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2 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

3 **FIRST STREET FOR BOOMERS &**  
4 **BEYOND, INC.; AITHR DEALER,**  
5 **INC.;**

6 **Petitioner,**

7 **v.**  
8

9 **THE EIGHTH JUDICIAL DISTRICT**  
10 **COURT, IN AND FOR THE COUNTY**  
11 **OF CLARK, STATE OF NEVADA,**  
12 **AND THE HONORABLE CRYSTAL**  
13 **ELLER, DISTRICT JUDGE,**

14 **Respondents,**

15 **And**

16 **ROBERT ANSARA, as Special**  
17 **Administrator of the Estate of SHERRY**  
18 **LYNN CUNNISON, Deceased;**  
19 **ROBERT ANSARA, as Special**  
20 **Administrator of the Estate of**  
21 **MICHAEL SMITH, Deceased heir**  
22 **to the Estate of SHERRY LYNN**  
23 **CUNNISON, Deceased; and**  
24 **DEBORAH**  
25 **TAMANTINI individually, and heir to**  
26 **the Estate of SHERRY LYNN**  
27 **CUNNISON, Deceased; HALE**  
28 **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**

**CASE NO. 83379**  
**Electronically Filed**  
**Nov 10 2021 11:08 a.m.**  
**Elizabeth A. Brown**  
**Clerk of Supreme Court**  
**District Court No.**  
**A-16-731244-C**  
**Dept. No. XIX**



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,

Real Parties in Interest.

**From the Eighth Judicial District Court  
The Honorable Crystal Eller District Judge**

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**MOTION FOR STAY OF TRIAL COURT PROCEEDINGS  
UNDER NRAP 8**

---

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Dealer, Inc.;*

1  
2 **MOTION FOR STAY OF TRIAL COURT PROCEEDINGS**  
3 **UNDER NRAP 8**

4 **RELIEF REQUESTED ON OR BEFORE NOVEMBER 24, 2021.**

5 Petitioners FIRST STREET FOR BOOMERS & BEYOND and AITHR  
6 DEALER, INC., respectfully move this Court, pursuant to NRAP 8(a)(2)(A)(ii)  
7 for an immediate stay of the district court proceedings in this matter, Eighth  
8 Judicial District Court Case No. A-16-731244-C, pending consideration and  
9 resolution of their Petition for Writ of Mandamus that was filed with this Court on  
10 August 17, 2021.  
11

12 The Petition for Writ of Mandamus filed by Petitioners seeks to vacate the  
13 district court order granting Plaintiffs' Renewed Motion to Strike Defendant First  
14 Street for Boomers & Beyond & AITHR Dealer, Inc.'s Answer to Plaintiffs'  
15 Fourth Amended Complaint because the district court abused its discretion by  
16 striking Petitioners' Answers for alleged discovery abuses in the absence of any  
17 prior motion to compel or resultant discovery order. Such a ruling has precluded  
18 Petitioners from mounting any type of liability defense to Plaintiffs' product  
19 defect allegations, or of presenting any "liability" evidence, such as contributory  
20 negligence arguments, to the jury which could reduce a jury's award of  
21 compensatory damages. As a result of the Order, this matter has been "trifurcated"  
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1 in the district court, with the first phase of the trial devoted solely to  
2 Plaintiffs/Real Party in Interests' compensatory damages.  
3

4 The district court recently denied Petitioners' Motion for Stay, necessitating  
5 the instant motion with this Court, as a jury trial in this matter is currently  
6 scheduled to begin on November 29, 2021. In the interest of public policy  
7 considerations, sound judicial economy, and sound administration, this Court is  
8 justified in staying the trial court proceedings pending review of the Petition for  
9 Writ of Mandamus.  
10  
11

12 **I. The Factors Set Forth in NRAP 8(c) Warrant a Stay of Proceedings**  
13 **Pending Resolution of the Petition.**  
14

15 On November 1, 2021, Petitioners filed a Motion for Stay of Trial in the  
16 district court. *Petitioners' Appendix*, Tab 1. On November 2, 2021, the district  
17 court held a hearing on Petitioners Motion for Stay. *Petitioners' Appendix*, Tab 2.  
18 An Order Denying Petitioners Motion for Stay was filed on November 9, 2021,  
19 prompting the filing of the instant Motion for Stay with this Court, pursuant to  
20 NRAP 8(a)(2)(A)(ii). *Petitioners' Appendix*, Tab 3.  
21  
22

23 Pursuant to NRAP 8(c), the Supreme Court generally considers the  
24 following factors when determining whether to issue a stay of civil proceedings:  
25 1) whether the object of the writ petition will be defeated if the stay is denied; 2)  
26 whether petitioner will suffer irreparable or serious injury if the stay is denied; 3)  
27  
28



1 whether respondent will suffer irreparable or serious injury if the stay is granted;  
2 and 4) whether petitioner is likely to prevail on the merits in the writ petition.  
3

4 While the Court has “not ascribed particular weights to any of the stay  
5 factors in the civil context,” it has “recognized that depending on the type of  
6 appeal, certain factors may be especially strong and counterbalance other weak  
7 factors.” *State v. Robles-Nieves*, 129 Nev. 537, 543, 306 P.3d 399, 403 (2013).  
8

9  
10 **1. The First Factor Weighs In Favor Of A Stay As The Object Of**  
11 **Petitioners’ Appeal Will Be Defeated If The Requested Stay Is**  
12 **Denied**  
13

14 The object of the petition will be defeated if a stay is denied because trial  
15 could very well be over before the Petition is decided. The district court has  
16 refused to stay these proceedings. Voir dire is scheduled to commence on  
17 November 29, 2021, and this case is the only case on the Court’s calendar for that  
18 date – in other words, this is a firm trial date, and trial is proceeding forward.  
19 “Given the interlocutory nature of [this] appeal...[this] first stay factor takes on  
20 added significance.” *Mikohn Gaming Corp. v. McCrea*, 120 Nev. 248, 253, 89  
21 P.3d 36, 39 (2004).  
22  
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24

25 The thrust of Petitioners’ petition involves the district court order Striking  
26 Petitioners’ Answers regarding liability, in the absence of any prior motion to  
27 compel or resultant discovery order. If this case were to proceed to trial on  
28



1 November 29, 2021, Petitioners will be forced to present their case in chief  
2 without any liability defenses, as ordered by the district court, despite genuine  
3 issues of material fact existing to permit Petitioners liability defenses. Should a  
4 stay not be imposed by this Court, this Petition may not be heard within the  
5 timeframe of the trial. The outcome of trial will then be based in part on the order  
6 issued by the district court prohibiting Petitioners from mounting any kind of  
7 liability defenses. The trial results will render the petition moot. The first factor  
8 weighs heavily in favor of granting the stay requested.

12 **2. The Fourth Factor – Likelihood Of Prevailing On The Merits Of**  
13 **Their Petition For Writ Of Mandamus – Also Weighs In Favor Of A**  
14 **Stay**

15 “[W]hen moving for a stay pending an appeal or writ proceedings, a movant  
16 does not have to show a probability of success on the merits, the movant must  
17 ‘present a substantial case on the merits when a serious legal question is involved  
18 and show that the balance of equities weighs heavily in favor of granting the  
19 stay.’” *Fritz Hansen*, 116 Nev. 659, 6 P.3d 987 (citing *Ruiz v. Estelle*, 650 F.2d  
20 555, 565 (5<sup>th</sup> Cir. 1981). Nevada case law requires violation of a court order  
21 before a district court may strike a pleading. *See Young v. Johnny Ribeiro Bldg.,*  
22 *Inc.*, 106 Nev. 88, 787 P.2d 777 (1990) (imposing sanctions where a party ignored  
23 the “court’s express oral admonition to ... rectify any inaccuracies in his  
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1 deposition testimony”); *Nevada Power Co. v. Flour Illinois*, 108 Nev. 638, 837  
2 P.2d 1354 (1992) (imposing sanctions against a party for destroying evidence in  
3 violation of a court order to preserve the evidence); *Bahena v. Goodyear Tire &*  
4 *Rubber Co.*, 126 Nev. 243, 235 P.3d 592 (2010) (imposing sanctions where a  
5 corporate party failed to produce a witness for deposition, in violation of a court  
6 order); *Foster v. Dingwall*, 126 Nev. 56, 227 P.3d 1042 (2010) (imposing  
7 sanctions on several parties in the suit for failing to attend their depositions and  
8 failing to supplement their responses to interrogatories, in violation of a court  
9 order). In each of the foregoing seminal cases issued by this Court, the sanctioned  
10 party had violated a court order.

15 Here, Plaintiffs never sought a single discovery order from the Discovery  
16 Commissioner or the district court against Petitioners. Petitioners could not, and  
17 did not violate any discovery order that would warrant discovery sanctions, much  
18 less that would warrant the District Court striking Petitioners’ Answer. As noted  
19 by the district court in its Order Denying Motion for Stay, the district court  
20 believes that Petitioners “have a fair to good likelihood of success on the merits  
21 because they were not included in Judge Scotti’s order, and, therefore, potentially  
22 did not violate a court order.” PA00053 at line 6 to 18. *See also* PA00036 at line 5  
23 to 12; PA00040 at line 20 to 23; PA00044 at line 4 to 19. It is Petitioners belief  
24 that the district court abused its discretion and erroneously applied the standards

1 of NRCP 16.1 when it struck Petitioners' Answers regarding liability for alleged  
2 discovery abuses in the absence of any prior motion to compel or resultant  
3 discovery order.  
4

5 **3. Petitioners Will Suffer Irreparable Injury If Their Request For Stay**  
6 **Is Denied**  
7

8 Petitioners will in fact suffer irreparable harm if the stay is denied.  
9  
10 Petitioners anticipate they will incur over \$100,000.00 in trial fees and costs  
11 defending this matter. An extensive trial team has been assembled to defend  
12 Petitioners against Plaintiffs' claims due to the elevated risk of a runaway verdict.  
13  
14 This trial team is commensurate with the risk associated with a case of this nature  
15 and the adversary trying this case. Although necessary and reasonable for this  
16 trial, the trial team is an expensive undertaking. Should this Court side with  
17 Petitioners and issue the requested Writ, it will necessitate a new trial on the  
18 merits. Petitioners will be forced to expend trial fees and costs of over  
19 \$100,000.00 not once, but twice. This is unduly prejudicial to Petitioners,  
20 particularly when there is a simple remedy available: staying proceedings  
21 temporarily pending the outcome of the Petition.  
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1                   **4. Real Party In Interest Will Suffer No Irreparable Injury If The Stay**  
2                   **Is Granted**  
3

4                   Conversely, Respondent and Real Party in Interest will suffer no irreparable  
5 harm whatsoever if this stay is granted. Counsel for Real Party in Interest will no  
6 doubt argue that “justice delayed is justice denied” in response to this Motion, or  
7 that witnesses have died because of Petitioners conduct. But the fact of the matter  
8 is, even after the district court granted Real Party in Interest’s Motion to Re-Open  
9 discovery for all purposes (*Petitioners’ Appendix*, Tab 4), no depositions of  
10 persons claiming other similar incidents with the walk-in-tub (i.e., the witnesses  
11 that have “died”) were scheduled between December 31, 2020 and May 28, 2021  
12 (the last day that depositions could be scheduled and completed within the  
13 discovery deadline). *Petitioners’ Appendix*, Tab 5.  
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18                   Moreover, with respect to Petitioners’ document production, 6,865 pages of  
19 the 6,867 pages they produced in this litigation (99.97%) were disclosed to  
20 Plaintiffs on, or before, August 21, 2019 – which is over one (1) year before  
21 Plaintiffs filed their Renewed Motion to Strike Petitioners’ Answers. *Petitioners’*  
22 *Appendix*, Tab 6). Therefore, any justice delayed rests equally in the hands of  
23 Plaintiffs/Real Party In Interest.  
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1           Petitioners are prepared to go to trial, so long as the rule of law is followed  
2  
3 and there is a level playing field. This cannot be accomplished without a ruling on  
4 the Petition. Justice delayed is far better than no justice at all.

5           **II.    Conclusion**

6  
7           It is a waste of each juror's month and taxpayer dollars when the judge's  
8 ruling on Plaintiffs' Renewed Motion to Strike Petitioners' Answers is so patently  
9 erroneous, that the Supreme Court could easily correct the ruling prior to trial  
10 commencing. All four factors weigh in favor of a stay, and, therefore, Petitioners  
11 request that all trial court proceedings be immediately stayed, pending resolution of  
12  
13 Petitioners' Writ.  
14

15           DATED this 10<sup>th</sup> day of November, 2021.

16  
17                           THORNDAL ARMSTRONG DELK  
18                           BALKENBUSH & EISINGER

19                           */s/ Philip Goodhart*

20                           \_\_\_\_\_  
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2. I further certify that this brief complies with the page and type volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted from NRAP 32(a)(7)(C), it is proportionately spaced, has a type face of 14 points or more and contains 2,146 words.

3. Finally, I hereby certify that I have read this brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript

///

1 or appendix where the matter relied on is to be found. I understand that I may be  
2 subject to sanctions in the event that the accompanying brief is not in conformity  
3 with the requirements of the Nevada Rules of Appellate Procedure.  
4

5 DATED this 10<sup>th</sup> day of November, 2021.  
6

7 THORNDAL ARMSTRONG DELK  
8 BALKENBUSH & EISINGER

9 */s/ Philip Goodhart*

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## CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On November 10, 2021, I caused to be served a true and correct copy of the foregoing MOTION FOR STAY OF TRIAL COURT PROCEEDINGS UNDER NRAP 8 upon the following by the method indicated:

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

Honorable Crystal Eller  
Eighth Judicial District Court, Dept. XIX  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, NV 89155

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

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10 **NOTE** – DEFENDANTS HOMECCLICK, LLC; BESTWAY BUILDING &  
11 REMODELING, INC.; WILLIAM BUDD, Individually and as BUDDS  
12 PLUMBING have previously been dismissed from this lawsuit, but the  
caption has not been amended/revised to reflect this. Therefore, there has  
been no service on these parties.

13 */s/ Stefanie Mitchell*

14 \_\_\_\_\_  
15 An Employee of Thorndal Armstrong Delk  
16 Balkenbush & Eisinger

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Real Parties in Interest.

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**From the Eighth Judicial District Court  
The Honorable Crystal Eller District Judge**

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**APPENDIX TO MOTION FOR STAY OF TRIAL COURT  
PROCEEDINGS UNDER NRAP 8**

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First Street for Boomers & Beyond, Inc.'s & AITHR Dealer, Inc. and Hale Benton's Seventh Supplemental Early Case Conference Production	08/21/2019	PA00068-PA00105

DATED this 10<sup>th</sup> day of November, 2021.

THORNDAL ARMSTRONG DELK  
BALKENBUSH & EISINGER

*/s/ Philip Goodhart*

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## CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On November 10, 2021, I caused to be served a true and correct copy of the foregoing  
APPENDIX TO MOTION FOR STAY OF TRIAL COURT PROCEEDINGS  
UNDER NRAP 8 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  
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- × **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.

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**NOTE** – DEFENDANTS HOMECCLICK, LLC; BESTWAY BUILDING & REMODELING, INC.; WILLIAM BUDD, Individually and as BUDDS PLUMBING have previously been dismissed from this lawsuit, but the caption has not been amended/revised to reflect this. Therefore, there has been no service on these parties.

*/s/ Stefanie Mitchell*

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An Employee of Thorndal Armstrong Delk  
Balkenbush & Eisinger



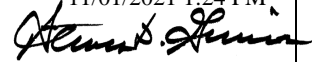
**THORNDAL  
ARMSTRONG**  
DELK BALKENBUSH & EISINGER

A PROFESSIONAL CORPORATION

ATTORNEYS

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# EXHIBIT 1

  
CLERK OF THE COURT

**MSTY**  
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Attorneys for Defendants/Cross-  
Defendants, FIRSTSTREET FOR  
BOOMERS AND BEYOND, INC.,  
AITHR DEALER, INC., and HALE BENTON

**DISTRICT COURT  
CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

Defendants.

CASE NO. A-16-731244-C  
DEPT. NO. 19

**FIRSTSTREET FOR BOOMERS AND  
BEYOND, INC. AND AITHR  
DEALER, INC.'S, MOTION FOR  
STAY OF TRIAL ONLY ON ORDER  
SHORTENING TIME**

Hearing Date: November 2, 2021

Hearing Time: 9:00 a.m.

HOMECLICK, LLC,  
Cross-Plaintiff,

vs.

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

Cross-Defendants.

HOMECLICK, LLC, a New Jersey limited  
liability company,

Third-Party Plaintiff,

vs.

CHICAGO FAUCETS, an unknown entity,

Third-Party Defendant.

BESTWAY BUILDING & REMODELING,  
INC.,

Cross-Claimant,

vs.

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

Cross-Defendants.

WILLIAM BUDD, individually and as  
BUDDS PLUMBING,

Cross-Claimants,



1 vs.

2 FIRST STREET FOR BOOMERS &  
3 BEYOND, INC.; AITHR DEALER, INC.;  
4 HALE BENTON, individually; HOMECLICK,  
5 LLC; JACUZZI INC., doing business as  
6 JACUZZI LUXURY BATH; BESTWAY  
7 BUILDING & REMODELING, INC.; DOES 1  
8 through 20; ROE CORPORATIONS 1 through  
9 20; DOE EMPLOYEES 1 through 20; DOE  
10 MANUFACTURERS 1 through 20; DOE 20  
11 INSTALLERS, 1 through 20; DOE  
12 CONTRACTORS 1 through 20; and DOE 21  
13 SUBCONTRACTORS 1 through 20, inclusive,

14 Cross-Defendants.

15 **FIRSTSTREET FOR BOOMERS AND BEYOND, INC. AND AITHR DEALER, INC.'S,**  
16 **MOTION FOR STAY OF TRIAL ONLY ON ORDER SHORTENING TIME**

17 COMES NOW, Defendants FIRSTTSTREET FOR BOOMERS AND BEYOND, INC.  
18 and AITHR DEALER, INC., by and through their attorneys of records, the law firm of  
19 Thorndal, Armstrong, Delk, Balkenbush & Eisinger, and hereby moves this Honorable Court  
20 for an Order granting its Motion to Stay Trial Only on Order Shortening Time.

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1           This Motion is based upon the pleadings and papers on file with the Court, the attached  
2 Memorandum of Points and Authorities, and any oral argument that this Court may entertain at  
3 the time of the hearing of this matter.

4           DATED this 29<sup>th</sup> day of October, 2021.

5                           THORNDAL ARMSTRONG DELK  
6                           BALKENBUSH & EISINGER

7                           */s/ Philip Goodhart*

8                           \_\_\_\_\_  
9                           PHILIP GOODHART, ESQ.  
10                          Nevada Bar No. 5332  
11                          MEGHAN M. GOODWIN, ESQ.  
12                          Nevada Bar No. 11974  
13                          1100 East Bridger Avenue  
14                          Las Vegas, Nevada 89101  
15                          Attorneys for Defendants,  
16                          FIRSTSTREET FOR BOOMERS AND  
17                          BEYOND, INC., and AITHR DEALER, INC.  
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**ORDER SHORTENING TIME**

Upon application and the supporting Affidavit of Philip Goodhart, Esq. for Defendants, FIRSTSTREET FOR BOOMERS AND BEYOND, INC. and AITHR DEALER, INC. pursuant to E.D.C.R. 2.26 on Application of Order Shortening Time and good cause appearing therefore, IT IS HEREBY ORDERED that hearing on FIRSTSTREET FOR BOOMERS AND BEYOND, INC., AITHR DEALER, INC. MOTION TO STAY TRIAL ONLY shall be shortened to the 2nd day of \_\_\_\_\_, November, 2021 at 9:00 a.m. A.M./P.M., or as soon thereafter as counsel may be heard, this Motion will be brought on for hearing before Department XIX of the above Captioned Court, with any Oppositions to be filed on \_\_\_\_\_ n/a \_\_\_\_\_, and any Replies to be filed on n/a \_\_\_\_\_.

IT IS SO ORDERED this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

Dated this 1st day of November, 2021



DISTRICT COURT JUDGE

Respectfully submitted,

93A 921 E6AB B287  
Crystal Eller  
District Court Judge

THORNDAL ARMSTRONG DELK  
BALKENBUSH & EISINGER

/s/ Philip Goodhart

\_\_\_\_\_  
PHILIP GOODHART, ESQ.  
Nevada Bar No. 5332  
MEGHAN M. GOODWIN, ESQ.  
Nevada Bar No. 11974  
1100 East Bridger Avenue  
Las Vegas, Nevada 89101  
Attorneys for Defendants/Cross-Defendants,  
FIRSTSTREET FOR BOOMERS AND BEYOND, INC.,  
and AITHR DEALER, INC.

[illegible]

1. That declarant is an attorney licensed to practice law in the State of Nevada and is a partner with the law firm of THORNDAL ARMSTRONG DELK BALKENBUSH & EISINGER, with offices located at 1100 East Bridger Avenue, Las Vegas, Nevada, 89101, attorneys for the Defendants, FIRSTSTREET FOR BOOMERS AND BEYOND, INC. (firstSTREET), and AITHR DEALER, INC. (AITHR), in the above matter.

3. That on December 28, 2020, just days before Judge Scotti left the bench, this Court granted Plaintiffs' Renewed Motion to Strike Defendants firstSTREET and AITHR's Answers Regarding Liability only.

PA00006

1           5.     That up until just recently, Plaintiffs were completing discovery against  
2 Defendants firstSTREET and AITHR, to wit, an NRCP 30(b)(6) witness deposition of a  
3 corporate designee of firstSTREET and AITHR, and Defendants did not want a possible stay  
4 of this litigation to interfere with this discovery, or a Mediation that took place on Saturday,  
5 October 23, 2021. Defendants also wanted to provide the Nevada Supreme Court with  
6 sufficient time to review the validity of the Writ that was filed, and possibly make a ruling on  
7 the Writ prior to the trial of this matter.

8           6.     Declarant requests that this matter be heard on shortened time in light of the fact  
9 that trial in this matter is set for a firm start on November 29, 2021.

10          7.     That this Motion and Request is made in good faith and not for any improper  
11 *purpose or to protract litigation.*

12                 FURTHER, DECLARANT SAYETH NAUGHT.

13  
14  
15                                   
16                                 PHILIP GOODHART, ESQ.

## MEMORANDUM OF POINTS AND AUTHORITIES

### I. STATEMENT OF FACTS

This is a product liability action involving claims that a Jacuzzi Walk-In Tub was defectively designed or that the warnings related to the tub were insufficient. Plaintiffs Fourth Amended Complaint, at ¶ 42. In October 2013, Decedent Sherry Lynn Cunnison (“Cunnison”) purchased the Tub from Defendant AITHR Dealer, Inc. The Tub was installed in her home on January 27, 2014. Plaintiffs allege that about a month after installation, Cunnison was using the bathtub and somehow became stuck in the tub, unable to exit. See, Plaintiffs’ Fourth Amended Complaint at ¶¶ 27-29.

Jacuzzi and firstStreet entered into a manufacturing agreement (the “Agreement”) on October 1, 2011. Under the terms of the Agreement, Jacuzzi was obligated to design and manufacture a walk-in tub. firstSTREET was granted exclusive advertising and marketing rights to the tub, along with the exclusive rights to sell the tub within the United States. *Id.* at 2(A)-(B). The design for the tub was developed exclusively by Jacuzzi.

AITHR, Inc. (“AITHR”), a subsidiary of firstSTREET, was a dealer that sold and arranged the installation of the Jacuzzi tub. Hale Benton was an independent contractor/salesperson for AITHR, located in Las Vegas, Nevada, when Ms. Cunnison contacted AITHR regarding the Jacuzzi tub. A potential customer interested in purchasing a Jacuzzi tub would call the dealer and set up an appointment. The dealer then gave the appointment to a salesperson who would go to the customer’s house, inspect the bathroom, take measurements, and sit down with the customer to answer any questions.

Defendants firstSTREET and AITHR were not involved in the design, testing, or manufacture of the subject tub, nor with the instructions for use or warnings that accompanied the tub. ***Defendants firstSTREET advertised, marketed, and sold the Jacuzzi tub.***

Plaintiffs’ first Motion To Strike Defendants firstSTREET and AITHR’s Answers For Discovery Abuses was denied by this Court on March 12, 2019. Then, on October 9, 2020 (the very last day that the Court provided for Plaintiffs to file another Motion to Strike) Plaintiffs filed a Renewed Motion to Strike Defendants firstSTREET and AITHR’s Answer to Plaintiffs’



1 Fourth Amended Complaint. This Renewed Motion was based entirely on Plaintiffs'  
2 arguments that Defendants had violated NRCP 16.1's disclosure requirements by failing to  
3 voluntarily disclosed certain documents and information. Significantly, Plaintiffs' Renewed  
4 Motion did not allege that Defendants firstSTREET and AITHR had violated a single  
5 discovery order, because there had never been a discovery order issued against firstSTREET or  
6 AITHR. In fact, at no point in time during this litigation did Plaintiffs file a Motion to Compel  
7 against firstSTREET or AITHR.

8 On December 28, 2020, just days before leaving the bench, Judge Scotti issued a  
9 minute order granting Plaintiffs' Renewed Motion to Strike Defendants firstSTREET and  
10 AITHR's Answers Regarding Liability only. Judge Scott ordered Plaintiffs to submit an Order  
11 by 4 p.m., December 30, 2020, so that he could sign it before leaving the bench. Defendants  
12 firstSTREET and AITHR believe that this Court's granting of Plaintiffs' Renewed Motion to  
13 Strike Defendants firstSTREET and AITHR's Answers was made in error. As such, on August  
14 17, 2021 Defendants firstSTREET and AITHR filed a Writ regarding this Court's decision, and  
15 now request a stay of the trial only, pending the result of said Writ. Therefore, firstSTREET  
16 and AITHR file the instant Motion and seeks to stay the trial only in the current litigation  
17 pending the resolution of said Petition pursuant to Nevada Rule of Appellate Procedure 8.

## 18 **II. LEGAL ARGUMENT**

### 19 **A. Legal Standard**

20 This Court has the power and discretion to stay this case to promote judicial efficiency  
21 and prevent the unnecessary waste of resources by the Court and the parties. As the United  
22 States Supreme Court has observed, "the power to stay any proceedings is incidental to the  
23 power inherent in every court to control the disposition of the causes on its docket with  
24 economy of time and effort for itself, for counsel, and for litigants."<sup>1</sup> Nevada Rule of Appellate  
25

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26 <sup>1</sup> *Landis v. North Am. Co.*, 299 U.S. 248, 254 (1936); *see also Dependable Highway Exp., Inc.*  
27 *v. Navigators Ins. Co.*, 498 F.3d 1059, 1066 (9th Cir. 2007) (quoting *Landis*, 299 U.S. at 254);  
28 *Eagle SPE NV I, Inc. v. S. Highlands Dev. Corp.*, No. 2:12-cv-00550-MMD-PAL, 2013 WL 595821, at \*2 (D. Nev. Feb. 15, 2013).

1 Procedure 8 provides the procedure for staying litigation pending appeals and petitions for  
2 writs of mandamus. "A party must ordinarily move first in the district court for... a stay of the...  
3 proceedings in a district court pending appeal or resolution of a petition to the Supreme Court  
4 for an extraordinary writ... ." Thus, the rule requiring a party to first "seek a stay in the district  
5 court before seeking a stay in the Nevada Supreme Court... is a sound one that should also  
6 apply to writ petitions when the order the petition seeks to challenge is one issued by a district  
7 court."<sup>2</sup>

8 In considering whether to grant the requested stay, this Court should weigh the  
9 following four factors:

- 10 (1) whether the object of the appeal or writ petition will be defeated if the stay or  
11 injunction is denied;
- 12 (2) whether appellant/petitioner will suffer irreparable or serious injury if the stay  
13 or injunction is denied;
- 14 (3) whether respondent/real party in interest will suffer irreparable or serious injury  
15 if the stay or injunction is granted; and
- 16 (4) whether appellant/petitioner is likely to prevail on the merits in the appeal or  
17 writ petition.<sup>3</sup>

18 As discussed thoroughly below, each of the aforementioned four factors indicate this  
19 Court should grant firstSTREET and AITHR's requested stay.

20 **B. As Each of the Foregoing Factors Weighs in Favor of Staying the Present**  
21 **Case, This Case Should Be Stayed Pending the Resolution of firstSTREET**  
22 **and AITHR's Petition for Writ of Mandamus**

23 **1. The Object of firstSTREET and AITHR's Appeal Will Be Defeated if**  
24 **the Requested Stay Is Denied**

25 If this Court refuses to stay the present litigation, the entire object of firstSTREET and  
26 AITHR's anticipated appeal regarding this Court's interpretation and application of NRS 16.1  
27 and its striking of an Answer with no violation of any Court Order will be defeated. In the  
28 impending appeal, firstSTREET and AITHR seek a determination as to whether the District

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<sup>2</sup> *Hansen v. Eighth Judicial Dist. Court ex rel. Cnty. of Clark*, 116 Nev. 650, 657, 6 P.3d 982, 986 (2000).

<sup>3</sup> Nevada Rule of Appellate Procedure 8; *Hansen*, 116 Nev. at 657, 6 P.3d at 986.



1 Court abused its discretion by striking Defendants Answers for alleged discovery abuses, in the  
2 absence of any prior motion to compel or resultant discovery order. Defendants firstSTREET  
3 and AITHR further seek a determination of whether the District Court abused its discretion by  
4 striking Defendants Answers for alleged discovery abuses without conducting an evidentiary  
5 hearing.

6 firstSTREET and AITHR's petition raises serious questions regarding the applicability  
7 of NRS 16.1 and a parties disclosure requirements absent a Motion to Compel Discovery or an  
8 Order compelling a party to respond to discovery. If this Court does not grant firstSTREET and  
9 AITHR's requested stay, this matter will proceed through trial and firstSTREET and AITHR  
10 will be required to go through an entire trial without the benefit of being able to defend  
11 themselves on liability, notwithstanding their belief that they have no liability to Plaintiffs.  
12 Therefore, failure to grant firstSTREET and AITHR's request for a stay would wholly defeat  
13 the purpose of the Petition for Writ of Mandamus.

14 **2. firstSTREET and AITHR Will Suffer Irreparable Injury if their**  
15 **Request for Stay Is Denied**

16 Absent a stay of the proceedings pending the outcome of the anticipated appeal,  
17 firstSTREET and AITHR will suffer irreparable and serious harm. Through its petition,  
18 firstSTREET and AITHR seek to renew their ability to defend themselves in the liability  
19 portion of this litigation. The Court's erroneous ruling currently prevents them from defending  
20 themselves from Plaintiffs claims, and are now limited to trying to reduce Plaintiffs' claimed  
21 damages. If firstSTREET and AITHR are successful on their Writ, then a trial on damages only  
22 will be a waste of the parties' and this Court's time, as the case will have to be re-tried, causing  
23 unnecessary delay and costs for all parties involved. This factor, therefore, weighs heavily in  
24 favor of this Court granting a stay of the current proceeding.

25 **3. Plaintiffs Will Suffer No Irreparable Injury if the Stay Is Granted**

26 Any harm the Plaintiffs might incur is minimal in light of the harm that would be  
27 suffered by firstSTREET and AITHR if they were forced to proceed to trial under the instant  
28 circumstances. Plaintiffs already have a ruling in their favor on liability regarding the product

1 defect, manufacturing and design claims against Jacuzzi. This “win” will remain in effect  
2 throughout the stay of the pending litigation. Further, Plaintiffs could actually benefit from a  
3 stay as it will gain more time, to prepare for trial in this matter and they will not have to be  
4 concerned with taking the case to trial prior to the expiration of the 5 year rule. In fact,  
5 Plaintiffs are continuing to complete their discovery against Jacuzzi even at this late hour –  
6 there are still NRCP 30(b)(6) depositions that this Court ordered to complete, as well as the  
7 inspection and production of Salesforce records that has not been completed. Moreover, as  
8 recently as two (2) weeks ago, Jacuzzi produced over 2,500 pages of emails. Thus, any harm  
9 suffered by Plaintiffs (if any) would certainly be minor, starkly contrasted with the nature of  
10 harm that firstSTREET and AITHR would suffer if this matter proceeds forward. This factor  
11 supports staying the present litigation pending the resolution of firstSTREET and AITHR’s  
12 petition.

#### 13 **4. firstSTREET and AITHR Are Likely to Prevail on the Merits of its** 14 **Appeal**

15 The District Court’s interpretation of NRCP 16.1(e)(3) to allow the severe sanctions  
16 imposed on firstSTREET and AITHR, namely striking their Answers, conflicts with the plain  
17 language of the Rule. Significantly, under the express language of the rule, if the conduct  
18 complained of is done by an attorney, rather than a party, then the District Court’s sanction  
19 may not necessarily be preceded by violation of a court order. However, when it is the *party’s*  
20 conduct that is sanctioned by the District Court, the sanctions available under Rules 37(b) or  
21 37(f) are only available if the “party fails to comply with an order entered under Rule 16.3.”  
22 Thus, a *party* must violate a court order, originating with the Discovery Commissioner, in  
23 order to warrant the discovery sanctions.

24 Throughout the entire course of discovery, Plaintiffs failed to file a single motion to  
25 compel against firstSTREET or AITHR, and consequently there is no discovery order that  
26 firstSTREET or AITHR – the party - could have violated. Nevertheless, the District Court’s  
27 sanctions were expressly based on conduct of firstSTREET and AITHR, who are a *party*, and  
28 the District Court expressly found that the sanctions were not a result of attorney conduct. Yet,

1 the basis for the District Court’s ruling – the violation of NRCP 16.1’s disclosure requirements  
2 – is based entirely and solely on the conduct of counsel, **not the party**. For it is counsel that  
3 selects what documents are disclosed as part of the NRCP 16.1 disclosure requirements, not the  
4 party that counsel represents.

5 This is a very significant distinction, as without a court order in place, the **party** cannot  
6 be sanctioned under Rules 37(b) or 37(f). *See Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev.  
7 88, 787 P.2d 777 (1990). Again, NRCP 16.1(e)(3) envisions a clear distinction between an  
8 attorney’s conduct (not complying with NRCP 16.1) and an attorney’s or party’s conduct (not  
9 complying with a court order). Since there have been no discovery orders issued against  
10 firstSTREET or AITHR the District Court abused its discretion when it imposed the sanction  
11 of striking fristSTREET and AITHR’s Answers.

12 firstSTREET and AITHR proffer that an attorney is solely responsible for the  
13 production of documents and information in NRCP 16.1 disclosures. That it is not the “party”  
14 that bears this burden, or has this obligation. On the other hand, when the Court issues a  
15 discovery order against the party, then this responsibility shifts to the party and the party must  
16 comply with the order or face the sanctions available under Rules 37(b) or 37(f). If this was not  
17 the case, then there would be no need for discovery – interrogatories, requests for production or  
18 requests for admission – as a “party” would be obligated to produce everything they had in  
19 order to be in compliance with this Court’s overly broad interpretation of NRCP 16.1.

20 Therefore, it seems likely the Nevada Supreme Court will entertain firstSTREET and  
21 AITHR’s petition and rule on its merits to clear up any ambiguity in the disclosure  
22 requirements of NRCP 16.1 when there has been no Motion to Compel filed, nor any discovery  
23 Order violated. Based on the prior motions and exhibits submitted by firstSTREET and  
24 AITHR, and in conjunction with the arguments made herein, firstSTREET and AITHR  
25 respectfully submit that they have a likelihood of success on the merits of their impending  
26 appeal.

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28 ///

1 **III. CONCLUSION**

2 Based on the foregoing, FIRSTSTREET FOR BOOMERS AND BEYOND, INC. AND  
3 AITHR DEALER, INC. respectfully requests that its Motion to Stay the trial only be  
4 GRANTED.

5 DATED this 29<sup>th</sup> day of October, 2021.

6 THORNDAL ARMSTRONG DELK  
7 BALKENBUSH & EISINGER

8 */s/ Philip Goodhart*

9 

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PHILIP GOODHART, ESQ.  
10 Nevada Bar No. 5332  
MEGHAN M. GOODWIN, ESQ.  
11 Nevada Bar No. 11974  
12 1100 East Bridger Avenue  
Las Vegas, Nevada 89101  
13 Attorneys for Defendants,  
FIRSTSTREET FOR BOOMERS AND  
14 BEYOND, INC., and AITHR DEALER, INC.

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on the 29<sup>th</sup> day of October, 2021, service of the above and foregoing **FIRSTSTREET FOR BOOMERS AND BEYOND, INC. AND AITHR DEALER, INC.'S, MOTION FOR STAY OF TRIAL ONLY ON ORDER SHORTENING TIME** was made upon each of the parties via electronic service through the Eighth Judicial District Court's Odyssey E-File and Serve system.

*/s/ Stefanie Mitchell*

\_\_\_\_\_  
An employee of THORNDAL ARMSTRONG  
DELK BALKENBUSH & EISINGER

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Robert Ansara, Plaintiff(s)

CASE NO: A-16-731244-C

7 vs.

DEPT. NO. Department 19

8 First Street for Boomers &  
9 Beyond Inc, Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District  
13 Court. The foregoing Order Shortening Time was served via the court's electronic eFile  
14 system to all recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 11/1/2021

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# EXHIBIT 2

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5 DISTRICT COURT  
6 CLARK COUNTY, NEVADA

7 ROBERT ANSARA, ET AL.,

8 Plaintiffs,

9 vs.

10 FIRST STREET FOR BOOMERS &  
11 BEYOND, INC., ET AL.,

12 Defendants.

CASE#: A-16-731244-C

DEPT. XIX

13 BEFORE THE HONORABLE CRYSTAL ELLER  
14 DISTRICT COURT JUDGE  
15 TUESDAY, NOVEMBER 2, 2021

16 **RECORDER'S TRANSCRIPT OF PENDING MOTIONS**

17 APPEARANCES:

18 For Plaintiffs:

BENJAMIN P. CLOWARD, ESQ.  
LONDON LITTLEFIELD, ESQ.  
IAN C. ESTRADA, ESQ.

20 For Defendant Jacuzzi, Inc:

BRITTANY M. LLEWELLYN, ESQ.  
JOEL D. HENRIOD, ESQ.  
JOHNATHAN T. KRAWCHECK, ESQ.

22 For Defendants AITHR  
23 Dealer Inc., Benton Hale,  
24 First Street for Boomers &  
Beyond, Inc.:

PHILIP GOODHART, ESQ.

25 RECORDED BY: BRITTANY AMOROSO, COURT RECORDER

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Las Vegas, Nevada, Tuesday, November 2, 2021

[Case called at 9:01 a.m.]

THE CLERK: -- 731244-C, Robert Ansara v. First Street for  
Boomers & Beyond, Inc.

MR. CLOWARD: Good morning, Your Honor. Ben Cloward  
and Landon Littlefield on behalf of Plaintiffs.

THE COURT: Good morning.

MR. GOODHART: Good morning, Your Honor. Philip  
Goodhart on behalf of First Street, AITHR, and Hale Benton.

MS. LLEWELLYN: Good morning, Your Honor. Brittany  
Llewellyn on behalf of Defendant Jacuzzi.

THE COURT: Good morning, everyone.

MR. HENRIOD: Joel Henriod on behalf of Jacuzzi.

MR. KRAWCHECK: Johnathan Krawcheck also on behalf of  
Jacuzzi.

MR. ESTRADA: And Ian Estrada for the Plaintiffs.

THE COURT RECORDER: Who was the last person who  
spoke?

MR. ESTRADA: Ian Estrada.

THE COURT RECORDER: Okay. Thank you.

MR. ESTRADA: Thank you.

THE COURT: Do we have everyone?

MR. CLOWARD: Yes, Your Honor.

THE COURT: All right. Thank you. All right. So this is

1 calendar call, but we also have a very recently filed motion to stay trial  
2 on OST. So since we were here for calendar call, I thought we would go  
3 ahead and hear it today. So let's start with the motion.

4 MR. GOODHART: May I approach the lectern, Your Honor?

5 THE COURT: Yes, please.

6 MR. GOODHART: I apologize, Your Honor. This is my first  
7 time; I think in front of you. I know Mr. Cloward and Mr. Roberts have  
8 been here before, but may I take my mask off?

9 THE COURT: Yes, that's okay.

10 MR. GOODHART: Thank you, Your Honor. I appreciate that.

11 Your Honor, this was filed, I believe, on Thursday. I did email  
12 a copy to Plaintiffs' counsel and to Jacuzzi's counsel Thursday afternoon,  
13 after it was filed to let them know we were just waiting for a hearing date  
14 and for Your Honor to sign the order. And when it was signed yesterday,  
15 we immediately notified all the parties. I know you don't have the  
16 benefit of any type of opposition, but, really, Your Honor, I've just set  
17 forth what is in the brief.

18 THE COURT: Uh-huh.

19 MR. GOODHART: To be clear, I've been succinct that we did  
20 file a writ to Judge Scotti's ruling where First Street and ALTHR's answer  
21 was struck as to liability. I've indicated in my brief how that came about.  
22 And the writ was filed back in August.

23 And just so the Court knows, I did not immediately file the  
24 writ after it was -- the decision was made for a variety of reasons, and I  
25 waited on the writ until I felt that it was an appropriate time to file it for

1 my client, and for myself, and my calendar, things like that, and how the  
2 case was progressing. Yes, I could have immediately filed a motion for  
3 stay at that point in time; however, settlement discussions were looking  
4 to be picking up a little bit, so as this Court is fully aware, anytime you  
5 have a firm trial date, that kind of pushes things along a little bit more.  
6 In fact, the parties had a mediation on Saturday, Ben, a couple of weeks  
7 ago in front of Judge Togliatti, but that, as far as I understand, has not  
8 resolved in a resolution of the case yet.

9           The other thing is there was still some discovery left to be  
10 done back in the August/September time frame. There was my client's  
11 30(b)(6) deposition, Dave Medina, which we had been trying to get set,  
12 trying to get done. And as the Court was aware, you were involved in  
13 several motion practice for those depositions as well. Plus there was  
14 Jacuzzi's PMKs 30(b)(6) witnesses that had to be completed as well. And  
15 there was also some discovery that Jacuzzi was still trying to produce,  
16 the emails that were produced a few weeks ago. I believe they're still in  
17 negotiations for sales force documents and things like that. Although  
18 they didn't have anything to do with me, I didn't think it would be  
19 prudent for me to come in at the eleventh hour more or less, or tenth  
20 hour at the time to say, hey, we need to stop everything.

21           So I waited until now, what I thought would be the prudent  
22 time to file the motion for stay. And quite honestly, Your Honor, I had  
23 been hoping that the Nevada Supreme Court might take this up and  
24 entertain it, and at least do something with it to let the parties know  
25 where it stood.

1           So there's no rule, there's no requirement that I have to bring  
2 the motion for stay immediately. Again, this isn't an attempt to delay the  
3 trial or anything like that. It was really an attempt to see whether,  
4 number 1, as I indicated, we could try to get this case settled. There was  
5 still outstanding discovery to get done. I didn't want to impede that.  
6 And quite honestly, I thought or hoped, anticipated that the Nevada  
7 Supreme Court may speak on the issue.

8           Regardless, Your Honor, I think I've set forth in my brief the  
9 factors upon which this Court can grant this stay. I don't want to belabor  
10 the point. I know Your Honor has a very busy day. I know Mr. Cloward  
11 may have some arguments to make, so unless you have any more  
12 questions, Your Honor, I would just reserve a few minutes to maybe  
13 respond to any of Mr. Cloward's arguments.

14           THE COURT: Well, I just have a broad question. Obviously,  
15 we understand the reason for the stay. You know, we don't want to have  
16 a trial, waste time --

17           MR. GOODHART: Right.

18           THE COURT: -- have your writ granted, and then have to  
19 come back and have a whole new trial on compensatory or liability,  
20 sorry. However, if we do go forward with the trial, as we all understand  
21 it's now trifurcated, assuming that the jury finds punitive damages,  
22 otherwise bifurcated. That portion, if the trial goes forward, would be  
23 complete and not have to be redone again. So I guess my question is for  
24 you to tell me a little bit about the utility of the stay.

25           MR. GOODHART: Well --

1 THE COURT: Like what is it going to help?

2 MR. GOODHART: I apologize, Your Honor. The utility is that  
3 if this case is overturned, we'll have a brand new jury that will be  
4 choosing and selecting whether or not there's any liability at all on  
5 behalf of my client First Street and AITHR.

6 Mr. Cloward has designated, I believe, at least four or five, if  
7 I'm not mistaken, expert witnesses on that issue. We have designated  
8 counter expert witnesses on those issues as well. But right now we are  
9 going into this trial on November 29th, pursuant to Judge Scotti's, what I  
10 believe is a wrongful order against my clients First Street and AITHR.  
11 And, again, Your Honor, I need you to be crystal clear that there is a  
12 significant distinction between my clients First Street and AITHR and  
13 Jacuzzi. They are not one in the same.

14 Mr. Cloward, throughout this litigation, has confused and  
15 convoluted the three of them, but they are not the same entities. They  
16 are completely separate and apart. They have different types of claims  
17 against them, allegedly.

18 In any event, Your Honor, if we were to proceed to trial on  
19 November 29th, pursuant to Judge Scotti's incorrect and wrongful order,  
20 in my opinion, we are precluded from arguing liability. We are  
21 precluded from defending ourselves saying we are not responsible for  
22 any of these injuries at all. And the trial -- if we are correct and the  
23 Nevada Supreme Court says, yes, we are correct, we're going to have to  
24 have a whole new trial. It's not just going to be on the damages. There's  
25 going to be things, and arguments, and things like that within the liability

1 portion of the claim that could very well -- if they do find liability, could  
2 very well reduce the damages.

3 We're also going to have issues here again because my client  
4 and because of its relationship with Jacuzzi and because of what's pled  
5 in the complaint, quite honestly, Your Honor, I don't see a cause of  
6 action for advertising and marketing. I know Mr. Cloward believes  
7 otherwise, but that is all my clients did in this case was the advertising  
8 and marketing. Therefore, because they were in the stream of  
9 commerce, I understand the argument that we are also going to be  
10 jointly and severally liable with Jacuzzi as -- if there is a product defect.

11 Right now, the jury is not going to be asked to differentiate  
12 between which of Ms. Cunnison's compensatory damages are the result  
13 of false advertising, allegedly, or marketing that as misrepresented,  
14 allegedly, or which of the damages are related to the product. Without  
15 that answer, I don't know what my clients are going to be responsible  
16 for. And it's even more important because without that answer, if there  
17 -- if a jury, hypothetically speaking, finds that maybe there was some  
18 misrepresentations in the advertising, but finds that there were  
19 compensatory damages related to that advertising, then my client  
20 doesn't even get to punitive damages. You have to have compensatory  
21 damages against my client to get to the punitive damages phase.

22 So the entire trial will have to be retried if the Nevada  
23 Supreme Court agrees with me and says the striking of my answer -- my  
24 clients' answers was wrong.

25 THE COURT: Thank you.



1 MR. GOODHART: Did you follow?

2 THE COURT: Uh-huh.

3 MR. GOODHART: I want to make sure that you're following  
4 my --

5 THE COURT: I'm doing them now.

6 MR. GOODHART: -- argument and where I am. It's literally  
7 connecting --

8 THE COURT: Yeah.

9 MR. GOODHART: -- the dots, Your Honor.

10 THE COURT: That's what I needed. Thank you.

11 MR. GOODHART: Okay. Thank you, Your Honor.

12 MS. LLEWELLYN: Your Honor, just briefly. I understand Mr.  
13 Cloward wants to speak. I just wanted to bring the Court's attention to  
14 the fact that Jacuzzi did file a joinder to First Street's motion. I'm not  
15 sure if you received that last evening. But I won't belabor the points that  
16 Mr. Goodhart made. I just wanted to bring the Court's attention to the  
17 fact that Jacuzzi does concur with a brief delay of the trial date in order  
18 to allow the Nevada Supreme Court to review each of the Defendants'  
19 petitions that are currently pending.

20 THE COURT: Thank you. Mr. Cloward.

21 MR. CLOWARD: Good morning, Your Honor. I appreciate  
22 the Court taking us first. I'm accused of confusing the issues. What Mr.  
23 Goodhart just did was spending his entire argument trying to confuse  
24 the issues. He spends time talking about the effect of granting the  
25 motion to strike. Your Honor, the effect is that I'm going to be prevented

1 from presenting damages, that I'm going to be prevented from having  
2 my experts, and I'm going to be prevented from all of these things.

3 The analysis on whether the Court should grant a stay or not  
4 is whether there will be success on the merits in the appellate court,  
5 number one. Number two, the analysis and discussion should be on  
6 whether or not Judge Scotti was correct in granting the motion, instead  
7 of focusing his argument on that, on Judge Scotti's decision -- Your  
8 Honor, may I remove my mask?

9 THE COURT: Yes.

10 MR. CLOWARD: Thank you. On whether Judge Scotti's  
11 decision was correct or incorrect, there's all of this discussion about,  
12 well, Your Honor, here's the effect of him granting the motion. I'm going  
13 to be prevented from this, prevented from this, and so forth. That is not  
14 what the Court is even to consider. So to reframe the argument into  
15 what is actually legally the Court's decision, all of that should be  
16 disregarded and not even considered. Number one.

17 Number two. The first half or more of the argument was  
18 explaining, and apologizing, and trying to justify the late filing. It's  
19 almost like the line from Hamlet, you know, the lady doth protest too  
20 much. Well, let me explain to you all of the reasons why I didn't file the  
21 motion, because of ongoing discovery, or discovery, or this, none of  
22 those issues would have prevented them from filing the motion. And  
23 with respect to, you know, this whole, the case might settle and things  
24 like that, they came to mediation, First Street, and offered nothing.

25 MR. GOODHART: Your Honor, I don't mean to object to the

1 arguments, but we're now we're getting into settlement discussions --

2 THE COURT: Yeah, let's not --

3 MR. GOODHART: -- mediations.

4 THE COURT: -- go down that road.

5 MR. GOODHART: I don't think that's appropriate.

6 MR. CLOWARD: Well, to suggest that somehow, you know,  
7 we're waiting for this mediation to take place and so forth, it's just a bad  
8 faith argument in my view.

9 And as far as the -- now, so all of -- everything that was just  
10 made, all of the argument that was just made by Mr. Goodhart had  
11 nothing to do with the analysis that the Court should perform when  
12 deciding whether or not to grant this issue. And what I would like to do  
13 is to focus the Court on the analysis under NRAP 8(c).

14 First Street is not going to prevail on the merits. There's this  
15 whole argument that, well, Judge Scotti should have conducted an  
16 evidentiary hearing. We weren't granted that benefit. We should have  
17 been granted that benefit.

18 The problem with that argument is that the *Bahena v.*  
19 *Goodyear* specifically indicates that unless case concluding sanctions are  
20 granted an evidentiary hearing is simply not required. And this is what it  
21 says, quote, "we conclude that when the Court does not impose ultimate  
22 discovery sanctions of dismissal of a complaint with prejudice or striking  
23 an answer as to liability and damages, the Court should, but still at its  
24 discretion, hold such a hearing as it reasonably deems necessary to  
25 consider matters that are pertinent to the imposition of the appropriate

1 sanctions. The length and nature of the hearing for non-concluding --  
2 case concluding sanctions shall be left to the sound discretion of the  
3 Court."

4           So Judge Scotti had broad discretion to determine this. And,  
5 Your Honor, this isn't like a situation -- I mean, I would encourage the  
6 Court to read the dissenting opinion of Justice Pickering. I respect  
7 Justice Pickering a lot. In her dissenting opinion, she essentially lines  
8 out and sets out the conduct of Goodyear in that case. And she says,  
9 look, I mean, they didn't supplement some discovery. They didn't  
10 produce some documents in a particular way, and this seems crazy that  
11 we're granting the -- and I'm taking quiet liberty -- you know, she  
12 wouldn't say --

13           THE COURT: Paraphrasing.

14           MR. CLOWARD: Yeah. Putting it in my own words. When  
15 the Court compares that conduct -- if the Court just reads the dissenting  
16 opinion of Justice Pickering and compares that conduct to the parties --  
17 and, you know, you don't have to consider Jacuzzi, just the parties First  
18 Street and Aging in the Home, of sitting by on the sidelines, sitting in  
19 hearing, after hearing, after hearing, through a four day evidentiary  
20 hearing knowing that they have recordings of my client and not  
21 producing those recordings in the case, knowing that they have  
22 recordings of thousands of calls that they don't produce in the case.

23           They sit by idly, don't do anything, and quite frankly, there is  
24 a flat out misrepresentation by Mr. Goodhart to me in a text message.  
25 There's a product called the 911 alert product that these parties gave to

1 the elderly to use. The Consumer Product Safety Commission report  
2 that Ruth Kernut [phonetic] filed said, hey, the 911 alert system, it would  
3 have done me no good, okay. I asked Mr. Goodhart in opening hearings,  
4 what about this 911 alert. The constant representations made to Mr.  
5 Goodhart through Dave Medina were, we didn't have anything to do  
6 with it. It wasn't us. It wasn't Jacuzzi.

7 Well, we go to take the deposition of Ms. Kernut, and guess  
8 what, the packing slip that the alert 911 came with was a First Street  
9 packing slip. It did come from them. And I text Mr. Goodhart before, are  
10 you sure that you didn't have anything to do with this? I'm positive. It  
11 must have been the dealer, Gordon Fairbanks. Are you positive? Yes.  
12 Dave Medina has told me that they didn't have anything to do with it.  
13 The next day we go, and sure enough -- she kept everything. Ms. Kernut,  
14 she kept all of the paperwork, all of the documents, and hands it over.

15 So there is palpable, tangible discovery abuses in this case  
16 that Judge Scotti -- that we briefed. He had the hearings. We didn't  
17 have to have an evidentiary hearing. I mean, here's the text message,  
18 here's the evidence. You know, here's the phone call from Ms. Cunnison  
19 that's recorded. Here's --

20 THE COURT: So there's not a strong likelihood of success on  
21 the writ?

22 MR. CLOWARD: There's no -- you know, it's almost --

23 THE COURT: I take it that's what you're arguing.

24 MR. CLOWARD: There is no likelihood of success. And I  
25 want to address -- and I appreciate the Court's indulgence. But there's

1 this claim of, you know, we're going to spend all of this money and all of  
2 this time, and this is going to be -- you know, this is going to be  
3 irreparable harm. Well, quite frankly, the Supreme Court has said that is  
4 not irreparable harm. And I'm going to quote the *Upper Deck Company*  
5 *v. Eighth Judicial District Court*, it's 281 P.3d 1227, and this is the cite --  
6 and it's citing the *Fritz Hansen v. District Court* case, which is 116 Nev.  
7 650. And it says, "litigation expenses, while potentially substantial, do  
8 not constitute sufficient irreparable or serious harm to warrant the  
9 imposition of stay." So that completely negates that argument.

10 And that's not the only case. The *Hansen v. Eighth Judicial*  
11 *District Court*, 116 -- oh, that's the same case. But it says, "mere injuries,  
12 however substantial in terms of money, time, and energy necessarily  
13 expended in the absence of a stay, are not enough to show irreparable  
14 harm." So that argument is no such argument.

15 And then the question of whether or not the Court was  
16 incorrect or correct by granting the sanctions via 16.1, and a violation of  
17 16.1 -- I'm trying to find the quotation here -- but there is a Nevada -- it's  
18 either a Supreme Court case or an Appellate Court case that specifically  
19 indicates that a 37 -- I mean, a 16.1 violation through NRCP 37, does  
20 warrant sanctions, including striking of the complaint or parts thereof  
21 and answer thereof.

22 So this argument that, well, you know, this reliance on 16.1,  
23 Judge Scotti shouldn't have done that, he couldn't do that, that's not  
24 true. It's just not correct. And so -- okay. So it's *Bahena*. Thank you  
25 Landon. I'm getting messages from my team.

1                   So under 37(b)(2), and this is in *Bahena*, a District Court has  
2 discretion to sanction a party for its failure to comply with a discovery  
3 order, which includes document production under 16.1. We will set  
4 aside a sanction order only upon abuse of that discretion. And I know  
5 Mr. Goodhart's going to come up, and he's going to say, well, that's an  
6 order. We never violated an order. Well, Judge Scotti said, no, you did  
7 violate an order because in March of 2019, I ordered the parties to  
8 produce the information, and they never did. The parties, plural.

9                   And there's also another case, I can't find it. I'm happy to  
10 supplement the record when I find it. It was as I was preparing for this.  
11 We didn't have the chance to get an opposition on file. But it's an  
12 appellate court case, and it specifically indicates that 37 allows a  
13 sanction.

14                   And I think the *Pizarro-Ortega* case is helpful. In that case the  
15 plaintiff didn't supplement their computation of damages. So what did  
16 the Court do, the Court struck the damages of the plaintiff. That is  
17 essentially the result of striking a defendant's answer. I mean, if a  
18 plaintiff can't go to court and put on damages, what case are they  
19 putting on? It's almost -- it has the same effect. They're not able to put  
20 on their case.

21                   So I think it's -- Judge Scotti was well within his discretion.  
22 There was a lot of motion practice, a lot of hearing. If the Court just  
23 reviews the motion to strike, as well as the opposition and the reply, the  
24 Court can see the time and effort that went into the motion. So unless  
25 the Court has anything else, I appreciate the Court allowing the parties to

1 argue, and I'm happy to answer any other questions the Court may have.

2 THE COURT: Thank you. I understand. I'm good.

3 MR. CLOWARD: Thank you.

4 THE COURT: Mr. Goodhart, you can respond.

5 MR. GOODHART: Thank you, Your Honor. Very briefly. I  
6 apologize, Your Honor, I asked you to ask questions -- excuse me. You  
7 asked me a very pointed question, and I thought I had answered your  
8 question.

9 THE COURT: You did.

10 MR. GOODHART: Apparently, Mr. --

11 THE COURT: And for the record, let me just save us the time  
12 with regard to Mr. Cloward's comments. The Court understands that  
13 you were just answering my question, so you don't have to explain why  
14 you explained everything.

15 MR. GOODHART: Again, this is just another methodology of  
16 Mr. Cloward to convolute things and confuse things. He also convolutes  
17 and confuses things when he read the writ. The evidentiary hearing is  
18 an alternative argument. The primary argument, the main argument, the  
19 thrust of the entire writ is 16.1.

20 What sanction can be imposed upon a party when counsel,  
21 who is in control of 16.1, produces documents voluntarily under 16.1 to  
22 the other side, versus what happens when there is an order of the  
23 Discovery Commissioner or the District Court ordering the party or the  
24 lawyer to produce certain documents? Again, please don't confuse  
25 Jacuzzi, First Street, and the AITHR. There is not one single order



1 ordering First Street or AITHR to produce documents. Zero. There was  
2 never a motion to compel. Mr. Cloward threatened motions to compel.  
3 We had 2.34 meet and confers on the motion to compel, yet he never  
4 filed a single motion to compel.

5 Mr. Cloward just had the opportunity to present an  
6 opposition. For whatever reason, I don't know why, Mr. Cloward is stuck  
7 on this 911 alert, and that's the argument that he presented to this Court  
8 as to why our writ will never fail. Mr. Cloward, interestingly says, those  
9 were discussions between counsel about what the 911 was. Counsel  
10 said this. I have a text message from Mr. Goodhart. Well, I'm not a  
11 witness, Your Honor, and neither is Mr. Cloward a witness in this case.  
12 So that doesn't matter.

13 But really, Mr. Cloward, in presenting this 911 argument,  
14 made the exact argument as to the exact reason why the writ will be  
15 granted. That was a conduct of counsel. Counsel chose not to produce  
16 the information, not the party. In fact, dealing with that exact 911 alert,  
17 there was a hearing before the Discovery Commissioner, because  
18 originally Plaintiffs thought Jacuzzi was responsible for the 911 alert.  
19 There was a hearing before the Discovery Commissioner about the 911  
20 alert, and it should have been voluntarily disclosed by Jacuzzi. The  
21 Discovery Commissioner said no, if you want that information Plaintiff,  
22 send out a request for production of documents.

23 As soon as Mr. Cloward sent out a request for production of  
24 documents to my client, we responded to that request for production of  
25 documents. He may not like the answer. He's got some other theory,

1 conspiracy theory, alternative theory of liability, but as soon as we  
2 received the request for production of documents, it was produced. So  
3 Mr. Cloward's argument for this Court is the precise reason why our writ  
4 will be granted by the Nevada Supreme Court because 16.1 is in the --  
5 encompasses the actions of counsel to voluntarily produce materials. If  
6 things are not voluntarily produced then Plaintiffs, as Mr. Cloward is well  
7 versed on this case and other cases, goes to the Court to get an order for  
8 the client to produce that document, that information. That did not  
9 happen here. That is why there's a distinct difference between Jacuzzi,  
10 First Street, and AITHR, and that is why we believe we will prevail.

11           With respect to his quotation to 37(b), he read it right to the  
12 Court. If a party violates a discovery order or other order of this Court,  
13 ordering documents or information be produced under 37(b), its answer  
14 can be stricken. There's no such order here.

15           And as far as the mandatory computation of damages under  
16 16.1, that is specifically written into the rule, Your Honor. If counsel fails  
17 to produce a mandatory computation of damages, the answer will be  
18 stricken. That's in the rule. What Mr. Cloward is trying to do is take  
19 things well outside the rule of voluntary production, Your Honor.

20           I believe I did set forth in my motion -- and again I just want  
21 to speed things along, but if you have any other questions, Your Honor,  
22 about the other factors I would be more than happy to answer them.

23           THE COURT: Okay. Thank you.

24           So as I mentioned in the beginning, obviously the whole  
25 issue -- the big picture is utility. The Court finds that the fact that the trial

1 is going to be bifurcated or trifurcated the way it is that AITHR and First  
2 Street will have the opportunity in the punitive damages portion to  
3 contest liability. That's already been resolved by prior motion practice.  
4 So really the issue is assuming the writ is granted as to these two  
5 Defendants, what is the balance? What is the cost to having to retry  
6 these two Defendants for compensatory damages for liability. And that's  
7 where the likelihood of success on the merits comes in, because we're  
8 doing a balancing act. We're doing what is going to be the best use of  
9 the Court's time and resources as well as the parties in this situation.

10 So the fact that Judge Scotti's order was specifically to  
11 Jacuzzi, I believe it does increase the likelihood of success on the merits  
12 with regard to the writ. I also have to balance out against the fact that,  
13 you know, everybody is really gearing up for trial, getting prepared, and  
14 that this case is quite old and needs to go to trial.

15 So my thoughts are, and this isn't a ruling yet, but my  
16 thoughts are to find out what the next trial stack would be and give the  
17 Supreme Court a little more time to make a decision, but, you know, I  
18 want that to look like not a lot of time. But, like I said, it's not a ruling  
19 yet. So let's find out what the answer to that is.

20 THE CLERK: February 7th.

21 THE COURT: Huh?

22 THE CLERK: February 7th.

23 THE COURT: February.

24 [Court and Clerk confer]

25 THE COURT: Okay.

1 THE CLERK: And the next stack is April 18th.

2 [Court and Clerk confer]

3 THE COURT: I'm sorry, when was the writ filed?

4 MR. GOODHART: I believe the writ was filed August 16th, or  
5 thereabouts, Your Honor.

6 MS. LLEWELLYN: And, Your Honor, Jacuzzi's writ was filed  
7 October 5th.

8 MR. GOODHART: August 17th, Your Honor.

9 THE COURT: Okay.

10 MR. CLOWARD: Your Honor, I don't normally argue, and  
11 then argue, and then argue.

12 THE COURT: Well, no, I'm leaving it open to that, because  
13 I'm sitting here saying, I haven't made a decision yet, and I need more  
14 information. And that information is how soon can we have the trial if  
15 we don't have it on the 29th. So feel free to speak again.

16 MR. CLOWARD: Thank you. One of the considerations is the  
17 prejudice to Plaintiffs, okay.

18 THE COURT: I understand.

19 MR. CLOWARD: The prejudice is substantial and significant.  
20 There literally are witnesses that are dying, okay. The elderly  
21 population, the population of this tub are folks that are 65 to whatever.

22 THE COURT: Uh-huh.

23 MR. CLOWARD: We have already had witnesses that have  
24 passed away. I mean every day that goes on more witnesses are going  
25 to pass away. The fact that this case, when the Court looks at the trial

1 settings, I have been trying to get this case to trial since 2018. It's their  
2 combined conduct that has allowed the case to continue to have to be  
3 kicked, continue to have to be kicked, continue to have to be kicked. And  
4 now they come in, and they file a writ in October, and they file a writ in  
5 August, when the case is set for mediation in October, and they're  
6 saying, well, you know, we waited for mediation or whatever. No, that  
7 was posturing to come in to mediation with a pending writ.

8           Judge Scotti's orders were finalized last year. Yet, they wait  
9 for ten months, and they wait for eight months. That's not good faith,  
10 Judge. That's not good faith when we have a firm setting. When Judge  
11 Scotti gives us a firm setting in 2020. At the end of 2020, they knew.  
12 They knew that the date is what it is and that's when we're coming, and  
13 you all be ready.

14           And so what do they do, they wait until the very tail end and  
15 now they come and try and explain, oh, well, here's why we waited or  
16 here's or here's why, whatever. If you truly thought that you had  
17 success, I posit that the opposite is true. That they know that there's no  
18 chance for them to succeed, and that's why they didn't file the motion.  
19 They didn't want to go before the Supreme Court and say, hey, why  
20 don't you take a look at our client's conduct? Instead, they're  
21 embarrassed by it, and they should be embarrassed by it, because it's  
22 preposterous the way that the parties have acted in this case.

23           An so they don't file a motion because they know that there's  
24 no chance, and instead they don't want to go to trial, so what do they  
25 do? They wait until the eve of trial and file the motions.

1 And, Your Honor, with due respect to counsel, this argument  
2 of the cost is a non-consideration, Judge. The Court -- the Nevada  
3 Supreme Court has flatly indicated that it is not a consideration. It is not  
4 a substantial harm. So all of the costs, all of the time, all of the effort of  
5 having to come and do this again, while I appreciate that, okay, and I  
6 don't want to try the case twice, that's not a consideration the Court can  
7 even take into account. That's what the Nevada Supreme Court has said.

8 And so any such argument being advanced by the Defense  
9 should be rejected as it's being made. It should have no place in the  
10 argument because the Nevada Supreme Court, quite frankly they've  
11 said, you know, it's not a consideration. If they want a stay, I think they  
12 should go to the Supreme Court, file an emergency motion with the  
13 Supreme Court, and ask the Supreme Court whether or not it's going to  
14 hear this -- whether it's going to hear the writ. And if the Supreme Court  
15 doesn't accept that emergency motion -- there are vehicles for them to  
16 do that. If the Supreme Court doesn't do that, then that would be a  
17 pretty big signal that the Supreme Court is not going to entertain their  
18 motion.

19 THE COURT: Okay. Thank you. All right. Let me hear from  
20 Mr. Goodhart.

21 MR. GOODHART: Goodhart.

22 THE COURT: I have a Goodwin and a Goodhart. I had to  
23 make sure I don't mix them up.

24 MR. GOODHART: That's okay, Your Honor. Thank you.

25 Well, again Mr. Cloward comes up here and talks about the

1 combined conduct of Jacuzzi, First Street, and AITHR. This is my motion,  
2 it's my writ, it's not Jacuzzi's. They did their own thing. This isn't  
3 combined conduct. This is First Street and AITHR's conduct. I've gone  
4 through all of that. I was anticipating that Mr. Cloward would come up  
5 here with another excuse other than the 911 alert, as to why we're not  
6 going to win on the writ, but he didn't.

7 He talked about posturing. We're posturing this case. You  
8 know, Your Honor, I've worked with Ben for many, many years, and I  
9 guarantee you one thing, if we had filed a writ immediately, he would  
10 have been -- and filed a motion to stay immediately, he would have been  
11 up here saying, Your Honor, they're just trying to cover things up. They  
12 don't want to do the discovery that's been ordered to be done.

13 THE COURT: Okay. Let's -- I know this is getting  
14 contentious, because this case --

15 MR. GOODHART: Right.

16 THE COURT: -- has been going on so long.

17 MR. GOODHART: So --

18 THE COURT: So my question is -- here's where I'm at. I'm  
19 sitting here thinking, oh, what if we give the Supreme another 30 to 60  
20 days? That's where I was ten minutes ago. But the problem is, I just --  
21 considering everything that's at stake here and how long this case has  
22 been going on, combined with your likelihood of success on the merits,  
23 which I do think is stronger than Jacuzzi's, for the reasons I stated, the  
24 option of filing the stay with the Supreme Court, I think is an excellent  
25 way to handle this.

1 MR. GOODHART: Right.

2 THE COURT: So I -- because there's two things. One, I don't  
3 know if the extra 60 days is going to do any good, even if we can get you  
4 in on February 7th, okay. I don't know if it's going to do any good or not,  
5 but the Supreme Court does.

6 So what I'm inclined to do is I'm not going to grant the  
7 motion. We're going to keep the trial date, November 29th, where it  
8 stands and let you ask the people who know the answer to that question,  
9 okay.

10 MR. GOODHART: I guess my concern though is what if --  
11 you know, like I said, Your Honor, we filed our writ August 17th. We  
12 haven't had a yay or nay in three-and-a-half months. I would have  
13 thought if there was really no likelihood, they would have come in --

14 THE COURT: I think that does bode well.

15 MR. GOODHART: What is the likelihood that they're going to  
16 rule on an emergency writ within the next three weeks? I don't know.  
17 We could be coming back before Your Honor -- is this denied without  
18 prejudice pending filing with the Nevada Supreme Court, and then  
19 making a ruling by November 29th? If they haven't made a ruling by  
20 November the 21st, 22nd, whatever it is, a week before, but then that's  
21 Thanksgiving, do we come back to Your Honor and say, you know, we  
22 don't have a ruling yet?

23 THE COURT: Right. I understand that, and I certainly can't  
24 speak for them or control the Supreme Court, but I'm going to deny it.  
25 I'll make it without prejudice if you want to bring it again, and you



1 haven't heard from them. I hope that they'll see the utility in you at least  
2 being able to be heard on your -- or have a decision on your stay in a  
3 timely manner, not that I'm not saying -- I'm not saying they're not  
4 timely. But it's -- the trial has just got to happen. It's got to happen, and  
5 I feel like the fact that the punitive damages is separated and that you  
6 can defend your clients on that phase for liability, that it's sufficient  
7 protection, at least for sure on the punitive damages stage.

8               So the only thing we will have to retry if we go forward and  
9 the writ is granted will be, you know, most likely, these two Defendants  
10 liability portion. So at this point, this case being this old, it's just -- the  
11 trial needs to go. If the Supreme Court says, no, we're going to stay it,  
12 then that's fine, but we need to go ahead and set it forward. And moving  
13 it out 60 days, I just don't have anything to go on. I don't have any  
14 evidence that the Supreme Court's going to decide it any sooner -- you  
15 know, within 60 days, any more likely than they're going to decide it in  
16 the next three weeks.

17              So there's really no basis for me to continue it that 60 days  
18 that I was kind of throwing that around. So I completely appreciate your  
19 position. It's difficult for the Court as well, but we're going to have to  
20 leave the trial date where it is, see where you can get with the Supreme  
21 Court.

22              MR. GOODHART: And just so --

23              MR. HENRIOD: Your Honor, this is Joel Henriod for Jacuzzi.  
24 Can I just chime in really quickly here?

25              Under Rule 8, the Nevada Supreme Court will defer to your

1 factual findings on these elements. NRAP 8 requires us to come to you  
2 first.

3 THE COURT: Okay.

4 MR. HENRIOD: So on the issue of weighing prejudice, I think  
5 you do need to address that, because they will look to your findings on  
6 that, as to whether or not Plaintiffs would be unduly prejudiced by  
7 another 60 days.

8 And then also, if I could speak to good faith since Jacuzzi's  
9 petition came out of our office. The Nevada Supreme Court, in  
10 evaluating a sanction looks significantly to the contours of the  
11 application for that sanction. You see that in the *Goodyear* case where  
12 there was a lot of discussion, not just in how the sanction was technically  
13 categorized, but also how it was applied to gauge its severity. And we  
14 filed the writ petition within days of the Court's order nailing down the  
15 contours of that. I just need to throw that out there since good faith was  
16 questioned.

17 THE COURT: Okay. Thank you.

18 MR. HENRIOD: Thank you, Your Honor.

19 THE COURT: All right. Thank you. What I'm going to do --  
20 obviously, time is of the essence. Because Mr. Cloward didn't get to  
21 respond in writing, I'm going to have him draft the order with findings of  
22 fact considering all of the relevant requirements including likelihood of  
23 success on the merits and undue prejudice. All the requirements.

24 And then, Mr. Cloward, please get that over to opposing  
25 counsel. I know there's a lot of attorneys here, but I need you guys to

1 get along and get this thing submitted, so that it's fair to the Defense,  
2 and they can get it up in front of the Supreme Court, okay.

3 MR. CLOWARD: Understood. We will endeavor to do that.

4 MR. GOODHART: And just so that I'm clear, Your Honor, it's  
5 my understanding from your colloquy with me that you do find that we  
6 have a good likelihood of success on the merits, at least with First Street  
7 and --

8 THE COURT: Yes.

9 MR. GOODHART: -- AITHR's writ.

10 THE COURT: Yes.

11 MR. GOODHART: Okay.

12 THE COURT: That should be in the order.

13 MR. GOODHART: And can this be denied --

14 THE COURT: Did you get that, Mr. Cloward?

15 MR. CLOWARD: I'm sorry, what was that?

16 THE COURT: I think that they have -- that these two  
17 Defendants have a fair to good likelihood of success on the merits  
18 because they weren't included in Judge Scotti's order and, therefore,  
19 potentially didn't violate a court order.

20 MR. CLOWARD: Okay.

21 MR. GOODHART: And again if it could be, just out of an  
22 abundance of caution, denied without prejudiced.

23 THE COURT: It will be denied without prejudice, just in case.  
24 And I'm not saying I'm going to grant it --

25 MR. GOODHART: I know.

1 THE COURT: -- next time.

2 MR. GOODHART: I know.

3 THE COURT: Okay. But I don't want to stop you from filing  
4 it.

5 MR. GOODHART: Thank you, Your Honor.

6 MS. LLEWELLYN: And, Your Honor, just as Mr. Henriod had  
7 raised, Jacuzzi's writ petition is on a distinct issue of the burden of proof  
8 that was utilized to grant the sanction, specifically, the preponderance of  
9 the evidence standard, versus the clear and convincing evidence  
10 standard. And that is the discreet issue that is before the Nevada  
11 Supreme Court. I'm not sure -- I know that our brief was filed late last  
12 night. I'm not sure if you had an opportunity to review it, but  
13 considering that we will be filing with the Nevada Supreme Court  
14 separately, has Your Honor made any findings as to Jacuzzi's likelihood  
15 of success on that discreet issue of law?

16 THE COURT: When you guys do submit the orders, submit it  
17 in Word. In the meantime, I will review that and make a decision on that  
18 specific portion. So leave a section in there for me to address it would  
19 be the best way to handle that, because I -- yeah, I haven't reviewed that  
20 completely, and it wouldn't be fair for me to make a ruling.

21 MS. LLEWELLYN: Thank you, Your Honor.

22 THE COURT: And you say you filed it last night?

23 MS. LLEWELLYN: I believe it was around 5:00 yesterday.

24 THE COURT: I definitely have not read it. I don't even know  
25 if we have it. Okay. Are we good? Sorry for all the confusion. I'm trying

1 to make this work.

2 MR. GOODHART: I appreciate that, Your Honor.

3 MR. CLOWARD: Thank you, Your Honor.

4 MR. GOODHART: Thank you.

5 MR. CLOWARD: Thank you.

6 THE COURT: Oh, okay. My staff is telling me, and I hope this  
7 cheers everyone up, that the Supreme Court typically never takes more  
8 than three business days to decide on a stay. So let's get this order  
9 done. I will read the filings, and I will be ready to do my little section on  
10 that one specific issue. You guys work this out and get the order to me  
11 right away, so we can get it up to the Supreme Court, and then we'll  
12 know confidently going into the trial whether, you know, it is on the 29th  
13 that this has been put to rest, if it's not stayed, okay.

14 MR. CLOWARD: Understood.

15 THE COURT: And then if it is stayed we'll set a new trial  
16 date. So in the meantime, regarding our calendar call, is there any other  
17 issues that we need to talk about, other than this one for trial readiness?

18 MR. CLOWARD: The only issue, we were to file a pretrial  
19 memorandum yesterday. Mr. Goodhart -- or, excuse me, Mr. Roberts is  
20 in trial and has been preparing for trial, so we had an opportunity to  
21 discuss this with Mr. Roberts' staff and, Mr. Goodhart, hopefully you'll  
22 agree, but we're going to actually meet on Veteran's Day or at least  
23 have the 2.67 on Veteran's Day. That way we can get the pretrial  
24 memorandum filed. And then the parties did stipulate to have the depo  
25 designations filed, I think, on the 7th or 8th. By court order those were

1 due, I think the 1st or 2nd. So we wanted to just alert the Court of that.

2 THE COURT: Okay. That's enough time.

3 MR. CLOWARD: Okay.

4 THE COURT: I'll agree to that.

5 MR. CLOWARD: Okay.

6 THE COURT: I'll agree to that stipulation.

7 MR. CLOWARD: Thank you. Yeah, we did that a little bit  
8 backwards, I apologize.

9 THE COURT: That's okay. All right. Anything else?

10 MR. CLOWARD: That's it.

11 MR. GOODHART: Your Honor, Philip Goodhart. When will  
12 we be picking the jury? I inadvertently missed the pretrial.

13 THE COURT: Okay.

14 MR. GOODHART: They can fill me on this if it's already been  
15 done.

16 MR. CLOWARD: It was not discussed.

17 MR. GOODHART: It was not discussed. Okay.

18 THE COURT: Right. Yeah, plus it's in flux because of  
19 Thanksgiving. So we did get that resolved for today's hearing. Jury  
20 selection -- wait.

21 THE CLERK: Will begin on the date of the trial.

22 THE COURT: Oh, okay. I was like that's the day of the trial.  
23 So we're going to have jury selection on the first day of the trial like in  
24 the old days, the 29th. Like back in the old days.

25 MR. GOODHART: Will they be in Your Honor's courtroom?

1 Will they be downstairs?

2 THE CLERK: It will either be here, or it will be in 5A.

3 THE COURT: Okay. Oh, all right. Yeah, that's the other  
4 thing. It will be here unless I have moved to 5A, which they're moving  
5 me. If at my permanent courtroom by then, that's where we'll be. If  
6 they're still doing construction, then it will be here. So we'll let you guys  
7 know. We'll send an email.

8 MR. CLOWARD: Okay. Thank you.

9 THE COURT: So barring a stay by the Supreme Court, I look  
10 forward to this trial getting started on the 29th.

11 MR. CLOWARD: Okay. Thank you very much.

12 MR. GOODHART: Thank you, Your Honor. I appreciate it.

13 MS. LLEWELLYN: Thank you, Your Honor.

14 [Proceedings concluded at 9:46 a.m.]

15

16

17

18

19

20 ATTEST: I do hereby certify that I have truly and correctly transcribed the  
21 audio-visual recording of the proceeding in the above entitled case to the  
best of my ability.

22 

23 Maukele Transcribers, LLC

24 Jessica B. Cahill, Transcriber, CER/CET-708

25



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# EXHIBIT 3



*Heather S. Smith*  
CLERK OF THE COURT

1 **ODM**

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

18 Plaintiffs,

19 vs.

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

Defendants.

AND ALL RELATED MATTERS

CASE NO.: A-16-731244-C

DEPT NO.: XIX

**ORDER DENYING**  
**FIRSTSTREET FOR**  
**BOOMERS AND BEYOND,**  
**INC. AND AITHR DEALER,**  
**INC.'S MOTION FOR STAY**  
**OF TRIAL ONLY ON ORDER**  
**SHORTENING TIME AND**  
**DEFENDANT JACUZZI INC.**  
**DBA JACUZZI LUXURY**  
**BATH'S JOINDER THERETO**

Hearing Date: 11/2/21

Hearing Time: 9:00 a.m.



Defendant Firststreet for Boomers and Beyond, Inc. and AITHR Dealer, Inc.’s Motion for Stay of Trial Only on Order Shortening Time and Defendant Jacuzzi Inc. dba Jacuzzi Luxury Bath’s Joinder thereto, having come on regularly for hearing on the 2nd day of November, 2021, in Department XIX, the Honorable Crystal Eller, presiding, BENJAMIN P. CLOWARD, ESQ., IAN C. ESTRADA, ESQ., and LANDON LITTLEFIELD, ESQ., appearing on behalf of the Plaintiffs; PHILIP GOODHART, ESQ. appearing on behalf of Defendants, Firststreet for Boomers and Beyond, Inc., AITHR Dealer, Inc., and Hale Benton; BRITTANY M. LLEWELLYN, ESQ., JOEL D. HENRIOD, ESQ., and JOHNATHAN T. KRAWCHECK, ESQ. appearing on behalf of Defendant Jacuzzi, Inc.; the Court being fully advised in the premises and good cause appearing therefore.

Both Motions to Stay are denied without prejudice after considering the factors set forth in NRAP 8(c) for the following reasons:

**First [NRAP 8(c)(1)]: Whether the object of the appeal will be defeated in the absence of a stay.**

If the case proceeds to trial, Jacuzzi<sup>1</sup> and firstSTREET/AITHR (collectively “firstSTREET”) will be precluded from presenting evidence that could absolve themselves of all liability in this matter, and could result in a defense verdict which would obviate the need for a compensatory damages or punitive damages phase of the trial. Furthermore, even though Jacuzzi and firstSTREET would be allowed to mount a full defense in the punitive damages phase of the trial if this Motion for Stay is denied, the liability defenses could potentially reduce the amount of compensatory damages a jury may be inclined to award Plaintiffs. Therefore, even though the object of the appeal will only be defeated in one portion of the case, i.e. the liability phase, it could have an impact on other portions of the trial as well. As such, this factor weighs in favor of supporting Jacuzzi and firstSTREET’s request for stay.

---

<sup>1</sup> Because Jacuzzi joined in the arguments advanced by firstSTREET, the Court addresses both Defendants herein. For the separate issue advanced by Jacuzzi regarding its challenge to the standard used by Judge Scotti, i.e., preponderance versus clear and convincing—that is addressed separately below.

**Second [NRAP 8(c)(2)]: Whether the appellant will suffer irreparable or substantial harm in the absence of a stay.**

This factor does not weigh in favor of firstSTREET or Jacuzzi who argue that tremendous money, time, and energy will be expended if this matter must be re-tried after a successful appeal. The Nevada Supreme Court has specifically addressed ***and rejected*** this very argument and therefore it cannot be said that this factor weighs in favor of either firstSTREET or Jacuzzi. Specifically, the Nevada Supreme Court has stated that “litigation expenses, while potentially substantial, are neither irreparable nor serious.” Hansen v. Eighth Jud. Dist. Ct. ex rel. Cty. of Clark, 116 Nev. 650, 658, 6 P.3d 982, 986 (2000). Further, “[m]ere injuries, however substantial, in terms of money, time and energy necessarily expended in the absence of a stay **are not enough**” to show irreparable harm. Id. (quoting Wisconsin Gas Co. v. F.E.R.C., 758 F.2d 669, 674 (D.C.Cir.1985)(internal quotations omitted)(emphasis added).

**Third: [NRAP 8(c)(3)]: whether the respondent will suffer irreparable or substantial harm if a stay is granted.**

This factor weighs heavily in favor of Plaintiffs. For many years Plaintiffs have attempted to obtain relevant evidence necessary to prove the claims asserted against firstSTREET and Jacuzzi. Plaintiffs’ attempts have been thwarted and neither firstSTREET nor Jacuzzi have acted in good faith in the discovery process, resulting in their Answers regarding liability being stricken.

As a result Plaintiffs have lost their fundamental right to have their case heard expeditiously. Here, the Court weighed moving this case to the Court’s trial stack beginning February 7, 2022, but determined that this would not assist the parties if the Nevada Supreme Court has not ruled on the Writs by then. Moreover, the Court notes that this case has been going on for quite some time and tends to agree the Plaintiffs that that given the target demographic of the Jacuzzi Walk-in Bathtub, some of the people involved in other incidents have since passed away, thereby forever depriving Plaintiffs of the testimony and evidence related to those incidents.



1 This Court has already found that Jacuzzi and firstSTREET withheld relevant  
2 information and failed to disclose relevant incidents. By granting a stay, additional delay will  
3 further deprive Plaintiffs of testimony and evidence. This harm is real, not just illusory. For  
4 instance, Donald Raidt, was someone who complained about the slipperiness of the tub and who  
5 slipped and fell leading to an injury. Mr. Raidt's incident was not turned over to Plaintiffs until  
6 July 26, 2019. Unfortunately, Mr. Raidt passed away on February 9, 2019. His relative, Karen  
7 Raidt Lee, died in June of 2019. His brother, Richard Arthur Raidt, died in May of 2019, and  
8 unfortunately, his son Richard Raidt, Jr. had no knowledge regarding Donald's injuries or the  
9 circumstances surrounding his fall or use of the Jacuzzi tub.

10 Another example is a husband and wife that complained to the Defendants about the tub  
11 floor and seat being too slippery which caused the couple to be fearful of using the tub for fear  
12 that Mrs. Arnouville would fall. The emails establish that the Arnouville complaint was known  
13 by Defendants in 2012. The Arnouville incident was not turned over to Plaintiffs until July 26,  
14 2019. Unfortunately, Mrs. Arnouville passed away on May 15, 2019. Her death has caused Mr.  
15 Arnouville to be too distraught to discuss the matter. Their son Jamey has no knowledge of his  
16 mother's use of the tub.

17 Important evidence was forever lost to Plaintiffs. Because of the uncertainty of how long  
18 a stay would last, any further delay will likely lead to additional evidence being lost, further  
19 prejudicing Plaintiffs. Furthermore, this Court believes that the Nevada Supreme Court is in a  
20 better position to determine when a ruling on Jacuzzi and firstSTREET's respective Writs will  
21 be ruled upon.

22  
23 **Fourth [NRAP 8(c)(4)]: Whether the appellant is likely to prevail on the merits of the**  
24 **appeal.**

25 District courts have broad discretion under NRCP 16.1, NRCP 26, NRCP 37. Additional  
26 power given to the District Courts have been discussed by the Nevada Supreme Court in cases  
27 like Young v. Johnny Ribeiro Bldg., Inc., 106 Nev. 88, 787 P.2d 777 (1990). In Young, the  
28 Supreme Court of Nevada held that courts have "inherent equitable powers to dismiss actions or

1 enter default judgments for ... abusive litigation practices. Litigants and attorneys alike should  
2 be aware that these powers may permit sanctions for discovery and other litigation abuses *not*  
3 *specifically proscribed by statute.*<sup>2</sup> The Court further stated, “while dismissal need not be  
4 preceded by other less severe sanctions, it should be imposed only after thoughtful  
5 consideration of all the factors involved in a particular case.” *Id.* at 92, 787 P.2d at 780.  
6 Additionally, the Young court “require[d] that every order of dismissal with prejudice as a  
7 discovery sanction be supported by an express, careful and preferably written explanation of the  
8 court’s analysis of the pertinent factors.”<sup>3</sup>

9 Additionally, this Court notes that the Nevada Supreme Court reviews discovery  
10 sanctions for an abuse of discretion. Thus, this Court’s Orders striking each of the Defendants’  
11 respective Answers will reviewed for an abuse of discretion, the Orders will **not** be reviewed de  
12 novo.

13 Here, in accordance with Young, this Court’s Orders were imposed only after thoughtful  
14 consideration of all the factors involved in [this] particular case and are supported by an  
15 express, careful and ...written explanation of the court’s analysis of the Young factors.  
16 Cognizant of this standard, this Court finds that firstSTREET and AITHR have a fair to good  
17 likelihood of success on the merits because they were not included in Judge Scott’s order and,  
18 therefore, potentially did not violate a court order. However, the Court notes that violation of an  
19 order is only one of the two separate and independent ways a party may run afoul of NRC  
20 16.1(c)(3). As such, this factor does not weigh heavily in favor of firstSTREET.

21 With respect to Jacuzzi, since its Writ is based on other grounds, this Court finds that no  
22 mandatory standard of review has been outlined by the Nevada Supreme Court, so there is little  
23 basis for this Court to conclude that Jacuzzi’s Writ will succeed under current Nevada law. The  
24 Nevada Supreme Court clearly distinguished between case-ending and non case-ending  
25 sanctions, and when case-ending sanctions were at issue the Court would apply a “heightened  
26

27 <sup>2</sup> 106 Nev. at 92, 787 P.2d at 779. (Internal quotation and citation omitted) (emphasis added).

28 <sup>3</sup> *Id.* at 93, 787 P.2d at 780.

1 standard” of review.<sup>4</sup> Because the sanction ordered against Jacuzzi was non case-ending, a  
2 “heightened standard” of review is not required. Although, this Court is careful to not confuse a  
3 “heightened standard of review,” with a “heightened standard” (i.e., preponderance versus clear  
4 and convincing), it does provide insight indicating that if our Supreme Court were to require  
5 proof by clear and convincing evidence as the standard of review for an evidentiary hearing,  
6 such as this, they would do so only for motions involving case-ending sanctions.

7  
8 **ORDER**

9 **IT IS HEREBY ORDERED** that both Motions to Stay are denied without prejudice.

10 Dated this 9th day of November, 2021

11   
12 \_\_\_\_\_

568 D3E FA0B 9940  
Crystal Eller  
District Court Judge

13 Prepared and Submitted by<sup>5</sup>:  
14 **RICHARD HARRIS LAW FIRM**  
15 /s/ Benjamin P. Cloward  
16 BENJAMIN P. CLOWARD, ESQ.  
17 Nevada Bar No. 11087  
18 IAN C. ESTRADA, ESQ.  
19 Nevada Bar No. 12575  
20 801 South Fourth Street  
21 Las Vegas, Nevada 89101  
22 *Attorneys for Plaintiffs*

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26 <sup>4</sup> Valley Health Sys., LLC v. Est. of Doe by & through Peterson, 134 Nev. 634, 638-39 (2018), as corrected (Oct. 1,  
27 2018) (citing Foster v. Dingwall, 126 Nev. 56, 65 (2010)).

28 <sup>5</sup> The Court received this document from Plaintiffs’ counsel, “redlined” by opposing counsel. The Court, having reviewed the documents and proposed edits, has made its own necessary revisions and executes this document without further review by Plaintiffs’ or Defendants’ counsel.



1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Robert Ansara, Plaintiff(s)

CASE NO: A-16-731244-C

7 vs.

DEPT. NO. Department 19

8 First Street for Boomers &  
9 Beyond Inc, Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District  
13 Court. The foregoing Order Denying Motion was served via the court's electronic eFile  
14 system to all recipients registered for e-Service on the above entitled case as listed below:

15 Service Date: 11/9/2021

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If indicated below, a copy of the above mentioned filings were also served by mail via United States Postal Service, postage prepaid, to the parties listed below at their last known addresses on 11/10/2021

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# EXHIBIT 4

*Heather S. Harris*  
CLERK OF THE COURT

**ORDR**

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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

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

**ORDER RE-OPENING  
DISCOVERY**





At the last hearing in this matter, the parties discussed, among other things, the Plaintiffs' request that discovery be re-opened given the numerous productions by the parties very late in the discovery period as well as after the discovery deadline. The timing of the productions by the Defendants has been extensively briefed by the parties and argued extensively in the various hearings on the motions to strike the answers of the Defendants. This Court has the authority and responsibility to efficiently manage its cases. As part of that responsibility, the Court needs to make sure that discovery is conducted in a meaningful way so that the parties can obtain the information they need in the search for truth, so that additional discovery motions can be minimized, and so that the parties will be able to efficiently present their evidence at trial. This Court deems it critical to make a further discovery ruling in this case now because this matter is soon to be re-assigned to a new Judge unfamiliar with the long and complicated history of this case.

The Court hereby ORDERS that the Discovery period is hereby re-opened, and the parties may conduct discovery on all issues that remain in the case through and including June 30, 2021. The Court notes that a Hearing on a new Motion regarding discovery is presently set; any remaining discovery issues may be discussed with the new Judge assigned to this matter at that time. The Court notes and Orders that the "Five-Year-Rule" period is extended another six (6) months, or as long as permitted under the Court's Administrative Orders, whichever is longer, for the reason that the Covid-19 pandemic substantially interfered with the parties' ability to proceed with discovery. A new Scheduling Order with Trial and Pre-Trial Dates should be discussed at the next Hearing in this matter, <sup>Dated this 31st day of December, 2020</sup> whenever that is.

IT IS SO ORDERED.

Prepared and Submitted by:  
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/s/ Benjamin P. Cloward  
BENJAMIN P. CLOWARD, ESQ.  
801 South Fourth Street  
Las Vegas, Nevada 89101  
*Attorneys for Plaintiffs*

1C9 B49 9F4B 6B5F  
Richard F. Scotti  
District Court Judge

1 **CSERV**

2  
3 DISTRICT COURT  
4 CLARK COUNTY, NEVADA

5  
6 Robert Ansara, Plaintiff(s)

CASE NO: A-16-731244-C

7 vs.

DEPT. NO. Department 2

8 First Street for Boomers &  
9 Beyond Inc, Defendant(s)

10  
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District  
13 Court. The foregoing Order was served via the court's electronic eFile system to all  
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# EXHIBIT 5



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13 *Attorneys for Plaintiffs*

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

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

23 Plaintiffs,

24 vs.

25 FIRST STREET FOR BOOMERS & BEYOND, INC.;  
26 AITHR DEALER, INC.; HALE BENTON, Individually,  
27 HOMECLICK, LLC; JACUZZI INC., doing business as  
28 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.: XIX

**NOTICE OF TAKING  
MULTIPLE VIDEOTAPED  
DEPOSITIONS FOR  
PURPOSES OF TRIAL  
PRESERVATION OUTSIDE  
THE STATE OF NEVADA**

**Date: See below  
Time: See below**





TO: ALL PARTIES and THEIR COUNSEL OF RECORD;

PLEASE TAKE NOTICE that the Plaintiffs in the above-entitled action will take the **videotaped** depositions for purposes of trial preservation outside the State of Nevada of the following witnesses as indicated in the table below pursuant to Rules 26, 30, and 32(a) of the Nevada Rules of Civil Procedure, before a notary public or some other officer authorized by law to administer oaths. This deposition will be video recorded.

Deponent	Date	Time	Location	Zoom Meeting ID / Passcode
Lois E. Gillespie	6/11/21	9:30 am EDT	9019 McIlvain Dr. Indianapolis, IN 46256	TBD
Randell T. Gillespie	6/11/21	11:00 am EDT	5824 E. Michigan St. Indianapolis, IN 46256	TBD
Lucille Marie Burgess	6/11/21	1:00 pm EDT	2555 Old US Hwy 40 NW London, OH 43140	TBD
Joe Vernon Burgess	6/11/21	2:00 pm EDT	2555 Old US Hwy 40 NW London, OH 43140	TBD
Todd M. Burgess	6/11/21	3:00 pm EDT	9775 Old Columbus Rd. South Vienna, OH 45369	TBD
Kathe W. Dolan	6/11/21	4:30 pm EDT	2635 Belle Christiane Cir. Pensacola, FL 32503	TBD
David W. Greenwell	6/15/21	9:30 am EDT	2615 Alps Rd. Louisville, KY 40216	TBD
David Roosevelt Greenwell	6/15/21	10:30 am EDT	6415 Stableview Pl. Louisville, KY 70228	TBD
David L. Greenwell	6/15/21	12:00 pm EDT	3010 Seneca Blvd. Louisville, KY 40205	TBD
Jeffrey Lynn Kinzer	6/15/21	2:00 pm EDT	11201 Brashier Hollow Rd SE Cumberland, MD 21502	TBD
Andrea Rae Kinzer	6/15/21	3:30 pm EDT	14508 Acorn Way Williamsport, MD 21795	TBD
David Williams	6/15/21	5:00 pm CDT	927 Broadway St. Pekin, IL 61554	TBD
Artie Lee Gatewood	6/16/21	9:00 am CDT	9401 New Harmony Rd. Poseyville, IN 47633	TBD
Nellie R. McDiffett	6/16/21	11:00 am CDT	311 E. Valley View St. Derby, KS 67037	TBD
Stanley F. McDiffett	6/16/21	12:30 pm CDT	311 E. Valley View St. Derby, KS 67037	TBD



Deponent	Date	Time	Location	Zoom Meeting ID / Passcode
Helen McDiffett	6/16/21	2:00 pm CDT	210 Main St. Alta Vista, KS 66834	TBD
Mary Miller King	6/16/21	4:00 pm CDT	663 Columbia Rd. #219 Magnolia, AR 71753	TBD
Robert King	6/16/21	5:00 pm CDT	663 Columbia Rd. #219 Magnolia, AR 71753	TBD
Manuel Joseph Arnouville	6/17/21	9:00 am CDT	5010 N. Bayou Black Dr. Gibson, LA 70356	TBD
Patricia Lynn Arnouville	6/17/21	10:00 am CDT	5010 N. Bayou Black Dr. Gibson, LA 70356	TBD
James Gregory Dolan	6/17/21	1:00 pm CDT	405 Oaklawn St. Kermit, TX 79745	TBD
Donald Joseph Raidt	6/17/21	3:00 pm CDT	11846 Mackey St. Overland Park, KS 66210	TBD
Karen Raidt Lee	6/18/21	9:00 am CDT	6318 Northland Dr. Houston, TX 77084	TBD
Richard Arthur Raidt	6/18/21	10:30 am CDT	3300 Parker Ln. #102 Austin, TX 78741	TBD
David-Shane Jason Greenwell	6/18/21	11:00 am PDT	5105 Forrest Hills Ln. Las Vegas, NV 89108	TBD
Alice I. Roehl	6/18/21	12:30 pm PDT	1884 Belhaven Ave. Simi Valley, CA 93063	TBD
Migdalia Valentin Roehl	6/18/21	1:30 pm PDT	1884 Belhaven Ave. Simi Valley, CA 93063	TBD
Karen W. Lugo	6/18/21	3:30 pm PDT	2316 Palos Verdes Dr. W. #7 Palos Verdes Estates, CA 90274	TBD

**PLEASE TAKE FURTHER NOTICE** that Plaintiffs have **not** retained the services of a **licensed interpreter** for this deposition, and hereby requests that the deponent or the deponent's attorney provide immediate notice of the need for a licensed interpreter for this deposition if such a need is required by the deponent. In the event the deponent and/or the deponent's attorney appear at the deposition without providing at least five (5) business days' notice prior to the deposition of the need for a licensed interpreter, and the deposition cannot proceed because of the lack of notice and the resulting absence of a licensed interpreter, the deponent and/or the deponent's attorney will be held jointly and severally responsible for any and all attorney fees and costs, including court reporter charges, incurred by Plaintiffs for this deposition.

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

3 DATED THIS 28th day of May, 2021.

4 **RICHARD HARRIS LAW FIRM**

5 /s/ Benjamin P. Cloward

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7 Nevada Bar No. 11087

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12 *Attorneys for Plaintiffs*





## CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b) and NEFCR 9, I hereby certify that on this 28th day of May, 2021, I caused to be served a true copy of the foregoing **NOTICE OF TAKING MULTIPLE VIDEOTAPED DEPOSITIONS FOR PURPOSES OF TRIAL PRESERVATION OUTSIDE THE STATE OF NEVADA** 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

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

☒ Electronic Service — By electronic means upon all eligible electronic recipients via the Clark County District Court e-filing system (Odyssey).

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

/s/ Catherine Barnhill

An employee of RICHARD HARRIS LAW FIRM



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# EXHIBIT 6

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Attorneys for Defendants/Cross-  
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BOOMERS AND BEYOND, INC.,  
AITHR DEALER, INC. and HALE BENTON

**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

CASE NO. A-16-731244-C  
DEPT. NO. 18

**DEFENDANTS FIRSTSTREET FOR  
BOOMERS AND BEYOND, INC.,  
AITHR DEALER, INC. AND HALE  
BENTON'S SEVENTH  
SUPPLEMENTAL EARLY CASE  
CONFERENCE PRODUCTION**

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.; 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,

Cross-Defendants.

WILLIAM BUDD, individually and as BUDDS  
PLUMBING,



1 Cross-Claimants,  
2 vs.  
3 FIRST STREET FOR BOOMERS & BEYOND,  
4 INC.; AITHR DEALER, INC.; HALE  
5 BENTON, individually; HOMECCLICK, LLC;  
6 JACUZZI INC., doing business as JACUZZI  
7 LUXURY BATH; BESTWAY BUILDING &  
8 REMODELING, INC.; DOES 1 through 20;  
9 ROE CORPORATIONS 1 through 20; DOE  
10 EMPLOYEES 1 through 20; DOE  
11 MANUFACTURERS 1 through 20; DOE 20  
12 INSTALLERS, 1 through 20; DOE  
13 CONTRACTORS 1 through 20; and DOE 21  
14 SUBCONTRACTORS 1 through 20, inclusive,  
15 Cross-Defendants.

12 **DEFENDANTS FIRSTSTREET FOR BOOMERS AND BEYOND, INC. AITHR**  
13 **DEALER, INC. AND HALE BENTON'S SEVENTH SUPPLEMENTAL EARLY**  
14 **CASE CONFERENCE PRODUCTION**

14 TO: ALL PARTIES HEREIN; and

15 TO: THEIR COUNSEL OF RECORD:

16 Defendants, FIRSTSTREET FOR BOOMERS AND BEYOND, INC., AITHR DEALER,  
17 INC. and HALE BENTON, hereby produces the following non-privileged tangible things which  
18 may be introduced into evidence and the identity of non-expert witnesses who may be called to  
19 testify at the trial of this matter:  
20

21 **I.**

22 **WITNESS LIST**

- 23
- 24 1. Robert Ansara, as Special Administrator of the Estate of Sherry Lyn Cunnison  
25 c/o Benjamin P. Cloward, Esq.  
26 Richard Harris Law Firm  
27 801 S. 4<sup>th</sup> Street  
28 Las Vegas, Nevada 89101  
(702)444-4444

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1 Mr. Ansara is expected to testify as to his understanding of the facts and circumstances  
2 surrounding the subject incident, including the damages the Estate allegedly has sustained as result  
3 thereof and any other information relevant to this matter.

4 2. Robert Ansara, as Personal Representative of Estate of Michael Smith  
5 c/o Benjamin P. Cloward, Esq.  
6 Richard Harris Law Firm  
7 801 S. 4<sup>th</sup> Street  
8 Las Vegas, Nevada 89101  
9 (702)444-4444

10 Mr. Smith is expected to testify as to his understanding of the facts and circumstances  
11 surrounding the subject incident, including the damages he allegedly has sustained as result thereof  
12 and any other information relevant to this matter

13 3. Deborah Tamantini individually, and heir to the Estate of Sherry Lyn Cunnison  
14 c/o Benjamin P. Cloward, Esq.  
15 Richard Harris Law Firm  
16 801 S. 4<sup>th</sup> Street  
17 Las Vegas, Nevada 89101  
18 (702)444-4444

19 Ms. Tamantini is expected to testify as to her understanding of the facts and circumstances  
20 surrounding the subject incident, including the damages she allegedly has sustained as result thereof  
21 and any other information relevant to this matter.

22 4. Corporate Representative(s) and/or Custodian of Records  
23 Firststreet for Boomers & Beyond, Inc.  
24 Dave Modena and  
25 John Fleming  
26 c/o Meghan M. Goodwin, Esq.  
27 THORNDAL ARMSTRONG DELK BALKENBUSH & EISINGER  
28 1100 E. Bridger Avenue  
Las Vegas, NV 89101  
(702) 366-0622

The Corporate Representative(s) and/or Custodian of Records (including Dave Modena  
and/or John Fleming) for Firststreet for Boomers & Beyond, Inc. is expected to testify as to his/her

1 understanding of the facts and circumstances surrounding the subject incident, and any other  
2 information relevant to this matter.

- 3 5. Corporate Representative(s) and/or Custodian of Records  
4 AITHR Dealer Inc., and  
5 Dave Modena  
6 c/o Meghan M. Goodwin, Esq.  
7 THORNDAL ARMSTRONG DELK BALKENBUSH & EISINGER  
8 1100 E. Bridger Avenue  
9 Las Vegas, NV 89101  
10 (702) 366-0622

11 The Corporate Representative(s) and/or Custodian of Records for AITHR Dealer Inc.  
12 (including Dave Modena) is expected to testify as to his/her understanding of the facts and  
13 circumstances surrounding the subject incident, and any other information relevant to this matter.

- 14 6. Corporate Representative(s) and/or Custodian of Records  
15 The Chicago Faucet Company  
16 c/o Scott R. Cook, Esq.  
17 Kolesar & Leatham  
18 400 South Rampart Blvd., Suite 400  
19 Las Vegas, Nevada 89145  
20 (702) 362-7800

21 The Corporate Representative(s) and/or Custodian of Records for The Chicago Faucet  
22 Company is expected to testify as to his/her understanding of the facts and circumstances  
23 surrounding the subject incident, including all products sold by Chicago Faucets and any other  
24 information relevant to this matter.

- 25 7. Corporate Representative(s) and/or Custodian of Records  
26 Homeclick, LLC  
27 c/o Michael E. Stoberski, Esq.  
28 OLSON, CANNON, GORMLEY, ANGULO & STOBERSKI  
9950 W. Cheyenne Avenue  
Las Vegas, NV 89129  
(702) 384-4012

The Corporate Representative(s) and/or Custodian of Records for Homeclick, LLC is  
expected to testify as to his/her understanding of the facts and circumstances surrounding the  
subject incident, and any other information relevant to this matter.

1 8. Corporate Representative(s) and/or Custodian of Records  
2 Jacuzzi Brands, LLC and/or  
3 Audrey Martinez  
4 Drew Meng  
5 Raymond Torres  
6 Tom Koos  
7 William Demeritt  
8 Michael A. Dominguez  
9 c/o Vaughn A. Crawford, Esq.  
10 SNELL & WILMER LLP  
11 3883 Howard Hughes Parkway, Suite 1100  
12 Las Vegas, NV 89169  
13 (702) 784-5200

14 The Corporate Representative(s) and/or Custodians of Records for Jacuzzi Brands, LLC  
15 and/or fact witnesses (including William Demeritt, Michael Dominguez, Tom Koos, Raymond  
16 Torres, Drew Meng, and Audrey Martinez) are expected to testify as to his/her understanding of the  
17 facts and circumstances surrounding the subject incident, and any other information relevant to this  
18 matter, including the design and manufacture of the subject tub, and to the marketing and  
19 advertising of the subject tub.

20 9. Corporate Representative(s) and/or Custodian of Records  
21 Bestway Building & Remodeling, Inc. and/or  
22 Joe Tilt  
23 c/o Stephen J. Erigero  
24 Ropers, Majeski, Kohn & Bentley  
25 3753 Howard Hughes Pkwy, Suite 200  
26 Las Vegas, NV 89169  
27 (702) 954-8300

28 The Corporate Representative(s) and/or Custodian of Records for Bestway Building &  
Remodeling, Inc. (including Joe Tilt) is expected to testify as to his/her understanding of the facts  
and circumstances surrounding the subject incident, and any other information relevant to this  
matter.

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10. Corporate Representative(s) and/or Custodian of Records

Budd's Plumbing and/or  
William Budd  
c/o Joseph P. Garin, Esq.  
Lipson, Neilson, Cole, Selzer & Garin  
9900 Covington Cross Drive, Suite 120  
Las Vegas, Nevada 89144  
(702) 382-1500

The Corporate Representative(s) and/or Custodian of Records for Budd's Plumbing  
(including William Budd) is expected to testify as to his/her understanding of the facts and  
circumstances surrounding the subject incident, and any other information relevant to this matter.

11. Corporate Representative(s) and/or Custodian of Records

Clark County Coroner  
1704 Pinto Lane  
Las Vegas, NV 89106  
(702) 455-3210

The Corporate Representative(s) from Clark County Coroner is expected to testify as to  
his/her understanding of the facts and circumstances surrounding the subject incident, including  
the investigation and subsequent findings thereof.

12. Timothy Dutra, M.D., Coroner  
Kristen Peters, Coroner Investigator  
Daniel S. Isenschmid, Ph.D., D-ABFT, Forensic Toxicologist  
Clark County Coroner  
1704 Pinto Lane  
Las Vegas, NV 89106  
(702) 455-3210

Dr. Dutra, Kristen Peters, and Dr. Isenschmid are expected testify as to their understanding  
of the facts and circumstances surrounding the subject incident, including the investigation and  
subsequent findings thereof pertaining to Ms. Cunnison's cause of death.

13. Hale Benton

c/o Meghan M. Goodwin, Esq.  
THORNDAL ARMSTRONG DELK BALKENBUSH & EISINGER  
1100 E. Bridger Avenue  
Las Vegas, NV 89101  
(702) 366-0622

1 Mr. Benton is expected to testify as to his understanding of the facts and circumstances  
2 surrounding the subject incident, including all goods and services provided to any party involved in  
3 this matter and any other information relevant to this matter.

4 14. Corporate Representative(s) and/or Custodian of Records  
5 Palm Eastern Cemetery  
6 7600 S. Eastern Avenue  
7 Las Vegas, NV 89123  
8 (702) 464-8500

9 The Corporate Representative(s) and/or Custodian of Records from Palm Eastern Cemetery  
10 is expected to testify as to his/her understanding of the facts and circumstances surrounding the  
11 subject incident, including all goods and services provided to any party involved in this matter and  
12 any other information relevant to this matter.

13 15. Corporate Representative(s) and/or Custodian of Records  
14 Las Vegas Fire & Rescue  
15 500 N. Casino Center Boulevard  
16 Las Vegas, NV 89101  
17 (702) 383-2888

18 The Corporate Representative(s) from Las Vegas Fire & Rescue is expected to testify as to  
19 his/her understanding of the facts and circumstances surrounding the subject incident, including the  
20 investigation and subsequent findings thereof

21 16. Corporate Representative(s) and/or Custodian of Records  
22 MedicWest Ambulance  
23 9 W. Delhi Avenue  
24 North Las Vegas, NV 89032  
25 (702) 650-9900

26 The Corporate Representative(s) and/or Custodian of Records from MedicWest Ambulance  
27 are expected to testify as to the care and treatment provided to Decedent and to the authenticity of  
28 the records.

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1 17. Carlos Fonseca,  
2 Paramedic MedicWest Ambulance  
3 9 W. Delhi Avenue  
4 North Las Vegas, NV 89032  
5 (702) 650-9900

6 Medic Fonseca is expected to testify as to the care and treatment provided to Decedent  
7 Sherry Lyn Cunnison.

8 18. Brennan Demille, EMT Intermediate  
9 MedicWest Ambulance  
10 9 W. Delhi Avenue  
11 North Las Vegas, NV 89032  
12 (702) 650-9900

13 Medic Demille is expected to testify as to the care and treatment provided to Decedent  
14 Sherry Lyn Cunnison.

15 19. Corporate Representative(s) and/or Custodian of Records  
16 Sunrise Hospital & Medical Center  
17 3186 S. Maryland Parkway  
18 Las Vegas, NV 89109  
19 (702) 731-8000

20 The Corporate Representative(s) and/or Custodian of Records from Sunrise Hospital &  
21 Medical Center are expected to testify as to the care and treatment provided to Decedent, Sherry  
22 Lyn Cunnison, and to the authenticity of the records.

23 20. Muhammad A. Syed, M.D. Sunrise Hospital & Medical Center  
24 3186 S. Maryland Parkway  
25 Las Vegas, NV 89109  
26 (702) 731-8000

27 Dr. Syed is expected to testify as to the care and treatment provided to Decedent, Sherry  
28 Lyn Cunnison.

21. James Walker, D.O.  
Sunrise Hospital & Medical Center  
3186 S. Maryland Parkway  
Las Vegas, NV 89109  
(702) 731-8000

1 Dr. Walker is expected to testify as to the care and treatment provided to Decedent, Sherry  
2 Lyn Cunnison.

3 22. Kitty Ho Cain, M.D.  
4 Sunrise Hospital & Medical Center  
5 3186 S. Maryland Parkway  
6 Las Vegas, NV 89109  
7 (702) 731-8000

8 Dr. Cain is expected to testify as to the care and treatment provided to Decedent, Sherry Lyn  
9 Cunnison.

10 23. Lindsey C. Blake, M.D.  
11 Sunrise Hospital & Medical Center  
12 3186 S. Maryland Parkway  
13 Las Vegas, NV 89109  
14 (702) 731-8000

15 Dr. Blake is expected to testify as to the care and treatment provided to Decedent, Sherry  
16 Lyn Cunnison.

17 24. Holman Chan, M.D.  
18 Sunrise Hospital & Medical Center  
19 3186 S. Maryland Parkway  
20 Las Vegas, NV 89109  
21 (702) 731-8000

22 Dr. Chan is expected to testify as to the care and treatment provided to Decedent, Sherry  
23 Lyn Cunnison.

24 25. Hany F. Ghali, M.D.  
25 Sunrise Hospital & Medical Center  
26 3186 S. Maryland Parkway  
27 Las Vegas, NV 89109  
28 (702) 731-8000

Dr. Ghali is expected to testify as to the care and treatment provided to Decedent, Sherry  
Lyn Cunnison.

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1           26. Sayed Z. Qazi, M.D.  
2           Sunrise Hospital & Medical Center  
3           3186 S. Maryland Parkway  
4           Las Vegas, NV 89109  
5           (702) 731-8000

6           Dr. Qazi is expected to testify as to the care and treatment provided to Decedent, Sherry  
7           Lyn Cunnison.

8           27. Muhammad Bhatti, M.D.  
9           Sunrise Hospital & Medical Center  
10          3186 S. Maryland Parkway  
11          Las Vegas, NV 89109  
12          (702) 731-8000

13          Dr. Bhatti is expected to testify as to the care and treatment provided to Decedent, Sherry  
14          Lyn Cunnison.

15          28. Wayne Jacobs, M.D.  
16          Sunrise Hospital & Medical Center  
17          3186 S. Maryland Parkway  
18          Las Vegas, NV 89109  
19          (702) 731-8000

20          Dr. Jacobs is expected to testify as to the care and treatment provided to Decedent, Sherry  
21          Lyn Cunnison.

22          29. Yekaterina K.hronusova, M.D.  
23          Sunrise Hospital & Medical Center  
24          3186 S. Maryland Parkway  
25          Las Vegas, NV 89109  
26          702) 731-8000

27          Dr. K.hronusova is expected to testify as to the care and treatment provided to Decedent,  
28          Sherry Lyn Cunnison.

29          30. Mark Vandenbosch, M.D.  
30          Sunrise Hospital & Medical Center  
31          3186 S. Maryland Parkway  
32          Las Vegas, NV 89109  
33          (702) 731-8000

1 Dr. Vandembosch is expected to testify as to the care and treatment provided to Decedent,  
2 Sherry Lyn Cunnison.

3 31. Chris J. Fischer, M.D.  
4 Sunrise Hospital & Medical Center  
5 23186 S. Maryland Parkway  
6 Las Vegas, NV 89109  
7 (702) 731-8000

8 Dr. Fischer is expected to testify as to the care and treatment provided to Decedent, Sherry  
9 Lyn Cunnison.

10 32. Shirin Rahman, M.D.  
11 Sunrise Hospital & Medical Center  
12 3186 S. Maryland Parkway  
13 Las Vegas, NV 89109  
14 (702) 731-8000

15 Dr. Rahman is expected to testify as to the care and treatment provided to Decedent, Sherry  
16 Lyn Cunnison.

17 33. Sean D. Beaty, M.D.  
18 Sunrise Hospital & Medical Center  
19 3186 S. Maryland Parkway  
20 Las Vegas, NV 89109  
21 (702) 731-8000

22 Dr. Beaty is expected to testify as to the care and treatment provided to Decedent, Sherry  
23 Lyn Cunnison.

24 34. Joshua Owen, M.D.  
25 Sunrise Hospital & Medical Center  
26 3186 S. Maryland Parkway  
27 Las Vegas, NV 89109  
28 (702) 731-8000

Dr. Owen is expected to testify as to the care and treatment provided to Decedent, Sherry  
Lyn Cunnison.

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1 35. Rafael Valencia, M.D.  
2 Sunrise Hospital & Medical Center  
3 3186 S. Maryland Parkway  
4 Las Vegas, NV 89109  
5 (702) 731-8000

6 Dr. Valencia is expected to testify as to the care and treatment provided to Decedent, Sherry  
7 Lyn Cunnison.

8 36. David P. Gorczyca, M.D.  
9 Sunrise Hospital & Medical Center  
10 3186 S. Maryland Parkway  
11 Las Vegas, NV 89109  
12 (702) 731-8000

13 Dr. Gorczyca is expected to testify as to the care and treatment provided to Decedent,  
14 Sherry Lyn Cunnison.

15 37. Dean P. Berthoty, M.D.  
16 Sunrise Hospital & Medical Center  
17 3186 S. Maryland Parkway  
18 Las Vegas, NV 89109  
19 (702) 731-8000

20 Dr. Berthoty is expected to testify as to the care and treatment provided to Decedent, Sherry  
21 Lyn Cunnison.

22 38. Robert N. Berkley, M.D.  
23 Sunrise Hospital & Medical Center  
24 3186 S. Maryland Parkway  
25 Las Vegas, NV 89109  
26 (702) 731-8000

27 Dr. Berkley is expected to testify as to the care and treatment provided to Decedent, Sherry  
28 Lyn Cunnison.

39. Corporate Representative(s) and/or Custodian of Records  
Davis Funeral Homes & Memorial Park  
6200 S. Eastern Avenue  
Las Vegas, NV 89119  
(702) 736-6200

1 The Corporate Representative(s) and/or Custodian of Records from Davis Funeral Homes  
2 & Memorial Park is expected to testify as to his/her understanding of the facts and circumstances  
3 surrounding the subject incident, including all goods and services provided to any party involved in  
4 this matter and any other information relevant to this matter.

5 40. Jesse Blanchard, Paramedic  
6 MedicWest Ambulance  
7 9 W. Delhi Avenue  
8 North Las Vegas, NV 89032  
(702) 650-9900

9 Medic Blanchard is expected to testify as to the care and treatment provided to Decedent  
10 Sherry Lyn Cunnison.

11 41. Vactor Montecerin, Paramedic  
12 MedicWest Ambulance  
13 9 W. Delhi Avenue  
14 North Las Vegas, NV 89032  
(702) 650-9900

15 Medic Montecerin is expected to testify as to the care and treatment provided to Decedent  
16 Sherry Lyn Cunnison.

17 42. Jimmy Chavez, Paramedic  
18 MedicWest Ambulance  
19 9 W. Delhi Avenue  
North Las Vegas, NV 89032 (702) 650-9900

20 Medic Chavez is expected to testify as to the care and treatment provided to Decedent  
21 Sherry Lyn Cunnison.

22 43. Luke Crawford, EMT Intermediate  
23 MedicWest Ambulance  
24 9 W. Delhi Avenue  
25 North Las Vegas, NV 89032  
(702) 650-9900

26 Medic Crawford is expected to testify as to the care and treatment provided to Decedent  
27 Sherry Lyn Cunnison.  
28

1           44. Jenna Lamperti, EMT Intermediate  
2           MedicWest Ambulance  
3           9 W. Delhi Avenue  
4           North Las Vegas, NV 89032  
5           (702) 650-9900

6           Medic Lamperti is expected to testify as to the care and treatment provided to Decedent  
7           Sherry Lyn Cunnison.

8           45. Jacob Stamer, EMT  
9           MedicWest Ambulance  
10          9 W. Delhi Avenue  
11          North Las Vegas, NV 89032  
12          (702) 650-9900

13          Medic Stamer is expected to testify as to the care and treatment provided to Decedent  
14          Sherry Lyn Cunnison.

15          46. Corporate Representative(s) and/or Custodian of Records  
16          Kindred Hospital Las Vegas-Flamingo  
17          2250 E. Flamingo Road Las Vegas, NV 89119  
18          (702) 784-4300

19          The Corporate Representative(s) and/or Custodian of Records from Kindred Hospital Las  
20          Vegas-Flamingo are expected to testify as to the care and treatment provided to Decedent, Sherry  
21          Lyn Cunnison, and to the authenticity of the records.

22          47. Corporate Representative(s) and/or Custodian of Records  
23          Southern Nevada Medical & Rehab Center  
24          2945 Casa Vegas Street  
25          Las Vegas, NV 89109  
26          (702) 735-7179

27          The Corporate Representative(s) and/or Custodian of Records from Southern Nevada  
28          Medical & Rehab Center are expected to testify as to the care and treatment provided to Decedent,  
29          Sherry Lyn Cunnison, and to the authenticity of the records.

30          48. Corporate Representative(s) and/or Custodian of Records  
31          Walgreens Pharmacy  
32          4895 Boulder Highway  
33          Las Vegas, NV 89121  
34          (702) 898-5264

1 The Corporate Representative(s) and/or Custodian of Records from Walgreens Pharmacy  
2 are expected to testify as to all prescriptions provided to Decedent, Sherry Lyn Cunnison, and to  
3 the authenticity of the records.  
4

5 49. Corporate Representative(s) and/or Custodian of Records  
MountainView Hospital  
6 3100 N. Tenaya Way  
Las Vegas, NV 89128  
7 (702) 962-5000  
8

9 The Corporate Representative(s) and/or Custodian of Records from MountainView  
10 Hospital are expected to testify as to the care and treatment provided to Decedent, Sherry Lyn  
11 Cunnison, and to the authenticity of the records.

12 50. Corporate Representative(s) and/or Custodian of Records  
Desert Springs Hospital  
13 2075 E. Flamingo Road  
Las Vegas, NV 89119  
14 (702) 733-8800  
15

16 The Corporate Representative(s) and/or Custodian of Records from Desert Springs  
17 Hospital are expected to testify as to the care and treatment provided to Decedent, Sherry Lyn  
18 Cunnison, and to the authenticity of the records.

19 51. Daniel D. Lee, M.D.  
Sunrise Hospital & Medical Center  
20 3186 S. Maryland Parkway  
Las Vegas, NV 89109  
21 (702) 731-8000  
22

23 Dr. Lee is expected to testify as to the care and treatment provided to Decedent, Sherry Lyn  
24 Cunnison.

25 52. Shameyel Roshan, D.O.  
Sunrise Hospital & Medical Center  
26 3186 S. Maryland Parkway  
Las Vegas, NV 89109  
27 (702) 731-8000  
28

1 Dr. Roshan is expected to testify as to the care and treatment provided to Decedent, Sherry  
2 Lyn Cunnison.

3 53. Arjun V. Gururaj, M.D.  
4 Sunrise Hospital & Medical Center  
5 3186 S. Maryland Parkway  
6 Las Vegas, NV 89109  
7 (702) 731-8000

8 Dr. Gururaj is expected to testify as to the care and treatment provided to Decedent, Sherry  
9 Lyn Cunnison.

10 54. Nicolaos Tsiouris, M.D.  
11 Sunrise Hospital & Medical Center  
12 3186 S. Maryland Parkway  
13 Las Vegas, NV 89109  
14 (702) 731-8000

15 Dr. Tsiouris is expected to testify as to the care and treatment provided to Decedent, Sherry  
16 Lyn Cunnison.

17 55. Warren Wheeler, M.D.  
18 Sunrise Hospital & Medical Center  
19 3186 S. Maryland Parkway  
20 Las Vegas, NV 89109  
21 (702) 731-8000

22 Dr. Wheeler is expected to testify as to the care and treatment provided to Decedent, Sherry  
23 Lyn Cunnison.

24 56. Gyorgy Varsanyi, M.D.  
25 Sunrise Hospital & Medical Center  
26 3186 S. Maryland Parkway  
27 Las Vegas, NV 89109  
28 (702) 731-8000

Dr. Varsanyi is expected to testify as to the care and treatment provided to Decedent, Sherry  
Lyn Cunnison.

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1 57. David Silverberg, M.D.  
2 Sunrise Hospital & Medical Center  
3 3186 S. Maryland Parkway  
4 Las Vegas, NV 89109  
5 (702) 731-8000

6 Dr. Silverberg is expected to testify as to the care and treatment provided to Decedent,  
7 Sherry Lyn Cunnison.

8 58. Douglas M. Sides, M.D.  
9 Sunrise Hospital & Medical Center  
10 3186 S. Maryland Parkway  
11 Las Vegas, NV 89109  
12 (702) 731-8000

13 Dr. Sides is expected to testify as to the care and treatment provided to Decedent, Sherry  
14 Lyn Cunnison.

15 59. Richard A. Schwartz, M.D.  
16 Sunrise Hospital & Medical Center  
17 3186 S. Maryland Parkway  
18 Las Vegas, NV 89109  
19 (702) 731-8000

20 Dr. Schwartz is expected to testify as to the care and treatment provided to Decedent, Sherry  
21 Lyn Cunnison.

22 60. Ronald F. Sauer, Jr., D.O.  
23 Sunrise Hospital & Medical Center  
24 3186 S. Maryland Parkway  
25 Las Vegas, NV 89109  
26 (702) 731-8000

27 Dr. Sauer is expected to testify as to the care and treatment provided to Decedent, Sherry  
28 Lyn Cunnison.

61. Corporate Representative(s) and/or Custodian of Records  
Las Vegas Metropolitan Police Department  
400 S. Martin Luther King Boulevard  
Las Vegas, NV 89106  
(702) 828-3111



1 The Corporate Representative(s) and/or Custodian of Records for Las Vegas Metropolitan  
2 Police Department is expected to testify as to his/her understanding of the facts and circumstances  
3 surrounding the subject incident, including the investigation conducted and subsequent findings and  
4 any other information relevant to this matter.

5 62. Officer, Matthew Scanlon  
6 Las Vegas Metropolitan Police Department  
7 400 S. Martin Luther King Boulevard  
8 Las Vegas, NV 89106  
9 (702) 828-3111

10 Officer Scanlon is expected to testify as to his understanding of the facts and circumstances  
11 surrounding the subject incident, including the investigation conducted and subsequent findings and  
12 any other information relevant to this matter.

13 63. Officer, Kevin Lemire  
14 Las Vegas Metropolitan Police Department  
15 400 S. Martin Luther King Boulevard  
16 Las Vegas, NV 89106  
17 (702) 828-3111

18 Officer Lemire is expected to testify as to his understanding of the facts and circumstances  
19 surrounding the subject incident, including the investigation conducted and subsequent findings and  
20 any other information relevant to this matter.

21 64. Officer, Matthew Shake  
22 Las Vegas Metropolitan Police Department  
23 400 S. Martin Luther King Boulevard  
24 Las Vegas, NV 89106  
25 (702) 828-3111

26 Officer Shake is expected to testify as to his understanding of the facts and circumstances  
27 surrounding the subject incident, including the investigation conducted and subsequent findings and  
28 any other information relevant to this matter.

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1           65. Officer, Keith Bryant  
2               Las Vegas Metropolitan Police Department  
3               400 S. Martin Luther King Boulevard  
4               Las Vegas, NV 89106  
5               (702) 828-3111

6           Officer Bryant is expected to testify as to his understanding of the facts and circumstances  
7           surrounding the subject incident, including the investigation conducted and subsequent findings and  
8           any other information relevant to this matter.

9           66. Officer, Shakeel Abdal-Karim  
10               Las Vegas Metropolitan Police Department  
11               400 S. Martin Luther King Boulevard  
12               Las Vegas, NV 89106  
13               (702) 828-3111

14           Officer Abdal-Karim is expected to testify as to his understanding of the facts and  
15           circumstances surrounding the subject incident, including the investigation conducted and  
16           subsequent findings and any other information relevant to this matter.

17           67. Officer, Brad Venpamel  
18               Las Vegas Metropolitan Police Department  
19               400 S. Martin Luther King Boulevard  
20               Las Vegas, NV 89106  
21               (702) 828-3111

22           Officer Venpamel is expected to testify as to his understanding of the facts and  
23           circumstances surrounding the subject incident, including the investigation conducted and  
24           subsequent findings and any other information relevant to this matter.

25           68. Sergeant, Dana Pickerel  
26               Las Vegas Metropolitan Police Department  
27               400 S. Martin Luther King Boulevard  
28               Las Vegas, NV 89106  
              (702) 828-3111

              Sergeant Pickerel is expected to testify as to his/her understanding of the facts and  
circumstances surrounding the subject incident, including the investigation conducted and  
subsequent findings and any other information relevant to this matter.

1           69. Sergeant, Allen Larsen  
2           Las Vegas Metropolitan Police Department  
3           400 S. Martin Luther King Boulevard  
4           Las Vegas, NV 89106  
5           (702) 828-3111

6           Sergeant Larsen is expected to testify as to his understanding of the facts and circumstances  
7           surrounding the subject incident, including the investigation conducted and subsequent findings and  
8           any other information relevant to this matter.

9           70. Corporate Representative(s) and/or Custodian of Records  
10          Clark County Fire Department  
11          575 E. Flamingo Road  
12          Las Vegas, NV 89119  
13          (702) 455-7311

14          The Corporate Representative(s) from Clark County Fire Department is expected to testify  
15          as to his/her understanding of the facts and circumstances surrounding the subject incident,  
16          including the investigation and subsequent findings thereof.

17          71. Nicholas Stahlberger, Paramedic  
18          Clark County Fire Department  
19          575 E. Flamingo Road  
20          Las Vegas, NV 89119  
21          (702) 455-7311

22          Paramedic Stahlberger is expected to testify as to his understanding of the facts and  
23          circumstances surrounding the subject incident, including the investigation and subsequent findings  
24          thereof.

25          72. William Lewis  
26          5354 Camden Avenue  
27          Las Vegas, NV 89122  
28          (702) 580-0017

            William Lewis called 911 for wellness check on Plaintiff in 2007 and is also the person who  
            called 911 regarding the subject incident. Mr. Lewis is expected to testify as to the facts and  
            circumstances surrounding the 911 calls.

1           73. Michael Zuvar  
2                 746655 Willow Drive  
3                 Doyle, CA 96109  
4                 (775) 560-7791

5           Michael Zuvar is expected to testify regarding the removal of the subject walk-in tub after  
6           the incident and as to the facts and circumstances surrounding the subject incident.

7           74. Michael Showalter  
8                 5500 Celestial Way  
9                 Citrus Heights, CA 95610  
10                (831) 595-1015 (cell)  
11                (916) 903-7186 (home)

12           Michael Showalter is expected to testify as to the facts and circumstances surrounding the  
13           subject incident.

14           75. Frederick J. Tanenggee, M.D.  
15                 Health Care Partners Nevada  
16                 129 W. Lake Mead, Suite 10  
17                 Henderson, NV 89015

18           Dr. Tanenggee is expected to testify as to Decedent's condition, care and treatment provided to  
19           Decedent.

20           76. Sachit Das, M.D.  
21                 Kindred Hospital Las Vegas-Flamingo  
22                 2250 E. Flamingo Road  
23                 Las Vegas, NV 89119  
24                 (702) 784-4300

25           Dr. Das is expected to testify as to the care and treatment provided to Decedent, Sherry Lyn  
26           Cunnison.

27           77. Robert M. Yeh, M.D.  
28                 Kindred Hospital Las Vegas-Flamingo  
                2250 E. Flamingo Road  
                Las Vegas, NV 89119  
                (702) 784-4300

            Dr. Yeh is expected to testify as to the care and treatment provided to Decedent, Sherry Lyn  
            Cunnison.

1 78. Prashant Bharucha, M.D.  
2 Desert Springs Hospital  
3 2075 E. Flamingo Road  
4 Las Vegas, NV 89119  
5 (702) 733-8800

6 Dr. Bharucha is expected to testify as to the care and treatment provided to Decedent,  
7 Sherry Lyn Cunnison.

8 79. Randal Shelin, M.D.  
9 Desert Springs Hospital  
10 32075 E. Flamingo Road  
11 Las Vegas, NV 89119  
12 (702) 733-8800

13 Dr. Shelin is expected to testify as to the care and treatment provided to Decedent, Sherry  
14 Lyn Cunnison.

15 80. Armen Hovanessian, M.D.  
16 Desert Springs Hospital  
17 2075 E. Flamingo Road  
18 Las Vegas, NV 89119  
19 (702) 733-8800

20 Dr. Hovanessian is expected to testify as to the care and treatment provided to Decedent,  
21 Sherry Lyn Cunnison.

22 81. Scott Cunnison  
23 23840 Southpoint Drive  
24 Denham Springs, LA 70726

25 Mr. Cunnison is expected to testify as to his understanding of the facts and circumstances  
26 surrounding the subject incident, including any other relevant information regarding this matter.

27 82. James T. Cunnison  
28 418 Burnham Street  
Hampton, VA 23669

Mr. Cunnison is expected to testify as to his understanding of the facts and circumstances  
surrounding the subject incident, including any other relevant information regarding this matter.

1 83. John S. Cunnison  
2 501 S.W. 16th Street  
3 Blue Springs, MO 64015

4 Mr. Cunnison is expected to testify as to his understanding of the facts and circumstances  
5 surrounding the subject incident, including any other relevant information regarding this matter.

6 84. Corporate Representative and/or Custodian  
7 Health Care Partners Nevada  
8 129 W. Lake Mead, Suite 10  
9 Henderson, NV 89015

10 The Corporate Representative and/or Custodian of Records from HealthCare Partners are  
11 expected to testify as to the care and treatment provided to Decedent, Sherry Lyn Cunnison, and to  
12 the authenticity of the records

13 85. Benjamin Muir, M.D.  
14 HealthCare Partners  
15 700 E. Warm Springs Road, Suite 110  
16 Las Vegas, NV 89119  
17 (702) 318-24

18 Dr. Muir expected to testify as to the care and treatment provided to Decedent, Sherry Lyn  
19 Cunnison.

20 86. Michael Carducci, M.D. HealthCare Partners  
21 700 E. Warm Springs Road, Suite 110  
22 Las Vegas, NV 89119  
23 (702) 318-2400

24 Dr. Carducci expected to testify as to the care and treatment provided to Decedent, Sherry  
25 Lyn Cunnison.

26 87. Corporate Representative and/or Custodian of Records  
27 Comprehensive & Interventional Pain Management  
28 10561 Jeffreys Street, Suite 211  
Henderson, NV 89052  
(702) 990-4530

1 The Corporate Representative and/or Custodian of Records from Comprehensive &  
2 Interventional Pain Management are expected to testify as to the care and treatment provided to  
3 Decedent, Sherry Lyn Cunnison, and to the authenticity of the records

4 88. Daniel Fabito, M.D.  
5 Comprehensive & Interventional Pain Management  
6 10561 Jeffreys Street, Suite 211  
7 Henderson, NV 89052  
8 (702) 990-4530

9 Dr. Fabito is expected to testify as to the care and treatment provided to Decedent, Sherry  
10 Lyn Cunnison and the authentication of medical records. This witness may be called to testify as a  
11 non-retained expert treating medical provider.

12 89. Othella A. Jurani-Suarez, M.D. HealthCare Partners  
13 9280 W. Sunset Road  
14 Las Vegas, NV 89148  
15 (702) 534-5464

16 Dr. Jurani-Suarez is expected to testify as to the care and treatment provided to Decedent,  
17 Sherry Lyn Cunnison.

18 90. Michael Her, M.D.  
19 1236 N. Magnolia Avenue  
20 Anaheim, CA 92801  
21 (714) 995-1000

22 Dr. Her is expected to testify as to the care and treatment provided to Decedent, Sherry Lyn  
23 Cunnison.

24 91. Thomas L. Bennett, M.D.  
25 Forensic Medicine and Pathology, PLLC  
26 6 Canyon View Drive  
27 Sheridan, WY 82801-9008

28 Dr. Bennett is a Pathologist and he is expected to testify regarding the pathology and the  
cause of Decedent Sherry Lynn Cunnison's death, as well as respond to issues raised by the other  
parties' experts.

1           92. Tara T. Amenson, Ph.D., M.P.H, ASP, CSP, CPST, CPSI, CXL/T  
2           S-E-A, Ltd.  
3           7001 Buffalo Parkway  
4           Columbus, Ohio 43229  
5           Telephone: (800) 782-6851

6           Dr. Amenson is a biomedical expert and is expected to testify to the matters contained in  
7 her rebuttal report and any supplements thereto. She is expected to offer opinions and rebuttal  
8 opinions to those expressed by Plaintiff's designated human factors experts, and potentially  
9 Plaintiff's lay witnesses. Dr. Amenson is further expected to testify as to her review and analysis of  
10 the discovery to date, the Plaintiff's physical condition, the standards of care as they relate to the  
11 subject product and/or any marketing and advertising. Dr. Amenson's testimony may result in  
12 opinions that are considered outside the scope of this rebuttal designation, and the Defendants  
13 submit this designation in compliance with the Nevada Rules of Civil Procedure regarding those  
14 opinions.

15           Further, Defendants reserves the right to designate the following witnesses upon  
16 identification through discovery:

17           A.     All of Plaintiff's doctors and other medical care providers who treated Plaintiff for  
18 injuries allegedly sustained in the subject incident, and any prior or subsequent incidents, who will  
19 testify concerning the nature of said treatments, diagnosis and prognosis, including all emergency  
20 room physicians and other technicians who may not be considered Plaintiff's "treating" physicians.

21           B.     Any independent medical examiner retained by Defendants or any other party to  
22 examine Plaintiff concerning her injuries which may have resulted from the subject incident, who  
23 will testify as to diagnosis and prognosis.  
24

25           C.     All necessary records custodians for purposes of document foundation.

26           D.     All witnesses identified by Plaintiff or any other party.

27           Defendants reserve the right to call any witnesses named by Plaintiff or any other party for  
28



1 the purpose of rebuttal, impeachment, and/or as an expert witness.

2 Defendants may call at trial as non-retained expert witnesses any and all of Plaintiff's  
3 treating medical professionals, and/or any other expert witness, retained or non-retained, identified  
4 by any party during litigation.

5 Defendants further reserve the right to call additional witnesses upon reasonable notice to  
6 all parties. Defendants reserve the right to supplement this list as discovery continues.

7  
8 **II.**

9 **DOCUMENTS**

- 10 A. Homeclick invoice dated December 18, 2013, bates numbered FIRST000001;  
11 B. ADA installation manual, bates numbered FIRST000002 – FIRST000003;  
12 C. BUDD's Plumbing invoice dated February 7, 2014, bates numbered FIRST000004;  
13 D. Jacuzzi and firstSTREET for Boomers and Beyond Manufacturing Agreement,  
14 bates numbered FIRST000005 – FIRST000022;  
15 E. Jacuzzi and firstSTREET for Boomers and Beyond Manufacturing Agreement  
16 Signature Page, bates numbered FIRST000023;  
17 F. Letter of Representation from Benjamin Cloward, Esq. to ALTHR dated April 9,  
18 2014, bated numbered FIRST000024;  
19 G. Hanover Insurance Group Policy for firstSTREET for Boomers and Beyond, bates  
20 numbered FIRST000025-FIRST000224;  
21 H. Subject Jacuzzi Photographs, bates numbered FIRST000225;  
22 I. Umbrella Hanover Insurance Group Policy for firstSTREET for Boomers and  
23 Beyond, bates numbered FIRST000226-FIRST00279;  
24 J. Benton Agreement, bates numbered FIRST000280-FIRST000296; Redaction on  
25 FIRST000280 and FIRST000296;  
26  
27  
28

- 1 K. Documents from Denver regarding Customer Agreement, bates numbered  
2 FIRST000297-FIRST00356; Redaction on FIRST000347;
- 3 L. LP Notes regarding Plaintiff, bates numbered FIRST000357-FIRST000362;
- 4 M. The Jacuzzi Brand Guide, bates numbered FIRST000363-FIRST000385;
- 5 N. Sales Presentation, bates numbered FIRST000386-FIRST000423;
- 6 O. Various internal and external emails regarding Jacuzzi Walk In Tub between  
7 October 1, 2011 (Effective Date of Jacuzzi / firstSTREET Manufacturing  
8 Agreement) and February 21, 2014 (date Plaintiffs allege Ms. Cunnison became  
9 trapped in the Jacuzzi Walk In Tub), bates numbered FIRST000424 to  
10 FIRST001320;
- 11  
12 P. Emails located on the desktop computer of David Modena, bates numbered  
13 FIRST001321-FIRST004666;
- 14  
15 Q. Installer Checklist for Cunnison Installation, bates numbered FIRST004667-  
16 FIRST004670;
- 17 R. Leave Behind Boucher for Jacuzzi Walk in Bathtubs, bates numbered  
18 FIRST004671-004696; and
- 19  
20 S. Testimonials, bates numbered FIRST004697-FIRST004704.
- 21 T. Amendment No. 1 to Manufacturing Agreement, dated January 12, 2015, bates  
22 numbered FIRST004705-FIRST004710.
- 23 U. Product Supply Agreement dated January 10, 2017, bates numbered FIRST004711-  
24 FIRST004723.
- 25  
26 V. Dealer Coverage Map from March 2014, bates numbered FIRST004724.
- 27 W. List of FirstStreet Dealers, bates numbered FIRST004725-FIRST004727.
- 28 X. Testimonials, bates numbered FIRST004728-FIRST004730.

1 Y. Link for Ed McMahon ad for Premier  
2 - [https://www.youtube.com/watch?v=FrZt\\_54emuw](https://www.youtube.com/watch?v=FrZt_54emuw)  
3 Z. AARP Media Advertising Guidelines, bates numbered FIRST004731.  
4 AA. Initial email string regarding communications with Allstate, bates numbered  
5 FIRST004732-FIRST004733.  
6 BB. Jacuzzi Personal Spa Walk-in Selling System (copyright 2013), bates numbered  
7 FIRST004734-FIRST004762.  
8  
9 CC. Email correspondence pertaining to advertising information, bates numbered  
10 FIRST004763-FIRST004769.  
11 DD. Trademark Electronic Search System Information for Designed for Seniors, bates  
12 numbered FIRST004770-FIRST004771.  
13  
14 EE. Installation and Operation Instructions Manual, Jacuzzi 5229 Walk-In Bathtub  
15 Series, 2013, previously produced by Jacuzzi as JACUZZI 000001-20.  
16 FF. DWO Geberit Installation Manual, 2012, previously produced by Jacuzzi as  
17 JACUZZI 000021-22.  
18  
19 GG. DWO Geberit Pin Drawing for Fitting No. 241.789.21.1. Subject to Protective  
20 Order, previously produced by Jacuzzi as JACUZZI 000023.  
21 HH. MT31 Geberit Installation Instructions, previously produced by Jacuzzi as  
22 JACUZZI 000024-27.  
23 II. Commercial General Liability Declarations for Policy GL 509-47-59 (redacted),  
24 previously produced by Jacuzzi as JACUZZI 000028-31.  
25 JJ. No Records Declaration received from Las Vegas Fire and Rescue pursuant to  
26 Jacuzzi's Subpoena, previously produced by Jacuzzi as JACUZZI000032-33.  
27  
28 KK. Records received from Palm Eastern Cemetery pursuant to Jacuzzi's Subpoena,

1 previously produced by Jacuzzi as JACUZZI000034-77.

2 LL. Records received from Medic West Ambulance pursuant to Jacuzzi's Subpoena  
3 (according to ChartSwap, pages bates numbered JACUZZI000083-87 are part of the PCR and  
4 contain the patient's name, and were intentionally left blank), previously produced by Jacuzzi as  
5 JACUZZI000078-87.

6 MM. Records and photographs received from Clark County Coroner / Medical  
7 Examiner's Office pursuant to Jacuzzi's Subpoena, previously produced by Jacuzzi as  
8 JACUZZI000088-118.

10 NN. Medical records received from Sunrise Hospital & Medical Center pursuant to  
11 Jacuzzi's Subpoena, previously produced by Jacuzzi as JACUZZI000119-1311.

12 OO. Photographs produced by Las Vegas Metropolitan Police Department in response  
13 to Jacuzzi's subpoena, previously produced by Jacuzzi as JACUZZI001312-1319.

15 PP. Officer's Report from Las Vegas Metropolitan Police Department in response to  
16 Jacuzzi's subpoena, previously produced by Jacuzzi as JACUZZI001320-1321.

17 QQ. 911 Logs and audio file from Las Vegas Metropolitan Police Department in  
18 response to Jacuzzi's subpoena, previously produced by Jacuzzi as JACUZZI001322-1325.

19 RR. Sunrise Hospital and Medical Center radiology records in response to Jacuzzi's  
20 subpoena, previously produced by Jacuzzi as JACUZZI001326-1327.

22 SS. Las Vegas Metro Police Department 911 records in response to Jacuzzi's 2nd  
23 subpoena, previously produced by Jacuzzi as JACUZZI001328-1332.

24 TT. Sunrise Hospital and Medical Center billing records in response to Jacuzzi's  
25 subpoena, previously produced by Jacuzzi as JACUZZI001333-1348.

26 UU. Drawing LW19000\_Shell FS5229 RH Walk In, previously produced by Jacuzzi as  
27 JACUZZI001349.  
28

1 VV. Drawing LW32827\_Grab Bar Assembly, previously produced by Jacuzzi as  
2 JACUZZI001350.

3 WW. Drawing LW47000RevD\_SHL T&D FS 5229 RH SLN, previously produced by  
4 Jacuzzi as JACUZZI001351-1352.

5 XX. Drawing LW48000RevB\_SHL Bond FS 5229 RH, previously produced by Jacuzzi  
6 as JACUZZI001353-1354.

7 YY. Drawing LX22000\_Piping Suction, previously produced by Jacuzzi as  
8 JACUZZI001355.

9 ZZ. Drawing LX24000B\_Piping Discharge, previously produced by Jacuzzi as  
10 JACUZZI001356-1357.

11 AAA. Drawing LX25000\_Piping Airline, previously produced by Jacuzzi as  
12 JACUZZI001358.

13 BBB. Drawing LX26000A\_Piping Blower, previously produced by Jacuzzi as  
14 JACUZZI001359-1360.

15 CCC. Drawing LX27000\_Two Pt Quarter Turn Door Latch, previously produced by  
16 Jacuzzi as JACUZZI001361-1368.

17 DDD. Drawing LX62000\_Door Assembly, previously produced by Jacuzzi as  
18 JACUZZI001369.

19 EEE. Drawing LX82000\_Skirt Access Panel, previously produced by Jacuzzi as  
20 JACUZZI001370.

21 FFF. Drawing LX91827A\_Handle\_Sub, previously produced by Jacuzzi as  
22 JACUZZI001371.

23 GGG. Door Life Cycle, previously produced by Jacuzzi as JACUZZI001372-1375.

24 HHH. ETL Certification Listing, previously produced by Jacuzzi as JACUZZI001376-

1 1441.

2 III. IAPMO Certification Listing, previously produced by Jacuzzi as JACUZZI001442-  
3 1446.

4 JJJ. IAMPO Lab Test Report\_ASTM F 462-79, previously produced by Jacuzzi as  
5 JACUZZI001447-1449.

6 KKK. WIT Tub Standards Certificate of Listing, previously produced by Jacuzzi as  
7 JACUZZI001450-1454.

8 LLL. 2011 National Electrical Code, previously produced by Jacuzzi as JACUZZI001455-  
9 1471.

10 MMM. 2012 Uniform Mechanical Code, previously produced by Jacuzzi as  
11 JACUZZI001472-1479.

12 NNN. 2012 Uniform Plumbing Code, previously produced by Jacuzzi as  
13 JACUZZI001480-1493.

14 OOO. Clark County Building Code, previously produced by Jacuzzi as JACUZZI001494-  
15 1587.

16 PPP. Jacuzzi's Manufacturing Agreement with First Street For Boomers & Beyond, Inc.,  
17 which is related to the subject Jacuzzi® Walk-In Bathtub, previously produced by Jacuzzi as  
18 JACUZZI001588-1606.

19 QQQ. Drawing 4486000B\_Label Bath Safety, previously produced by Jacuzzi as  
20 JACUZZI001607.

21 RRR. Drawing BA35000A\_Label Lift Here, previously produced by Jacuzzi as  
22 JACUZZI001608.

23 SSS. Drawing N261000B\_Label No Wrench, previously produced by Jacuzzi as  
24 JACUZZI001609.

1 TTT. Drawing R958000F\_Label Caution Union, previously produced by Jacuzzi as  
2 JACUZZI001610.

3 UUU. 270244 Order Acknowledgement, previously produced by Jacuzzi as  
4 JACUZZI001611-1612.

5 VVV. Jacuzzi 270244 Invoice 68325423, previously produced by Jacuzzi as  
6 JACUZZI001613.

7  
8 WWW. SEFL Southeastern Freight Lines Invoice 180106252, previously produced by  
9 Jacuzzi as JACUZZI001614-1617.

10 XXX. Social Security Administration records in response to Jacuzzi's request for Release  
11 of Information, previously produced by Jacuzzi as JACUZZI001618-1620.

12  
13 YYY. Certificate of Custodian of Records of No Records for Torrey Pines Rehabilitation  
14 in response to Jacuzzi's Subpoena, previously produced by Jacuzzi as JACUZZI001621.

15  
16 ZZZ. Comprehensive & Interventional Pain Management records in response to Jacuzzi's  
17 Subpoena, previously produced by Jacuzzi as JACUZZI001622-1811.

18  
19 AAAA. Orthopedic Institute of Henderson records in response to Jacuzzi's Subpoena,  
20 previously produced by Jacuzzi as JACUZZI001812-2036.

21  
22 BBBB. Certificate of Custodian of Records of No Records for Davis Funeral Homes &  
23 Memorial Park in response to Jacuzzi's Subpoena, previously produced by Jacuzzi as  
24 JACUZZI002037.

25  
26 CCCC. Certificate of Custodian of Records of No Records for Premier Health & Rehab  
27 Center f/k/a Southern Nevada Medical & Rehab Center, previously produced by Jacuzzi as  
28 JACUZZI002038.

DDDD. Nevada Ortho and Spine records in response to Jacuzzi's Subpoena, previously  
produced by Jacuzzi as JACUZZI002854-2911.

EEEE. Documents regarding other incidents of personal injury or death in walk-in tubs from 2008 to present produced in compliance with Discovery Commissioner's direction at July 20, 2018 hearing produced to Plaintiff on August 17, 2018. The production should not be regarded as a waiver to the documents and information's relevance or admissibility, previously produced by Jacuzzi as JACUZZI002912-002991.

FFFF. Email correspondence with FirstStreet regarding walk-in tub development and marketing from January 1, 2008-February 21, 2014. The production includes some native files, previously produced by Jacuzzi as JACUZZI002992-004521.

GGGG. FirstStreet Installer Completion Training document, previously produced by Jacuzzi as JACUZZI004522-004533.

HHHH. Jacuzzi Brand Guidelines, previously produced by Jacuzzi as JACUZZI004534-004577.

IIII. Jacuzzi Engineering Drawing LW17000 (Confidential – Subject to Protective Order), previously produced by Jacuzzi as JACUZZI004578-004579.

JJJJ. Jacuzzi Engineering Drawing LW17000B (Confidential – Subject to Protective Order), previously produced by Jacuzzi as JACUZZI004580-004581.

KKKK. Jacuzzi Engineering Drawing LW17000C (Confidential – Subject to Protective Order), previously produced by Jacuzzi as JACUZZI004582-004583.

LLLL. Jacuzzi 5229 Walk-In Bath Series – Installation and Operation Manual LX64000B – 05/2013, previously produced by Jacuzzi as JACUZZI004584-004603.

MMMM. Jacuzzi 5229 Walk-In Bath Series – Installation and Operation Manual LX64000C – 04/2014, previously produced by Jacuzzi as JACUZZI004604-004625.

NNNN. Jacuzzi 5229 Walk-In Bath Series – Installation and Operation Manual LX64000D – 10/2015, previously produced by Jacuzzi as JACUZZI004626-004649.



1 OOOO. Jacuzzi 5229 Walk-In Bath Series – Installation and Operation Manual LX64000E  
2 – 04/2017, previously produced by Jacuzzi as JACUZZI004650-004673.

3 PPPP. Jacuzzi 5229 Walk-In Bath Series – Installation and Operation Manual PT13000A –  
4 1/2018, previously produced by Jacuzzi as JACUZZI004674-004695.

5 QQQQ. Various internal and external emails regarding Jacuzzi Walk In Tub between  
6 January 2014 and December 2016, bates numbered FIRST004772 to FIRST005186.

7 RRRR. Customer Satisfaction Survey's for which no date could verified, bates numbered  
8 FIRST005187 to FIRST00595.

10 SSSS. Customer Satisfaction Survey's from 3<sup>rd</sup> Quarter of 2013, bates numbered  
11 FIRST005396 to FIRST005403.

12 TTTT. Customer Satisfaction Survey's from 1<sup>st</sup> Quarter of 2014, bates numbered  
13 FIRST005404 to FIRST005574.

14 UUUU. Customer Satisfaction Survey's from 2<sup>nd</sup> Quarter of 2014, bates numbered  
15 FIRST005575 to FIRST005609.

16 VVVV. Customer Satisfaction Survey's from 4<sup>th</sup> Quarter of 2014, bates numbered  
17 FIRST005610 to FIRST005751.

18 WWW. Customer Satisfaction Survey's from 1<sup>st</sup> Quarter of 2014, bates numbered  
19 FIRST005752 to FIRST005915.

20 XXXX. Customer Satisfaction Survey's from 2<sup>nd</sup> Quarter of 2014, bates numbered  
21 FIRST005916 to FIRST006106.

22 YYYY. Customer Satisfaction Survey's from 2<sup>nd</sup> Quarter of 2013, bates numbered  
23 FIRST006107 to FIRST006160.

24 ZZZZ. Customer Satisfaction Survey's from 3<sup>rd</sup> Quarter of 2014, bates numbered  
25 FIRST006161 to FIRST006608.

1           AAAAA. Customer Satisfaction Survey's from 4<sup>th</sup> Quarter of 2013, bates numbered  
2 FIRST006609 to FIRST006792.

3           BBBBB. Customer Satisfaction Survey's from 2<sup>nd</sup> Quarter of 2013, bates numbered  
4 FIRST006793 to FIRST006813.

5           CCCCC. 2012 – 2014 Survey Comparison, bates numbered FIRST006815 to  
6 FIRST006827.

7           DDDDD. Customer Satisfaction Survey's from 1<sup>st</sup> Quarter of 2014, bates numbered  
8 FIRST006828 to FIRST006838.

9           EEEEEE. Customer Satisfaction Survey's from 2<sup>nd</sup> Quarter of 2013, bates numbered  
10 FIRST006839 to FIRST006841.

11           FFFFF. Customer Satisfaction Survey's from 4<sup>th</sup> Quarter of 2013, bates numbered  
12 FIRST006842.

13           GGGGG. Customer Satisfaction Survey's from 2<sup>nd</sup> Quarter of 2013, bates numbered  
14 FIRST006843 to FIRST006864.

15           HHHHH. Guild Survey Excel Spreadsheet for Customer Satisfaction Survey's from April  
16 2015 to December 2016, bates numbered FIRST006865.

17           Further, Defendants will produce the following upon receipt:

18           Any and all other relevant documents and tangible things unknown to Defendants at this  
19 time which are or become relevant to this litigation.

20           No inclusion of any documents within this disclosure made pursuant to NRCP 16.1 and no  
21 acceptance of any documents provided by any other party hereto in a disclosure made pursuant to  
22 NRCP 16.1 shall be deemed as a waiver by Defendants of any evidentiary rights Defendants may  
23 have with respect to those documents, including, but not limited to, objections related to  
24 authenticity, materiality, relevance, foundation, hearsay, or any other right as may be permitted  
25  
26  
27  
28

1 pursuant to the Nevada Rules of Evidence.

2 Defendants reserves the right to supplement this list as discovery progresses, upon  
3 reasonable notice to all parties.

4 Defendants further reserves the right to use during discovery and/or use or admit during  
5 trial Plaintiff's and/or any other parties' documents and evidence, tangible or otherwise, produced  
6 or identified during the course of litigation.

7  
8 DATED this 21<sup>st</sup> day of August, 2019.

9 THORNDAL ARMSTRONG DELK  
10 BALKENBUSH & EISINGER

11 */s/ Philip Goodhart*

12  
13 PHILIP GOODHART, ESQ.  
14 Nevada Bar No. 5332  
15 MEGHAN M. GOODWIN, ESQ.  
16 Nevada Bar No. 11974  
17 1100 East Bridger Avenue  
18 Las Vegas, Nevada 89101  
19 Attorneys for Defendants/Cross-  
20 Defendants, FIRSTSTREET FOR  
21 BOOMERS AND BEYOND, INC.,  
22 AITHR DEALER, INC and HALE BENTON  
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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), on the 21<sup>st</sup> day of August, 2019, service of the above and foregoing DEFENDANTS FIRSTSTREET FOR BOOMERS AND BEYOND, INC., AITHR DEALER, INC. and HALE BENTON'S SEVENTH SUPPLEMENTAL EARLY CASE CONFERENCE PRODUCTION was made upon each of the parties via electronic service through the Eighth Judicial District Court's Odyssey E-File and Serve system.

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