a Jacuzzi Walk-In tub's floor.

5 **RESPONSE:** All documents responsive to this request that Defendant firstSTREET has been
6 able to locate have previously been produced as part of Defendant firstSTREET's NRCP 16.1
7 Early Case Conference Production and all Supplements thereto.

8 107. Please produce all documents pertaining to a customer or end-user slipping on the
9 floor (or allegedly slipping on the floor) of a Jacuzzi walk-in tub from 2008 to present.

10 **RESPONSE:** All documents responsive to this request that Defendant firstSTREET has been
11 able to locate have previously been produced as part of Defendant firstSTREET's NRCP 16.1
12 Early Case Conference Production and all Supplements thereto.

13 108. Please produce all communications You received, directly or indirectly, from a
14 customer or end-user (or family member, friend, counsel, agent, representative, or any other person
15 acting on behalf of a customer or end-user) of a Jacuzzi walk-in tub regarding concerns or
16 complaint relating to any actual or potential issues pertaining the ingress and egress of the tub; and
17 Your responses thereto. This request seeks such information regardless of the method You became
18 aware of the communication (e.g., directly from the user, indirectly from some customer service
19 management company, from a marketing company, a dealer, a salesperson, or any other source).

20 **RESPONSE:** All documents responsive to this request that Defendant firstSTREET has been
21 able to locate have previously been produced as part of Defendant firstSTREET's NRCP 16.1
22 Early Case Conference Production and all Supplements thereto.

23 109. Please produce all documents relating to communications You have received,
24 directly or indirectly, from a customer or end-user (or family member, friend, counsel, agent,
25 representative, or any other person acting on behalf of a customer or end-user) of a Jacuzzi walk-in
26 tub regarding concerns or complaints about any actual or potential risks pertaining to ingress or
27 egress issues of the tub and Your responses thereto. This request seeks such information regardless
28 of the method You became aware of the communication (e.g., directly from the user, indirectly

1 from a customer service management company, from a marketing company, a dealer, a salesperson,
2 or any other source).

3 **RESPONSE:** All documents responsive to this request that Defendant firstSTREET has been
4 able to locate have previously been produced as part of Defendant firstSTREET's NRCP 16.1
5 Early Case Conference Production and all Supplements thereto.

6 110. Please produce all Documents You created in the ordinary course of business which
7 arose out of You becoming aware of any customer or end-user concern or complaint about any
8 actual or potential risks pertaining to ingress or egress issues of the tub.

9 **RESPONSE:** All documents responsive to this request that Defendant firstSTREET has been
10 able to locate have previously been produced as part of Defendant firstSTREET's NRCP 16.1
11 Early Case Conference Production and all Supplements thereto.

12 111. Please produce all documents pertaining to a customer or end-use of a Jacuzzi walk-
13 in tub getting stuck (or allegedly getting stuck) in a Jacuzzi walk-in tub from 2008 to present.

14 **RESPONSE:** All documents responsive to this request that Defendant firstSTREET has been
15 able to locate have previously been produced as part of Defendant firstSTREET's NRCP 16.1
16 Early Case Conference Production and all Supplements thereto.

17 112. Please produce all communications You have received, directly or indirectly, from a
18 customer or end-user (or family member, friend, counsel, agent, representative, or any other person
19 acting on behalf of a customer or end-user) of a Jacuzzi walk-in tub regarding the placement of the
20 tubs grab-bars and Your responses thereto. This request seeks such information regardless of the
21 method You became aware of the communication (e.g., directly from the user, indirectly from
22 some customer service management company, from a marketing company, a dealer, a salesperson,
23 or any other source).

24 **RESPONSE:** All documents responsive to this request that Defendant firstSTREET has been
25 able to locate have previously been produced as part of Defendant firstSTREET's NRCP 16.1
26 Early Case Conference Production and all Supplements thereto.

27 / / /

28 / / /

1 113. Please produce all documents relating to communications You have received,
2 directly or indirectly, from a customer or end-user (or family member, friend, counsel, agent,
3 representative, or any other person acting on behalf of a customer or end-user) of a Jacuzzi walk-in
4 tub regarding the placement of the tub's grab-bars and Your responses thereto. This request seeks
5 such information regardless of the method You became aware of the communication (e.g., directly
6 from the user, indirectly from a customer service management company, from a marketing
7 company, a dealer, a salesperson, or any other source).

8 **RESPONSE:** All documents responsive to this request that Defendant firstSTREET has been
9 able to locate have previously been produced as part of Defendant firstSTREET's NRCP 16.1
10 Early Case Conference Production and all Supplements thereto.

11 114. Please produce all Documents You created in the ordinary course of business which
12 arose out of You becoming aware of any customer or end-user concern or complaint regarding the
13 placement of a Jacuzzi Walk-In tub's grab-bars.

14 **RESPONSE:** All documents responsive to this request that Defendant firstSTREET has been
15 able to locate have previously been produced as part of Defendant firstSTREET's NRCP 16.1
16 Early Case Conference Production and all Supplements thereto.

17 115. Please produce all documents pertaining to a customer or end-user of a Jacuzzi
18 walk-in tub being unable to reach a grab bar (or allegedly being unable to reach a grab bar) in a
19 Jacuzzi walk-in tub from 2008 to present.

20 **RESPONSE:** All documents responsive to this request that Defendant firstSTREET has been
21 able to locate have previously been produced as part of Defendant firstSTREET's NRCP 16.1
22 Early Case Conference Production and all Supplements thereto.

23 116. Any documents You made in the ordinary course of business in response to, or
24 which arose out of, any customer or end-user contending or alleging that a Jacuzzi Walk-In tub was
25 defective (or somehow did not meet the user's expectations) due to the slipperiness of the tub
26 surface (whether the floor or seat).

27 / / /

28 / / /

1 **RESPONSE:** All documents responsive to this request that Defendant firstSTREET has been
2 able to locate have previously been produced as part of Defendant firstSTREET's NRCP 16.1
3 Early Case Conference Production and all Supplements thereto.

4 117. Any documents You made in the ordinary course of business in response to, or
5 which arose out of, any customer or end-user contending or alleging that a Jacuzzi Walk-In tub was
6 defective (or somehow did not meet the user's expectations) in any way the customer or end user's
7 ability to ingress or egress in or out of the tub.

8 **RESPONSE:** All documents responsive to this request that Defendant firstSTREET has been
9 able to locate have previously been produced as part of Defendant firstSTREET's NRCP 16.1
10 Early Case Conference Production and all Supplements thereto.

11 118. Any documents You made in the ordinary course of business in response to, or
12 which arose out of, any customer or end-user contending or alleging that a Jacuzzi Walk-In tub
13 presented an unexpected a risk of bodily injury or physical harm.

14 **RESPONSE:** All documents responsive to this request that Defendant firstSTREET has been
15 able to locate have previously been produced as part of Defendant firstSTREET's NRCP 16.1
16 Early Case Conference Production and all Supplements thereto.

17 119. Produce all communications You received, directly or indirectly, from any customer
18 or end-user (or family member, friend, counsel, agent, representative, or any other person acting on
19 behalf of a customer or end-user) of a Jacuzzi Walk-In bathtub in which the customer or end-user
20 contends, alleges, or states a concern that a Jacuzzi Walk-In tub was presented any type of risk of
21 bodily injury or physical harm.

22 **RESPONSE:** All documents responsive to this request that Defendant firstSTREET has been
23 able to locate have previously been produced as part of Defendant firstSTREET's NRCP 16.1
24 Early Case Conference Production and all Supplements thereto.

25 120. Produce all communications You received, directly or indirectly, from any customer
26 or end-user (or family member, friend, counsel, agent, representative, or any other person acting on
27 behalf of a customer or end-user) of a Jacuzzi Walk-In bathtub in which the customer or end-user
28 contends that a Jacuzzi walk-in tub did not meet the user's expectations due to concerns regarding

1 a risk of bodily injury or physical harm.

2 **RESPONSE:** All documents responsive to this request that Defendant firstSTREET has been
3 able to locate have previously been produced as part of Defendant firstSTREET's NRCP 16.1
4 Early Case Conference Production and all Supplements thereto.

5 121. Please produce all communications between You and Audrey Martinez of Jacuzzi,
6 Inc. regarding any complaint, allegation, or concern from a customer or user (or family member,
7 friend, representative, or agent communicating on behalf of a customer or end-user) of a Jacuzzi
8 Walk-In bathtub that a Jacuzzi Walk-In bathtub presented any actual or possible risk that did cause,
9 or could cause, bodily injury or physical harm.

10 **RESPONSE:** All documents responsive to this request that Defendant firstSTREET has been
11 able to locate have previously been produced as part of Defendant firstSTREET's NRCP 16.1
12 Early Case Conference Production and all Supplements thereto.

13 122. Please produce all communications between You and Jacuzzi, Inc. regarding any
14 complaint, allegation, or concern from a customer or user (or family member, friend,
15 representative, or agent communicating on behalf of a customer or end-user) of a Jacuzzi Walk-In
16 bathtub that a Jacuzzi Walk-In bathtub presented any actual or possible risk that did cause, or could
17 cause, bodily injury or physical harm.

18 **RESPONSE:** All documents responsive to this request that Defendant firstSTREET has been
19 able to locate have previously been produced as part of Defendant firstSTREET's NRCP 16.1
20 Early Case Conference Production and all Supplements thereto.

21 123. Please produce all communications between You and AITHR or any other dealer
22 regarding any complaint, allegation, or concern from a customer or user (or family member, friend,
23 representative, or agent communicating on behalf of a customer or end-user) of a Jacuzzi Walk-In
24 bathtub that a Jacuzzi Walk-In bathtub presented any actual or possible risk that did cause, or could
25 cause, bodily injury or physical harm.

26 **RESPONSE:** All documents responsive to this request that Defendant firstSTREET has been
27 able to locate have previously been produced as part of Defendant firstSTREET's NRCP 16.1
28 Early Case Conference Production and all Supplements thereto.

1 124. Please produce all Documents, informational brochures, pamphlets, marketing
2 materials, guides, instructions, manuals, warnings, or any other similar document which was given
3 to any customer or end-user regarding the 9-1-1 system – regardless of whether such 9-1-1 system
4 is a Jacuzzi product.

5 **RESPONSE:** Defendant firstSTREET did not advertise or promote the use of a 9-1-1 system as
6 part of the sale of the Jacuzzi Walk-In-Tub. Rather, the 9-1-1 system was a “gift” or “bonus” to
7 customers that purchased the Jacuzzi Walk-In-Tub during a certain time period (July 2014 through
8 October 2015) and was reflected in various print ads wherein the potential customer was told “Ask
9 how you can get a FREE \$200 gift. Attached as Exhibit A is a sample print ad with the \$200 gift,
10 which during the relevant time period would have been the 9-1-1 system. All documents responsive
11 to this request will be produced.

12 125. Please produce any communications between You and any dealer relating to any
13 dealer’s sales methods, procedures, or policies related to the marketing and sales of Jacuzzi Walk-In
14 tubs to customers or end-users.

15 **RESPONSE:** All documents responsive to this request that Defendant firstSTREET has been
16 able to locate have previously been produced as part of Defendant firstSTREET’s NRCP 16.1
17 Early Case Conference Production and all Supplements thereto.

18 126. Please produce any communications between You and any dealer relating to any
19 dealer’s sales methods pertaining to the marketing and sales of Jacuzzi Walk-In tubs to customers
20 or end-users.

21 **RESPONSE:** All documents responsive to this request that Defendant firstSTREET has been
22 able to locate have previously been produced as part of Defendant firstSTREET’s NRCP 16.1
23 Early Case Conference Production and all Supplements thereto.

24 127. Please produce any communications between You and any dealer relating to any
25 dealer’s sales methods pertaining the marketing and sales of Jacuzzi Walk-In tubs to customers or
26 end-users.

27 **RESPONSE:** All documents responsive to this request that Defendant firstSTREET has been
28 able to locate have previously been produced.

1 128. Please produce any communications between You and Jacuzzi or any dealer relating
2 to any dealer or dealer sales representative's in-home sales methods, policies, or procedures.

3 **RESPONSE:** All documents responsive to this request that Defendant firstSTREET has been
4 able to locate have previously been produced as part of Defendant firstSTREET's NRCP 16.1
5 Early Case Conference Production and all Supplements thereto.

6 129. Please produce any Documents in Your possession or control relating to dealer or
7 dealer sales representative in-home sales methods, policies or procedures.

8 **RESPONSE:** All documents responsive to this request that Defendant firstSTREET has been
9 able to locate have previously been produced as part of Defendant firstSTREET's NRCP 16.1
10 Early Case Conference Production and all Supplements thereto.

11 130. Please produce all documents in Your possession relating to representing any
12 bonus, deferred compensation or incentive compensation plans, programs, perks or agreements
13 between any dealer and any sales-representatives.

14 **RESPONSE:** There was no bonus, deferred compensation or incentive compensation plans,
15 programs, perks or agreements between Defendant firstSTREET and any dealer and any sales-
16 representatives, and therefore, there are no documents responsive to this request.

17 131. Please produce all documents in Your possession relating to any sales incentive
18 plans, contests or commission plans, including individual goals, payout targets, achieved goals and
19 payouts for dealer sales representatives.

20 / / /

21 / / /

22 / / /

23 / / /

24 / / /

25 / / /

26 / / /


27 / / /

28 / / /

1 **RESPONSE:** There was no sales incentive plans, contests or commission plans, including
2 individual goals, payout targets, achieved goals and payouts between Defendant firstSTREET and
3 any dealer sales representatives., and, therefore, there are no documents responsive to this request.

4 DATED this 23rd day of August, 2019.

5 THORNDAL ARMSTRONG DELK
6 BALKENBUSH & EISINGER

7 
8 PHILIP GOODHART, ESQ.
9 Nevada Bar No. 5332
10 MICHAEL C. HETHEY, ESQ.
11 Nevada Bar No. 5668
12 MEGHAN M. GOODWIN, ESQ.
13 Nevada Bar No. 11974
14 1100 East Bridger Avenue
15 Las Vegas, Nevada 89101
16 Attorneys for Defendants/Cross-Defendants,
17 FIRSTSTREET FOR BOOMERS AND BEYOND,
18 INC., AITHR DEALER, INC., and HALE
19 BENTON
20
21
22
23
24
25
26
27
28

1 **CERTIFICATE OF SERVICE**

2 I HEREBY CERTIFY that on the 23rd day of August, 2019, service of the above and
3 foregoing DEFENDANT, FIRSTSTREET FOR BOOMERS AND BEYOND, INC.'S
4 RESPONSE TO PLAINTIFF ROBERT ANSARA'S FIFTH SET OF REQUESTS FOR
5 PRODUCTION OF DOCUMENTS was made upon each of the parties via electronic service
6 through the Eighth Judicial District Court's Odyssey E-File and Serve system.

7
8 Benjamin P. Cloward, Esq.
9 Richard Harris Law Firm
10 801 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

11 Vaughn A. Crawford, Esq.
12 Morgan Petrelli, Esq.
13 Snell & Wilmer LLP
14 3883 Howard Hughes Pkwy., Ste. 1100
Las Vegas, Nevada 89169
Attorneys for Defendant,
15 JACUZZI INC. dba JACUZZI
16 LUXURY BATH

D. Lee Roberts, Jr., Esq.
Brittany M. Llewellyn, Esq.
Weinberg, Wheeler, Hudgins,
Gunn & Dial, LLC
6385 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
Attorneys for Defendant,
JACUZZI INC. dba JACUZZI
LUXURY BATH

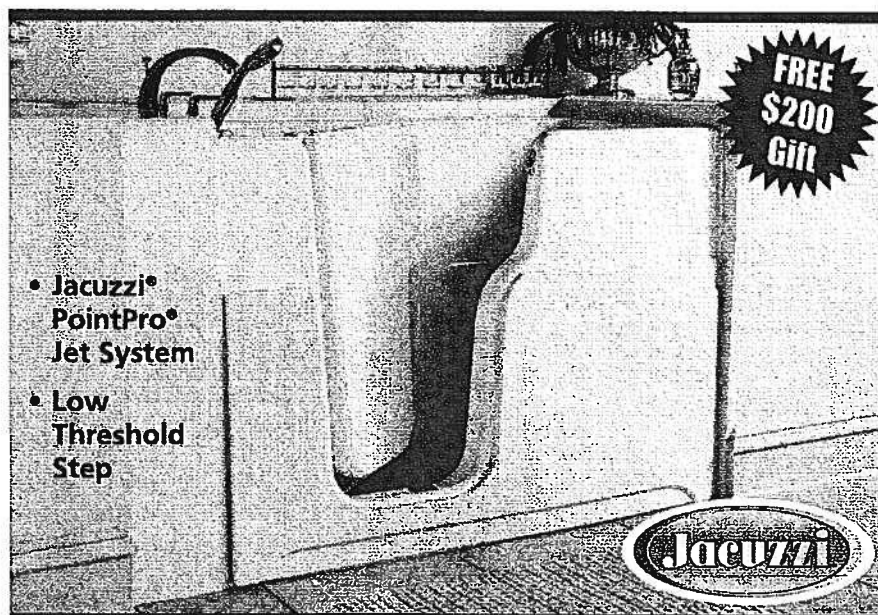
17 
18 _____
19 An employee of THORNDAL ARMSTRONG
20 DELK BALKENBUSH & EISINGER
21
22
23
24
25
26
27
28



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

EXHIBIT A

Enjoy A Bath Again... Safely and Affordably

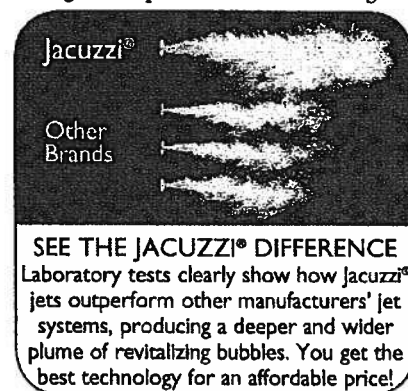


*The Jacuzzi® Walk-In tub is luxurious,
feature-packed and affordable*

There is nothing like the simple pleasure of taking a warm bath. The cares of the day seem to fade away, along with the aches and pains of everyday life. Unfortunately for many aging Americans with mobility issues, slipping into a bath can result in slipping onto the floor. The fear of falling has made the simple act of bathing and its therapeutic benefits a thing of the past until now. Jacuzzi®, the company that perfected hydrotherapy, has created a walk-in tub that offers more than just safe bathing, peace-of-mind and independence, it can actually help you feel better.

Unlike traditional bathtubs, this Walk-In Tub features a leak-proof door that allows you to simply step into the tub rather than stepping precariously over the side. It features a state-of-the-art acrylic surface, a raised seat, and the controls are within easy reach. No other Walk-In Tub features the patented Jacuzzi® PointPro® jet system. These high-volume, low-pressure pumps feature a perfectly balanced water to air ratio to massage thoroughly yet gently,

Some swirl, some spiral, some deliver large volumes of water and others target specific pressure points. They are all arranged in precise locations designed



to deliver a therapeutic massage, yet they are fully adjustable so that your bathing experience can be completely unique.

Why spend another day wishing you could enjoy the luxury and pain-relieving benefits of a safe, comfortable bath? Call now and you'll get an unsurpassed limited lifetime warranty. Knowledgeable product experts are standing by to help you learn more about this product. Call Today!

What To Look For in a Walk-In Tub:

Five major considerations to help make an informed decision before buying a Walk-In Tub:

- ➡ **Quality** - A walk-in tub is a major investment. You want to find a quality tub that will last for decades. Look for one that's 100% leak-proof, mold-resistant, full metal frame construction and one that's American made.
- ➡ **Warranty** - Ask for a lifetime "no leak guarantee." The best tubs offer a lifetime warranty on both the tub and the operating system.
- ➡ **Pain Relieving Therapy** - Find a tub that has both water and air jet therapy to soak away your aches and pains preferably with a perfectly balanced water to air mix. This tub is the first to offer a specialized foot massage experience. Its unique spinning motion provides optimal therapy to feet and legs. Best of all, you get it at no additional charge.
- ➡ **Comfort** - Insist on ergonomic design, easy-to-reach controls.
- ➡ **Endorsements** - Only consider tubs that are ETL or UL listed. Also look for a tub tested to IAPMO standards and that's USPC Certified.

Jacuzzi® Walk-In Tub

Call Toll Free NOW
Ask how you can get
a FREE \$200 gift

1-800-000-0000

Call now Toll-Free and mention your special promotion code XXXXX.

Third-party financing available with approved credit.
Aging in the Home Remodelers Inc.
is neither a broker nor a lender.
Not available in Hawaii and Alaska
© 2014 Aging in the Home Remodelers Inc.

61333



**THORNDAL
ARMSTRONG**
DELK BALKENBUSH & EISINGER

A PROFESSIONAL CORPORATION

ATTORNEYS
www.thorndal.com

EXHIBIT 18

ROBERT ANSARA

VS

FIRST STREET FOR BOOMERS & BEYOND

Case No. A-16-731244-C



NOREEN ROUILLARD

July 19, 2019

ADVANCED REPORTING SOLUTIONS

801-746-5080 | office@advancedrep.com | advancedrep.com

SALT LAKE | 159 West Broadway, Broadway Lofts, Suite 100 | Salt Lake City, Utah 84101

PROVO | 3507 North University Avenue, Suite 350-D | Provo, Utah 84604

ST. GEORGE | 20 North Main Street, Suite 301 | St. George, Utah 84770



IN THE DISTRICT COURT IN AND FOR
CLARK COUNTY, STATE OF NEVADA

-ooOoo-

ROBERT ANSARA, as Special)
Administrator of the)
Estate of SHERRY LYNN)
CUNNISON, Deceased;) Case No. A-16-731244-C
MICHAEL SMITH, individually,) Dept No. II
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,)
v.)
FIRST STREET FOR BOOMERS &)
BEYOND, INC.; AITHR DEALER,)
INC.; HALE BENTON,)
individually; HOMECCLICK,)
LLC; JACUZZI INC., doing)
business as JACUZZI LUXURY)
BATH; BESTWAY BUILDING AND)
REMODELING, INC.; WILLIAM)
BUDD, individually and as)
BUDDS PLUMBING; et al.,)
Defendants.)
_____)

Video Deposition of NOREEN ROUILLARD

Taken on July 19, 2019
At 10:04 a.m.

At RICHARDS BRANDT MILLER & NELSON
299 South Main Street
Suite 1500
Salt Lake City, Utah 84110

Reported by: Deirdre Rand, RPR, CSR, CCR

A P P E A R A N C E S

For the Plaintiffs:

BENJAMIN P. CLOWARD
RICHARD HARRIS LAW FIRM
801 South Fourth Street
Las Vegas, Nevada 89101
702-444-4444
benjamin@richardharrislaw.com

For the Defendants:

PHILIP GOODHART
THORNDAL ARMSTRONG DELK BALKENBUSH &
EISINGER
1100 East Bridger Avenue
P.O. Box 2070
Las Vegas, Nevada 89125
702-366-0622
png@thorndal.com
Attorney for FirstStreet, AITHR,
and Hale Benson

BRITTANY W. LLEWELLYN
WEINBERG WHEELER HUDGINS GUNN & DIAL
6385 South Rainbow Road, Suite 400
Las Vegas, Nevada 89118
702-938-3848
blllewellyn@wwhgd.com
Attorney for Jacuzzi

For the Witness:

RUSSELL C. FERICKS
RICHARDS BRANDT MILLER & NELSON
299 South Main Street, Suite 1500
Salt Lake City, Utah 84110
801-531-2000
russell-fericks@rbmn.com

The Videographer:

STEPHANIE LARGIN

-ooOoo-

I N D E X

WITNESS	PAGE
NOREEN ROUILLARD	
Examination by Mr. Cloward.....	5
Examination by Mr. Goodhart.....	21
Examination by Ms. Llewellyn.....	28
Further Examination by Mr. Cloward.....	29

-ooOoo-

E X H I B I T S

EXHIBIT	DESCRIPTION	PAGE
1	Salesforce.com report of incident (Jacuzzi002945 to 002948)	8
2	Jacuzzi Walk-In Tub packet (LBP 0001, WP0001 to 0011, WP 0030 to 0031)	11
3	Photographs (TUBPHOTO0007 to 0009)	13
4	Photographs	14
5	Letter re: Free Bathroom Safety Assessment for Noreen Rouillard from Safe Step Walk-in Tubs	14

-ooOoo-

P R O C E E D I N G S

NOREEN ROUILLARD,

called as a witness, and having been first duly sworn to
tell the truth, the whole truth, and nothing but the
truth, testified as follows:

(Before commencing, Exhibits No. 1 through 5 were
marked for identification.)

EXAMINATION

BY MR. CLOWARD:

Q. How are you today, Ms. Rouillard?

A. I'm fine. Thank you.

Q. Okay. Well, I'm going to be as fast as I
possibly can to get own your way. Okay?

A. Good idea.

Q. All right.

Have you had your deposition taken before?

A. No.

Q. Okay. So it's just kind of an
answer-question, question-answer session. The nice
reporter to my right, she's typing down all of my
questions along with your answers.

A. Okay.

Q. And if there are any objections that are made,
she'll also type down those objections.

A. Okay.

1 Do you know what he did in the piping or was
2 it just like a clog or --

3 A. I think it was a clog of some kind --

4 Q. Okay.

5 A. -- that had gotten stuck in there.

6 Q. Okay. And your understanding was that the tub
7 wasn't draining because of that clog that the handyman
8 fixed?

9 A. Yes.

10 Q. Yes? That's a yes?

11 A. Yes.

12 MS. LLEWELLYN: Okay. I don't have any other
13 questions for you.

14 THE WITNESS: Okay.

15 MS. LLEWELLYN: Thank you very much for coming
16 out today.

17 THE WITNESS: You're welcome.

18 FURTHER EXAMINATION

19 BY MR. CLOWARD:

20 Q. Just a couple follow-up questions just really
21 quick. Can you tell us a little bit about the pad with
22 bubbles? What does that look like? I don't think I've
23 seen one of those.

24 A. Well, I don't know. It's about this big.

25 (Witness gestures.)

1 **Q. Okay.**

2 A. And it's a clear color plastic. And there are
3 like bubbles all the way across the whole thing.

4 **Q. Are there --**

5 A. So that you put down on the tub and then you
6 step on it and walk so there's nothing to slip on.

7 **Q. Oh, okay. And was that something that came**
8 **installed in the tub or is that something that you and**
9 **your husband had to put in the tub?**

10 A. I honestly do not remember. I'm sorry. I got
11 it right away because I didn't want to step in it and
12 slide.

13 **Q. Okay. You were concerned about potentially**
14 **sliding without that?**

15 A. Yes.

16 **Q. Okay. Do you feel like that bubbles insert**
17 **helps to prevent that?**

18 A. Yes. That's what I bought -- I guess I did go
19 out and buy it the next day. I could have done
20 something. It's been so long ago, I really don't --
21 can't give you an honest answer, but I got it somewhere
22 and I like it and I use it every time I'm in the tub.

23 **Q. Okay. Fair to say you bought that because you**
24 **were worried about slipping?**

25 A. Yes.

1 Q. Okay.

2 And did you use the tub first without that and
3 then you realized that it was too slippery and that's
4 what caused you to go out and buy that?

5 A. I don't remember. And I should have changed
6 that. I don't remember that I bought it, whether that
7 it came with the tub, but I had it in the first couple
8 of days.

9 Q. Okay.

10 My understanding is that --

11 MR. CLOWARD: Mr. Fericks, did you pick
12 Ms. Rouillard up today?

13 MR. FERICKS: I did.

14 BY MR. CLOWARD:

15 Q. Would it be okay if your attorney -- and he
16 would have to agree as well -- to just take a photograph
17 of that? Would that be okay?

18 A. Photograph of what?

19 Q. Of the insert, the bubble thing.

20 A. Yeah.

21 Q. Would that be okay with you?

22 A. If he's willing to do it, yeah.

23 Q. Okay. I sincerely appreciate that from both
24 of you. Thank you.

25 MR. FERICKS: Do you have a text or a number I

1 could send that to?

2 MR. CLOWARD: Yes. Area code 801-913-5668.

3 MR. FERICKS: All right.

4 And Philip?

5 MR. CLOWARD: Ben. Oh, sorry.

6 MR. GOODHART: Actually, I think it would be
7 probably easier on you if you just text it to Ben. And
8 we've done this before, and I know Ben will text it to
9 us immediately. I don't have a problem with that.

10 MR. FERICKS: All right.

11 MR. GOODHART: In fact, I was going to
12 recommend that maybe we try to get a picture of the mat
13 as well.

14 MR. CLOWARD: Great.

15 MR. GOODHART: Thank you for asking that.

16 MR. FERICKS: So that's a cell -- that's a
17 cell phone number.

18 MR. CLOWARD: Correct, that's my cell.

19 MR. FERICKS: All right. Brittany, same
20 thing? Do you want it directly or --

21 MS. LLEWELLYN: No, I can just receive it from
22 Ben as well.

23 MR. FERICKS: All right.

24 MS. LLEWELLYN: Thank you.

25 MR. GOODHART: We trust Ben. He's a good guy.

1 Like I said before, he's the smart one in the group.

2 THE WITNESS: And I forgot to say I have
3 another one of those in the shower. In the other
4 bathroom. So I'm used to having them. So I don't think
5 that there was anything spectacular when I got it, it
6 was just common sense.

7 BY MR. CLOWARD:

8 Q. Okay.

9 A. I didn't want to fall.

10 Q. Yeah.

11 Okay. Well, thank you again. I appreciate
12 it. I know this is not fun coming and being deposed.
13 We appreciate your time. Thank you very much,
14 sincerely.

15 A. You're welcome. I hope I can be a help.

16 MR. GOODHART: You have. Thank you very much.
17 We appreciate it.

18 (Deposition concluded at 10:34 a.m.)
19
20
21
22
23
24
25

Case: ROBERT ANSARA as Special Administrator of the
Estate of SHERRY LYNN CUNNISON, Deceased, et al. vs.
FIRST STREET FOR BOOMERS & BEYOND, INC., et al.
Case No. A-16-731244-C
Reported by: Deirdre Rand, RPR, CSR, CCR
Date taken: July 19, 2019

WITNESS CERTIFICATE

I, NOREEN ROUILLARD, HEREBY DECLARE:

That I am the witness in the foregoing transcript;
that I have read the transcript and know the contents
thereof; that with these corrections, I have noted this
transcript truly and accurately reflects my testimony.

PAGE-LINE	CHANGE-CORRECTION	REASON
	No corrections were made.	

I, NOREEN ROUILLARD, deponent herein, do hereby
certify and declare under penalty of perjury the within
and foregoing transcription to be true and correct.

NOREEN ROUILLARD, Deponent

SUBSCRIBED AND SWORN to at _____
_____, this _____ day of _____, 20____.

NOTARY PUBLIC



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

EXHIBIT 19

From: Martinez, Audrey </O=JACUZZI ORGANIZATION/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AUDREY MARTINEZ66B76F91>
To: Davis, Joseph N.
Sent: 9/24/2014 5:51:12 PM
Subject: Non Skid Options
Attachments: 5229 Non Skid Options 92014.pptx

Buonasera Joey. Here are the non-skid options we discussed the other day. I wanted to get your approval before sending. Thank you.

Audrey Martinez

Marketing Manager- Aging In Place Bathing



www.jacuzzi.com

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

909.247.2582 (o) 909.762.3203 (c)

This email and any attachments are confidential and may be legally privileged. If you are not the intended recipient, please notify the author by replying to this email message, and then delete all copies of the email on your system. If you are not the intended recipient, you must not disclose, distribute, copy, print or use this email in any manner. Email messages and attachments may contain viruses. Although we take precautions to check for viruses, we make no assurances about the absences of viruses. We accept no liability and suggest that you carry out your own virus

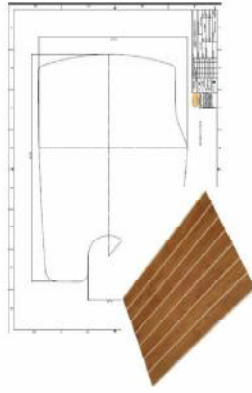
JACUZZI006666
REV JACUZZI006766

PA0707



5229 Non Skid Options

All Jacuzzi® Walk in Bathtubs and Showers exceed the voluntary American Society for Testing and Materials Standard Consumer Safety Specification for Slip-Resistant Bathing Facilities (ASTM F462 – 79)



#1 Recommended Option

Liquiguard SolidStepCote

What: Water-based coating that dries clear and creates non-slip texture
Cost: +/- \$40 per application
Available: At once
Note: Field application only. Cannot be applied at the plant. Subjective application, unable to replicate in factory.

#2 Recommended Option

NuTeak Mat

What: NuTeak synthetic mat, custom cut to fit tub floor
Cost: +/- \$95
Available: 4 weeks
Note: Tested to exceed voluntary standard. Material appropriate for use in this application.

#3 Recommended Option

Vinyl Mat

What: Suction cup backed traditional mat, custom cut to fit tub floor
Cost: +/- \$25
Available: 6 months
Challenge: If mat isn't removed often to dry, blisters in acrylic may occur. Requires testing and tooling development.

JACUZZI LUXURY BATH

JACUZZI006667

REV JACUZZI006767

From: Martinez, Audrey </O=JACUZZI ORGANIZATION/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=AUDREY MARTINEZ66B76F91>
To: Baehr, Rich; Bachmeyer, Kurt; Torres, Ray
Sent: 6/27/2013 5:20:22 PM
Subject: RE: Emailing: Test various Non Skid Patterns for compliance to ASTM F-462 , 5229 slip resistance

You guys are very funny:)

Audrey Martinez
Marketing Manager- Aging In Place Bathing

www.jacuzzi.com
13925 City Center Drive, Suite 200 / Chino Hills, CA 91709
909.247.2582 (o) 909.762.3203 (c)

This email and any attachments are confidential and may be legally privileged. If you are not the intended recipient, please notify the author by replying to this email message, and then delete all copies of the email on your system. If you are not the intended recipient, you must not disclose, distribute, copy, print or use this email in any manner. Email messages and attachments may contain viruses. Although we take precautions to check for viruses, we make no assurances about the absences of viruses. We accept no liability and suggest that you carry out your own virus checks.

-----Original Message-----

From: Baehr, Rich
Sent: Thursday, June 27, 2013 9:43 AM
To: Bachmeyer, Kurt; Torres, Ray; Martinez, Audrey
Subject: RE: Emailing: Test various Non Skid Patterns for compliance to ASTM F-462 , 5229 slip resistance

My 2 cents

A while back when we had units from Brazil they had a rougher bottom on the units. We had several complaints from mostly older people that it hurt their feet, to the point that we started toning down the non skid

Below is a possible solution

<http://www.slipxsolutions.com/tub-tattoos-clownfish>

-----Original Message-----

From: Bachmeyer, Kurt
Sent: Thursday, June 27, 2013 11:34 AM
To: Torres, Ray; Martinez, Audrey
Cc: Demeritt, William; Peetz, Chris; Baehr, Rich; Davis, Joseph N.
Subject: RE: Emailing: Test various Non Skid Patterns for compliance to ASTM F-462 , 5229 slip resistance

I'm not sure we are done here; we're compliant which is great but are we meeting the needs and safety requirements of this particular demographic? Seems to me if we want to be the leader in this category we would want to eliminate slippage of any kind now and in the future. My two cents.

Kurt Bachmeyer

Director of Customer Service

www.jacuzzi.com
14525 Monte Vista Avenue / Chino, CA 91710
909.247.2187 (o) 909.606.4270 (f)

This email and any attachments are confidential and may be legally privileged. If you are not the intended recipient, please notify the author by replying to this email message, and then delete all copies of the email on your system. If you are not the intended recipient, you must not disclose, distribute, copy, print or use this email in any manner. Email messages and attachments may contain viruses. Although we take precautions to check for viruses, we make no assurances about the absences of viruses. We accept no liability and suggest that you carry out your own virus checks.

-----Original Message-----

From: Torres, Ray
Sent: Thursday, June 27, 2013 8:24 AM
To: Martinez, Audrey
Cc: Bachmeyer, Kurt; Demeritt, William; Peetz, Chris; Baehr, Rich; Davis, Joseph N.
Subject: Emailing: Test various Non Skid Patterns for compliance to ASTM F-462 , 5229 slip resistance

JACUZZI006669
REV JACUZZI006769

PA0709

Audrey,

Here are the two test reports, one is our generic test on a shower pan which is the worst case sheet draw in thickness coefficient of friction .05 (.04 is the passing standard). This is the pattern we use as a master on all jacuzzi bottoms today. The second report is a deep draw on the 5229 walk in tub, the coefficient of friction is .10 double that of the pan which is exactly what we thought it would be. In fact I have never seen a .10 average in all my years. That is darn good!

Anyways, when you send out the reports only send page one which is the conclusion page. Do not send out the actual data as it sometimes with slick lawyers, (not picking on bill) could challenge results.

Anyways great news on the bottom. Where do I charge my fees?

Thanks

ray

This email and any attachments are confidential and may be legally privileged. If you are not the intended recipient, please notify the author by replying to this email message, and then delete all copies of the email on your system. If you are not the intended recipient, you must not disclose, distribute, copy, print, or use this email in any manner. Email messages and attachments may contain viruses. Although we take precautions to check for viruses, we make no assurances about the absence of viruses. We accept no liability and suggest that you carry out your own virus checks.

JACUZZI006670

REV JACUZZI006770

RA0710

From: Norm Murdock <norm.murdock@aihremodelers.com>
To: Martinez, Audrey; 'DAVE MODENA'
Sent: 7/10/2013 11:10:29 AM
Subject: Discussion Topics for Tonight/Tomorrow

Sorry, should have sent these sooner! Some of these may be a follow-up from Bob & Joey's visit to VA...

General business:

- Higher quality, higher flow faucet – Norm/Todd to test this week
- Foot spinner launch?
- Anti-scald valve improvement
- Dual drain for rapid draining of tub
- Greater slip resistance needed for our senior users
- Update on current tub problems – color matching, poor skirt panel fitting
- Tub-to-shower conference prototype... everything on schedule? Pricing update?
- Jacuzzi WF financing
- Large bariatric tub & small shower tub needed... can/will Jacuzzi develop these for us? Timeline?
- Jacuzzi wall system
- "Next generation" WIT with instant fill/drain
- Other Jacuzzi products that we could offer our customers – comfort height toilets, etc
- Warranty issues/customer service follow-through & communications with our customers
- Installer certifications as authorized service agents

Conference:

- Jacuzzi Presentation – who, what, time allotment, etc
- "Wish list" of features/options I would like to include in the tub you will be shipping to conference:
 - o New End Panel
 - o New Adjustable Anti Scald
 - o New easy-to-adjust feet
 - o Heated Seat (conceptual)
 - o New & improved ¾" high flow faucet
 - o New Door bumper (on door edge)
 - o New & improved pneumatic push buttons (easier to push/less "sticking")
 - o New spinning foot massaging jets
 - o 2nd grab bar on tub shelf next to seat
 - o New & improved skirt panel
 - o New & improved door with easier to operate door closing mechanism
 - o Dual drain/fast drain (conceptual)
 - o New & improved slip resistant bottom (more aggressive texture, ASTM certification on our tub)
 - o New "Bio-lock" anti-bacterial resistance
- Also, assuming we are moving forward with the large & small tub options, it would be great to show some initial concepts/designs of what these may look like as "teasers" for our group.
- Please also ship in a Jacuzzi comfort height toilet.

Norm Murdock, CAPS, CSA
Vice President



Phone: 303-222-3207

Cell: 602-403-6267

Email: norm.murdock@firststreetonline.com

Website: www.firststreetinc.com, www.firststreetonline.com

JACUZZI006671

REV JACUZZI006771

PA0711



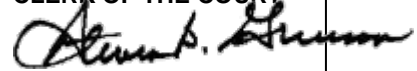
**THORNDAL
ARMSTRONG**
DELK BALKENBUSH & EISINGER

A PROFESSIONAL CORPORATION

ATTORNEYS

www.thorndal.com

PETITIONERS' APPENDIX TAB 7



RIS
BENJAMIN P. CLOWARD, ESQ.
Nevada Bar No. 11087
RICHARD HARRIS LAW FIRM
801 South Fourth Street
Las Vegas, Nevada 89101
Phone: (702) 444-4444
Fax: (702) 444-4455
E-Mail: Benjamin@RichardHarrisLaw.com
Attorneys for Plaintiffs

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,

Plaintiff,

vs.

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

Defendants.

AND ALL RELATED MATTERS

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

PLAINTIFFS' REPLY IN SUPPORT
OF PLAINTIFFS' RENEWED
MOTION TO STRIKE
DEFENDANTS FIRST STREET FOR
BOOMERS & BEYOND, INC. and
AITHR DEALER, INC.'S ANSWERS



1 Plaintiffs, by and through their attorney of record, Benjamin P. Cloward, Esq. of the
2 Richard Harris Law Firm, hereby submits Plaintiffs' Reply In Support of Plaintiffs' Renewed
3 Motion to Strike Defendants *first*STREET for Boomers & Beyond, Inc. and AITHR Dealer, Inc.'s
4 Answers. This Reply is made and based on the papers and pleadings on file herein, the Affidavit
5 of Benjamin P. Cloward, Esq., the following Memorandum of Points and Authorities and the oral
6 argument of counsel at the hearing on Plaintiffs' underlying motion.

7 DATED THIS 12th day of November, 2020.

8 **RICHARD HARRIS LAW FIRM**

9 /s/ Benjamin P. Cloward

10 BENJAMIN P. CLOWARD, ESQ.

11 Nevada Bar No. 11087

12 801 South Fourth Street

13 Las Vegas, NV 89101

14 *Attorneys for Plaintiffs*





TABLE OF CONTENTS

MEMORANDUM OF POINTS AND AUTHORITIES	1
I. INTRODUCTION	1
A. Fawkes Allegations	2
1. Telephone Recordings and LP Notes	2
2. Five9 and RingCentral Allegations	4
3. <i>firstSTREET</i> NRCP 30(b)(6) Deposition	6
B. Guild Surveys	11
1. Striking the Answer for Failure to Disclose Pursuant to NRCP 16.1 is Allowable Pursuant to NRCP 16.1(e)(3)	11
2. Striking the Answer for Incomplete and Evasive Discovery Responses	15
3. Dave Modena Should Have Been Adequately Prepared Pursuant to Topic 51 of Plaintiffs Rule 30(b)(6) Notice to Discuss Guild Survey Entries and the Other Incident Evidence	17
C. <i>firstSTREET</i>’s “Front Row” Seat	18
D. Alert 911 Non-Disclosure	19
E. Bathmat Non-Disclosure	26
II. LEGAL ARGUMENT	32
A. Fairness Dictates Striking the Answer	33
1. Young Factors Support Plaintiffs Request	33
(a) Degree of Willfulness	33
(b) Plaintiff has been Significantly Prejudiced	34
(c) <i>firstSTREET</i> & AITHR’s Actions Are Despicable and Must be Punished and the Punishment Must be Commensurate with the Conduct of the Defendants	42
(d) Plaintiffs’ Ability to Have a Trial on the Merits Has Been Destroyed by <i>firstSTREET</i> & AITHR	42
(e) It Remains to be Seen Whether This Factor Applies	43
(f) The Fact that <i>firstSTREET</i> and AITHR do not Even Acknowledge They Have Done Anything Wrong is Precisely Why Sanctions Are Necessary	43
III. CONCLUSION	44

TABLE OF AUTHORITIES

CASES

<u>Bahena v. Goodyear Tire & Rubber Co.</u> , 126 Nev. 243 (Nev. 2010)	15
<u>Capanna v. Orth</u>	14
<u>Edy v. McManus Auctions</u> , No. 70737, 2017 WL 4996831, at *1 (Nev. App. Oct. 31, 2017) .	15
<u>ETT, Inc. v. Delgado</u> , 126 Nev. 709 (Nev. 2010)	13, 14
<u>Pizarro-Ortega v. Cervantes-Lopez</u> , 133 Nev. 261 (Nev. 2017)	14
<u>Smith v. Ford Motor Co.</u> , 626 F.2d 784 (10 th Cir. 1980).....	12
<u>Young v. Johnny Ribeiro Bldg., Inc.</u> , 106 Nev. 88, 787 P.2d 777 (1990).....	33, 42

OTHER AUTHORITIES

Peter J. Henning, Lawyers, <u>Truth, and Honesty in Representing Clients</u> , 20 Notre Dame J.L. Ethics & Pub. Pol'y 209 (2006)	1
Vol. 1 Nevada Civil Practice Manual, § 16.02 [3] (Matthew Bender)	12, 13

RULES

NRCP 16.1	passim
NRCP 16.1(a)(1)	12
NRCP 16.1(b)(1)	13
NRCP 16.1(e)(3)	11, 12, 13, 44
NRCP 16.1(e)(3)(A)	15
NRCP 16.1(e)(3)(B)	14
NRCP 26	13, 15
NRCP 26(b)	12
NRCP 26(e)	12
NRCP 26(e)(1)	19
NRCP 26(f)	44
NRCP 37(b)(2)	12, 13
NRCP 37(b)(2)(C)	15
NRCP 37(c)(1)	15
NRCP 37(f)	13



MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

While zealous advocacy is admired, it “must be limited if it obstructs the search for truth because the lawyer’s paramount obligation is the court’s ascertainment of the truth **and not the client’s interest in a favorable outcome . . .**”¹

Parties and their lawyers are not supposed to hide the truth from their adversary. As uncomfortable as it is to state, someone is not being truthful – whether that is *firstSTREET* or its attorneys remains to be seen. Rather than acknowledge certain facts that may be unfavorable to its conduct during the discovery process, *firstSTREET* doubles-down and flatly misrepresents several issues in order to shift the focus away from how it has behaved throughout this process.

Going one step further, *firstSTREET* takes a page from Jacuzzi’s playbook and attempts to cast doubt by advancing a dangerous and completely false conspiracy theory, again in a desperate attempt to discredit Sherry and her lawyers. The “win at all cost” approach is dangerous and undermines the integrity of the judicial system because it creates serious doubt about the judicial system.

In wrongful death cases a lawyer *by definition* cannot talk to his deceased client. Instead, the lawyer must rely on oftentimes second-hand hearsay accounts from family members, friends, emergency responders or healthcare providers to piece together how the decedent lost their life. In this case, Sherry’s lawyers were told by her family members early-on that there was a problem with the drain. This is why the complaint was drafted the way it was drafted. Those reports were based on “what people had heard.”

Later on, during the litigation, when the first responders were deposed, it was discovered that Sherry told Bradley Van Pamel that she slipped off of the seat into the footwell of the tub. Based on this newly discovered information the complaint was amended to set forth these additional details.

¹ See, Peter J. Henning, Lawyers, Truth, and Honesty in Representing Clients, 20 Notre Dame J.L. Ethics & Pub. Pol’y 209 (2006).

1 Since that change, Jacuzzi and the *firstSTREET* Defendants² have ridiculed Plaintiffs to
2 sow doubt and discredit Plaintiffs for “allegations [that] have materially changed.” What the
3 affidavits of Nick Fawkes and Annie Dubek (non-party former employees of *firstSTREET*) prove
4 is that **both** issues were true. Sherry did have a drain problem (first call)³ and she did slip off the
5 seat and become wedged (second health-check call resulting in her ultimate death)⁴.

6 **A. Fawkes Allegations**

7 **1. Telephone Recordings and LP Notes**

8 Rather than admit it knew about the first call where Sherry complained about the drain
9 (which was plead in the original complaint), *firstSTREET* tries in the instant opposition to
10 distance itself from two former employees (who have nothing to gain and everything to lose from
11 coming forth) who have sworn in affidavits that Sherry Cunnison called first to report a problem
12 with the drain. Interestingly enough the Lead Perfection notes ***do in fact***⁵ reveal some sort of issue
13 with the drain (paying close attention to the Allstate Adjuster comment) – yet *firstSTREET* in a
14 condescending footnote advance a conspiracy that Sherry never was stuck once before and that
15 somehow someone ***other than*** AITHR and *firstSTREET* communicated with Mr. Fawkes about
16 preserving the phone call that was in fact preserved.

17 Problematic for *firstSTREET* is that Mr. Fawkes is the person who took the video.⁶ Also
18 troublesome is that Mr. Fawkes was an employee of AITHR/*firstSTREET* at the time the video
19 was obtained, ***not*** an employee of Plaintiff or any other party. *firstSTREET* goes to great lengths
20 to explain how the voicemail might have been missed when it searched for documents.

21 _____
22 ² The *firstSTREET* Defendants refers to both *firstSTREET* For Boomers & Beyond, Inc. (“*firstSTREET*”) and
AITHR Dealers, Inc.’s (“AITHR”). For simplicity they will collectively be referred to as “the *firstSTREET*
Defendants.”

23 ³ The Lead Perfection notes that were produced do in fact prove there was an issue with the drain. For instance the
24 entry made by Annette Doubek (Annie Doubek) on January 29, 2014 indicated, “Ms. Cunnison called and said she
25 could not turn the drain opener to turn, I am sending her a lever overnight . . .” and “[w]e received a call from Ashley
Smith who is the claims adjuster for All State. She stated the customer was in the tub and the drain malfunctioned
and she couldn’t get out and passed away in the tub.” See, Ex. 25 (Lead Perfection Notes FIRST000360;
FIRST000357).

26 ⁴ See Ex. 26, Bradley Van Pamel Dep. 16:4-12, Nov. 20, 2017, who testified that, “She said that she went to go turn
27 the water off and to drain the tub out and she slipped off the seat and wedged herself between the seat and like the
side of the tub.”

28 ⁵ See, FN 2, *supra*.

⁶ See Ex. 42 Declaration of Benjamin Cloward.

1 *firstSTREET* argues that the voicemail may not have been saved in its systems based on the
2 assertion that the voicemail was on Ms. Doubek's cell phone. This is just a red-herring to distract
3 the Court from the simple fact that *firstSTREET* was in possession of the voicemail. Whether the
4 voicemail was from Ms. Doubek's cell phone does not matter. **If** the voicemail was only left on
5 Ms. Doubek's cell phone, then that might explain why it was not saved into *firstSTREET*'s
6 systems. But it **does not** explain why *firstSTREET* did not turn the voicemail over to Plaintiffs.
7 The fact remains that Annie Doubek and Nick Fawkes – employees of AITHR – were in
8 possession of the voicemail from Sherry that was not produced. The fact that Plaintiffs discovered
9 the voicemail through their own investigation illustrates just how unfair *firstSTREET*'s discovery
10 strategy has been. But even more problematic is that Mr. Fawkes **will testify that he provided**
11 **the recording to Dave Modena via a thumb-drive** at or around the time it was obtained.⁷

12 Further, *firstSTREET* claims defiantly that "once an entry is made into LP notes it cannot
13 be altered, changed, revised or deleted."⁸ Plain and simple this is not true.⁹ Mr. Modena has
14 already shown the Court that he has no problem bending the truth, just like when he testified that
15 he was only aware of **three** safety incidents involving the Jacuzzi tub.¹⁰

16 Mr. Fawkes is now the President of a different renovation company and still uses Lead
17 Perfection for his current company.¹¹ After reading Dave Modena's affidavit, the undersigned
18 contacted Mr. Fawkes to determine if it was true that the Lead Perfection notes could not be
19 modified.¹² Mr. Fawkes explained to the undersigned how a note can be changed, modified or
20 even deleted and even demonstrated over the phone how easy it was to do that.¹³ Either
21 *firstSTREET* is intentionally trying to deceive or it is simply being careless with the facts. It is
22 worth noting that *firstSTREET* also misrepresented the affidavit of Nick Fawkes by claiming that
23
24

25 ⁷ See, Id.

26 ⁸ See, firstSTREET Opp'n. at 11: 4-5

27 ⁹ See, Ex. 42 Declaration of Benjamin Cloward.

28 ¹⁰ See, Dave Modena Depo at 32:20-25 ("Q. Okay. So why don't you tell me all of the incidents that you're aware of at any point, safety incidents. A. Those would be it. Q. **Just those three?** A. That I would be aware of.")

¹¹ See, Ex. 42 Declaration of Benjamin Cloward.

¹² See, Ex. 42 Declaration of Benjamin Cloward.

¹³ See, Ex. 42 Declaration of Benjamin Cloward.

1 he “coached Annie Doubek to *revise* an LP log entry.”¹⁴ Nothing in Mr. Fawkes’ affidavit
2 mentions that he coached her to *revise* the LP log entry, rather, he simply coached her about not
3 putting so much detail in the LP log entries.¹⁵ Further, *firstSTREET* tries to insinuate that maybe
4 Plaintiffs were the ones who got Nick Fawkes to record Sherry’s voicemail. That idea is
5 preposterous and prior to speaking with Mr. Fawkes in mid-June of this year, neither the
6 undersigned nor anyone at his direction or on his behalf had ever spoken with him.¹⁶

7 2. Five9 and RingCentral Allegations

8 *firstSTREET* completely misses the boat with respect to these two issues. It admits that,
9 “[s]ince notes for all calls were made and recorded in the LP notes, there was no need to offload
10 these recordings.”¹⁷ While it may be true that the Five9 calls were not saved (contrary to Nick
11 Fawkes’ affidavit), not a single document from the LP note system has been produced in this
12 litigation (other than Sherry’s file). Clearly if people are calling *firstSTREET* and it is creating
13 notes regarding these calls, there should be relevant information in those notes that should have
14 been produced in this case – but nothing has been produced.

15 Similarly, with respect to RingCentral, *firstSTREET* tries to explain away any non-
16 production by claiming that “[t]he “auto-recording” feature provided by RingCentral . . . was not
17 made available to *firstSTREET* and AITHR until late August 2015.” Where the heck are the
18 recordings from 2015 to present!?! That’s five years of discoverable information that
19 *firstSTREET* wants to just sweep under the rug! The exhibit that *firstSTREET* produced shows
20 unequivocally that on August 27, 2015 at 2:32 p.m., “[a]n administrator of your RingCentral
21 phone system has **turned on automatic** call recording on your extension and your calls are now
22 being recorded.”¹⁸

23 Further, the exchange between Larry Rathbone and Dave Modena shows that recording
24 **was in fact** available **before** that date, but it had to be turned on manually by the specific user by
25

26 ¹⁴ See, *firstSTREET* Opp’n. at 11:7-8 (emphasis added).

27 ¹⁵ See, **Ex. 21**, Affidavit of Nick Fawkes, Sept. 22, 2020.

28 ¹⁶ See, **Ex. 42** Declaration of Benjamin Cloward.

¹⁷ See, *firstSTREET* Opp’n. at 12:6-7.

¹⁸ See, Defs. Opp’n. at Exhibit C (emphasis added).

pushing *, 9. More specifically, Mr. Rathbone’s email to Mr. Modena stated, “Ring Central rolled out a new automation feature. The recording feature that *was in place* required a *, 9 to record. The new feature will do it automatically so production people don’t have to manually launch it . . .”¹⁹ Finally, documents produced by Jacuzzi reveal that RingCentral was unequivocally used by *firstSTREET before* August 27, 2015 to record voice messages. The following summary of email exchanges is insightful:

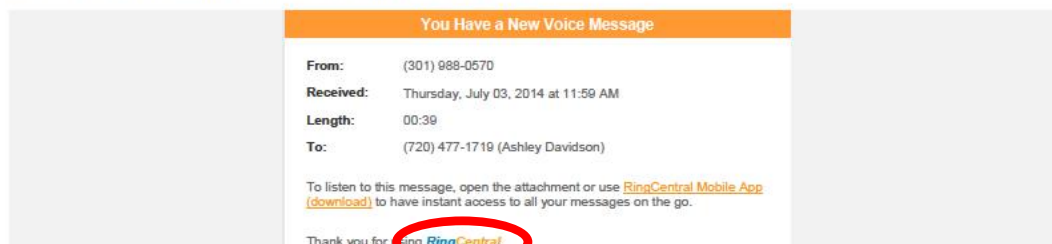
FROM:	TO:	DATE:	DISCUSSION:
Ashley D.	Todd Stout	July 3, 2014	“Hey – this is that Shannon lady I told you about calling about the man who has been <i>injured in his tub</i> .”
Todd Stout	<i>Stacy Hackney (corporate counsel)</i> <i>Dave Modena (Rule 30(b)(6) designee); and Nick Fawkes</i>	July 3, 2014	“ <u>Voicemail</u> from a Shannon . . .”
<i>Dave Modena</i>	Simona Robertson	July 7, 2014	“ Please listen . . . ”
Simona R.	<i>Dave Modena</i> Norm Murdock	July 9, 2014	“Here you go Norm see the address below with a more detailed laundry list of complaints . . . - The floor, seats and walls of the tub are too slippery, Mr. Kinzer slips off the seat when in the tub and slips on the floor when getting out . . . ” ²⁰

¹⁹ See, Defs. Opp’n. at Exhibit C (emphasis added).

²⁰ See, Ex. 27, JACUZZI005341 – JACUZZI005345 (emphasis added).

This email exchange originated from a voicemail that was left on the RingCentral system with Ashley Davidson.²¹

From: RingCentral [<mailto:notify@ringcentral.com>]
Sent: Thursday, July 03, 2014 12:00 PM
To: Ashley Davidson
Subject: New Voice Message from (301) 988-0570 on 07/03/2014 at 11:59 AM



So, despite RingCentral being used manually by users to record phone calls by simply pushing *,9, not a single recording has been produced in this case. Further, despite RingCentral being used to gather voicemails, not a single recording has been produced.

Instead of offering an explanation as to why no recordings have been produced when they were obviously kept in the regular business practices, *firstSTREET* tries to skirt the issue by glossing over this topic and only devoted **two paragraphs** of its Opposition to this very important topic.²² Another glaring issue is that we only know about these documents because they were produced by Jacuzzi after Mr. Lee Roberts became involved. *firstSTREET* has never produced these emails despite the fact that they originated from within *firstSTREET*'s system!

3. *firstSTREET* NRCP 30(b)(6) Deposition

Page 12, line 21 through page 14 line 22 of *firstSTREET*'s Opposition is a cut and paste job from the January 28, 2019 Opposition that *firstSTREET* filed. In the January 2019 Opposition *firstSTREET* misrepresented the facts and was corrected by Plaintiffs' Reply. Yet despite being corrected for misrepresenting facts, *firstSTREET* **again** attempts to perpetuate a flat-out lie! As it did in January of 2019, it now claims that Plaintiffs' deposition notice was limited to only **prior** incidents. This is false. A lie. Untrue. A fabrication. Fictitious. Made up.

The identical argument *firstSTREET* falsely set forth in January 2019 is set forth again in its current Opposition and is cut and pasted here for ease of reading:²³

²¹ See, Ex. 27, JACUZZI005345.

²² See, generally, Def. Opp'n at 11-12.

²³ See, Def. Opp'n. at 12-13.

21 Prior to the NRCP 30(b)(6) deposition of firstSTREET and AITHR, Plaintiffs' counsel
22 submitted a list of topics on which examination is sought.¹¹ There Plaintiffs listed 53 different topic
23 areas. One of the topic "areas" is entitled "**OTHER SIMILAR INCIDENTS TESTIMONY**",¹²
24 and covers topic numbers 48, 50, 51 and 52. Under each of these topic areas Plaintiffs limited the
25 area of inquiry to "*prior incidents involving slips and falls while using or while exiting or*
1 *entering any Jacuzzi products including not only the fall itself, but also the inability of an*
2 *end user to remove themselves after having had fallen inside the tub.*"

9 What firstSTREET completely misrepresents is that topics 51 and 52 contain no limitation
10 as to time. Specifically, the topics (as cut and pasted now from Plaintiffs' notice) are set forth
11 as²⁴:

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

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

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

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

25 The Court can easily compare the two and see for itself that there is no time limitation to
26 Topic 51 & 52, yet firstSTREET does not care about the truth and flatly misrepresents what took
27 place in order to justify Dave Modena's improper testimony. Further the "NOTE" portion of topic
28 51 clearly and unambiguously set forth that Plaintiff "*seeks to obtain any information related to*
a claim made by an end user that a Jacuzzi product was unsafe."²⁵

²⁴ See, Ex. 28, Pls' Rule 30(b)(6) Dep. Notice, at 12.

²⁵ See id., at 11 (emphasis in original).

1 What is also very upsetting is that not one single time during the deposition was an
2 objection made that the questioning was outside the scope of the deposition notice. Not one single
3 objection! Yet now, that all the evidence is laid out on the table and it is abundantly clear that
4 Dave Modena was not truthful, *firstSTREET* comes to court and wants to reinvent time and
5 history to explain away his clearly untruthful and carefully crafted testimony.

6 What is most egregious is that this is **exactly** what Jacuzzi did to try and explain-away
7 William Demeritt's untruthful deposition testimony. Jacuzzi raised this **identical** line of argument
8 in response to Plaintiffs Motion to Strike back in 2018 and the arguments were rejected by
9 Commissioner Bulla. All of that briefing and arguments were *well-before the deposition of Dave*
10 *Modena* and *firstSTREET* had a front row seat and knew dang well that Plaintiffs were
11 contending that the Rule 30(b)(6) notice (same notice for both Jacuzzi and *firstSTREET*) was
12 sufficient to cover both prior and subsequent incidents.

13 The following timeline is helpful for the Court to understand how disingenuous
14 *firstSTREET* is being in advancing this prior versus subsequent incident argument.

- 15 • On May 24, 2018 – Plaintiffs take the deposition of William Demeritt the Jacuzzi
16 Rule 30(b)(6) designee to talk about other similar incidents. (*firstSTREET*'s
17 Counsel was physically present at the deposition)
 - 18 ○ At the deposition, Mr. Demeritt only claimed to know about **two** incidents,
19 the Cunnison incident and the Smith incident (which Sherry's lawyers are
20 also prosecuting).
 - 21 ○ At the deposition, Mr. Demeritt was cross-examined about two other
22 incidents that Plaintiffs had found independently, Leonard Baize and Ruth
23 Curnutte.
- 24 • On June 22, 2018 – Plaintiffs filed a Motion to Strike Jacuzzi's Answer arguing
25 that William Demeritt was untruthful regarding other similar incidents (Baize and
26 Curnutte) during the deposition. (*firstSTREET*'s Counsel was served with this
27 pleading).
- 28 • On July 12, 2018 – Jacuzzi filed an Opposition and improperly and untruthfully

1 argued that Plaintiffs' Notice only sought Prior Incidents and offered that as a
2 justification for William Demeritt's blatant misrepresentation of other incident
3 testimony. Basically, Jacuzzi incorrectly argued that Demeritt was not prepared
4 to discuss subsequent incidents because they were not relevant and because
5 Plaintiffs' notice only sought Prior incidents. (*firstSTREET*'s Counsel was served
6 with this pleading).

- 7 • On June 26, 2018 – *firstSTREET* was served with the identical Rule 30(b)(6)
8 deposition notice that was served upon Jacuzzi.
- 9 • On July 20, 2018 – Discovery Commissioner Bulla heard the arguments of
10 counsel and ordered Jacuzzi to produce all incidents both prior and subsequent
11 and continued the hearing.
- 12 • On December 11, 2018 – the deposition of Dave Modena, *firstSTREET* Rule
13 30(b)(6) designee was taken

14 The foregoing timeline documents that the flimsy argument regarding the prior versus
15 subsequent incidents was rejected well-before Dave Modena's deposition commenced.
16 Therefore, *firstSTREET*'s position is highly disingenuous and outright false. *firstSTREET* knew
17 dang well that Plaintiffs were seeking all incidents, and this is why not a single objection was
18 made during the deposition that Plaintiffs questions were outside the scope.

19 What is worse is that during the deposition it was absolutely apparent that Mr. Goodhart
20 knew full-well what was being asked. Specifically, when Dave Modena pretended as though he
21 couldn't remember any other incidents other than the ONE single incident (Cunnison) that he
22 could remember, he suggested that "in-house counsel (Stacy Hackney) would probably be –
23 probably could answer that better than myself."²⁶

24 Plaintiffs then requested that Ms. Hackney be sworn in as a witness so that the information
25 could be obtained. Immediately, Mr. Goodhart interjected and said, "[o]r I can – we can take a
26 break and I can re-educate my witness on certain things."²⁷

27
28 ²⁶ See, Ex. 29, Modena Dep. 27-28, Dec. 11, 2018.

²⁷ See, Ex. 29, Modena Dep. at 28:5-6.

1 Then Mr. Goodhart summarized *his* understanding of what was being requested of the
2 witness and said, “just so I’m clear on your question, you’re asking him even up through to today
3 -- . . . -- about any type of claims of any injuries that have taken place -- . . . – in a Jacuzzi
4 product?”²⁸ Clearly and unequivocally, Mr. Goodhart the attorney responsible for preparing the
5 witness understood what was being asked. After Mr. Goodhart, Ms. Hackney and Mr. Modena
6 stopped the deposition, went outside and discussed the clear and unambiguous question that was
7 being asked, they came back into the room and Mr. Modena conveniently could now only
8 remember TWO additional incidents, 1) Baize (which Plaintiff discovered and had previously
9 disclosed months earlier in the Jacuzzi depositions and multiple motions – all well before the
10 Modena deposition); and 2) Smith (which Plaintiffs’ attorneys were prosecuting and had been
11 disclosed well before the Modena deposition). In total, Modena could only remember **three**
12 incidents in total! That is preposterous! As Plaintiffs set forth in their motion, there were many,
13 many, many incidents and complaints that *firstSTREET* was made aware of.

14 Next, *firstSTREET* keeps referring to Plaintiffs’ Original motion as some sort of proof
15 that the instant motion should be summarily denied, i.e. “hey Judge you already denied this once,
16 so it should automatically be denied again.”

17 Plaintiffs however want to refresh the Court’s memory regarding several important
18 aspects and why this type of argument should be soundly rejected. The first motion that Plaintiffs
19 filed seeking to strike *firstSTREET*’s answer was primarily based on the non-disclosure of the
20 “Chopper documents.” None of the document dump that took place in the summer and end of
21 2019 **had even taken place**. Therefore, none of the Guild documents had been disclosed. None
22 of the emails contained in this motion and in the motion to strike Jacuzzi’s answer (which was
23 ultimately granted) had been disclosed. Finally, close to 95% of the other similar incident
24 evidence had not yet been disclosed by any party at the time of Plaintiffs’ first motion to strike
25 *firstSTREET*’s answer.

26 . . .

27

28 ²⁸ See, Ex. 29, Modena Depo at 28:18-24.

1 Yet, even before thousands of damning documents had yet to be disclosed, this Court
2 appeared quite concerned with the actions of the parties. Specifically, this Court set forth the
3 following in a minute order: “The Court requests the parties to identify, by filed brief (no more
4 than two (2) pages); (1) What discovery has been conducted in this case since February 4, 2019;
5 (2) The names of any relevant customers of Jacuzzi/First Street that have died; (3) What additional
6 discovery Plaintiff would need to conduct if the Court were not to strike Defendants Answers;
7 and (4) any new developments that the Court should know about. Please provide this by Thursday
8 March 8, 2019. *At this time the Court believes that an Evidentiary Hearing is necessary to*
9 *determine whether, and the extent to which, sanctions might be assessed against Jacuzzi and/or*
10 *First Street for failure to timely disclose the Chopper incident.* The Court will elaborate on this
11 more in the upcoming sanctions Order.”²⁹

12 As a result of that minute order, the Pullen death was disclosed by Jacuzzi and all of
13 Plaintiffs efforts shifted to Jacuzzi. It was around that same time that Mr. Lee Roberts got involved
14 as Counsel for Jacuzzi and despite Jacuzzi (through Snell Wilmer) telling the Nevada Supreme
15 Court in a Writ petition that all documents had already been turned over – thousands of pages of
16 documents containing nearly 200 similar incidents/complaints were finally disclosed.
17 Unfortunately, Lee Roberts does not represent *firstSTREET* and cannot produce their documents
18 too. There can be no question that *firstSTREET* is sitting on thousands of relevant documents,
19 simply unwilling to turn them over because there’s been “no order directing them to do so.”

20 **B. Guild Surveys**

21 **1. Striking the Answer for Failure to Disclose Pursuant to NRCP 16.1 is**
22 **Allowable Pursuant to NRCP 16.1(e)(3)**

23 First off – Plaintiffs admit they were wrong with respect to the dates of the Guild Survey
24 and apologize to this Court for that misstatement. After a closer examination, Defendants are
25 correct that the Guild Survey document does contain surveys from 2016 and 2017. Plaintiffs were
26 mistaken. The document was produced and named, “FirstStreet & AITHR’s Guild Survey Report
27

28 ²⁹ See, Ex. 30, Minute Order, Mar. 4, 2019.

1 2015.”³⁰ Plaintiffs incorrectly assumed that it only contained surveys for 2015 based on the name
2 of the document. Notwithstanding the foregoing, *firstSTREET*’s claim that it had no affirmative
3 obligation to turn these documents over and that “Plaintiff can cite to no Nevada case authority
4 supporting this argument,” must be rejected.³¹

5 Perhaps *firstSTREET* was mistaken and overlooked the authority set forth in Plaintiff’s
6 motion. NRCP 16.1(e)(3) unequivocally establishes that a Court has authority pursuant to that
7 rule to sanction a party, including striking the answer. The authority is very clear. In fact,
8 ironically, Mr. Goodhart’s partner Craig Delk is who “wrote the chapter” on Civil Discovery in
9 the Nevada Civil Practice Manual and wrote extensively on this rule. Borrowing from that
10 Chapter, Mr. Delk sets out that, “NRCP 16.1(a)(1) provides that, at each case conference . . . the
11 attorneys **must exchange**: . . . (2) [a] copy of . . . all documents . . . that are in the possession,
12 custody, or control of the party otherwise discoverable under NRCP 26(b).”³²

13 Mr. Delk warns practitioners that “[t]he parties have an ***affirmative duty to disclose*** this
14 basic information without formal discovery requests and without the associated expense. The
15 scope of this duty requires the disclosure of information that is ‘relevant to the subject matter,’ a
16 standard ***more liberal*** than its federal counterpart (‘relevant to the claim or defense of any party’)
17 . . . practitioners are cautioned to advise their clients of the broad obligations at the outset of
18 litigation.”³³

19 Further, Mr. Delk explains that while “NRCP 16.1 no longer expressly provides for a
20 continuing duty to supplement, ***this requirement is now specifically set forth in NRCP 26(e)***.”³⁴
21 Mr. Delk even cautions practitioners that when an attorney who fails to comply with any provision
22 of NRCP 16.1, “NRCP 16.1(e)(3) **requires** ***that the court impose appropriate sanctions***, which
23 may include **any sanction** available under NRCP 37(b)(2) . . . [which] include one or more of the
24

25 ³⁰ See, Ex. 43, *firstSTREET* Guild Survey Report FIRST006865 (excel spreadsheet provided to Court via thumb-
26 drive).

27 ³¹ See, Opp’n. At 15: 17-18.

28 ³² See, Vol. 1 Nevada Civil Practice Manual, § 16.02 [3] (Matthew Bender).

³³ See, Vol. 1 Nevada Civil Practice Manual, § 16.02 [3] (Matthew Bender) (emphasis added).

³⁴ See, Vol. 1 Nevada Civil Practice Manual, § 16.02 [3] (Matthew Bender); citing, *Smith v. Ford Motor Co.*, 626
F.2d 784 (10th Cir. 1980) (emphasis added).

1 following: **striking pleadings**; staying proceedings; **dismissing the action**; **rendering a**
2 **judgment by default**; taking designated facts as established for the action; refusing to allow a
3 party to support or oppose designated claims or defenses or introduce certain matters in evidence;
4 and requiring the payment of reasonable expenses (including attorney's fees) caused by the
5 failure."³⁵

6 *firstSTREET*'s entire argument is that it cannot be sanctioned because it has not failed to
7 obey a discovery order – this point was addressed by Mr. Goodhart's partner Mr. Delk in the
8 following sentence, "[t]here is an important distinction between the imposition of sanctions under
9 NRCP 37(b)(2) and under NRCP 16.1(e)(3). Under NRCP 37(b)(2), sanctions *can only* be
10 imposed for failing to obey a court order to provide or permit discovery. *However, under NRCP*
11 *16.1(e)(3), sanctions can be imposed upon motion or the court's own initiative for failure to*
12 *reasonably comply with any provision of NRCP 16.1 without the prior entry of a court order*
13 *compelling the discovery in question.*"³⁶

14 The Nevada Supreme Court in an unpublished, but *en banc* decision addressed the duties
15 of NRCP 16.1(e)(3) and upheld a district court's decision to prohibit the use of evidence where
16 there had been a failure to produce that evidence pursuant to NRCP 16.1 and NRCP 26. There,
17 similar to *firstSTREET*, the Defendant ETT failed to turn over a voicemail. The Court prohibited
18 it along with other evidence from being used at trial. The Court held the following:

19 Pursuant to NRCP 16.1(b)(1), ETT was required to produce every
20 document contemplated "to be used in support of the allegations or
21 denials of the pleading filed by that party, including rebuttal and
22 impeachment documents." Therefore, **NRCP 16.1(b)(1) is broad**
23 **and not limited to the production of documents intended to be**
24 **used at trial.** Accordingly, ETT's argument is without merit.

25 The audiotape also falls within the scope of NRCP 16.1(b)(3).
26 Pursuant to NRCP 16.1(b)(3), ETT was required to "produce all
27 tangible things" within the scope of Rule 26(b). The audiotape is a
28 tangible thing that falls within the scope of NRCP 26(b) because it
was relevant to the underlying action and related to ETT's defense.

³⁵ See, Vol. 1 Nevada Civil Practice Manual, § 16.02 [3] (Matthew Bender) (emphasis added) (citing, NRCP 37(f)).

³⁶ See, Vol. 1 Nevada Civil Practice Manual, § 16.02 [3] (Matthew Bender) (emphasis added).

1 Further, Delegado served request for production no. 8 on ETT,
2 which in our determination, required ETT to produce the audiotape.
3 Because ETT did not comply with NRCP 16.1(b)(1) and (3), the
4 district court acted within its discretion by excluding Foster's
5 deposition and the audiotape pursuant
6 to NRCP 16.1(e)(3)(B) which permits the district court to
7 "prohibit [] the use of any witness, document or tangible thing
8 which should have been disclosed, [or] produced."³⁷

9 In addition to ETT v. Delgado, other Nevada Supreme Court cases have also upheld the
10 sanctioning arm of NRCP 16.1. Specifically, Capanna v. Orth³⁸, reviewed the specific issue of
11 when supplementation is considered timely and when it is not and that harm to a party for non-
12 disclosure is a factor to consider.³⁹ Further in Pizarro-Ortega v. Cervantes-Lopez, the Supreme
13 Court specifically expressly stated the following:

14 We clarify that **when a party has failed to abide by NRCP 16.1's**
15 **disclosure requirements, NRCP 37(c)(1) provides the**
16 **appropriate analytical framework** for district courts to employ in
17 determining the consequence of that failure. Under NRCP 37(c)(1),
18 a party is prohibited from "us[ing] as evidence at trial ... any witness
19 or information not so disclosed" unless the party can show there was
20 "substantial justification" for the failure to disclose or "unless such
21 failure is harmless." *See also* NRCP 16.1(e)(3)(B) (providing for
22 discretionary exclusion of evidence under similar circumstances if
23 an attorney "fails to **788 reasonably comply with any provision
24 of [NRCP 16.1]")⁴⁰.

25 Further in Edy v. McManus Auctions, the Nevada Appellate Court specifically indicated
26 that striking a pleading or parts thereof is allowed by NRCP 16.1(e)(3) via NRCP 37(c)(1). The
27 following was set forth:

28 A party must disclose "[a] computation of any category of damages"
it seeks to recover, NRCP 16.1(a)(1)(C). A court may sanction a
party for failure to disclose damages. NRCP 16.1(3); NRCP
37(c)(1). **Permissible sanctions include "[a]n order striking out**

³⁷ ETT, Inc. v. Delgado, 126 Nev. 709 (Nev. 2010).

³⁸ 134 Nev. Adv. Op. 108, 432 P.3d 726 (Nev. 2018).

³⁹ 134 Nev. 888, 895 (Nev. 2018) ("the district court carefully considered the timeliness of Orth's disclosures and found that Orth satisfied his duty to supplement the disclosures 'at appropriate intervals.'" (internal quotation and citation omitted).

⁴⁰ Pizarro-Ortega v. Cervantes-Lopez, 133 Nev. 261 (Nev. 2017) (emphasis added).

1 pleadings or parts thereof ... or dismissing the action or
2 proceeding or any part thereof. ..." NRCP 37(b)(2)(C); *see* NRCP
3 37(c)(1); NRCP 16.1(e)(3)(A).⁴¹

4 Finally, in one of the seminal sanction cases in Nevada law, the Court in Bahena v.
5 Goodyear Tire & Rubber Co., expressly stated, "Under NRCP 37(b)(2), a district court has
6 discretion to sanction a party for its failure to comply with a discovery order, **which includes**
7 **document production under NRCP 16.1**. We will set aside a sanction order only upon an abuse
8 of that discretion."⁴²

9 The entire basis of *firstSTREET*'s argument that without a court order or a specific
10 discovery request (a party has no obligation to turn over relevant documents voluntarily), is
11 exactly the bad faith approach to litigation that NRCP 16.1 and NRCP 26 is meant to prevent.
12 *firstSTREET*'s conduct is **exactly** what should be deterred via NRCP 16.1(e)(3). This Court is
13 well within its discretion to strike *firstSTREET*'s Answer for failing to disclose the Guild
14 Survey's pursuant to the affirmative disclosure obligations that are imposed upon parties pursuant
15 to NRCP 16.1 **and** the supplementation obligations imposed pursuant to NRCP 26.

16 2. Striking the Answer for Incomplete and Evasive Discovery Responses

17 The narrative created by *firstSTREET* as to why and when these documents were
18 produced is misleading. Reading just *firstSTREET*'s Opposition the reader may be under the
19 impression that Plaintiffs never sent any discovery requests that would have required
20 *firstSTREET* to respond with the documents at issue.

21 However, a review of the discovery shows that well before Dave Modena's deposition, in
22 2018, Plaintiffs requested the following:

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

26 **RESPONSE:** Objection. This Request is vague, ambiguous, and
27 overbroad as to time, product type, and subject matter. This Responding

28 ⁴¹ Edy v. McManus Auctions, No. 70737, 2017 WL 4996831, at *1 (Nev. App. Oct. 31, 2017) (emphasis added).

⁴² Bahena v. Goodyear Tire & Rubber Co., 126 Nev. 243 (Nev. 2010).

1 Defendant is aware of the claim by Leonard Baize, previously produced in this
2 litigation by other parties, and the claim made by Mack Smith, attached hereto
3 as Exhibit A.⁴³

4 Clearly the Guild Survey and other relevant documents should have been produced in
5 response to the foregoing discovery request. It is anticipated that *first*STREET will make the same
6 type of disingenuous “what is a claim” argument that Vaughn Crawford tried to advance. Any
7 argument along those lines should be rejected. If *first*STREET tries to argue that the survey results
8 did not give notice of injury, that is false. They did. Further, if it is argued that no one was asking
9 for anything to be done like, “remuneration, or removal of the tub,” that is also false. They did.

10 For instance, the Guild Survey for Nancy & Bill Greenwood stated, “they have slipped
11 and fell in the tub. They can’t open the door to the tub. They are afraid to go back in there now.”⁴⁴
12 Another survey for Doyle & Joanne Phipps indicated that “my husband got in just fine and then
13 we couldn’t get him out. I had to have my nephew to come out him out (sic). It took us 2 hours
14 to get him out.”⁴⁵

15 Another person, William Schanel told them, “[w]e paid high for the thing for my stroke,
16 and I only used once, the 1st time I tried to use by myself, **I fell**. I slipped and fell. **I couldn’t even**
17 **walk for 1 ½ months**. It was so slippery.”⁴⁶

18 Lucas Cantu told them, “**my wife fell twice** in the tub because it is too slippery. She is
19 afraid to get in there. They need to address this problem.”⁴⁷

20 Donna Addario told them, “**I am talking to a lawyer about the tub itself, it doesn’t have**
21 **any traction on the bottom, because both my husband and I have fallen down in the tub.**”⁴⁸

22 Further, in an interrogatory, Plaintiffs requested:

23
24 11. Please state whether Defendant FIRST STREET has ever
25 received notice, either verbal or written, from or on behalf of any

26 ⁴³ See, Ex. 37, Def. *first*STREET’s Resp. to Pl. Ansara’s Req. for Prod. Docs., No. 1, dated Sept. 14, 2018.

27 ⁴⁴ See, Ex. 38, Guild Survey, at line 2483

28 ⁴⁵ See, Ex. 38, Guild Survey at line 973.

⁴⁶ See, Ex. 38, Guild Survey at line 1505.

⁴⁷ See, Ex. 38, Guild Survey at line 1748.

⁴⁸ See, Ex. 38, Guild Survey at line 3197.

1 person claiming injury or damage from his use of a Jacuzzi Walk-
2 In-Tub which is the subject of the litigation.

3 If so, please state:

- 4 (a) The date of each such notice
5 (b) The name and last known address of each person
6 giving such notice; and
7 (c) The substance of the allegations of such notice.

8 **ANSWER:** Objection. This Interrogatory is overbroad with respect
9 to timeframe, subject matter, and the term “damage.” This
10 Answering Defendant has received notice of the following
11 incidents:

- 12 1. Leonard Baize, served June 28, 2018. Mr. Baize alleged
13 he was sold a tub too small for him after being advised
14 by the sales representative that he would fit.
15 2. Mack Smith, received notice of claim January 2017. The
16 claimants allege Mr. Smith drowned in the tub. This
17 Answering Defendant is not aware of any further facts or
18 the current status of this claim.⁴⁹

19 **3. Dave Modena Should Have Been Adequately Prepared Pursuant to**
20 **Topic 51 of Plaintiffs Rule 30(b)(6) Notice to Discuss Guild Survey**
21 **Entries and the Other Incident Evidence**

22 The Guild Survey entries clearly evidence that *firstSTREET* was receiving complaints
23 from customers about the design of the tub. Customers were complaining that the floor and seat
24 surfaces of the tub were too slippery and that once someone had fallen it was difficult to get back
25 out. These things are would be crucial for Plaintiffs to use to prove its case against both
26 defendants. Customers actually indicated that it was a manufacturing defect that needed to be
27 fixed. Topic 51⁵⁰ of Plaintiffs’ Rule 30(b)(6) Notice is directly on point and Plaintiffs are
28 significantly prejudiced by *firstSTREET*’s failure to 1) produce the documents before Modena’s
deposition so that Plaintiffs could intelligently and adequately prepare and use the documents in

⁴⁹ See, Ex. 9 to Pls’ Mot., Def. *firstSTREET*’s Resp. to Pl. Ansara’s Interrogs., No. 11.

⁵⁰ See, Ex. 28, Topic 51 States:

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.**

1 the deposition to question Modena and 2) to at a minimum raise the issues during the deposition
2 so that Plaintiffs could question Modena about them.

3 As this Court is aware, a party cannot compel an out of state witness to attend trial.
4 Therefore, Plaintiffs need to make sure that any Rule 30(b)(6) depositions that are taken cover all
5 of the requisite topics and materials so that when trial comes, the Plaintiffs are prepared. If there
6 is an issue of evidence that has not been met, the Plaintiffs cannot subpoena the out-of-state
7 witness and compel them to attend trial so that the Plaintiffs can ask questions of the witness to
8 meet the burden of proof on the contested issue. All of that needs to be done *prior* to trial.
9 *firstSTREET* did not turn over these documents until well after the deposition of Dave Modena
10 and until the deadlines were closed. These actions significantly prejudiced Plaintiffs by depriving
11 them of meaningfully deposing the Rule 30(b)(6) in preparation for trial. The significant majority
12 of important documents were produced *after* the depositions had already taken place. That is like
13 a Plaintiff in a car crash case who sat silently regarding a significant medical history and only
14 disclosed the relevant details after discovery had closed, Plaintiff had been deposed and trial was
15 upon the parties. That would never be allowed. *firstSTREET*'s actions are no different and should
16 not be allowed either.

17 **C. *firstSTREET*'s "Front Row" Seat**

18 Plaintiffs sincerely do not understand the position being taken by *firstSTREET* which
19 cherry-picks statements made by Commissioner Bulla from just one hearing while ignoring the
20 remainder of the briefing and hearings in this case. Even if only the cherry-picked segment of the
21 hearing *firstSTREET* selected is considered, at a very minimum, *firstSTREET* was on notice of
22 the importance of providing all injury claims as early as ***September 19, 2018***. Yet despite that,
23 *firstSTREET* failed to identify those documents, failed to produce those documents, failed to
24 prepare David Modena to discuss those documents and failed to supplement either NRCP 16.1 or
25 its Interrogatory and Request for Production Responses as required under the rules when the party
26 "learns that in some material respect the information disclosed is incomplete or incorrect and if
27 the additional or corrective information has not otherwise been made known to the other parties
28



1 during the discovery process or in writing.”⁵¹

2 At a **bare minimum** *firstSTREET* should have supplemented its discovery requests and
3 16.1 disclosures to produce all of the documentation evidencing a complaint about **an injury**. But
4 going one step further, as *firstSTREET* has pointed out, Plaintiffs filed a previous motion to strike
5 and was subject of a minute order this Court entered on March 4, 2019 where this court ordered
6 an evidentiary hearing “on the issue of sanctions for March 28, 2019,” and further ordered that
7 “Plaintiff is permitted to take a further deposition of the corporate representatives and First Street,
8 regarding Chopper, marketing and advertising, and the First Street dealers that existed between
9 2008 and the date of the incident . . . Plaintiff is entitled to take the depositions of the First Streets
10 Dealers. The parties are directed to again cooperate in good faith to conduct the forensic review
11 previously ordered by the Discovery Commissioner- if it still has not been complete – and, of
12 course, **the scope shall be all incidents involving a Jacuzzi walk-in tub with inward opening
13 doors, for the time period of January 1, 2008, through the date of filing of the complaint,
14 where a person slipped and fell, whether or not there was an injury, whether or not there
15 was any warranty claim, and whether or not there was a lawsuit.”⁵²**

16 Despite having a front-row seat **and** being in the fight, *firstSTREET* chose to sit idly by
17 and do nothing while Jacuzzi and Plaintiffs slugged it out knowing full well what the allegations
18 being made by Plaintiffs were and knowing full well what the relevant discovery was.

19 **D. Alert 911 Non-Disclosure**

20 *firstSTREET* does not even acknowledge that it lied about this aspect of the case. Instead
21 it shifts to the dangerous conspiracy theory insinuations without even acknowledging that it
22 (through counsel) flatly lied to Plaintiffs. Unequivocally. Plainly. It lied. Where is the candor to
23 opposing counsel? Where is the candor to the court? What is happening in our profession and
24 world where instead of coming forth and saying, “you know we made a mistake,” you instead
25 double-down and hope you can confuse the issue by making baseless insinuations about your
26

27
28 ⁵¹ See, NRCP 26(e)(1).

⁵² See, **Ex. 30** Minute Order, Mar. 4, 2019 (emphasis added).

1 opponent? *firstSTREET* lied. Plain and simple. Instead of owning up to that, it tries to shift focus
2 and blame Plaintiffs for “creat[ing] out of thin air a conspiracy/non-disclosure theory!”⁵³

3 What world are we living in? A system that allows this type of behavior is broken. A
4 system that allows this cannot be trusted. When a system cannot be trusted, all hope is lost.
5 Alarmingly we are seeing more and more that despite clear facts, this “fake news” approach is
6 being propagated throughout society. It cannot be allowed to bleed into the legal system – the last
7 bastion of truth.

8 Why is this important? Ruth Curnutte complained to the Consumer Product Safety
9 Commission (CPSC) via a formal complaint about the Jacuzzi walk-in tub and complained that it
10 was a death trap. She mentioned that she was given an Alert 911 and was instructed to use it in
11 conjunction with her use of the tub. In her words she nearly drowned and the product (Alert 911)
12 would have “been useless” because she was thrust under the water. Plaintiffs’ ability to conduct
13 discovery regarding this matter should not hinge on *firstSTREET*’s characterization of this being
14 only a “free gift,” that was simply a “marketing tool.” If it existed – Plaintiffs should have been
15 able to get straight-forward answers about it and make their own assessment of the item. Instead,
16 *firstSTREET* lied when asked about it. And then when confronted, *firstSTREET* tries to play it
17 off as Plaintiffs “concoct[ing] an unfounded and unsubstantiated theory!”⁵⁴

18 Again, to make this as simple as possible, because of Ms. Curnutte’s Consumer Product
19 Safety Commission formal complaint, on multiple occasions Plaintiffs asked counsel for
20 *firstSTREET* whether *firstSTREET* or AITHR were involved with this product. Never once did
21 *firstSTREET* ever say that this was just a marketing tool, instead it outright denied having **any**
22 **involvement** whatsoever! In fact, in order to throw Plaintiffs off the scent, *firstSTREET* even
23 suggested that she was confused or that it was one of the installers independent of *firstSTREET*
24 and AITHR. Specifically, the day before Ms. Curnutte’s deposition the undersigned texted Mr.
25 Goodhart asking the following:

26 . . .

27 _____
28 ⁵³ See, Def. Opp’n. at 17:4.

⁵⁴ See, Def. Opp’n. at 17:5-6.

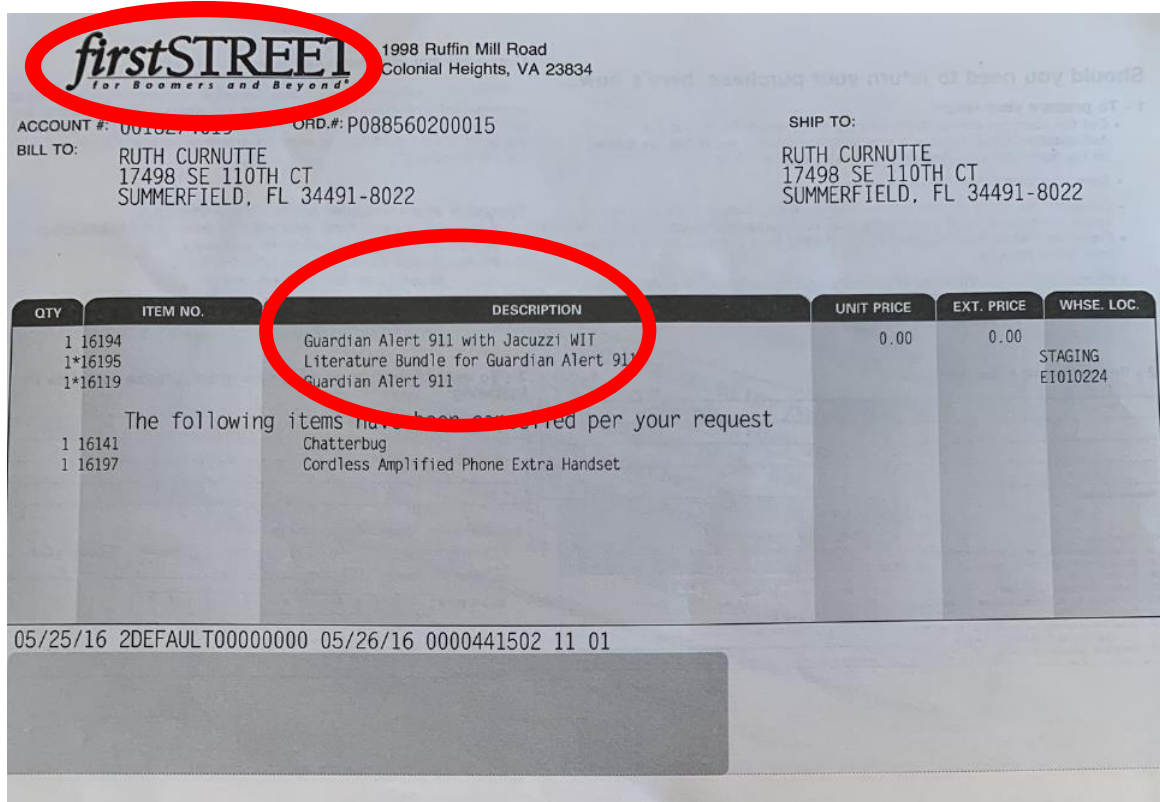
1 **Mr. Cloward --** “Hey I’m prepping for this drop (sic) tomorrow. Did you ever find
 2 out from firstSTREET who was proving (sic) the 911 Alert that
 3 Curnutte mentioned? Was that a Jacuzzi product? FS product? Or
 something that was independent of both?”⁵⁵

4 **Mr. Goodhart --** “**No on (sic) at FirstSTREET** promoted that with WIT customers.
 5 It might have been the installer? Or she could have just thought of
 that.”⁵⁶

6 **Mr. Cloward --** “**Are you sure?**”⁵⁷

7 **Mr. Goodhart --** “**Yes.** That is what Dave told me. **But he can only speak about**
 8 **AITHR.** The independent dealers may have done some other
 things that was not a part of the FirstSTREET program.”⁵⁸

9 So, through counsel *firstSTREET* and AITHR denied having any involvement and
 10 suggested that it was one of the independent dealers or that she [Ms. Curnutte] was confused. The
 11 next day, on the record, it was fleshed out that it absolutely came from *firstSTREET* and
 AITHR.⁵⁹



firstSTREET 1998 Ruffin Mill Road
Colonial Heights, VA 23834

ACCOUNT #: 0010271022 ORD.#: P088560200015 SHIP TO:

BILL TO: RUTH CURNUTTE 17498 SE 110TH CT SUMMERFIELD, FL 34491-8022

QTY	ITEM NO.	DESCRIPTION	UNIT PRICE	EXT. PRICE	WHSE. LOC.
1	16194	Guardian Alert 911 with Jacuzzi WIT	0.00	0.00	
1*	16195	Literature Bundle for Guardian Alert 911			STAGING
1*	16119	Guardian Alert 911			E1010224
The following items have been converted per your request					
1	16141	Chatterbug			
1	16197	Cordless Amplified Phone Extra Handset			

05/25/16 2DEFAULT00000000 05/26/16 0000441502 11 01

⁵⁵ See, Ex. 42 Declaration of Benjamin Cloward.

⁵⁶ See, *Id.*; see also, Ex. 6.

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ See, Ex. 7, Ruth Curnutte Dep.

1 Yet no apology followed. No, “hey we’re really sorry, we made a mistake.” Instead,
2 Defendants pivot and try and shift focus and blame Plaintiffs for diligently pursuing every angle
3 of the case and accuse Plaintiffs of “concocting unfounded and unsubstantiated theor[ies]” about
4 the case!

5 Then, *firstSTREET* even goes one step further and appears to lie on top of the lies being
6 advanced in the moving papers. Keeping in mind, Dave Modena apparently first told Phil
7 Goodhart that neither *firstSTREET* nor AITHR had anything to do with the Guardian Alert 911
8 product, but then after Plaintiffs stumbled into the original paperwork that was sent with the
9 product to Ms. Curnutte which proved unequivocally that the product did in fact come from these
10 Defendants, they instead shift the focus and claim it was just a marketing ploy and was only used
11 from July 2014 and October 2015.

12 A closer look however at the Guild Survey documents belies that argument. There are
13 entries in **November** 2015 which indicate that the Guardian Alert was still being used.⁶⁰ An entry
14 for **December** 2015 the user indicated that, “I would like to return the life alert that was sent, I
15 do not need it.”⁶¹ Another entry in **January of 2016** indicated that, “[t]hey sent me some kind of
16 Guardian machine in the mail and I don’t really understand it.”⁶² Also in **January of 2016** another
17 person said, “I also never did get my free gift of a year subscription to an alert system.”⁶³ In
18 **March of 2016**, an individual stated, “[t]he salesperson said we would get a LifeAlert Guardian.
19 We have not heard from him about it and we would like to receive the LifeAlert.”⁶⁴ Then in **May**
20 **of 2016** a customer indicated, “I was supposed to get a Home Alert for around my neck, but I
21 have yet to receive it.”⁶⁵

22 The May 2016 entry creates suspicion of *firstSTREET*’s statement that this was only a
23 “marketing tool,” when people apparently are told to wear the product around their neck when
24 using the walk-in tub. This is not the only entry that corroborates the importance of the Guardian

25 ⁶⁰ See, Ex. 38, Guild Survey at line 1556 (“They sent a guardian button at not (sic) charge!”).

26 ⁶¹ See, Ex. 38, Guild Survey at line 1575.

27 ⁶² See, Ex. 38, Guild Survey at line 1660.

28 ⁶³ See, Ex. 38, Guild Survey at line 1777.

⁶⁴ See, Ex. 38, Guild Survey at line 2045.

⁶⁵ See, Ex. 38, Guild Survey at line 2569.

1 LifeAlert when using the product. An entry from August of 2015 really highlights how important
2 the product was as explained by the salesman. The customer indicated the following:

3 This is our second Jacuzzi, but **we didn't want the Home Alert**
4 **part of the deal.** We aren't old, and **we don't need that product.**
5 When the salesman came out to sell us the tub, we told him we
6 wanted the tub, and it was a done deal. **He insisted, however, that**
7 **we go through the whole presentation.** We are in our 60's, and **he**
8 **was telling us about how we might fall.** That may happen one day,
9 but it isn't why we bought the tub. We purchased the tub because it
fits in the space and we were planning ahead. **Even so, he insisted**
on going through everything. Then we received a follow up call
for another service, and that badgered me as well.⁶⁶

10 This customer seems to have been told about the importance of using the Alert system
11 when using the tub in case they fell. The customer was only in their 60's and apparently was
12 frustrated with the detail the salesman insisted with which to deliver the presentation, because of
13 the fall risk. Yet *firstSTREET* now comes to court and argues this was just a marketing tool.

14 When Ms. Curnutte was deposed, she said, after the tub was installed, "I had to wait three
15 months for the 911 emergency button to be delivered. And I was not supposed to use the Jacuzzi
16 without the button because of the problem of possibly dangerous circumstances using the
17 bathtub."⁶⁷

18 She further testified that:

19 And the first time I used it I had it filled, and when I turned it on,
20 the jets, I was thrushed [sic] against the bottom -- the footwell is
21 much lower than the seat, and I was thrushed against the wall and I
22 ended up on my knees, and I was submerged -- my head was
23 underwater. And I frantically tried to get ahold of something to get
24 out of the water. It was the scariest moment because I didn't know
25 whether I can save myself because I live alone. And it was the most
26 horrifying experience I had with a Jacuzzi.⁶⁸

27 . . .

28 ⁶⁶ See, Ex. 38, Guild Survey at line 803.

⁶⁷ See, Ex. 7, Curnutte Dep. at 9: 21-25.

⁶⁸ See, Ex. 7, Curnutte Dep. at 10:1-10.

1 Next during her deposition, the Alert 911 was discussed but prior to that being discussed,
2 the undersigned again gave *first*STREET and AITHR the opportunity to admit having
3 involvement with the product. Counsel stated:

4 Mr. CLOWARD: Hold on one moment. This is a
5 Question for the attorneys in the case.

6 Counsel, we have pending discovery on this issue. It's my
7 understanding that the claim is going to be that neither First Street
8 nor Jacuzzi had anything to do with this.

9 MS. LLEWELLYN: I can't answer that right now.

10 MR. CLOWARD: Okay.

11 MR. GOODHART: It's my understanding, Ben, that First
12 Street did not have any direct contact with Mr. Curnutte [sic], so
13 they're not aware of any attempts by anybody to sell a 911 alert,
14 badge, or whatever you want to call it, to her.

15 MR. CLOWARD: Okay.

16 MR. GOODHART: And AITHR, I believe, did not do any
17 business in Florida, according to Fairbanks.

18 That was the independent dealer in Florida.⁶⁹

19 The colloquy with counsel was before Ms. Curnutte was asked to discuss the Alert 911
20 product itself. Next, she was asked to describe some of the documents that she had provided
21 stating on line 6 with the following: "So I'm going to show you some documents that are your
22 documents that I want to attach, we'll attach as Exhibit 4. And is this the – I guess the label, or
23 the documentation that came with the 911 alert? A: Yes it is. Okay. So mark that as Exhibit 4."
24 Ms. Curnutte was then asked, "and who is the company that is listed that that document – that
25 that came from? A: **Well, it says here, First Street.**"⁷⁰

26 The document was then handed to Mr. Goodhart with a request for counsel to "talk to his
27 client and find out what's going on with that."⁷¹ Incredulously, after being handed the smoking
28 gun, Mr. Goodhart midstream starts to reinvent time and history by saying, "well, Ben, I never
said that First Street did not sell it to her. My comment was neither First Street nor AITHR were

⁶⁹ See, Ex. 7, Curnutte Dep. at 13:1-16.

⁷⁰ See, Ex. 7, Curnutte Dep. at 14:17-19 (emphasis added).

⁷¹ See, Ex. 7, Curnutte Dep. at 14: 20-22.

1 directly involved in the actual sale, that would have been Gordon Fairbanks, who was the
2 independent dealer in Florida at the time.”⁷²

3 This is a prime example of the gamesmanship that Plaintiffs have had to deal with the
4 *entire course of litigation!* There has been zero candor to opposing counsel, instead it has been
5 “win at all costs” from the start and “we’ll only tell the truth if you catch us in the act.”

6 Compare what Mr. Goodhart said during the deposition “I never said that First Street did
7 not sell it to her,” with what Mr. Goodhart said in his text message the day before the deposition:

8 **Mr. Cloward --** “Hey I’m prepping for this drop (sic) tomorrow. Did you ever find
9 out from firstSTREET who was proving (sic) the 911 Alert that
10 Curnutte mentioned? Was that a Jacuzzi product? FS product? Or
something that was independent of both?”⁷³

11 **Mr. Goodhart --** “**No on (sic) at FirstSTREET** promoted that with WIT customers.
12 It might have been the installer? Or she could have just thought of
that.”⁷⁴

13 **Mr. Cloward --** “**Are you sure?**”⁷⁵

14 **Mr. Goodhart --** “Yes. That is what Dave told me. **But he can only speak about**
15 **AITHR.** The independent dealers may have done some other
things that was not a part of the FirstSTREET program.”⁷⁶

16 He tried to suggest that no one at either *firstSTREET* or AITHR had anything to do with
17 it. He also tried to make it sound like Ms. Curnutte was just confused (“Or she could have just
18 thought of that.”). Finally, he tried to suggest that maybe it was one of the “independent dealers”
that was not part of the *firstSTREET* program.

25
26 ⁷² See, Ex. 7, Curnutte Dep. at 14:23-15:3.

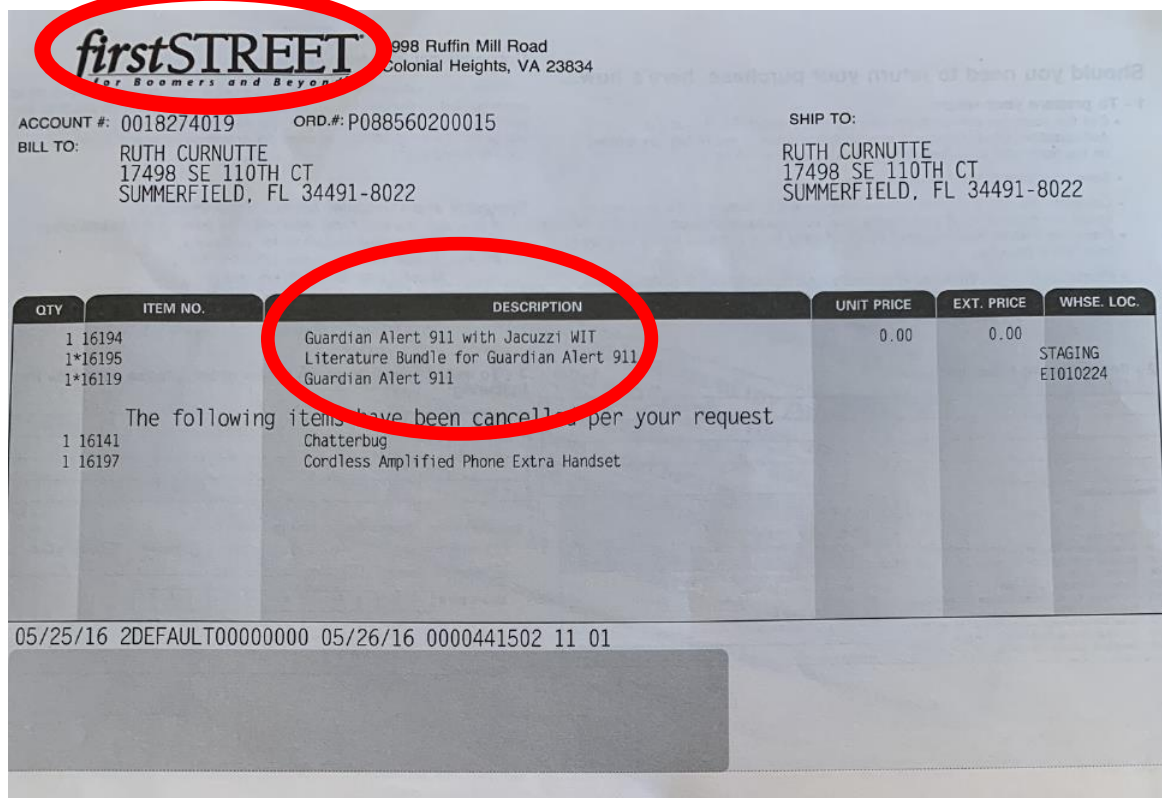
27 ⁷³ See, Ex. 42 Declaration of Benjamin Cloward.

28 ⁷⁴ See, *Id.*; see also, Ex. 6.

⁷⁵ *Id.*

⁷⁶ *Id.*

Only when this document was handed to him in the middle of the deposition was there a possible concession that *firstSTREET* may have been involved!



firstSTREET 998 Ruffin Mill Road
Colonial Heights, VA 23834

ACCOUNT #: 0018274019 ORD.#: P088560200015 SHIP TO:
BILL TO: RUTH CURNUTTE RUTH CURNUTTE
17498 SE 110TH CT 17498 SE 110TH CT
SUMMERFIELD, FL 34491-8022 SUMMERFIELD, FL 34491-8022

QTY	ITEM NO.	DESCRIPTION	UNIT PRICE	EXT. PRICE	WHSE. LOC.
1	16194	Guardian Alert 911 with Jacuzzi WIT	0.00	0.00	STAGING
1*	16195	Literature Bundle for Guardian Alert 911			E1010224
1*	16119	Guardian Alert 911			
The following items have been cancelled per your request					
1	16141	Chatterbug			
1	16197	Cordless Amplified Phone Extra Handset			

05/25/16 2DEFAULT00000000 05/26/16 0000441502 11 01

This is not how litigation should be conducted. Instead, all of this information should have been provided regardless of whether *firstSTREET* felt it was important or just simply a sales tool. Plaintiffs should have been able to question the Rule 30(b)(6) about these issues and formulate their own thoughts about the importance of this product. Instead, Plaintiffs have been deprived of that opportunity.

E. Bathmat Non-Disclosure

Are we in the twilight zone?? Literally, is this the twilight zone?? *firstSTREET* says, “Plaintiffs cite word for word Ms. Rouillard’s testimony that the mats she had come with the tub to mislead this Court.”⁷⁷ Then *firstSTREET* says, Plaintiff “failed, however, to cite Ms. Rouillard’s follow up response she provided to counsel at the end of her deposition, when she stated, “I got it [bathmat] right away because I didn’t want to step in it and slide.”⁷⁸ *firstSTREET*

⁷⁷ See, Def. Opp’n. at 18: 11-12.

⁷⁸ See, Def. Opp’n. at 18: 13-15.

1 then says, “[s]he then clarified this even further and testified, ‘That’s what I bought – I guess I
2 did go out and buy it the next day.’”⁷⁹

3 *firstSTREET* cites the foregoing to 1) make Plaintiffs look like they’re lying to the Court;
4 and 2) to prove that Ms. Rouillard actually bought the mat and Plaintiffs were misrepresenting
5 that fact.

6 Hmm.... There is a saying – something that involves a Kettle and a Pot.... Again,
7 Plaintiffs sincerely ask if we are in the Twilight zone.....

8 Painfully, Plaintiffs must take the Court through this one more time to show who is lying
9 and who is being truthful. *firstSTREET* unfortunately only cited **half** of her answer and omitted
10 the rest, apparently hoping that the Court would not read the deposition for itself. For the Court’s
11 ease of getting this matter right, the full question and answer is set forth here:

12 Q: Okay. You were concerned about potentially sliding
13 without that?

14 A: Yes. That’s what I bought – I guess I did go out and
15 buy it the next day. I could have done something. It’s been so long
16 ago, **I really don’t – can’t give you an honest answer, but I got it
17 somewhere and I like it and I use it every time I’m in the tub.”**

18 Q: Okay.
19 And did you use the tub first without that and then
20 you realized that it was too slippery and that’s what caused you to
21 go out and buy that?

22 A: **I don’t remember. And I should have changed
23 that. I don’t remember that I bought it, whether that it came
24 with the tub, but I had it in the first couple of days.**⁸⁰

25 She clearly was not sure whether she went out and bought it or whether it came with the
26 tub. But *firstSTREET* cherry-picks her answer and leaves off the part where she says she “can’t
27 give you an honest answer,” and also omits the part where she corrects herself and says, “I should
28 have changed that. I don’t remember that I bought it, whether that it came with the tub, but I had
it in the first couple of days.”⁸¹

⁷⁹ See, Def. Opp’n. at 18:15-16.

⁸⁰ See, Ex. 10, Rouillard Dep. at 30:13-31:8 (emphasis added).

⁸¹ See, Ex. 10, Rouillard Dep. at 30: 20-22; 31:5-8 (emphasis added).

1 Compare Defendants' recitation of what Ms. Rouillard said with Plaintiffs in their original
2 motion which stated:

3 Upon questioning by *firstSTREET*'s lawyer she was asked
4 if that was "something you bought for yourself or was that
5 something that was delivered with the tub?"⁸² She responded that
6 "[i]t came with the tub."⁸³

7 Upon further questioning by the undersigned, she could not
8 remember whether the tub came installed with the slip mat/pad or
9 whether her husband had to install it, nor could she remember
10 whether it was purchased directly from *firstSTREET* or whether it
11 was purchased somewhere else.⁸⁴

12 The second paragraph is pretty darn clear that she was confused about the bathmat and
13 that's what was represented by Plaintiffs. This Honorable Court can compare what Plaintiffs set
14 forth and what Defendants set forth and make the conclusion of who is trying to mislead the
15 Court.

16 Next in Alice in Wonderland fashion, Defendants start talking about who was copied on
17 this email or that email to again try and prove that somehow Plaintiffs were misrepresenting things
18 to the Court. Defendants' assertion boiled down to its essence is basically this: the emails have
19 Jacuzzi folks copied and not *firstSTREET* so that means that *firstSTREET* was not involved. Well
20 that will be proven false below, but first, Defendants miss the point entirely. What Plaintiffs were
21 conveying was simply this (which was set forth in the motion): the slipperiness aspect of the tub
22 has been a **HUGE** part of Plaintiffs' efforts and *firstSTREET* failed to produce documents
23 regarding this issue until way too late (after Plaintiffs stumbled upon the information) which has
24 prejudiced Plaintiffs.

25 Stepping back and looking at this from the 30,000-foot view, the entire fight with Jacuzzi
26

27 ⁸² Id.

28 ⁸³ Id. (emphasis added).

⁸⁴ See, Pl. Mot. at 7:16-19 (citing **Ex. 10**, Rouillard Dep. at 30:7-12, 30:18-22, 31:5-8.)

1 started when 20 search terms were provided to Jacuzzi in February of 2018 and Jacuzzi claimed
2 no results were retrieved. The first two terms on the list were: 1. Fall, and 2. Slip.⁸⁵ This fight has
3 been **extensively** briefed with *firstSTREET* receiving service of all pleadings and being in
4 attendance at all of the hearings. All of the discussion by Commissioner Bulla was heard by
5 *firstSTREET*. All of the arguments by both Jacuzzi and Plaintiffs were heard as well. It's not like
6 this was one isolated hearing for goodness sake. In fact, the prior motion to strike *firstSTREET*'s
7 answer involved similar issues! Yet, it continued to sit by and do nothing until Plaintiffs stumbled
8 upon the bathmat at Ms. Rouillard's deposition and lo and behold it's discovered that custom
9 bathmats were offered and used! In addition to that other non-skid options were also used and
10 offered. Again, this is not something that should have been discovered by having Plaintiffs
11 stumble upon it and it's not something that should have been discovered in **year 4** of the litigation.

12 Plaintiffs should have had the information produced so that they could have questioned
13 the Rule 30(b)(6) designee about this including all of the discussion leading up to the decision to
14 implement these various products. Clearly the companies would not just randomly start offering
15 these products if they were not necessary. The entire thrust of Plaintiffs Motion was to prove that
16 numerous "non skid options" were being used by Jacuzzi and *firstSTREET* in conjunction with
17 the walk-in tubs.

18 *firstSTREET*'s Alice in Wonderland insinuations that because the emails that Plaintiffs
19 referenced did not originate within *firstSTREET* or did not have *firstSTREET* employees in the
20 cc line, that it was not involved is flatly false.

21 As promised, to address why this attempt fails miserably the court first and foremost
22 should look at the initial email that Plaintiffs referenced from *firstSTREET* Vice President Norm
23 Murdock, which listed "[g]reater slip resistance **needed for our senior users**" as a topic of
24 discussion to be had between *firstSTREET* and Jacuzzi.⁸⁶ Second, here are just a few of the emails
25 that *firstSTREET* **was** on which clearly document it was "in the thick of things" and involved
26 with these non-skid options.

27
28 ⁸⁵ See, Ex. 40, Email between JDC and BPC, Feb. 2018.

⁸⁶ See, Ex. 16 of Pls. Motion; Ex. 19 of Defs. Opp'n. (emphasis added).

- 1 • Email from *firstSTREET* Vice President Norm Murdock to Audrey Martinez on March
2 18, 2014:
3 “Can you please confirm that the use of this product [Liquiguard
4 Solid Step Cote] on Jacuzzi tubs will not void your lifetime
5 warranty? We just need that confirmation in order to use this
6 product.”⁸⁷
- 7 • Newsletter from Jacuzzi, *AITHR* and Easy Climber:
8 “We are pleased to announce that *Aging in the Home Remodelers*
9 & Jacuzzi have **both** tested & approved the use of an optional non-
10 skid coating designed to improve the slip resistance of the floors in
11 our walk-in bathtubs. . . . [t]he product is SolidStepCote 04 . . .
12 *Aging in the Home Remodelers* has negotiated a 20% discount off
13 of the published internet process for our dealers.”⁸⁸
- 14 • Email from Norm Murdock to Jacuzzi on July 9, 2014
15 “If we schedule service for this customer, we would like to have the agent also
16 apply the slip resistant coating . . . **we will supply the product.** 20 minute
17 application. We will pay for this.”⁸⁹

18 There can be no question that *firstSTREET* was heavily involved with these non-slip or
19 non-skid products, yet its’ discovery regarding same has been woefully deficient. Plaintiffs have
20 asked *firstSTREET* specifically to produce such documentation. Plaintiffs requested⁹⁰:

13	133. Please produce all documents reflecting items, including bathmats or other
14	accessories or product modifications like Kahuna grip, LX07000, Cajun grip, etc., that you sold or
15	provided or are aware were sold, provided, offered or marketed to customers using any/all Jacuzzi
16	walk-in tub products.
17	RESPONSE: All documents responsive to this request that Defendant <i>firstSTREET</i> has been
18	able to locate have previously been produced as part of Defendant <i>firstSTREET</i> ’s NRCP 16.1
19	Early Case Conference Production and all Supplements thereto.

21 In the request, Plaintiffs requested products that were sold by *firstSTREET* **and** products
22 that *firstSTREET* was “aware were sold, provided, offered or marketed to customers using any/all
23

24 ⁸⁷ See, Ex. 31, JACUZZI005640 (email from within *firstSTREET* to Jacuzzi).

25 ⁸⁸ See, Ex. 32, JACUZZI005669-JACUZZI005670 (newsletter bulletin from Jacuzzi, *AITHR* & Easy Climber –
26 produced **only** by Jacuzzi). It should be noted that the email chain begins with Simona Robertson and is sent to ***Dave***
27 ***Modena!*** Yet it was never produced by *firstSTREET*.

28 ⁸⁹ Ex. 33, JACUZZI005513-JACUZZI005514 (produced **only** by Jacuzzi).

⁹⁰ See, Ex. 34, *firstSTREET*’s Resp. to Pl. Ansara’s Req. for Prod. Docs., No.6.

1 Jacuzzi walk-in tub products.”⁹¹ *firstSTREET*’s responses were less than 30 days before the
2 evidentiary hearing involving Jacuzzi was scheduled to commence! Despite having a co-
3 Defendant under the threat of having its answer struck for failing to disclose information,
4 *firstSTREET* couldn’t be bothered to even respond to the discovery request in good faith and did
5 not produce a single new document. Instead, it simply referred to the NRCP 16.1 Disclosure and
6 Supplements Thereto.⁹² The problem with that is that those documents contained nothing with
7 respect to SolidStepCote or any bathmats whatsoever. The request specifically asked for products
8 that *firstSTREET* “you sold or provided or are aware were sold, provided, offered or
9 marketed to customers. . .”⁹³

10 So *firstSTREET* can say all that it wants that it hasn’t produced important documents
11 pursuant to NRCP 16.1 because it didn’t have to – but what does it say with respect to discovery
12 requests directly on point? Apparently *firstSTREET* believes that the way discovery works is that
13 unless and until Plaintiffs obtain an order compelling production, it can sit back and not disclose
14 any responsive documents.

15 **F. Plaintiffs’ Table on Pages 11 and 12 of the Motion**

16 *firstSTREET* devotes two paragraphs to probably the most damning part of Plaintiffs’
17 motion and basically takes the position that it can’t comment because all of the documents
18 referenced by Plaintiffs are documents produced by Jacuzzi. ***THAT’S THE ENTIRE POINT!***
19 The documents referenced by Plaintiffs were produced by Jacuzzi but are *firstSTREET*
20 documents! How is it that Jacuzzi can locate and produce these documents, but *firstSTREET*
21 cannot?

22
23
24
25
26
27 ⁹¹ See, *Id.*

28 ⁹² See, **Ex. 35**, *firstSTREET* NRCP 16.1 Disclosures (Initial through 7th)(submitted to Court via thumb-drive).

⁹³ See, **Ex. 34**, *firstSTREET*’s Resp. to Pl. Ansara’s Req. for Prod. Docs. No. (emphasis added).



Further, *firstSTREET* argues that Plaintiffs failed to reference “supporting documentation” in the table it produced. Apparently *firstSTREET* over-looked the column of the table that contained the Bates-stamped pages that serve as the supporting documentation.⁹⁴

to Norm Murdock and Monique Trujillo of AITHR/ <i>firstSTREET</i>	him to hurt his back . . . Is willing to get a lawyer if the tub is not taken out and he is refunded. . . .”	Raidt	2013	Jacuzzi005715; Jacuzzi005716
Email from AITHR employee Ashley Davidson to Norm Murdock the Vice President of <i>firstSTREET</i>	“she slipped in her tub and hit her arm on the grab bar . . .”	Mrs. Borroz	Sept. 2013	Jacuzzi005315; Jacuzzi005438
“referred to AITHR, we do not support product.”	“she slipped when trying to get out and <u>almost</u> drowned.” “She called in previously with the same problem.”	Alice Roehl	Nov. 2017	Jacuzzi005838; Rev. Jacuzzi005938
Email copying <i>firstSTREET</i> employee, Simona Robertson	“he says the bottom of the tub is extremely slippery, he has slipped, and also a friend has slipped . . . [w]e get this complaint a lot, we have two customers right now that have injured themselves seriously and are threatening law suits.”	Mr. Flashberger	Dec. 2013	Jacuzzi005327; Jacuzzi005328

firstSTREET has received all of the same disclosures that Plaintiffs have received in this matter. Notwithstanding the underlying documents are produced here again.⁹⁵

firstSTREET’s arguments are without merit. For goodness sake one of the most significant emails produced by Jacuzzi was from *firstSTREET*/AITHR employee Nick Fawkes telling Jacuzzi about the slipperiness complaint and that “we actually hear this complaint more and more often and the numbers are increasing installations. I would highly recommend that we consider putting something a little bit more abrasive not only on the floor but also on the seats as we have had customers call concerned that they slip off the seat”⁹⁶

II. LEGAL ARGUMENT

Plaintiffs incorporate and restate the arguments outlined in their Motion and fully express them here. Unfortunately, Plaintiffs have had their hands full litigating the discovery abuses with

⁹⁴ See, Pls.’ Mot. at 12. (cut and pasted here with highlights for the Court’s ease of viewing).

⁹⁵ See, Ex. 36, Jacuzzi005652; Jacuzzi005621; Jacuzzi005623; Jacuzzi005719; Jacuzzi005720; Jacuzzi006856; Jacuzzi006857; Jacuzzi005465; Jacuzzi005466; Jacuzzi005367; Jacuzzi005715; Jacuzzi005716; Jacuzzi005315; Jacuzzi005438; Jacuzzi005838; Rev. Jacuzzi005938; Jacuzzi005327; Jacuzzi005328.

⁹⁶ See, Pls. Mot. at 13 (citing See, Ex. 16, Email from Nick Fawkes to Regina Reyes re: Arnouville, Manuel – Serial #BDFDK9, dated Dec. 21, 2012 (emphasis added)).

1 Jacuzzi and have been unable to advance the same issues with *firstSTREET* with the same
2 advocacy until now. Plaintiffs had hoped that *firstSTREET* would act in good faith and not be
3 required to have motions filed and orders compelling discovery entered prior to disclosing
4 relevant documents. But what is evident from *firstSTREET*'s position is that unless and until this
5 Court orders it to participate in discovery in good faith, it simply will not be doing so.

6 **A. Fairness Dictates Striking the Answer**

7 The attitude of *firstSTREET* clearly shows that it is flatly ignoring the requirements of
8 NRCP 16.1 and unless and until there is an order compelling specific discovery, it will not
9 volunteer any information.

10 **1. Young Factors Support Plaintiffs Request⁹⁷**

11 **(a) Degree of Willfulness**

12 How can *firstSTREET* sincerely come to court and argue that it has clean hands and has
13 participated in good faith? As has been shown on numerous occasions, *firstSTREET* has flatly
14 lied to Plaintiffs. Plain and simple, it has lied about very important issues. How is that any
15 different than fabricating evidence? There is no difference. In one instance, the party is saying
16 something does not exist, in the latter, the party is creating something that is false. Both are lies.
17 Both are untrue. Both thwart the purpose of trial which is the ascertainment of truth. *firstSTREET*
18 has lied through counsel (by misrepresenting things to counsel) and has lied at deposition to claim
19 that only **three** safety incidents exist. This is no different than the fabrication of evidence that
20 took place in Young.

21 *firstSTREET* knew as early as September 19, 2018 that the Alert 911 was an issue that
22 was important in the case. Despite that, it never offered any information on the product, instead
23 it lied. The text exchange between the undersigned and Phil Goodhart is crystal clear that Dave
24 Modena lied about this issue. Period. What is sad is that it would appear as though Mr. Goodhart
25 knew the truth because the next day during the deposition, when he was handed the document
26 listing *firstSTREET* as the company that provided the product – the story changed midstream.

27
28

⁹⁷ Young v. Johnny Ribeiro Bldg., Inc., 106 Nev. 88, 787 P.2d 777 (1990).

1 This midstream change indicates that Mr. Goodhart was holding back information. There is no
2 difference between what Bill Young did and what these Defendants have done.

3 Regarding the 200,000 emails, no privilege log or anything else has been produced that
4 would support withholding of those documents. Instead, Defendants appear to have cherry-picked
5 what they want produced in this matter.

6 (b) Plaintiff has been Significantly Prejudiced

7 Plaintiffs are shocked by *firstSTREET*'s claim that Plaintiffs simply sat around and
8 "elected to wait until December 11, 2018 to take the deposition of *firstSTREET* and AITHR's
9 NRCP 30(b)(6) witness."⁹⁸ Plaintiffs realize what a significant burden it is on this Court to sift
10 through volumes of materials but this is an important issue. Plaintiffs respectfully request the
11 Court to review a Motion⁹⁹ that was sent down to be filed back on October 24, 2018 but was
12 returned by the Discovery Commissioner for clarification. In that Motion, Plaintiffs set forth the
13 issues with respect to the advertising and marketing emails and evidence that *firstSTREET* flatly
14 refused to turn over. In a lengthy affidavit, the undersigned set forth all of the efforts taken to
15 obtain the information prior to that time.¹⁰⁰ *firstSTREET*'s delay not only caused a delay in
16 Plaintiffs ability to take the deposition of *firstSTREET*'s 30(b)(6) deposition, but it also seriously
17 prejudiced Plaintiffs continued deposition of Jacuzzi's Rule 30(b)(6) designee because Plaintiffs
18 did not have the documents available at that time to use during his deposition.

19 Therefore, for *firstSTREET* to try and claim that Plaintiffs were sitting around doing
20 nothing is extremely offensive. Had *firstSTREET* acted with a shred of decency and produced
21 the documents required via NRCP 16.1 the delays would not have occurred and Plaintiffs would
22 have been able to use the relevant documents during Jacuzzi's Rule 30(b)(6) deposition too but
23 were deprived of that opportunity because of *firstSTREET*'s failures. This is only with *one issue*
24 *though* – the marketing and advertising issue. As with be set forth below, Plaintiffs did not receive
25
26

27 ⁹⁸ See, Def. Opp'n. at 24.

28 ⁹⁹ See, Ex. 39, Pls' Mot. to Compel Def. *firstSTREET* to Prod. Docs. on OST (returned as moot).

¹⁰⁰ Id.

1 the vast majority of documents regarding other incidents until August of 2019, after the close of
2 discovery.

3 Plaintiffs have been appreciably prejudiced because they have not had all of the
4 information to use with their experts, cross-examine the Defense experts, use during the Rule
5 30(b)(6) witnesses, or use during other important depositions. It is quite unfair for *firstSTREET*
6 to claim that Plaintiffs “waited around” to take the Rule 30(b)(6) depositions of *firstSTREET* and
7 AITHR. Unfortunately, as Plaintiffs more fully documented in the Motion, the discovery
8 responses of Jacuzzi and *firstSTREET* largely mirrored one another and the parties were only
9 disclosing incidents that Plaintiffs already knew about through their own discovery efforts. Had
10 *firstSTREET* acted in good faith, it would have turned over the documents at the beginning of the
11 case and that would have mooted all of the discovery motions and the massive waste of judicial
12 resources addressing the issues.

13 Unfortunately, as the documents disclosed after discovery reveal, the depositions that
14 Plaintiffs *did take* were a complete waste of time because Plaintiffs did not have the relevant
15 documents to use during Mr. Modena’s first or second depositions. Further, all of the Plaintiffs
16 efforts in deposing Jacuzzi’s Rule 30(b)(6) witnesses (four different depositions) were also
17 wasted because the documents were not produced until well after the depositions.

18 Equally as important, Plaintiffs have wasted considerable time and thousands upon
19 thousands of dollars flying around the country taking depositions of other incident witnesses, who
20 while important, may not have been as important as other witnesses who were not disclosed until
21 after discovery had closed. This all could have been avoided had *firstSTREET* simply done the
22 right thing and produced the documents to begin with rather than acting in concert with Jacuzzi
23 to sand-bag or actually purposefully misdirect Plaintiffs at every turn.

24 For the Court’s edification an exhaustive timeline has been prepared by Plaintiffs
25 recounting the start-stop-start-stop-start-stop manner by which Plaintiffs have had to conduct the
26 discovery since late 2018.¹⁰¹ Because of Defendants’ conduct, discovery has been disjointed,

27
28 ¹⁰¹ See, Ex. 41, Timeline for Reply.



1 difficult and confusing to say the least. For instance, in early 2019, there was a brief stay of
2 discovery while the Court heard Plaintiffs Motions to Strike. After the Court lifted the stay, it
3 extended discovery on April 2, 2019 to August 2, 2019. The parties informally agreed to allow
4 depositions to continue for a couple weeks after that in preparation of the evidentiary hearing.
5 During that four-and-a-half-month period, Plaintiffs feverishly flew all over the country to take
6 depositions and complete important discovery. The following discovery was conducted or
7 attempted:

- 8 1. 4/2/19: Plaintiffs served 13th NRCP 16.1 Supplement
- 9 2. 4/8/19: Plaintiffs served 14th NRCP 16.1 Supplement
- 10 3. 4/9/19: Plaintiffs served 15th NRCP 16.1 Supplement
- 11 4. 5/21/19: Continued Depo of 30(b)(6) of Jacuzzi (Audrey Martinez
(individually and as 30(b)(6) designee), Mark Allen) (noticed for
12 6/12/19 in Costa Mesa, CA; rescheduled)
- 13 5. 5/22/19: Depo of 30(b)(6) of AITHR (noticed for 7/16/19 in
14 Richmond, VA; rescheduled)
- 15 6. 5/22/19: Depo of 30(b)(6) of *first*STREET (Dave Modena) (noticed
16 for 7/17/19 in Richmond, VA; rescheduled)
- 17 7. 5/22/19: Depo of Mark Gordon (President/CEO of *first*STREET)
(noticed for 7/18/19 in Richmond, VA; rescheduled)
- 18 8. 6/13/19: Depo of 30(b)(6) of AITHR (re-noticed for 7/11/19 in
19 Richmond, VA; rescheduled)
- 20 9. 6/13/19: Depo of 30(b)(6) of *first*STREET (Dave Modena) (re-
21 noticed for 7/10/19 in Richmond, VA; rescheduled)
- 22 10. 6/13/19: Continued Depo of 30(b)(6) of Jacuzzi (Advertising &
23 Marketing) (noticed for 6/28/19 in Costa Mesa, CA; rescheduled)
 - 24 a. 6/21/19: Jacuzzi objected to depo
- 25 11. 6/13/19: Continued Depo of 30(b)(6) of Jacuzzi (ESI Forensic,
26 Information Technology) (noticed for 6/28/19 in Costa Mesa, CA;
27 rescheduled)
 - 28 a. 6/21/19: Jacuzzi objected to depo
12. 6/14/19: Audrey Martinez (re-noticed for 7/9/19 in Costa Mesa,
CA; rescheduled)
13. 6/20/19: Audrey Martinez (re-noticed for 7/16/19 in **Costa Mesa,**
CA; taken)
14. 6/25/19: Depo of 30(b)(6) of AITHR (re-noticed for 7/12/19 in
Richmond, VA; not taken)
15. 6/25/19: Depo of 30(b)(6) of *first*STREET (Dave Modena) (re-
noticed for 7/11/19 in **Richmond, VA; taken**)
16. 6/25/19: Depo of Mark Gordon (President/CEO of *first*STREET)
(re-noticed for 9/23/19 in Richmond, VA; not taken)

17. 6/27/19: Continued Depo of 30(b)(6) of Jacuzzi (Advertising & Marketing: Designee: Michael Dominguez) (re-noticed for 7/15/19 in **Costa Mesa, CA; taken**)
18. 6/27/19: Continued Depo of 30(b)(6) of Jacuzzi (ESI Forensic, Information Technology) (re-noticed for 7/15/19 in Costa Mesa, CA; rescheduled)
19. 7/2/19: Depo of Barbara Morrison (noticed for 7/22/19 in Seattle, WA; rescheduled)
20. 7/2/19: Depo of George Robinson (noticed for 7/31/19 in Panama City, FL; not taken (deceased))
21. 7/2/19: Depo of Michael Kanarek (noticed for 8/1/19 in Miami, FL; not taken (possibly deceased))
22. 7/2/19: Depo of Nancy Jones (noticed for 8/2/19 in Tucson, AZ; rescheduled)
23. 7/2/19: Depo of Noreen Rouillard (noticed for 7/19/19 in Salt Lake City, UT; rescheduled)
24. 7/2/19: Depo of Patricia Herman (noticed for 7/29/19 in Apopka, FL; rescheduled)
25. 7/2/19: Depo of Robert Pullen (noticed for 7/25/19 in Detroit, MI; rescheduled)
26. 7/2/19: Depo of Ruth Curnutte (noticed for 7/29/19 in Ocala, FL; rescheduled)
27. 7/2/19: Depo of Sandy Haywood (noticed for 7/24/19 in Gardnerville, NV; rescheduled)
28. 7/2/19: Depo of Shirli Billings (noticed for 7/30/19 in Jacksonville, FL; rescheduled)
29. 7/2/19: Depo of 30(b)(6) of Atlas Home Improvement (noticed for 7/25/19 in Ann Arbor, MI; rescheduled)
30. 7/2/19: Depo of 30(b)(6) of Community Builders (noticed for 7/23/19 in Tulsa, OK; rescheduled)
31. 7/2/19: Depo of 30(b)(6) of Fairbanks Construction (noticed for 7/29/19 in Ocala, FL; rescheduled)
32. 7/2/19: Depo of 30(b)(6) of Hausner Construction (noticed for 7/17/19 in Santa Ana, CA; rescheduled)
33. 7/2/19: Depo of 30(b)(6) of Home Safety Baths (noticed for 7/28/19 in San Jose, CA; not taken (out of business))
34. 7/2/19: Depo of 30(b)(6) of Ohio Build & Remodel (noticed for 7/26/19 in Columbus, OH; rescheduled)
35. 7/3/19: Depo of Nancy Jones (re-noticed for 8/2/19 in Tucson, AZ; rescheduled)
36. 7/3/19: Depo of Robert Pullen (re-noticed for 7/25/19 in Detroit, MI; rescheduled)
37. 7/3/19: Depo of Robert Pullen (re-noticed for 7/25/19 in Woodhaven, MI; rescheduled)
38. 7/3/19: Depo of Shirli Billings (re-noticed for 7/30/19 in Jacksonville, FL; rescheduled)

39. 7/3/19: Depo of 30(b)(6) of Fairbanks Construction (re-noticed for 7/29/19 in Ocala, FL; rescheduled)
40. 7/3/19: Depo of 30(b)(6) of Ohio Build & Remodel (re-noticed for 7/26/19 in Columbus, OH; not taken)
41. 7/3/19: Plaintiff Ansara's RFA Set #2 to *firstSTREET*
42. 7/3/19: Plaintiff Ansara's RFPD Set #5 to *firstSTREET*
43. 7/3/19: Plaintiff Ansara's ROGS Set #3 to *firstSTREET*
44. 7/3/19: Plaintiff Ansara's RFPD Set #3 to AITHR
45. 7/3/19: Plaintiff Ansara's ROGS Set #2 to AITHR
46. 7/3/19: Plaintiff Tamantini's ROGS Set #1 to AITHR
47. 7/3/19: Plaintiff Ansara's RFA Set #2 to Jacuzzi
48. 7/3/19: Plaintiff Ansara's RFPD Set #6 to Jacuzzi
49. 7/3/19: Plaintiff Ansara's RFPD Set #7 to Jacuzzi
50. 7/3/19: Plaintiff Ansara's ROGS Set #4 to Jacuzzi
51. 7/9/19: Depo of Barbara Morrison (re-noticed for 7/22/19 in Seattle, WA; rescheduled)
52. 7/9/19: Depo of Mark Sutterluety (noticed for 7/26/19 in Akron, OH; rescheduled)
53. 7/12/19: Continued Depo of 30(b)(6) of Jacuzzi (ESI Forensic, Information Technology: Designee: Mark Allen) (noticed for 7/30/19 in Las Vegas, NV; rescheduled)
54. 7/12/19: Depo of Barbara Morrison (re-noticed for 8/6/19 in Seattle, WA; rescheduled)
55. 7/15/19: Depo of 30(b)(6) of Atlas Home Improvement (re-noticed for 7/25/19 in Ann Arbor, MI; rescheduled)
56. 7/16/19: Depo of 30(b)(6) of Hausner Construction (re-noticed for 7/17/19 in Santa Ana, CA; rescheduled)
57. 7/19/19: Depo of Noreen Rouillard (in **Salt Lake City, UT; taken**)
58. 7/20/19: Plaintiffs served 16th NRC 16.1 Supplement
59. 7/22/19: Depo of Simona Robertson (*firstSTREET* employee) (noticed for 8/16/19 in Richmond, VA; rescheduled)
60. 7/22/19: Depo of Barbara Morrison (re-noticed for 8/15/19 in Seattle, WA; not taken)
61. 7/23/19: Depo of 30(b)(6) of Atlas Home Improvement (re-noticed for 7/25/19 in **Ann Arbor, MI; non-appearance**)
62. 7/23/19: Depo of 30(b)(6) of Community Builders (re-noticed for 8/5/19 in Tulsa, OK; **non-appearance**)
63. 7/23/19: Depo of 30(b)(6) of Fairbanks Construction (re-noticed for 8/7/19 **in Ocala, FL; non-appearance**)
64. 7/23/19: Depo of Gordon Fairbanks (noticed for 8/7/19 **in Ocala, FL; non-appearance**)
65. 7/23/19: Depo of Sandy Haywood (noticed for TBD; not taken)
66. 7/24/19: Depo of Angelena Yvette Jefferson (noticed for 8/8/19 in Panama City, FL; rescheduled)
67. 7/24/19: Depo of Mark Sutterluety (re-noticed for 7/26/19 in **Akron, OH; taken**)

- 1 68. 7/24/19: Depo of Nancy Jones (re-noticed for 8/2/19 in **Tucson, AZ; taken**)
2 69. 7/24/19: Depo of Patricia Herman (re-noticed for 8/9/19 in **Apopka, FL; taken**)
3 70. 7/24/19: Depo of Teresa Gooding (noticed for 8/8/19 in Panama
4 City, FL; rescheduled)
5 71. 7/25/19: Depo of Robert Pullen (in **Woodhaven, MI; taken**)
6 72. 7/25/19: Depo of Tracy Pullen (in Woodhaven, MI; not taken)

7 **7/26/19 – IMPORTANTLY – this was the Jacuzzi document dump**
8 **the Friday before the Monday depositions of Nuanes, Rojas, Lopez**
9 **and Bachmeyer, where Jacuzzi produced JACUZZI005190—5722**
10 **which contained emails regarding slipperiness and customer**
11 **complaints regarding same.**

- 12 73. 7/29/19: Depo of Deborah Deeann Nuanes (Jacuzzi employee)
13 (noticed in **Costa Mesa, CA; taken**)
14 74. 7/29/19: Depo of Eda Rojas (Jacuzzi employee)(in **Costa Mesa,**
15 **CA; taken**)
16 75. 7/29/19: Depo of Kurt Bachmeyer (Jacuzzi employee)(in **Costa**
17 **Mesa, CA; taken**)
18 76. 7/29/19: Depo of Mayra Lopez (Jacuzzi employee)(in **Costa Mesa,**
19 **CA; taken**)
20 77. 7/25/19: Depo of Angelena Yvette Jefferson (re-noticed for 8/8/19
21 in Panama City, FL; rescheduled)
22 78. 7/25/19: Depo of Ruth Curnutte (re-noticed for 8/7/19 in **Ocala,**
23 **FL; taken**)
24 79. 7/25/19: Depo of Teresa Gooding (re-noticed for 8/8/19 in Panama
25 City, FL; rescheduled)
26 80. 7/27/19: Depo of Kevin James Lewis (Fairbanks employee)
27 (noticed for 8/7/19 in Ocala, FL; not taken)
28 81. 7/27/19: Depo of Raymond Charles Torres (Jacuzzi employee)
(noticed for 8/12/19 in Santa Ana, CA; rescheduled)
82. 7/27/19: Depo of Shirli Billings (re-noticed for 8/6/19 in Ponte
Vedra, FL; rescheduled)
83. 7/27/19: Depo of Shirli Billings (re-noticed for 8/6/19 (time change)
in **Ponte Vedra, FL; taken**)
84. 7/27/19: Depo of 30(b)(6) of Hausner Construction (re-noticed for
8/12/19 in Santa Ana, CA; rescheduled)
85. 7/28/19: Plaintiff Ansara's RFA Set #3 to *first*STREET
86. 7/28/19: Plaintiff Ansara's RFPD Set #6 to *first*STREET
87. 7/28/19: Plaintiff Ansara's RFA Set #2 to AITHR
88. 7/28/19: Plaintiff Ansara's RFPD Set #4 to AITHR
89. 7/28/19: Plaintiff Ansara's RFA Set #3 to Jacuzzi
90. 7/28/19: Plaintiff Ansara's RFPD Set #8 to Jacuzzi



91. 7/29/19: Depo of Ashley Davidson (noticed for 8/13/19 in Denver, CO; rescheduled)
92. 7/30/19: Continued Depo of 30(b)(6) of Jacuzzi (ESI Forensic, Information Technology: Designee: Mark Allen) (in **Las Vegas, NV; taken**)
 - a. 7/29/19: Jacuzzi objected to depo
93. 7/31/19: Depo of Alisha Williams (noticed for 8/8/19 in Panama City, FL; not taken)
94. 7/31/19: Depo of Angelena Yvette Jefferson (noticed for 8/9/19 in **Panama City, FL; taken**)
95. 7/31/19: Depo of Norm Murdock (noticed for 8/13/19 in Denver, CO; rescheduled)
96. 7/31/19: Depo of Regina Reyes (Jacuzzi employee) (noticed for 8/12/19 in Costa Mesa, CA; rescheduled)
97. 7/31/19: Depo of Regina Reyes (Jacuzzi employee) (re-noticed for 8/12/19 in Santa Ana, CA; rescheduled)
98. 7/31/19: Depo of Robert Doucette (noticed for 8/15/19 in Connersville, IN; rescheduled)
99. 7/31/19: Depo of Sara Niland (noticed for 8/7/19 in Summerfield, FL; not taken)
100. 8/1/19: Depo of Alisha Williams (re-noticed for 8/8/19 in Pensacola, FL; not taken)
101. 8/1/19: Depo of Audrey Martinez (re-noticed for 8/12/19 in Santa Ana, CA; not taken)
102. 8/1/19: Depo of Sarah Johnson (*first* STREET employee) (noticed for 8/13/19 in Denver, CO; rescheduled)

8/2/19 – Discovery closed pursuant to the SAO, but per informal agreement, the parties agreed that discovery could remain open until 8/29/19 to complete pending issues.

103. 8/7/19: Depo of Andrea L. Nuessle (fka Andrea Dorman) (noticed for 9/13/19 in San Rafael, CA; not taken)
104. 8/7/19: Depo of Ashley Davidson (noticed for TBD in Denver, CO; not taken)
105. 8/7/19: Depo of Audrey Martinez (re-noticed for TBD in Santa Ana, CA; not taken)
106. 8/7/19: Depo of Lawrence Prell (re-noticed for 9/13/19 in San Rafael, CA; not taken)
107. 8/7/19: Depo of Norm Murdock (re-noticed for TBD in Denver, CO; not taken)
108. 8/7/19: Depo of Raymond Charles Torres (Jacuzzi employee) (re-noticed for TBD in Santa Ana, CA; not taken)
109. 8/7/19: Depo of Regina Reyes (Jacuzzi employee) (re-noticed for TBD in Santa Ana, CA; not taken)



110. 8/7/19: Depo of Sarah Johnson (*firstSTREET* employee) (re-noticed for TBD in Denver, CO; not taken)
111. 8/7/19: Depo of Teresa Gooding (re-noticed for 8/8/19 in **Panama City, FL; taken**)
112. 8/8/19: Depo of Nele Frierson (noticed for 9/13/19 in San Rafael, CA; not taken)
113. 8/10/19: Depo of 30(b)(6) of Hausner Construction (re-noticed for TBD in Santa Ana, CA; not taken)
114. 8/14/19: Depo of Robert Doucette (re-noticed for TBD in Connersville, IN; not taken)
115. 8/14/19: Depo of Sandy Badu (*firstSTREET* employee) (re-noticed for TBD in Richmond, VA; not taken)
116. 8/14/19: Depo of Simona Robertson (*firstSTREET* employee) (re-noticed for TBD in Richmond, VA; not taken)

As the Court can see, Plaintiffs were taking depositions from Florida to California. Including non-appearances, over 20 depositions were actually taken with many others attempted. Then, on August 2, 2019, discovery closed, and the focus shifted on the upcoming evidentiary hearing.

After discovery formally closed, **Jacuzzi** made the following disclosures:

August 12, 2019 – 19th Supplement;

August 19, 2019 – 20th Supplement;

August 21, 2019 – 21st Supplement;

August 23, 2019 – 21st Supplement;

August 27, 2019 – 22nd Supplement.

Also, after discovery formally closed, on August 21, 2019, *firstSTREET* made its 7th Supplement where in response to Plaintiffs discovery requests, for the first time, it disclosed the customer service surveys and Guild Survey documents which contained very important information about incidents/complaints that *firstSTREET* was aware of.

Contained within these disclosures were the names of many people who experienced problems with their Jacuzzi walk-in tubs.

...

...

1 Plaintiffs have been unable to take any depositions since August of 2019 because
2 discovery has been closed. This has drastically impaired Plaintiffs ability to prepare for trial and
3 is a serious, real and tangible prejudice to Plaintiffs.

4 With respect to *firstSTREET*'s claim that there is no prejudice because "Plaintiffs have
5 already secured a victory" against Jacuzzi – what happens if Jacuzzi files bankruptcy and
6 Plaintiffs have no judgment against *firstSTREET*? The judgment Plaintiffs would have obtained
7 against Jacuzzi would be worthless. This argument by *firstSTREET* is without merit.

8
9 **(c) *firstSTREET* & AITHR's Actions Are Despicable and Must be
10 Punished and the Punishment Must be Commensurate with the
11 Conduct of the Defendants**

12 As mentioned above, the actions of *firstSTREET* & AITHR are just the same as Bill
13 Young's actions in the Young case where Mr. Young fabricated evidence. Here the Defendants
14 have attempted at every juncture to thwart Plaintiffs' legitimate discovery attempts by
15 minimizing, misdirecting and flatly misrepresenting the truth. The conduct is abhorrent. One of
16 the seminal reasons given by Courts throughout the United States to assess a sanction is to prevent
17 others from engaging in the bad behavior. Well – here, despite the fact that Jacuzzi has been under
18 the threat of significant sanctions from very early on – that has provided no deterrent to
19 *firstSTREET* and it is clear that it will simply not understand the importance of participating in
20 discovery in good faith without the assessment of a significant sanction including, among other
21 things, striking the answer as to liability.

22 **(d) Plaintiffs' Ability to Have a Trial on the Merits Has Been
23 Destroyed by *firstSTREET* & AITHR**

24 Plaintiffs agree that Nevada has a strong policy for favoring adjudication on the merits.
25 What *firstSTREET* fails to appreciate is that it destroyed the ability for Plaintiffs to have that trial
26 because it waited until the 11th hour to disclose relevant information and now Plaintiffs have no
27 ability to cure that prejudice.
28

1 **(e) It Remains to be Seen Whether This Factor Applies**

2 Plaintiffs respectfully request a very short (1 day) evidentiary hearing to assess whether
3 this factor implicates outside counsel. Plaintiffs believe the evidentiary hearing could be
4 accomplished in a fraction of the time that it took for the Jacuzzi hearing. Plaintiffs believe the
5 existing documents could be used, whereas, as the Court recalls, many documents were still being
6 produced during the evidentiary hearing for Jacuzzi.

7 **(f) The Fact that *first*STREET and AITHR do not Even**
8 **Acknowledge They Have Done Anything Wrong is Precisely**
9 **Why Sanctions Are Necessary**

10 Sadly, *first*STREET does not even recognize its misdeeds in this case. Dave Modena lied
11 about the Alert 911 and apparently directed Counsel to perpetuate that lie. Then he misrepresented
12 the Lead Perfection capabilities in his affidavit attached to Defendants' Opposition. The other
13 issues were apparently so damning that *first*STREET did not even attempt to address them in its
14 Opposition. Specifically, with respect to the Rule 30(b)(6) segment of Plaintiffs' Motion,
15 *first*STREET simply cut and pasted the identical arguments it made in January 2019, failing
16 entirely to address the entire year of 2019 and all of the documents disclosed during that year.
17 Further, it attempted to perpetuate misstatements or lies that were set forth in the January 2019
18 Opposition despite Plaintiff specifically calling those out in Plaintiffs Reply filed on February 1,
19 2019.

20 *first*STREET failed to address in any meaningful way the Table of other incidents that
21 Plaintiffs set forth on Pages 11 and 12 of their motion. This was one of the most important parts
22 of Plaintiffs' motion – yet *first*STREET devoted just two short paragraphs to this argument,
23 failing to acknowledge or attempt to explain its misdeeds. Further, *first*STREET fails to
24 acknowledge why it has not turned over any Lead Perfection notes from before 2015 when those
25 calls were allegedly entered into the Lead Perfection System. Nor has it acknowledged why it has
26 turned over zero RingCentral recordings despite the fact that the documents produced by Jacuzzi
27 evidence that those recordings did at one point exist. Nor has it acknowledged why despite
28 RingCentral being changed to “automatically record” calls in August 2015, it has failed to turn
over a single call after that date.

1 *firstSTREET*'s argument regarding discovery disputes must be rejected. Had Plaintiffs
2 not engaged in exhaustive discovery disputes against Jacuzzi – with Jacuzzi losing, and being
3 ordered to produce the relevant information – *firstSTREET*, ***might*** have a thread of an argument,
4 but in light of the hundreds upon hundreds of pages of briefing on this matter on identical issues
5 – where Jacuzzi time and time again lost – *firstSTREET* cannot sit back and claim that it had a
6 valid argument to withhold the documents or that Plaintiffs should have been required to have
7 filed the same motions against it as well. That is the essence of the argument – *firstSTREET*
8 believes that a party apparently is not required to affirmatively disclose anything until a motion
9 to compel is filed and an order is entered. Again – these issues were raised by Jacuzzi ***and rejected***
10 ***over and over again*** by the Discovery Commissioner. *firstSTREET* cannot be serious. Otherwise,
11 what is the purpose of Rule 16.1? If *firstSTREET*'s position is accepted, it will render NRCP 16.1
12 and NRCP 26(f) meaningless. Why does NRCP 16.1(e)(3) even exist if not for this exact
13 situation? *firstSTREET* must be sanctioned for its bad faith conduct.

14 **III. CONCLUSION**

15 *firstSTREET* has failed to address material and essential aspects of Plaintiffs' Motion and
16 can offer no justification for its' repeated discovery failures. For instance to recap some of the
17 major issues:

18 1) *firstSTREET* acknowledges that calls from the Five9 system were entered into LP note
19 systems, yet has produced no LP notes (other than for Sherry's case).

20 2) *firstSTREET* acknowledges that RingCentral "auto recording" was made available in
21 late August 2015, meaning every single call was automatically recorded. Yet it has produced NO
22 recordings whatsoever from after August 2015.

23 3) Evidence shows that before August 2015, *firstSTREET* was utilizing the RingCentral
24 system for both voice messages ***and*** when users manually started a recording. Yet it has produced
25 NO recordings whatsoever from before August 2015.

26 4) *firstSTREET* failed to address why the names of important other incidents set forth in
27 Jacuzzi's disclosures were not also disclosed in *firstSTREET*'s disclosures;

28 . . .



1 5) *firstSTREET* failed to address the misstatements made by Dave Modena in his
2 deposition and instead tried to perpetuate inaccuracies set forth in its Opposition filed in January
3 of 2019 by claiming that Plaintiffs Notice only addressed *prior* incidents, completely
4 misrepresenting the fact that Topics 51 & 52 were **not** limited in time. It also failed to explain
5 why after numerous motions on this identical issue well-before Dave Modena’s deposition, where
6 Jacuzzi lost, how its’ position was somehow meritorious. *firstSTREET* failed to object before or
7 during the deposition to the scope of the questions or topics and is bound by the answers – which
8 completely misrepresent and distort the truth, i.e. claiming to only remember **three** incidents,
9 when the documents show there were significant issues.

10 DATED THIS 13th day of November, 2020.

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 NEFCR 9, NRCP 5(b), LR IC 4-1, and/or FRCP 5(b), I hereby certify that on this 13th day of November, 2020, I caused to be served a true copy of the foregoing **PLAINTIFFS' REPLY IN SUPPORT OF PLAINTIFFS' RENEWED MOTION TO STRIKE DEFENDANT JACUZZI, INC. d/b/a JACUZZI LUXURY BATH'S ANSWER FOR REPEATED, CONTINUOUS AND BLATANT DISCOVERY ABUSES ON ORDER SHORTENING TIME** as follows:

- ☐ **U.S. Mail:** By depositing a true and correct copy of said document(s) via U.S. mail, with postage pre-paid and addressed as listed below.
- ☐ **Hand Delivery:** I caused said document(s) to be delivered to the address(es) list below;
- ☐ **Electronic Mail:** I caused said document(s) to be delivered by emailing an attached Adobe Acrobat PDF of the document to the email address(es) identified above.
- ☒ **Electronic Service:** I caused said document to be delivered by electronic means upon all eligible electronic recipients via the United States District Court CM/ECF system or Clark County District Court E-Filing system (Odyssey).

Meghan M. Goodwin, Esq.
Philip Goodhart, Esq.
Thorndal Armstrong Delk Balkenbush & Eisinger
1100 East Bridger Ave.
Las Vegas, NV 89101-5315
Telephone: 702-366-0622
Fax: 702-366-0327
E-mail: MMG@thorndal.com
E-mail: png@thorndal.com
Mail to:
P.O. Box 2070
Las Vegas, NV 89125-2070
*Attorneys for Defendants/Cross-Defendants
firstSTREET for Boomers and Beyond, Inc. and
AITHR Dealer, Inc. and Defendant, Hale Benton*

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
Fax: 702-784-5252
E-mail: jcools@swlaw.com

D. Lee Roberts, Esq.
Brittany M. Llewellyn, Esq.
Weinberg, Wheeler, Hudgins, Gunn &
Dial, LLC
6385 S. Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
Fax: 702.938.3864
E-mail: lroberts@wwhgd.com
E-mail: bllewellyn@wwhgd.com

*Attorneys for Defendant/Cross-
Defendant, Jacuzzi, Inc. dba Jacuzzi
Luxury Bath*

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



EXHIBIT 7

EXHIBIT 7

DISTRICT COURT
CLARK COUNTY, NEVADA

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

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

Plaintiffs,

vs.

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

Defendants.

VIDEO DEPOSITION OF: RUTH R. CURNETTE
TAKEN BY: PLAINTIFFS
DATE: WEDNESDAY, AUGUST 7, 2019
TIME: 9:05 A.M. - 12:13 P.M.
LOCATION: 17498 SE 110th COURT
SUMMERFIELD, FLORIDA 34491-8022
REPORTED BY: Courtney L. Wear, RMR, CRR
Stenographic Court Reporter
Notary Public, State of Florida

OWEN & ASSOCIATES COURT REPORTERS
P.O. BOX 157, OCALA, FLORIDA 34478
352.624.2258 owenassocs@aol.com

APPEARANCES:

BENJAMIN P. CLOWARD, Esquire

RICHARD HARRIS LAW FIRM

801 South Fourth Street

Las Vegas, Nevada 89101

E-mail: benjamin@RichardHarrisLaw.com

E-mail: catherine@RichardHarrisLaw.com

APPEARING ON BEHALF OF PLAINTIFFS

PHILIP GOODHART, Esquire

THORNDAL ARMSTRONG DELK BALKENBUSH & EISINGER

1100 East Bridger Avenue

Las Vegas, Nevada 89215

E-mail: png@thorndal.com

APPEARING ON BEHALF OF DEFENDANTS FIRST STREET
FOR BOOMERS & BEYOND, INC., AITHR DEALER, INC.,
and HALE BENTON

BRITTANY M. LLEWELLYN, Esquire

WEINBERG WHEELER HUDGINS GUNN & DIAL

6385 South Rainbow Boulevard, Suite 400

Las Vegas, Nevada 89118

E-mail: bllewellyn@wwhgd.com

APPEARING ON BEHALF OF DEFENDANT JACUZZI, INC.

ALSO PRESENT:

Greg Waugh, Videographer

Sara Niland, Caregiver

I N D E X

<u>EXAMINATION OF RUTH R. CURNETTE</u>	<u>PAGE</u>
Direct Examination by Mr. Cloward.....	7
Cross Examination by Mr. Goodhart.....	65
Cross Examination by Ms. Llewellyn.....	80
Redirect Examination by Mr. Cloward.....	90
Recross Examination by Mr. Goodhart.....	94
CERTIFICATE OF REPORTER.....	99
CERTIFICATE OF OATH.....	100

E X H I B I T S

<u>PLAINTIFFS' EXHIBITS</u>	<u>PAGE</u>
No. 1 (Deposition Subpoena Notice.)	9
No. 2 (Jacuzzi_002965 and 2966.)	11
No. 3 (3/10/17 Letter.)	12
No. 4 (911 Alert/Label Documentation.)	14
No. 5 (Jacuzzi/Aging in the Home Remodelers Letter.)	16
No. 6 (Guardian Alert 911 - A Quick Start and Use Guide.)	17
No. 7 (What You Should Know About Safety in the Bathroom.)	18
No. 8 (Nine Color Photos.)	98
No. 9 (Are You Experiencing Tingling or Prickly Sensations Ad.)	22
No. 10 (Photocopy of Two Checks.)	22
No. 11 (Responses Received from Different Entities.)	24
No. 12 (Handwritten Slippery Floor Notes.)	26
No. 13 (3/8/17 Letter to Office of the General Counsel.)	27
No. 14 (9/14/16 Fairbanks Construction Letter to Ms. Curnutte with Envelope.)	27

E X H I B I T S C O N T I N U E D

<u>PLAINTIFFS' EXHIBITS</u>	<u>PAGE</u>
No. 15 (Two Jacuzzi Pamphlets/Brochures.)	28
No. 16 (Jacuzzi FAST FILL/FAST DRAIN BROCHURE.)	30
No. 17 (Fairbanks Construction Items Initialed by Ms. Curnutte that Installer Explained Document.)	34
No. 18 (Your Jacuzzi Walk -- In Tub Pamphlet/Brochure Folder with Documents.)	46
No. 19 (Notice of Right to Cancel Document/Fairbanks Construction CRC #050304 Document.)	38
No. 20 (Fairbanks Construction Letter of 3/10/16, Change Order and Envelope.)	41
No. 21 (4/2/16 Ruth Curnutte Letter to Jacuzzi/Warranty Registration Card.)	42
No. 22 (Ruth Curnutte Letter to Warranty Service Department with Certified Mail Receipt.)	43
No. 23 (9/1/16 Ruth Curnutte Letter to US Consumer Product Safety Commission.)	44
No. 24 (8/11/16 La Plaza Grande Postage Receipt.)	45
No. 25 (Jacuzzi - Safety. Comfort. Independence. Advertisement.)	46
No. 26 (Jacuzzi Walk - In Bathtub Series - Installation and Operation Instructions.)	47
No. 27 (9/9/16 Letter from Pam Bondi, Attorney General.)	47
No. 28 (3/6/17 Ruth Curnutte Letter to The Office of the General Counsel.)	49
No. 29 (Handwritten Notes of Serial Number, Model Number, Several Entities.)	51
No. 30 (Correspondence with Department of Business and Professional Regulation with Certified Mail Receipt.)	52

E X H I B I T S C O N T I N U E D

<u>PLAINTIFFS' EXHIBITS</u>	<u>PAGE</u>
No. 31	53
(Correspondence between Fairbanks Construction and Ruth Curnutte with Certified Mail Receipt.)	
No. 32	55
(Building Permit Correspondence.)	
No. 33	56
(4/18/17 Letter to Attorney Osteen and 2/15/17 DBPR Letter to Ms. Curnutte.)	
No. 34	57
(Fairbanks Construction #CRC050304- HC0002524 Documents and Jacuzzi Lifetime Warranty Certificate.)	
No. 35	58
(8/25/16 DBPR Letter to Ms. Curnutte.)	
No. 36	60
(Documents Regarding Senior Vs. Crime, Business Cards, Elder Helpline, Special Report - Tips on Living to be 100 Pamphlet, Handwritten Notes on Fairbanks Construction Change Order Form, Contractor's Final Payment Affidavit, Care and Cleaning Instructions, Photocopy of a Check.)	
No. 37	60
(Fairbanks Construction Walk-In Tub Specs.)	
No. 38	61
(Business Card - Jacuzzi, Kevin Lewis, Design Consultant.)	
No. 39	61
(First Street for Boomers and Beyond Envelope.)	
No. 40	98
(Four Color Photos.)	

P R O C E E D I N G S

THE VIDEOGRAPHER: All right. This is tape number one to the videotaped deposition of Ruth Curnutte taken in the matter of Robert Ansara and others, versus First Street For Boomers & Beyond Inc., and others.

Deposition is being held at 17498 Southeast 110th Court in Summerfield, Florida on August 7th, 2019. The time's approximately 9:05 p.m. -- or a.m.

My name is Greg Waugh, I'm the videographer. Court Reporter is Courtney Wear.

So, Counsel, please introduce yourself for the record, beginning with the plaintiff.

MR. CLOWARD: Benjamin Cloward for the Cunnison family.

MR. GOODHART: Philip Goodhart for First Street, AITHR and Hale Benton.

MS. LLEWELLYN: Brittany Llewellyn for Jacuzzi, Inc.

THE VIDEOGRAPHER: Madam Court Reporter will now swear in the witness and we'll proceed.

THE REPORTER: Ma'am, can you raise your right hand.

Do you swear the testimony you're about to

1 deposition subpoena notice as an exhibit to the
2 record. And we'll attach that as Exhibit 1.

3 (Plaintiffs' Exhibit No. 1 marked for
4 identification.)

5 MR. CLOWARD: Where do you want me to put
6 these?

7 THE REPORTER: On the side upside down.

8 BY MR. CLOWARD:

9 Q. Then I'm going to show you, I guess, the
10 reason how we came across your name was a letter that
11 you apparently wrote. And I want you to just take a
12 look -- here's a computerized version -- see if you
13 recognize that document.

14 A. Oh, yes, I do. Yes, I do. I --

15 Q. And what is that?

16 A. I complained about the Jacuzzi, which was
17 delivered, was not the one I originally had in mind, but
18 they delivered it anyway because I assume it was sitting
19 in their warehouse. And I had problems the first time I
20 had used it. Well, it was delivered -- it was installed
21 in April. And I had to wait three months for the 911
22 emergency button to be delivered. And I was not
23 supposed to use the Jacuzzi without the button because
24 of problem of possibly dangerous circumstances using the
25 bathtub.

1 And the first time I used it I had it filled,
2 and when I turned it on, the jets, I was thrushed [sic]
3 against the bottom -- the footwell is much lower than
4 the seat, and I was thrushed against the wall and I
5 ended up on my knees, and I was submerged -- my head was
6 underwater. And I frantically tried to get ahold of
7 something to get out of the water. It was the scariest
8 moment because I didn't know whether I can save myself
9 because I live alone. And it was the most horrifying
10 experience I had with a Jacuzzi.

11 I did not intend to have such a huge Jacuzzi.
12 I was just released from the hospital a week ago at that
13 time with pneumonia, and I thought it would help me.
14 But this was the only time I used it, and ever since the
15 three past years it is just sitting there like a big
16 monster. And it's something I complained about it, but
17 I did not get any results, even though I notified all
18 entities I could find in the book to notify for help.
19 But the end result was nothing -- nobody could do
20 anything for me. And the final -- the final checkup for
21 safety was done by the installer -- by the owner of the
22 Jacuzzi, which is located in Ocala. Not even the State
23 or the other entities came to my aid to clarify what
24 could be done that I could use the Jacuzzi.

25 I could not -- as I said in that -- in that

1 Counsel, we have pending discovery on this
2 issue. It's my understanding that the claim is
3 going to be that neither First Street nor Jacuzzi
4 had anything to do with this.

5 MS. LLEWELLYN: I can't answer that right
6 now.

7 MR. CLOWARD: Okay.

8 MR. GOODHART: It's my understanding, Ben,
9 that First Street did not have any direct contact
10 with Mr. Curnutte [sic] , so they're not aware of
11 any attempts by anybody to sell a 911 alert, badge,
12 or whatever you want to call it, to her.

13 MR. CLOWARD: Okay.

14 MR. GOODHART: And AITHR, I believe, did not
15 do any business in Florida, according to Fairbanks.
16 That was the independent dealer in Florida.

17 MR. CLOWARD: Okay. So I would just ask that
18 you have them re-look into that, because that's --
19 I don't believe that's accurate. So we'll go over
20 that right now.

21 BY MR. CLOWARD:

22 Q. So Ms. Curnutte, who was it that provided
23 this to you?

24 A. It came from California. It was sent to me
25 by mail. It took them -- after of the installation it

1 took them three months after I sent letters of reminders
2 that I cannot use the bathtub, the walk-in tub without
3 that unit because of safety reasons.

4 Q. Okay.

5 A. So it was sent from California.

6 Q. Okay. So I'm going to show you some
7 documents that are your documents that I want to attach,
8 we'll attach as Exhibit 4.

9 And is this the -- I guess the label, or the
10 documentation that came with the 911 alert?

11 A. Yes, it is.

12 MR. CLOWARD: Okay. So mark that as
13 Exhibit 4.

14 (Plaintiffs' Exhibit No. 4 marked for
15 identification.)

16 BY MR. CLOWARD:

17 Q. And who is the company that is listed that
18 that document -- that that came from?

19 A. Well, it says here, First Street.

20 MR. CLOWARD: Mark that as Exhibit 4 and I'll
21 hand that to counsel so he can talk to his client
22 and find out what's going on with that.

23 MR. GOODHART: Well, Ben, I never said that
24 First Street did not sell it to her. My comment
25 was neither First Street nor AITHR were directly

1
2
3 CERTIFICATE OF OATH

4 STATE OF FLORIDA}

5 COUNTY OF MARION}

6 I, COURTNEY L. WEAR, Registered Merit
7 Reporter, Certified Realtime Reporter, a Notary Public
8 for the State of Florida, and Court Reporter, certify
9 that the witness, RUTH R. CURNETTE, personally appeared
10 before me this day of 8-7-2019 and was duly sworn.

11 WITNESS my hand and official seal this day
12 of 8-12-2019.

13 Identification: FL Driver's License
14
15
16

17 /s/ Courtney L. Wear
18 COURTNEY L. WEAR
19 Notary Public-State of Florida
Comm No: GG 260936

20 Comm. Expires: December 12, 2022
21
22
23
24
25

EXHIBIT 25

EXHIBIT 25

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	

< >

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	

< >

EXHIBIT 26

EXHIBIT 26

1

DISTRICT COURT

2

CLARK COUNTY, NEVADA

3

4

ROBERT ANSARA, as Special) Case No. A-16-731244-C

5

Administrator of the)

6

Estate of SHERRY LYNN)

7

CUNNISON, Deceased; et)

8

al.,)

9

Plaintiffs,)

10

vs.)

11

FIRST STREET FOR BOOMERS)

12

& BEYOND, INC.; et al.,)

13

Defendants.)

14

(Complete caption on page 2)

15

16

17

18

19

20

21

22

23

24

25

26

27

28

29

30

31

32

33

34

35

36

37

38

39

40

41

42

43

44

45

46

47

48

49

50

51

52

53

54

55

56

57

58

59

60

1 DISTRICT COURT

2 CLARK COUNTY, NEVADA

3

4 ROBERT ANSARA, as Special) Case No. A-16-731244-C

5 Administrator of the)

6 Estate of SHERRY LYNN)

7 CUNNISON, Deceased;)

8 MICHAEL SMITH)

9 individually, and heir)

10 to the Estate of SHERRY)

11 LYNN CUNNISON, Deceased;)

12 and DEBORAH TAMANTINI)

13 individually, and heir)

14 to the Estate of SHERRY)

15 LYNN CUNNISON, Deceased,)

16)

17 Plaintiffs,)

18)

19 vs.)

20)

21 FIRST STREET FOR BOOMERS)

22 & BEYOND, INC.; AITHR)

23 DEALER, INC.; HALE)

24 BENTON, Individually,)

25 HOMECLICK, LLC; JACUZZI)

26 LUXURY BATH, doing)

27 business as JACUZZI INC;)

28 BESTWAY BUILDING &)

29 REMODELING, INC.; WILLIAM)

30 BUDD, Individually and as)

31 BUDD'S PLUMBING; DOES 1)

32 through 20; ROE)

33 CORPORATIONS 1 through)

34 20; DOE EMPLOYEES 1)

35 through 20; DOE)

36 MANUFACTURERS 1 through)

37 20; DOE 20 INSTALLERS 1)

38 through 20; DOE)

39 CONTRACTORS 1 through 20;)

40 and DOE 21 SUBCONTRACTORS)

41 1 through 20, inclusive,)

42)

43 Defendants.)

44)

1 APPEARANCES:

2
3 For the Plaintiffs:

4 BENJAMIN P. CLOWARD, ESQ.
5 Richard Harris Law Firm
6 801 South Fourth Street
7 Las Vegas, Nevada 89101

8
9 For firstSTREET for Boomers and Beyond, Inc., and
10 AITHR Dealer, Inc.:

11 MEGHAN M. GOODWIN, ESQ.
12 Thorndal, Armstrong, Delk,
13 Balkenbush & Eisinger
14 1100 East Bridger Avenue
15 Las Vegas, Nevada 89101

16 For HomeClick, LLC:

17 DANIELA LaBOUNTY, ESQ.
18 Olson, Cannon, Gormley, Angulo & Stoberski
19 9950 West Cheyenne Avenue
20 Las Vegas, Nevada 89129

21 For Jacuzzi Brands LLC:

22 ALEXANDRIA LAYTON, ESQ.
23 Snell & Wilmer L.L.P.
24 3883 Howard Hughes Parkway
25 Suite 1100
Las Vegas, Nevada 89169

For Bestway Building & Remodeling, Inc.:

ARTHUR N. BORTZ, ESQ.
Ropers Majeski Kohn & Bentley
3753 Howard Hughes Parkway
Suite 200
Las Vegas, Nevada 89169

1 APPEARANCES (continued):

2

For The Chicago Faucet Company:

3

JENNIFER L. MICHELI, ESQ.
Kolesar & Leatham, Chtd.
400 South Rampart Boulevard
Suite 400
Las Vegas, Nevada 89145

6

7 For Budd's Plumbing (via telephone):

8

ERIC N. TRAN, ESQ.
Lipson, Neilson, Cole, Seltzer & Garin, P.C.
9900 Covington Cross Drive
Suite 120
Las Vegas, Nevada 89144

10

11

12

* * * * *

13

14

15

16

17

18

19

20

21

22

23

24

25

1 I N D E X

2 WITNESS PAGE

3 BRADLEY S. VAN PAMEL

4 Examination by:

5 Mr. Cloward 6

6 Ms. Goodwin 22

7 Ms. Layton 32

8 Ms. LaBounty 35

9 Mr. Cloward 36

10

11

12

13 E X H I B I T S

14 NUMBER DESCRIPTION MARKED

15 (No exhibits were marked.)

16

17

18

19

20

21

22

23

24

25

1 P R O C E E D I N G S

2 (Counsel stipulated to waive

3 the reporter requirements

4 under Rule 30(b)(4).)

5 (Witness sworn.)

6 BRADLEY S. VAN PAMEL,

7 having been first duly sworn, was

8 examined and testified as follows:

9 EXAMINATION

10 BY MR. CLOWARD:

11 Q. Officer, how you doing today?

12 A. Good.

13 Q. Good. So my name is Ben Cloward. I
14 represent the family in this matter.

15 You're probably wondering why you're
16 here. My understanding is you responded to an event
17 several years ago. We want to just discuss that
18 with you. Is that fair?

19 A. Yeah.

20 Q. Okay. Have you ever had your deposition
21 taken before?

22 A. Yes, I have.

23 Q. On how many occasions?

24 A. Two.

25 Q. Okay. Since it's just limited to those

1 Q. Yeah.

2 A. -- how long she had been there or what
3 circumstances were.

4 So she -- her basic story was, "I was --
5 I took a bath." The tub that she was in, she was
6 sitting in like a seat. She said that she went to
7 go turn the water off and to drain the tub out and
8 she slipped off the seat and wedged herself between
9 the seat and like the side of the tub.

10 Q. Okay. And she was able to vocalize all
11 of that?

12 A. Yes.

13 Q. Okay. Now, this is kind of a -- kind of
14 a strange question to ask, but it's an important
15 issue in the case: My understanding is from other
16 testimony that there was some human feces in the
17 tub?

18 A. The smell was like nothing that you could
19 imagine.

20 Q. It was pretty bad?

21 A. Yes.

22 Q. Okay.

23 A. It smelled like death. If you've been
24 around people that have passed away, it smelled like
25 that.

REPORTER'S CERTIFICATE

STATE OF NEVADA)
) ss
COUNTY OF CLARK)

I, William C. LaBorde, a duly certified court reporter licensed in and for the State of Nevada, do hereby certify:

That I reported the taking of the deposition of the witness, BRADLEY S. VAN PAMEL, at the time and place aforesaid;

That prior to being examined, the witness was by me duly sworn to testify to the truth, the whole truth, and nothing but the truth;

That I thereafter transcribed my shorthand notes into typewriting and that the typewritten transcript of said deposition is a complete, true and accurate record of testimony provided by the witness at said time to the best of my ability.

I further certify (1) that I am not a relative, employee or independent contractor of counsel of any of the parties; nor a relative, employee or independent contractor of the parties involved in said action; nor a person financially interested in the action; nor do I have any other relationship with any of the parties or with counsel of any of the parties involved in the action that may reasonably cause my impartiality to be questioned; and (2) that transcript review pursuant to NRCP 30(e) was waived.

IN WITNESS WHEREOF, I have hereunto set my hand in the County of Clark, State of Nevada, this 20th day of November 2017.



William C. LaBorde, CCR 673, RPR, CRR



EXHIBIT 27

EXHIBIT 27

From: Norm Murdock <norm.murdock@aihremodelers.com>
Sent: Wednesday, July 09, 2014 8:50 AM
To: Reyes, Regina
Cc: Bachmeyer, Kurt; Martinez, Audrey
Subject: FW: New Voice Message from (301) 988-0570 on 07/03/2014 at 11:59 AM

Importance: High

Regina-

See below. We have an issue with this Beldon customer. Can you please check the service history & see if there is a way the jets can be serviced without removing the tub?

Can we have another agent or RSM pay a visit to this customer?

If we schedule service for this customer, we would like to have the agent also apply the slip resistant coating...we will supply the product. 20 minute application. We will pay for this.

Happy to discuss by phone if you wish.

Thanks,

Norm Murdock, CAPS, CSA
Vice President

firstSTREET
for Boomers and Beyond

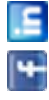
Phone: 303-222-3207

Cell: 602-403-6267

Email: norm.murdock@firststreetonline.com

Website: www.firststreetinc.com, www.firststreetonline.com

designed for SENIORS®



PA0787

From: SIMONA ROBERTSON [mailto:SIMONA.ROBERTSON@firstSTREETonline.com]
Sent: Wednesday, July 09, 2014 8:03 AM
To: Norm Murdock; DAVE MODENA
Subject: RE: New Voice Message from (301) 988-0570 on 07/03/2014 at 11:59 AM

Here you go Norm see the address below along with a more detailed laundry list of complaints. Shannon is ready to speak with someone to schedule an appointment...Thanks

- The floor, seats and walls of the tub are too slippery, Mr. Kinzer slips off the seat when in the tub and slips on floor when getting out
- The grab bar is slippery; Mr. Kinzer's hands slip when grabbing the bar
- The water temperature fluctuates when the tub is filling and when the shower is on but it doesn't fluctuate when using the other tubs in the home.
- The shower doesn't stay on
- The jets are not working- a technician from Betz repair came out twice (2/16/14 & 2/19/14) and stated that the tub would have to be removed to access the jets for repair
- The door knocks his knees when closing the door and it's hard for him to get into the tub

Shannon
301 988 0570

Paul Kinzer
16758 Spielman Rd
Fairplay, MD 21733
301 582 0442

Simona Reid-Robertson
phone 804-451-2309
fax 804-524-9889
[firstSTREET for Boomers and Beyond](http://firstSTREETforBoomersandBeyond.com)

From: Norm Murdock [mailto:norm.murdock@ajhremodelers.com]
Sent: Wednesday, July 09, 2014 9:54 AM
To: DAVE MODENA; SIMONA ROBERTSON
Subject: RE: New Voice Message from (301) 988-0570 on 07/03/2014 at 11:59 AM

Simona – do you have the customer address so we can schedule service?

Norm Murdock, CAPS, CSA
Vice President

PA0788



Phone: 303-222-3207

Cell: 602-403-6267

Email: norm.murdock@firststreetonline.com

Website: www.firststreetinc.com, www.firststreetonline.com

designed for SENIORS®



From: DAVE MODENA [<mailto:DAVE.MODENA@firstSTREETOnline.com>]

Sent: Wednesday, July 09, 2014 6:13 AM

To: SIMONA ROBERTSON; Norm Murdock

Cc: Todd Stout

Subject: RE: New Voice Message from (301) 988-0570 on 07/03/2014 at 11:59 AM

Norm.... Can we help them with both the slippery floor issue with the application that we now have and also get Jacuzzi to get the jets working as well Otherwise let us know what our other options are and do we need to get Beldon back in the mix in some fashion i.e. we may need to bill them for any costs we incur (I would also think that Jacuzzi would have to bear some of the costs if fixing a defective jet requires pulling out the tub).... Thanks

Dave Modena

President - Aging In The Home Remodelers

804-451-2314

Sr. V.P. firstSTREET for Boomers & Beyond

www.firststreetonline.com

From: SIMONA ROBERTSON

Sent: Tuesday, July 08, 2014 1:21 PM

To: DAVE MODENA

Cc: 'Todd Stout'

Subject: RE: New Voice Message from (301) 988-0570 on 07/03/2014 at 11:59 AM

This was a Beldon install from Nov. He apparently has fallen while exiting the tub as his main complaint is that the floor is too slippery.

Other areas of concern are the grab bar is too slippery, shower head does not stay on, water temp fluctuates, and one of the jets is not working.

Someone did come out to service the inoperable jet but was unable to fix as they were told the tub needed to be pulled out for access...

At this point Mr. Kinser wants to have the tub removed. I know this is not an option but, I'm sure we can have a Jacuzzi rep address and fix everything with the exception of the water temp issue???

Simona Reid-Robertson
phone 804-451-2309
fax 804-524-9889
firstSTREET for Boomers and Beyond

From: DAVE MODENA
Sent: Monday, July 07, 2014 12:00 PM
To: SIMONA ROBERTSON
Subject: FW: New Voice Message from (301) 988-0570 on 07/03/2014 at 11:59 AM
Importance: High

Please listen ... Paul Kinser is apparently the tub owner ... can you determine whose customer this is?

Dave Modena
President - Aging In The Home Remodelers
804-451-2314
Sr. V.P. firstSTREET for Boomers & Beyond
www.firststreetonline.com

From: Todd Stout [<mailto:todd.stout@aihremodelers.com>]
Sent: Thursday, July 03, 2014 2:48 PM
To: STACY HACKNEY; DAVE MODENA
Cc: Nick Fawkes
Subject: FW: New Voice Message from (301) 988-0570 on 07/03/2014 at 11:59 AM
Importance: High

Voice mail from a Shannon 301-988—0570 calling about a Mr. Paul Kinzer(sic) the area code is Maryland but I have no info in LP... I don't think it one of AITHR installs...

Todd

PA0790

From: Ashley Davidson [<mailto:ashley.davidson@aihremodelers.com>]
Sent: Thursday, July 03, 2014 12:24 PM

To: Todd Stout
Subject: FW: New Voice Message from (301) 988-0570 on 07/03/2014 at 11:59 AM

Hey- this is that Shannon lady I told you about calling about the man who has been injured in his tub.

Best Regards,

Ashley Davidson

Production Manager

Aging In The Home Remodelers

Office: 720.504.0126

Extension: 3197

Direct: 720.477.1719

Toll Free: 1.888.926.8095

Fax: 720.477.1719

Email: Ashley.davidson@aihremodelers.com

Mailing: 1460 W Canal Ct STE 102

Littleton, CO. 80120

From: RingCentral [<mailto:notify@ringcentral.com>]

Sent: Thursday, July 03, 2014 12:00 PM

To: Ashley Davidson

Subject: New Voice Message from (301) 988-0570 on 07/03/2014 at 11:59 AM

You Have a New Voice Message

From: (301) 988-0570
Received: Thursday, July 03, 2014 at 11:59 AM
Length: 00:39
To: (720) 477-1719 (Ashley Davidson)

To listen to this message, open the attachment or use [RingCentral Mobile App \(download\)](#) to have instant access to all your messages on the go.

Thank you for using [RingCentral](#).

EXHIBIT 28

EXHIBIT 28

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 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; and
18 DEBORAH TAMANTINI individually, and heir to the
19 Estate of SHERRY LYNN CUNNISON, Deceased,

20 Plaintiffs,

21 vs.

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

Defendants.

AND ALL RELATED MATTERS

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

**8TH AMENDED NOTICE TO
TAKE VIDEOTAPED
DEPOSITION(S) OF 30(b)(6)
OF FIRST STREET FOR
BOOMERS & BEYOND, INC.**

Date of Deposition:
7/11/19

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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on **July 11, 2019, at 9:00 a.m. EST** (6:00 a.m. PST)(*previously scheduled for July 10, 2019*), 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 25th day of June, 2019.

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 25th day of June, 2019, I caused to be served a true copy of the foregoing **8TH 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.
Philip Goodhart, Esq.
Thorndal Armstrong Delk Balkenbush & Eisinger
1100 East Bridger Ave.
Las Vegas, NV 89101-5315
Telephone: 702-366-0622
Fax: 702-366-0327

E-mail: MMG@thorndal.com

E-mail: png@thorndal.com

Mail to:

P.O. Box 2070

Las Vegas, NV 89125-2070

Attorneys for Defendants/Cross-Defendants first STREET for Boomers and Beyond, Inc. and AITHR Dealer, Inc. and Defendant, Hale Benton

Vaughn A. Crawford, Esq.
Morgan Petrelli, Esq.
Snell & Wilmer, LLP
3883 Howard Hughes Pkwy.,
Suite 1100
Las Vegas, NV 89159
Telephone: 702-784-5200
Fax: 702-784-5252
E-mail: vcrawford@swlaw.com
E-mail: mpetrelli@swlaw.com

D. Lee Roberts, Esq.
Brittany M. Llewellyn, Esq.
Weinberg, Wheeler, Hudgins, Gunn & Dial,
LLC
6385 S. Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
Fax: 702.938.3864
E-mail: lroberts@wwhgd.com
E-mail: bllewellyn@wwhgd.com

*Attorneys for Defendant/Cross-Defendant,
Jacuzzi, Inc. dba Jacuzzi Luxury Bath*

/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 place, time, and date listed in the amended 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
which examination is sought.

4 LIST OF TOPICS ON WHICH EXAMINATION IS SOUGHT

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

7 EXAMINATION WILL BE SOUGHT ON THE FOLLOWING SUBJECTS

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

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

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

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

- 20 3. Incident reports of the incident.

- 21 4. On the date of the incident and to the date of the deposition: who was the person in
22 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.

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

26 NOTE: Plaintiff is not seeking to obtain scientific or medical opinions, rather is simply trying to
27 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.
28

1 Nev. Mar. 5, 2007); *Great Am. Ins. Co. of N.Y. v. Vegas Constr. Co.*, 251 F.R.D. 534 (D. Nev.
2 2008).

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

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

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

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

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

19 8. Instructions and warnings ***known by Defendants that are either given or supposed to be***
20 ***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.

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

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

26 11. All inspections, not invoking attorney work-product, in the area at issue and reasonable
27 proximity thereto (defined as ***any inspection of the bathroom where the Jacuzzi tub at***
28





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
and amendments thereto.

7
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. Caesars*
10 *Entm't, Inc*, 237 F.R.D. 428 (D. Nev. 2006); *Taylor v. Shaw*, 2007 U.S. Dist. LEXIS 16305 (D.
11 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.

12 **GENERAL TESTIMONY**

- 13 13. The authenticity, existence and completeness of all documents produced in response to
14 Plaintiff's discovery requests in this case.
- 15 14. Any and all document/record retention policies ***regarding preservation of incidents***
16 ***involving the personal injury or death of an end user of any of Jacuzzi's products***
17 ***whether they be the walk in model or not.***
- 18 15. The name, address (home and work) and phone numbers (home and work) for all
19 custodians of the documents produced in response to Plaintiff's discovery requests in
20 this case.
- 21 16. Defendant's responses to Plaintiff's interrogatories in this case.
- 22 17. The factual basis for all denials to the allegations raised in Plaintiff's Complaint.
- 23 18. All insurance agreements (including self-insurance fund or risk pool fund) that exist
24 under the terms of which the person or company issuing the same may be called upon to
25 satisfy all or part of any judgment against you which may be entered in favor of the
26 Plaintiff in this action.
- 27 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:
- 28 (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.

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

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

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

NOTE: *TOPICS 35-47 request among other things a witness knowledgeable to discuss the design of an inward door entrance as opposed to an outward door entrance; design of the seat pan and angulation of the seat pan; design of the seat height; design of the control reach for the end user; design of the placement of the grab bars; design of the 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 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. 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.

EXHIBIT 29

EXHIBIT 29

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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.; AITHR DEALER, INC.;
HALE BENTON, Individually, HOMECCLICK,
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

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

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 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 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?

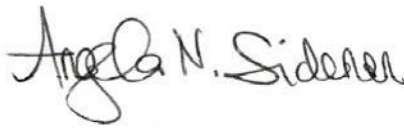
25 A That I would be aware of.

1 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
20
21
22
23
24
25

EXHIBIT 30

EXHIBIT 30

R. GISTER 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 Retained 7023660622(W)
Defendant	Benton, Hale	Philip Goodhart Retained 7023660622(W)
Defendant	First Street for Boomers & Beyond Inc	Christopher John Curtis Retained 7023660622(W)

Defendant	Homeclick LLC	Michael E Stoberski <i>Retained</i> 7023844012(W)
Defendant	Jacuzzi Inc <i>Doing Business As</i> Jacuzzi Luxury Bath	Vaughn A. Crawford <i>Retained</i> 7027845200(W)
Plaintiff	Ansara, Robert <i>Now Known As</i> 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 <i>Retained</i> 702-385-1400(W)
Plaintiff	Tamantini, Deborah	Benjamin P. Cloward <i>Retained</i> 702-385-1400(W)
Trust	Estate of Sherry Lynn Cunnison	Benjamin P. Cloward <i>Retained</i> 702-385-1400(W)

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 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

PA0816

3/12/2019

<https://www.clarkcountycourts.us/Anonymous/CaseDetail.aspx?CaseID=11658121&HearingID=198562118&SingleViewMode=Minutes>

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](#)

EXHIBIT 31

EXHIBIT 31

Unless there is something in this product that may influence the integrity of the acrylic shell and or structure I see no reason why this would void the warranty to the consumer. That said – I know nothing about this product or its chemical composition – Ray and Don may be able to assist us with that part of the answer.

Adding a few others so once we make a stance or recommendation we are all aware of the decision.

Kurt Bachmeyer

Director of Customer Service



www.jacuzzi.com

14525 Monte Vista Avenue / Chino, CA 91710
909.247.2187 (o) 909.606.4270 (f)

This email and any attachments are confidential and may be legally privileged. If you are not the intended recipient, please notify the author by replying to this email message, and then delete all copies of the email on your system. If you are not the intended recipient, you must not disclose, distribute, copy, print or use this email in any manner. Email messages and attachments may contain viruses. Although we take precautions to check for viruses, we make no assurances about the absences of viruses. We accept no liability and suggest that you carry out your own virus checks.

From: Martinez, Audrey

Sent: Tuesday, March 18, 2014 4:50 PM

To: Bachmeyer, Kurt; Torres, Ray

Subject: FW: Slippery floors W.I.T.

FS has a couple of tubs in the field that people want removed because the customers claim they are too slippery to use. We proposed Liquiguard Solid Step Cote- an after market anti slip coating that Emmett Luder uses on tubs for the elderly. Will this void their warranty??

Audrey Martinez

Marketing Manager- Aging In Place Bathing



www.jacuzzi.com

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

909.247.2582 (o) 909.762.3203 (c)

This email and any attachments are confidential and may be legally privileged. If you are not the intended recipient, please notify the author by replying to this email message, and then delete all copies of the email on your system. If you are not the intended recipient, you must not disclose, distribute, copy, print or use this email in any manner. Email messages and attachments may contain viruses. Although we take precautions to check for viruses, we make no assurances about the absences of viruses. We accept no liability and suggest that you carry out your own virus

PA0819

From: Norm Murdock [<mailto:norm.murdock@aihrefmodelers.com>]

Sent: Tuesday, March 18, 2014 3:08 PM

To: Martinez, Audrey

Subject: RE: Slippery floors W.I.T.

Can you please confirm that the use of this product on Jacuzzi tubs will not void your lifetime warranty? We just need that confirmation in order to use this product.

Thanks!

Norm Murdock, CAPS, CSA
Vice President

firstSTREET
for Boomers and Beyond®

Phone: 303-222-3207

Cell: 602-403-6267

Email: norm.murdock@firststreetonline.com

Website: www.firststreetinc.com, www.firststreetonline.com

designed for SENIORS®



From: Martinez, Audrey [<mailto:audrey.martinez@jacuzzi.com>]

Sent: Wednesday, October 16, 2013 12:59 PM

To: Torres, Ray; Steve Buckley

Cc: Norm Murdock

Subject: RE: Slippery floors W.I.T.

We have a dealer who uses this product regularly with great results:

Liquidguard - Solid Step Cote
Liquidguard Technologies
(800) 790-9299

Let me know if you need any additional information.

Audrey Martinez

Marketing Manager- Aging In Place Bathing



www.jacuzzi.com

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

909.247.2582 (o) 909.762.3203 (c)

PA0820

EXHIBIT 32

EXHIBIT 32

Thanks,
Stephanie

From: SIMONA ROBERTSON [<mailto:SIMONA.ROBERTSON@firstSTREETonline.com>]

Sent: Thursday, April 03, 2014 9:55 PM

Cc: DAVE MODENA

Subject: 114th Issue Newsletter

Hello All,

Please find attached our latest edition Newsletter!

Best,

Simona Reid-Robertson

phone 804-451-2309

fax 804-524-9889

firstSTREET for Boomers and Beyond

This email and any attachments are confidential and may be legally privileged. If you are not the intended recipient, please notify the author by replying to this email message, and then delete all copies of the email on your system. If you are not the intended recipient, you must not disclose, distribute, copy, print, or use this email in any manner. Email messages and attachments may contain viruses. Although we take precautions to check for viruses, we make no assurances about the absence of viruses. We accept no liability and suggest that you carry out your own virus checks.

PA0822



Newsletter

April, 3 2014

New WIT Resources!

We are pleased to announce that Aging in the Home Remodelers & Jacuzzi have both tested & approved the use of an optional non-skid coating designed to improve the slip resistance of the floors in our walk-in bathtubs. This is not intended to be offered as a part of the normal installation but a customer request basis or as a means for resolution to any potential new or existing slip like issues/concerns.

The product is SolidStepCote O4 manufactured by Liquiguard Technologies, Inc. It is an entirely nontoxic, green, water-based solution that dries clear and creates an invisible anti-skid finish. This eco-friendly product contains extremely low VOC's, and has no fumes or odors. It can be easily applied using a ¼ " nap 3" paint roller. The result is a nonskid surface equivalent to 50-grit sandpaper. Additionally, use of this coating on Jacuzzi walk-in tubs will not void the warranty. This product is available for you to order direct from the manufacturer & apply to tubs in your shop or in the field for those customers requiring or desiring additional slip resistance. Aging in the Home Remodelers has negotiated a 20% discount off of the published internet prices for our dealers. Below is the contact person to place orders. Just mention that you are a Jacuzzi/Aging in the Home Remodelers dealer to receive the 20% discount.



- For more information, please visit <http://www.liquiguard.com/non-slip-coatings/solid-step-cote/solidstep-cote-O4.html>
- An optional primer, Unibond 110, is also available: <http://www.liquiguard.com/surface-primers/unibond-111/unibond110-quart-32-oz.html>

Complete application instructions provided in a separate attachment

Rehash Spec Update

Jacuzzi has corrected an error on the re-hash (i.e. "product 2" whirlpool) walk-in tub specification sheet included in the product shipment which incorrectly specified that one 20 amp circuit was required. Below is the updated specification:

TECHNICAL SPECIFICATIONS		
	COMBINATION	WHIRLPOOL
Electrical Specifications	Device Power Requirements	Device Power Requirements
Blower	120V, 5A, 60Hz, 500W Motor, 600W Heater	N/A
Pump/Motor (Ozone)	120V, 7A, 60Hz / (120V, 0.25A, 60Hz)	120V, 7A, 60Hz / (120V, 0.25A 60Hz)
Heater	120V, 12.5A, 60Hz, 1.5kW	120V, 12.5A., 60Hz, 1.5kW
Light	120V, 1.6A, 60Hz	N/A
GFCI-Protected Circuits	Two Dedicated 120V, 20A, 60Hz	Two Dedicated 120V, 20A, 60Hz

EC Installation Video

The complete Easy Climber Deluxe (Xclusive) installation video is now available! You can find it in the "Easy Climber Docs" Drop Box folder under the subfolder "Install docs/Installation Videos".



JACUZZI00620

EXHIBIT 33

EXHIBIT 33

From: Reyes, Regina
Sent: Wednesday, July 09, 2014 12:29 PM
To: 'Norm Murdock'
Cc: Bachmeyer, Kurt; Martinez, Audrey
Subject: RE: New Voice Message from (301) 988-0570 on 07/03/2014 at 11:59 AM

Norm, we are working on this one. We collected some info, but we need to confirm what the problem is since we have conflicting reports of what is outstanding. I'll get back to you.

Regina Reyes
Customer Service Manager



www.jacuzzi.com
14525 Monte Vista Avenue / Chino, CA 91710
909.247.2170 (o) Office Hours 8 a.m. to 5:00 p.m. PT
909.247.2551 (f)

This email and any attachments are confidential and may be legally privileged. If you are not the intended recipient, please notify the author by replying to this email message, and then delete all copies of the email on your system. If you are not the intended recipient, you must not disclose, distribute, copy, print or use this email in any manner. Email messages and attachments may contain viruses. Although we take precautions to check for viruses, we make no assurances about the absences of viruses. We accept no liability and suggest that you carry out your own virus checks.

From: Norm Murdock [<mailto:norm.murdock@alhrmodelers.com>]
Sent: Wednesday, July 09, 2014 8:50 AM
To: Reyes, Regina
Cc: Bachmeyer, Kurt; Martinez, Audrey
Subject: FW: New Voice Message from (301) 988-0570 on 07/03/2014 at 11:59 AM
Importance: High

Regina-

See below. We have an issue with this Beldon customer. Can you please check the service history & see if there is a way the jets can be serviced without removing the tub?

Can we have another agent or RSM pay a visit to this customer?

PA0825

If we schedule service for this customer, we would like to have the agent also apply the slip resistant coating...we will supply the product. 20 minute application. We will pay for this.

Happy to discuss by phone if you wish.

Thanks,

Norm Murdock, CAPS, CSA
Vice President

firstSTREET
for Boomers and Beyond

Phone: 303-222-3207

Cell: 602-403-6267

Email: norm.murdock@firststreetonline.com

Website: www.firststreetinc.com, www.firststreetonline.com

designed for SENIORS®



From: SIMONA ROBERTSON [mailto:SIMONA.ROBERTSON@firstSTREETOnline.com]

Sent: Wednesday, July 09, 2014 8:03 AM

To: Norm Murdock; DAVE MODENA

Subject: RE: New Voice Message from (301) 988-0570 on 07/03/2014 at 11:59 AM

Here you go Norm see the address below along with a more detailed laundry list of complaints. Shannon is ready to speak with someone to schedule an appointment...Thanks

- The floor, seats and walls of the tub are too slippery, Mr. Kinzer slips off the seat when in the tub and slips on floor when getting out
- The grab bar is slippery; Mr. Kinzer's hands slip when grabbing the bar
- The water temperature fluctuates when the tub is filling and when the shower is on but it doesn't fluctuate when using the other tubs in the home.
- The shower doesn't stay on
- The jets are not working- a technician from Betz repair came out twice (2/16/14 & 2/19/14) and stated that the tub would have to be removed to access the jets for repair
- The door knocks his knees when closing the door and it's hard for him to get into the tub

Shannon
301 988 0570

PA0826

EXHIBIT 34

EXHIBIT 34

1 **RSPN**
2 PHILIP GOODHART, ESQ.
3 Nevada Bar No. 5332
4 MICHAEL C. HETHEY, ESQ.
5 Nevada Bar No. 5668
6 MEGHAN M. GOODWIN, ESQ.
7 Nevada Bar No. 11974
8 THORNDAL ARMSTRONG DELK
9 BALKENBUSH & EISINGER
10 Mailing Address: PO Box 2070
11 Las Vegas, Nevada 89125-2070
12 1100 East Bridger Avenue
13 Las Vegas, NV 89101-5315
14 Mail To:
15 P.O. Box 2070
16 Las Vegas, NV 89125-2070
17 Tel.: (702) 366-0622
18 Fax: (702) 366-0327
19 png@thorndal.com
20 mch@thorndal.com
21 mmg@thorndal.com
22
23 Attorneys for Defendants/Cross-
24 Defendants, FIRSTSTREET FOR
25 BOOMERS AND BEYOND, INC.,
26 AITHR DEALER, INC., and HALE BENTON

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

24 FIRST STREET FOR BOOMERS & BEYOND,
25 INC.; AITHR DEALER, INC.; HALE
26 BENTON, Individually; HOMECCLICK, LLC;
27 JACUZZI INC., doing business as JACUZZI
28 LUXURY BATH; BESTWAY BUILDING &
REMODELING, INC.; WILLIAM BUDD,
Individually and as BUDDS PLUMBING; DOES
1 through 20; ROE CORPORATIONS 1

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

**DEFENDANT, FIRSTSTREET FOR
BOOMERS AND BEYOND, INC.'S
RESPONSE TO PLAINTIFF
ROBERT ANSARA'S SIXTH SET OF
REQUESTS FOR PRODUCTION OF
DOCUMENTS**

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.

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

1 BENTON, individually; HOMECCLICK, LLC;
2 JACUZZI LUXURY BATH, dba JACUZZI
3 INC.; WILLIAM BUDD, individually and as
4 BUDD'S PLUMBING; ROES I through X,

5 Cross-Defendants.

6 WILLIAM BUDD, individually and as BUDDS
7 PLUMBING,

8 Cross-Claimants,

9 vs.

10 FIRST STREET FOR BOOMERS & BEYOND,
11 INC.; AITHR DEALER, INC.; HALE
12 BENTON, individually; HOMECCLICK, LLC;
13 JACUZZI INC., doing business as JACUZZI
14 LUXURY BATH; BESTWAY BUILDING &
15 REMODELING, INC.; DOES 1 through 20;
16 ROE CORPORATIONS 1 through 20; DOE
17 EMPLOYEES 1 through 20; DOE
18 MANUFACTURERS 1 through 20; DOE 20
19 INSTALLERS, 1 through 20; DOE
20 CONTRACTORS 1 through 20; and DOE 21
21 SUBCONTRACTORS 1 through 20, inclusive,

22 Cross-Defendants.

23 FIRSTSTREET FOR BOOMERS & BEYOND,
24 INC.; and AITHR DEALER, INC.,

25 Cross-Claimants,

26 v.

27 HOMECCLICK, LLC; CHICAGO FAUCETS;
28 and WILLIAM BUDD, individually and as
BUDD'S PLUMBING,

Cross-Defendants.

DEFENDANT, FIRSTSTREET FOR BOOMERS AND BEYOND, INC.'S RESPONSE
TO PLAINTIFF ROBERT ANSARA'S SIXTH SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS

1 TO: ROBERT ANSARA, Plaintiff; and

2 TO: RICHARD HARRIS LAW FIRM, attorneys for Plaintiff:

3 COMES NOW Defendant, FIRSTSTREET FOR BOOMERS AND BEYOND, INC., by
4 and through its attorneys, the law firm of THORNDAL ARMSTRONG DELK BALKENBUSH
5 & EISINGER, and hereby responds to Plaintiff's Sixth Set of Requests for Production of
6 Documents as follows:

7 **REQUEST NO.:**

8 132. Please produce all documents reflecting that you provided, offered, or sold,
9 bathmats to customers of any and all Jacuzzi walk-in tub produced from January 1, 2008 to present.

10 **RESPONSE:** All documents responsive to this request that Defendant firstSTREET has been
11 able to locate have previously been produced as part of Defendant firstSTREET's NRCP 16.1
12 Early Case Conference Production and all Supplements thereto.

13 133. Please produce all documents reflecting items, including bathmats or other
14 accessories or product modifications like Kahuna grip, LX07000, Cajun grip, etc., that you sold or
15 provided or are aware were sold, provided, offered or marketed to customers using any/all Jacuzzi
16 walk-in tub products.

17 **RESPONSE:** All documents responsive to this request that Defendant firstSTREET has been
18 able to locate have previously been produced as part of Defendant firstSTREET's NRCP 16.1
19 Early Case Conference Production and all Supplements thereto.

20 134. Please produce all customer satisfaction surveys (front and back) left with
21 customers to fill out from January 1, 2008 to present, regardless of content of survey.

22 **RESPONSE:** Defendant firstSTREET did not begin selling Jacuzzi Walk-In Bathtubs until after
23 the firstSTREET / Jacuzzi Manufacturing Agreement was executed. As such, AITHR does not
24 have any customer survey's that pre-date this agreement. All documents responsive to this request
25 that Defendant firstSTREET has been able to locate have previously been produced as part of
26 Defendant firstSTREET's NRCP 16.1 Early Case Conference Production and all Supplements
27 thereto. Please note that sometime in early 2015, firstSTREET began to utilize the services of an
28 "online" Customer Survey organization called "Guild Quality". A copy of a sample "Guild Quality"

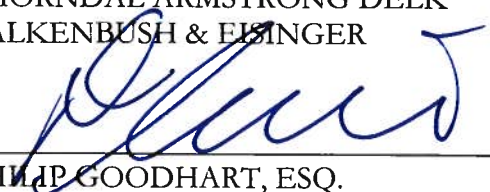
1 survey is attached as Exhibit A to this Request for Production. However, an excel spreadsheet was
2 attached as part of Defendants Seventh Supplemental Early Case Conference Production which
3 contains all the information contained in a Guild Quality Survey in electronic format.

4 135. Please produce all customer satisfaction cards (front and back) left with customers
5 to fill out from January 1, 2008 to present, regardless of content of survey.

6 **RESPONSE:** Defendant firstSTREET did not begin selling Jacuzzi Walk-In Bathtubs until after
7 the firstSTREET / Jacuzzi Manufacturing Agreement was executed. As such, AITHR does not
8 have any customer survey's that pre-date this agreement. All documents responsive to this request
9 that Defendant firstSTREET has been able to locate have previously been produced as part of
10 Defendant firstSTREET's NRCP 16.1 Early Case Conference Production and all Supplements
11 thereto. Please note that sometime in early 2015, firstSTREET began to utilize the services of an
12 "online" Customer Survey organization called "Guild Quality". A copy of a sample "Guild Quality"
13 survey is attached as Exhibit A to this Request for Production. However, an excel spreadsheet was
14 attached as part of Defendants Seventh Supplemental Early Case Conference Production which
15 contains all the information contained in a Guild Quality Survey in electronic format.

16 DATED this 23rd day of August, 2019.

17 THORNDAL ARMSTRONG DELK
18 BALKENBUSH & EISINGER

19 
20 PHILIP GOODHART, ESQ.
21 Nevada Bar No. 5332
22 MICHAEL C. HETHEY, ESQ.
23 Nevada Bar No. 5668
24 MEGHAN M. GOODWIN, ESQ.
25 Nevada Bar No. 11974
26 1100 East Bridger Avenue
27 Las Vegas, Nevada 89101
28 Attorneys for Defendants/Cross-Defendants,
FIRSTSTREET FOR BOOMERS AND BEYOND,
INC., AITHR DEALER, INC., and HALE
BENTON

1 **CERTIFICATE OF SERVICE**

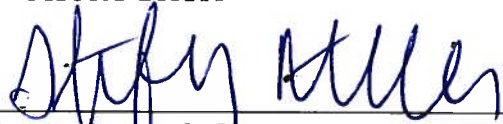
2 I HEREBY CERTIFY that on the 23rd day of August, 2019, service of the above and
3 foregoing DEFENDANT, FIRSTSTREET FOR BOOMERS AND BEYOND, INC.'S
4 RESPONSE TO PLAINTIFF ROBERT ANSARA'S SIXTH SET OF REQUESTS FOR
5 PRODUCTION OF DOCUMENTS was made upon each of the parties via electronic service
6 through the Eighth Judicial District Court's Odyssey E-File and Serve system.

7
8 Benjamin P. Cloward, Esq.
9 Richard Harris Law Firm
10 801 South Fourth Street
11 Las Vegas, Nevada 89101
12 Attorneys for Plaintiffs

Graham R. Scofield, Esq.
Allen & Scofield Injury Lawyers LLC
3575 Piedmont Road, NE
Building 15, Suite L-130
Atlanta, Georgia 30305
Attorneys for Plaintiffs

13 Vaughn A. Crawford, Esq.
14 Morgan Petrelli, Esq.
15 Snell & Wilmer LLP
16 3883 Howard Hughes Pkwy., Ste. 1100
17 Las Vegas, Nevada 89169
18 Attorneys for Defendant,
19 JACUZZI INC. dba JACUZZI
20 LUXURY BATH

D. Lee Roberts, Jr., Esq.
Brittany M. Llewellyn, Esq.
Christopher T. Byrd, Esq.
Weinberg, Wheeler, Hudgins,
Gunn & Dial, LLC
6385 South Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
Attorneys for Defendant,
JACUZZI INC. dba JACUZZI
LUXURY BATH

21
22
23
24
25
26
27
28


An employee of THORNDAL ARMSTRONG
DELK BALKENBUSH & EISINGER

EXHIBIT 35

*firstSTREET Disclosures
(Initial through 7th Supplement)
Submitted to Court via thumb-drive*

EXHIBIT 35

EXHIBIT 36

EXHIBIT 36

Sent: Monday, September 23, 2013 8:01 AM
To: Norm Murdock
Subject: FW: Five9 Voicemail Alert

Hey Norm, good morning,

Mrs. Borroz called in and left a message for me.. She slipped in her tub and hit her arm on the grab bar... She is requesting we send her a matt to put in the bottom of the tub so it is not so slippery.. do you have any suggestions? I had already suggested to her to go to Wal-Mart or bath and body and get one there but she is saying they are all too big...

Best Regards,

Ashley Davidson
Customer Care Coordinator
Aging In The Home Remodelers
Office: 303.222.3200
Direct: 303.222.3197
Email: Ashley.davidson@aihremodelers.com
1460 W Canal Ct STE 102
Littleton, CO. 80120

-----Original Message-----

From: Five9 VCC Notification [<mailto:voicemail-noreply@five9.com>]
Sent: Saturday, September 21, 2013 10:02 AM
To: Ashley Davidson
Subject: Five9 Voicemail Alert

Dear Ashley Davidson,

You have received a new voicemail from 5202264643 at Sat Sep 21 09:02:01 PDT 2013

VCC Email Robot

PA0836

This email and any attachments are confidential and may be legally privileged. If you are not the intended recipient, please notify the author by replying to this email message, and then delete all copies of the email on your system. If you are not the intended recipient, you must not disclose, distribute, copy, print, or use this email in any manner. Email messages and attachments may contain viruses. Although we take precautions to check for viruses, we make no assurances about the absence of viruses. We accept no liability and suggest that you carry out your own virus checks.

From: Reyes, Regina
Sent: Monday, December 30, 2013 10:13 AM
To: Martinez, Audrey; Bachmeyer, Kurt
Cc: Davis, Megan
Subject: FW: Flashberger repair SN #BDF8WQ
Attachments: Gail's pictures 049.jpg; Gail's pictures 050.jpg; Gail's pictures 051.jpg; Gail's pictures 052.jpg

Unit mfg 4/23/13 – original issue door color mismatch.

Serviced last week, customer accepts color but not fit. See attached photos.

There is another email trail going around that Megan is going to be adding you to the distribution list. We have a big issue and we are only pointing finger per say, but due to the circumstances involved with time line and slip injuries this needs to be settled so I'm keeping you in the loop.

Regina Reyes
Customer Service Manager



www.jacuzzi.com
14525 Monte Vista Avenue / Chino, CA 91710
909.247.2170 (o) Office Hours 8 a.m. to 5:00 p.m. PT
909.247.2551 (f)

This email and any attachments are confidential and may be legally privileged. If you are not the intended recipient, please notify the author by replying to this email message, and then delete all copies of the email on your system. If you are not the intended recipient, you must not disclose, distribute, copy, print or use this email in any manner. Email messages and attachments may contain viruses. Although we take precautions to check for viruses, we make no assurances about the absences of viruses. We accept no liability and suggest that you carry out your own virus checks.

From: Andrea [<mailto:andrea@homesafetybaths.com>]
Sent: Friday, December 27, 2013 1:24 PM
To: Nuanes, Deborah
Cc: Reyes, Regina; Martinez, Audrey; SIMONA ROBERTSON
Subject: Flashberger repair SN #BDF8WQ

PA08337

Hi Deborah,

I understand that Tom went out and replaced the door on this tub after several attempts. I called the customer yesterday and was informed that they were still not satisfied with the tub. Evidently they have sent you pictures of the way the door fits and gasket is showing (door doesn't cover the gasket?) Mr., Is also concerned with the integrity of the fiberglass where the hinge screws have been taken out and put back in. Also he says the bottom of the tub is extremely slippery, he has slipped, and also a friend has slipped in using it. We get this complaint a lot, we have two customers right now that have injured themselves seriously and are threatening law suits. We have sent out bath mats to put in the tub to three other customers because they slipped and were afraid to use the tub. Furthermore, Mr. Flashberger expressed his concern that the door hits the opposite side of the tub when you open it, is concerned about damage to the tub wall. Thinks there should be some kind of bumper there to prevent this. The door still is not an exact match but he has given up on that issue, but he does want it to fit properly. Evidently someone from there called him and told him to use it for 30 days and see if it got better,(he was not impressed with whoever called and said no matter how long he waits it is not going to change how the door fits) He doesn't. like the way the water runs down the shower wand, and all and all he said he wishes he never would have bought the tub, He thought he was getting the Cadillac of tubs, instead he got a very poorly designed mess. His job was installed in May and we are still not any closer to being resolved. He said he had no issues with the installation or with Tom Gregory who was trying to do the repair. Only with Jacuzzi's attempt to fix a flawed product. He also stated that when he contracted with us he had several friends that wanted to purchase one and after they saw the tub and new of his problems, changed their minds. So besides the \$4,895 he still owes us we have lost potential sales. We would like to know what is going to be done about this situation and what can be done for this customer. Asking him to wait for 30 days is not acceptable since he has already waited 8 months!

Andrea Dorman
Home Safety Baths

From: dnuanes <deborah.nuanes@jacuzzi.com>
Sent: Tuesday, April 09, 2013 3:33 PM
To: Bachmeyer, Kurt; monique.trujillo@aihremodelers.com
Cc: Reyes, Regina; norm.murdock@firststreetonline.com
Subject: FWD: Hot Spot Pools to service door leak. Agent called homeowner and he indicated he did not want tub and he slipped and fell.

The following incident has been forwarded to you by:
Deborah Nuanes(deborah.nuanes@jacuzzi.com)

Sender's Comment

Hello Everyone,

I just wanted to update you on this incident that I'm forwarding this over to Kurk Bachmayer. Please address all questions and updates to him.

Thank you,
Deborah Nuanes
Consumer Relations, Aging in Place

Contact Information

First Name: Donald
Last Name: Raidt
Type: Consumer
Title:
Primary Phone: 785-218-5414
DLR/Agent #:
DLR/Agent Name:
Lowes Store #:
Region/Territory:
ShipTo Acct Sequence:
ShipTo Account Name: RENOVATIVE SOL - LEAVENWORTH

Reference #130405-000181

PA0839

Ashley Davidson
Customer Care Coordinator
Aging In The Home Remodelers
Office: 303.222.3200
Direct: 303.222.3197
Email: Ashley.davidson@aihremodelers.com
1460 W Canal Ct STE 102
Littleton, CO. 80120

-----Original Message-----

From: Five9 VCC Notification [<mailto:voicemail-noreply@five9.com>]
Sent: Saturday, September 21, 2013 10:02 AM
To: Ashley Davidson
Subject: Five9 Voicemail Alert

Dear Ashley Davidson,

You have received a new voicemail from 5202264643 at Sat Sep 21 09:02:01 PDT 2013

VCC Email Robot

This email and any attachments are confidential and may be legally privileged. If you are not the intended recipient, please notify the author by replying to this email message, and then delete all copies of the email on your system. If you are not the intended recipient, you must not disclose, distribute, copy, print, or use this email in any manner. Email messages and attachments may contain viruses. Although we take precautions to check for viruses, we make no assurances about the absence of viruses. We accept no liability and suggest that you carry out your own virus checks.

PA0840

From: Reyes, Regina
Sent: Wednesday, March 06, 2013 4:54 PM
To: Monique Trujillo; First Street Support
Cc: Todd Stout; Norm Murdock; Davis, Megan; Bachmeyer, Kurt
Subject: RE: Fuchs, Fred Serial # BDFN3C - URGENT!!!

Hi Monique, we can send a finish agent out to inspect the tub. If the tub requires a resurface we will resurface it, however if it does not yet the customer's position is that it is slippery we cannot make changes to the surface. We would instead recommend that the customer use non skid bath mats.

We'll let you know what happens after the inspection. Thank you.

Regina Reyes
Customer Service Manager



www.jacuzzi.com
14525 Monte Vista Avenue / Chino, CA 91710
909.247.2170 (o) Office Hours 8 a.m. to 5:00 p.m. PT
909.247.2551 (f)

This email and any attachments are confidential and may be legally privileged. If you are not the intended recipient, please notify the author by replying to this email message, and then delete all copies of the email on your system. If you are not the intended recipient, you must not disclose, distribute, copy, print or use this email in any manner. Email messages and attachments may contain viruses. Although we take precautions to check for viruses, we make no assurances about the absences of viruses. We accept no liability and suggest that you carry out your own virus checks.

From: Monique Trujillo [<mailto:monique.trujillo@alhrefmodelers.com>]
Sent: Wednesday, March 06, 2013 3:58 PM
To: First Street Support
Cc: Todd Stout; Norm Murdock; Reyes, Regina; Davis, Megan
Subject: Fuchs, Fred Serial # BDFN3C - URGENT!!!
Importance: High

PA0841
Jacuzzi Team,

The customer has called in and is very upset because he says he has almost fallen 3 times since having his new walk-in tub installed. He says that the floor of the tub is too slippery. He says there is no grip or no-slip feeling to the tub. He said he is no longer able to use the tub until this problem is fixed.

This is a very serious safety concern and I really need someone to contact him ASAP to get a technician out to his home before he falls.

Fred Fuchs
239 4th Ave North
South Saint Paul, MN 55075

651-451-3609
Serial # BDFN3C

Thank you,

Monique Trujillo
Production Manager
AITHR Dealer Inc.
1460 W. Canal Ct., Suite 102
Littleton, CO 80120

Office Phone: 303-222-3200 Direct Phone: 303-222-3205

Email: Monique.Trujillo@AIHRemodelers.com *** PLEASE NOTE NEW EMAIL ADDRESS***

This email and any attachments are confidential and may be legally privileged. If you are not the intended recipient, please notify the author by replying to this email message, and then delete all copies of the email on your system. If you are not the intended recipient, you must not disclose, distribute, copy, print or use this email in any manner.

PA0842

From: Torres, Ray
Sent: Monday, June 24, 2013 3:56 PM
To: Martinez, Audrey; Bachmeyer, Kurt
Subject: RE: Service issues on 5230/5229

no worries, I have the pan in the lab and it is less aggressive than the tub side by side you can see it. ill spend the 3k but how we going to get this money back?also, one is a dwo issue not jacuzzi, the second is an old person who got stuck, no slip involved. ?

Raymond Torres
Sr. Director of Engineering – Jacuzzi Luxury Bath

www.jacuzzi.com
14525 Monte Vista Avenue / Chino, CA 91710
909.247.2158 (o) 909.217.4799 (c) 909.643.2829 (f)

This email and any attachments are confidential and may be legally privileged. If you are not the intended recipient, please notify the author by replying to this email message, and then delete all copies of the email on your system. If you are not the intended recipient, you must not disclose, distribute, copy, print or use this email in any manner. Email messages and attachments may contain viruses. Although we take precautions to check for viruses, we make no assurances about the absences of viruses. We accept no liability and suggest that you carry out your own virus checks.

From: Martinez, Audrey
Sent: Monday, June 24, 2013 3:48 PM
To: Torres, Ray
Subject: RE: Service issues on 5230/5229

I'm guessing it's Anthony who is raising the slip issue. He's got lawyers for lawyers. I think we'd better drop the \$3k and add to the certification.

Audrey Martinez
Marketing Manager- Aging In Place Bathing



www.jacuzzi.com
13925 City Center Drive, Suite 200 / Chino Hills, CA 91709
909.247.2582 (o) 909.762.3203 (c)

PA0843



www.jacuzzi.com
14525 Monte Vista Avenue / Chino, CA 91710
909.247.2187 (o) 909.606.4270 (f)

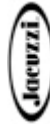
This email and any attachments are confidential and may be legally privileged. If you are not the intended recipient, please notify the author by replying to this email message, and then delete all copies of the email on your system. If you are not the intended recipient, you must not disclose, distribute, copy, print or use this email in any manner. Email messages and attachments may contain viruses. Although we take precautions to check for viruses, we make no assurances about the absences of viruses. We accept no liability and suggest that you carry out your own virus checks.

From: Reyes, Regina
Sent: Friday, June 21, 2013 2:21 PM
To: Bachmeyer, Kurt
Subject: Service issues on 5230/5229

Kurt, here are the tubs we talked about:

BDD3W3 5230 mfg 10/15/12; customer I Stoldt; installed 9/18/12 installer Keith Cottett – customer reported that unit would not drain; she got stuck in tub and had to crawl out of door; installer addressing to find out why tub would not drain.
BDF78X 5229 mfg 4/17/13; customer D Greenwell; installed 4/17/13 installer American Home Design – customer reported tub didn't work during conversation he mentioned he slipped in tub, got stuck in footwell had to call fire dept to get out. Field tech later found no mfg defect, customer wasn't operating the tub properly.
BDD537 mfg 10/29/12; customer C Lashinsky; installed 12/29/12 installer Anthony Home improvement – customer called to request we replace her door under warranty. Partner slipped in tub, they had to remove the door to get her out.

Regina Reyes
Customer Service Manager



www.jacuzzi.com
14525 Monte Vista Avenue / Chino, CA 91710
909.247.2170 (o) Office Hours 8 a.m. to 5:00 p.m. PT
909.247.2551 (f)

This email and any attachments are confidential and may be legally privileged. If you are not the intended recipient, please notify the author by replying to this email message, and then delete all copies of the email on your system. If you are not the intended recipient, you must not disclose, distribute, copy, print or use this email in any manner. Email messages and attachments may contain viruses. Although we take precautions to check for viruses, we make no assurances about the absences of viruses. We accept no liability and suggest that you carry out your own virus checks.

From: Norm Murdock <norm.murdock@aihremodelers.com>
Sent: Thursday, May 08, 2014 10:29 AM
To: Martinez, Audrey; Torres, Ray; Bachmeyer, Kurt; Davis, Joseph N.
Subject: RE: Survey results

I will have the Q1 surveys sent to you...

I think the other major issue that we see frequently in the surveys are complaints that the seat & floor are too slippery...

Norm Murdock, CAPS, CSA
Vice President

firstSTREET
for Boomers and Beyond®

Phone: 303-222-3207

Cell: 602-403-6267

Email: norm.murdock@firststreetonline.com

Website: www.firststreetinc.com, www.firststreetonline.com

designed for SENIORS®



From: Martinez, Audrey [<mailto:audrey.martinez@jacuzzi.com>]
Sent: Wednesday, May 07, 2014 9:56 AM
To: Norm Murdock; Torres, Ray; Bachmeyer, Kurt; joey.davis@jacuzzi.com
Subject: RE: Survey results

Thanks for sharing Norm. Yes, we'd like to see approval well over 80%.

While it's definitely a plaguing issue, I don't know that we've had enough skirt fit issue to make these numbers drop this significantly. Can you share any more detail of the comments on the surveys so we can review and identify areas we need to address? Simona used to scan copies and send to us but I haven't seen anything in quite a while.

Audrey Martinez
Marketing Manager- Aging In Place Bathing



PA0845



- [Close Window](#)
- [Print This Page](#)
- [Expand All](#) | [Collapse All](#)

Case: 00182053

Contact Name	Case Owner	Deborah Nuanes
Account Name	Asset	
Brand	Warranty	
Demo/Red Tag	Serial # (Text)	
	Part Number	
	Part Number (Text)	

Additional Information			
Status	Closed	Type	
Case Reason		Case Origin	Legacy RightNow
Case Sub-Reason		Priority	Medium
Subject	Per FS incident is closed. customer is refusing to have us resolve any issues he may have with his product. H/O refused agent to service tub.		
Description			

Resolution Information		
Category	Product	
Product Issue	Product Component	
Other Product Issue	Other Reason	
Case Resolution		

System Information			
Created By	Hilton Calderon, 4/5/2013 9:26 PM	Last Modified By	Deborah Nuanes, 12/17/2013 5:51 PM
Business Hours	Default	Entitlement Name	
Accepted Date/Time		Case Record Type	Legacy

Case Comments

4/17/2013 6:39 PM		4/17/2013 6:34 PM	
User	Regina Reyes	User	Regina Reyes
Public	<input type="checkbox"/>	Public	<input type="checkbox"/>
Comment	Subject line:Homeowner not allowing us to service. Does not want tub. Hot Spot Pools to service door leak. Agent called homeowner and he indicated he did not want tub and he slipped and fell.	Comment	FYI below_♦_Norm Murdock, CAPSVice PresidentPhone: 303-222-3207Cell: 602-403-6267Email: norm.murdock@firststreetonline.comWebsite: www.firststreetinc.com, www.firststreetonline.com From: Nick Fawkes [mailto:nick.fawkes@aihremodelers.com] Sent: Wednesday, April 17, 2013 12:09 PMTo: 'Monique Trujillo'Cc: Todd Stout; norm.murdock@firststreetonline.comSubject: RE: Raidt, Donald Team,This customer is refusing to have us resolve any issues he may have with his product.. I have left a message that we will be more than willing to reconcile any issues he may have when he is ready to do so.. Tub will still have all applicable warranties and at this point, the file is closed.Nick Fawkes,General ManagerfirstSTREET Jacuzzinick.fawkes@aihremodelers.com303.953.7080 From: Monique Trujillo [mailto:monique.trujillo@aihremodelers.com] Sent: Wednesday, April 17, 2013 11:35 AMTo: Nick FawkesCc: Travis Peterson; Chris.Dhooghe@yahoo.comSubject: Raidt, Donald Nick, I know that you and I have both spoke with Mr. Raidt last week and we are at a standstill because he will not allow Jacuzzi to fix the door leak issue. He just wants the tub taken out. I called him today to see if I could get him to allow Jacuzzi to come out and repair and he is still adamant about taking out the tub. Could you give him a call and let him know that he won_♦_t get a refund if we take out the tub or only partial? Thank you,Monique TrujilloMidwest Production Manager, AIHR
4/9/2013 10:31 PM		4/9/2013 10:28 PM	
User	Regina Reyes	User	Regina Reyes
Public	<input type="checkbox"/>	Public	<input type="checkbox"/>
Comment	Door has a huge leak out of the bottom of the door...coordinated service with HOT SPOT POOLS, claim#0070174.** cust not allowing us to set svc.	Comment	Hello Everyone,I just wanted to update you on this incident that I'm forwarding this over to Kurk Bachmayer. Please address all questions and updates to him.Thank you, Deborah NuanesConsumer Relations, Aging in Place
4/8/2013 5:02 PM		4/8/2013 5:02 PM	
User	Regina Reyes	User	Regina Reyes
Public	<input type="checkbox"/>	Public	<input type="checkbox"/>
Comment	Hello Monique Our service provider contacted Donald Raidt to set up service and he notified them he did not want to set service because he no longer wants the tub. He told them he slipped and fell causing him to hurt his back. I called him to follow up and he told me he doesn't want the unit due to the leaks and is willing to get a lawyer if the tub is not taken out and he is refunded. He did not mentioned his injuries to me but did insist that he was not keeping the tub.Thank you, Megan	Comment	Larry from Hot Spot said he tried to call the customer to set up service .. Per agent he is stating he slipped and fell and in doing so he hurt his back..I called the customer to confirm that he didn't want to have service done on the unit... He said he does not want it serviced he wants it out of his house. Let him know I will notify his dealer
4/5/2013 9:26 PM		4/5/2013 9:26 PM	
User	Regina Reyes	User	Regina Reyes
Public	<input type="checkbox"/>	Public	<input type="checkbox"/>
Comment	From: Calderon, Hilton On Behalf Of First Street SupportSent: Friday, April 05, 2013 2:26 PMTo: Monique Trujillo; First Street SupportCc: Gary.Yingst@aihremodelers.comSubject: RE: Raidt, Donald Serial # BDF0Y7Monique, The service will be done by HOT SPOT POOLS (816-781-8884) under claim# 0070174; no charge parts order# 168739 shipping on Monday via UP1. I called Mr. Raidt and left him a voice message that his tub will be service by HOT SPOT POOLS as soon as parts arrive to their shop. HOT SPOT POOLS (Amy) will call customer first thing Monday morning to schedule service. Regards, Hilton CalderonTechnical Services Consultant	Comment	From: Monique Trujillo [mailto:monique.trujillo@aihremodelers.com] Sent: Thursday, April 04, 2013 2:46 PMTo: First Street SupportCc: Gary.Yingst@aihremodelers.comSubject: Raidt, Donald Serial # BDF0Y7Jacuzzi Team,Customers tub was just installed. It did not leak at time of installation. The customer now says that the door has a huge leak out of the bottom of the door. He said it flooded the bathroom and adjoining room. Please send a Jacuzzi Tech to the customers home ASAP. Donald Raidt10105 Mohawk LnLeawood, KS 66206Installed 3/30/13785-218-5414Serial # BDF0Y7Thank you,Monique TrujilloMidwest Production Manager, AIHR 1460 W Canal Ct Suite 102Littleton, CO 80120303-222-3200 - Office303-222-3205 - Direct

Attachments

Claim#0070174.rtf	
Size	8KB
Ownership	Jared Baker
View	View file
Last Modified	6/9/2014 7:22 PM

JACUZZI00846

JACUZZI PA6846



- [Close Window](#)
- [Print This Page](#)
- [Expand All](#) | [Collapse All](#)

Case: 00192130

Contact Name	Case Owner	Martin Guevara
Account Name	Asset	
Brand	Warranty	
Demo/Red Tag	Serial # (Text)	
	Part Number	
	Part Number (Text)	

Additional Information

Status	Closed	Type	
Case Reason		Case Origin	Legacy RightNow
Case Sub-Reason		Priority	Medium
Subject	Melanie Borgia talk to Irene and everything taken care of. cust says drain is not opening and will not drain the water- she had to crawl out- Referred to installer		
Description			

Resolution Information

Category	Product
Product Issue	Product Component
Other Product Issue	Other Reason
Case Resolution	

System Information

Created By	Martin Guevara, 6/20/2013 2:39 PM	Last Modified By	Jared Baker, 6/7/2014 4:01 PM
Business Hours	Default	Entitlement Name	
Accepted Date/Time		Case Record Type	Legacy

Case Comments

5/5/2014 5:38 PM

User	Regina Reyes
Public	<input type="checkbox"/>
Comment	how did this one get resovled?

6/20/2013 11:33 PM

User	Regina Reyes
Public	<input type="checkbox"/>
Comment	LVM for Irene Stoldt to return my call.

6/20/2013 2:39 PM

6/21/2013 3:03 PM

User	Regina Reyes
Public	<input type="checkbox"/>
Comment	From: Melanie Borgia [mailto:melanieborgia@gmail.com] Sent: Friday, June 21, 2013 6:10 AM To: SIMONA ROBERTSON Cc: Steve Borgia; Kim Hogan; Nuanes, Deborah Subject: Re: FW: Irene Stoldt - serial BDD3W3 Just spoke to Irene and she said she got everything taken care of. On Fri, Jun 21, 2013 at 8:59 AM, Melanie Borgia <melanieborgia@gmail.com> wrote: Hi Simona: I just want to let you know that Irene was installed

JACUZZI006849

in November of 2012. I spoke to her in May re: a blower issue that she had with the direction of Deborah Nuanes. I will call her and give you an update, I did not hear from her since. So I am not sure who she called. I will give you an update as soon as I talk to her. On Thu, Jun 20, 2013 at 9:29 PM, SIMONA ROBERTSON <SIMONA.ROBERTSON@firststreetonline.com> wrote: Good Evening, Please see below where customer Irene Stoldt has contacted Jacuzzi with a complaint. Please contact her tomorrow morning and provide an update once you have done so. Thanks, Simona Reid-Robertson phone 804-451-2309

From: Nuanes, Deborah Sent: Thursday, June 20, 2013 12:33 PM To: 'simona.robertson@firststreetonline.com' Cc: Martinez, Audrey; Reyes, Regina Subject: Irene Stoldt - serial BDD3W3 Importance: High Hi Simona, I received a voice mail today from Irene Stoldt. She was not happy at all. She is a 84 year old lady. She went to take a bath and when she was done she could not drain her tub. She was stuck, she had to climb out. Then she had to get a pail/bucker to drain the water out of her tub. I need you to send your installer back out to address this issue. Please confirm that homeowner will be contacted as soon as possible. She need this fixed ASAP so she can take a bath. She did mention that she called 3 other people and no one has called her back. Irene Stoldt10750 Jones Road Clarence, NY 14031 Phone: 716-759-8604 Serial/Part: BDD3W3/NQ81958 Model: 5230 C LH SLN HTR SKT ALM Thank you,

Name **Alice Roehl**
 Related To **00501568**
 Task ☒
 Due Date **12/6/2017**
 Assigned To **Martin Guevara**
 Last Modified Date/Time **12/6/2017 3:28 PM**
 Additional To: **air80@sbcglobal.net**
 CC:
 BCC:
 Attachment: **Kahuna Grip installations instructions.pdf**

 Subject: **Kahuna Grip [ref:_00DG0kX3r_5000f1FsoiB:ref]**
 Body:
 Here is more info on the Kahuna Grip that should assist you. Let me know if you have any more problems.

Martin Guevara
Customer Service

 Comments

www.jacuzzi.com
14525 Monte Vista Avenue / Chino, CA 91710
800-288-4002(o) 909.247-2551 (f)
Office Hours 8am -5pm CT

 This email and any attachments are confidential and may be legally privileged. If you are not the intended recipient, please notify the author by replying to this email message, and then delete all copies of the email on your system. If you are not the intended recipient, you must not disclose, distribute, copy, print or use this email in any manner. Email messages and attachments may contain viruses. Although we take precautions to check for viruses, we make no assurances about the absences of viruses. We accept no liability and suggest that you carry out your own virus checks.
 ref:_00DG0kX3r_5000f1FsoiB:ref

inbound

Name **Alice Roehl**
 Related To **00504136**
 Task ☒
 Due Date
 Assigned To **Christopher Alvarado**
 Last Modified Date/Time **11/27/2017 11:52 AM**
 Comments **referred to AIHR, we do not support product**

Cases

00501568

Contact Name **Alice Roehl**
 Subject **Walk in bath - slippery bottom**
 Priority **Medium**
 Date Opened **11/13/2017**
 Status **Closed**
 Owner **Martin Guevara**
 Description **Jacuzzi tub has slippery bottom even though its supposed to be non- skid
she slipped when trying to get out and almost drowned
she called Hausner Construction and they suggested Kahuna Grip**

00504136

Contact Name **Alice Roehl**
 Subject **Walk in bath - slippery bottom**
 Priority **Medium**
 Date Opened **11/21/2017**
 Status **Closed**



- [Close Window](#)
- [Print This Page](#)
- [Expand All](#) | [Collapse All](#)

Case: 00192130

Contact Name	Case Owner	Martin Guevara
Account Name	Asset	
Brand	Warranty	
Demo/Red Tag	Serial # (Text)	
	Part Number	
	Part Number (Text)	

Additional Information

Status	Closed	Type	
Case Reason		Case Origin	Legacy RightNow
Case Sub-Reason		Priority	Medium
Subject	Melanie Borgia talk to Irene and everything taken care of. cust says drain is not opening and will not drain the water- she had to crawl out- Referred to installer		
Description			

Resolution Information

Category	Product
Product Issue	Product Component
Other Product Issue	Other Reason
Case Resolution	

System Information

Created By	Martin Guevara, 6/20/2013 2:39 PM	Last Modified By	Jared Baker, 6/7/2014 4:01 PM
Business Hours	Default	Entitlement Name	
Accepted Date/Time		Case Record Type	Legacy

Case Comments

5/5/2014 5:38 PM

User **Regina Reyes**
 Public ☐
 Comment how did this one get resovled?

6/20/2013 11:33 PM

User **Regina Reyes**
 Public ☐
 Comment LVM for Irene Stoldt to return my call.

6/20/2013 2:39 PM

6/21/2013 3:03 PM

User **Regina Reyes**
 Public ☐
 Comment
 From: Melanie Borgia
 [mailto:melanieborgia@gmail.com] Sent: Friday,
 June 21, 2013 6:10 AM
 To: SIMONA ROBERTSON
 Cc: Steve Borgia; Kim Hogan;
 Nuanes, Deborah
 Subject: Re: FW: Irene Stoldt -
 serial BDD3W3
 Just spoke to Irene and she said
 she got everything taken care of. On Fri, Jun 21,
 2013 at 8:59 AM, Melanie Borgia
 <melanieborgia@gmail.com> wrote:
 Hi Simona: I just want to let you know that Irene was installed

User **Regina Reyes**
Public ☐

Comment Customer called and said unit is not draining. She is 84 yrs old and had to crawl out. I contacted Keith her installer at 716 870 8759 from the previous notes in RNT and left him a message to contact customer and arrange service. She says she left a message for someone here as well and waiting on call back. She needs this fixed ASAP so she can take a bath

in November of 2012. I spoke to her in May re: a blower issue that she had with the direction of Deborah Nuanes. I will call her and give you an update, I did not hear from her since. So I am not sure who she called. I will give you an update as soon as I talk to her. On Thu, Jun 20, 2013 at 9:29 PM, SIMONA ROBERTSON <SIMONA.ROBERTSON@firststreetonline.com> wrote: Good Evening, Please see below where customer Irene Stoldt has contacted Jacuzzi with a complaint. Please contact her tomorrow morning and provide an update once you have done so. Thanks, Simona Reid-Robertson phone 804-451-2309

6/20/2013 7:47 PM

User **Regina Reyes**
Public ☐

Comment From: Nuanes, Deborah Sent: Thursday, June 20, 2013 12:33 PM To: 'simona.robertson@firststreetonline.com' Cc: Martinez, Audrey; Reyes, Regina Subject: Irene Stoldt - serial BDD3W3 Importance: High Hi Simona, I received a voice mail today from Irene Stoldt. She was not happy at all. She is a 84 year old lady. She went to take a bath and when she was done she could not drain her tub. She was stuck, she had to climb out. Then she had to get a pail/bucker to drain the water out of her tub. I need you to send your installer back out to address this issue. Please confirm that homeowner will be contacted as soon as possible. She need this fixed ASAP so she can take a bath. She did mention that she called 3 other people and no one has called her back. Irene Stoldt 10750 Jones Road Clarence, NY 14031 Phone: 716-759-8604 Serial/Part: BDD3W3/NQ81958 Model: 5230 C LH SLN HTR SKT ALM Thank you,

EXHIBIT 37

EXHIBIT 37

RSPN

MEGHAN M. GOODWIN, ESQ.
Nevada Bar No. 11974
THORNDAL ARMSTRONG DELK
BALKENBUSH & EISINGER
Mailing Address: PO Box 2070
Las Vegas, Nevada 89125-2070
1100 East Bridger Avenue
Las Vegas, NV 89101-5315
Mail To:
P.O. Box 2070
Las Vegas, NV 89125-2070
Tel.: (702) 366-0622
Fax: (702) 366-0327
mmg@thorndal.com

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

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

FIRST STREET FOR BOOMERS & BEYOND,
INC.; AITHR DEALER, INC.; HALE
BENTON, Individually; HOMECCLICK, LLC;
JACUZZI INC., doing business as JACUZZI
LUXURY BATH; BESTWAY BUILDING &
REMODELING, INC.; WILLIAM BUDD,
Individually and as BUDD'S 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
RESPONSE TO PLAINTIFF, ROBERT
ANSARA'S FIRST SET OF REQUEST
FOR PRODUCTION OF
DOCUMENTS**

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

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.; AITHR 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 BUDDS
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 RESPONSE
TO PLAINTIFF, ROBERT ANSARA'S FIRST SET OF REQUEST FOR PRODUCTION
OF DOCUMENTS**

TO: ROBERT ANSARA, Plaintiff; and

TO: RICHARD HARRIS LAW FIRM, attorneys for Plaintiff:

COMES NOW Defendant, FIRSTSTREET FOR BOOMERS AND BEYOND, INC., by and through its attorneys, the law firm of THORNDAL ARMSTRONG DELK BALKENBUSH & EISINGER, and hereby responds to Plaintiff's First Set of Request for Production of Documents as follows:

REQUEST NO.:

1. All documents identified in your answers to Interrogatories.

RESPONSE: This Responding Defendant is not in possession of any documents responsive to this request, other than those already produced in this Responding Defendant's NRCP 16.1 Initial Document Production and Witness List, and all supplements thereto.

2. Any contracts between this Defendant and any other party regarding indemnification agreement or contracts.

RESPONSE: Please see this Responding Defendant's NRCP 16.1 Initial Document Production and Witness List, and all supplements thereto, specifically, Exhibits "D" and "E," Bates numbered FIRST000005 – FIRST0000023.

3. Copies of any treatises, standards in the industry, legal authority, rule, case, statute or code that will be relied upon in the defense of this case.

RESPONSE: Objection. This Response calls for expert opinion and legal conclusions, and seeks to invade attorney-client privilege and/or attorney work product doctrine. Discovery is ongoing and this Response will be supplemented following expert disclosure deadlines pursuant to the scheduling order.

4. Any and all reports made as a result of any inspections, examination or investigation by any person acting on behalf of any party as a result of the occurrence complained of in Plaintiffs' Complaint.

RESPONSE: Objection. This Request is vague, ambiguous, and overbroad with respect to

1 timeframe, subject matter, and the term “reports.” This responding Defendant is not in possession
2 of any documents responsive to this Request.

3 5. Any and all documents relating to any cause or circumstance this Defendant
4 contends may have contributed to the occurrence.

5 **RESPONSE:** Objection. This Request is premature, as discovery is ongoing and this Request calls
6 for a legal conclusion, as well as invades attorney-client privilege and/or attorney work product.
7 Please see Plaintiff’s medical records produced to date.
8

9 6. Any and all documents, manuals, policies, memoranda letters or the like setting forth
10 proper standards, policies and/or procedures, concerning the use of the subject Jacuzzi Walk-In-
11 Tub at issue. (These should be documents that were effective on the date of loss of February 27,
12 2014.)
13

14 **RESPONSE:** Objection. This Request is vague, ambiguous, and overbroad with respect to the
15 phrase “concerning the use of the subject Jacuzzi Walk-In Tub.” This Responding Defendant is not
16 in possession of documents responsive to this Request other than those previously produced in the
17 course of litigation.
18

19 7. All written, recorded and/or signed statement of any person including Plaintiff, any
20 Defendant, witness, investigators or any agents, representative or employee of the parties,
21 concerning this matter of this action.

22 **RESPONSE:** Objection. This Request is vague, ambiguous, and overbroad with respect to
23 timeframe. This responding Defendant is not in possession of any documents responsive to this
24 Request other than those documents previously produced in litigation, specifically Exhibits “C,”
25 “D,” “E,” “J,” “K,” and “L.”
26

27 8. Any documents concerning the purchase, invoice, sales receipt or delivery of the
28 subject Jacuzzi Walk-In-Tub at issue.

1 **RESPONSE:** This Responding Defendant is not in possession of documents responsive to this
2 request other than the documents previously produced in this Responding Defendant's NRCP 16.1
3 Initial Document Production and Witness List, and all supplements thereto, specifically, Exhibits
4 "A," "B," "C," "K," and "L."

5 9. Any literature, service manual, written instructions, or operator's manual or
6 handbook regarding the subject Jacuzzi Walk-In-Tub at issue.

7 **RESPONSE:** Objection. This Request is vague, ambiguous and overbroad with respect to subject
8 matter and the term "literature." This Responding Defendant is not in possession of documents
9 responsive to this request other than those documents previously produced in litigation, as these
10 documents are provided by Jacuzzi in the walk-in tub packaging.

11 10. Any engineering literature, drawings, diagrams, schematics or models of the subject
12 Jacuzzi Walk-In-Tub at issue.

13 **RESPONSE:** This Responding Defendant is not in possession of documents responsive to this
14 request other than those documents previously produced in litigation.

15 11. Any written warnings posted on the subject Jacuzzi Walk-In-Tub at issue.

16 **RESPONSE:** This Responding Defendant is not in possession of documents responsive to this
17 request other than the documents previously produced in litigation, as these documents are provided
18 by Jacuzzi in the walk-in tub packaging.

19 12. Any and all documents that relate to the design of the subject Jacuzzi Walk-In-Tub
20 involved in the occurrence complained of in the Plaintiffs' Complaint.

21 **RESPONSE:** This Responding Defendant is not in possession of documents responsive to this
22 request other than those documents already produced in litigation, as this Responding Defendant
23 did not design the subject Jacuzzi Walk-In Tub.

24 13. Any and all documents that relate to the production of the subject Jacuzzi Walk-In-

1 Tub involved in the occurrence complained of in Plaintiffs' Complaint.

2 **RESPONSE:** Objection. The term "production" is vague and ambiguous. This Responding
3 Defendant is not in possession of documents responsive to this request other than those documents
4 previously produced in litigation, as this Responding Defendant did not design the subject Jacuzzi
5 Walk-In Tub.

6 14. All documents which afforded liability insurance or self-insured status for the
7 incident which is the subject matter of the Plaintiffs' Complaint.

8 **RESPONSE:** Please see this Responding Defendant's NRCP 16.1 Initial Document Production
9 and Witness List and all supplements thereto, specifically Exhibits "G" and "I."

10 15. Any and all documents that relate to the production of the subject Jacuzzi Walk-In-
11 Tub involved in the occurrence complained of in Plaintiffs' Complaint.

12 **RESPONSE:** Please see the response to Request No. 13, as this Request is duplicative.

13 16. Any and all documents that relate to the schematics of the subject Jacuzzi Walk-In-
14 Tub involved in the occurrence complained of in Plaintiffs' Complaint.

15 **RESPONSE:** Objection. The term "schematics" is vague and ambiguous. This Responding
16 Defendant is not in possession of documents responsive to this request other than those documents
17 previously produced in litigation, as this Responding Defendant did not design the subject Jacuzzi
18 Walk-In Tub.

19 17. Any documents prepared during the regular course or business as a result of the
20 incident complained of in the Plaintiffs' Complaint.

21 **RESPONSE:** Objection. This Request is vague, ambiguous and overbroad with respect to the
22 phrase "in the regular course of business." Please see this Responding Defendant's NRCP 16.1
23 Initial Document Production and Witness List and all supplements thereto, specifically Exhibit "L."

24 18. Any and all documentary evidence regarding failures and malfunctions of the Jacuzzi
25
26
27
28

1 Walk-In-Tub. This may be in the form of direct complaints from customers to the manufacturer, or
2 indirect reports such as warranty claims through dealers. It may also be derived from developmental
3 testing, investigations by government agencies, and product liability lawsuits.

4 **RESPONSE:** Objection. This Request seeks expert opinion and calls for a legal conclusion.
5 Further, this Request is vague, ambiguous, and overbroad as to time, subject matter, and the term
6 “failures and malfunctions.” This Responding Defendant is not in possession of evidence
7 documenting any definitive “failure or malfunction.”
8

9 19. Any and all documents and communications containing the name, home and
10 business address and qualifications of all persons who have been retained or specially employed by
11 Defendant(s) in *anticipation* of litigation or *preparation* for trial and who are *not* expected to be called as
12 witnesses at trial or as to whom no such decision has yet been made, and attach any documents or
13 communications received from said person(s). If there are no documents or communications, then
14 the name of said person(s) as well as their home and business addresses should be provided.
15

16 **RESPONSE:** Objection. This Request seeks to invade attorney-client privilege and/or attorney
17 work product, as the time for expert disclosures has not yet passed.
18

19 20. The entire claims and investigation file or files including but not limited to daily
20 activity sheets, diary sheets, and status sheets of any insurance adjuster and/or risk
21 employee/manager, internal memoranda regarding this claim created, sent and/or received by any
22 insurance adjuster or other adjuster, risk employee/manager and/or by the Defendant(s) or an
23 agent/employee of the Defendant(s), communications to and from all insurance carriers, parties,
24 Defendant(s), or potential parties, request(s) for investigation, and/or reports/findings of
25 investigators, both in-house and/or independent and/or all insurance policies of the Defendant(s),
26 excluding references to mental impressions, conclusions, or opinions representing the value or merit
27 of the claim or defense or respecting strategy or tactics and privileged communications from
28

1 counsel.

2 **RESPONSE:** Objection. This Request seeks information protected by the attorney-client privilege,
3 and work product doctrine. Further, blanket requests for investigation files, or adjuster's reports
4 and adjuster's files, are not proper Requests for Production under NRCP Rules 34 and 26,
5 respectively, nor under any Nevada case opinions, including Ballard v. Eighth Judicial District Court
6 et al., 106 Nev. 83, 787 P.2d 406 (1990). It is further objected on grounds that it is overly broad and
7 burdensome and the information sought is neither relevant nor calculated to lead to the discovery of
8 admissible evidence at the time of arbitration or trial. The portions of the pre-litigation claims file
9 that are discoverable have been previously produced via this Responding Defendant's NRCP 16.1
10 Initial Document Production and Witness List and all supplements thereto, specifically Exhibits "A"
11 through "L."

12
13
14 21. All statements and communications of any and all witnesses including any and all
15 statements of Plaintiff(s) and Defendant(s), including taped recordings, whether transcribed or not,
16 as well as all written statements.

17 **RESPONSE:** Objection. This Request seeks to invade attorney client privilege and attorney work
18 product. This Responding Defendant is not in possession of any documents responsive to this
19 request, other than those documents previously produced in litigation.
20

21 22. The name, home and business address of the insurance carrier investigators
22 employed by the Defendant(s) or its insurance carrier to investigate this claim, treatment of the
23 Plaintiff(s), witnesses, or any other aspect of the incidents that form the basis of Plaintiff(s)
24 Complaint. Also, attach any documents, records or communications of or prepared by the
25 investigator acquired as a result of their investigation(s), including but not limited to telephone calls,
26 correspondence, facsimiles, e-mail, billing, inspections or observations, interviews, statements
27 and/or findings.
28

1 **RESPONSE:** This Responding Defendant is not in possession of any documents responsive to
2 this request.

3 23. The name, home and business address, background and qualifications of any and all
4 persons in the employ of Defendant(s), who in anticipation and/or preparation of litigation, is
5 expected to be called to trial.

6 **RESPONSE:** Objection. This Request is premature, seeks to invade attorney-client privilege, and
7 attorney work product. Please see this Responding Defendant's NRCP 16.1 Initial Document
8 Production and Witness List and all Supplements thereto, specifically the list of witnesses. Please
9 also see this Responding Defendant's Answer to Interrogatory No. 2.
10

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

13 **RESPONSE:** Objection. This Request is premature, seeks to invade attorney-client privilege, and
14 attorney work product. Please see this Responding Defendant's NRCP 16.1 Initial Document
15 Production and Witness List and all Supplements thereto, specifically the list of witnesses. Please
16 also see this Responding Defendant's Answer to Interrogatory No. 2.
17

18 25. Any and all documents and communication substantiating any defense to Plaintiffs'
19 Complaint.
20

21 **RESPONSE:** Objection. This Request is premature, seeks to invade attorney-client privilege, and
22 attorney work product. Please see this Responding Defendant's NRCP 16.1 Initial Document
23 Production and Witness List and all Supplements thereto, specifically Exhibits "A through L."
24 Please also see medical records for Sherry Cunnison produced throughout the course of litigation.

25 26. Any all *[sic]* videotapes, photographs, notes, memorandums, technical data, and
26 internal documents of any and all testing conducted by this Defendant's research and design experts
27 on the same model as the subject Jacuzzi Walk-In-Tub.
28

1 **RESPONSE:** Objection. This Request is vague and ambiguous with respect to time and subject
2 matter. This Responding Defendant did not design the subject tub, and is not in possession of any
3 documents responsive to this request.

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

7 **RESPONSE:** Objection. This Request is vague and ambiguous with respect to the term “safety
8 features.” Please see Exhibit B attached hereto, in addition to any sales materials produced through
9 the course of litigation.
10

11 28. Any sales material provided to elderly folks (over the age of 55) concerning the ease
12 of use features of the Jacuzzi Walk-In-Tub. (These should be documents that were used prior to the
13 date of loss of February 27, 2014.)
14

15 **RESPONSE:** Objection. This Request is vague and ambiguous with respect to the term “ease of
16 use.” Please see Exhibit B attached hereto, in addition to any sales materials produced through the
17 course of litigation.

18 29. Any sales material provided to overweight folks concerning the safety features of the
19 Jacuzzi Walk-In-Tub. (These should be documents that were used prior to the date of loss of
20 February 27, 2014.)
21

22 **RESPONSE:** Objection. This Request is vague and ambiguous with respect to the term
23 “overweight folks.” This Responding Defendant is not in possession of documents responsive to
24 this request.

25 30. Any sales material provided to overweight folks (over the age of 55) concerning the
26 ease of use features of the Jacuzzi Walk-In-Tub. (These should be documents that were used prior
27 to the date of loss of February 27, 2014.)
28

1 **RESPONSE:** Objection. This Request is vague and ambiguous with respect to the term
2 “overweight folks.” This Responding Defendant is not in possession of documents responsive to
3 this request.

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

7 **RESPONSE:** Objection. This Request is vague and ambiguous with respect to the term “folks
8 with mobility issues” and “safety features.” This Responding Defendant is not in possession of
9 documents responsive to this request.
10

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

15 **RESPONSE:** Objection. This Request is vague and ambiguous with respect to the term “folks
16 with mobility issues.” Please see Exhibit B attached hereto, in addition to any sales materials
17 produced through the course of litigation.

18 33. Please produce all documents pertaining to the design and function of the door.
19

20 **RESPONSE:** This Responding Defendant is not in possession of any documents responsive to
21 this request other than those produced during the course of litigation as this Responding Defendant
22 did not design the door.

23 34. Please produce all documentation, emails, memorandums, technical data, and
24 internal documents of any and all discussion, communication or otherwise pertaining to safety
25 considerations regarding the inward opening door versus an outward opening door.
26

27 **RESPONSE:** This Responding Defendant is not in possession of any documents responsive to
28 this request other than those produced during the course of litigation as this Responding Defendant

1 did not design the door.

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

4 **RESPONSE:** This Responding Defendant is not in possession of any documents responsive to
5 this request other than those produced during the course of litigation as this Responding Defendant
6 did not design the subject tub.

7
8 36. Please produce all scientific research validating or supporting the ease of use claims
9 made by Jacuzzi regarding the tub at issue.

10 **RESPONSE:** This Responding Defendant is not in possession of any documents responsive to
11 this request other than those produced during the course of litigation as this Responding Defendant
12 did not design the subject tub.

13
14 37. Please produce all technical, architectural, and design documents pertaining to the
15 inward opening door of the tub at issue.

16 **RESPONSE:** This Responding Defendant is not in possession of any documents responsive to
17 this request other than those produced during the course of litigation as this Responding Defendant
18 did not design the door.

19
20 38. Please produce any and all documents produced by any other claimant who claimed
21 injury or death in any and all tubs designed, manufactured, distributed, marketed or sold by Jacuzzi.

22 **RESPONSE:** Objection. This Request is vague, ambiguous, and overbroad as to time, product
23 type, and subject matter. This Responding Defendant is aware of the claim by Leonard Baize,
24 previously produced in this litigation by other parties, and the claim made by Mack Smith, attached
25 hereto as Exhibit A.

26
27 39. Please produce any and all documentation in support of the safety statistics
28 pertaining to falls; that are used in any marketing materials (whether those materials be written, oral,

1 video or otherwise) that are distributed by Jacuzzi.

2 **RESPONSE:** Objection. This request is vague, ambiguous and unintelligible, and is directed at
3 Jacuzzi. This Responding Defendant seeks clarification as to the information sought by Plaintiff to
4 adequately respond.

5 40. Please produce any documentation in support of the claim by Jacuzzi that “bathing,
6 for seniors is one of the most common causes of injury.”

7 **RESPONSE:** Objection. This request is vague, ambiguous and unintelligible, and is directed at
8 Jacuzzi. This Responding Defendant seeks clarification as to the information sought by Plaintiff to
9 adequately respond.
10

11 41. Please produce any documentation in support of the claim by Jacuzzi that “for many,
12 [bathing] can create anxiety rather than be an enjoyable experience.”

13 **RESPONSE:** Objection. This request is vague, ambiguous and unintelligible, and is directed at
14 Jacuzzi. This Responding Defendant seeks clarification as to the information sought by Plaintiff to
15 adequately respond.
16

17 42. Please produce any research in support of the claim by Jacuzzi that “for many,
18 [bathing] can create anxiety rather than be an enjoyable experience.”

19 **RESPONSE:** Objection. This request is vague, ambiguous and unintelligible, and is directed at
20 Jacuzzi. This Responding Defendant seeks clarification as to the information sought by Plaintiff to
21 adequately respond.
22

23 43. For YouTube Marketing video: <https://www.youtube.com/watch?v=kTsrCTwOrAk>
24 Please produce the building codes, association criteria and product safety and performance standards
25 that Jacuzzi claims to exceed as mentioned in the video.
26

27 **RESPONSE:** This Responding Defendant did not create the YouTube Marketing video therefore
28 is not in possession of documents responsive to this Request.

1 44. For all individual inspections that were performed during the construction period of
2 Sherry Cunnison's bathtub, please produce the written documentation pertaining to each inspection
3 that was performed.

4 **RESPONSE:** This Responding Defendant did not construct the subject tub, therefore is not in
5 possession of any documents responsive to this Request, other than those documents already
6 produced in the course of litigation.

7 45. For YouTube Marketing video: <https://www.youtube.com/watch?v=kTsrCTwOrAk>
8
9 Please produce the documentation supporting Jacuzzi's claim that its tubs provide therapeutic
10 benefit and pain relief for ailments such as: muscle cramps, diabetes, circulatory disease, arthritis,
11 osteoarthritis, & back pain.

12 **RESPONSE:** This Responding Defendant did not create the YouTube Marketing video therefore
13 is not in possession of documents responsive to this Request.

14 46. Please produce any documentation provided by Mark J. Sontag, M.D. to Jacuzzi.

15
16 **RESPONSE:** This Responding Defendant is not in possession of documents responsive to this
17 Request other than any documents produced by any other party to this litigation, as this Request is
18 directed at Jacuzzi.

19 47. Please produce the qualification of Mark J. Sontag, M.D.

20
21 **RESPONSE:** Objection. This Request is vague, overbroad and unintelligible in the information
22 sought from this Responding Defendant. This Responding Defendant is not in possession of
23 documents pertaining to Mark J. Sontag, M.D.

24 48. Please produce the contract between Jacuzzi and Mark J. Sontag, M.D.

25
26 **RESPONSE:** This Responding Defendant is not in possession of documents responsive to this
27 request other than those previously produced in litigation, as it is directed at Jacuzzi.

28 49. Please produce all documentation regarding the dangers associated with bathing

1 Jacuzzi had in its possession on or prior to February 27, 2014.

2 **RESPONSE:** Objection. This Request is vague and ambiguous with respect to the term “dangers
3 associated with bathing.” This Responding Defendant is not in possession of documents responsive
4 to this request other than those previously produced in litigation, as it is directed at Jacuzzi.

5 50. Please produce documents identified as Exhibit A-1 (“Product One”) of the
6 Manufacturing Agreement between FIRST STREET and Jacuzzi, Inc. produced as
7 JACUZZI001588 – JACUZZI001606.
8

9 **RESPONSE:** This Responding Defendant is not in possession of the documents responsive to
10 this request, and will supplement this response should additional information become available.

11 51. Please produce documents identified as Exhibit A-2 (“Product Two”) of the
12 Manufacturing Agreement between FIRST STREET and Jacuzzi, Inc. produced as
13 JACUZZI001588 – JACUZZI001606.
14

15 **RESPONSE:** This Responding Defendant is not in possession of the documents responsive to
16 this request and will supplement this response should additional information become available.

17 52. Please produce documents identified as Exhibit B through Exhibit D-3 of the
18 Manufacturing Agreement between FIRST STREET and Jacuzzi, Inc. produced as
19 JACUZZI001588 – JACUZZI001606.
20

21 **RESPONSE:** This Responding Defendant is not in possession of the documents responsive to
22 this request and will supplement this response should additional information become available.

23 53. Please produce all marketing or advertising materials ever created or developed by
24 Defendant FIRST STREET, Jacuzzi, Inc., or any other third party on behalf of Defendant in
25 relation to subject Jacuzzi Walk-In-Tub.
26

27 **RESPONSE:** Objection. This Request is vague, ambiguous, overbroad and unduly burdensome
28 with respect to subject matter, time frame, and medium. Please see Exhibit B attached hereto, in

1 addition to the documents previously produced in the course of litigation pertaining to the sale of
2 Ms. Cunnison's Jacuzzi tub.

3 54. Please produce all documents which support statement made by any medical
4 professional in support of the subject Jacuzzi Walk-In-Tub, regardless of its use in marketing or
5 advertising materials for Defendant FIRST STREET or Jacuzzi, Inc.

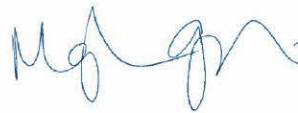
6 **RESPONSE:** Objection. This Request is vague, ambiguous, overbroad and unintelligible with
7 respect to the information sought through this Request. This Responding Defendant seeks
8 clarification of the information sought in order to properly respond to this Request.
9

10 55. Please produce all documents which support the phrase DESIGNED FOR
11 SENIORS WALK-IN TUB in the Manufacturing Agreement between FIRST STREET and Jacuzzi,
12 Inc. produced as JACUZZI001588 – JACUZZI001606.

13 **RESPONSE:** Objection. This Request is vague, ambiguous, and unintelligible with respect to the
14 information sought through this Request. This Responding Defendant seeks clarification of the
15 information sought through this Request. This Responding Defendant seeks clarification of the
16 information sought in order to properly respond to this Request.

17 DATED this 14th day of September, 2018.

18 THORNDAL ARMSTRONG DELK
19 BALKENBUSH & EISINGER

20 
21

22 MEGHAN M. GOODWIN, ESQ.
23 Nevada Bar No. 11974
24 1100 East Bridger Avenue
25 Las Vegas, Nevada 89101
26 Attorneys for Defendants/Cross-Defendants,
27 FIRSTSTREET FOR BOOMERS AND BEYOND,
28 INC., and AITHR DEALER, INC.