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EXHIBIT 1

MOT

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

DISTRICT COURT

CLARK COUNTY, NEVADA

ROBERT ANSARA, as Special Administrator of the Estate of SHERRY LYNN CUNNISON, Deceased; MICHAEL SMITH individually, and heir to the Estate of SHERRY LYNN CUNNISON, Deceased; and DEBORAH TAMANTINI individually, and heir to the Estate of SHERRY LYNN CUNNISON, Deceased, Plaintiffs, vs. FIRST STREET FOR BOOMERS & BEYOND, INC.; AITHR DEALER, INC.; HALE BENTON, Individually; 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	CASE NO. A-16-731244-C DEPT. NO. 2 **DEFENDANTS FIRSTSTREET AND AITHR'S MOTION FOR RECONSIDERATION OF COURT'S ORDER GRANTING PLAINTIFFS' REQUEST FOR ORDER SHORTENING TIME FOR HEARING ON PLAINTIFFS' MOTION TO STRIKE DEFENDANTS FIRSTSTREET AND AITHR'S ANSWERS FOR DISCOVERY ABUSES, ON ORDER SHORTENING TIME**

through 20; DOE EMPLOYEES 1 through 20; DOE MANUFACTURERS 1 through 20; DOE 20 INSTALLERS 1 through 20; DOE CONTRACTORS 1 through 20; and DOE 21 SUBCONTRACTORS 1 through 20, inclusive,

Defendants.

HOMECLICK, LLC,

Cross-Plaintiff,

vs.

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

Cross-Defendants.

HOMECLICK, LLC, a New Jersey limited liability company,

Third-Party Plaintiff,

vs.

CHICAGO FAUCETS, an unknown entity,

Third-Party Defendant.

BESTWAY BUILDING & REMODELING, INC.,

Cross-Claimant,

vs.

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

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,

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.; 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,

Cross-Defendants.

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

Cross-Claimants,

v.

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

Cross-Defendants.

. . .

DEFENDANTS FIRSTSTREET AND AITHR'S MOTION FOR RECONSIDERATION OF COURT'S ORDER GRANTING PLAINTIFF'S REQUEST FOR ORDER SHORTENING TIME FOR HEARING ON PLAINTIFFS' MOTION TO STRIKE DEFENDANTS FIRSTSTREET AND AITHR'S ANSWERS FOR DISCOVERY ABUSES, ON ORDER SHORTENING TIME

COME NOW Defendants, FIRSTSTREET FOR BOOMERS AND BEYOND, INC. ("firstSTREET"), and AITHR DEALER, INC. ("AITHR"), by and through their attorneys, THORNDAL ARMSTRONG DELK BALKENBUSH & EISINGER, and respectfully submit their Motion for Reconsideration of Court's Order Granting Plaintiffs' Request for Order Shortening Time for Hearing on Plaintiffs' Motion to Strike Defendants firstSTREET and AITHR's Answers for Discovery Abuses, On Order Shortening Time. For the reasons stated below, Defendants firstSTREET and AITHR request this Honorable Court permit this matter to be briefed in the ordinary course, due to the volume of information contained in Plaintiffs' Motion and the severity of the requested sanction.

This Motion is made and based upon the attached Memorandum of Points and Authorities, together with all papers and pleadings on file herein, which are hereby incorporated by this reference, as well as any oral arguments that may be heard at the time of the hearing of this matter.

DATED this 23rd day of January, 2019.

THORNDAL ARMSTRONG DELK
BALKENBUSH & EISINGER

/s/ Philip Goodhart

PHILIP GOODHART, ESQ.
Nevada Bar No. 5332
MICHAEL C. HETEY, ESQ.
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1100 East Bridger Avenue
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Attorneys for Defendants/Cross-Defendants,
FIRSTSTREET FOR BOOMERS AND BEYOND,
INC., and AITHR DEALER, INC.

ORDER SHORTENING TIME

Pursuant to the Affidavit of PHILIP GOODHART, ESQ. in support of Order Shortening Time, and good cause appearing therefor,

IT IS HEREBY ORDERED that the time for hearing of the above DEFENDANTS FIRSTSTREET AND AITHR'S MOTION FOR RECONSIDERATION OF COURT'S ORDER GRANTING PLAINTIFFS' REQUEST FOR ORDER SHORTENING TIME FOR HEARING ON PLAINTIFFS' MOTION TO STRIKE DEFENDANTS FIRSTSTREET AND AITHR'S ANSWERS FOR DISCOVERY ABUSES is hereby shortened, and that the hearing of said Motion shall be scheduled for the _____ day of _____, 2019, at the hour of _____ a.m.

DATED this _____ day of January, 2019.

_____
DISTRICT COURT JUDGE

Submitted by:

THORNDAL ARMSTRONG DELK
BALKENBUSH & EISINGER

/s/ Philip Goodhart

_____
PHILIP GOODHART, ESQ.
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Attorneys for Defendants/Cross-Defendants, FIRSTSTREET FOR BOOMERS AND BEYOND, INC., and AITHR DEALER, INC.

AFFIDAVIT IN SUPPORT OF ORDER SHORTENING TIME

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

PHILIP GOODHART, ESQ., being first duly sworn, deposes and says:

1. That Affiant 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., and AITHR DEALER, INC., in the above matter.

2. That Plaintiffs' Motion To Strike Defendants firstSTREET and AITHR's Answers For Discovery Abuses is scheduled for hearing on February 4, 2019, and that Defendants firstSTREET and AITHR's Opposition to said Motion is due January 28, 2019, and there is not sufficient time to hear this Motion in the ordinary course.

3. That Plaintiff's Affidavit in Support of its Request for an Order Shortening Time on Plaintiffs' Motion To Strike Defendants firstSTREET and AITHR's Answers For Discovery Abuses is riddled with false statements and misrepresentation to this Court. That had the true facts been presented to this Court by Plaintiffs' counsel in the Affidavit, this Court would not have granted the Request for Order Shortening Time. Rather, the Court would have set Plaintiffs' Motion in the ordinary course.

4. That Plaintiffs' counsel's Affidavit fails to describe the necessary circumstances which constitute good cause and justify shortening the time in which Plaintiffs' Motion can be heard. That the trial of this matter is set for April 22, 2019, which provides Plaintiffs with sufficient time to bring this termination sanction motion in the ordinary course, and will allow the parties to fully brief the issues and contentions raised in Plaintiffs' Motion.

5. That Plaintiffs' counsel failed to comply with EDCR 5.513 by failing to provide counsel for firstSTREET and AITHR with a copy of Plaintiffs' Motion To Strike Defendants firstSTREET And AITHR's Answers For Discovery Abuses ***prior to*** the Court signing the Order Shortening Time.

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

FURTHER, AFFIANT SAYETH NAUGHT.

PHILIP GOODHART, ESQ.

SUBSCRIBED and SWORN to before me
this 22 day of January, 2019,
by PHILIP GOODHART, ESQ

KAREN M. BERK
Notary Public State of Nevada
No. 99-893-1
My appt. exp. Jul. 15, 2019

NOTARY PUBLIC in and for the County
of Clark, State of Nevada.

MEMORANDUM OF POINTS AND AUTHORITIES

INTRODUCTION

Plaintiffs' Motion is nothing more than a clever attempt by counsel to manufacture a situation that does not exist to avoid litigating a complicated case by seeking terminating sanctions for which there is no basis. Plaintiffs' actions go beyond egregious conduct as counsel has submitted a false and misleading Affidavit in order to convince this Court, without any legitimate or supporting reason, to hear the underlying Motion on an Order Shortening Time, thereby preventing this Court from being fully briefed and informed of the issues that form the basis of the underlying Motion.

Plaintiffs' counsel's Affidavit in Support of the Request for an Order Shortening Time contains false and misleading information and ***is not*** signed by the attorney that would have been engaged in an EDCR 2.34 meet and confer conference, had any actually taken place. The false and misleading information contained in the Affidavit purportedly supports Plaintiffs' request for the Order Shortening Time. However, had Plaintiffs' counsel presented the true facts, and not misled this Court, Plaintiffs' Request for an Order Shortening Time would have been denied. Finally, Plaintiffs' counsel has failed to comply with EDCR 5.513 by not serving the Motion on the nonmoving parties prior to the granting of the order shortening time, as no exigent circumstances exist. Therefore, firstSTREET and AITHR request this manner be briefed in the normal course, to allow the nonmoving parties to adequately respond to Plaintiffs' lengthy motion.

LEGAL ARGUMENT

1. Standard for Reconsideration

The Nevada Supreme Court has held that a court has the inherent authority to reconsider its prior orders. *Trail v. Faretto*, 91 Nev. 401, 536, P.2d 1026 (1975). Moreover, the Court states that "a court may, for sufficient cause shown, amend, correct, resettle, modify or vacate, as the case may be, an order previously made and entered on the motion in the progress of the cause or proceeding." *Id.* at 403, 536 P.2d at 1027; *see also, Barry v. Lindner*, 119 Nev. 661, 670, 81 P.3d 537, 543 (2003).

Reconsideration is always appropriate when new issues of fact or law, or some error of law

or fact is raised supporting a contrary result to that already reached. *See, Moore v. City of Las Vegas*, 92 Nev. 402, 551 P.2d 244 (1976). Indeed, unless and until an order is appealed, the district court always retains jurisdiction to reconsider the matter at a later time. *See, Gibbs v. Giles*, 96 Nev. 243, 607 P.2d 119 (1990) *overturned on other grounds by State of Washington v. Bagley*, 114 Nev. 788, 963 P.2d 498 (1998). One of the major grounds justifying reconsideration is the need to correct clear error or to prevent manifest injustice. *See, Major v. Benton,* 647 F.2d 110,112 (10th Cir.1988*); Kern-Tulare Water Dist. V. City of Bakersfield*, 634 F.Supp.656, 665 (E.D.Ca.1986). Rehearing is also appropriate when "there is a reasonable probability that the court may have arrived at an erroneous conclusion or overlooked some important question necessary to a full and proper understanding of the case." *See, State v. Fitch*, 68 Nev. 422, 233 P.2d 1070, 1072 (1951).

As set forth below, reconsideration is warranted to correct an error and prevent manifest injustice since the Affidavit upon which this Court granted Plaintiffs' request for an Order Shortening Time is replete with falsehoods and misleads this Court on relevant facts upon which the Order was granted.

2. <u>Plaintiffs' Affidavit is False, Misleading And Does Not Satisfy The Requirements of EDCR 2.26.</u>

Plaintiffs, by way of their underlying Motion, seek a terminating sanction against Defendants firstSTREET and AITHR without ever having brought a single motion before the Discovery Commissioner for any type of discovery dispute. Plaintiffs have misled this Court in believing that this Motion must be heard on an Order Shortening Time, thereby limiting Defendants' ability to oppose this motion. Plaintiffs' counsel's Affidavit in support of the Order Shortening Time is so replete with falsehoods and misrepresentations that sanctions should be imposed against its author, Ian Estrada, Esq.

In paragraph 5 of counsel's affidavit, Mr. Estrada claims that "due to ongoing, multiple discovery abuses, there have been multiple discussions among counsel pursuant to E.D.C.R. 2.34 over the last year and a half and said discovery issues have been the subject of numerous motions filed and heard by this Court." An affidavit of counsel can only be made based upon personal knowledge. In this case, counsel for Defendants firstSTREET and AITHR have not had a single

EDCR 2.34 conference with Mr. Estrada during the entirety of this litigation. Therefore, his affidavit stating such as a basis for the Order Shortening Time is false, misleading and cannot form a basis for this Court to grant the request for an Order Shortening Time.

Interestingly, Mr. Estrada's affidavit in support of order shortening time is **identical** to the Affidavit in Support of Order Shortening Time contained within Plaintiffs' Motion to Strike Jacuzzi's Answer, which was executed by Benjamin P. Cloward, Esq., with the exception of the titles of the documents. Both affidavits were executed on January 7, 2019.

Counsel for firstSTREET and AITHR have had one, perhaps two, informal conferences that may qualify as an EDCR 2.34 conference. Each of these conferences were with Ben Cloward, Esq., who did not sign the Affidavit attesting to such conferences. However, none of these conferences were in any way related to potential discovery abuses, let alone the grounds that set forth the basis for Plaintiffs seeking to strike firstSTREET and AITHR's Answers. Rather, these conferences were related to Defendant firstSTREET and AITHR's Second Supplemental Early Case Conference Production, served on November 5, 2018, wherein nearly one thousand pages of emails and attachments were produced. This discovery dispute conference addressed Plaintiffs' inquiries as to why there was no privilege log that accompanied the document production and specifically why firstSTREET and AITHR did not produce any emails that post-dated Ms. Cunnison's death. In response to that conference, firstSTREET and AITHR supplemented their production with a privilege log, wherein they took the position that since the claims against firstSTREET and AITHR were predicated upon their advertising and marketing campaigns, there was no way that Ms. Cunnison could have relied upon emails or documents that were generated after she died. Plaintiffs' counsel disagreed with this position, and he was encouraged to file an appropriate motion with the Discovery Commissioner to resolve the dispute.

These were the only discovery dispute communications between counsel, and rather than file a Motion to Compel with the Discovery Commissioner, Plaintiffs elected to file the instant terminating sanction motion with the Court on order shortening time. Since these were the only discovery dispute conferences with Plaintiffs' counsel, and they did not take place until after November 5, 2018, Mr. Estrada's statement that these conferences have taken place over the "***past***

year and a half" is a clear misrepresentation to this Court, and was stated only to persuade this Court that an Order Shortening Time was warranted. The fact of the matter is, this dispute did not arise until November 5, 2018, and Plaintiffs never followed up with a Motion to Compel.

As noted above, Plaintiffs have not filed a single discovery dispute Motion against firstSTREET and AITHR with the Discovery Commissioner. Numerous Motions have been filed against Jacuzzi, but none against firstSTREET or AITHR. Mr. Estrada's affidavit is false and misleading when he states that that the discovery issues "have been the subject of numerous motions filed and heard by this Court." Once again, the only reason for Mr. Estrada to include this in his Affidavit is to mislead this Court in believing that the instant terminating sanction Motion should be heard on an Order Shortening Time, and not in the normal course.

In paragraph 6 of his Affidavit, Mr. Estrada misstates that "as a result of multiple discovery related motions, counsel have met and conferred at least on ten occasions in an attempt to resolve the discovery disputes under E.D.C.R. 2.34". As noted above, counsel for firstSTREET and AITHR have not had a single discovery resolution conference with Mr. Estrada, the author of the Affidavit. Plaintiffs have not filed a single discovery related motion against firstSTREET and AITHR. There have been, at best, two (2) meet and confer conferences between Plaintiffs' other counsel (Ben Cloward) and firstSTREET and AITHR's counsel, the first of which took place ***after*** November 5, 2018, when firstSTREET and AITHR' served their Second Supplemental NRCP 16.1 Early Case Conference Production, and dealt entirely with a privilege log and Plaintiffs' argument that firstSTREET and AITHR had an affirmative obligation to produce all emails and documents generated after Ms. Cunnison died. As noted above, firstSTREET and AITHR did not agree with Plaintiffs' counsel's position and invited him to file the necessary Motion to Compel with the Discovery Commissioner – something he has never done.

Instead, Mr. Estrada misled this Court in his Affidavit. The only logical conclusion for this tactic is to trick this Court into granting Plaintiffs' request that the instant terminating sanction motion be heard on an Order Shortening Time. Such a tactic cannot be condoned by this Court, and appropriate sanctions should be levied against Mr. Estrada for misstating facts and misleading this court in his signed/sworn affidavit.

EDCR 2.26 mandates that there be "good cause" justifying the Order Shortening Time. Without the false and misleading Affidavit, there is no "good cause" for this Motion to be heard on an Order Shortening Time. The Motion was not filed until January 16, 2019 – only nine (9) days before the Discovery Cut Off. Moreover, this case is not set to be tried for another three and a half months – which is more than sufficient time for this motion to be heard in the ordinary course.

Not only do Plaintiffs seek to improperly expedite the hearing of this Motion, Plaintiffs sought to exceed the page limit imposed by the Eighth Judicial District Court. firstSTREET and AITHR submit a motion of this length when there is no good cause for an Order Shortening Time be briefed in the ordinary course.

3. <u>Plaintiffs' Counsel Has Failed To Comply With EDCR 5.513</u>

EDCR 5.513, enacted in September 2018, provides additional requirements for counsel seeking an Order Shortening Time. Rule 5.515 states:

> **(a)** Unless prohibited by other rule, statute, or court order, a party may seek an order shortening time for a hearing.
>
> **(b)** An *ex parte* motion to shorten time must explain the need to shorten the time. Such a motion must be supported by affidavit.
>
> **(c)** Absent exigent circumstances, an order shortening time will not be granted until after service of the underlying motion on the nonmoving parties. Any motion for order shortening time filed before service of the underlying motion must provide a satisfactory explanation why it is necessary to do so.

Plaintiffs' counsel failed to provide the nonmoving parties, firstSTREET and AITHR, with the underlying Motion until ***after the Court had signed the Order Shortening Time***. This was in clear violation of EDCR 5.513 that mandates that "absent exigent circumstances, an order shortening time ***will not be granted until after service of the underlying motion on the nonmoving parties***." (emphasis added). In the present case, Plaintiffs' counsel signed the Motion and Affidavit on January 7, 2019. The Court signed the Order Shortening Time on January 15, 2019. The Motion was not provided to firstSTREET and AITHR until it was filed on January 16,

. . .

2019. Therefore, by the explicit language of EDCR 5.513 Plaintiffs' request for an Order Shortening Time should have been denied.[1]

CONCLUSION

Based upon the foregoing, Defendants firstSTREET and AITHR respectfully request that this Court Reconsider its Order Shortening Time, and re-set this Motion in the ordinary course so the issues can be properly and fully addressed by the parties, and by this Court.

Furthermore, since Plaintiffs' counsel's Affidavit in support of the Order Shortening Time is replete with falsehoods and deliberate misrepresentations, Defendants firstSTREET and AITHR request that this Court impose sanctions against its author, Ian Estrada, Esq.

DATED this 23rd day of January, 2019.

THORNDAL ARMSTRONG DELK
BALKENBUSH & EISINGER

/s/ Philip Goodhart

PHILIP GOODHART, ESQ.
Nevada Bar No. 5332
MICHAEL C. HETEY, ESQ.
Nevada Bar No. 5668
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.

[1] Additional evidence of Plaintiffs' counsel's attempts to mislead this Court, can be found in the Motion to Exceed Page Limit, wherein Plaintiffs' counsel describes the underlying Motion as a Motion to Strike Defendants firstSTREET and AITHR's Answers for ***Repeated, Continuous and Blatant Discovery Abuses***.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 23rd day of January, 2019, service of the above and foregoing DEFENDANTS FIRSTSTREET AND AITHR'S MOTION FOR RECONSIDERATION OF COURT'S ORDER GRANTING PLAINTIFF'S REQUEST FOR ORDER SHORTENING TIME FOR HEARING ON PLAINTIFFS' MOTION TO STRIKE DEFENDANTS FIRSTSTREET AND AITHR'S ANSWERS FOR DISCOVERY ABUSES, 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.

Benjamin P. Cloward, Esq.
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Attorneys for Defendant,
JACUZZI INC. dba JACUZZI
LUXURY BATH

/s/ Karen Berk

An employee of THORNDAL ARMSTRONG
DELK BALKENBUSH & EISINGER

AFFIDAVIT OF COUNSEL IN SUPPORT OF MOTION FOR RECONSIDERATION

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

PHILIP GOODHART, ESQ., being first duly sworn, deposes and says:

1. That Affiant 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., and AITHR DEALER, INC., in the above matter.

2. That counsel for Defendants firstSTREET and AITHR have not had a single E.D.C.R 2.34 conference with Mr. Estrada during the entirety of this litigation.

3. That counsel for firstSTREET and AITHR have had one, perhaps two, informal conferences that may qualify as an EDCR 2.34 conference, all of which occurred with Plaintiffs' other counsel, Ben Cloward. Any meet and confer that may qualify as an EDCR 2.34 Conference would have taken place after November 5, 2018 when Defendant firstSTREET and AITHR's provided Plaintiffs with their Second Supplemental Early Case Conference Production.

4. Any EDCR 2.34 conference that took place addressed Plaintiffs' inquiries as to why there was no privilege log that accompanied the second supplement, specifically why firstSTREET and AITHR did not produce any emails that post-dated Ms. Cunnison's death. In response to that conference, firstSTREET and AITHR supplemented the production with a privilege log, wherein it was indicated that since the claims against firstSTREET and AITHR were predicated upon their advertising and marketing campaigns, there was no way that Ms. Cunnison could have relied upon emails or documents that were generated after she died. Plaintiffs' counsel disagreed with this position, and he was urged to file an appropriate motion with the Discovery Commissioner.

5. Plaintiffs have never filed a Motion to Compel with the Discovery Commissioner to question or dispute the position that Defendants firstSTREET and AITHR have taken on this issue.

6. The discovery issues referenced in Plaintiff's underlying Motion ***have not*** been the subject of numerous motions filed and heard by this Court.

7. Counsel for Plaintiffs and counsel for firstSTREET and ATTIR ***have not*** met and conferred on ten occasions in an attempt to resolve the discovery disputes under EDCR 2.34.

8. Plaintiff's counsel signed the Affidavit in support of Order Shortening Time, the Motion Pleadings, and the Affidavit in Support of the Motion on January 7, 2019. The Court signed the Order Shortening Time on January 15, 2019. Plaintiff's counsel did not provide firstSTREET and ATTIR with a copy of the Motion or the Request for an Order Shortening Time until January 16, 2019 – a full day ***after the Court had signed the Order Shortening Time***.

9. That on January 23, 2019, at the same time this Motion was submitted to the Court for an Order Shortening Time, Plaintiff's counsel was provided with a copy of the Motion as mandated by EDCR 5.513.

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

FURTHER, AFFIANT SAYETH NAUGHT.

PHILIP GOODHART, ESQ.

SUBSCRIBED and SWORN to before me
this 22 day of January, 2019,
by PHILIP GOODHART, ESQ.

KAREN M. BERK
Notary Public State of Nevada
No. 99-893-1
My appt. exp. Jul. 15, 2019

Karen M Berk
NOTARY PUBLIC in and for the County
of Clark, State of Nevada.

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EXHIBIT 2

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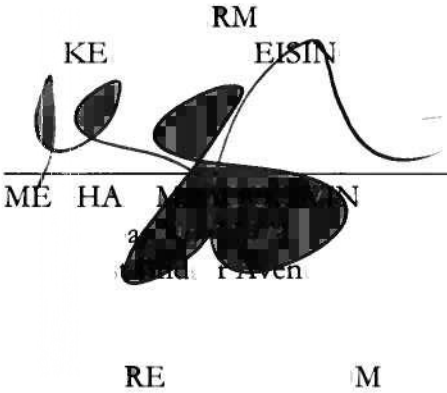

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THORNDAL
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EXHIBIT 3

RSPN
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Attorneys for Defendants/Cross-Defendants, FIRSTSTREET FOR BOOMERS AND BEYOND, INC., and AITHR DEALER, INC.

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

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

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

Defendants.

HOMECLICK, LLC,

Cross-Plaintiff,

vs.

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

Cross-Defendants.

HOMECLICK, LLC, a New Jersey limited liability company,

Third-Party Plaintiff,

vs.

CHICAGO FAUCETS, an unknown entity,

Third-Party Defendant.

BESTWAY BUILDING & REMODELING, INC.,

Cross-Claimant,

vs.

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

Cross-Defendants.

WILLIAM BUDD, individually and as BUDDS PLUMBING,

Cross-Claimants,

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.; 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,

Cross-Defendants.

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

Cross-Claimants,

v.

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

Cross-Defendants.

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

TO: ROBERT ANSARA, Plaintiff; and

TO: RICHARD HARRIS LAW FIRM, attorneys for Plaintiff:

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

REQUEST NO.:

1. All documents identified in your answers to Interrogatories.

RESPONSE: This Responding Defendant is not in possession of any documents responsive to this request, other than those already produced in this Responding Defendant's NRCP 16.1 Initial Document Production and Witness List, and all supplements thereto.

2. Any contracts between this Defendant and any other party regarding indemnification agreement or contracts.

RESPONSE: Please see this Responding Defendant's NRCP 16.1 Initial Document Production and Witness List, and all supplements thereto, specifically, Exhibits "D" and "E," Bates numbered FIRST000005 – FIRST0000023.

3. Copies of any treatises, standards in the industry, legal authority, rule, case, statute or code that will be relied upon in the defense of this case.

RESPONSE: Objection. This Response calls for expert opinion and legal conclusions, and seeks to invade attorney-client privilege and/or attorney work product doctrine. Discovery is ongoing and this Response will be supplemented following expert disclosure deadlines pursuant to the scheduling order.

4. Any and all reports made as a result of any inspections, examination or investigation by any person acting on behalf of any party as a result of the occurrence complained of in Plaintiffs' Complaint.

RESPONSE: Objection. This Request is vague, ambiguous, and overbroad with respect to

timeframe, subject matter, and the term "reports." This responding Defendant is not in possession of any documents responsive to this Request.

5. Any and all documents relating to any cause or circumstance this Defendant contends may have contributed to the occurrence.

RESPONSE: Objection. This Request is premature, as discovery is ongoing and this Request calls for a legal conclusion, as well as invades attorney-client privilege and/or attorney work product. Please see Plaintiff's medical records produced to date.

6. Any and all documents, manuals, policies, memoranda letters or the like setting forth proper standards, policies and/or procedures, concerning the use of the subject Jacuzzi Walk-In-Tub at issue. (These should be documents that were effective on the date of loss of February 27, 2014.)

RESPONSE: Objection. This Request is vague, ambiguous, and overbroad with respect to the phrase "concerning the use of the subject Jacuzzi Walk-In Tub." This Responding Defendant is not in possession of documents responsive to this Request other than those previously produced in the course of litigation.

7. All written, recorded and/or signed statement of any person including Plaintiff, any Defendant, witness, investigators or any agents, representative or employee of the parties, concerning this matter of this action.

RESPONSE: Objection. This Request is vague, ambiguous, and overbroad with respect to timeframe. This responding Defendant is not in possession of any documents responsive to this Request other than those documents previously produced in litigation, specifically Exhibits "C," "D," "E," "J," "K," and "L."

8. Any documents concerning the purchase, invoice, sales receipt or delivery of the subject Jacuzzi Walk-In-Tub at issue.

RESPONSE: This Responding Defendant is not in possession of documents responsive to this request other than the documents previously produced in this Responding Defendant's NRCP 16.1 Initial Document Production and Witness List, and all supplements thereto, specifically, Exhibits "A," "B," "C," "K," and "L."

9. Any literature, service manual, written instructions, or operator's manual or handbook regarding the subject Jacuzzi Walk-In-Tub at issue.

RESPONSE: Objection. This Request is vague, ambiguous and overbroad with respect to subject matter and the term "literature." This Responding Defendant is not in possession of documents responsive to this request other than those documents previously produced in litigation, as these documents are provided by Jacuzzi in the walk-in tub packaging.

10. Any engineering literature, drawings, diagrams, schematics or models of the subject Jacuzzi Walk-In-Tub at issue.

RESPONSE: This Responding Defendant is not in possession of documents responsive to this request other than those documents previously produced in litigation.

11. Any written warnings posted on the subject Jacuzzi Walk-In-Tub at issue.

RESPONSE: This Responding Defendant is not in possession of documents responsive to this request other than the documents previously produced in litigation, as these documents are provided by Jacuzzi in the walk-in tub packaging.

12. Any and all documents that relate to the design of the subject Jacuzzi Walk-In-Tub involved in the occurrence complained of in the Plaintiffs' Complaint.

RESPONSE: This Responding Defendant is not in possession of documents responsive to this request other than those documents already produced in litigation, as this Responding Defendant did not design the subject Jacuzzi Walk-In Tub.

13. Any and all documents that relate to the production of the subject Jacuzzi Walk-In-

Tub involved in the occurrence complained of in Plaintiffs' Complaint.

RESPONSE: Objection. The term "production" is vague and ambiguous. This Responding Defendant is not in possession of documents responsive to this request other than those documents previously produced in litigation, as this Responding Defendant did not design the subject Jacuzzi Walk-In Tub.

14. All documents which afforded liability insurance or self-insured status for the incident which is the subject matter of the Plaintiffs' Complaint.

RESPONSE: Please see this Responding Defendant's NRCP 16.1 Initial Document Production and Witness List and all supplements thereto, specifically Exhibits "G" and "I."

15. Any and all documents that relate to the production of the subject Jacuzzi Walk-In-Tub involved in the occurrence complained of in Plaintiffs' Complaint.

RESPONSE: Please see the response to Request No. 13, as this Request is duplicative.

16. Any and all documents that relate to the schematics of the subject Jacuzzi Walk-In-Tub involved in the occurrence complained of in Plaintiffs' Complaint.

RESPONSE: Objection. The term "schematics" is vague and ambiguous. This Responding Defendant is not in possession of documents responsive to this request other than those documents previously produced in litigation, as this Responding Defendant did not design the subject Jacuzzi Walk-In Tub.

17. Any documents prepared during the regular course or business as a result of the incident complained of in the Plaintiffs' Complaint.

RESPONSE: Objection. This Request is vague, ambiguous and overbroad with respect to the phrase "in the regular course of business." Please see this Responding Defendant's NRCP 16.1 Initial Document Production and Witness List and all supplements thereto, specifically Exhibit "L."

18. Any and all documentary evidence regarding failures and malfunctions of the Jacuzzi

Walk-In-Tub. This may be in the form of direct complaints from customers to the manufacturer, or indirect reports such as warranty claims through dealers. It may also be derived from developmental testing, investigations by government agencies, and product liability lawsuits.

RESPONSE: Objection. This Request seeks expert opinion and calls for a legal conclusion. Further, this Request is vague, ambiguous, and overbroad as to time, subject matter, and the term "failures and malfunctions." This Responding Defendant is not in possession of evidence documenting any definitive "failure or malfunction."

19. Any and all documents and communications containing the name, home and business address and qualifications of all persons who have been retained or specially employed by Defendant(s) in *anticipation* of litigation or *preparation* for trial and who are *not* expected to be called as witnesses at trial or as to whom no such decision has yet been made, and attach any documents or communications received from said person(s). If there are no documents or communications, then the name of said person(s) as well as their home and business addresses should be provided.

RESPONSE: Objection. This Request seeks to invade attorney-client privilege and/or attorney work product, as the time for expert disclosures has not yet passed.

20. The entire claims and investigation file or files including but not limited to daily activity sheets, diary sheets, and status sheets of any insurance adjuster and/or risk employee/manager, internal memoranda regarding this claim created, sent and/or received by any insurance adjuster or other adjuster, risk employee/manager and/or by the Defendant(s) or an agent/employee of the Defendant(s), communications to and from all insurance carriers, parties, Defendant(s), or potential parties, request(s) for investigation, and/or reports/findings of investigators, both in-house and/or independent and/or all insurance policies of the Defendant(s), excluding references to mental impressions, conclusions, or opinions representing the value or merit of the claim or defense or respecting strategy or tactics and privileged communications from

counsel.

RESPONSE: Objection. This Request seeks information protected by the attorney-client privilege, and work product doctrine. Further, blanket requests for investigation files, or adjuster's reports and adjuster's files, are not proper Requests for Production under NRCP Rules 34 and 26, respectively, nor under any Nevada case opinions, including Ballard v. Eighth Judicial District Court et al., 106 Nev. 83, 787 P.2d 406 (1990). It is further objected on grounds that it is overly broad and burdensome and the information sought is neither relevant nor calculated to lead to the discovery of admissible evidence at the time of arbitration or trial. The portions of the pre-litigation claims file that are discoverable have been previously produced via this Responding Defendant's NRCP 16.1 Initial Document Production and Witness List and all supplements thereto, specifically Exhibits "A" through "L."

21. All statements and communications of any and all witnesses including any and all statements of Plaintiff(s) and Defendant(s), including taped recordings, whether transcribed or not, as well as all written statements.

RESPONSE: Objection. This Request seeks to invade attorney client privilege and attorney work product. This Responding Defendant is not in possession of any documents responsive to this request, other than those documents previously produced in litigation.

22. The name, home and business address of the insurance carrier investigators employed by the Defendant(s) or its insurance carrier to investigate this claim, treatment of the Plaintiff(s), witnesses, or any other aspect of the incidents that form the basis of Plaintiff(s) Complaint. Also, attach any documents, records or communications of or prepared by the investigator acquired as a result of their investigation(s), including but not limited to telephone calls, correspondence, facsimiles, e-mail, billing, inspections or observations, interviews, statements and/or findings.

RESPONSE: This Responding Defendant is not in possession of any documents responsive to this request.

23. The name, home and business address, background and qualifications of any and all persons in the employ of Defendant(s), who in anticipation and/or preparation of litigation, is expected to be called to trial.

RESPONSE: Objection. This Request is premature, seeks to invade attorney-client privilege, and attorney work product. Please see this Responding Defendant's NRCP 16.1 Initial Document Production and Witness List and all Supplements thereto, specifically the list of witnesses. Please also see this Responding Defendant's Answer to Interrogatory No. 2.

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

RESPONSE: Objection. This Request is premature, seeks to invade attorney-client privilege, and attorney work product. Please see this Responding Defendant's NRCP 16.1 Initial Document Production and Witness List and all Supplements thereto, specifically the list of witnesses. Please also see this Responding Defendant's Answer to Interrogatory No. 2.

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

RESPONSE: Objection. This Request is premature, seeks to invade attorney-client privilege, and attorney work product. Please see this Responding Defendant's NRCP 16.1 Initial Document Production and Witness List and all Supplements thereto, specifically Exhibits "A through L." Please also see medical records for Sherry Cunnison produced throughout the course of litigation.

26. Any all *[sic]* videotapes, photographs, notes, memorandums, technical data, and internal documents of any and all testing conducted by this Defendant's research and design experts on the same model as the subject Jacuzzi Walk-In-Tub.

RESPONSE: Objection. This Request is vague and ambiguous with respect to time and subject matter. This Responding Defendant did not design the subject tub, and is not in possession of any documents responsive to this request.

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

RESPONSE: Objection. This Request is vague and ambiguous with respect to the term "safety features." Please see Exhibit B attached hereto, in addition to any sales materials produced through the course of litigation.

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

RESPONSE: Objection. This Request is vague and ambiguous with respect to the term "ease of use." Please see Exhibit B attached hereto, in addition to any sales materials produced through the course of litigation.

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

RESPONSE: Objection. This Request is vague and ambiguous with respect to the term "overweight folks." This Responding Defendant is not in possession of documents responsive to this request.

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

RESPONSE: Objection. This Request is vague and ambiguous with respect to the term "overweight folks." This Responding Defendant is not in possession of documents responsive to this request.

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

RESPONSE: Objection. This Request is vague and ambiguous with respect to the term "folks with mobility issues" and "safety features." This Responding Defendant is not in possession of documents responsive to this request.

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

RESPONSE: Objection. This Request is vague and ambiguous with respect to the term "folks with mobility issues." Please see Exhibit B attached hereto, in addition to any sales materials produced through the course of litigation.

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

RESPONSE: This Responding Defendant is not in possession of any documents responsive to this request other than those produced during the course of litigation as this Responding Defendant did not design the door.

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

RESPONSE: This Responding Defendant is not in possession of any documents responsive to this request other than those produced during the course of litigation as this Responding Defendant

did not design the door.

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

RESPONSE: This Responding Defendant is not in possession of any documents responsive to this request other than those produced during the course of litigation as this Responding Defendant did not design the subject tub.

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

RESPONSE: This Responding Defendant is not in possession of any documents responsive to this request other than those produced during the course of litigation as this Responding Defendant did not design the subject tub.

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

RESPONSE: This Responding Defendant is not in possession of any documents responsive to this request other than those produced during the course of litigation as this Responding Defendant did not design the door.

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

RESPONSE: Objection. This Request is vague, ambiguous, and overbroad as to time, product type, and subject matter. This Responding Defendant is aware of the claim by Leonard Baize, previously produced in this litigation by other parties, and the claim made by Mack Smith, attached hereto as Exhibit A.

39. Please produce any and all documentation in support of the safety statistics pertaining to falls; that are used in any marketing materials (whether those materials be written, oral,

video or otherwise) that are distributed by Jacuzzi.

RESPONSE: Objection. This request is vague, ambiguous and unintelligible, and is directed at Jacuzzi. This Responding Defendant seeks clarification as to the information sought by Plaintiff to adequately respond.

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

RESPONSE: Objection. This request is vague, ambiguous and unintelligible, and is directed at Jacuzzi. This Responding Defendant seeks clarification as to the information sought by Plaintiff to adequately respond.

41. Please produce any documentation in support of the claim by Jacuzzi that "for many, [bathing] can create anxiety rather than be an enjoyable experience."

RESPONSE: Objection. This request is vague, ambiguous and unintelligible, and is directed at Jacuzzi. This Responding Defendant seeks clarification as to the information sought by Plaintiff to adequately respond.

42. Please produce any research in support of the claim by Jacuzzi that "for many, [bathing] can create anxiety rather than be an enjoyable experience."

RESPONSE: Objection. This request is vague, ambiguous and unintelligible, and is directed at Jacuzzi. This Responding Defendant seeks clarification as to the information sought by Plaintiff to adequately respond.

43. For YouTube Marketing video: https://www.youtube.com/watch?v=kTsrCTwOrAk Please produce the building codes, association criteria and product safety and performance standards that Jacuzzi claims to exceed as mentioned in the video.

RESPONSE: This Responding Defendant did not create the YouTube Marketing video therefore is not in possession of documents responsive to this Request.

44. For all individual inspections that were performed during the construction period of Sherry Cunnison's bathtub, please produce the written documentation pertaining to each inspection that was performed.

RESPONSE: This Responding Defendant did not construct the subject tub, therefore is not in possession of any documents responsive to this Request, other than those documents already produced in the course of litigation.

45. For YouTube Marketing video: https://www.youtube.com/watch?v=kTsrCTwOrAk Please produce the documentation supporting Jacuzzi's claim that its tubs provide therapeutic benefit and pain relief for ailments such as: muscle cramps, diabetes, circulatory disease, arthritis, osteoarthritis, & back pain.

RESPONSE: This Responding Defendant did not create the YouTube Marketing video therefore is not in possession of documents responsive to this Request.

46. Please produce any documentation provided by Mark J. Sontag, M.D. to Jacuzzi.

RESPONSE: This Responding Defendant is not in possession of documents responsive to this Request other than any documents produced by any other party to this litigation, as this Request is directed at Jacuzzi.

47. Please produce the qualification of Mark J. Sontag, M.D.

RESPONSE: Objection. This Request is vague, overbroad and unintelligible in the information sought from this Responding Defendant. This Responding Defendant is not in possession of documents pertaining to Mark J. Sontag, M.D.

48. Please produce the contract between Jacuzzi and Mark J. Sontag, M.D.

RESPONSE: This Responding Defendant is not in possession of documents responsive to this request other than those previously produced in litigation, as it is directed at Jacuzzi.

49. Please produce all documentation regarding the dangers associated with bathing

Jacuzzi had in its possession on or prior to February 27, 2014.

RESPONSE: Objection. This Request is vague and ambiguous with respect to the term "dangers associated with bathing." This Responding Defendant is not in possession of documents responsive to this request other than those previously produced in litigation, as it is directed at Jacuzzi.

50. Please produce documents identified as Exhibit A-1 ("Product One") of the Manufacturing Agreement between FIRST STREET and Jacuzzi, Inc. produced as JACUZZI001588 – JACUZZI001606.

RESPONSE: This Responding Defendant is not in possession of the documents responsive to this request, and will supplement this response should additional information become available.

51. Please produce documents identified as Exhibit A-2 ("Product Two") of the Manufacturing Agreement between FIRST STREET and Jacuzzi, Inc. produced as JACUZZI001588 – JACUZZI001606.

RESPONSE: This Responding Defendant is not in possession of the documents responsive to this request and will supplement this response should additional information become available.

52. Please produce documents identified as Exhibit B through Exhibit D-3 of the Manufacturing Agreement between FIRST STREET and Jacuzzi, Inc. produced as JACUZZI001588 – JACUZZI001606.

RESPONSE: This Responding Defendant is not in possession of the documents responsive to this request and will supplement this response should additional information become available.

53. Please produce all marketing or advertising materials ever created or developed by Defendant FIRST STREET, Jacuzzi, Inc., or any other third party on behalf of Defendant in relation to subject Jacuzzi Walk-In-Tub.

RESPONSE: Objection. This Request is vague, ambiguous, overbroad and unduly burdensome with respect to subject matter, time frame, and medium. Please see Exhibit B attached hereto, in

addition to the documents previously produced in the course of litigation pertaining to the sale of Ms. Cunnison's Jacuzzi tub.

54. Please produce all documents which support statement made by any medical professional in support of the subject Jacuzzi Walk-In-Tub, regardless of its use in marketing or advertising materials for Defendant FIRST STREET or Jacuzzi, Inc.

RESPONSE: Objection. This Request is vague, ambiguous, overbroad and unintelligible with respect to the information sought through this Request. This Responding Defendant seeks clarification of the information sought in order to properly respond to this Request.

55. Please produce all documents which support the phrase DESIGNED FOR SENIORS WALK-IN TUB in the Manufacturing Agreement between FIRST STREET and Jacuzzi, Inc. produced as JACUZZI001588 – JACUZZI001606.

RESPONSE: Objection. This Request is vague, ambiguous, and unintelligible with respect to the information sought through this Request. This Responding Defendant seeks clarification of the information sought in order to properly respond to this Request.

DATED this 14th day of September, 2018.

THORNDAL ARMSTRONG DELK
BALKENBUSH & EISINGER

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.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 14th day of September, 2018, service of the above and foregoing DEFENDANT, FIRSTSTREET FOR BOOMERS AND BEYOND, INC.'S RESPONSE TO PLAINTIFF, ROBERT ANSARA'S FIRST SET OF REQUEST FOR PRODUCTION OF DOCUMENTS was made upon each of the parties via electronic service through the Eighth Judicial District Court's Odyssey E-File and Serve system.

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

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

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Joshua D. Cools, Esq.
Snell & Wilmer LLP
3883 Howard Hughes Pkwy., Ste. 1100
Las Vegas, Nevada 89169
Attorneys for Defendant,
JACUZZI BRANDS LLC

Hale Benton
26479 West Potter Drive
Buckeye, AZ 85396

Karen Bark

An employee of THORNDAL ARMSTRONG
DELK BALKENBUSH & EISINGER

EXHIBIT "A"

Benjamin P. Cloward, J.D.*°
Jonathan R. Hicks, J.D.*
Alison M. Brasier, J.D.*°

* admitted in Nevada
° admitted in Utah

Top 40 under 40
AVVO Rated 10 out of 10
Multi-Million Dollar Advocates Forum
National Trial Lawyers, Nevada Top 100
Gerry Spence Trial Lawyers College

January 19, 2017

First Street for Boomers and Beyond
1998 Ruffin Mill Rd,
South Chesterfield, VA 23834

Claimant	:	Mack Smith
Date of Loss	:	9/12/2016

To Whom It May Concern:

This office represents the family of Mack Smith in connection with his death as the result of a drowning as a consequence of using a Jacuzzi tub in their home.

Please be advised that we will preserve the subject Jacuzzi tub as is, for thirty (30) days to allow for inspection. The Jacuzzi tub will then be removed from the Mack residence in Cartersville, Georgia.

Please refer this letter to your liability insurance carrier with instructions to contact my paralegal, Tina Jarchow, if you have any questions regarding this request.

Thank you for your cooperation.

Sincerely,

BENJAMIN P. CLOWARD, ESQ.
CLOWARD HICKS BRASIER, PLLC.

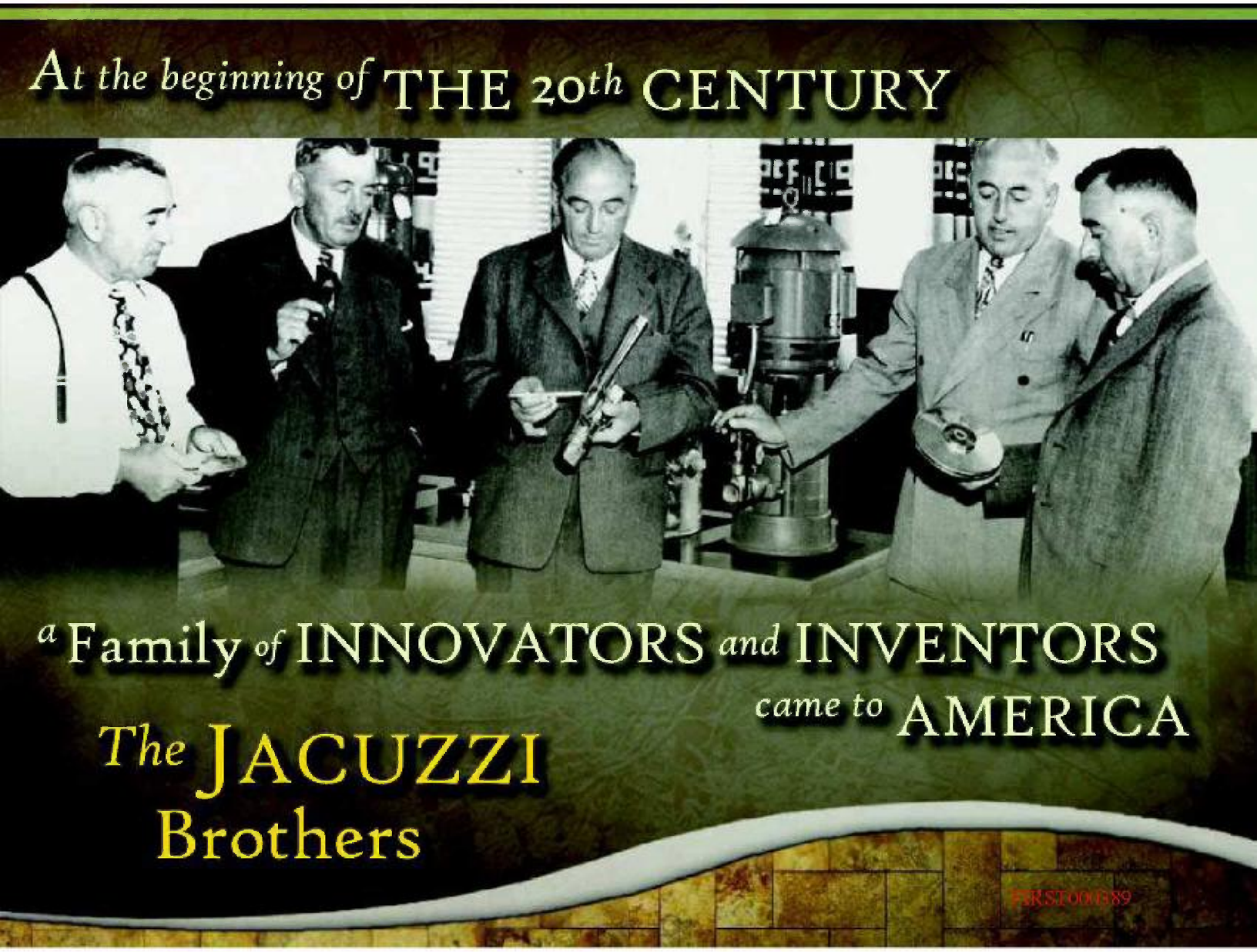
4101 Meadows Lane, Suite 210 • Las Vegas, Nevada 89107
(702) 628-9888 (702) 960-4118 info@chblawyers.com www.chblawyers.com

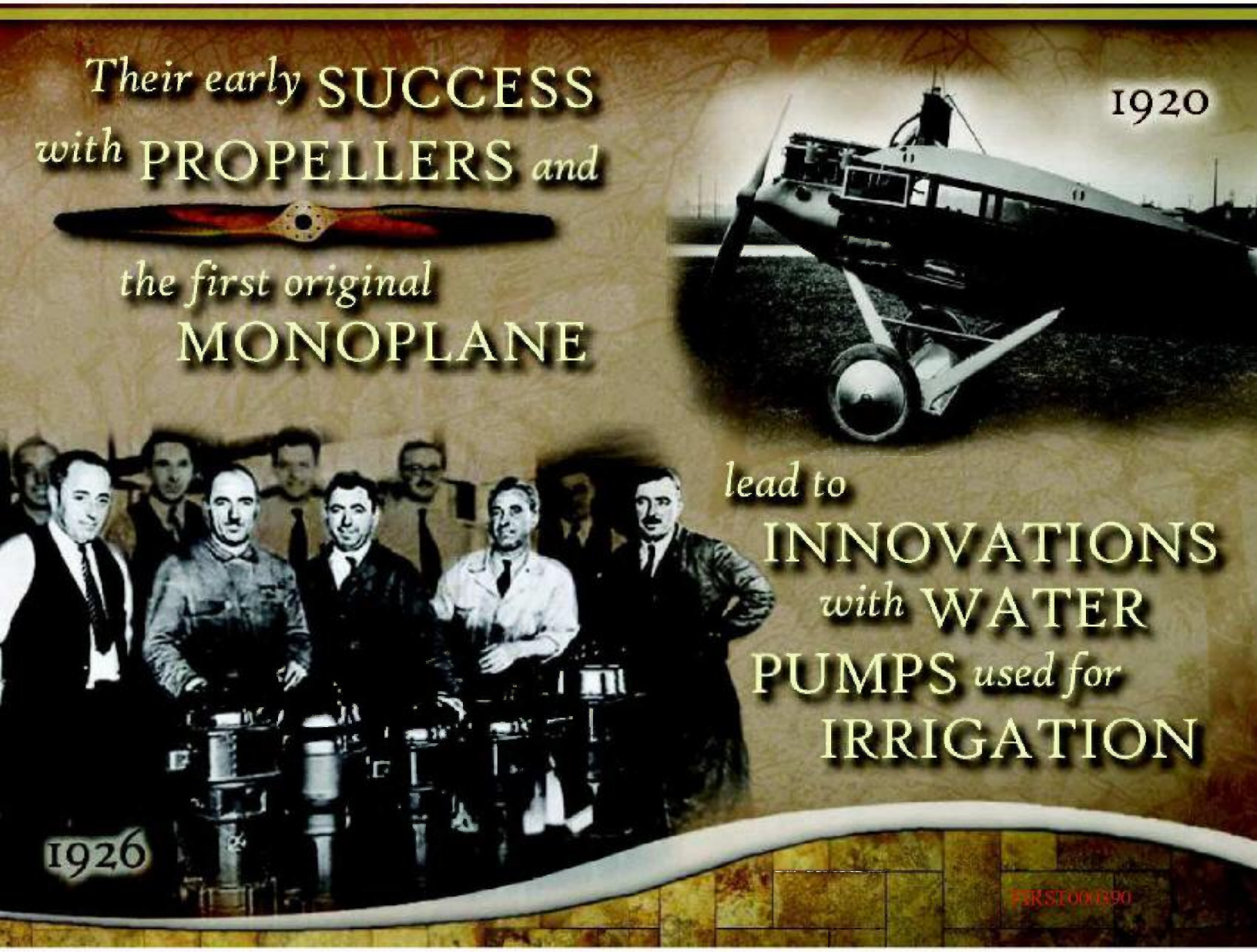
EXHIBIT "B"

Comfort
in your
HOME
Jacuzzi
FERST001686

Jacuzzi
FIRST000387

FIRST000388


At the beginning of THE 20th CENTURY
a Family of INNOVATORS and INVENTORS
came to AMERICA
The JACUZZI
Brothers
FIRST001689


Their early SUCCESS
with PROPELLERS and
the first original
MONOPLANE
1920
lead to
INNOVATIONS
with WATER
PUMPS used for
IRRIGATION
1926
FERST001390

NECESSITY, *being the* MOTHER *of* INVENTION...

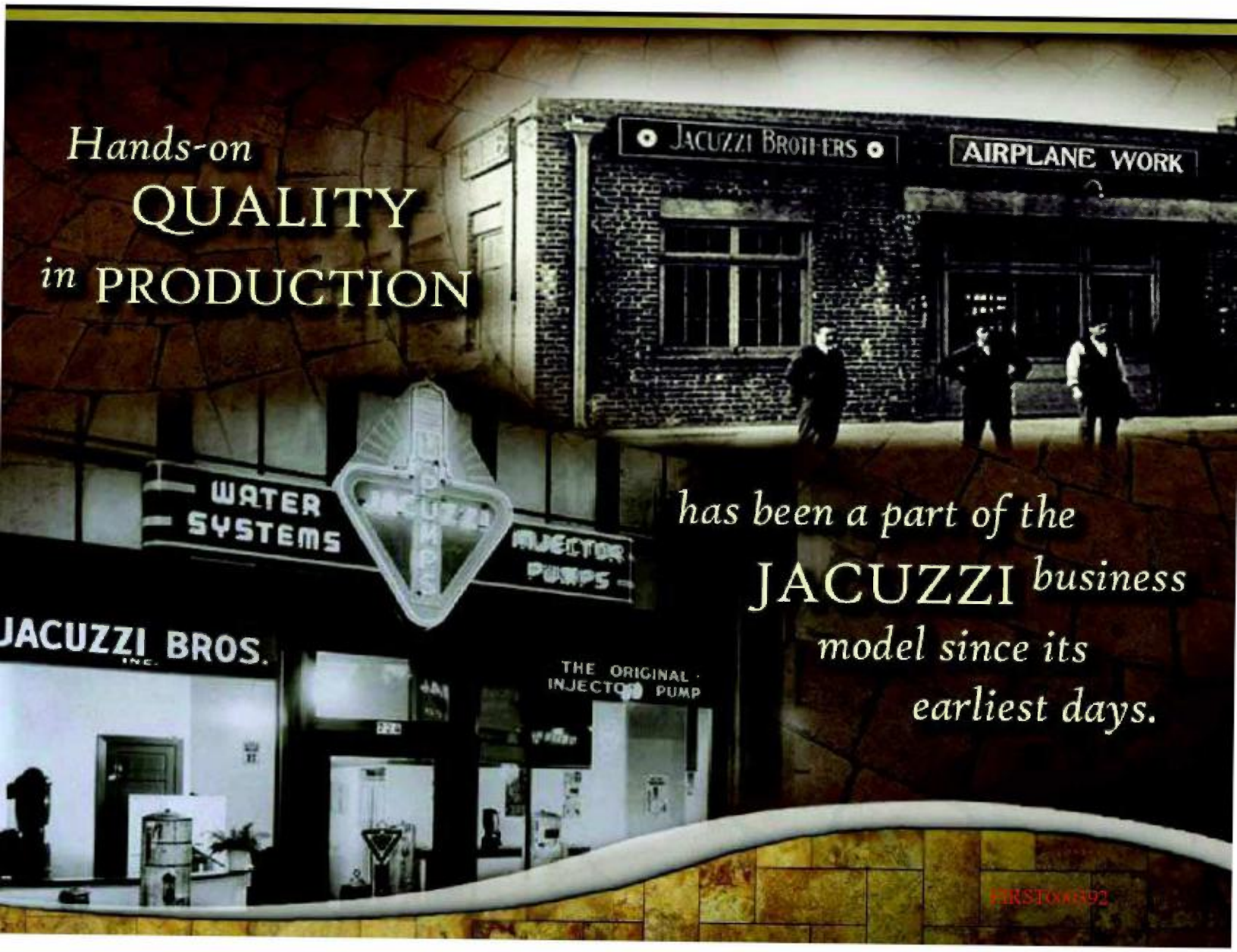
1948

To help his youngest son, Kenneth, cope with the pain of Rheumatoid Arthritis (RA), Candido developed a version of their pump to work in a bath tub, and changed the direction of history.

In the late 1950s, they launched the first portable hydrotherapy pump that could turn any tub into a spa.

FERST001391

Hands-on
QUALITY
in PRODUCTION



has been a part of the
JACUZZI *business*
model since its
earliest days.

FIRST006392

The original JACUZZI VINEYARDS *established by the* BROTHERS *is still going strong.*

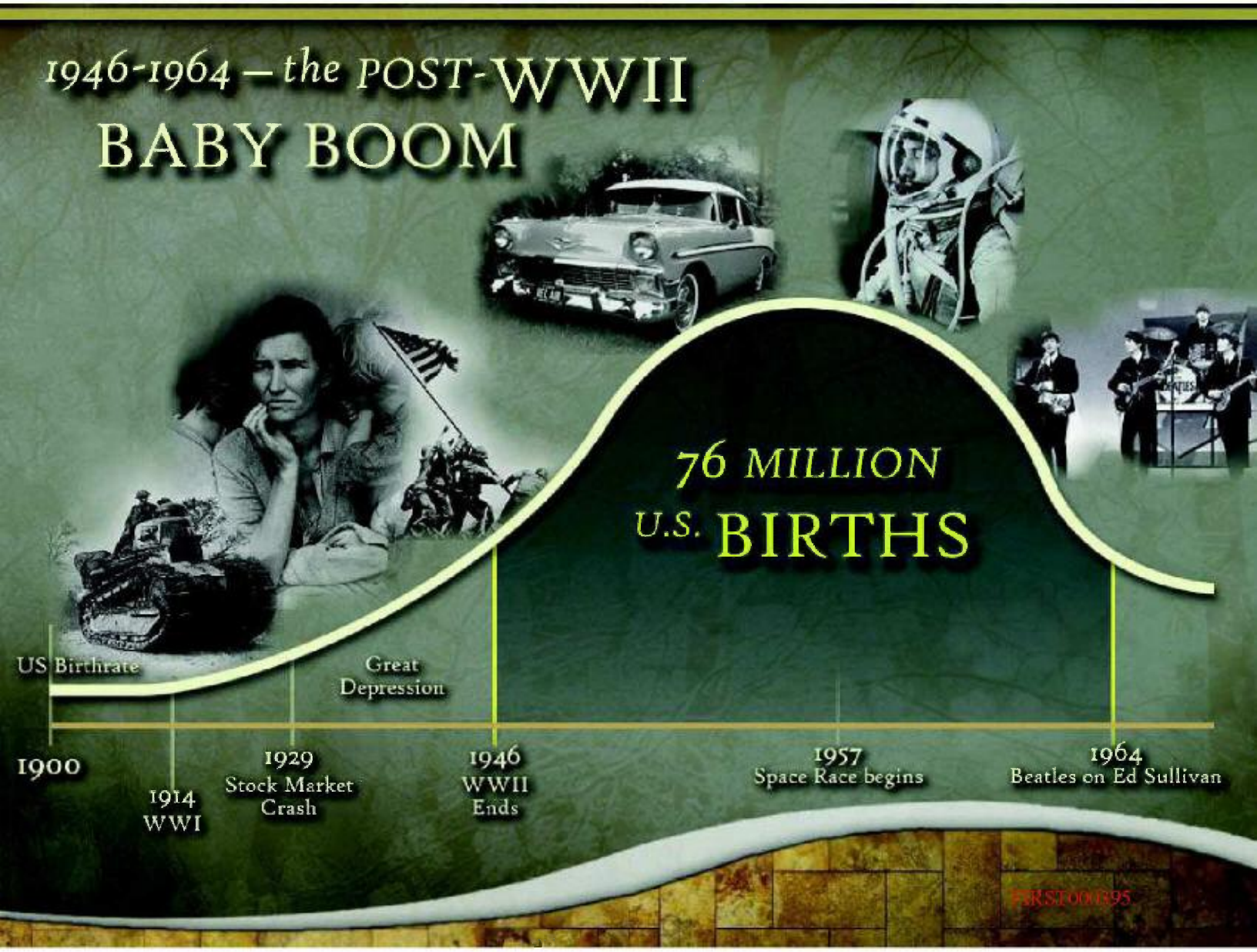
FERST001393

Jacuzzi Walk- In tubs are proud supporters of Operation Homefront a non-profit organization that assists military service men/women and their families in need.

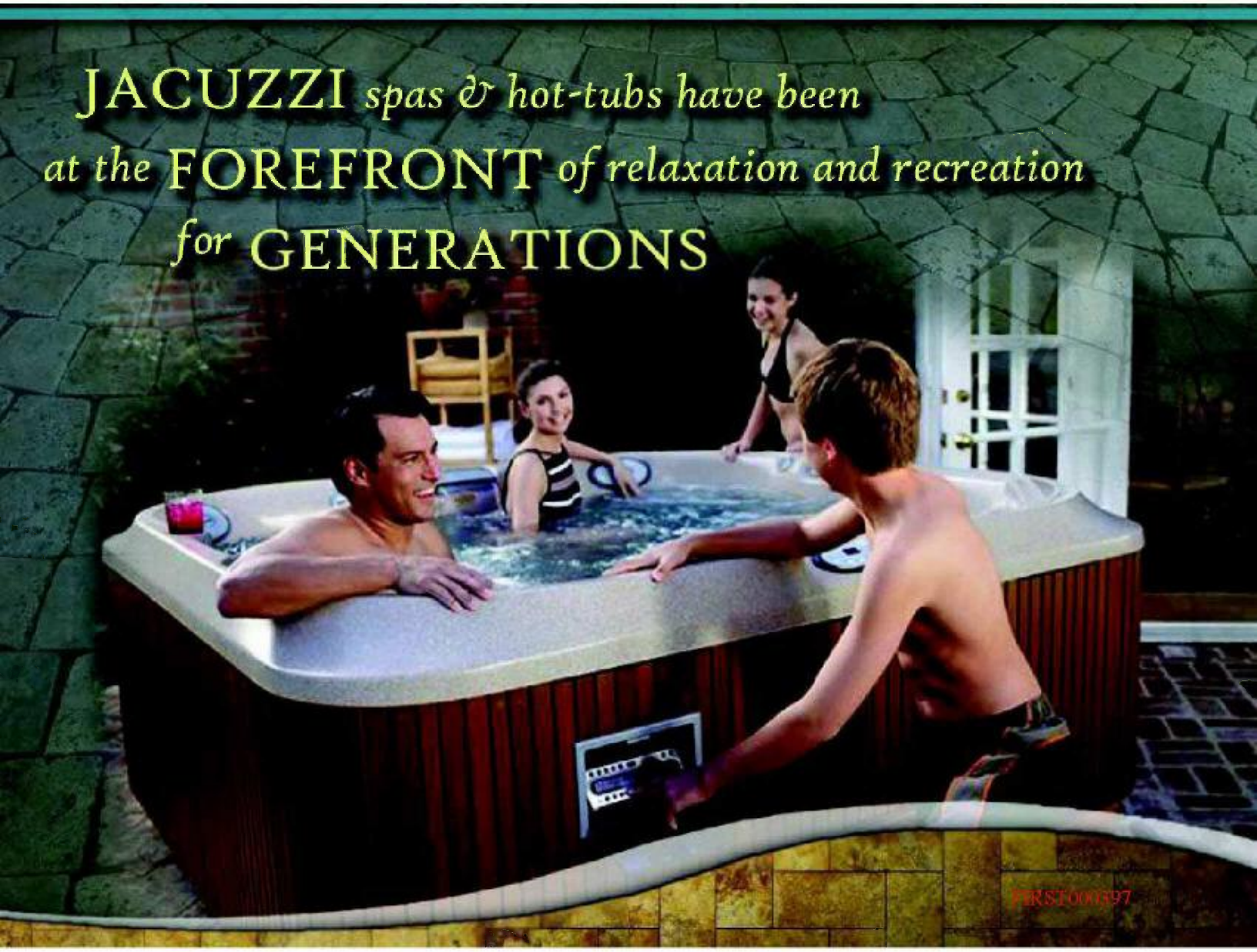
OPERATION HOMEFRONT

Jacuzzi

FIRST000334

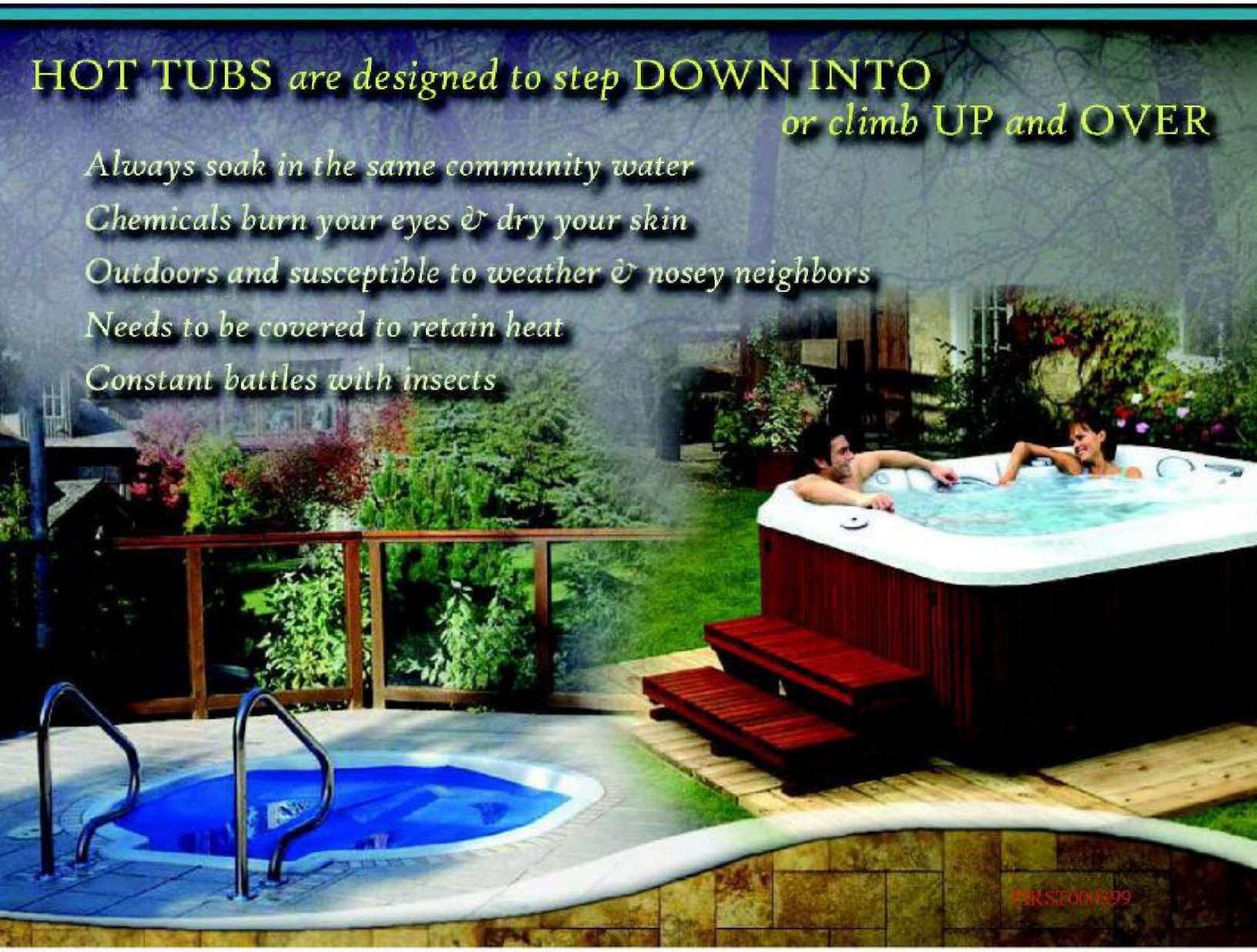

1946-1964 – the POST-WWII
BABY BOOM
76 MILLION
U.S. BIRTHS
US Birthrate
Great Depression
1900
1914 WWI
1929 Stock Market Crash
1946 WWII Ends
1957 Space Race begins
1964 Beatles on Ed Sullivan
FERST001895

Jacuzzi
FAMILY SPA
for most,
an IN-HOME SPA was
an ELUSIVE LUXURY

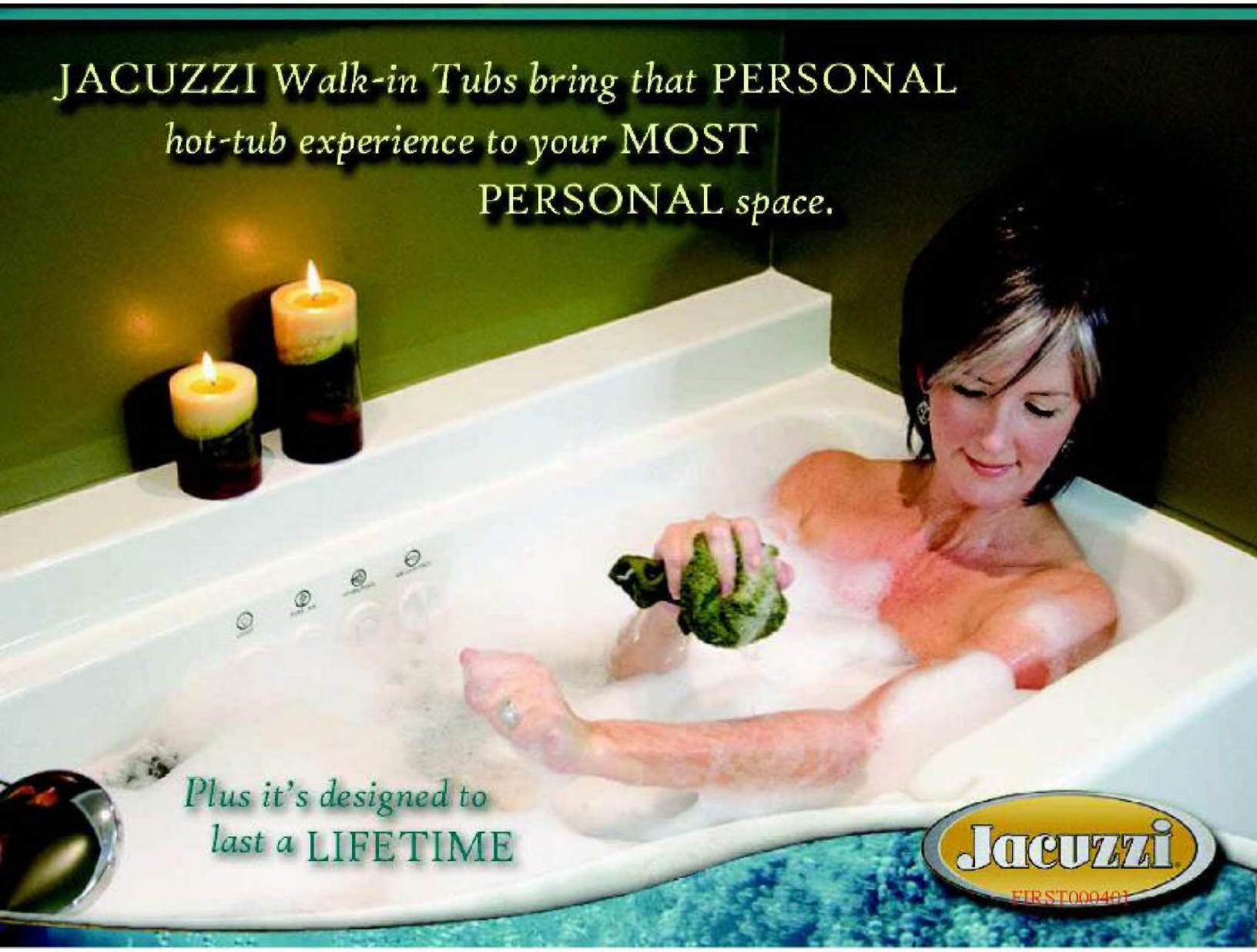

JACUZZI spas & hot-tubs have been
at the FOREFRONT of relaxation and recreation
for GENERATIONS
FIRST001697

Hot-tubs & HYDROTHERAPY are the BEST ways to deal with STRESS, soothe aching MUSCLES, and COPE with pain and recovery.

BUT, *not everyone has a PERSONAL Hot-tub...*

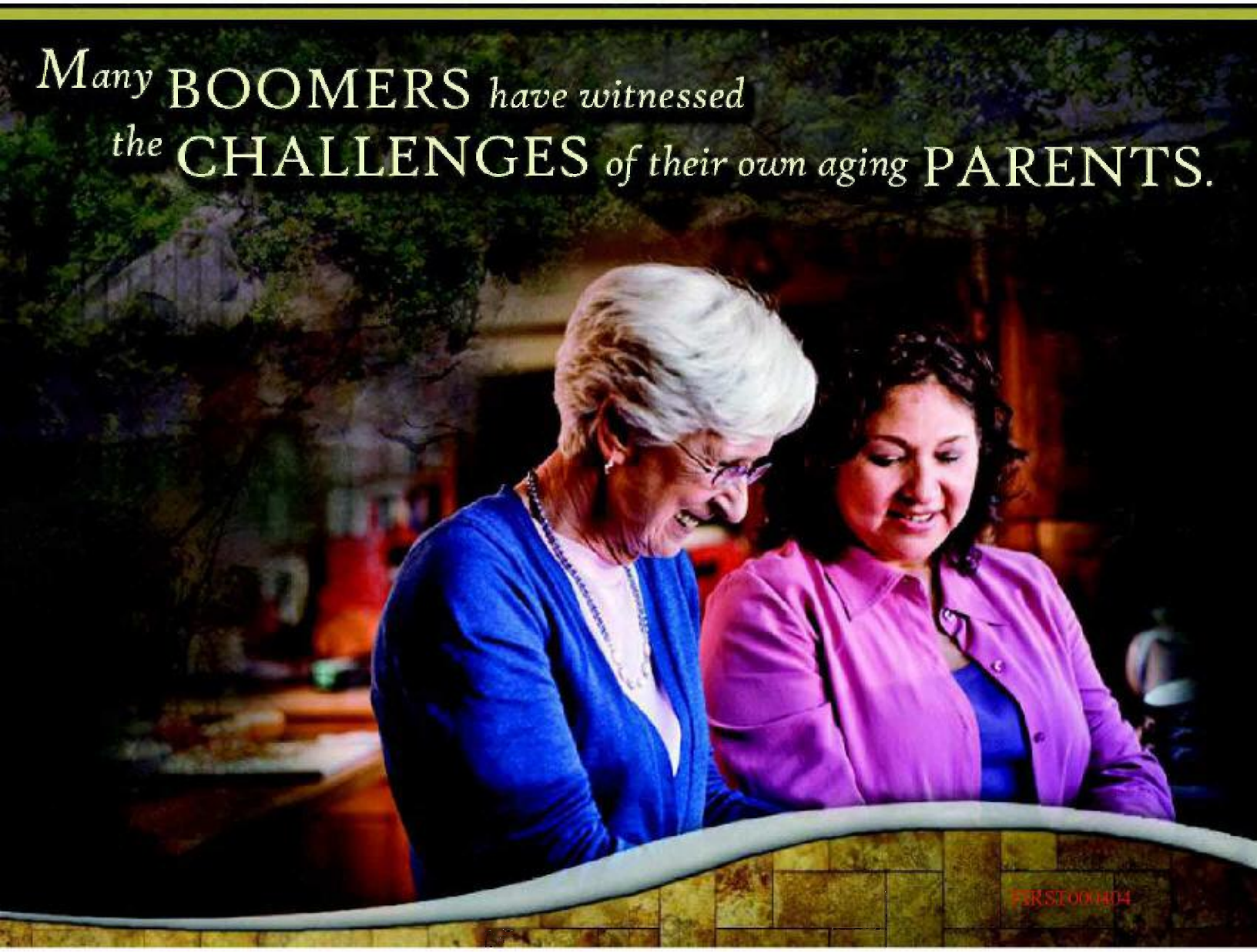

HOT TUBS are designed to step DOWN INTO
or climb UP and OVER
Always soak in the same community water
Chemicals burn your eyes & dry your skin
Outdoors and susceptible to weather & nosey neighbors
Needs to be covered to retain heat
Constant battles with insects
FERST001099

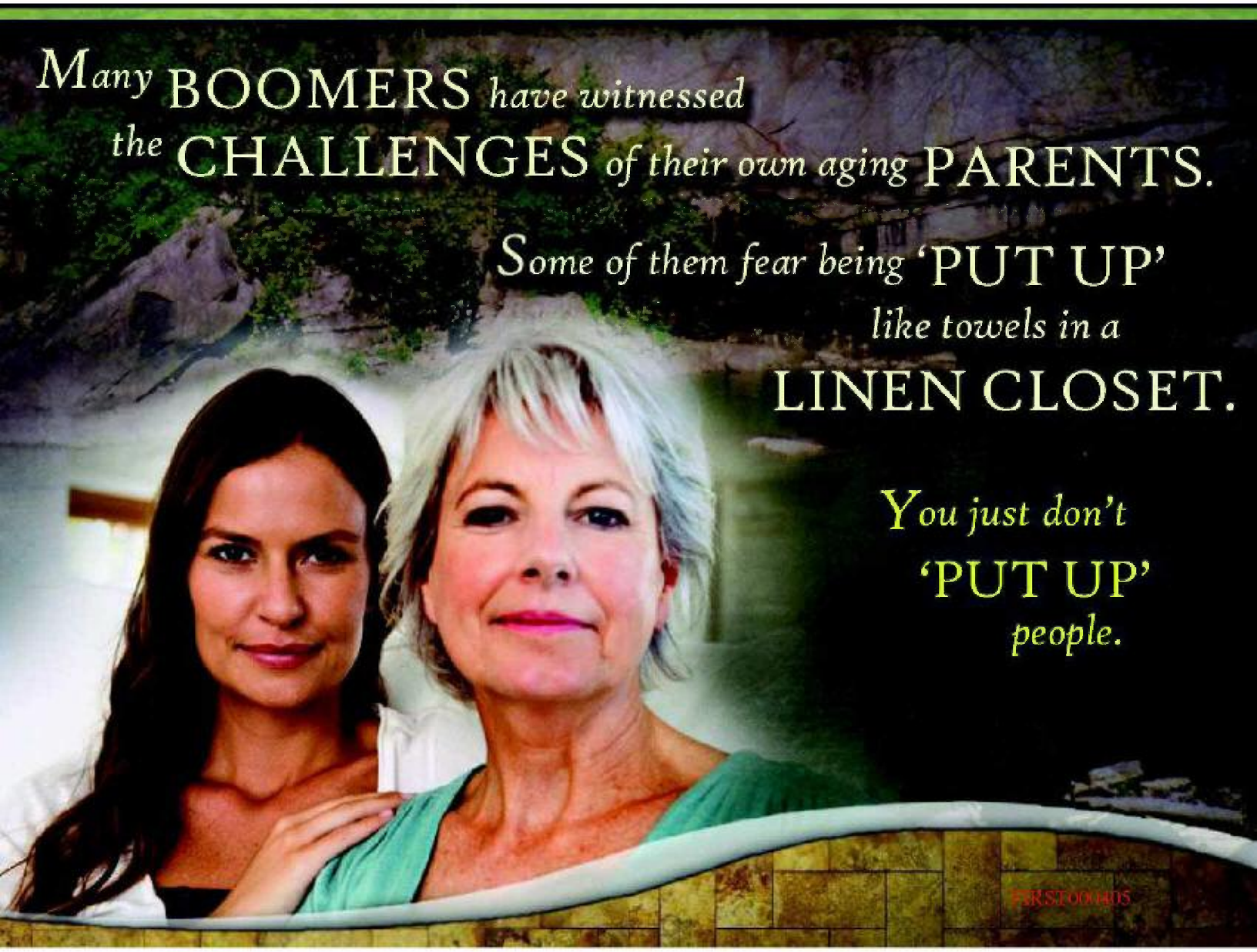
The only COMPLAINT our customers have had is . . . they'd WISHED they had done it SOONER
Jacuzzi
FIRST000406

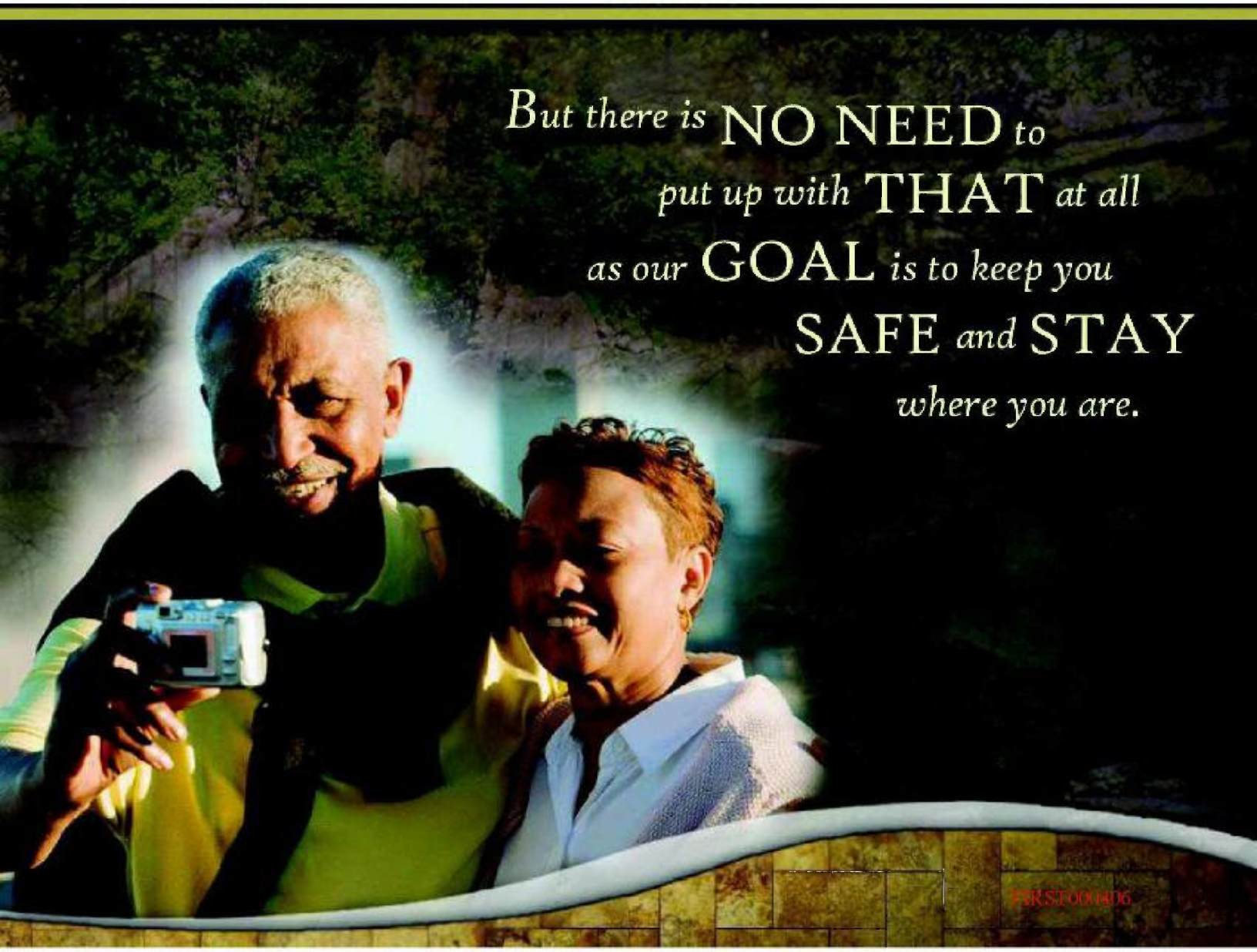

JACUZZI Walk-in Tubs bring that PERSONAL
hot-tub experience to your MOST
PERSONAL space.
Plus it's designed to
last a LIFETIME
Jacuzzi
FIRST000401

water that moves you™
Jacuzzi
FIRST000402

Jacuzzi
FIRST000403

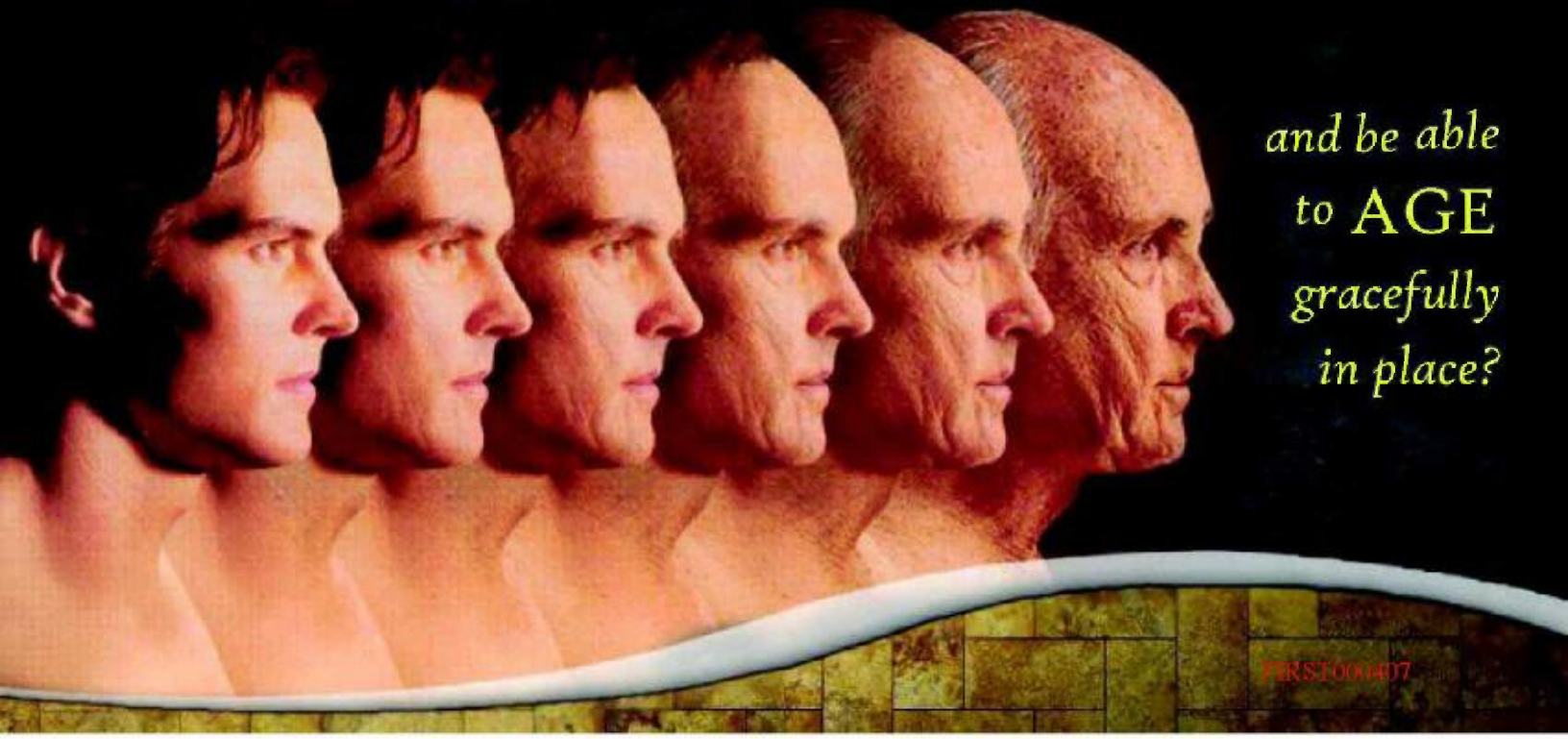

Many BOOMERS have witnessed
the CHALLENGES of their own aging PARENTS.
FERST001404


Many BOOMERS have witnessed the CHALLENGES of their own aging PARENTS.
Some of them fear being 'PUT UP' like towels in a LINEN CLOSET.
You just don't 'PUT UP' people.
FERST001405


But there is NO NEED to
put up with THAT at all
as our GOAL is to keep you
SAFE and STAY
where you are.
FIRST001406

AARP says 89% of the 76 million BOOMERS want to STAY in their HOMES.

Why wait to modify your BATHROOM, when you can BENEFIT now -



and be able to AGE gracefully in place?

FIRST001407

[redacted]

Comfort in your HOME™

either OLD
or NEWER

your BATHROOM *is*
now DANGEROUS *and*
OBSOLETE

Comfort in your HOME™

A state-of-the art
SOLUTION
Jacuzzi
FIRST000416

Therapeutic FEATURES

ORIGINAL *High Volume* HYDRO AIR-JET *Technology*

With over 250 patents Jacuzzi has mastered the concept of moving air & water together to soften the impact and improve the experience of hydrotherapy.

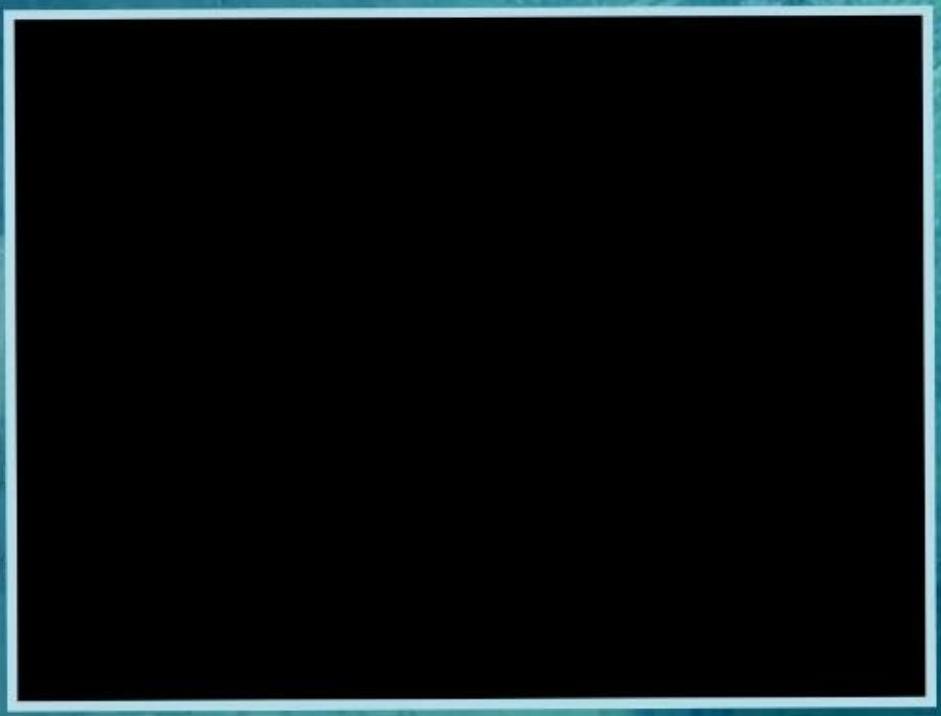
Heat, Buoyancy & Massage

Jacuzzi

FIRST000411

Therapeutic FEATURES

Jacuzzi® PointPro™ Jet System



Jacuzzi

FIRST000412

Therapeutic
FEATURES
Aromatherapy
French Lavender
Eucalyptus
Honey Mango
Pina Colada
Midnight Jasmine
Tahitian Vanilla
Jacuzzi
FIRST000413

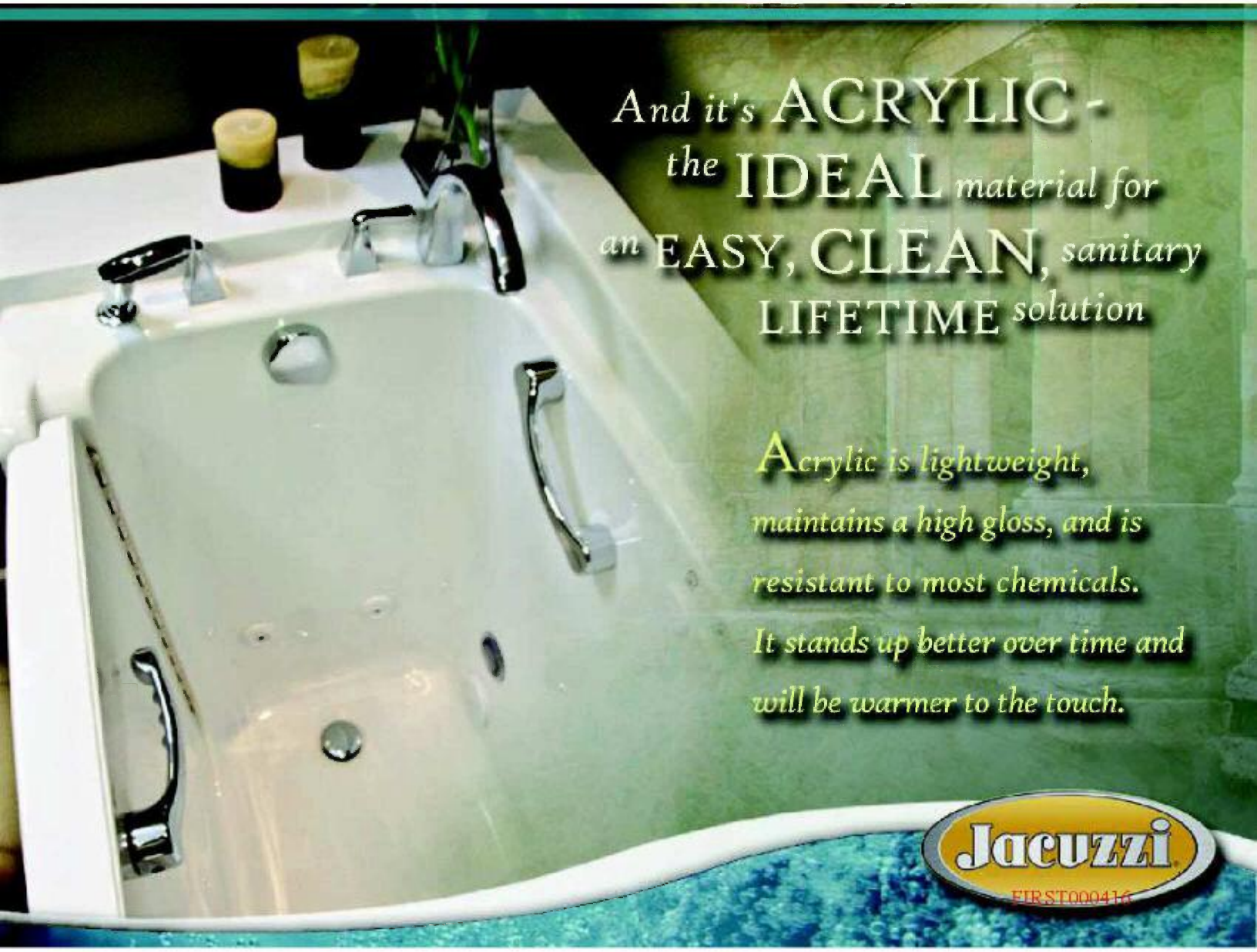
Therapeutic
FEATURES
Chromotherapy
LED lighting that is able to produce a total of 256 mood-setting colors. Jacuzzi's Chromatherapy lighting serves to not only enhance your bathing experience, but can also enhance mood and increase relaxation.
Jacuzzi
FIRST000414

JACUZZI HOT TUBS *feature* SAFETY *and* CONVENIENCE

Comfortable 17-inch high seat with lumbar cluster
Ergonomic grab bars
Beautiful chrome door handles, controls & shower wand
Therapeutic massaging foot jets
Low, easy-step entry and non-slip floor
Durable Acrylic, easy clean finish
Right or left hand no-leak door - Guaranteed!
Dual pin safety release
Heater maintains constant temperature
Anti-scald technology
Quick release drain
Bacteria & mold resistant
Ozone cleaning system

Jacuzzi

FIRST000415


And it's ACRYLIC -
the IDEAL material for
an EASY, CLEAN, sanitary
LIFETIME solution
Acrylic is lightweight,
maintains a high gloss, and is
resistant to most chemicals.
It stands up better over time and
will be warmer to the touch.
Jacuzzi
FIRST000416

Industry

CERTIFICATIONS

INTERTEK ETL LISTED

BBB ACCREDITED BUSINESS

IAPMO

USPC

UPC

- Made in USA -

Jacuzzi

FIRST000417

Our WARRANTY has been around LONGER than ALL of our COMPETITION has

Limited Lifetime Warranty
Jacuzzi Luxury Walk-in Tubs

WARRANTY COVERAGE

Jacuzzi Luxury Bath (the "Company") offers the following expressed limited lifetime warranty to the original purchaser of any Jacuzzi® Luxury Bath products provided in the Company's First Street Walk-in collection who purchases the Bath for personal or single family residential use ("User"). The Company will repair or replace, at its sole option, the Bath or its equipment in accordance with the following terms and conditions. This warranty does not apply to non-branded Bath products manufactured by the Company.

LIFETIME WARRANTY ON BATHS

The Company extends to the User of the Bath a non-transferable limited lifetime warranty that the shell will maintain its structural integrity and configuration and be free of water loss due to a defect in the bathtub shell. This warranty covers only the bathtub shell and the manufacturer installed pump, jets, controls, and blower against defects in material or workmanship. This warranty does not apply to any display models or to any options or accessories which are covered under our limited ninety (90) day warranty set forth below. Warranty coverage begins on the date the unit was originally purchased by the User and upon receipt by the Company of a completely filled out Warranty Registration Card as described below.

2 YEAR LABOR WARRANTY FOR ALL FACTORY INSTALLED COMPONENTS

Our limited labor warranty is for a period of two (2) years from the date the unit was originally purchased by the User, but not more than Three (3) Years from date of manufacture. All factory installed components (e.g., pump, motor, blower, and plumbing) are covered under our labor warranty against failure due to defects in materials and workmanship.

NINETY DAY (PARTS ONLY) LIMITED WARRANTY ON OPTIONS AND ACCESSORIES

Our limited warranty on options and accessories is for ninety (90) days for parts only. Our warranty covers options and accessories manufactured (e.g., drains fill spout kits, trim kits, skirts, video monitors, plasma television screens, CD and MP3 players and other music and video devices and optional heaters) against defects in material or workmanship. Warranty coverage begins on the date the option or accessory was originally purchased by the User. These items may be covered by a manufacturer's warranty which may have a longer duration than this limited warranty. Please confirm with the manufacturer the duration of the appropriate warranty for Options and Accessories.

WARRANTY LIMITATIONS

Our limited warranty does not cover defects, damage, or failure caused by the common carrier, installer, user, or other persons, pets, or rodents, or resulting from, without limitation, any of the following: careless ha[illegible] plumbing, abrading finish, etc.) including its own negligence; modification of any type [illegible] to meet local codes); improper installation (including installation not in acc[illegible] supplied with the unit); connections supplied by the installer [illegible]

JACUZZI still services tubs that have been around since the 1950s with a NATIONAL network of certified dealers.

Who else can say that?

FIRST000418

Jacuzzi
FIRST000419

	BRAND X	BIG BOX STORE	JACUZZI
1. Hydro-Jet Therapy	N/A	INCLUDED	STANDARD
2. Air-Jet Therapy	OPTION	INCLUDED	STANDARD
3. Chromotherapy	N/A	EXTRA $	STANDARD
4. Aromatherapy	N/A	N/A	STANDARD
5. Solid, Acrylic Surface	N/A	N/A	STANDARD
6. Dual Pin Safety Latch	N/A	N/A	STANDARD
7. Auto-Purge System	N/A	INCLUDED	STANDARD
8. In-Line Heater	N/A	EXTRA $	STANDARD
9. Tub Extender	INCLUDED	EXTRA $	STANDARD
10. Ozone Generator	N/A	INCLUDED	STANDARD
11. Fixtures	INCLUDED	EXTRA $	STANDARD
12. Delivery	DROP SHIP	EXTRA $	STANDARD
13. Electric	EXTRA $	EXTRA $	STANDARD
14. Installation	OUT OF AREA	EXTRA $	LOCAL
15. Made In U.S.A.	?	?	YES
16. Warranty: Tub	1 YEAR	1 YEAR	LIFETIME

Best VALUE

Jacuzzi

FIRST000420

[redacted]

Jacuzzi

FIRST000421

Jacuzzi
FIRST000422

Jacuzzi

Marketer

Jacuzzi Dealer

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FIRST001423

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

EXHIBIT 4

ECC
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Nevada Bar No. 5332
MEGHAN M. GOODWIN, ESQ.
Nevada Bar No. 11974
THORNDAL ARMSTRONG DELK
BALKENBUSH & EISINGER
Mailing Address: PO Box 2070
Las Vegas, Nevada 89125-2070
1100 East Bridger Avenue
Las Vegas, NV 89101-5315
Mail To:
P.O. Box 2070
Las Vegas, NV 89125-2070
Tel.: (702) 366-0622
Fax: (702) 366-0327
png@thorndal.com
mmg@thorndal.com

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

DISTRICT COURT

CLARK COUNTY, NEVADA

ROBERT ANSARA, as Special Administrator of the Estate of SHERRY LYNN CUNNISON, Deceased; MICHAEL SMITH individually, and heir to the Estate of SHERRY LYNN CUNNISON, Deceased; and DEBORAH TAMANTINI individually, and heir to the Estate of SHERRY LYNN CUNNISON, Deceased, Plaintiffs, vs. FIRST STREET FOR BOOMERS & BEYOND, INC.; AITHR DEALER, INC.; HALE BENTON, Individually; 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	CASE NO. A-16-731244-C DEPT. NO. 18 **DEFENDANTS FIRSTSTREET FOR BOOMERS AND BEYOND, INC., AND AITHR DEALER, INC.'S PRIVILEGE LOG RELATED TO SECOND SUPPLEMENTAL EARLY CASE CONFERENCE PRODUCTION**

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

Defendants.

HOMECLICK, LLC,

Cross-Plaintiff,

vs.

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

Cross-Defendants.

HOMECLICK, LLC, a New Jersey limited liability company,

Third-Party Plaintiff,

vs.

CHICAGO FAUCETS, an unknown entity,

Third-Party Defendant.

BESTWAY BUILDING & REMODELING, INC.,

Cross-Claimant,

vs.

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

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.; 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,

Cross-Defendants.

DEFENDANTS FIRSTSTREET FOR BOOMERS AND BEYOND, INC., AND AITHR DEALER, INC.'S PRIVILEGE LOG RELATED TO SECOND SUPPLEMENTAL EARLY CASE CONFERENCE PRODUCTION

TO: ALL PARTIES HEREIN; and

TO: THEIR COUNSEL OF RECORD:

Defendants, FIRSTSTREET FOR BOOMERS AND BEYOND, INC., and AITHR DEALER, INC., hereby submits the following privilege log related to the documents produced as part of FIRSTSTREET FOR BOOMERS AND BEYOND, INC. and AITHR DEALER, INC.'s Second Supplemental Early Case Conference Production.

1. All emails generated **after March 1, 2014** have been withheld as they are not relevant to the subject matter, nor are they likely to lead to any relevant and admissible evidence. As counsel is fully aware, the claims against FirstSTREET and AITHR are based on the marketing and advertising materials that Ms. Cunnison may have reviewed in making the decision to purchase the Jacuzzi walk in tub in question. As Ms. Cunnison could not have inspected or reviewed any marketing or advertising materials after March 1, 2014, any such materials are

not relevant, nor likely to lead to any relevant or admissible evidence. However, any email generated after March 1, 2014, that makes reference to this incident, if such emails exist, was not withheld, and has been produced.

2. All emails between employees or representatives of FirstSTREET and AITHR and its counsel have been withheld based on the attorney client privilege. Of note, there were no emails referencing the subject incident that falls into this category.

3. All emails referencing "advertising buys" that FirstSTREET purchased related to the Jacuzzi walk in tub in question were withheld based upon a trade secrets privilege. If the email contained anything other than the "advertising buy" information, the email was produced and the protected information was redacted out.

DATED this 3rd day of December, 2018.

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

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), on the 3rd day of December, 2018, service of the above and foregoing DEFENDANTS FIRSTSTREET FOR BOOMERS AND BEYOND, INC., AND AITHR DEALER, INC.'S PRIVILEGE LOG RELATED TO ITS SECOND 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, and by personal serving a thumb drive containing the identified documents on Mr. Cloward and Mr. Cools.

Benjamin P. Cloward, Esq.
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Attorneys for Plaintiffs

Charles Allen Law Firm, P.C.
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Hale Benton
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Buckeye, AZ 85396

/s/ Stefanie Mitchell

An employee of THORNDAL ARMSTRONG
DELK BALKENBUSH & EISINGER

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ARMSTRONG
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EXHIBIT 5

1 DISTRICT COURT

2 CLARK COUNTY, NEVADA

3 ROBERT ANSARA, as Special)
Administrator of the Estate of)
4 SHERRY LYNN CUNNISON, Deceased;)
ROBERT ANSARA, as Special)
5 Administrator of the Estate of)
MICHAEL SMITH, Deceased heir to the)
6 Estate of SHERRY LYNN CUNNISON,)
Deceased; and DEBORAH TAMANTINI)
7 individually, and heir to the)
Estate of SHERRY LYNN CUNNISON,)
8 Deceased,)
)
9 Plaintiffs,)
VS.) Case No.
10) A-16-731244-C
) Dept. No.: II
11 FIRST STREET FOR BOOMERS & BEYOND,)
INC.; AITHR DEALER, INC.; HALE)
12 BENTON individually; HOMECLICK, LLC;)
JACUZZI, INC., doing business as)
13 JACUZZI LUXURY BATH; BESTWAY)
BUILDING & REMODELING, INC.; WILLIAM)
14 BUDD, individually and as BUDDS)
PLUMBING; DOES 1 through 20; ROE)
15 CORPORATIONS 1 through 20; DOE)
EMPLOYEES 1 through 20; DOE)
16 MANUFACTURERS 1 through 20; DOE 20)
INSTALLERS 1 through 20; DOE)
17 CONTRACTORS 1 through 20; and DOE)
21 SUBCONTRACTORS 1 through 20,)
18 inclusive,)
)
19 Defendants.)
)
20

DEPOSITION OF: HALE BENTON
21 Phoenix, Arizona
November 27, 2017
22 1:09 p.m.

23 Job No.: 433815

24 Prepared by:
KRISTIN M. DECASAS, CSR, RPR
25 Certificate No. 50925

1 I N D E X

2

3 WITNESS: Page:

4

5 HALE BENTON

6 EXAMINATION BY MR. COOLS 6

7 EXAMINATION BY MR. CLOWARD 38

8 EXAMINATION BY MS. GOODWIN 102

9 EXAMINATION BY MR. BORTZ 125

10 EXAMINATION BY MS. MICHELI 138

11 EXAMINATION BY MR. COOLS 140

12 EXAMINATION BY MR. TRAN 140

13 EXAMINATION BY MR. CLOWARD 141

14

15 E X H I B I T S

16

17 NUMBER DESCRIPTION PAGE:

18 EXHIBIT 1 Customer Agreement 10/19/2013 11

19 EXHIBIT 2 Field Sales Rep Data Form 11

20 EXHIBIT 3 Collection of documents - Bates 54

21 JAC000001 - JAC000012

22

23

24

25

1 DEPOSITION OF HALE BENTON

2 commenced at 1:09 p.m. on November 27, 2017, at One

3 Arizona Center, 400 East Van Buren - Suite 1900, Phoenix,

4 Arizona, before KRISTIN M. DECASAS, a Certified Reporter,

5 CR No. 50925, for the State of Arizona.

6

7 A P P E A R A N C E S

8 For the Plaintiffs:

9 RICHARD HARRIS LAW FIRM

10 BY: BENJAMIN P. CLOWARD, ESQ.

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23 702-784-5200

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18 Inc. and AITHR Dealer, Inc.:

19 THORNDAL, ARMSTRONG, DELK, BALKENBUSH & EISINGER

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21 1100 East Bridger Avenue

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1 APPEARANCES CONT'D:

2

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11 For the Defendant, William Budd individually and as Budds

12 Plumbing:

13 LIPSON, NEILSON, COLE, SELTZER & GARIN

14 BY: ERIC TRAN, ESQ. (via speakerphone)

15 9900 Covington Cross Drive - Suite 120

16 Las Vegas, Nevada 89144

17 702-382-1500

18

19

20

21

22

23

24

25

1 November 27, 2017
2 1:09 p.m.
3 Phoenix, Arizona
4
5 HALE BENTON,
6 called as a witness herein, having been first duly sworn,
7 was examined and testified as follows:
8 EXAMINATION
9 BY MR. COOLS:
10 **Q Mr. Benton, could you please state your full**
11 **name for the record?**
12 A Hale Powers Benton.
13 **Q You mentioned before we started the record that**
14 **this is your first time having a deposition taken, right?**
15 A Yes.
16 **Q So basically just to explain what's going on, we**
17 **have a court reporter here, who's recording everything or**
18 **typing down everything that we're saying. So this is the**
19 **attorneys' opportunity to ask you questions about this**
20 **case.**
21 **One of the things that is very common in**
22 **normal conversation is to speak at the same time as one**
23 **another or speak over each other. It's important that we**
24 **don't do that in this context so that we have a clean**
25 **record.**

1 records. That was it.

2 THE WITNESS: That's the one. Yes. I'm

3 sorry.

4 MR. COOLS: Other than that, I haven't

5 spoken with him before today.

6 BY MR. CLOWARD:

7 **Q Did you ever e-mail or text with anybody about**

8 **your deposition or what you know?**

9 A No, Sir. No, Sir.

10 **Q Okay. Fair enough.**

11 **And then you were -- you were asked some**

12 **questions about this being a tight fit. I think you**

13 **wrote down on the paperwork, "tight fit." And then you**

14 **said that -- in the paperwork it says, "recommended to**

15 **lose some weight."**

16 **Was that your recommendation that**

17 **Ms. Cunnison lose some weight?**

18 A That's correct.

19 **Q And she said that she was going to do that, she**

20 **was going to lose some weight?**

21 A To my recollection, yes, because she -- yes.

22 **Q Okay.**

23 **Now, you were asked specifically, I guess,**

24 **whether you had any concerns about her being a tight fit.**

25 **Mr. Cools said, you know, what were your concerns for her**

1 **And in the same documents, we discussed**
2 **earlier that you have some written notes that you did not**
3 **give Ms. Cunnison a lead pamphlet, correct?**
4 A Lead paint pamphlet, yeah, because the house was
5 built in 2005.
6 **Q In 2005?**
7 A Yeah, we would only give them those if it was
8 back in the '70s.
9 **Q Okay.**
10 **I just wanted to clear up the reason you**
11 **didn't give her a lead pamphlet was because it was**
12 **unnecessary?**
13 A Yes, unnecessary.
14 **Q Okay.**
15 **Do you recall looking at these documents --**
16 **let me rephrase that. Excuse me.**
17 **My understanding from looking at these**
18 **documents is that you sold Ms. Cunnison the Jacuzzi model**
19 **with ten jets; is that accurate?**
20 A Yes.
21 **Q Yes?**
22 A Yes.
23 **Q Okay.**
24 **When you visited Ms. Cunnison in her home,**
25 **were there any other individuals at the home?**

1 A That's what I've been trying to remember. Um, I
2 believe, but I'm going to tell you, I just believe what
3 I'm going to tell you, I believe there was a son there.
4 A son.
5 **Q Okay.**
6 **Did you have any conversations with the**
7 **son?**
8 A No, but he kept on -- again, this is what I
9 think -- talking to his mother about not getting a tub.
10 It's too much money. That's what I recall.
11 **Q Okay.**
12 **Do you remember if the son was present when**
13 **you discussed Ms. Cunnison maybe having a tight fit into**
14 **the tub?**
15 A No, I don't, but I think he was there. I don't
16 recall it exactly.
17 **Q And I'm a woman so bear with me. I know.**
18 A I think he was there.
19 **Q I'm sorry. Go ahead.**
20 A Yeah. He had to have because he was there the
21 whole time. Yeah. Yes.
22 **Q Okay.**
23 **So how did Ms. Cunnison's weight come up in**
24 **conversations because I know that can be kind of awkward**
25 **sometimes?**

1 A She was just big, and I'm the one who brought it
2 up.
3 **Q So you let her know, hey, your size --**
4 A Size, it's going to be a tight fit. You got to
5 lose some weight to get the full benefits of it. I was
6 worried she wouldn't get the full benefits of the jets.
7 **Q Okay.**
8 **Um, did she indicate to you that she was**
9 **intending to lose weight for other reasons than the**
10 **Jacuzzi tub?**
11 A No. No.
12 **Q So when she said that she was going to lose**
13 **weight, it was because she wanted to be able to utilize**
14 **the tub?**
15 A I believe so. That's my -- that's my thought,
16 yes.
17 **Q Did Ms. Cunnison ever tell you what type of**
18 **medical condition she was suffering from when she decided**
19 **to purchase the tub?**
20 A No.
21 **Q Aside from her weight, do you remember her**
22 **physical condition when you were at her home?**
23 A No.
24 **Q Did anything stand out to you aside from her**
25 **weight?**

1 the parties.

2 MR. CLOWARD: I'm just going to -- I hate

3 to throw a wrench, I've never actually done this, but any

4 party can request that that be done, and I'm going to

5 request that that be done. So I'm requesting that you

6 read and review. Coordinate with the reporter. I've

7 never exercised that, that right, but I know that you've

8 had some memory -- you know, I want to give you a full

9 opportunity.

10 THE WITNESS: That's three hours of

11 testimony.

12 MR. CLOWARD: I know. It's important. I'm

13 sorry. I'm sorry to do that, but I'd like to you to

14 review and sign. That way if anything comes back to you

15 during review, you can fill that in for us. Okay?

16 THE WITNESS: Are we still on the record?

17 MR. CLOWARD: Yes.

18 THE WITNESS: Can we go off the record?

19 MR. CLOWARD: Sure.

20 MR. COOLS: Yeah.

21 MS. MICHELI: That's fine.

22 (RECESS: 4:13 P.M. TO 4:15 P.M.)

23 MR. COOLS: Sir, back on the record.

24 Mr. Hale (sic), just to confirm, you -- as

25 Mr. Cloward requested, you're going to receive and sign

1 your transcript from this deposition; is that correct?
2 THE WITNESS: Yes.
3 MR. COOLS: And you'll work with the court
4 reporter in terms of coordinating receiving a copy of it
5 and letting her know if there are any changes?
6 THE WITNESS: Yes.
7 MR. COOLS: Off the record. That concludes
8 the deposition.
9 (DEPOSITION CONCLUDED AT 4:16 P.M.)
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1 REPORTER'S CERTIFICATE

2 COUNTY OF MARICOPA)

3) SS.

4 STATE OF ARIZONA)

5 The deposition of HALE BENTON, noticed by Counsel

6 for the Defendant Jacuzzi, was taken on November 27, 2017

7 At One East Washington - Suite 500, Phoenix, Arizona,

8 before Kristin M. DeCasas, RPR, CSR, Arizona Certified

9 Reporter, No. 50925.

10 I, KRISTIN M. DECASAS, hereby certify:

11 That I am a RPR, CSR, and Arizona Certified Reporter,

12 No. 50925, representing Litigation Services, Registered

13 Firm R1023; that an oath or affirmation was administered

14 to the witness by me;

15 That the foregoing proceedings, Deposition of

16 HALE BENTON, was written by me in computerized machine

17 shorthand and thereafter transcribed and produced under

18 my direction; that the transcript constitutes a full,

19 true and accurate record of said proceedings taken on the

20 date and time indicated therein; that the witness has

21 elected to read and sign the transcript; that the

22 preparation, production and distribution of the

23 transcript and copies comply with the Arizona Revised

24 Statutes and Arizona Code of Judicial Administration

25 7-206(J)(1)(g)(1) and (2); that the billings and business

1 terms regarding the transcript and copies comply with the
2 Arizona Revised Statutes and Arizona Code of Judicial
3 Administration 7-206(J)(1)(g)(3) through (6); that I am a
4 disinterested person to this action with no relational,
5 financial, contractual, or business interest in said
6 action, and that I have not been retained to provide
7 court reporting services in the action by an individual
8 or entity other than a party, a party's attorney, or a
9 registered reporting firm.
10 IN WITNESS WHEREOF, I have hereunto subscribed my hand on
11 this day, December 4, 2017.
12
13
14 KRISTIN M. DECASAS, CSR, RPR
15 Arizona Certified Reporter
16 No. 50925
17
18
19
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22
23
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25

1 CERTIFICATE OF COMPLIANCE BY REPORTING FIRM

2 I CERTIFY that the foregoing deposition transcript
3 was prepared by the reporter designated herein; that a
4 digital copy of the reporter's transcript was submitted
5 by the reporter to Litigation Services, LLC, Registered
6 Firm R1023, for the purposes of preparing electronic
7 and/or paper copies for the parties; that the transcripts
8 have been prepared and distributed pursuant to the
9 request by counsel on the record or the order on file
10 with Litigation Services, LLC.

11 I FURTHER CERTIFY that the production and
12 distribution of the transcripts, as well as the billing
13 and business terms, comply with the ethical obligations
14 of a Registered Firm indicated in the Arizona Code of
15 Judicial Administration 7-206(J)(1)(g)(1) and (2) and
16 7-206(J)(1)(g)(3) through (6).

17 DATED this 4th day of December, 2017.

18

19 _____

20 Designated Representative

21 Litigation Services, LLC

22 Firm Number R1023

23

24

25

1 DEPOSITION DECLARATION

2

3 Job Number: 433815

4 Case Caption: ANSARA, ET AL vs.

5 FIRST STREET FOR BOOMERS

6 Case Number: A-16-731244-C

7

8

9 DECLARATION UNDER PENALTY OF PERJURY

10 I declare under penalty of perjury that I have

11 read the entire transcript of my Deposition taken in the

12 captioned matter, or the same has been read to me, and

13 the same is true and accurate, save and except for

14 changes and/or corrections, if any, as indicated by me

15 on the DEPOSITION ERRATA SHEET hereof, with the

16 understanding that I offer these changes as if still

17 under oath.

18 Signed on this day, _____.

19 _____

20 HALE BENTON

21

22

23

24

25

1 DEPOSITION ERRATA SHEET

2

3 Page No._____Line No._____Change to:_____

4 _____

5 Reason for change:_____

6

7 Page No._____Line No._____Change to:_____

8 _____

9 Reason for change:_____

10 Page No._____Line No._____Change to:_____

11 _____

12 Reason for change:_____

13 Page No._____Line No._____Change to:_____

14 _____

15 Reason for change:_____

16 Page No._____Line No._____Change to:_____

17 _____

18 change:_____

19 Page No._____Line No._____Change to:_____

20 _____

21 Reason for change:_____

22 Page No._____Line No._____Change to:_____

23 _____

24 Reason for change:_____

25

1 Page No._____Line No._____Change to:_____

2 _____

3 Reason for change:_____

4

5 Page No._____Line No._____Change to:_____

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7 Reason for change:_____

8 Page No._____Line No._____Change to:_____

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10 Reason for change:_____

11 Page No._____Line No._____Change to:_____

12 _____

13 Reason for change:_____

14 Page No._____Line No._____Change to:_____

15 _____

16 change:_____

17 Page No._____Line No._____Change to:_____

18 _____

19 Reason for change:_____

20 Page No._____Line No._____Change to:_____

21 _____

22 Reason for change:_____

23

24 SIGNATURE:_____DATE:_____

25

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

EXHIBIT 6

Electronically Filed
6/21/2017 7:57 AM
Steven D. Grierson
CLERK OF THE COURT

5. For reasonable attorney's fees, pre-judgment interest and costs of incurred herein;

6. For such other and further relief as the Court may deem just and proper in the premises.

DATED this 20th day of June, 2017.

RICHARD HARRIS LAW FIRM

BENJAMIN P. CLOWARD, ESQ.
Nevada Bar No. 11087
801 South Fourth Street
Las Vegas, Nevada 89101
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the RICHARD HARRIS LAW FIRM and that on the 21 day of June 2017, I caused the foregoing **FOURTH AMENDED COMPLAINT** to be served as follows:

[X] pursuant to N.E.F.C.R. 9 by serving it via electronic service

to the attorneys listed below:

Michaele E. Stoberski, Esq.
Daniel Labounty, Esq.
OLSON, CANNON, GORMLEY
ANGULO & STOBERSKI
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Attorneys for Defendants/Cross-Defendants FIRST STREET FOR BOOMERS & BEYOND, INC. and AITHR DEALER, INC.

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Attorneys for Defendants WILLIAM BUDD and BUDDS PLUMBING

/

An employee of RICHARD HARRIS LAW FIRM

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EXHIBIT 7

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EXHIBIT 8

ANTD
BENJAMIN P. CLOWARD, ESQ.
Nevada Bar No. 11087
RICHARD HARRIS LAW FIRM
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Phone: (702) 444-4444
Fax: (702) 444-4455
E-Mail: Benjamin@RichardHarrisLaw.com
Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

ROBERT ANSARA, as Special Administrator of the Estate of SHERRY LYNN CUNNISON, Deceased; MICHAEL SMITH individually, and heir to the Estate of SHERRY LYNN CUNNISON, Deceased; and DEBORAH TAMANTINI individually, and heir to the Estate of SHERRY LYNN CUNNISON, Deceased; Plaintiffs, vs. FIRST STREET FOR BOOMERS & BEYOND, INC.; AITHR DEALER, INC.; HALE BENTON, Individually, HOMECLICK, LLC.; JACUZZI LUXURY BATH, doing business as JACUZZI INC; BESTWAY BUILDING & REMODELING, INC.; WILLIAM BUDD, Individually and as BUDDS PLUMBING; DOES 1 through 20; ROE CORPORATIONS 1 through 20; DOE EMPLOYEES 1 through 20; DOE MANUFACTURERS l through 20; DOE 20 INSTALLERS I through 20; DOE CONTRACTORS 1 through 20; and DOE 21 SUBCONTRACTORS 1 through 20, inclusive Defendants.	CASE NO. A-16-731244-C DEPT. NO. I **FIFTH AMENDED NOTICE TO TAKE VIDEOTAPED DEPOSITION(S) OF 30(b)(6) OF FIRST STREET FOR BOOMERS & BEYOND, INC.** **Date of Deposition: 12/11/18** **Time of Deposition: 9:00 a.m. EST / 6:00 a.m. PST**

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

TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD:

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

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

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

DATED THIS 7th day of November, 2018.

RICHARD HARRIS LAW FIRM

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

RICHARD HARRIS LAW FIRM

CERTIFICATE OF SERVICE

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

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

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

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

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

Meghan M. Goodwin, Esq.
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Facsimile: 702-366-0327
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Las Vegas, NV 89125-2070
Attorneys for Defendants/Cross-Defendants firstStreet for Boomers and Beyond, Inc. and Aithr Dealer, Inc.

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

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

EXHIBIT A

1. Items on which examination is sought. PLEASE TAKE NOTICE that the video-taped oral deposition of Defendant(s) will be taken through the person or persons designated by Defendant(s) to testify concerning matters shown on the attached list of items on which examination is sought. You are notified that the party giving this notice wishes to examine the witness or witnesses so designated by Defendant(s) on the matters shown on the attached list of items on which examination is sought.

2. Items to be brought to the deposition. You are further notified that the person or persons designated by Defendant(s) are to bring with them the items in the attached list of items to be brought to the deposition.

3. Time and place. The deposition will be taken at the Zahn Court Reporting, 101 North Fifth Street, Richmond, Virginia 23219 at the time and date listed in the notice.

4. Your designation of persons. Pursuant to NRCP 30(b)(6) Defendant(s) is/are hereby notified to designate the person or persons to testify on behalf of the deponent organization. Defendant(s) is/are further notified that the witness or witnesses so designated by them must be prepared to testify to matters known or reasonably available to Defendant(s). The designation should be served on the undersigned deposing attorney on a reasonable date before the date of the deposition. If Defendant'(s)' organization so desires, Defendant(s) may designate the separate matters on which each person designated by Defendant(s) will testify. To expedite the questioning of witnesses by their separate subject matters, the designation:

   (A) should be by name and job title or other description and specify the separate matters on which each will testify; and

   (B) should be served on the undersigned deposing attorney on a reasonable date before the date of the deposition.

5. Defendant(s), not individuals, being deposed. Pursuant to the provision of NRCP 30(b)(6) the rules of civil procedure, is/are on notice that it is Defendant(s) being deposed, not individual officers, employees or agents of Defendant(s). Therefore, Defendant(s) has/have a duty to prepare their designated witness or witnesses to testify on not only the information personally known by their designated witness, but also on all the information known by Defendant(s) through its officers, employees, and agents. The designated witness should be able to answer with reasonable particularity, everything Defendant(s) knows/know on the Matters on Which Examination is sought, unlimited by how little the designed witness or other individual officer, employees, and agents personally know.

6. Duty mandated by rules. Pursuant to NRCP 30(b)(6) Defendant(s) is/are on notice that Defendant(s) must search for, and inform itself, of all matters known or reasonably available, and who in Defendant'(s)' organization has the information. If no one single

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

LIST OF TOPICS ON WHICH EXAMINATION IS SOUGHT

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

EXAMINATION WILL BE SOUGHT ON THE FOLLOWING SUBJECTS

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

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

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

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

3. Incident reports of the incident.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

GENERAL TESTIMONY

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

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

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

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

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

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

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

    (a) A description of any documents;

    (b) The author of any documents and his or her address (home and work) and phone number (home and work);

    (c) The identity of the custodian of any documents and things and his or her address (home and work) and phone number (home and work);

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

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

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

SALES AND MARKETING TESTIMONY GENERAL

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

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

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

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

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

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

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

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

28. The number of Walk-In Tubs sold over the last ten (10) years including:
    a. Model
    b. Style
    c. Manufacturer
    d. Distributor
    e. Price, both sales and purchase

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

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SALE AND MARKETING WITH END USER TESTIMONY

29. Any and/or all conversations with Sherry Lynn Cunnison, concerning the purchase of the subject Jacuzzi, any subsequent use and maintenance on the subject Jacuzzi.

30. Any and/or all Sales and Marketing materials concerning the purpose and use of Jacuzzi walk in tubs.

    a. Any policies and procedures of Defendant with regard to training or education of consumers as to the safe use walk in tubs.

    b. The existence and location of plaintiff's discovery request.

COMMUNICATION BETWEEN FIRST STREET AND JACUZZI AND INSTALLERS TESTIMONY

31. Communications between defendants concerning the elements and/or components manufactured or designed by Jacuzzi, included but not limited to, the design, changes, testing, manufacturing of said elements and components of the Jacuzzi walk-in tub.

32. What, if any, resources were available to First Street, to notify, research, or otherwise learn and/or disclose information to/from Jacuzzi; Bestway Building and Remodeling; William Budd; and/ or Budds Plumbing; regarding the subject Jacuzzi ***walk in tub and specifically with regard to the potential that an end user could become unable to remove themselves from a tub after falling inside the tub while either entering, using or exiting the tub.***

33. Identification of all of Defendant's officers, directors, employees or other personnel who at any time prior to the purchase of Plaintiff Cunnison's tub had any communication with Jacuzzi; Bestway Building and Remodeling; William Budd; and/ or Budds Plumbing, regarding the safety of the user of Jacuzzi walk in tubs.

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

34. All contracts, agreements and/or other documents entered into and/or exchanged between Jacuzzi, Inc., First Street for Boomers & Beyond, Inc.; Bestway Building and Remodeling; William Budd; and/ or Budds Plumbing, ***including the expectations of Jacuzzi of the other defendants and Jacuzzi's understanding of the other defendants' expectations of Jacuzzi.***

35. Any policies and procedures of Defendant with regard to training or supervising temporary employees or contractor as to ***education of the end user of the*** safety ***features or proper use*** of the tub.

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

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

DESIGN OF TUB

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

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

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

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

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

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

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

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

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

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

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

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

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

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

OTHER SIMILAR INCIDENTS TESTIMONY

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

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

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

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

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

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

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

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

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

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

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ANTD
BENJAMIN P. CLOWARD, ESQ.
Nevada Bar No. 11087
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Fax: (702) 444-4455
E-Mail: Benjamin@RichardHarrisLaw.com
Attorneys for Plaintiffs

DISTRICT COURT

CLARK COUNTY, NEVADA

ROBERT ANSARA, as Special Administrator of the Estate of SHERRY LYNN CUNNISON, Deceased; MICHAEL SMITH individually, and heir to the Estate of SHERRY LYNN CUNNISON, Deceased; and DEBORAH TAMANTINI individually, and heir to the Estate of SHERRY LYNN CUNNISON, Deceased; Plaintiffs, vs. FIRST STREET FOR BOOMERS & BEYOND, INC.; AITHR DEALER, INC.; HALE BENTON, Individually, HOMECLICK, LLC.; JACUZZI LUXURY BATH, doing business as JACUZZI INC; BESTWAY BUILDING & REMODELING, INC.; WILLIAM BUDD, Individually and as BUDDS PLUMBING; DOES 1 through 20; ROE CORPORATIONS 1 through 20; DOE EMPLOYEES 1 through 20; DOE MANUFACTURERS l through 20; DOE 20 INSTALLERS I through 20; DOE CONTRACTORS 1 through 20; and DOE 21 SUBCONTRACTORS 1 through 20, inclusive Defendants.	CASE NO. A-16-731244-C DEPT. NO. I **SECOND AMENDED NOTICE TO TAKE VIDEOTAPED DEPOSITION(S) OF 30(b)(6) OF AITHR DEALER, INC.** **Date of Deposition: 12/10/18** **Time of Deposition: 9:00 a.m. EST / 6:00 a.m. PST**

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

TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD:

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

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

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

DATED THIS 7th day of November, 2018.

RICHARD HARRIS LAW FIRM

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

RICHARD HARRIS LAW FIRM

CERTIFICATE OF SERVICE

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

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

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

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

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

Meghan M. Goodwin, Esq.
THORNDAL ARMSTRONG DELK
BALKENBUSH & EISINGER
1100 East Bridger Avenue
Las Vegas, NV 89101-5315
Telephone: 702-366-0622
Facsimile: 702-366-0327
Mail to:
P.O. Box 2070
Las Vegas, NV 89125-2070
Attorneys for Defendants/Cross-Defendants firstStreet for Boomers and Beyond, Inc. and Aithr Dealer, Inc.

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

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

EXHIBIT A

1. Items on which examination is sought. PLEASE TAKE NOTICE that the video-taped oral deposition of Defendant(s) will be taken through the person or persons designated by Defendant(s) to testify concerning matters shown on the attached list of items on which examination is sought. You are notified that the party giving this notice wishes to examine the witness or witnesses so designated by Defendant(s) on the matters shown on the attached list of items on which examination is sought.

2. Items to be brought to the deposition. You are further notified that the person or persons designated by Defendant(s) are to bring with them the items in the attached list of items to be brought to the deposition.

3. Time and place. The deposition will be taken at the Zahn Court Reporting, 101 North Fifth Street, Richmond, Virginia 23219 at the time and date listed in the notice.

4. Your designation of persons. Pursuant to NRCP 30(b)(6) Defendant(s) is/are hereby notified to designate the person or persons to testify on behalf of the deponent organization. Defendant(s) is/are further notified that the witness or witnesses so designated by them must be prepared to testify to matters known or reasonably available to Defendant(s). The designation should be served on the undersigned deposing attorney on a reasonable date before the date of the deposition. If Defendant'(s)' organization so desires, Defendant(s) may designate the separate matters on which each person designated by Defendant(s) will testify. To expedite the questioning of witnesses by their separate subject matters, the designation:

   (A) should be by name and job title or other description and specify the separate matters on which each will testify; and

   (B) should be served on the undersigned deposing attorney on a reasonable date before the date of the deposition.

5. Defendant(s), not individuals, being deposed. Pursuant to the provision of NRCP 30(b)(6) the rules of civil procedure, is/are on notice that it is Defendant(s) being deposed, not individual officers, employees or agents of Defendant(s). Therefore, Defendant(s) has/have a duty to prepare their designated witness or witnesses to testify on not only the information personally known by their designated witness, but also on all the information known by Defendant(s) through its officers, employees, and agents. The designated witness should be able to answer with reasonable particularity, everything Defendant(s) knows/know on the Matters on Which Examination is sought, unlimited by how little the designed witness or other individual officer, employees, and agents personally know.

6. Duty mandated by rules. Pursuant to NRCP 30(b)(6) Defendant(s) is/are on notice that Defendant(s) must search for, and inform itself, of all matters known or reasonably

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

LIST OF TOPICS ON WHICH EXAMINATION IS SOUGHT

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

EXAMINATION WILL BE SOUGHT ON THE FOLLOWING SUBJECTS

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

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

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

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

3. Incident reports of the incident.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

GENERAL TESTIMONY

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

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

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

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

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

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

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

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(a) A description of any documents;

(b) The author of any documents and his or her address (home and work) and phone number (home and work);

(c) The identity of the custodian of any documents and things and his or her address (home and work) and phone number (home and work);

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

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

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

SALES AND MARKETING TESTIMONY GENERAL

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

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

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

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

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

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

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

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

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

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

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

SALE AND MARKETING WITH END USER TESTIMONY

29. Any and/or all conversations with Sherry Lynn Cunnison, concerning the purchase of the subject Jacuzzi, any subsequent use and maintenance on the subject Jacuzzi.

30. Any and/or all Sales and Marketing materials concerning the purpose and use of Jacuzzi walk-in tubs.
    a. Any policies and procedures of Defendant with regard to training or education of consumers as to the safe use walk-in tubs.

    b. The existence and location of plaintiff's discovery request.

COMMUNICATION BETWEEN FIRST STREET AND JACUZZI AND INSTALLERS TESTIMONY

31. Communications between defendants concerning the elements and/or components manufactured or designed by Jacuzzi, included but not limited to, the design, changes, testing, manufacturing of said elements and components of the Jacuzzi walk-in tub.

32. What, if any, resources were available to AITHR, to notify, research, or otherwise learn and/or disclose information to/from Jacuzzi; Bestway Building and Remodeling; William Budd; and/ or Budds Plumbing; regarding the subject Jacuzzi ***walk-in tub and specifically with regard to the potential that an end user could become unable to remove themselves from a tub after falling inside the tub while either entering, using or exiting the tub.***

33. Identification of all of Defendant's officers, directors, employees or other personnel who at any time prior to the purchase of Plaintiff Cunnison's tub had any communication with Jacuzzi; Bestway Building and Remodeling; William Budd; and/ or Budds Plumbing, regarding the safety of the user of Jacuzzi walk-in tubs.

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

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34. All contracts, agreements and/or other documents entered into and/or exchanged between Jacuzzi, Inc., First Street for Boomers & Beyond, Inc.; AITHR, Bestway Building and Remodeling; William Budd; and/ or Budds Plumbing, ***including the expectations of Jacuzzi of the other defendants and Jacuzzi's understanding of the other defendants' expectations of Jacuzzi.***

35. Any policies and procedures of Defendant with regard to training or supervising temporary employees or contractor as to ***education of the end user of the*** safety ***features or proper use*** of the tub.

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

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

DESIGN OF TUB

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

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

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

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

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

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

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

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

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

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

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

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

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

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

OTHER SIMILAR INCIDENTS TESTIMONY

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

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

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

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

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

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

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

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

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

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

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

EXHIBIT 9

CT Corporation

Service of Process Transmittal

06/27/2016
CT Log Number 529403375

TO: Anthony Lovallo, Vice President & General Counsel
Jacuzzi Brands Corp.
13925 City Center Dr Ste 200
Chino Hills, CA 91709-5438

RE: **Process Served in Texas**

FOR: Jacuzzi Inc. (Domestic State: DE)

ENCLOSED ARE COPIES OF LEGAL PROCESS RECEIVED BY THE STATUTORY AGENT OF THE ABOVE COMPANY AS FOLLOWS:

TITLE OF ACTION:	Leonard Baize and Alice Baize, Pltfs. vs. R.G. Galls, etc., et al., Dfts. // To: JACUZZI, INC
DOCUMENT(S) SERVED:	Notice, Original Petition
COURT/AGENCY:	128th Judicial District Court, Orange County, TX Case # A160190C
NATURE OF ACTION:	Plaintiff seeking relief for the damages sustained as a result of defendants actions in the said matter
ON WHOM PROCESS WAS SERVED:	C T Corporation System, Dallas, TX
DATE AND HOUR OF SERVICE:	By Certified Mail on 06/27/2016 postmarked on 06/20/2016
JURISDICTION SERVED :	Texas
APPEARANCE OR ANSWER DUE:	By 10:00 A. M. on the Monday next following the expiration of twenty days after you were served
ATTORNEY(S) / SENDER(S):	William Conley 3280 Delaware Beaumont, TX 77703 (409) 899-3380
ACTION ITEMS:	CT has retained the current log, Retain Date: 06/28/2016, Expected Purge Date: 07/03/2016 Image SOP Email Notification, Anthony Lovallo anthony.lovallo@jacuzzibrands.com Email Notification, Nicole Simetz nicole.simetz@jacuzzi.com Email Notification, William Demeritt william.demeritt@jacuzzi.com
SIGNED:	C T Corporation System
ADDRESS:	1999 Bryan St Ste 900 Dallas, TX 75201-3140
TELEPHONE:	214-932-3601

Information displayed on this transmittal is for CT Corporation's record keeping purposes only and is provided to the recipient for quick reference. This information does not constitute a legal opinion as to the nature of action, the amount of damages, the answer date, or any information contained in the documents themselves. Recipient is responsible for interpreting said documents and for taking appropriate action. Signatures on certified mail receipts confirm receipt of package only, not contents.

Vickie Edgerly
Orange County District Clerk
801 W. Division Ave.
Orange, Texas 77630-6364

CERTIFIED MAIL™

7190 0518 0010 0001 0803

U.S. POSTAGE PITNEY BOWES

ZIP 77630 $ 006.88[5]
02 1W
0001382696 JUN 20 2016

JUCUZZI INC
CT CORP. SYSTEM
1999 BYRAN SUITE 900
DALLAS, TEXAS 75201

CIVIL CITATION – CITCVWD

THE STATE OF TEXAS

To: **JACUZZI INC**
C T CORP SYSTEM A
1999 BRYAN SUITE 900
DALLAS TX 75201

Defendant, **NOTICE:**

YOU HAVE BEEN SUED. You may employ an attorney. If you or your attorney do not file a written answer with the clerk who issued this citation by 10:00 A. M. on the Monday next following the expiration of twenty days after you were served this citation and petition, a default judgment may be taken against you.

Said **ANSWER** may be filed with the District Clerk's Office, Orange County Courthouse, 801 W Division Ave, Orange Texas 77630.

Said **PLAINTIFF'S ORIGINAL PETITION**

was filed and docketed in the Honorable 128th District Court of Orange County, Texas at the District Clerk's Office at the Orange County Courthouse, 801 W Division Ave, Orange, Texas on June 17, 2016 in the following styled and numbered cause:

Cause No: 160190-C

LEONARD BAIZE ET AL VS. RICHARD G GALLS ET AL

The name and address of the attorney for plaintiff otherwise the address of Plaintiff is:
William H Conley
3280 DELAWARE STREET
BEAUMONT TX 77703

ISSUED AND GIVEN under my hand and seal of said Court at Orange, Texas, this June 20, 2016.

VICKIE EDGERLY, District Clerk
Orange County, Texas

Vickie Edgerly

CLERK'S RETURN FOR CERTIFIED MAIL

CAME TO HAND ON THE **20TH** DAY OF **JUNE, 2016**, AT 3:00 O'CLOCK P.M. and executed in Orange County, Texas, by delivering to each of the within named defendants a true copy of this citation, by certified mail, return receipt requested, Addressee Only, the return receipt being attached to this citation and referred herto for all pertinent purposes.

CERTIFIED MAIL # **71900518001000010803** DELIVERY DATE: _____ RETURN DATE: _____

ALTERNATE RETURN

COME TO HAND ON THE _____ DAY OF _____, 20____, AT 3:00 O'CLOCK P.M. and after due and diligent effort, having been unable to locate the within named Defendants in _____ _____ by certified mail, return receipt requested, Addressee Only, for the reason shown on the return receipt attached to this citation and referred hereto for all pertinent purpose.

VICKIE EDGERLY, District Clerk
Orange County, Texas

By:_____ Deputy

FILED: 6/17/2016 4:46:38 PM
Vickie Edgerly, District Clerk
Orange County, Texas
By: Denise Smith, Deputy

CAUSE NO.: A160190-C

LEONARD BAIZE and	§	
ALICE BAIZE	§	IN THE DISTRICT COURT
Plaintiffs	§	
	§	
V.	§	128th
	§	_____JUDICIAL DISTRICT
R. G. GALLS, AGING IN THE HOME	§	
REMODERLERS, INC	§	
(AIHR), FIRSTSTREET FOR	§	
BOOMERS AND	§	
BEYOND, INC. (FIRSTSTREET) AND	§	
JACUZZI, INC	§	ORANGE COUNTY, TX

PLAINTIFF'S ORIGINAL PETITION

TO THE HONORABLE JUDGE OF SAID COURT:

NOW COMES, LEONARD BAIZE and ALICE BAIZE, Plaintiffs herein who files this Original Petition, complaining of R. G. GALLS, AGING IN THE HOME REMODELERS, INC. (AIHR), FIRSTSTREET FOR BOOMERS AND BEYOND, INC., (FIRSTSTREET) and JACUZZI, INC.

I. DISCOVERY CONTROL PLAN DESIGNATION

By this action, the Plaintiffs seek monetary relief of $100,000 or less, and a demand for judgment for all other relief to which the Plaintiffs deem themselves entitled. This includes damages of any kind, penalties, costs, expenses,

prejudgment interest, and attorney's fees. The damages sought are within the jurisdictional limits of this court.

Discovery in this case is intended to be conducted under Level 2, pursuant to Rule 190, Texas Rules of Civil Procedure.

II. PARTIES

Plaintiffs Leonard Baize and Alice Baize are residents of Orange, Orange County Texas.

Defendant, JACUZZI, INC.. is an out-of-state business establishment operating at 13925 City Center Drive, Suite 200, Chino Hills, CA 91709 and can be served at its registered agent, C.T. Corp. System, 1999 Bryan, Suite 900, Dallas, TX 75201.

Defendant, AGING IN THE HOME REMODELERS, INC. hereafter referred to as "AIHR" located at 1998 Ruffin Road, Colonial Heights, VA 23834, is a non-resident corporation who engaged in business in this state. The defendant does not maintain a regular place of business in this state or a designated agent for process in Texas. This lawsuit, in which AGING IN THE HOME REMODELERS, INC. is a party, arises out of the business done in Texas. For this reason, citation should be served with the Secretary of State of Texas under Tex. Civ. Prac. & Rem. Code §17.044(b). A copy of the citation and

petition should be mailed by the Secretary of State to this Defendant at its registered agent, NANCY ELLEN KEANE at 1001 Haxall PT., P.O. Box 112, Richmond, VA 23218.

Defendant, FIRSTSTREET FOR BOOMERS AND BEYOND, INC., hereafter known as "FirstSTREET" is an out-of-state corporation operating at 1998 Ruffin Road, Colonial Heights, VA 23834. The defendant does not maintain a regular place of business in this state or a designated agent for process in Texas. This lawsuit, in which FirstSTREET for Boomers and Beyond, Inc. is a party, arises out of the business done in Texas. For this reason, citation should be served with the Secretary of State of Texas under Tex. Civ. Prac. & Rem. Code §17.044(b). A copy of the citation and petition should be mailed by the Secretary of State to this Defendant at its registered agent, NANCY ELLEN KEANE at 1001 Haxall PT., P.O. Box 112, Richmond, VA 23218

Defendant, RICHARD G. GALLS is a non-resident individual who engaged in business in this state. The defendant does not maintain a regular place of business in this state or a designated agent for process in Texas. This lawsuit, in which RICHARD G. GALLS is a party, arises out of the business done in Texas. For this reason, citation should be served with the Secretary of State of Texas under Tex. Civ. Prac. & Rem. Code §17.044(b). A copy of the citation and

petition should be mailed by the Secretary of State to this Defendant at his place of business at 1998 Ruffin Road, Colonial Heights, VA 23834.

III. VENUE

Venue of this action is proper in Orange County, Texas because both Plaintiffs reside in Orange County, Texas and the events made the basis of this lawsuit and giving rise to the Plaintiff's cause of action occurred, in whole or in part, in Orange County, Texas.

IV. NOTICE; CONDITIONS PRECEDENT

No written notice of claims made in this petition has been given by Plaintiffs before this suit was filed because the statute of limitations applicable to this action is expected to expire during the notice period.

All conditions precedent to recovery by Plaintiff herein have been performed, have occurred, or have been excused.

V. AGENCY AND JOINT VENTURE

Unless otherwise stated, whenever it is alleged that Defendant AIHR and/or Defendant FIRSTSTREET committed an act, failed to perform an act, made a representation or a statement, or failed to make a disclosure, it is alleged that Defendant AIHR and Defendant FIRSTSTREET acted or failed to act through its

authorized agents, servants, employees or representatives acting with either express, implied, apparent, direct and/or ostensible authority, or Defendants AIHR and FIRSTSTREET subsequently ratified these acts, failures to act, representations, statements or conduct.

Unless otherwise stated, whenever it is alleged that Defendant JACUZZI, INC. committed an act, failed to perform an act, made a representation or a statement, or failed to make a disclosure, it is alleged that Defendant JACUZZI, INC. acted or failed to act through its authorized agents, servants, employees or representatives acting with either express, implied, apparent, direct and/or ostensible authority, or Defendant JACUZZI, INC. subsequently ratified these acts, failures to act, representations, statements or conduct.

Employee/Agent Richard G. Galls was the sales representative and safety consultant for Defendants AIHR and FIRSTSTREET in the area of East Texas including Orange County, Texas. It is therefore further alleged that at all times relevant hereto, Employee/Agent Richard G. Galls acted as the authorized agent of Defendants AIHR and FIRSTSTREET with either express, implied, apparent, direct and/or ostensible authority, or Defendants AIHR and FIRSTSTREET subsequently ratified these acts, failures to act, representations, statements or conduct.

Case No. 83379

IN THE SUPREME COURT OF NEVADA

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

Petitioner,

vs.

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

Respondents,

and

ROBERT ANSARA, as Special Administrator of the ESTATE OF SHERRY LYNN CUNNISON, Deceased; ROBERT ANSARA, as Special Administrator of the ESTATE OF MICHAEL SMITH, Deceased heir to the ESTATE OF SHERRY LYNN CUNNISON, Deceased; and DEBORAH TAMANTINI individually, and heir to the ESTATE OF SHERRY LYNN CUNNISON, DECEASED; HALE BENTON, Individually; HOMECLICK, LLC; JACUZZI INC., doing business as JACUZZI LUXURY BATH; BESTWAY BUILDING & REMODELING, INC.; WILLIAM BUDD, Individually and as BUDDS PLUMBING; DOES 1 through 20; ROE CORPORATIONS 1 through 20; DOE EMPLOYEES 1 through 20; DOE MANUFACTURERS 1 THROUGH 20; DOE 20 INSTALLERS 1 through 20; DOE

Docket 83379 Document 2021-34952

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

Real Parties in Interest.

APPENDIX TO REAL PARTY IN INTEREST'S ANSWERING BRIEF TO PETITIONERS' firstSTREET FOR BOOMERS & BEYOND, INC.'s & AITHR DEALER, INC.'s PETITION FOR WRIT OF MANDAMUS

VOLUME 4
PAGES 751-1000

Benjamin P. Cloward (SBN 11087)
Ian C. Estrada (SBN 12575)
Landon D. Littlefield (SBN 15268)
RICHARD HARRIS LAW FIRM, LLP
801 South Fourth Street
Las Vegas, Nevada 89101

Attorneys for Real Parties in Interest, 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

CHRONOLOGICAL TABLE OF CONTENTS TO APPENDIX

Tab	Document	Date	Vol.	Pages
1	Opposition To Defendant Jacuzzi, Inc.'s Motion For Protective Order On Order Shortening Time	9/18/18	1	1-123
2	Plaintiff's Motion To Strike Defendant firstSTREET's And AITHR's Answers For Discovery Abuses On Order Shortening Time	1/16/19	1 2 3	124-250 251-500 501-528
3	Defendants firstSTREET And AITHR's Opposition To Plaintiffs' Motion To Strike Defendants firstSTREET And AITHR's Answers For Discovery Abuses, On Order Shortening Time	1/28/19	3 4	529-750 751-918
4	Defendants firstSTREET And AITHR's Corrected Exhibits 2, 6, 7 And 11 To Opposition To Plaintiffs' Motion To Strike Defendants firstSTREET And AITHR's Answers For Discovery Abuses, On Order Shortening Time	1/28/19	4	919-996
5	Order Striking Defendant Jacuzzi Inc., d/b/a Jacuzzi Luxury Bath's Answer As To Liability Only	1/18/20	4 5	997-1000 1001-1030

ALPHABETICAL TABLE OF CONTENTS TO APPENDIX

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1	Opposition To Defendant Jacuzzi, Inc.'s Motion For Protective Order On Order Shortening Time	9/18/18	1	1-123
5	Order Striking Defendant Jacuzzi Inc., d/b/a Jacuzzi Luxury Bath's Answer As To Liability Only	1/18/20	3 4	997-1000 1001-1030
2	Plaintiff's Motion To Strike Defendant firstSTREET's And AITHR's Answers For Discovery Abuses On Order Shortening Time	1/16/19	1 2 3	124-250 251-500 501-528

CERTIFICATE OF SERVICE

I certify that on December 7, 2021, I submitted the foregoing APPENDIX TO REAL PARTY IN INTEREST'S ANSWERING BRIEF TO PETITIONERS' firstSTREET FOR BOOMERS & BEYOND, INC.'s & AITHR DEALER, INC.'s PETITION FOR WRIT OF MANDAMUS for filing via the Court's eFlex electronic filing system. Electronic notification will be sent to the following:

Philip Goodhart, Esq.
Meghan M. Goodwin, Esq.
Thorndal Armstrong Delk Balkenbush & Eisinger
1100 East Bridger Ave., Las Vegas, NV 89101-5315
Mail To: P.O. Box 2070, Las Vegas, NV 89125-2070
Attorneys for Petitioners, firstSTREET For Boomers & Beyond, Inc.; AITHR Dealer, Inc. and Real Party in Interest, Hale Benton

D. Lee Roberts, Jr., Esq.
Brittany M. Llewellyn, Esq.
Johnathan T. Krawcheck, Esq.
Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC
6385 S. Rainbow Blvd., Suite 400, Las Vegas, NV 89118
Attorneys for Real Party in Interest, Jacuzzi, Inc. dba Jacuzzi Luxury Bath

Daniel F. Polsenberg, Esq.
Joel D. Henriod, Esq.
Lewis Roca Rothgerber Christie, LLP
3993 Howard Hughes Pkwy., Suite 600, Las Vegas, NV 89169-5996
Attorneys for Real Party in Interest, Jacuzzi, Inc. dba Jacuzzi Luxury Bath

Charles Allen, Esq.
Graham Scofield, Esq.
Charles Allen Law Firm
3575 Piedmont Road, NE, Building 15, Suite L-130
Atlanta, GA 30305
Attorneys for Real Party in Interest, Robert Ansara

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, at Las Vegas, Nevada, addressed as follows:

The Honorable Crystal Eller
DISTRICT COURT JUDGE – DEPT. 19
200 Lewis Avenue, Las Vegas, Nevada 89155
Respondent

NOTE - DEFENDANTS HOMECLICK, 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/ Catherine Barnhill
An Employee of Richard Harris Law Firm

Employee/Agent Richard G. Galls was the sales representative and safety consultant for Defendant JACUZZI, INC. in the area of East Texas including Orange County, Texas. It is therefore further alleged that at all times relevant hereto, Employee/Agent Richard G. Galls acted as the authorized agent of Defendant JACUZZI, INC. with either express, implied, apparent, direct and/or ostensible authority, or Defendant JACUZZI, INC. subsequently ratified these acts, failures to act, representations, statements or conduct.

Further it is alleged that Defendants AIHR and FIRSTSTREET were engaged with Defendant JACUZZI, INC. in a joint venture for their mutual benefit and acted as each other's agents with all express, implied, apparent, direct and/or ostensible authority to so act, and as such are vicariously liable for the acts, omissions, statements and conduct of the other as alleged herein.

VI. FACTS

This lawsuit arises out of the transaction, acts and events:

In May of 2014, Plaintiffs responded to direct advertising by Defendants AIHR and FIRSTSTREET for a Defendant JACUZZI, INC. manufactured walk in tub. Plaintiff Leonard Baize is a veteran, a large individual weighing approximately 500 pounds and suffers from PTSD, diabetes and other ailments that prevent normal ambulatory movements. Plaintiff Leonard Baize must use a

motorized chair to be able to get around effectively and is restricted from many activities. It is extremely difficult, if not impossible for him to step over the side of a regular tub.

Plaintiffs called the toll free number from the advertising sheets and Richard A. Galls returned their call and made an appointment to visit the Baize's in their home in Orange, Texas. Mr. Galls came to the Baize home and measured the bathroom area and made a diagram showing how the tub would be installed. Mr. Galls presented his business card that purports him to be a safety consultant for Defendants AIHR and JACUZZI. The Baizes were concerned that Leonard Baize would be too large to fit into the tub. Mr. Galls measured Leonard Baize at the waist and bottom at 24 inched across. Due to the Baizes concern, Mr. Galls measured him three time emphasizing that the tub was 26 and ½ inches wide. The advertising extolled the many benefits of hydro therapy and safety features afforded by the Jacuzzi walk in tub and he and his wife, Plaintiff Alice Baize were persuaded by the advertising and sales presentation of Richard Galls to enter a contract for Defendant AIHR to remove the current whirlpool tub and install a Jacuzzi walk in tub. On May 7th 2014 Plaintiff Alice Baize tendered a check for $7,000.00 on check number 4191. On June 19th 2014 the Jacuzzi tub was installed and Plaintiff Alice Baize tendered a check for the balance amount of $12,345.00.

At the time of installation, the door to the tub leaked and there were scratches on the tub from faulty installation. The installer said he reported both. Two and a half weeks later, the door was repaired. No correction has been made for the scratch damage to the tub. On July 6, 2014, Plaintiff Leonard Baize got into the tub and then discovered that the seat area was too narrow. He got stuck in the tub, causing bruising to his stomach area and scrapes. He was very traumatized and he and his wife thought they were going to have to call emergency personnel to remove him from the tub. Plaintiff Leonard Baize suffered much mental anguish and embarrassment from this traumatic event. It was then discovered that the seat area in the tub was 19 and ½ inches wide, making it impossible for Plaintiff to fit properly in the tub. On July 7th,2014, Plaintiff Alice Baize called the regional manager of Defendant AIHR, who identified himself as Steven, and requested that the company take out the tub, return the money and reinstall a regular whirlpool tub. She was told that was beyond his ability and that his boss would have to make that decision. Subsequent calls were ignored and Defendant was unresponsive.

VII. FIRST CAUSE OF ACTION: DTPA

The Plaintiffs are consumers entitled to bring this action for relief under the Texas Deceptive Trade Practices-Consumer Protection Act (the "DTPA"). The actions of the Defendants outlined above constitute, including any or all applicable

misrepresentations, breaches of warranties and unconscionable conduct, are actionable under the DTPA.

Specifically, the Defendants committed the following acts in violation of the DTPA "laundry list," one of more of which was a producing cause of damages to Plaintiff:

(a) Representing that the goods or services had characteristics, ingredients, uses of benefits which they did not have;

(b) Representing that goods or services were of a particular standard, quality or grade when they were of another and

(c) Failing to disclose information concerning goods or services which was known at the time in order to induce the Plaintiff to enter into a transaction which Plaintiff would not have otherwise entered.

The Plaintiffs relied on these representations to their detriment.

Further, the Defendants violated the DTPA by breaching one or more express or implied warranties.

The Defendants' conduct as described was a producing cause of damages to the Plaintiffs.

Further, The Defendants' conduct was committed knowingly, entitling the Plaintiffs to seek the trebling of their damages in accordance with the DTPA.

VIII. SECOND CAUSE OF ACTION: BREACH OF CONTRACT

The Plaintiffs repeats and re-alleges the material factual allegations in the preceding paragraphs.

On May 7, 2014 plaintiff and defendant executed a valid and enforceable written contract. Plaintiff attaches a copy of the customer agreement as Exhibit A and incorporates it by reference. The contract provided that plaintiff would pay a total of $19,345 and that defendant would install a Jacuzzi whirlpool that conforms to the medical requirements as stated in the agreement.

Plaintiffs initiated the contract by tendering a check of $7,000 after the plaintiffs signed the contract agreement. On June 19, 2014, the Jacuzzi walk in tub was installed and the Plaintiffs tendered another check for $12,345 to the defendant on the day the Jacuzzi Walk In Tub installation was completed for the balance of the contract.

The Defendant had measured the width that is necessary for the Plaintiff to be able to use the Jacuzzi Walk In Tub. The Plaintiff relied on the Defendant's skill and knowledge in furnishing the appropriate goods.

Defendant's breach caused injury to plaintiff, which resulted in the following damages, by Jacuzzi installing a Jacuzzi Walk In Tub that did not

conform to the size requirements as promised by the defendants and the defendant contractor had destroyed the old whirlpool the in process of installing the new Jacuzzi whirlpool rendering the old whirlpool a total loss. In doing so, The Defendant's breached the implied warranty of the merchantability and fitness for purpose.

IX. THIRD CAUSE OF ACTION: COMMON LAW FRAUD

The Plaintiff repeats and re-alleges the material factual allegations in the preceding paragraphs

By the conduct described above, the Defendants made one or more false representations of material fact and/or benefitted by not disclosing that a third-party's representations of material fact was false, for the purpose of inducing the Plaintiffs into the contract for the purchase of the Jacuzzi Walk In Tub

The Plaintiffs relied upon the false representation of fact and entered into the contract for the purchase of a Jacuzzi Walk In Tub, which resulted in actual damages to the Plaintiffs, for which they sue.

XI. DAMAGES

The Defendants' acts and omissions as described herein have been a producing and/or proximate cause of damages the Plaintiffs.

The Plaintiff has suffered economic damages, including but not limited to:

WHEREFORE, PREMISES CONSIDERED, The Plaintiffs respectfully pray that the Defendants be cited to appear and answer herein, and that upon final trial thereof, the Plaintiffs recover from the Defendants all of their economic damages, mental anguish, additional damages, exemplary damages, pre-judgment interest as allowed by law, attorney's fees, costs of court and such other and further relief to which they may show themselves justly entitled.

Respectfully Submitted,

/s/ William Conley
William Conley
Texas Bar No.: 00795300
3280 Delaware
Beaumont, Texas, 77703
Telephone: (409) 899-3380
Fax: (409) 899-3372
E-mail: wconley239@aol.com

Attorney for the Plaintiffs

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

EXHIBIT 10

1 DISTRICT COURT
CLARK COUNTY, NEVADA
2
ROBERT ANSARA, as Special
3 Administrator of the Estate of
SHERRY LYNN CUNNISON, Deceased;
4 MICHAEL SMITH individually, and heir
to the Estate of SHERRY LYNN CUNNISON,
5 Deceased; and DEBORAH TAMANTINI
individually, and heir to the
6 Estate of SHERRY LYNN CUNNISON,
Deceased,
7 Plaintiffs,
vs. CASE NO. A-16-731244-C
8 DEPT. NO.
FIRST STREET FOR BOOMERS &
9 BEYOND, INC.; AITHR DEALER, INC.;
HALE BENTON, Individually, HOMECLICK,
10 LLC.; JACUZZI LUXURY BATH, d/b/a
JACUZZI, INC.; BESTWAY BUILDING &
11 REMODELING, INC.; WILLIAM BUDD,
Individually and as BUDDS PLUMBING;
12 DOES 1 through 20; ROE CORPORATIONS
1 through 20; DOE EMPLOYEES 1 through
13 20; DOE MANUFACTURERS 1 through 20; DOE
20 INSTALLERS 1 through 20; DOE
14 CONTRACTORS 1 through 20; and DOE 21
SUBCONTRACTORS 1 through 20, inclusive,
15
Defendants.
16
17 *
18 VIDEOTAPED DEPOSITION OF DAVID MODENA
19 *
20
21 December 11, 2018
22
23 Richmond, Virginia
24 Job No. 508962
25 Reported By: Angela N. Sidener, CCR, RPR

1 Videotaped deposition of DAVID MODENA, Rule
2 30(b)(6) Designee for Defendants FIRST STREET FOR BOOMERS
3 AND BEYOND, INC. and AITHR DEALER, INC., taken by and before
4 Angela N. Sidener, CCR, RPR, and Notary Public in and for
5 the Commonwealth of Virginia at large, pursuant to Rules 26
6 and 30(b)(6) of the Rules of Civil Procedure, and by Notice
7 to Take Deposition; commencing at 10:31 a.m., December 11,
8 2018, at Regus, 919 East Main Street, Suite 1000, Richmond,
9 Virginia 23219.
10
11 Appearances:
12 RICHARD HARRIS LAW FIRM
By: BENJAMIN P. CLOWARD, ESQ.
13 801 South Fourth Street
Las Vegas, Nevada 89101
14 Counsel for Plaintiffs

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

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

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

24 Also Present:

25 Laura Cooney, Videographer

1

2 I N D E X

3

4 DEPONENT

5 DAVID MODENA

6 Examination By: Page

7 Direct Mr. Cloward 4

8

9

10 EXHIBITS RETAINED BY PLAINTIFFS' COUNSEL

11 No. Description Page

12 1 Binder of Documents Produced by First Street for Boomers and Beyond 65

13

14 2 Electronic PDF File of Original Contents in Leave-Behind Folder 113

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1 THE VIDEOGRAPHER: This is the beginning of
2 disc number 1 in the videotaped deposition of David Modena.
3 We are on the record on December 11, 2018, at 10:31 a.m.
4 Counsel have agreed to waive the usual videographer's
5 introduction.
6 Would you please introduce yourselves,
7 starting with Plaintiff's Counsel, and the court reporter
8 will please swear in the witness.
9 MR. CLOWARD: My name is Ben Cloward, and I
10 represent the plaintiff.
11 MR. GOODHART: This is Philip Goodhart, and I
12 represent First Street and AITHR Dealers.
13 MS. HACKNEY: Stacy Hackney, counsel for
14 AITHR Dealer and First Street.
15 MR. COOLS: Joshua Cools, counsel for
16 Jacuzzi, Inc.
17 DAVID MODENA,
18 having been duly sworn, testified as follows:
19 DIRECT EXAMINATION
20 BY MR. CLOWARD:
21 **Q Good to go. How are you today, sir?**
22 A Very good. Thanks.
23 **Q What -- what do you prefer to be called?**
24 A Just call me Dave.
25 **Q Okay.**

1 normal channels of the customer service department just are
2 not seemingly getting it done, or they needed to make an
3 exception of some sort. They knew we had a good
4 relationship with Jacuzzi. I did. You know, I knew the
5 folks from top to bottom, could get to the right people if
6 we needed some extra assistance or just some pushing to help
7 get a customer taken care of, so they would come to me
8 sometimes just, you know -- just need a little extra help,
9 but not often because Jacuzzi normally was very responsive.
10 **Q Okay. You indicated when it's something**
11 **reasonably significant. Does that apply to all different**
12 **types of claims that may come in?**
13 A Yes. Yes, because -- because it could -- it could
14 be the situation like with the Cunnisons that was extremely
15 serious and very rare. I don't -- I can't -- I'm not sure
16 if we -- I can remember one even prior to that like that,
17 but there might be an attorney general issue on -- that a --
18 that a customer had contacted and that always got our
19 attention, for whatever the reason, it was just -- it was
20 just not getting the service you wanted quick enough, so
21 they would go that route.
22 And so that would normally, obviously, come to me,
23 like I said before. But it was -- normally, it was just a
24 situation that had gotten to the point where we just -- they
25 couldn't handle it. They just couldn't quite get the

1 resolution they needed, and so, you know, see if I could
2 help.
3 **Q Okay. Say, for instance, when someone would**
4 **contact the attorney general, what are those claims usually**
5 **about?**
6 A Typically, it's probably about a -- they -- the
7 tub has been installed. It's not working properly or not to
8 their satisfaction, and we're still trying to -- you know,
9 we've sold it, installed it, and we think we've completed
10 the work as agreed to in the contract.
11 And they would be objecting to -- to something and
12 not wanting to pay, and we're still trying to get them to
13 pay, so we're in this little, you know, discussion, urging
14 them to pay, so -- and they're pushing back so they want to
15 then use legal counsel like a state attorney general to come
16 up with some reason to push back, just so they wouldn't have
17 to pay, you know, because normally in those situations, the
18 product ends up staying in the house.
19 They were using it and it stayed in the house.
20 They just ended up not paying the full amount for some
21 reason. It could have been some issues where it didn't
22 quite work properly or the workmanship in the installation
23 was done not to their expectation, didn't finish the job,
24 the caulking wasn't as neat. I mean, a lot of issues would
25 come up that weren't necessarily big issues, but they would

1 push back and not want to make the final payment.
2 That was --
3 **Q Sure.**
4 A -- most of them.
5 **Q What are some serious issues that came up -- that**
6 **have come up?**
7 A I mean, I -- the Cunnison, obviously, was a very
8 serious one, which we -- I didn't hear about until I told
9 you, and then that was handled quickly, or by inside
10 counsel. It was more just those. Those -- I mean, those
11 were just ones that just escalated that -- that we couldn't
12 resolve and -- and so we just needed to try to come to some
13 resolution.
14 And so we would try to -- and if it hasn't
15 escalated to, like, the attorney general, I would try to get
16 with the customer and talk to them myself and just see what
17 we could resolve so it didn't turn into something that ended
18 up -- get lawyers involved where we could hopefully resolve
19 it ourselves.
20 **Q Okay. When lawyers have been involved, what are**
21 **some of the -- some of the issues that you recall?**
22 A It's normally those same ones that I'm talking
23 about now. It's just -- it's just issues where customers
24 didn't feel the workmanship was -- you know, they -- somehow
25 we fell short on delivering the promise of the product's

1 performance or installation. It's, you know, one of those
2 two things.
3 And we would go back time and time again, say
4 we'll send someone back in. No, we're tired of it. We
5 don't want anyone coming back in. We're done. They'd get
6 frustrated.
7 **Q Yeah.**
8 A And we were trying to do our best, you know, to in
9 some cases even put a new product in, you know, and just
10 replacing it if we couldn't get it fixed, and they'd then
11 say, no, I'm done. I want that product out, where, even
12 though we're willing to replace it with a new product, no,
13 we want all of our money back.
14 And by this time, we've obviously invested a lot
15 of time and money. We're trying to deliver on our promise,
16 and -- and -- and so your -- those type of issues, they
17 were -- they were serious in our mind because we didn't --
18 we didn't get it done the way we -- you know, the way they
19 would have liked for us to do it, so we tried everything we
20 could and sometimes your -- attorneys would get involved.
21 **Q Okay. Now, initially, there was an objection, was**
22 **kind of some parameters about different types of claims that**
23 **might come in, like warranty versus, you know, injury and**
24 **different things like that, so --**
25 A Uh-huh.

1 **Q -- you've done a nice job addressing kind of the**
2 **warranty claims or the, you know, performance issues.**
3 A Uh-huh.
4 **Q How about we focus now on kind of the safety**
5 **aspect of the tub. How often and what types of claims are**
6 **called in on that?**
7 A Very, very few that I can -- I just don't remember
8 many at all, honestly. I don't -- I just -- the issues were
9 normally the warranty or the installation. I just didn't
10 hear about those. There may -- there may have been a couple
11 of -- I mean, there's just -- that wasn't an occurrence that
12 happened very often at all.
13 **Q So if it -- I mean, if it didn't happen often at**
14 **all, you would probably remember the ones that did happen,**
15 **right? They would kind of --**
16 A You would think so.
17 **Q So they didn't stand out when you --**
18 A Well, I just -- I honestly just can't think of
19 particular ones in general because it just did not happen
20 that -- I mean, you would have people raising concerns about
21 certain things, but an actual injury? I just don't -- I'm
22 just not -- I can't recall. I don't remember incidents,
23 anything like this that come up to that point.
24 **Q So is it fair to say that -- that the Cunnison**
25 **case is the only incident you recall?**

1 A To this level, for sure. But I -- I feel like
2 there must have been a couple, but, as honest I can be, I
3 just don't recall incidents like this. I -- concerns -- you
4 know, people addressing maybe other concerns about their tub
5 or something like that, you'd get into those, but an actual
6 injury? I don't -- I -- I feel like there must have been
7 one or two. I just -- I couldn't tell you who they were and
8 when they were, if it was before that point in time.
9 **Q Were you informed of, say, for instance, when a**
10 **lawsuit is filed?**
11 A Normally. Normally, I would have -- I would have
12 known. I would -- normally it would have come in. It would
13 always go into our in-house legal counsel. That's where it
14 went first. And then typically our in-house counsel would
15 approach me with making sure we had all the information in
16 our files and turned over to the right people, so, normally,
17 yes.
18 **Q Okay. And is this the only -- the only case that**
19 **First Street is aware of?**
20 A I can't answer that, because, again, legal -- our
21 in-house counsel would probably be -- probably could answer
22 that better than myself. I'm just not able to tell you that
23 there were two or three more that I can think of like this.
24 **Q Okay. Well, I'm entitled to have the most -- I**
25 **guess, the information.**

1 A Sure.
2 MR. CLOWARD: If you're relying on your
3 memory, maybe what we could do is take a break and have
4 Ms. Hackney testify. Is that -- is that okay?
5 MR. GOODHART: Or I can -- we can take a
6 break and I can re-educate my witness on certain things.
7 MR. CLOWARD: I mean, that's -- if that's
8 what's -- what's necessary.
9 MR. GOODHART: Yeah. That's fine with me.
10 MR. CLOWARD: It's a topic in the --
11 MR. GOODHART: I understand. I just have not
12 been objecting and have not been trying to coach the witness
13 in any way, shape, or form. But you know as well as I do,
14 you know, sometimes memories fade and things like that, but
15 I can certainly have a discussion with Mr. Modena and
16 Ms. Hackney, and we can clear this up for you.
17 MR. CLOWARD: Yeah.
18 MR. GOODHART: And just so I'm clear on your
19 question, you're asking him even up through to today --
20 MR. CLOWARD: Yeah.
21 MR. GOODHART: -- about any type of claims of
22 any injuries that have taken place --
23 MR. CLOWARD: Yeah.
24 MR. GOODHART: -- in a Jacuzzi product?
25 MR. CLOWARD: Correct.

1 A After the Cunnison is -- because I think I was
2 working a little bit prior -- prior to the Cunnison -- up to
3 that point, I think I was more concerned about that, but --
4 in answering that, but there -- there had been two, one in
5 Texas, Baez or something, and I was -- I wasn't directly
6 notified on that one, but eventually so -- and that went to
7 legal counsel, and -- not even sure that was an injury --
8 we're not sure that's even an injury case.
9 The -- probably the more significant one is Max
10 Smith, I believe, which is in Georgia, and that was well
11 after the fact, as well, so that was something that would
12 have gone to our legal counsel. First Street was notified
13 and then, thus, I would have been notified at that time.
14 **Q Okay. So --**
15 A Those are the two situations, which, one, we're
16 not even sure was an injury incident.
17 **Q Okay. So it's fair to say you now recall, I**
18 **guess, those -- those incidents. You recall being told**
19 **about those incidents at some point?**
20 A Well, the one -- certainly the one in Georgia.
21 That's probably the one that would -- the more significant
22 issue that was obviously an injury-related type issue. The
23 one in Texas, we weren't sure about, so to say I absolutely
24 a hundred percent remember that one, it sounds familiar.
25 You know, it -- the -- I was -- and I've looked at

1 it since then, too, since -- in prepping for this, too, as
2 well, and the notes were even unclear on it, as well, so it
3 was -- it's one that I could see if I was notified of -- it
4 was relatively unclear what had even happened so it --
5 **Q So you reviewed some notes about that prior to the**
6 **deposition?**
7 A We looked at it just recently. I was -- this was
8 just going through probably those two situations and -- and,
9 actually, our notes were relatively -- they were not that
10 forthcoming on what had actually happened.
11 **Q Is there a reason you weren't able to recall**
12 **reviewing those notes five minutes ago?**
13 A Well, I thought we were -- actually, I was going
14 to bring that up, because that's the Baez thing, the one --
15 that's -- because that is the one that I remember that,
16 because I looked at it recently, but when I looked at the
17 notes, and -- it wasn't in our -- in our LP system that I
18 talked about earlier. There really wasn't much in there, so
19 that's why I was having a hard time.
20 We didn't -- it didn't show up as a -- as a -- you
21 know, an injury report, so I was like -- I knew that that
22 was potentially an issue that we could discuss, but I
23 couldn't find anything in the note that even shows it as an
24 injury, so I didn't -- didn't designate it as an injury type
25 of an incident --

1 Q **Okay. And did you --**

2 A -- in my mind.

3 Q **Did you review notes in the system, as well,**

4 **regarding the Smith case?**

5 A Yes. But there, again, in our system, because

6 most of this, once it gets turned over -- once Denver sort

7 of turns it over, there's not much in there, as well.

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

9 A Yes.

10 Q **You were informed --**

11 A Yes.

12 Q **-- of that?**

13 A Yes. Yes.

14 Q **Is there a reason why you didn't remember that**

15 **five minutes ago?**

16 A Well, again, I was thinking about up to that

17 point. I thought that's how I'd answered it. I thought we

18 were just trying to -- up to that point, what we were aware

19 of.

20 Q **Okay. So why don't you tell me all of the**

21 **incidents that you're aware of at any point, safety**

22 **incidents.**

23 A Those would be it.

24 Q **Just those three?**

25 A That I would be aware of.

1 THE DEPONENT: I -- if it's okay --
2 MR. GOODHART: Wait until there's a question
3 pending.
4 THE DEPONENT: Okay.
5 MR. GOODHART: So, you know, Ben, we work
6 well together. I'm not going to object to you -- we're
7 going to have to come back for a second day anyway, so if
8 you would like me to go through those in greater detail with
9 the witness, then I certainly will, but I believe he does
10 have knowledge of -- or some knowledge of that. It just may
11 be miscommunication as to definitions that are being used by
12 you and what he is interpreting that to be, as we are here
13 for a deposition concerning a wrongful death case.
14 MR. CLOWARD: Okay.
15 BY MR. CLOWARD:
16 **Q Sir, let me ask you this question: Do you**
17 **consider a slippery floor to be a danger to the elderly that**
18 **buy your tub?**
19 A That's such a relative question, because my
20 response to you earlier was about injuries, not about
21 concerns of a customer. Did Jacuzzi ever bring us a
22 concern. I was strictly talking about injuries.
23 A slippery floor is such a relative thing to try
24 to determine is that dangerous or not. Is it any more
25 dangerous than a regular tub? It's -- it's -- it's always a

1 concern that you -- that you -- if you -- if you have a
2 concern like that, you -- you try to address it one way or
3 the other. But how you determine what's dangerous versus is
4 it just -- you know, I --
5 **Q So is it fair to say you're unable to tell me**
6 **whether a slippery floor is dangerous to the elderly that**
7 **purchase your tub?**
8 MR. GOODHART: Object to form. Asked and
9 answered. Argumentative.
10 MR. COOLS: Join.
11 MR. GOODHART: You can answer the question,
12 if you can.
13 A A slippery floor can be dangerous to an elderly
14 person as well as a -- as a person like myself or any other
15 person. To what level, how dangerous it is, that's -- I
16 don't know how you define that. I don't now how you -- how
17 you make that determination, and -- and it was certainly an
18 issue that had been discussed, you know, a couple of times
19 with Jacuzzi and trying to make sure it was -- you know, met
20 all the standards.
21 BY MR. CLOWARD:
22 **Q How many times was that addressed with Jacuzzi?**
23 A I don't know how many times, but certainly a
24 number of times. It would -- it would come up in -- in
25 either direct conversation, maybe if it's -- especially if

1 they had referred a concern to us, if they did, which is --
2 I think we did, in preparation for this, was
3 provided some documentation I had not seen before, because
4 it had come through Jacuzzi, and -- but some of that I had,
5 so -- the slippery floor issue, but it's -- it's a -- these
6 would come up from time to time.
7 It would -- a customer would bring it up to one of
8 our installers, and they would make a comment. They were
9 just concerned. It wasn't over an incident, necessarily.
10 It was just they had a concern, so we would address it from
11 time to time with Jacuzzi and -- and acknowledge that there
12 was -- had been expressed concerns by customers. Is there
13 something we should do, something they should do? And so
14 there were discussions on that.
15 I couldn't tell you exactly how many times, but
16 I'm sure more than once or twice, probably, you know, half a
17 dozen times, I would say.
18 **Q What's the time period of those complaints?**
19 A In reviewing and looking back, it was -- I don't
20 know exactly for sure. We -- probably in the 2014 time
21 frame, somewhere in there. It seemed we had probably more
22 coherent conversations about that. Maybe -- maybe late '13,
23 early '14 there were discussions about that. Again, there
24 may have been some that came through Jacuzzi earlier, but I
25 don't recall those.

1 **Q What documents did you review?**
2 A As far as what Jacuzzi had done?
3 **Q You represented you had two -- two sources of**
4 **information that you reviewed, one, documentation from**
5 **Jacuzzi and, two, documentation that you had internally, so**
6 **let's talk about Jacuzzi first.**
7 A Well, the -- as a far as -- as far as slippery
8 floors? As far as --
9 **Q Yeah. That's where we're going to keep the focus**
10 **on right now.**
11 A Right. So what I -- what I recall was when this
12 issue came up, the -- Ray Torres was the -- a product
13 engineer at the time, came back and provided us information
14 that showed that the -- the floor was to the standards of
15 whatever the -- I don't know if it's IMO, because it's a
16 public standard, but within the tub industry, whatever the
17 standard was, they showed -- gave evidence of a -- that
18 their tub was standard, as far as the floor and the way it
19 was done.
20 **Q So it's fair to say we can -- we can determine**
21 **based on when Mr. Torres was employed, that's the operative**
22 **time period?**
23 A He was -- it may have carried on past him, but,
24 yes, he was employed at the time that Jacuzzi addressed that
25 issue, as far as providing evidence of their tub being

1 manufactured to the appropriate specs relative to the floor.

2 **Q What did he provide?**

3 A It would have been a document. I don't know if I

4 got it in the form of email or whatever that showed the

5 coefficient or whatever the terminology they would have used

6 for what the floor needed to -- how it needed to be

7 constructed so it's sort of slip resistant. I don't know

8 what the technical term of that would have been, but they

9 did provide us documentation.

10 **Q Coefficient of friction?**

11 A I don't know if that's the right term or not, but

12 it was -- it is -- it was specifically an engineering design

13 element that I believe is a tub industry standard that

14 Jacuzzi had met, relative to their floor of the tub.

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

16 A No. I have no idea. I can't remember what that

17 number would have been, no.

18 **Q Is that the only information that you received**

19 **from Jacuzzi?**

20 A From the documentation point of view, yes, that

21 would have been the only documentation as far as what -- how

22 it met the standards.

23 **Q I'm not limiting it to just the standards. I'm**

24 **talking broadly about the slippery issue. Is that the only**

25 **document that you received from Jacuzzi, or were there other**

1 **emails about that?**

2 MR. COOLS: Object to form.

3 MR. GOODHART: Are you talking -- is there a

4 time frame again, Ben? Ever? Like, post Cunnison incident?

5 Pre Cunnison incident?

6 MR. CLOWARD: Ever.

7 MR. GOODHART: Ever, okay.

8 MR. CLOWARD: His response was he reviewed

9 information internally, and he reviewed information from

10 Jacuzzi. So what I'm trying to do is find out the universe

11 of information that he reviewed in this aspect of his

12 testimony.

13 A Yeah. We -- once we -- once the discussion was

14 sort of ongoing, then we would have -- I would have received

15 a couple of different emails for sure, because we went about

16 trying to find additional solutions, if you will, if someone

17 was -- wanted to be provided additional assurance or

18 comfort, their floor could be made even more slip resistant,

19 you know, they were looking for other solutions that they --

20 just on an exception basis, if we wanted to do that.

21 So Jacuzzi went and actually worked and developed

22 and found other products that could be used to -- to, you

23 know -- for people that just had additional concerns, if --

24 similar to people, what they, I guess, do in their regular

25 tub. They want to put additional stuff, they can put

1 additional stuff down in their tub.
2 BY MR. CLOWARD:
3 **Q What was the additional stuff they put down in the**
4 **tub?**
5 A It's called Kahuna Grip, I believe, is what it
6 was.
7 **Q What was it?**
8 A Kahuna Grip, I think, is what the name of it. It
9 was -- it's a product that's already out there and it can be
10 adhered to the tub. It just gives it more grip. It's was
11 provided after-market and upon request.
12 **Q And, certainly, there were emails about that?**
13 A Uh-huh.
14 **Q Is that a yes?**
15 A Yes. I'm sorry.
16 **Q And those emails have been provided in this case?**
17 A Yes.
18 MR. GOODHART: As you and I have discussed,
19 Ben, the only emails that my office has provided to you so
20 far predate the death of Ms. Cunnison.
21 I believe what Mr. Modena is talking about
22 are emails, as he indicated and testified earlier, that were
23 from early 2014, which have postdated the death. So First
24 Street has not produced those emails, given the discussions
25 that we have had in the past. I know you've raised an

1 objection to that, and I've provided you with a response to
2 that.
3 So I can represent those particular emails
4 that Mr. Modena was just testifying about have not been
5 produced by First Street to Plaintiffs, because they
6 postdate Ms. Cunnison's death. Any emails relative to
7 slipperiness of surfaces and things like that that predated
8 Ms. Cunnison's death, if there are any, have been produced.
9 MR. CLOWARD: Okay. Counsel would just ask
10 that you produce all the emails regarding slipperiness of
11 the tub.
12 MR. GOODHART: Again, we have a dispute over
13 that, as to what relevance an email about the slipperiness
14 of the tub that postdated Ms. Cunnison's death has, with
15 respect to First Street, as claims against First Street are
16 based entirely upon the allegations that Ms. Cunnison relied
17 upon advertising, sales, and marketing materials that it
18 provided to her.
19 And I have used Ms. Cunnison's death as the
20 time point where there is absolutely no way that
21 Ms. Cunnison could have relied upon an email or a
22 conversation that was generated after she had passed away.
23 MR. CLOWARD: Okay. And my position, I'll
24 state it for the record, I believe I've shared it with you,
25 but we can just use this as the 2.3 forum. Is that okay?

1 MR. GOODHART: That's fine.
2 MR. CLOWARD: Our position is those emails
3 would be relevant for whether or not the tub is actually
4 dangerous, okay? So we believe that they're relevant,
5 similar to the subsequent similar incidents for the same
6 reason that Commissioner Buella has compelled production of
7 that information, it's the same -- same reasoning.
8 MR. GOODHART: And just to respond to that,
9 Ben, I didn't mean to cut you off. Those have dealt with
10 the design and manufacturing of the tub, which is directed
11 at Jacuzzi. The claims against First Street and AITHR, as
12 neither of them designed nor manufactured that tub, I
13 believe are quite different than those claims and that issue
14 has not been brought before discovery commissioner.
15 MR. CLOWARD: But if there are internal
16 communications and complaints from consumers, and that's
17 generating conversation within First Street, as well as
18 between First Street and Jacuzzi, and I'm including AITHR in
19 this as well, then that would be relevant on whether or not
20 that the product is dangerous, so I understand your
21 objection. I think you understand my position.
22 MR. GOODHART: Right.
23 MR. CLOWARD: Fair to say you won't provide
24 those without further court intervention?
25 MR. GOODHART: Correct. I'm assuming that --

1 MR. CLOWARD: Okay.
2 MR. GOODHART: -- Jacuzzi will provide the
3 emails, since they have been ordered to provide those emails
4 about post-death --
5 MR. CLOWARD: We would ask you --
6 MR. GOODHART: -- discussions.
7 MR. CLOWARD: We would ask that First Street
8 provide them as well, because there may be internal
9 communications within the folks at First Street who have the
10 boots on the ground, who are in actually installing the
11 product in consumers' homes. I think a better source of
12 that information would actually be First Street, to be quite
13 honest with you.
14 So we'd ask that you produce those. If not,
15 I'm happy to take it up with the commissioner.
16 MR. GOODHART: I think we're going to have
17 to, Ben. I apologize. It's --
18 MR. CLOWARD: Not a problem.
19 MR. GOODHART: We can agree to disagree on
20 that one.
21 MR. CLOWARD: Not a problem. We'll move on.
22 Thank you.
23 MR. GOODHART: Thanks.
24 BY MR. CLOWARD:
25 **Q Okay. Sir, so why don't you just tell me as much**

1 And further this deponent saith not.

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

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1 COMMONWEALTH OF VIRGINIA AT LARGE, to wit:

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

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

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

14

15

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17 Angela N. Sidener, CCR, RPR
Notary Registration No. 7378859

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EXHIBIT 11

INTG
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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

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

PLAINTIFF DEBORAH TAMANTINI'S FIRST SET OF INTERROGATORIES TO DEFENDANT, FIRST STREET FOR BOOMERS & BEYOND, INC.

AND ALL RELATED MATTERS

PLAINTIFF DEBORAH TAMANTINI'S FIRST SET OF INTERROGATORIES TO DEFENDANT, FIRST STREET FOR BOOMERS & BEYOND, INC.

ROBERT ANSARA individually, and heir to the Estate of SHERRY LYNN CUNNISON, Deceased; under the authority of Rule 33 of the Nevada Rules of Civil Procedure, by and through his attorney, BENJAMIN P. CLOWARD, ESQ. of the RICHARD HARRIS LAW FIRM and hereby requests that Defendant, FIRST STREET BOOMERS & BEYOND, INC. ("FIRST STREET"), answer, in writing and under oath, within thirty (30) days of receipt hereof, the Interrogatories, hereinafter, set forth.

NOTE: When used in these interrogatories, the term "Defendant", its plural or any synonym thereof, is intended to and shall embrace and include in addition to the named party or parties, counsel for said party, and all agents, servants, employees, representatives, investigators, and others who are in possession of or may have obtained information for or on behalf of the named party or parties Defendant. As to each person named in response to each question herein, state the person's full name, last known residence address and telephone number, his last known business address and telephone number, and his job title, capacity or position at such last known employment.

If you cannot answer any of the following Interrogatories in full and complete detail, after exercising due diligence to secure the information to do so, so state, and answer to the extent possible, specifying your inability to answer the remainder, and stating whatever information or knowledge you have concerning the unanswered portion.

These Interrogatories shall be deemed continuing so as to require supplemental answers if you or your attorneys obtain further information between the time answers are served and the time of trial.

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PRELIMINARY STATEMENT AND DEFINITIONS

The following Preliminary Statement and Definitions apply to each of the Interrogatories set forth hereinafter and are deemed to be incorporated therein:

1. The singular number and the masculine gender, as used herein, also mean the plural, feminine or neuter, as may be appropriate.

2. These interrogatories call for all information (including information contained in writing) as is known or reasonably available to Defendant, Defendant's attorneys or any investigators or representatives or others acting on Defendant's behalf or under Defendant's direction or control, not merely such information as is known of Defendant's own personal knowledge.

3. If you cannot answer any of these Interrogatories in full after exercising due diligence to secure the information to do so, so state and answer the Interrogatory to the extent possible, specifying your inability to answer the remainder, the reasons therefor, the steps taken to secure the answers to the unanswered portions, and stating whatever information or knowledge you have concerning the unanswered portions, please also identify the persons you believe to have such knowledge, what you believe the correct answer to be and the facts upon which you base your answer.

4. If you consult any document or person in answering these Interrogatories, identify in regard to each such Interrogatory the person and/or document consulted.

5. The term "person" as used herein shall be deemed to mean any natural person, firm, association, partnership, corporation or any other form of legal entity or governmental body, unless the context otherwise dictates.

6. The term "document" as used in these Interrogatories means all written, recorded or graphic matters, however produced or reproduced and includes, but is not limited to, any record, report, paper, writing, book, letter, note, memorandum, correspondence, agreement, contract, journal, ledger, summary, minute of meeting, photograph, interoffice communication, telegram, schedule, diary, log, memorandum of telephone or in-person communication, meeting or conversation, Telex, cable, tape, transcript, recording, photograph, picture or film, computer printout, program or data of other graphic, symbolic, recorded or written materials of any nature whatsoever. Any document, as hereinabove defined, which contains any comment, notation, addition, insertion or marking of any kind which is part of another document, is to be considered a separate document.

7. The term "communication" as used in these Interrogatories shall mean any dissemination of information of transmission or a statement from one person to

RICHARD HARRIS LAW FIRM

another or in the presence of another, whether by writing, orally or by action or conduct.

8. The term "fact" as used in these Interrogatories shall include, without limitation, every matter occurrence, act, event, transaction, occasion, instance, circumstance, representation or other happening, by whatever name it is known.

9. The term "identify" or request to "state the identity" as used in these Interrogatories shall call for the following information:

With respect to a person:

(1) His full name;

(2) His last known business and residence address.

(3) His last known business and residence telephone numbers;

(4) His last know job title and capacity;

(5) His relationship to you, by blood or marriage, including former marriages;

(6) Whether any statement pertaining to any matter involved in this litigation, whether written or oral, or by recording device or by court reporter, or whether signed or unsigned, has been taken from him, and if so, how many such statements, and as to each statement, state the identity of thereof.

With respect to each document:

(1) Its nature (e.g., letter, memorandum, etc.);
(2) Its title;
(3) The date it bears;
(4) The date it was sent;
(5) The date it was received;
(6) The identity of all persons who prepared it or participated in anyway in its preparation;
(7) The identity of the person sending it and who such person represented at that time;
(8) The identity of the person to whom it was sent;
(9) The identity of the person who presently has custody of it and its present location;
(10) Its subject matter and its substance;
(11) Whether the document is claimed to be privileged;
(12) If you exercise the option to produce business records pursuant to NRCP 34(c), please answer, nonetheless, subparts (1) through (9) hereof in regard to each pertinent Interrogatory.

. . .

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With respect to "communication":

(1) The maker;
(2) The receiver;
(3) When made;
(4) Where made;
(5) The identity of all persons present when made;
(6) The mode of communication;
(7) The subject matter and substance;
(8) Whether the communication is claimed to be privileged.

With respect to each "fact":

(1) The date and time it occurred;
(2) The place where it occurred;
(3) The identity of each person present;
(4) An identification of the subject matter, nature and substance of the fact.

10. With respect to each document or communication identified and claimed to be privileged, state the type of privilege claimed and its basis.

11. If you object in whole or in part to any of the following Interrogatories, please state in complete detail the basis for your objection and all the facts in which you rely to support your objection.

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

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

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

INTERROGATORIES

INTERROGATORY NO. 1:

In the Manufacturing Agreement between FirstStreet and Jacuzzi, Bates stamped as Jacuzzi001588 thru Jacuzzi001606, the document indicates that FirstStreet desired Jacuzzi to

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manufacture walk-in tubs and other bath products for FirstStreet and its network of dealers and distributors – please list all dealers and distributors within the network of FirstStreet.

INTERROGATORY NO. 2:

Please identify the name of the person who was responsible for testing the two tubs provided by FirstStreet to Jacuzzi pursuant to Section 1. G. of the Manufacturing Agreement between FirstStreet and Jacuzzi, Bates stamped as Jacuzzi001588 thru Jacuzzi001606

INTERROGATORY NO. 3:

Please identify the name of the person who was responsible for training using the two tubs provided by FirstStreet to Jacuzzi pursuant to Section 1. G. of the Manufacturing Agreement between FirstStreet and Jacuzzi, Bates stamped as Jacuzzi001588 thru Jacuzzi001606.

INTERROGATORY NO. 4:

In Section 2. A of the Manufacturing Agreement between FirstStreet and Jacuzzi, Bates stamped as Jacuzzi001588 thru Jacuzzi001606, please provide all known FirstStreet Dealers that have places advertisements in sources of "direct mail, Internet, catalog, television, radio and print media known by Jacuzzi for Jacuzzi walk-in products.

INTERROGATORY NO. 5:

In Section 2. B of the Manufacturing Agreement between FirstStreet and Jacuzzi, Bates stamped as Jacuzzi001588 thru Jacuzzi001606, the document indicates that only FirstStreet has the right to sell Jacuzzi walk-in products in the United States, please name any other company that has had the right at any time to sell Jacuzzi walk-in products in the United States.

INTERROGATORY NO. 6:

In Section 2. B of the Manufacturing Agreements between FirstStreet and Jacuzzi, Bates stamped as Jacuzzi001588 thru Jacuzzi001606, the document indicates that only FirstStreet has the right to sell Jacuzzi walk-in products in the United States, please name any and all companies who have the right to sell Jacuzzi walk-in products outside the United States.

. . .

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INTERROGATORY NO. 7:

Please identify all past or present salesmen or saleswomen used by FirstStreet to sell Jacuzzi products. For instance, please identify the names of all individuals like Hale Benton or Jonathan Honerbrink who have been involved in selling Jacuzzi walk-in bath products.

INTERROGATORY NO. 8:

Identity the person at First Street who is in charge of the remodeling division and the network of contractors.

INTERROGATORY NO. 9:

Please identify all past and present contractors who have provided installation services with regard to a walk-in bathtub sold by FirstStreet.

INTERROGATORY NO. 10:

Please state whether FirstStreet gets any portion of the proceeds from the installation services, such as a "kickback" for authorizing the company to work with FirstStreet.

DATED this 20th day of September, 2018.

RICHARD HARRIS LAW FIRM

/s/ Benjamin P. Cloward

BENJAMIN P. CLOWARD, ESQ.
Nevada Bar No. 11087
801 South Fourth Street
Las Vegas, Nevada 89101
Attorneys for Plaintiff

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of RICHARD HARRIS LAW FIRM and that on this 20th day of September, 2018, I served a copy of the foregoing, **PLAINTIFF DEBORAH TAMANTINI'S FIRST SET OF INTERROGATORIES TO DEFENDANT, FIRST STREET FOR BOOMERS & BEYOND, INC.** in Ansara, Robert, et al. v. First Street for Boomers & Beyond, Inc., et al., Clark County District Court Case No. A-16-731244-C, as follows:

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

Meghan M. Goodwin, Esq.
THORNDAL ARMSTRONG DELK BALKENBUSH & EISINGER
1100 East Bridger Avenue
Las Vegas, NV 89101-5315
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Facsimile: 702-366-0327
Mail to:
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Las Vegas, NV 89125-2070
Attorneys for Defendants/Cross-Defendants Firstsreet for Boomers and Beyond, Inc. and Aithr Dealer, Inc.

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

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

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

EXHIBIT 12

1 DISTRICT COURT
CLARK COUNTY, NEVADA
2

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,	CASE NO. A-16-731244-C DEPT NO. II
Plaintiffs,	
-vs-	Taken at 139 Bitterroot Plaza Dr. Hamilton, Montana Thursday, December 20, 2018 12:00 P.M.
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 INSTALLERS 1 through 20; DOE CONTRACTORS 1 through 20; and DOE SUBCONTRACTORS 1 through 20, inclusive,	VIDEOTAPED DEPOSITION OF JERRE CHOPPER
Defendants.	

21
22
23
Reported by: Terra Rohlfs, RPR
24 Freelance Court Reporter and
Notary Public for the State of Montana
25

1 A P P E A R A N C E S

2

3 Benjamin P. Cloward, Esq.
Richard Harris Law Firm
4 801 South Fourth Street
Las Vegas, Nevada 89101
5 benjamin@richardharrislawfirm.com
Associated Staff:
6 ngriffin@richardharrislawfirm.com
appearing on behalf of the Plaintiffs.
7

8 Philip N. Goodhart, Esq.
9 Thorndal Armstrong Delk Balkenbush & Eisinger
1100 East Bridger Avenue
10 Las Vegas, Nevada 89101-5315
png@thorndal.com
11 appearing on behalf of Defendants firstSTREET
for Boomers & Beyond, Inc., and AITHR Dealer,
12 Inc.

13 Joshua D. Cools, Esq.
14 Snell & Wilmer LLP
3883 Howard Hughes Pkwy, Suite 1100
15 Las Vegas, Nevada 89169
jmoreno@swlaw.com
16 and
Brittany M. Llewellyn, Esq.
17 Weinberg Wheeler Hudgins Gunn & Dial
6385 South Rainbow Boulevard, Suite 400
18 Las Vegas, Nevada 89118
appearing on behalf of Defendant Jacuzzi
19 Brands, LLC.

20

21 Also appearing: Claudia Williamson and Candace
Simonich, videographer.
22

23

24

25

1 I N D E X

2

WITNESS: PAGE:

3

JERRE CHOPPER

4

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5 Examination by Mr. Goodhart 117
Examination by Mr. Cools 130
6 Examination by Mr. Cloward 144

7 EXHIBITS:

8 Deposition Exhibit Number 1
Marked for Identification 8
9 Deposition Exhibit Number 2
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10 Deposition Exhibit Number 3
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11 Deposition Exhibit Number 4
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12 Deposition Exhibit Number 5
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13 Deposition Exhibit Number 6
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14 Deposition Exhibit Number 7
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15 Deposition Exhibit Number 8
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17 Deposition Exhibit Numbers 10 and 11
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19 Deposition Exhibit Number 13
Marked for Identification 80
20 Deposition Exhibit Number 14
Marked for Identification 86
21 Deposition Exhibit Number 15
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22 Deposition Exhibit Number 16
Marked for Identification 11
23 Deposition Exhibit Numbers 17 and 18
Marked for Identification 88
24

25 Certificate of Court Reporter 151

1 THURSDAY, DECEMBER 20, 2018
2 VIDEOGRAPHER SIMONICH: Today is
3 Thursday, December 20th. The time is approximately
4 12 p.m. The court reporter is Terra Rohlfs, and I
5 am your videographer Candace Simonich. We are here
6 on behalf of Oasis Reporting Services.
7 The witness today is Jerre Chopper. And
8 we are here in the case of Robert Ansara, et al.
9 versus firstSTREET for Boomers & Beyond,
10 Incorporated, et al.
11 Will the counsel please state your
12 appearances, and the court reporter will then
13 administer the oath.
14 MR. CLOWARD: My name is Ben Cloward for
15 the Cunnison family.
16 MR. GOODHART: Philip Goodhart on behalf
17 of firstSTREET and AITHR Dealers.
18 MS. LLEWELLYN: Brittany Llewellyn on
19 behalf of Jacuzzi, Inc.
20 MR. COOLS: Josh Cools on behalf of
21 Jacuzzi, Inc.
22 COURT REPORTER: Okay. I'll have you
23 raise your right hand.
24 Thereupon,
25 //

1 JERRE CHOPPER,
2 a witness of lawful age, having been first duly
3 sworn to tell the truth, the whole truth and
4 nothing but the truth, testified upon her oath as
5 follows:
6 EXAMINATION
7 BY MR. CLOWARD:
8 Q. Good morning, Ms. Chopper. How are you
9 today?
10 A. I'm my usual self. (Laughter.)
11 Q. All right. Now, have you and I met
12 before?
13 A. Yes.
14 Q. When was that?
15 A. Yesterday.
16 Q. Okay. And did you provide me with
17 anything?
18 A. Yes, I provided you with several
19 documents.
20 Q. Okay. So I'm going to kind of go over
21 the documents that you provided. And I made copies
22 and gave all of the counsel involved copies of
23 that. And I'll just ask you some specific
24 questions about those documents, okay?
25 A. Okay.

1 A. No.
2 MR. COOLS: Join.
3 Q. (BY MR. CLOWARD) Okay.
4 A. But then I stopped payment, they got
5 $5,000 and then I stopped payment on the check that
6 I sent them, plus any paperless transactions that
7 they tried to slip through.
8 Q. Okay. Do you still have the opinion that
9 this tub is a death trap --
10 A. Yes.
11 Q. -- and it's unsafe?
12 A. Definitely.
13 MR. GOODHART: Objection -- objection,
14 leading, form and foundation, and argumentative.
15 MR. COOLS: Join.
16 Q. (BY MR. CLOWARD) And I saw in the
17 letters that you wrote to I believe Jacuzzi as well
18 as firstSTREET, that you actually informed them of
19 your views of the safety -- lack of safety of the
20 tub; is that correct?
21 MR. GOODHART: Objection, form,
22 foundation, leading.
23 MR. COOLS: Join.
24 A. Yes, when I got this transmittal from
25 Bachmeyer wanting me to fill out the survey --

1 survey, I didn't fill out the survey, I wrote him a
2 letter and outlined all of the reasons --
3 Q. (BY MR. CLOWARD) Okay. So --
4 A. -- that I was --
5 Q. You were concerned about the tub?
6 A. -- that I was concerned.
7 Q. Matter of fact, you were concerned enough
8 that you wrote to the U.S. Consumer Product Safety
9 Commission, informing them of your concerns with
10 the product; true?
11 A. Yes.
12 MR. GOODHART: Objection, form,
13 foundation, leading.
14 MR. COOLS: Join.
15 Q. (BY MR. CLOWARD) You also informed the
16 Department of Elder Fraud of the U.S. Attorney
17 General of the problems?
18 MR. GOODHART: Objection, form,
19 foundation, leading.
20 MR. COOLS: Join.
21 Q. (BY MR. CLOWARD) Correct?
22 A. Yes, I -- yes.
23 Q. And that's Exhibit 5. Can you refresh
24 the jury's memory --
25 A. Yeah, Mr. Michael Shin, Department of

1 Elder Fraud, Attorney General, U.S. Attorney
2 General in Billings, Montana. The Jacuzzi designed
3 for seniors walk-in tub in no way benefits the
4 elders who are looking for a comfort -- the comfort
5 and convenience of a nice, warm bath.
6 You will note the dates of the enclosed
7 letters to Jacuzzi, and they have been given
8 opportunity to respond. To date I have heard
9 nothing from them. Although I have no concrete
10 facts, it is my suspicion that AIHR is continuing
11 to hire salesmen, tutor them in high-pressure
12 tactics to go out and blanket multiple states, sell
13 tubs to seniors, collect down payments with no clue
14 as to how these tubs are going to be installed.
15 But that's not the worst-case scenario. These tubs
16 do not deliver what seniors are expecting.
17 This is I believe some investigation. I
18 know nothing about firstSTREET, other than they are
19 a mail order company. How their partnership with
20 Jacuzzi evolved and hence their partnership AIHR, I
21 have no idea. What I believe is they are
22 perpetrating a fraud. Since my first encounter
23 with them, they have changed their identity and
24 started answering their phones as Jacuzzi, which is
25 a deception. And additionally they have been

1 certainly would've given it to Mr. Cloward and
2 brought it with you today?
3 A. Of course.
4 MR. GOODHART: Okay. I don't think I
5 have any other questions for you. Thank you, I
6 appreciate it.
7 THE WITNESS: Okay.
8 EXAMINATION
9 BY MR. COOLS:
10 Q. Ms. Chopper, my name is Josh Cools, I
11 represent Jacuzzi.
12 How long did Mr. Brown spend with you
13 when he came to sell you the tub?
14 A. Somewhere in my documentation -- I think
15 he came at 5:30 and he left at 7:30, so he spent
16 two hours.
17 Q. And I know that Mr. Goodhart already
18 asked you about the -- whether or not a brochure
19 was left with you, but do you remember seeing any
20 materials about the tub while Mr. Brown was there
21 with you?
22 A. No, no. Like I said, the name Jacuzzi,
23 particularly among people of my age revered the
24 name Jacuzzi.
25 Q. So it's fair to say that you did not see

1 C E R T I F I C A T E

2

3 STATE OF MONTANA)

4 : ss.

5 County of Ravalli)

6 I, Terra Rohlfs, RPR, Freelance Court Reporter and Notary Public for the State of
7 Montana, residing in Hamilton, Montana, do hereby certify:

8

That I was duly authorized to swear in
9 the witness and did report the deposition of JERRE CHOPPER in this cause;

10

That the reading and signing of the
11 deposition by the witness have been expressly waived;

12

That the foregoing pages of this
13 deposition constitute a true and accurate transcription of my stenotype notes of the
14 testimony of said witness.

15 I further certify that I am not an attorney nor counsel of any of the parties; nor a
16 relative or employee of any attorney or counsel connected with the action, nor financially
17 interested in the action.

18 IN WITNESS WHEREOF, I have hereunto set my hand and seal on this the 26th day of December, 2018.

19

20

21 _____
Terra Rohlfs, RPR,
Freelance Court Reporter
22 Notary Public, State of Montana
Residing in Hamilton, Montana
23 My Commission expires: 11/4/19

24

25

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ARMSTRONG
DELK BALKENBUSH & EISINGER
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ATTORNEYS
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EXHIBIT 13

1 DISTRICT COURT, CLARK COUNTY, NEVADA
2 Case No. A-16-731244-C, Dept. No. II

---

3 DEPOSITION OF: LILA F. LAUX, PH.D. - October 30, 2018

4
5 ROBERT ANSARA, as Special Administrator of the Estate
of SHERRY LYNN CUNNISON, Deceased; ROBERT ANSARA, as
6 Special Administrator of the Estate of MICHAEL SMITH,
Deceased heir to the Estate of SHERRY LYNN CUNNISON,
7 Deceased; and DEBORAH TAMANTINI, individually and heir
to the Estate of SHERRY LYNN CUNNISON, Deceased,
8
Plaintiffs,
9
v.
10
FIRST STREET FOR BOOMERS & BEYOND, INC.; AITHR DEALER,
11 INC.; HALE BENTON, individually; HOMECLICK, LLC;
JACUZZI INC., doing business as JACUZZI LUXURY BATH;
12 BESTWAY BUILDING & REMODELING, INC.; WILLIAM BUDD,
individually and as BUDDS PLUMBING; DOES 1 through 20;
13 ROE CORPORATIONS 1 through 20; DOE EMPLOYEES 1 through
20; DOE MANUFACTURERS 1 through 20; DOE 20 INSTALLERS
14 1 through 20; DOE CONTRACTORS 1 through 20; and DOE 21
SUBCONTRACTORS 1 through 20, inclusive,
15
Defendants.
16

---

17 PURSUANT TO NOTICE, the deposition of
LILA F. LAUX, PH.D., was taken on behalf of the
18 Defendant Jacuzzi Inc. doing business as Jacuzzi
Luxury Bath at 1200 17th Street, Suite 1900, Denver,
19 Colorado 80202, on October 30, 2018, at 9:53 a.m.,
before Darcy Curtis, Registered Professional Reporter
20 and Notary Public within Colorado.
21
22
23
THOMAS G. OAKES, A VERITEXT COMPANY
24 MID-ATLANTIC REGION
535 Route 38 East, Suite 330
25 Cherry Hill, NJ 08002

1 A P P E A R A N C E S
2 For the Plaintiffs:
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Richard Harris Law Firm
4 801 South Fourth Street
Las Vegas, Nevada 89101
5
CHARLES H. ALLEN, ESQ.
6 Charles Allen Law Firm, P.C.
3575 Piedmont Road, NE
7 Building 15, Suite L-130
Atlanta, Georgia 30305
8
9 For the Defendants First Street for Boomers & Beyond,
Inc. and AITHR Dealer, Inc.:
10
PHILIP GOODHART, ESQ.
11 Thorndal, Armstrong, Delk, Balkenbush &
Eisinger
12 1100 East Bridger Avenue
Las Vegas, Nevada 89101
13
14 For the Defendant Jacuzzi Inc. doing business as
Jacuzzi Luxury Bath:
15
JOSHUA D. COOLS, ESQ.
16 Snell & Wilmer L.L.P.
3883 Howard Hughes Parkway
17 Suite 1100
Las Vegas, Nevada 89169
18
19
20
21
22
23
24
25

1 I N D E X

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9 Amended Notice of Oral Deposition
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21 Exhibit 10 Collection of Advertisements, 103
JAC000001 through JAC000012

22
23
24
25

WHEREUPON, the following proceedings were taken pursuant to the Nevada Rules of Civil Procedure.

* * * * *

LILA F. LAUX, PH.D.,

having been first duly sworn to state the whole truth, testified as follows:

(Deponent's reply to oath: Yes and yes.)

(Deposition Exhibits 1 and 2 were marked.)

EXAMINATION

BY MR. COOLS:

Q. Good morning. My name is Josh Cools. I represent Jacuzzi in this case. You've been identified as an expert witness in the Ansara v. Jacuzzi matter. You are aware of that?

A. Yes.

Q. And you've been deposed several times before, right?

A. I have.

Q. Okay. When were you retained in this case?

A. Oh, gosh. It's been several months. 12 something, December, I think.

Q. And who retained you?

A. I think I did, but I don't have any belief that I referenced it in my report, which means it probably didn't have information in there that I was going to try to recall.

Q. Do you document in any way the materials that you reviewed in preparing a report?

A. Well, usually if they have something of relevance, I'll footnote them, yes, in my report.

Q. So is it fair to assume that if it was something you reviewed that was significant to you that you'll have it as a footnote in your report?

A. Right. But a lot of these things I didn't get until after my report, so you won't have any way of knowing if I reviewed them or not unless I tell you.

Q. The last document in the file is A Comparison of Two Testers in Evaluating the Slip Resistance of Bathtub and Shower Base Surfaces.

A. Right.

Q. What's the significance of that document?

A. Well, that was something that plaintiffs' counsel sent me and it's a study of the slipperiness of a tub, two kinds of surfaces. It's actually quite an excellent study -- it's old but it's good -- about what makes a tub slippery. We all know people slip in

tubs, so what surface is better to prevent that. I have a house with 55-year-old tubs and they don't have any kind of slip resistance.

Q. Are you critical of the slip resistance in the Jacuzzi 5229 Walk-In Bathtub?

A. I'm not going to have any criticism of that.

Q. What significance did this particular publication have to your report?

A. To my report, it was just evidence that the business about slipperiness of tubs has been recognized for a long, long time.

Q. In total it sounds like you spent about 17 hours on this case; is that right?

A. Yes, probably.

Q. Do you take any notes as you prepare your report?

A. Not usually. Sometimes I write down a page in a deposition that I want to remember, but, no, I don't take any particular notes. If I take notes, what I do is I use Snippet and just make a copy of it and paste it into my report, and then if I don't later use it, I cut it out.

Q. Do the two reports that you produced in this case contain all of your opinions that you would

REPORTER'S CERTIFICATE

STATE OF COLORADO)
) ss.
CITY AND COUNTY OF DENVER)

I, Darcy Curtis, Registered Professional Reporter and Notary Public ID 20064016972, State of Colorado, do hereby certify that previous to the commencement of the examination, the said LILA F. LAUX, PH.D., was duly sworn or affirmed by me to testify to the truth in relation to the matters in controversy between the parties hereto; that the said deposition was taken in machine shorthand by me at the time and place aforesaid and was thereafter reduced to typewritten form; that the foregoing is a true transcript of the questions asked, testimony given, and proceedings had.

I further certify that I am not employed by, related to, nor of counsel for any of the parties herein, nor otherwise interested in the outcome of this litigation.

IN WITNESS WHEREOF, I have affixed my signature this 9th day of November, 2018.

My commission expires May 2, 2022.

_____ Reading and Signing was requested.

__X__ Reading and Signing was waived.

_____ Reading and Signing was not required.

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

EXHIBIT 14

ECC
PHILIP GOODHART, ESQ.
Nevada Bar No. 5332
MEGHAN M. GOODWIN, ESQ.
Nevada Bar No. 11974
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Attorneys for Defendants/Cross-Defendants, FIRSTSTREET FOR BOOMERS AND BEYOND, INC., and AITHR DEALER, INC.

DISTRICT COURT

CLARK COUNTY, NEVADA

ROBERT ANSARA, as Special Administrator of the Estate of SHERRY LYNN CUNNISON, Deceased; MICHAEL SMITH individually, and heir to the Estate of SHERRY LYNN CUNNISON, Deceased; and DEBORAH TAMANTINI individually, and heir to the Estate of SHERRY LYNN CUNNISON, Deceased, Plaintiffs, vs. FIRST STREET FOR BOOMERS & BEYOND, INC.; AITHR DEALER, INC.; HALE BENTON, Individually; HOMECLICK, LLC; JACUZZI INC., doing business as JACUZZI LUXURY BATH; BESTWAY BUILDING & REMODELING, INC.; WILLIAM BUDD, Individually and as BUDDS PLUMBING; DOES 1 through 20; ROE CORPORATIONS 1 through 20; DOE EMPLOYEES 1 through 20; DOE MANUFACTURERS 1 through 20; DOE 20 INSTALLERS 1 through 20; DOE	CASE NO. A-16-731244-C DEPT. NO. 18 **DEFENDANTS FIRSTSTREET FOR BOOMERS AND BEYOND, INC., AND AITHR DEALER, INC.'S FOURTH 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.; 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,

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.; 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,

Cross-Defendants.

DEFENDANTS FIRSTSTREET FOR BOOMERS AND BEYOND, INC., AND AITHR DEALER, INC.'S FOURTH SUPPLEMENTAL EARLY CASE CONFERENCE PRODUCTION

TO: ALL PARTIES HEREIN; and

TO: THEIR COUNSEL OF RECORD:

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

I.

WITNESS LIST

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

. . .

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

2. Michael Smith individually, and heir to the Estate of Sherry Lyn Cunnison
   c/o Benjamin P. Cloward, Esq.
   Richard Harris Law Firm
   801 S. 4th Street
   Las Vegas, Nevada 89101
   (702)444-4444

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

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

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

4. Corporate Representative(s) and/or Custodian of Records
   Firststreet for Boomers & Beyond, Inc. c/o Meghan M. Goodwin, Esq.
   THORNDAL ARMSTRONG DELK BALKENBUSH & EISINGER
   1100 E. Bridger Avenue
   Las Vegas, NV 89101
   (702) 366-0622

The Corporate Representative(s) and/or Custodian of Records for Firststreet for Boomers & Beyond, Inc. 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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5. Corporate Representative(s) and/or Custodian of Records
AITHR Dealer Inc
c/o Meghan M. Goodwin, Esq.
THORNDAL ARMSTRONG DELK BALKENBUSH & EISINGER
1100 E. Bridger Avenue
Las Vegas, NV 89101
(702) 366-0622

The Corporate Representative(s) and/or Custodian of Records for AITHR Dealer Inc. 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.

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

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

7. Corporate Representative(s) and/or Custodian of Records
Homeclick, LLC
c/o Michael E. Stoberski, Esq.
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.

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8. Corporate Representative(s) and/or Custodian of Records
Jacuzzi Brands, LLC
c/o Vaughn A. Crawford, Esq.
SNELL & WILMER LLP
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, NV 89169
(702) 784-5200

The Corporate Representative(s) and/or Custodian of Records for Jacuzzi Brands, 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.

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

The Corporate Representative(s) and/or Custodian of Records for Bestway Building & Remodeling, Inc. 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.

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

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

12. 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.

13. 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 his/her understanding of the facts and circumstances surrounding the subject incident, including the investigation and subsequent findings thereof.

14. Corporate Representative(s) and/or Custodian of Records
    Hale Benton
    1176 Ponce de Leon Avenue
    Las Vegas, NV 89123-1458
    (702) 498-9012

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

15. Corporate Representative(s) and/or Custodian of Records
    Palm Eastern Cemetery
    7600 S. Eastern Avenue
    Las Vegas, NV 89123
    (702) 464-8500

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

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

The Corporate Representative(s) from Las Vegas Fire & Rescue 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

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

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

18. Carlos Fonseca, Paramedic MedicWest Ambulance
    9 W. Delhi Avenue
    North Las Vegas, NV 89032
    (702) 650-9900

Medic Fonseca is expected to testify as to the care and treatment provided to Decedent.

19. Brennan Demille, EMT Intermediate
    MedicWest Ambulance
    9 W. Delhi Avenue
    North Las Vegas, NV 89032
    (702) 650-9900

Medic Demille is expected to testify as to the care and treatment provided to Decedent.

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

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

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

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

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

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

23. Kitty Ho Cain, M.D.
Sunrise Hospital & Medical Center
3186 S. Maryland Parkway
Las Vegas, NV 89109
(702) 731-8000

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

24. Lindsey C. Blake, M.D.
Sunrise Hospital & Medical Center
3186 S. Maryland Parkway
Las Vegas, NV 89109
(702) 731-8000

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

25. Holman Chan, M.D.
Sunrise Hospital & Medical Center
3186 S. Maryland Parkway
Las Vegas, NV 89109
(702) 731-8000

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

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

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

27. Sayed Z. Qazi, M.D.
Sunrise Hospital & Medical Center
3186 S. Maryland Parkway
Las Vegas, NV 89109
(702) 731-8000

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

28. Muhammad Bhatti, M.D.
Sunrise Hospital & Medical Center
3186 S. Maryland Parkway
Las Vegas, NV 89109
(702) 731-8000

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

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29. Wayne Jacobs, M.D.
Sunrise Hospital & Medical Center
3186 S. Maryland Parkway
Las Vegas, NV 89109
(702) 731-8000

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

30. Yekaterina K.hronusova, M.D.
Sunrise Hospital & Medical Center
3186 S. Maryland Parkway
Las Vegas, NV 89109
702) 731-8000

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

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

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

32. Chris J. Fischer, M.D.
Sunrise Hospital & Medical Center
23186 S. Maryland Parkway
Las Vegas, NV 89109
(702) 731-8000

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

33. Shirin Rahman, M.D.
Sunrise Hospital & Medical Center
3186 S. Maryland Parkway
Las Vegas, NV 89109
(702) 731-8000

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

34. Sean D. Beaty, M.D.
Sunrise Hospital & Medical Center
3186 S. Maryland Parkway
Las Vegas, NV 89109
(702) 731-8000

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

35. Joshua Owen, M.D.
Sunrise Hospital & Medical Center
3186 S. Maryland Parkway
Las Vegas, NV 89109
(702) 731-8000

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

36. Rafael Valencia, M.D.
Sunrise Hospital & Medical Center
3186 S. Maryland Parkway
Las Vegas, NV 89109
(702) 731-8000

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

37. David P. Gorczyca, M.D.
Sunrise Hospital & Medical Center
3186 S. Maryland Parkway
Las Vegas, NV 89109
(702) 731-8000

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

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38. Dean P. Berthoty, M.D.
Sunrise Hospital & Medical Center
3186 S. Maryland Parkway
Las Vegas, NV 89109
(702) 731-8000

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

39. Robert N. Berkley, M.D.
Sunrise Hospital & Medical Center
3186 S. Maryland Parkway
Las Vegas, NV 89109
(702) 731-8000

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

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

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

41. Kristen Peters, Investigator
Clark County Coroner
1704 Pinto Lane
Las Vegas, NV 89106
(702) 455-3210

Ms. Peters is expected to testify as to her understanding of the facts and circumstances surrounding the subject incident, including the investigation and subsequent findings thereof.

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42. Jesse Blanchard, Paramedic
MedicWest Ambulance
9 W. Delhi Avenue
North Las Vegas, NV 89032
(702) 650-9900

Medic Blanchard is expected to testify as to the care and treatment provided to Decedent.

43. Voctor Montecerin, Paramedic
MedicWest Ambulance
9 W. Delhi Avenue
North Las Vegas, NV 89032
(702) 650-9900

Medic Montecerin is expected to testify as to the care and treatment provided to Decedent.

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

Medic Chavez is expected to testify as to the care and treatment provided to Decedent.

45. Luke Crawford, EMT Intermediate
MedicWest Ambulance
9 W. Delhi Avenue
North Las Vegas, NV 89032
(702) 650-9900

Medic Crawford is expected to testify as to the care and treatment provided to Decedent.

46. Jenna Lamperti, EMT Intermediate
MedicWest Ambulance
9 W. Delhi Avenue
North Las Vegas, NV 89032
(702) 650-9900

Medic Lamperti is expected to testify as to the care and treatment provided to Decedent.

47. Jacob Stamer, EMT
MedicWest Ambulance
9 W. Delhi Avenue
North Las Vegas, NV 89032
(702) 650-9900

Medic Stamer is expected to testify as to the care and treatment provided to Decedent.

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

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

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

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

50. Corporate Representative(s) and/or Custodian of Records
Walgreens Pharmacy
4895 Boulder Highway
Las Vegas, NV 89121
(702) 898-5264

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

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

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

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

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

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

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

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

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

55. Arjun V. Gururaj, M.D.
Sunrise Hospital & Medical Center
3186 S. Maryland Parkway
Las Vegas, NV 89109
(702) 731-8000

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

56. Nicolaos Tsiouris, M.D.
Sunrise Hospital & Medical Center
3186 S. Maryland Parkway
Las Vegas, NV 89109
(702) 731-8000

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

57. Warren Wheeler, M.D.
Sunrise Hospital & Medical Center
3186 S. Maryland Parkway
Las Vegas, NV 89109
(702) 731-8000

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

58. Gyorgy Varsanyi, M.D.
Sunrise Hospital & Medical Center
3186 S. Maryland Parkway
Las Vegas, NV 89109
(702) 731-8000

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

59. David Silverberg, M.D.
Sunrise Hospital & Medical Center
3186 S. Maryland Parkway
Las Vegas, NV 89109
(702) 731-8000

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

60. Douglas M. Sides, M.D.
Sunrise Hospital & Medical Center
3186 S. Maryland Parkway
Las Vegas, NV 89109
(702) 731-8000

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

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61. Richard A. Schwartz, M.D.
Sunrise Hospital & Medical Center
3186 S. Maryland Parkway
Las Vegas, NV 89109
(702) 731-8000

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

62. Ronald F. Sauer, Jr., D.O.
Sunrise Hospital & Medical Center
3186 S. Maryland Parkway
Las Vegas, NV 89109
(702) 731-8000

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

63. 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

The Corporate Representative(s) and/or Custodian of Records for Las Vegas Metropolitan Police Department 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.

64. Officer, Matthew Scanlon
Las Vegas Metropolitan Police Department
400 S. Martin Luther King Boulevard
Las Vegas, NV 89106
(702) 828-3111

Officer Scanlon is expected to testify as to his 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.

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65. Officer, Kevin Lemire
Las Vegas Metropolitan Police Department
400 S. Martin Luther King Boulevard
Las Vegas, NV 89106
(702) 828-3111

Officer Lemire is expected to testify as to his 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.

66. Officer, Matthew Shake
Las Vegas Metropolitan Police Department
400 S. Martin Luther King Boulevard
Las Vegas, NV 89106
(702) 828-3111

Officer Shake is expected to testify as to his 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.

67. Officer, Keith Bryant
Las Vegas Metropolitan Police Department
400 S. Martin Luther King Boulevard
Las Vegas, NV 89106
(702) 828-3111

Officer Bryant is expected to testify as to his 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.

68. Officer, Shakeel Abdal-Karim
Las Vegas Metropolitan Police Department
400 S. Martin Luther King Boulevard
Las Vegas, NV 89106
(702) 828-3111

Officer Abdal-Karim is expected to testify as to his 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.

69. Officer, B. Venpamel
Las Vegas Metropolitan Police Department
400 S. Martin Luther King Boulevard
Las Vegas, NV 89106
(702) 828-3111

Officer Venpamel is expected to testify as to his 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.

70. Sergeant, Dana Pickerel
Las Vegas Metropolitan Police Department
400 S. Martin Luther King Boulevard
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.

71. Sergeant, Allen Larsen
Las Vegas Metropolitan Police Department
400 S. Martin Luther King Boulevard
Las Vegas, NV 89106
(702) 828-3111

Sergeant Larsen is expected to testify as to his 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.

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

The Corporate Representative(s) from Clark County Fire Department 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.

73. Nicholas Stahlberger, Paramedic
Clark County Fire Department
575 E. Flamingo Road
Las Vegas, NV 89119
(702) 455-7311

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

74. William Lewis
5354 Camden Avenue
Las Vegas, NV 89122
(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.

75. Michael Zuvar
746655 Willow Drive
Doyle, CA 96109
(775) 560-7791

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

76. Michael Showalter
5500 Celestial Way
Citrus Heights, CA 95610
(831) 595-1015 (cell)
(916) 903-7186 (home)

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

77. Frederick J. Tanenggee, M.D.
Health Care Partners Nevada
129 W. Lake Mead, Suite 10
Henderson, NV 89015

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

78. Sachit Das, M.D.
Kindred Hospital Las Vegas-Flamingo
2250 E. Flamingo Road
Las Vegas, NV 89119
(702) 784-4300

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

79. Robert M. Yeh, M.D.
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.

80. Prashant Bharucha, M.D.
Desert Springs Hospital
2075 E. Flamingo Road
Las Vegas, NV 89119
(702) 733-8800

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

81. Randal Shelin, M.D.
Desert Springs Hospital
32075 E. Flamingo Road
Las Vegas, NV 89119
(702) 733-8800

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

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82. Armen Hovanessian, M.D.
Desert Springs Hospital
2075 E. Flamingo Road
Las Vegas, NV 89119
(702) 733-8800

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

83. Michael Showalter
5500 Celestial Way
Citrus Heights, CA 95610
(916) 903-7186

Mr. Showalter 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.

84. Scott Cunnison
23840 Southpoint Drive
Denham Springs, LA 70726

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.

85. James T. Cunnison
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.

86. John S. Cunnison
501 S.W. 16th Street
Blue Springs, MO 64015

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.

87. Corporate Representative and/or Custodian
Health Care Partners Nevada
129 W. Lake Mead, Suite 10
Henderson, NV 89015

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

88. Benjamin Muir, M.D.
HealthCare Partners
700 E. Warm Springs Road, Suite 110
Las Vegas, NV 89119
(702) 318-24

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

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

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

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

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

91. Daniel Fabito, M.D.
Comprehensive & Interventional Pain Management
10561 Jeffreys Street, Suite 211
Henderson, NV 89052
(702) 990-4530

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

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

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

93. Michael Her, M.D.
1236 N. Magnolia Avenue
Anaheim, CA 92801
(714) 995-1000

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

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

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

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

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

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

Defendants reserve the right to call any witnesses named by Plaintiff or any other party for the purpose of rebuttal, impeachment, and/or as an expert witness.

Defendants may call at trial as non-retained expert witnesses any and all of Plaintiff's treating medical professionals, and/or any other expert witness, retained or non-retained, identified

by any party during litigation.

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

II.

DOCUMENTS

A. Homeclick invoice dated December 18, 2013, bates numbered FIRST000001;

B. ADA installation manual, bates numbered FIRST000002 – FIRST000003;

C. BUDD's Plumbing invoice dated February 7, 2014, bates numbered FIRST000004;

D. Jacuzzi and firstSTREET for Boomers and Beyond Manufacturing Agreement, bates numbered FIRST000005 – FIRST000022;

E. Jacuzzi and firstSTREET for Boomers and Beyond Manufacturing Agreement Signature Page, bates numbered FIRST000023;

F. Letter of Representation from Benjamin Cloward, Esq. to ALTHR dated April 9, 2014, bated numbered FIRST000024;

G. Hanover Insurance Group Policy for firstSTREET for Boomers and Beyond, bates numbered FIRST000025-FIRST000224;

H. Subject Jacuzzi Photographs, bates numbered FIRST000225;

I. Umbrella Hanover Insurance Group Policy for firstSTREET for Boomers and Beyond, bates numbered FIRST000226-FIRST00279;

J. Benton Agreement, bates numbered FIRST000280-FIRST000296; Redaction on FIRST000280 and FIRST000296;

K. Documents from Denver regarding Customer Agreement, bates numbered FIRST000297-FIRST00356; Redaction on FIRST000347;

L. LP Notes regarding Plaintiff, bates numbered FIRST000357-FIRST000362;

M. The Jacuzzi Brand Guide, bates numbered FIRST000363-FIRST000385;

N. Sales Presentation, bates numbered FIRST000386-FIRST000423;

O. Various internal and external emails regarding Jacuzzi Walk In Tub between October 1, 2011 (Effective Date of Jacuzzi / firstSTREET Manufacturing Agreement) and February 21, 2014 (date Plaintiffs allege Ms. Cunnison became trapped in the Jacuzzi Walk In Tub), bates numbered FIRST000424 to FIRST001320;

P. Emails located on the desktop computer of David Modena, bates numbered FIRST001321-FIRST004666;

Q. Installer Checklist for Cunnision Installation, bates numbered FIRST004667-FIRST004670;

R. Leave Behind Boucher for Jacuzzi Walk in Bathtubs, bates numbered FIRST004671-004696; and

S. Testimonials, bates numbered FIRST004697-FIRST004704.

T. Amendment No. 1 to Manufacturing Agreement, dated January 12, 2015, bates numbered FIRST004705-FIRST004710.

U. Product Supply Agreement dated January 10, 2017, bates numbered FIRST004711-FIRST004723.

V. Dealer Coverage Map from March 2014, bates numbered FIRST004724.

W. List of FirstStreet Dealers, bates numbered FIRST004725-FIRST004727.

X. Testimonials, bates numbered FIRST004728-FIRST004730.

Y. Link for Ed McMahon ad for Premier

- https://www.youtube.com/watch?v=FrZt_54emuw

Z. AARP Media Advertising Guidelines, bates numbered FIRST004731.

AA. Initial email string regarding communications with AllState, bates numbered FIRST004732-FIRST004733.

BB. Jacuzzi Personal Spa Walk-in Selling System (copyright 2013), bates numbered FIRST004734-FIRST004762.

Further, Defendants will produce the following upon receipt:

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

No inclusion of any documents within this disclosure made pursuant to NRCP 16.1 and no acceptance of any documents provided by any other party hereto in a disclosure made pursuant to NRCP 16.1 shall be deemed as a waiver by Defendants of any evidentiary rights Defendants may have with respect to those documents, including, but not limited to, objections related to authenticity, materiality, relevance, foundation, hearsay, or any other right as may be permitted pursuant to the Nevada Rules of Evidence.

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

Defendants further reserves the right to use during discovery and/or use or admit during

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trial Plaintiff's and/or any other parties' documents and evidence, tangible or otherwise, produced or identified during the course of litigation.

DATED this 18th day of January, 2019.

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

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), on the 18th day of January, 2019, service of the above and foregoing DEFENDANTS FIRSTSTREET FOR BOOMERS AND BEYOND, INC., AND AITHR DEALER, INC.'S FOURTH 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, and by personal serving a thumb drive containing the identified documents on Mr. Cloward and Mr. Cools.

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

Charles Allen Law Firm, P.C.
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Joshua D. Cools, Esq.
Snell & Wilmer LLP
3883 Howard Hughes Pkwy., Ste. 1100
Las Vegas, Nevada 89169
Attorneys for Defendant,
JACUZZI BRANDS LLC

Hale Benton
26479 West Potter Drive
Buckeye, AZ 85396

/s/ Karen Berk

An employee of THORNDAL ARMSTRONG
DELK BALKENBUSH & EISINGER

EXHIBIT T

AMENDMENT NO. 1 TO MANUFACTURING AGREEMENT

THIS AMENDMENT NO. 1 TO MANUFACTURING AGREEMENT ("Amendment") is effective as of January 12, 2015 ("Effective Date"), by and between Jacuzzi Inc., a Delaware corporation ("JI"), and firstSTREET for BOOMERS and BEYOND, Inc., a Virginia corporation ("FS"), and relates to that certain Manufacturing Agreement dated October 1, 2011 (the "Agreement") between JI and FS.

WHEREAS, Section 12 of the Agreement provides that the Agreement may be amended in writing if such writing is signed by the parties; and

WHEREAS, the parties desire to amend the Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and agreements set forth in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby amend the Agreement as follows:

1. EXCLUSIVITY: Section 3 is hereby amended to add the following provisions immediately following Section 3C:

"D. JI will not directly or indirectly sell or distribute a Jacuzzi® brand "Tub to Shower" (defined as a product with shower pan and integrated wall and jet system and hand held shower wand) in the Territory to or for any other person or entity other than FS and other than as outlined in this Agreement, provided that FS shall lose its rights to such exclusivity except in the In-Home Sales Channel (as defined below) commencing with the beginning of the subsequent Period unless it meets the following Minimum Purchase Requirements for the Tub to Shower product:

Applicable Period	Minimum Purchase Requirements
2/1/15- 1/31/18	$9,000,000*
2/1/18- 1/31/19	$4,000,000
2/1/19- 1/31/20	$5,000,000

*With minimum purchases of $1,500,000 for each 12 month period commencing on 2/1/15 and ending 1/31/18. For example, FS must purchase $1,500,000 in the period 2/1/15 to 1/31/16.

E. Notwithstanding anything in this Amendment or in the Agreement to the contrary, including this Section 3, JI shall have the right to manufacture and sell any walk-in tub manufactured by JI, its Affiliates, or otherwise available in the market other than a Jacuzzi® brand walk-in tub (a "Non-Jacuzzi Brand WIT"), through any channel of distribution other than the in home direct sales channel ("In-Home Sales Channel"). (For the avoidance of doubt, the In-Home Sales Channel does not include sales that originate through the Home Center Channel.)

The Non-Jacuzzi Brand WIT shall be different from, and manufactured from a different mold than, the Jacuzzi® brand WIT sold to FS. In the event that JI elects to sell a Non-Jacuzzi Brand WIT, it shall provide written notice (e-mail is acceptable) to FS not less than ninety (90) days prior to its first sale of any such product, and the first sentence of Section 2A, Section 2B, the first sentence of Section 3A and Section 3B shall not apply to the Non-Jacuzzi Brand WIT. JI shall not place, publish or run any advertisements associating the Non-Jacuzzi Brand WIT with the Jacuzzi® brand and shall prohibit its dealers or distributors from associating the Jacuzzi® brand or JI with the Non-Jacuzzi Brand WIT in selling or marketing it; provided that the parties acknowledge that the foregoing shall not prevent such dealers or distributors from disclosing the manufacturer of the Non-Jacuzzi Brand WIT to the extent required by applicable law or legal process. JI agrees to offer FS a right of first refusal concerning any WIT (as defined below) product innovation (other than a product innovation primarily addressing safety or regulatory issues) (a "PI"), which must be accepted in writing (including email) by FS (along with the respective pricing) within thirty (30) days after offered by JI (and the failure to provide a written acceptance within such period shall be deemed a rejection of the PI by FS): if accepted by FS, the PI must be included in at least twenty-five percent (25%) of FS's purchases from JI over a twelve (12) month period from the date the PI is first available, and FS will have the exclusive rights to such PI for use in connection with walk-in tubs for a period of twenty-four (24) months from the date of the PI is first available; if the PI is not accepted by FS, JI shall be free to include such PI on any Non-Jacuzzi Brand WIT. Notwithstanding the foregoing, JI shall have the right to use the PI in connection with any product other than a walk-in tub, if applicable.

F. If the total gross sales of Product One, Product Two and any other current or future walk-in tubs and related accessories (collectively, "WITs") actually purchased pursuant to this Agreement by FS during any applicable Period (as defined in Section 10) is less than $6,500,000, then JI shall thereafter have the right, commencing with the beginning of the subsequent Period, to sell any walk-in tub, including, without limitation, any Jacuzzi® brand walk-in tub, any Non-Jacuzzi Brand WIT, or any walk-in tub manufactured by any other party, through any channel of distribution other than the In-Home Sales Channel, and, only if such right is exercised by JI, then the first sentence of Section 2A, Section 2B, and Sections A, B and C of this Section 3 shall be of no further force and effect."

2. TERM AND TERMINATION: Section 10 of the Agreement is hereby deleted in its entirety and replaced with the following[1]:

"A. The initial term of the Agreement shall begin as of October 1, 2011 and continue until January 31, 2017 ("Initial Term") unless earlier terminated. Except as set forth in this Section 10, the term of this Agreement will be extended automatically for four (4) successive one (1) year periods (each, an "Extension Term") after the Initial Term, through January 31, 2021.

[1] Note that paragraphs C, D. and E of Section 10 are unchanged but restated for ease of reference.

B. The following total gross sales of Products (to include any licensing revenue and walk-in shower sales) purchased by FS during the applicable contract period or year ("Period") are referred to herein as the "Minimum Performance Requirements":

Applicable Period	Minimum Purchase Requirements
10/1/11 - 1/31/13	$6,000,000
2/1/13 - 1/31/14	$9,600,000
2/1/14 – 1/31/15	$10,200,000
2/1/15 – 1/31/16	$13,000,000
2/1/16 – 1/31/17	$14,000,000
2/1/17 – 1/31/18	$14,700,000
2/1/18 – 1/31/19	$15,435,000
2/1/19 – 1/31/20	$16,206,750

JI shall have the right to terminate this Agreement upon sixty (60) days' written notice to FS (i) if FS purchases Products totaling $5,000,000 or more (total gross sales) but less than one hundred percent (100%) of the Minimum Purchase Requirement during any Period unless FS pays JI, not later than thirty (30) days after the end of the applicable Period, an amount equal to the difference between the applicable Minimum Purchase Requirement and the total gross sales of Products actually purchased by FS during the applicable Period, which will then be divided by $2,000 and then multiplied by $600 (the "Buy-Up Right"); (ii) if FS purchases from JI during any Period less than $5,000,000 of Products, provided that JI may offer, in its sole and absolute discretion, FS the Buy-Up Right in lieu of termination; or (iii) if FS fails to purchase from JI the Minimum Purchase Requirements (a) in any two (2) consecutive Periods or (b) in the 2/1/19 – 1/31/20 Period.

C. JI agrees to fill all orders of Products and Additional Products received by JI from FS within one hundred eighty (180) days of expiration or other termination of this Agreement, provided that the aggregate amount of such orders shall not exceed two (2) times the average monthly order volume during the 12-month period prior to the notice of termination/expiration.

D. Notwithstanding anything in this Agreement to the contrary, either party may terminate this Agreement upon thirty (30) days written notice to the other party (i) in the event of an Unresolved Pricing Dispute or (ii) should the other party commit a material breach of this Agreement that remains uncured for 10 days. Material breaches shall include, without limitation, (x) any attempted transfer or assignment of this Agreement or any right or obligation hereunder by FS in violation of Section 12 of this Agreement; or (y) the failure of FS to timely pay when due any amounts owing by FS to JI.

E. This Agreement shall terminate automatically, and without the giving of notice in the event that FS shall become insolvent, shall execute an assignment for the benefit of creditors or shall ask its creditors for a moratorium, or shall file a voluntary petition in bankruptcy, or shall be adjudicated as a bankrupt pursuant to an involuntary petition, or shall suffer appointment of a temporary or permanent receiver, trustee, or custodian for all or a substantial part of its assets who shall not be discharged within thirty (30) days.

F. If a party undergoes a Change of Control, that party may terminate this Agreement by giving written notice to the other party not later than ninety (90) days after the Change of Control, such termination to be effective twelve (12) months after the notice of termination. "Change of Control" means, with respect to a party or any direct or indirect parent: the closing of a merger or consolidation, the sale or disposition of all or substantially all of its assets; or the acquisition of beneficial ownership (as defined in Rule 13d-3 of the Securities Exchange Act of 1934, as amended), directly or indirectly, of fifty percent (50%) or more of the voting securities.

2. This Amendment may not be modified or amended except by a written document signed by the Parties. This Amendment shall be binding on the successors and permitted assigns of each Party. This Amendment and the Agreement, as modified hereby, embodies the entire agreement and understanding of the Parties hereto with respect to the subject matter hereof and thereof and supersedes all prior agreements and understandings relating to such subject matter. This Amendment may be executed in counterparts, each of which shall be deemed an original and both of which shall together be deemed to be one document binding on the Parties hereto. Signatures on this Amendment transmitted electronically, whether by facsimile or as attached files to e-mail messages (e.g., in .pdf format), shall bind the Parties and shall not in any way affect the validity of this Amendment.

3. Except as specifically modified by this Amendment, the Agreement shall remain in full force and effect.

[Signature page to follow]
[Remainder of the page intentionally blank]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

JACUZZI INC.

By: _____

Name: Bob Rowan

Title: President and CEO

FIRSTSTREET FOR BOOMERS AND BEYOND, INC.

By: _____

Name: _____

Title: _____

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

JACUZZI INC.

By: _____

Name: Bob Rowan

Title: President and CEO

FIRSTSTREET FOR BOOMERS AND BEYOND, INC.

By: _____

Name: DAVE MODENA

Title: Res. AITHR

EXHIBIT U

PRODUCT SUPPLY AGREEMENT

THIS PRODUCT SUPPLY AGREEMENT (the "Agreement") is made as of January 10, 2017 (the "Effective Date") by and between FirstSTREET for Boomers and Beyond, Inc., a Virginia corporation ("FS"), having its principal office at 1998 Ruffin Mill Road, Colonial Heights, Virginia 23834, and Jacuzzi Inc., a Delaware corporation, doing business as Jacuzzi Luxury Bath ("JLB"), having its principal office at 13925 City Center Drive, Suite 200, Chino, California 91709 (FS and JLB are referred to herein each a "Party" and together as the "Parties").

RECITALS:

A. WHEREAS, the Parties entered into a Manufacturing Agreement dated October 1, 2011, which was amended by an Amendment No. 1 to Manufacturing Agreement dated January 12, 2015 (the "Manufacturing Agreement"), pursuant to which JLB agreed to manufacture and supply walk-in tubs branded with the JACUZZI trademark; and

B. WHEREAS, the Parties wish to terminate the Manufacturing Agreement and to enter into this Agreement for the manufacture and supply of the walk-in bathtubs that are not branded with the JACUZZI trademark (the "Products"), on the terms and conditions set forth herein and for a limited time consistent with the terms herein for the manufacture and supply of a Jacuzzi® branded walk-in tub ("Jacuzzi WIT Product") that was sold to FS pursuant to the Manufacturing Agreement.

NOW, THEREFORE, in consideration of the premises and for good and valuable consideration of the mutual covenants and agreements set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **Termination of Manufacturing Agreement and Term of this Agreement**.

(a) The Manufacturing Agreement is hereby terminated effective January 11, 2017 and notwithstanding any provisions to the contrary in the Manufacturing Agreement, all rights and obligations of the Parties thereunder shall terminate on that date, including, without limitation, Section 10 C thereof, except that the following provisions thereof shall remain in effect in accordance with their terms: Section 2 D (other than the first and last sentences thereof), Section 5, the first, second, and last two sentences of Section 6 A, Section 8, Sections 12-15, and the obligation of FS to pay for any Products purchased under thereunder; further provided that FS's license to use the JACUZZI trademark and logo and any domain name or URL containing the word "jacuzzi" shall be extended to and terminate on the Product Supply Date (as defined below). From and after the Product Supply Date FS shall have no right to operate a web site at an URL containing the word "Jacuzzi," and FS agrees to transfer to JI on such date any domain names or URL's under its control containing the term "Jacuzzi," take down any website it operates at a URL that contains the word "Jacuzzi," destroy any marketing materials that contains the trademark JACUZZI, and upon request provide a written certification of such destruction. FS shall cause the FS Dealers (as defined in the Manufacturing Agreement) to cease any use of the JACUZZI trademark after they have disposed of their existing inventory of product bearing the JACUZZI mark. Subject to FS's compliance with the provisions of this

Section 1(a), JLB shall waive and agree not to assert its claims against FS set forth in the December 8, 2016 termination letter to FS, and FS agrees not to assert any claims against JLB regarding the termination of the Manufacturing Agreement.

(b) The term of this Agreement ("Term") will commence as of the Effective Date and unless earlier terminated, shall continue until the day before the first anniversary of the Effective Date; provided that the term of this Agreement shall automatically renew for successive one year periods unless either Party has issued a termination notice pursuant to Section 5 or Section 11 below.

2. **Supply of Products and Jacuzzi WIT Products**. Commencing on the Product Supply Date (as defined below), the Parties agree as follows:

(a) JLB agrees to supply Products to FS and agrees to sell FS mutually agreed upon other bath products manufactured by JLB , including but not limited to other walk-in tubs, whirlpool tubs and jetted tubs (collectively, "Additional Products"), all subject to and in accordance with the provisions of this Agreement. For the sake of clarity, the Products and Additional Products shall not be branded with the JACUZZI trademark. "Product Supply Date" shall mean the earlier of March 1, 2017 and another date agreed to by the Parties in writing (including email).

(b) JLB agrees to supply Jacuzzi WIT Products to FS on a non-exclusive basis until the Product Supply Date, and FS agrees not to sell Jacuzzi WIT Products after the Product Supply Date; provided however that FS may sell such products after March 1 to the extent that such sales resulted from ads placed on or before the Product Supply Date. FS agrees to provide such confirmatory documentation with respect to such sale within five (5) days if requested by JLB. FS shall be permitted to advertise Jacuzzi WIT Products through the Product Supply Date consistent with its current practices approved by JLB and shall not advertise the Jacuzzi WIT Products after such date.

3. **Identification of Manufacturer**. FS shall not advertise (in any format) that JLB is the manufacturer of the Products and the Additional Products unless when required by applicable law. FS shall instruct its dealers and sales personnel to identify JLB as the manufacturer only if specifically asked the identity of the manufacturer.

4. **Forecast**. FS shall provide JLB with a non-binding forecast of the volume of Products and Additional Products it expects to order each calendar month not later than thirty (30) days prior to the first day of such month.

5. **Purchase Price.** The purchase price and freight to be paid by FS for each Jacuzzi WIT Product shall be consistent with the Parties current agreement for such products. The purchase price and freight to be paid by FS for each Product shall be as listed in Exhibit A, attached hereto and incorporated herein, and shall remain in effect for nine (9) months from the Product Supply Date ("Initial 9 Month Price Term"); provided, however, that if JLB's cost per unit increases due to conditions that demonstrably lead to higher manufacturing costs, the Parties agree to negotiate in good faith towards a mutually agreeable cost increase. If the Parties are unable to reach agreement on pricing within thirty (30) days, either Party may terminate this

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Agreement upon not less than thirty (30) days' written notice. Following the Initial 9 Month Price Term, JLB shall have the right to change such prices and freight charges on not less than ninety (90) days' prior written notice to FS and update Exhibit A accordingly. FS acknowledges it has received the Price and freight list for the Additional Products. Any purchase orders received by JBL prior to the effective date of a price or freight charge change shall not be subject to the price change.

6. **Payment Terms.** JLB shall submit invoices to FS for each shipment of Products and Additional Products. Payment in full shall be due within thirty (30) days after date of each invoice and shall be made in United States Dollars. All payments shall be made via wire transfer pursuant to wire instructions provided from time to time in writing (including email) by JLB.

7. **Terms of Sale**. The sale by JLB to FS of Products, Jacuzzi WIT Products, and Additional Products shall be subject to the provisions of this Agreement and subject to JLB's standard terms and conditions of sale in effect from time to time to the extent that such terms and conditions are not inconsistent with the terms of this Agreement. Any provision of any purchase order placed by FS that is inconsistent with any term of this Agreement or, to the extent applicable, JLB's standard terms and conditions of sale shall be null and void unless expressly accepted by JLB in writing.

8. **Product Delivery.** Delivery of Products, Jacuzzi WIT Products and Additional Products to FS shall be F.O.B. JLB's factory. JLB shall not thereafter be liable for transportation or for loss or damage in transit. Shipping dates are estimated, and JLB shall not be liable for loss or damage due to delay in manufacture or delivery resulting from any cause beyond its reasonable control including, but not limited to, compliance with regulations, orders or instructions of any federal, state or municipal government or any department or agent thereof, acts of God, acts or omissions of FS, acts of civil or military authority, fires, strikes, facilities shutdowns or alterations, embargoes, war, riot, delays in transportation, or inability to obtain necessary labor, manufacturing facilities or materials from usual sources, and any delays resulting from any such cause shall extend the time for delivery correspondingly.

9. **Warranties**.

(a) For each Product, Jacuzzi WIT Products,. and Additional Product sold to FS, JLB will extend to the end consumer its standard manufacturer's warranty for such product (as applicable, the "Consumer Warranty"). FS shall acquire no rights under the Consumer Warranty, which is offered for the sole benefit of the end-user consumer purchaser of the Product, Jacuzzi WIT Product, or Additional Product, as applicable. JLB will keep FS informed of the Consumer Warranty applicable to each Product, Jacuzzi WIT Product, and Additional Product as in effect from time to time. FS will provide a copy of the Consumer Warranty, in the form and content specified by JLB, to each purchaser of a Product, a Jacuzzi WIT Products, and Additional Product from FS. JLB warrants to FS that the Products, Jacuzzi WIT Products, and Additional Products will be delivered free and clear of any lien or encumbrance, and free from defects in design, material and workmanship.

(b) NO WARRANTIES, EXPRESS OR IMPLIED, OTHER THAN THOSE ABOUT WHICH FS IS INFORMED PURSUANT TO SECTION 9(a) HEREOF, ARE GIVEN

IN RESPECT OF PRODUCTS AND THE ADDITIONAL PRODUCTS, AND ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PURPOSE IS HEREBY EXPRESSLY DISCLAIMED.

(c) FS is familiar with JLB's Products and Additional Products and will become familiar with the installation requirements of the safety codes and laws of the states in which the Products and Additional Products will be sold by FS and its dealers. If FS learns of any changes in any such code or law which would require changes in the Products and Additional Products, FS will advise and consult with JLB about such changes. JLB agrees to manufacture and produce the Products and Additional Products in compliance with all state and federal laws, codes, and regulations.

10. **Confidential Information.** Each Party recognizes that the proprietary information relating to the other Party or any of its affiliates that a Party may learn is the valuable property of the other Party. Each Party acknowledges the need to preserve the confidentiality and secrecy of such information. This information includes but is not limited to the provisions of this Agreement, the designs, drawings, molds, material and manufacturing specifications, trade secrets, as well as financial, business, marketing and product development information (collectively "Confidential Information"). Thus, during and after the Term, neither Party nor its respective officers, directors, employees, agents and representatives shall use or disclose any Confidential Information except as necessary for the performance of the Agreement or as otherwise required by law or legal process. The Parties hereby acknowledge and agree that a breach of the covenants contained in this Section 10 will cause irreparable harm to the non-breaching Party, and that a Party may enforce the above-described covenants by injunction, both preliminary and permanent, without the posting of a bond or other security. Nothing herein shall be construed as prohibiting a party from pursuing any other legal or equitable remedy available due to the breach of the provisions of this Section 10. The obligations set forth in this Section 10 shall survive the termination of this Agreement.

11. **Termination.** This Agreement may be terminated upon the occurrence of the following:

(a) **Default of JLB.** If FS delivers to JLB a written notice specifying the nature of JLB's default and JLB fails to cure such default within thirty (30) days following the delivery of such notice, then and only then shall FS have the right to terminate or cancel this Agreement. A "default" with respect to JLB shall mean that JLB: (i) becomes insolvent or has a petition in bankruptcy, reorganization or similar action filed by or against it; (ii) is dissolved or liquidated or has a petition for dissolution or liquidation filed with respect to it; (iii) is subject to property attachment, court injunction, or court order materially affecting its operations under this Agreement; or (iv) breaches any representation, warranty, covenant, obligation, commitment or other agreement contained in this Agreement.

(b) **Default by FS.** If JLB delivers to FS a written notice specifying the nature of FS's default and FS fails to cure such default within thirty (30) days (or ten (10) days in the case of clause (iii) below) following the delivery of such notice, then and only then shall JLB have the right to terminate or cancel this Agreement. A "default" with respect to FS shall mean that FS: (i) becomes insolvent or has a petition in bankruptcy, reorganization or similar action

filed by or against it; (ii) is dissolved or liquidated or has a petition for dissolution or liquidation filed with respect to it; (iii) fails to pay any amount due in accordance with the terms of this Agreement; or (iv) breaches any other representation, warranty, covenant, obligation, commitment or other agreement contained in this Agreement.

(c) **General Termination Right**. Either Party may terminate this Agreement for any reason or no reason by giving written notice to the other Party specifying a termination date not less than one hundred twenty (120) days after the date of notice. JLB shall have no obligation to fill orders requiring shipment of Product after the effective date of termination

(d) **Effect of Termination**. Any termination of this Agreement shall not release FS from paying any amount which may then be owing to JLB or from any obligation to pay for any Products and Additional Products or parts which may have been ordered by FS and not shipped prior to such termination. In the event of any termination of this Agreement, all obligations owed by FS to JLB shall become immediately due and payable on the effective date of termination whether otherwise then due or not (without presentation, demand, protest or notice of any kind, all of which are hereby waived by FS). The acceptance of orders from FS or the continuous sale of Products and Additional Products or parts to FS or any other act after termination of this Agreement shall not be construed as a renewal of this Agreement for any further term nor as a waiver of the termination. FS shall be solely responsible for all commitments incurred or assumed by it during the Term or thereafter, and JLB shall not be held responsible in any manner therefor, irrespective of any suggestion or recommendation with respect thereto by JLB or any of its employees or representatives unless JLB has expressly agreed in writing to assume the responsibility. Neither JLB nor FS shall by reason of the termination of this Agreement in accordance with its provisions be liable to the other for compensation, reimbursement or damages on account of the loss of prospective profits, or anticipated sales or on account of expenditures, investments, leases, property improvements or commitments in connection with the business or goodwill of JLB, FS, or otherwise.

12. **Indemnification; Limitation of Liability**.

(a) **Definitions**. For purposes of this Section 12, "Claims" means an action, allegation, cause of action, cease and desist letter, claim, demand, lawsuit or other litigation or proceeding, and "Damages" means assessments, fines, bona fide settlements, costs, damages (including without limitation consequential, indirect, special, incidental or punitive damages), expenses (including without limitation reasonable attorneys' and accountants' fees, expenses and costs), judgments, liabilities, losses, or penalties incurred in connection with a Claim.

(b) **Indemnification by JLB**. JLB shall indemnify, defend and hold harmless FS, its Affiliates and their respective employees, agents, officers and directors, from and against any and all third party Claims and Damages arising out of or related to JLB's breach or alleged breach of this Agreement; JLB's gross negligence, willful misconduct or fraudulent acts or omissions; JLB's breach of applicable law in the performance of this Agreement; or any product liability, defect, or warranty claim with respect to the Products and Additional Products except to the extent the claim is the result of damage to a Product and Additional Product that occurred while in the actual or constructive control of FS or its agents.

(c) **Indemnification by FS**. FS shall indemnify, defend and hold harmless JLB, its Affiliates and their respective employees, agents, officers and directors, from and against any and all third party Claims and Damages arising out of or related to FS's breach or alleged breach of this Agreement; FS's gross negligence, willful misconduct or fraudulent acts or omissions; FS's breach of applicable law in the performance of this Agreement; or claims for damage to a Product, a Jacuzzi WIT Product, and Additional Product that occurred while in the actual or constructive control of FS or its agents.

(d) **Indemnification Procedure**. The Party seeking indemnification (the "Indemnified Party") shall: give the indemnifying party (the "Indemnifying Party") notice of any Claim subject to indemnification under this Section 12; cooperate with the Indemnifying Party, at the Indemnifying Party's expense, in the defense of such Claim; and give the Indemnifying Party the right to control the defense and settlement of any such claim. The Indemnified Party will have the right to participate in the defense with counsel of its choice at its own expense, provided that the Indemnifying Party will have the right to make final decisions regarding the defense of a Claim as long as the Indemnifying Party actively maintains the defense of such Claim.

(e) **Limitation of Liability**. THE FOLLOWING LIMITATIONS SHALL NOT APPLY TO ANY CLAIM THAT IS: SUBJECT TO INDEMNIFICATION UNDER SECTION 12(b) or (c) ABOVE, ARISES OUT OF A BREACH OF CONFIDENTIALITY, OR ARISES OUT OF GROSS NEGLIGENCE, WILLFUL MISCONDUCT, OR FRAUD: IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY, WHETHER IN CONTRACT, TORT, EQUITY OR OTHERWISE, FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES (EVEN IF SUCH DAMAGES ARE FORESEEABLE, AND WHETHER OR NOT A PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) ARISING FROM OR RELATING TO THIS AGREEMENT.

13. **Insurance**. Throughout the Term and for a period of two (2) years thereafter each Party shall maintain a general liability insurance policy (including product liability) with coverage of at least $2,000,000 per occurrence and $4,000,000 in the aggregate, which includes the other Party as an additional insured. Each Party shall from time to time provide the other Party with a certificate of insurance upon request of the other Party and provide the other Party with written notice of a cancellation or modification of the insurance within forty-eight (48) hours of its receipt of notice thereof.

14. **Taxes**. FS shall pay all sales, use, or other taxes that may be assessed or levied against any of the Products, Jacuzzi WIT Products, and the Additional Products ordered by FS or under FS's direct or indirect control.

15. **Amendments; Waivers.** Except as set forth in Section 5, this Agreement may only be changed or supplemented by a written amendment, signed by authorized representatives of each Party. This Agreement supersedes all prior or contemporaneous term sheets, agreements, representations, warranties and understandings and contains the entire agreement between the Parties. No amendment, modification, termination, or waiver of any provision of this Agreement nor consent to any departure therefrom, shall in any event be effective unless the same shall be in

writing and signed by duly authorized representatives of each Party and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. No failure or delay on the part of any Party in exercising any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy hereunder.

16. **Assignment.** Neither Party may assign its rights or delegate its obligations under this Agreement without the prior written approval of the other Party and any attempted assignment or delegation without such an approval shall be void; provided, however, that either Party may assign this Agreement to any Affiliate of the Party or to a successor in interest or by merger. For purposes of this Agreement an "Affiliate" of a Party shall mean any individual or entity that directly or indirectly controls, is controlled by, or is under common control with such Party. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

17. **Governing Law and Forum.** This Agreement shall be governed by the laws of the State of Delaware, without regard to any provision (including conflicts of law provisions) that would require the application of the law of any state. The United Nations Convention for the International Sale of Goods shall not be applicable to this Agreement. If JLB brings an action under this Agreement, it must be brought only in a court of competent jurisdiction in Chesterfield, Virginia, and if FS brings an action under this Agreement, it must be brought only in a court of competent jurisdiction in San Bernardino County, California.

18. **Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable by a court of competent jurisdiction, the remaining provisions shall not be affected.

19. **Effect of Title and Headings.** The title of the Agreement and the headings of its Sections are included for convenience, and shall not affect the meaning of the Agreement or the Section.

20. **Survival**. The terms of this Agreement that by their nature are reasonably intended by the parties to survive termination, including, without limitation, the terms of Sections 3, 5, 6, 8, 9, 10, 12 – 21, and 24 shall survive the expiration or other termination of this Agreement.

21. **Notice.** All notices, consents, waivers and other communications under this Agreement must be in writing and will be deemed to have been duly given upon (a) delivery by hand (with written confirmation of receipt) or (b) one business day after deposit with an internationally recognized overnight delivery service (receipt requested, delivery prepaid). Notices shall be sent in each case to the appropriate addresses indicated for each Party below, or to such other addresses as a Party may designate in writing by notice to the other Party. The address or the name of any party or contact person may be changed by sending notice in the manner set forth in this Section 21:

If to JLB:

Jacuzzi Inc.
13925 City Center Drive # 200
Chino Hills, California 91709
Attention: President

Copies to:

Jacuzzi Inc.
13925 City Center Drive # 200
Chino Hills, California 91709
Attention: General Counsel

If to FS:

1998 Ruffin Mill Road
Colonial Heights, Virginia 23834
Attention: Mark Gordon

22. **No Joint Venture**. FS shall conduct its business in the purchase and resale of Products and Additional Products as a principal for its own account and at its own expense and risk. The relationship of the Parties established by this Agreement is that of independent contractors, and this Agreement does not in any way create the relationship of principal and agent, partners, joint venturers, or any similar relationship, between JLB and FS. FS covenants and warrants that it will not act or represent itself directly or by implication as agent for JLB and will not attempt to create any obligation, or make any representation, on behalf of or in the name of JLB.

23. **Counterparts.** This Agreement may be executed and delivered in counterparts, which execution and delivery may be by facsimile or email attachments, each of which will be deemed an original but all of which together will constitute one and the same document.

24. **Further Assurances.** The Parties agree to furnish upon request to each other such further information, to execute and deliver to each other such other documents, and to do such other acts and things, all as the other party may reasonably request for the purpose of carrying out the intent of this Agreement and the documents referred to in this Agreement.

[signature page follows]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first written above.

FIRSTSTREET FOR BOOMERS AND BEYOND, INC., a Virginia corporation

By: _____

Name: MR Gordon

Title: CEO / President

1/11/2017

JACUZZI INC., a Delaware corporation doing business as Jacuzzi Luxury Bath

By: _____

Name: Robert Rowan

Title: President & CEO

1/11/2017

EXHIBIT A

PRICES AND FREIGHT

Model Experience	Item Core Desc	MPC	Current ASP Unit	New ASP Unit
52x29 Salon	FS 5229 C RH SLN HTR SKT	F1S5229CRL1CHW	$2,375	$1,980
52x29 Salon	FS 5229 C LH SLN HTR SKT	F1S5229CLR1CHW	$2,375	$1,980
52x29 Salon	FS 5229 C LH SLN HTR SKT	F1S5229CLR1CHA	$2,375	$1,980
52x29 Salon	FS 5229 C RH SLN HTR SKT	F1S5229CRL1CHXA	$2,375	$1,980
52x29 Salon	FS 5229 3T C LH SLN HTR SKT	F1T5229CLR1CHW	$2,375	$1,980
52x29 Salon	FS 5229 3T C RH SLN HTR SKT	F1T5229CRL1CHW	$2,375	$1,980
52x29 Salon	FS 5229 3T C LH SLN HTR SKT	F1T5229CLR1CHA	$2,375	$1,980
52x29 Salon	FS 5229 3T C RH SLN HTR SKT	F1T5229CRL1CHA	$2,375	$1,981
52x29 Whirlpool	FS 5229 RH WP HTR SKT	F1S5229WRL1HXW	$1,975	$1,738
52x29 Whirlpool	FS 5229 LH WP HTR SKT	F1S5229WLR1HXW	$1,975	$1,738
52x29 Whirlpool	FS 5229 LH WP HTR SKT	F1S5229WLR1HXA	$1,975	$1,738
52x29 Whirlpool	FS 5229 RH WP HTR SKT	F1S5229WRL1HXA	$1,975	$1,738
52x29 Whirlpool	FS 5229 3T RH WP HTR SKT	F1T5229WRL1HXW	$1,975	$1,738
52x29 Soaker	FS 5229 RH NJ SKT	F1S5229BRXXXXW	$1,800	$1,584
52x29 Soaker	FS 5229 LH NJ SKT	F1S5229BLXXXXW	$1,800	$1,584

MY

Model Experience	Item Core Desc	MPC	Current ASP Unit	New ASP Unit
52x29 Soaker	FS 5229 RH NJ SKT	F1S5229BRXXXXA	$1,800	$1,584
52x29 Soaker	FS 5229 LH NJ SKT	F1S5229BLXXXXA	$1,800	$1,584
52x29 Soaker	FS 5229 3T LH NJ SKT	F1T5229BLXXXXW	$1,800	$1,584
54x33 Salon	FS 5433 RH SLN HTR SKT	F1S5433CRL1CHW	$2,700	$2,430
54x33 Salon	FS 5433 LH SLN HTR SKT	F1S5433CLR1CHW	$2,700	$2,430
54x33 Salon	FS 5433 LH SLN HTR SKT	F1S5433CLR1CHA	$2,700	$2,430
54x33 Salon	FS 5433 RH SLN HTR SKT	F1S5433CRL1CHA	$2,700	$2,430
54x33 Salon	FS 5433 3T LH SLN HTR SKT	F1T5433CLR1HXW	$2,700	$2,430
54x33 Salon	FS 5433 3T LH SLN HTR SKT	F1T5433CLR1HXA	$2,700	$2,430
54x33 Salon	FS 5433 3T RH SLN HTR SKT	F1T5433CRL1HXW	$2,700	$2,430
54x33 Salon	FS 5433 3T RH SLN HTR SKT	F1T5433CRL1HXA	$2,700	$2,430
54x33 Whirlpool	FS 5433 LH WP HTR SKT	F1S5433WLR1HXW	$2,255	$2,030
54x33 Whirlpool	FS 5433 RH WP HTR SKT	F1S5433WRL1HXA	$2,255	$2,030
54x33 Whirlpool	FS 5433 RH WP HTR SKT	F1S5433WRL1HXW	$2,255	$2,030
31x37 Salon	FS 3137 WIT LH SLN	F1S3137CLR2CXW	$2,225	$2,225
31x37 Salon	FS 3137 WIT RH SLN	F1S3137CRL2CXW	$2,225	$2,225
31x37 Salon	FS 3137 WIT RH SLN	F1S3137CRL2CXA	$2,225	$2,225

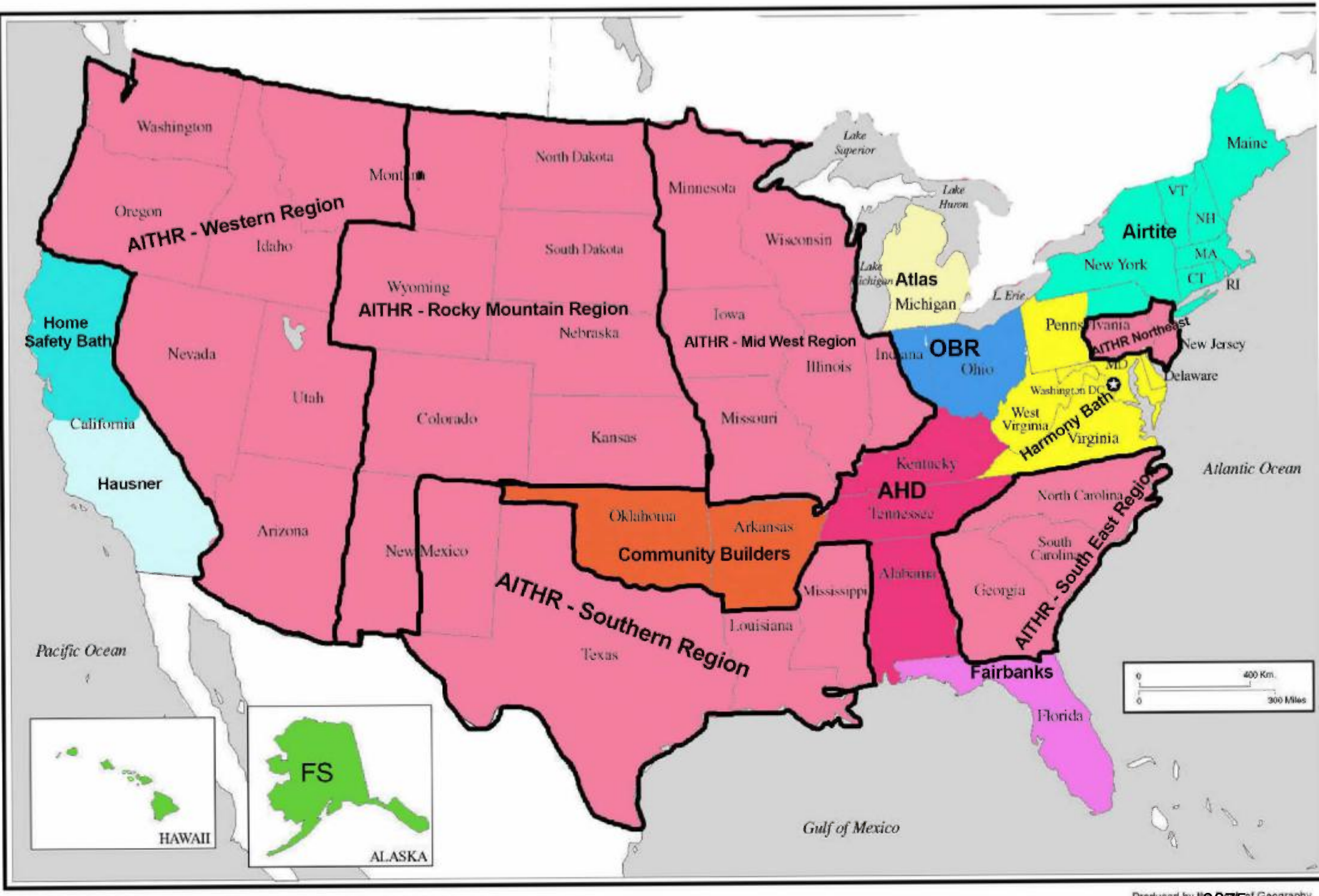
				Current	New
Model	Experience	Item Core Desc	MPC	ASP Unit	ASP Unit
31x37	Salon	FS 3137 WIT LH SLN	F1S3137CLR2CXA	$2,225	$2,225
60x36	Salon	FINESTRA 6036 LH SLN HTR	FIN6036CLR1CHW	$4,575	$4,575
60x36	Salon	FINESTRA 6036 RH SLN HTR	FIN6036CRL1CHA	$4,575	$4,575
Tub-to-Shower		AGIP 6030 LH SHOWER, PACKAGE AAIP6030QLXD4PW		$2,225	$2,014
Tub-to-Shower		AGIP 6030 RH SHOWER, PACKAGE AAIP6030QRXD4PW		$2,225	$2,014
Tub-to-Shower		AGIP 6030 RH SHOWER, PACKAGE AAIP6030QRXD4PY		$2,225	$2,014
Tub-to-Shower		AGIP 6030 LH SHOWER, PACKAGE AAIP6030QLXD4PY		$2,225	$2,014
Tub-to-Shower		AGIP 6030 LH SHOWER, PACKAGE CAIP6030SLXD4PW		$2,005	$1,905
Tub-to-Shower		AGIP 6030 RH SHOWER, PACKAGE CAIP6030SRXD4PW		$2,005	$1,905
Tub-to-Shower		AGIP 6030 LH SHOWER, PACKAGE CAIP6030SLXD4PY		$2,005	$1,905
Tub-to-Shower		AGIP 6030 RH SHOWER, PACKAGE CAIP6030SRXD4PY		$2,005	$1,905
Acc	Accessories	BACK SHELF KIT, 5229 WIT		$95.00	$81
Acc	Accessories	EXTENSION KIT 5229 LEFT END		$75.00	$64
Acc	Accessories	EXTENSION KIT 5229 RIGHT END		$75.00	$64

hr

			Shipped from: Valdosta, GA 6229 Walk In Tub			Shipped from: Valdosta, GA 6438 Walk In Tub			Shipped from: Valdosta, GA 6030 Finestra Walk In Tub			Shipped from: Valdosta, GA 6036 Finestra Walk In Tub			Shipped from: Valdosta, GA 6030 Tub To Shower			[illegible]			Glass Doors	Lift Gate
Zone		States shipped to	1	3	>=6	1	3	>=6	1	3	>=6	1	3	>=6	1	3	>=6	1	3	>=6	1-3	Per Shipment
Zone 1	South	GA, FL	$142	$107	$81	$167	$129	$88	$172	$137	$97	$184	$143	$103	$237	$178	$136	$322	$249	$203	$350	$82
Zone 2	Midwest South	VA, TN, NC, AL, MS, SC, LA, IA, AR, MO, MN, WI, KY, IL, MI	$174	$141	$106	$232	$208	$139	$239	$214	$150	$240	$222	$156	$249	$226	$163	$327	$252	$211	$350	$82
Zone 3	Plains	ND, SD, TX, OK, NE, KS	$215	$173	$128	$289	$227	$176	$296	$243	$183	$301	$252	$187	$269	$231	$183	$252	$208	$185	$350	$82
Zone 4	Northeast	NY, PA, NJ, WV, MD	$229	$176	$141	$296	$236	$188	$303	$254	$204	$309	$262	$210	$277	$247	$188	$332	$258	$224	$350	$82
Zone 5	New England	DE, ME, VT, CT, NH, MA, RI	$242	$186	$148	$328	$252	$208	$335	$271	$218	$342	$279	$224	$295	$249	$193	$349	$282	$241	$350	$82
Zone 6	Rockies	WY, CO, NM	$268	$204	$155	$380	$321	$241	$383	$329	$261	$386	$336	$266	$341	$255	$206	$247	$206	$176	$350	$82
Zone 7	West	CA, NV, ID, MT, UT, AZ	$348	$254	$202	$426	$341	$288	$434	$367	$312	$443	$372	$317	$436	$307	$276	$243	$213	$162	$350	$82
Zone 8	Northwest	WA, OR	$381	$283	$232	$487	$385	$322	$492	$414	$349	$487	$421	$335	$487	$353	$288	$252	$224	$185	$350	$82

EXHIBIT V

The United States



FIRST004724

Produced by the Center of Geography
The University of Alabama

EXHIBIT W

[redacted]

Here were our dealers at various times:

Alure Home Improvements
1 Commercial Court
Plainview, NY 11803

Airtite
1013 Wood Street
Scranton, PA 18508

Anthony home improvement
530 Stahr Road
Elkins Park, PA 19027

Atlas Home Improvement
10824 Plaza Drive
Whitmore Lake, MI 48189

Community Builders, Inc.
8220 E. Skelly Drive
Tulsa, OK 74129

Harmony Bath Solutions
11842 Rock Landing Drive, Suite 124
Newport News, VA 23606

Hausner Construction
1541 Parkway Loop, Suite E
Tustin, CA 92780

Home Safety Baths
448 DuBois Street
San Rafael, CA 94915

LeafGuard by Beldon Inc.
5039 West Avenue
San Antonio, TX 78213

RAI Holdings, Inc.
7101 Cheviot Hills Drive

Raleigh, NC 27616

Ohio Build and Remodel
5901-D Chandler Court
Westerville, Ohio 43082

Affordable Home Improvements
880 Conference Drive
Goodlettsville, TN 37072

Fairbanks Construction
1720 NW 4th Ave, Suite 100
Ocala, FL 34475

Merk Services, Inc.
453-1 Columbia Ind. Blvd.
Eans, GA 30809

I've attached the map we were able to locate which was from March 2014. Some of these dealers may have already stopped working with us by then, but the above dealers are all the dealers we worked with at some point of another.

[redacted]

[redacted]

FIRST004727

EXHIBIT X

April 6, 2012

Jack Omstead

1460 W Canal Court #102

Littleton, Co 80120

Gentlemen,

We recently purchased and had installed your Walk-in Jacuzzi tub.

We can't begin to tell you how pleased we are with it. It is everything we expected and more.

Your sales people were friendly and helpful. The installers went out of their way to be neat and courteous. We had some minor adjustments after the initial installation and they were prompt in returning to take care of them.

We'd highly recommend your product.

Sincerely,

Keith A Holden

LaVerne Holden

LaVerne & Keith Holden

13627 N Woodside Dr.

Fountain Hills, AZ 85268

1460 W. Canal Ct.
Suite 102
Littleton, CO 80120

May 3, 2012

Dear Nick,

The installation of our Jacuzzi® tub went extremely well, due solely to Jay Cook and Dave Rose. They are outstanding workers - polite, cheerful, skilled, and totally dedicated to the job, the weather was cool and rainy. Add to this difficulty getting the tub through the bathroom door, and a plumbing problem, many workers would be projecting negative vibes. Not these guys! They were unfailingly cheering and positive. They kept at it until it was done (Sunday night at 12:35 am). Rarely do you see anyone today with this type of work ethic. They protected our oriental carpeting, and were careful to not damage anything, from start to finish. They gave us a feeling of trust and confidence. We would recommend their work to anyone.

We have a few problems left to correct. In fact, the "plate" under the door latch has come loose, and the drain leaks a bit. The lights do not turn on at all. We have already heard back from Jay, who will stop by on his way back from the Dakotas.

Thanks,
Nancy & Jim Litecky

Our Testimony of the Jacuzzi walk in tub.

My Husband Tom has had a stroke and is diabetic. He had fallen out of a regular tub and with this walk in tub he is so safe. He loves the step in (much lower) and all the grab safety bars that are included. Also with his diabetes of course he has a problem with blood flowing to his lower legs and feet. After he took his first bath his lower legs/feet were beautiful pink in color. Every night he comments how he loves his walk in tub.

I (Joyce) also love this tub for numerous reasons. First of all my arthritis is so painful and my first bath with the jets (water & air) my pains were almost all gone. I was expecting to have to use the tub many times before I felt any results. But after the first time I did leave the house with my husband and went shopping. I have not done any shopping for months and months. With the aromatherapy which is so relaxing and the lights to make me feel like I am not at home but on a vacation somewhere I can take a vacation anytime. With more and more uses I feel like a whole new person. My personality has even changed because of the atmosphere, the aromatherapy & less pain almost all of the time now. When in pain I jump into the Jacuzzi. This tub has been a real blessing to both of us..

We are Thankful for our Christmas gift (Jacuzzi Tub) the jets, aromatherapy, & the colored lights that make us feel like humans again.

Tom & Joyce

December 2012

EXHIBIT Z

AARP MEDIA SALES

AARP MEDIA

Ad Policy/General Guidelines for all Advertising

The general guidelines listed below may not address each and every advertising/product situation. Each advertisement will be judged on a case-by-case basis, on its own merits.

1 **Conformity of Government Laws and Regulations.** All advertising material presented to members/readers in AARP publications must conform to governmental laws and regulations and to the standards and policies of AARP.

2 **Substantiation of Claims.** Any claim made in an ad will have to be substantiated by the advertiser to the satisfaction of AARP as will reference to any scientific studies.

3 **Company Must Be Financially Sound and Have a Good Record of Customer Service.** To ascertain this, AARP will conduct an in-depth assessment of the company. The following will be required from advertisers: Background information, the proposed ad, possibly a product sample, and customer service contact information. If AARP cannot substantiate a potential advertiser's background, an established background on the parent company may suffice as long as a connection between the two companies exists and the parent company agrees to take full responsibility for the ad placed by the subordinate company.

4 **AARP's Advertising Terms & Conditions.** All advertising orders are accepted subject to AARP's Advertising Terms & Conditions which can be found at http://advertise.aarp.org/.

5 **AARP Products and Services.** AARP allows the use of its brand, through AARP Services, Inc., to certain companies. AARP makes available, through AARP Services Inc., member services to meet specific needs and desires of AARP members. The appearance of any other ads in any of AARP's publications/online properties, however, does not constitute nor should be construed as an endorsement of any product or service.

6 **AARP Reserves The Right To Reject Any Advertisements.** AARP reserves the right to decline or reject any advertisement for any reason at any time without liability, even though previously acknowledged or accepted.

7 **AARP Protects The Privacy of Its Members and Non-members.** AARP is committed to offering the consumer a choice about how personal information is used. The privacy policy can be found at www.aarp.org (http://www.aarp.org/about-aarp/info-05-2010/privacypolicy.html).

8 **The AARP Logo and Use of Its Name.** General advertisers may not use the AARP logo. The use of the AARP name, its initials, its URL, or the name of any of its publications may not be used in any advertisement, promotional materials or follow-up mailings without the express prior written permission of AARP.

Special Requirements

Some ad categories raise a number of issues for which AARP may require additional information as its experience demonstrates a more in-depth investigation is needed.

These categories include

- Auto Insurance
- Business Opportunities and Franchise Sales
- Debit + Credit Cards
- Financial or Investment Information or Offers
- Hearing Aids and Personal Sound Amplification Products (PSAPs)
- Health Insurance
- Home Equity Loans
- Homeowners and Manufactured Housing Insurance
- Life Insurance
- Mail Order Offers
- OTCs, Supplements, Vitamins & Herbs
- Personal Emergency Response Systems (PERS)
- Pharmaceutical and Drug Stores
- Prescription Drugs
- Vanity Publishers

Unacceptable Advertising Products and Messages

AARP deems some industry-wide products and messages as unacceptable for its publications.

These include

- Guns, firearms, weapons
- Age-related membership organizations recruiting members (there may be exceptions on a case-by-case basis)
- Planned giving ads and those soliciting bequests or charitable gift annuities
- Political and public policy messages
- Any specific religious organization recruiting members/participants and donations
- Personal and classified messages from individuals
- Lotteries and ads focusing primarily on gambling
- Reverse mortgages
- Wills and trusts
- Viaticals and life settlement insurance policies
- Payday lending, car title lending, pawn shops, or grant opportunities
- Debt settlement services (legitimate credit counseling services will be reviewed on a case-by-case basis)
- Tobacco and related products, including smokeless products. This includes any image ad from a tobacco company or an ad seeking to promote the good works of any tobacco company or group of companies. AARP will accept ads for legitimate stop-smoking techniques or products
- Investment and loan opportunities that are arranged by businesses or people that are not subject to oversight or licensing by state or federal regulatory and licensing agencies, such as state insurance regulators, the US Commodity Futures Trading Commission, the National Futures Association, or the Financial Industry Regulatory Authority

The SVP-GM AARP Media Properties and the Group Publisher reserve the right to reject any advertising, at any time, for any reason or to limit the advertising pages in any edition, even though previously acknowledged or accepted.

EXHIBIT AA

From: Tracey Dierkens [mailto:tracey.dierkens@aihremodelers.com]
Sent: Friday, April 11, 2014 4:19 PM
To: STACY HACKNEY; DAVE MODENA
Cc: 'Todd Stout'; 'Norm Murdock'; 'Audrey Martinez'
Subject: RE: Cunnison, Shirley - Las Vegas NV

We haven't spoken with Ashley Smith, she only left a voice mail. She indicated our attorneys were involved, so I was hoping Dave or Stacy knew all about this.

I have two numbers for her: 866-234-0284 or 480-927-7112

Tracey

From: STACY HACKNEY [mailto:STACY.HACKNEY@firstSTREETonline.com]
Sent: Friday, April 11, 2014 1:46 PM
To: DAVE MODENA
Cc: Tracey Dierkens; Todd Stout; Norm Murdock; STACY HACKNEY; Audrey Martinez
Subject: Re: Cunnison, Shirley - Las Vegas NV

On Apr 11, 2014, at 2:09 PM, "Tracey Dierkens" <tracey.dierkens@aihremodelers.com> wrote:

Dave,

We received a call from Ashley Smith who is the claims adjuster for All State.

She stated the customer was in the tub and the drain malfunctioned and she couldn't get out and passed away in the tub.

She said the customers attorneys and our attorneys are working on this, but she needs information from us.

She would like a copy of all the paperwork.

Do you know about this, and what would you like me to do?

Thank you!

Tracey Dierkens
Lead Project Manager
303-222-3204 (direct)

EXHIBIT BB

Selling System

WALK IN BATHTUBS

Sales Consultant Training Manual-10 Step Selling

TABLE OF CONTENTS

1. Entry/Greeting

- Affirmation and Segue
- Opening Statement
- Full Size canvass Tub Picture w/features

2. Needs Assessment

- Customer questionnaire
- Floating – Pricing statement

3. Walk Around/Measure (drawing)

- Probing questions
- Third party avoidance
- Price Conditioning element (dropping anchor)

4. In Home Power Point Presentation

a. Jacuzzi® Company Story

b. Normalization

c. Justification with features and benefits

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5. 'Taking a Personal Soak for Therapy and a Hygienic Bath

6. Pre-Close

- Transition into Romancing the Price

7. Price Delivery

- Overcoming Objections
- Authorization Code Sale offer-2nd Price

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- Warm down / Post Close Assurance

A SALES CONSULTANT'S MISSION: ALWAYS EXCEED THE EXPECTATIONS OF OUR PROSPECTIVE CUSTOMER

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Selling System

1. Entry/Greeting

During the entry or greeting the Sales Rep must focus on the prospects to help them feel at ease. This is done by always putting the prospect first. Refrain from using 1st person language which can be found intimidating. Focus on you, your and yours (Refrain from using I, me, and we)

Example:

Sales Rep - ***You must be (Mrs. Prospect) and you must be (Mr. Prospect). Would you prefer Mr. and Mrs._____ or may I call you_____and*** _____ (by your first names). ***Thanks*** _____ ***and*** _____.

During the greeting, an **Affirmation** is important to thank and by letting them know they're in control.

Sales Rep - ***Jacuzzi® wants you to know that your time is very valuable. You could have chosen to be anywhere else today but you chose to be here--- Thank you for that and Jacuzzi® appreciates the opportunity that you have set aside this*** (time of day) – ***morning, afternoon, evening.***

The segue is done immediately after the affirmation because all prospects want you to get to the point of business quickly

Sales Rep - ***Did our office explain to you the purpose for our visit today?***

Prospect's Response – ***Yes, you're going to give us an estimate on a Walk-in.***

This next paragraph is known as the **Opening Statement** and will let the prospect know what to expect the entire visit.

Sales Rep – ***That's exactly what you can expect. If it's not too much trouble--- you will start out by answering a few noninvasive questions that will determine exactly how this tub will serve the both of you. Naturally you don't care what the tub will do for anyone else, do you? You then (both) will walk to the bathroom, so you can let us know exactly what it is that you want to accomplish with this project: what you want and what you need. Then, return to the kitchen or back to the chair where you're most comfortable to review and sort of a small focus group. You'll see the steps of taking a therapeutic bath to get the most out of this device, right here in your living room. Finally, we will give you an exact price quote that's good for 45 days so when the time comes, you will have all the information necessary to make a well-educated decision without feeling any pressure.*** (Pause)
However, if we can't do exactly what it is you want us to do, we'll let you know that as well, and will point you in the right direction to get you what you need.

FIRST004736

0892

('I' or first person statement)

I'm not here to push something on you. I am here however to eventually your business - and - if I can do that...great...but if I can't, I understand that this product may not be for everyone, so, if you like it let's go ahead and get project started or if it's not for you, just say no and we'll be friendly and on our way; Fair enough? Here is my business card, my name is_____.

Transition to starting the Needs Assessment

Sales Rep - ***In order to better serve you, would you mind if I were to take a few notes?***

Set up the full size canvass Tub Picture

2. Needs Assessment

During the Needs Assessment the Sales Reps wants to ask key questions which can be recalled and used later during the closing process.

Question #1 - **Sales Rep** – ***What was it about the ad that you read that prompted you to have us here?*** (Identify the Prospect's Point of Pain)

Question #2 - **Sales Rep** - ***What types of activities to you regularly engage in?***

Question #3 - **Sales Rep** – ***Do you or your spouse suffer from_____ (issues)? Sports/exercise related injuries? When is the last time you felt sore or difficult to almost move?***

Question #4 - **Sales Rep** – ***Mr._____, May I ask Mrs._____ a somewhat personal question....When is the last time by design; you took a candle lit bubble bath for the sole purpose of relaxation?***

Question #5 – **Sales Rep** – ***There are three reasons why Boomers typically purchase one of these tubs. Which one best describes your situation?***

1) ***Convenience – Their tub is obsolete so replacing it with a personal spa that you walk right in was the perfect solution***
2) ***Therapy - They have sports/activity pain that heat or massage/therapy would help or solve.***
3) ***Safety - They want to proactively remain in their homes and enjoy the benefits for aging adults.***

Which is the second reason? Which is third?

Question #6 - **Sales Rep** - ***Last question, before you show me your bathroom, what do you hate the most about the bathroom and why?***

FIRST004737

WALK IN BATHTUBS

Customer Questionnaire

- *What was it about the ad that you read that prompted you to have us here?* _____
  _____
- *How long have you lived in your home?* _____ *How long do you plan to stay?* _____
- *If you had a Jacuzzi® personal spa in your home, how do you feel the tub would help you?* _____
  _____
- *What types of activities cause you to become sore or achy?* _____
  _____
  _____

  *(**Mr. - Circle those that apply**: Diabetes / high blood pressure / blood-clots / heart issues / stroke / lower back problems / hip / ankles / knees / feet / shoulder / arthritis / neuropathy / stress or anxiety / lumbago / sciatica / varicose veins / trouble sleeping / trouble walking / balance issues / overall pains and discomfort / anything else we need to know?)* _____
  _____

  *(**Mrs. - Circle those that apply**: Diabetes / high blood pressure / blood-clots / heart issues / stroke / lower back problems / hip / ankles / knees / feet / shoulder / arthritis / neuropathy / stress or anxiety / lumbago / sciatica / varicose veins / trouble sleeping / trouble walking / balance issues / overall pains and discomfort / anything else we need to know?)* _____
  _____
- *How do you currently bathe? (**MR. - Circle one**: Bath Shower) (**MRS. – Circle one**: Bath Shower)*
  _____
- *When is the last time, by design, you took a candle lit bath for the sole purpose of relaxation?* _____
  _____
- *There are three main reasons that our customers told us why they purchased the tub. Which one describes your situation?*

  1) Convenience –their current bath tub is completely obsolete and in never used, a spa/tub certainly would be.
  2) Therapy – they had an ailment that required water therapy, heat or massage.
  3) Independence –they wanted to remain in their homes and prepare for the future

  Which is most important to you? _____ *Second?* _____ *Third?* _____
- *Before you show me your bathroom, what do you **HATE** the most about your bathroom and why?*
  _____
  _____
  _____

FIRST004738
0894

Recap of the Needs Assessment:
The answers to these questions will carefully provide you exactly what is important to the prospects and will help you sell them later. Remember, prospects will tell the truth when there is no pressure or threat, so ask questions up front that specifically address objections later. Uncover from the consumer how long they have known they have had issues and how long they have been ignoring it.

Floating Step-Pricing

Sales Rep –***Jacuzzi® wants you to be clear about one thing… Never do they pressure you into doing something you don't want to --- so; at the end of this visit you can expect to get pricing three ways.***

First the retail price is good for an entire one year time period so that you may talk it over with family, pray about it or decide however you may. What we've found is that most of our customers don't want to wait a year, but they sure do like the option.

The second price is the sale offer; coming from the promotional code on the ad you called in on and is good for 45 days; so you can really give this life changing purchase serious consideration, without feeling pressured.

The final price that we offer is the 'Jacuzzi® Instant Rewards program' available while we're here is for folks like you; who hoped that private insurance would take care of a portion of this or all of this tub. It's very disappointing to realize they won't pay a thing-but- you had already made the decision that you wanted this tub when you picked up the phone. The special price is an (Instant Rewards Program) developed to take the place of an insurance contribution and only good while we're here….and it is a substantial amount. Of course, the last thing we will ever do is put any pressure on you to do anything…. If you like it and want it- go for it and if you don't that's ok, just let me know. Either way, we will remain friends. (tie down)

So, the first price is good for an entire year, the second is good for 45 days and the third is good while I'm here… fair enough?

3. Walk Around/Measure

The focus on the Walk Around is not selling but reaffirming the problems/issues that are identified in the needs assessment stage and how their issues may be corrected. Use the Customer Questionnaire/Drawing sheet as guidance. The main goal if possible is to get the prospect engaged in the walk-around, more importantly, in the tub. You need to know the size of the water heater-at least a 50 gallon is recommended. 2-20 amp GFIC circuits/ four plug wall receptacle is needed.

FIRST004739
0895

Selling System

Begin asking questions when you get to the door of the bathroom. It is a continuation of the needs assessment.

Example:

Sales Rep - ***Wow, now I know why I'm here. What did you say that you hated most about this bathroom?***

Sales Rep – ***Would you mind if I got into your tub?***

Sales Rep - ***What would need to occur to this tub for you to take a relaxing bath right now?***
(Search for the engagement of the prospect, preferably the wife)

Prospect's Response –***It isn't comfortable, it's hard to clean, too short and the water gets cold rather quickly.***

Sales Rep - ***Do you know what I see? I see an obsolete tub that hasn't changed since the 40's. It's not attractive but more so it is dangerous. Slippery, wet surfaces when getting out cause many folks…older and younger to slip. The problem occurs as we age our bodies are less resilient to breakages and injury. Is there anything relaxing about laying on a cold piece of steal, in the fetal position with water that gets cold and stagnant; with your face inches away from the commode? At any time you do relax you're sitting in a chair that's 17" from the floor. Why the industry, until this point, has chosen to climb over the bath tub wall rather than walking through it is beyond me. We have, by the nature of this obsolescence, began to forget how relaxing a soak is and resorted to showers. Lastly we find that grown children don't understand the desire for relaxing in a comfortable, ergonomically pleasing setting so they end up having an opinion that is reactionary and unsupported by facts or experience. We find that the best way to proceed is to get one and the reaction is "wow that tub is awesome" versus looking at a brochure and determining' the price is too high!"***

You should get in the tub. Fill-out Site Drawing sheet with prospects help. Measure and record the height, length, width of tub, width of rail, width at lowest point in tub and record measurements. Vertically measure the side and their step.

Sales Rep - ***Do you know how high the side of the tub is? Can you comfortably raise one foot and keep your balance 15-17 inches high? Of course not… I can't either — not even if I'm holding on.***

Sales Rep - ***Lift your foot 6 inches off the floor…*** (Pause) ***not that much just 6 inches! …pretty simple, right?***

Continue to probe, draw and document questionnaire.

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Sales Rep – ***Now that I've taken a good look at your bathroom I can say that you have the perfect foundation for what we do. Let's check out the door and hallway measurements, water heater and electrical panel and then get you the info you're looking for!***

Price Conditioning (Dropping Anchor):

Dropping Anchor begins the process of price conditioning the prospect. This prevents the consumer from being shocked once the price is presented. If you have properly price conditioned during the sale; when price is presented you will get a response of "*Wow, I never thought it would be that much;*" will change to "*Oh, you made it sound like it would be much higher*".

Sales Rep - ***Most of the companies that have tubs out there install them in the range of 18-19k… but there is good news, I am confident that we can do this job with a personal spa for under 16k! Besides, what else were you going to do with $16k today?***

You want to set the stage for the presentation. Make it simple --- call it a Marketing piece and ask them for their opinion when it's over.

Sales Rep – ***Do you recall a few minutes ago, we mentioned that your opinion of our marketing material would be very valuable, and if you had a few minutes we would appreciate your feedback --- for this effort, there would be a little something in it for you at the pricing stage. You do recall saying that none of your neighbors has a Jacuzzi® spa, true? This marketing piece has lots of pictures and a few videos that will answer many of the questions you might have. Can I count on you to give honest feedback?***

4. In Home PowerPoint Presentation

The sales presentation is just that, a presentation. It is not a conversation or a discussion of pros and cons, nor is it a debate about the product or another. It is a rehearsed, practiced, delivery of an idea, using a structured group of words that have been selected because of their meaning and impact. They must be delivered physically and orally with conviction in order to cause transference of feelings between the two parties-the seller and the purchaser.
Be sure to have the computer ready to go so the prospect doesn't wait for it to have to boot up in the room they are most comfortable, which means in their recliner or on the sofa. Turn the TV off. Have fun and relax!

FIRST004741
0897

COMPUTER

MOVEMENT

Slide 1) Comfort in your Home

Whether active or inactive, Jacuzzi® offers 'State of the Art' answers to stay independent and achieve ultimate comfort in your home.

MOVEMENT

Slide 2) Bathing

Bathing shouldn't be a burden, an annoyance or avoided…It should be something we look forward to, make us feel better and add to the quality of life.

MOVEMENT

Slide 3) Introducing the first Jacuzzi® Personal spa

Introducing the very first, Jacuzzi® Personal Spa that you bathe in!

MOVEMENT AFTER EACH FEATURE

Slide 4)

1.) Low step up
2.) Patented dual pin in door safety lock
3.) Little effort to secure a no leak seal.
4.) Ergonomic grab bar
5.) Slip resistant 'knurled floor'
6.) Quick release drain and overflow
7.) L shaped faucets for ease of temperature control
8.) Sturdy spigot to offset pressure of diverter
9.) Air actuator control systems eliminate electrical switches in water
10.) Lumbar cluster of Jacuzzi® patented Point Pro Jets™
11.) Suction and Lighting systems tucked out of the way
12.) Canister for Aromatherapy beads
13.) High fill capacity for a deep soak

MOVEMENT

Slide 5) At the beginning of the 20th Century

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At the beginning of the 20th century, a family of innovators and inventors came to America. They are known as the Jacuzzi Brothers.

MOVEMENT

Slide 6) Their early success with propellers

As very young men, their early success was with propellers and the monoplane. The Jacuzzi® brothers were responsible for the invention of the 'Toothpick-Propeller' which was the first and most efficient of the time period. They had mastered the concept of the movement of air before most could conceptualize flying. A few years later took the same approach and became experts within the physics of moving water; inventing the impeller. These pumps used impellers to advance water from aqua duct and lakes to irrigate orange crops in Florida and southern California in the year 1926.

MOVEMENT

Slide 7) Necessity being the mother of invention

To help his youngest son, Kenneth, cope with the pain of rheumatoid arthritis, Candido Jacuzzi® developed a version of their pump to work within a bathtub and that action literally changed the course of history. In 1956 they launched their first portable commercial unit that could turn any bathtub into a spa. Kenneth grew up to become the President of Jacuzzi® Inc.

MOVEMENT

Slide 8) Hands-on Quality in Production

The Jacuzzi® brothers have had hands on involvement in quality production from the beginning; in all businesses bearing the proud name. It has been a part of the Jacuzzi® business model since its earliest days. Whether it was their airplane business, pumps for irrigation, fire suppressant systems, hot tubs, wine or olive oil, quality is part of the Jacuzzi® tradition and legacy.

MOVEMENT

Slide 9) The original Jacuzzi® Vineyards

Even when they decided to buy a large plot of land to bring a little Italy into their new country, the brothers developed a way to irrigate an olive grove that sat aside a vineyard making it… the first of its kind. The vineyard is still going strong to this day.

FIRST004743
0899

MOVEMENT

Slide 10) Post war Baby Boom /1946-1964

Early in 1900's the birth rate and the death rates were about equal. From WW1 to the end of WW2 even through the great depression and a stock market crash the increase of modern medicines boosted the birthrates to deaths by twofold. The victory at Normandy and the return of the GI's led to an expansive increase in population between 1946 and 1964, known as the post war baby boom. 76 million Americans were born, spawning its growth and prosperity. This prosperity brought us the minivan, Pampers as well as oral contraceptives. What it didn't bring was a plan on where or how to retire. No one, at the time, thought of life in their retirement years...until today. We now realize by the result of many statistics and surveys that Boomers want to remain in the homes they raised their children in or in the home they're currently in.

MOVEMENT

Slide 11) In-Home Spa was an Elusive Luxury

Jacuzzi® was the place to go for hydrotherapy in its' use of jets and soothing air bubbles, unfortunately during the 50's and 60's only the affluent could afford to have them in their homes. It was indeed an elusive luxury; ultimately the only place an average person could enjoy a spa experience was a higher end hotel, physical therapy or the whirlpool at the local YMCA.

MOVEMENT

Slide 12) Jacuzzi® at the Forefront

Jacuzzi® Spas and Hot-Tubs then became the forefront of relaxation and recreation for generations. In the late eighty's and early nineties the deck spa was an enjoyable item for the entire family to enjoy.

MOVEMENT

Slide 13) Hot tubs are the Best Ways

Clearly the best ways to deal with stress, soothe aching muscles or relax at the end of a long day is the use of hydrotherapy spas with very warm water and massaging jets. Jacuzzi® spas have been used by athletes for decades which help those individuals cope with the pain and recovery of injuries.
But not everyone has a personal hot tub…

FIRST004744
0900

MOVEMENT

Slide 14) Generic Hot tubs are designed to Step Down into or Climb Over

> ***Hot Tubs in general are designed to step down into or to climb up and over the side. Their occupants always soak in the same community water. Chemicals burn the eyes and dries out skin. Having them on the deck means they're susceptible to hot and cold weather and nosey neighbors. All need to be covered to retain the heat and there is always a constant battle with insects. Until now...***

MOVEMENT

Slide 15) The only Complaint

> ***Introducing the Jacuzzi® tub you walk into—not up and over or down and into. The only complaint our customers' have had is that they'd wished they had done this sooner.***

MOVEMENT

Slide 16) Jacuzzi® Walk-In Tubs bring that personal experience

> ***Jacuzzi® Walk-In tubs bring that personal hot tub experience to your most personal space. This device gives you the best of both worlds-a brilliantly designed hot tub having every feature of the outside units brought in, and then you may enjoy a bath with a shower without moving a muscle. Most of all; It's designed to last a lifetime.***

MOVEMENT

Slide 17) Water that moves you

> ***Who wouldn't want a tub that you enjoy privately, makes you feel like a million bucks, improves the quality of life, is affordable and gets you moving both physically and emotionally for the rest of your years.***

HYPERLINK ON JACUZZI ® Plant Tour Video

MOVEMENT

Slide 18) 3 Pictures

> ***Perfection…***

FIRST004745
0901

MOVEMENT

Slide 19) Many Boomers have witnessed

Many Boomers have witnessed or have been a part of the challenges of their own aging parents went; (or are currently going) through.

MOVEMENT

Slide 20) Many Boomers have Witnessed /and some Fear being 'Put Up'

Some of them (parents) fear being put up in a nursing home, like you would put up towels in a linen closet. You just don't 'put up' PEOPLE

MOVEMENT

Slide 21) But there is No Need

But there is no need to 'put up' with that at all. Our goal is to keep you safe, comfortable and optimistic where you are.

MOVEMENT

Slide 22) (Cascade of men) AARP says 89% of the 76 million Boomers

Experts agree, and you know who the experts are including the AARP, that 89% of all boomers want to stay in their homes.

MOVEMENT

Why wait to modify your home or your bathroom when you will benefit now…and be able to age gracefully in place? Most seniors use this tub an average of about 4 years, while the millions of Boomers may enjoy the benefits of safe, hydrotherapy bath in the home they love for decades.

MOVEMENT

Slide 23) Therapy and the Running man/Dr. testimonial

MOVEMENT

FIRST004746
0902

Slide 24) Either old or newer

Whether the room is circa 1979 or brand new this year, your bathroom is now dangerous and obsolete

1. ***Soaking depth of 7"- 9" of warm stagnant water***
2. ***Hard steel has your neck and knees bent***
3. ***Extremely slippery whether showering or exiting a bath***
4. ***Face is inches from the commode***
5. ***Archaic design and colors and rarely used for a bath***

MOVEMENT

Slide 25) A 'State of the Art' Solution

Who wouldn't want to get out of the forties and get into the newest, most high tech, and 'State of the Art' bath tub made today? Ultra luxury, this therapeutic tub is manufactured with every conceivable feature for comfort, relaxation and stress relief, right here in South Georgia, USA.

HYPERLINK ON JACUZZI ® VIDEO bath, hydro and air jets

MOVEMENT

Slide 26) Therapeutic Features

Original High Volume Hydro Air Jet Technology has 10 Low pressure, high volume, adjustable jets in our walk in tubs move more air and water than comparable baths' jets, with more diffused action that feel soothing and therapeutic, never harsh like a garden hose; a Jacuzzi® innovation since 1968. With over 250 patents Jacuzzi® has mastered the concept of moving air and water together to soften the impact for a more pleasurable experience.

HEAT, BUOYANCY, MASSAGE

+ more effective

Heat *– relaxes and expands tired muscles and joints*
Buoyancy *- makes the body 60% lighter relieving stress on skeleton/muscles*
Massage *- water pushes against the muscle clearing them of lactic acid pain while releasing powerful endorphins which are the body's natural pain reliever.*

therapeutic

MOVEMENT

Slide 27) Therapeutic Features VIDEO Jacuzzi® Exclusive Power Pro™ Jet System

> ***In addition; Gentle Jet (Air-Jet) Therapy: 360° Air infusion***
> ***16 variable speeds Gentle Jets are used to liven and exhilarate the body. They surround your body with a continual massage providing a greater range of motion and increased circulation. They reduce aches and pains as well as providing you with the ultimate healthy, luxurious and relaxing bath.***

MOVEMENT

Slide 28) Therapeutic Features

> ***Aromatherapy:***
> ***Our sense of smell is another key factor in relaxation and has been a part of emotional and physical healing for thousands of years. Jacuzzi® takes a holistic approach and uses pellets of essential oils derived from plants.***
> ***Fragrances and Essential Oils and useful Effects***
> ***Honey Mango, Pina Colada, French Lavender, Eucalyptus, Tahitian Vanilla, Midnight Jasmine***

HYPERLINK ON JACUZZI ®

> ***List of fragrances and their affects***

MOVEMENT

Slide 29) Therapeutic Features

> ***Chromotherapy:***
> ***Everyday stresses are soothed away through Jacuzzi's® Chromotherapy feature, which produces a spectral array of light. Chromotherapy serves not only to enhance your bathing experience, but can also enhance mood and improve relaxation.***

HYPERLINK ON JACUZZI ®

> ***List of colors and their affects***

FIRST004748
0904

MOVEMENT (AFTER EACH FEATURE)

Slide 30) Safety and Convenience

Comfortable 17" high seat with Lumbar Cluster
Ergonomic grab bars
Beautiful chrome Easy Reach™ door handles, controls and shower wand
Therapeutic massaging foot jets
Low, easy step entry and nonskid floor
Durable 'Solid Surface Acrylic' easy clean finish
Right or Left hand no leak door-Guaranteed!
Patented Exclusive Dual Pin™ safety release
In Line Heater maintains constant temperature
Anti-Scald technology
Quick Release drain and overflow
Bacteria and mold resistant Sanitary Acrylic
Safe Water™ Ozone cleaning system
Auto Gravity purge jets
Fits a standard tub space

MOVEMENT

Slide 31) And it's acrylic

Acrylic is the ideal material for an easy clean, sanitary, lifetime solution. It's lightweight, maintains a high gloss and is resistant to most chemicals. Its non-porous surface stands up better over time and is warmer to the touch.

HYPERLINK ON JACUZZI®

Add an optional Acrylic wall system to cover empty walls or give the project that ultra-finished look.

MOVEMENT

Slide 32) Certifications - 50 States / BBB Company Story AIHR Inc.

The certifications necessary to install a jetted, therapy tub with electrical, plumbing and door seals are in place for your second layer of safety. How safe do you feel about the installation process and the company? The American made Jacuzzi® walk in tub, along with the national, yet local installation team has surpassed every certification necessary to install the Jacuzzi® personal spa in all 50 States.

1. ***ETL listed mark is the most well known product certification marks in North America for electrical and plumbing. A product showing the ETL label has met the requirements of the products safety standards. The mark also indicates the manufacturers' production site conforms to all OSHA and compliance measures, subject to periodic follow up inspections.***

2. ***IAPMO or (International Association Plumbers and Mechanical Officials) logo is the most coveted research and testing certification there is when it comes to products used in bathroom and the spa industry. IAPMO research enforces 'Code Conformity Assessments' to ensure that bath plumbing products meet the intent of their codes and that the products installed have the same attributes as the product tested. This logo proudly displayed is proof that the tub has met or exceeded ANSI (American National Standards Institute) requirements for safety of all components' including electrical, Acrylic tub, door, door seal and plumbing.***

3. ***UPC (Uniform Plumbing Code), USPC (Uniform Spa and Plumbing Code)***

4. ***The BBB accreditation program issues (Dealers)***
   Business Reliability reports
   Fraud prevention
   Complaints and Dispute resolution
   Truth in Advertising
   Consumer and Business education

If the accredited business falls to meet the BBB standards their accreditation is revoked. Low or no cost arbitration is provided to resolve any potential disputes.

HYPERLINK ON JACUZZI® BBB Company Story Triad AIHR Inc.

MOVEMENT

Slide 33) 'Best in Class' Warranty

> ***How strong and secure is a warranty? It is only as good as the company that stands behind it. Our warranty has been around longer than all of our competition has, in fact, Jacuzzi® still services tubs that were installed in the 50's and 60's with a national network of certified service dealers. No one in the business can say that. 'Best in Class' and what that means to you is a Lifetime Worry free warranty on the tub, door, door seal, hinge and leakage. There is a Lifetime warranty on the pump, motor and blower and all installed components --- simply the best in the industry. Who else can say that?***

MOVEMENT

Slide 34) 3 Pictures cascade

MOVEMENT

Slide 35) Best Value

> ***Price condition feature for feature Brand X @ $19,000 / Big Box @ $18,000 / Jacuzzi® at 10-20% less than all of its competition, complete with all standard Jacuzzi® features.***

MOVEMENT

Slide 36) Testimonial video

There's only one!

MOVEMENT

Slide 37) Model in tub picture/

MOVEMENT

Slide 38) Standalone tub picture

MOVEMENT

Slide 39) 4 minute Wrap up Promo Video

HYPERLINKS JACUZZI® LOGO

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5. Taking a Bath

Stand up and position a chair in the middle of the room place it to the left of you if you are installing a right hand tub or place it to the right of you if you are installing a right hand tub. Have the full size tub picture behind you so they can visualize themselves easily getting in and out of the tub.

Sales Rep –***Let me share with you the first time you see a walk-in-tub it is a bit of a shock to the eye, we are just not used to seeing a tub that high*** (holding your hands at 40"). ***People assume that the tub is that high to enjoy a nice deep soak. That's one reason for the height, but the most important reason the tub is this high is because this is the magic height that keeps the lumbar jets working to their fullest enjoyment.***

All the while doing this in their living room, pretending you are actually entering the imaginary tub and sitting on the chair in their living room.

Your left hand hangs onto the frame to the left of the open door and the right hand on the right. Remember all we have on is a large bath towel or short bath robe. Pull your left foot in to tub and immediately you'll notice a real nonskid surface. It's not a decal but deep peaks and valleys molded into the floor during manufacturing to ensure no one slips. Next the right hand reaches in and securely grabs onto the chrome grab bar. This ergonomically designed bar will hold 350lbs of force so pull hard and get that second foot over the low entry step. All you need to do now is sit comfortably on the 17"chair, reach forward shut the door and use a minimal 15lbs of force to close the door tight with the dual safety pin system, exclusive to Jacuzzi®

Then while seated on the chair in the imaginary tub this is where to begin. You are using the features on the computer screen to give them a visual of what you're saying.

Now comes the part that will change your life…

A) Easy Reach Controls on the Jacuzzi® ® tub are designed for people with aches or arthritis to easily move the 'L' shaped hot and cold levers with little effort. Just move the hot and cold controls and fill the tub to the desired temperature and the in-line heater will maintain the water at that temp! Remember that a mechanism called an anti-scald device was installed into the wall so you can never have water enter the tub too hot to burn you. Many boomers, whether diabetic or not, have circulation issues and may not know the water temp at their feet until it's too late.

FIRST004752
0908

Selling System

B) Quick Release Drain and Overflow. How do you currently plug the drain hole in the tub you have now? That method wouldn't work in your new tub because you needed to bend quite a distance and many of our customers have bad backs. All you need to do is turn the ergonomic handle ¼ and its right in front of you. Turn the hot all the way on and adjust your comfort level with the cold faucet.

C) You may now reach over and press the control labeled 'pure air 'and what begins to blow is floral scented, warm air through the 16 air jets. No need to wait for the water to be filled, we have a few more things to do. The next is the button labeled lights or Chromotherapy. Choose a color that best aids the time of day and your mood. Yellow is for appetite, red for energy violet and light blue for relaxation.

D) Safe Water Ozone Cleaning System. Also to insure the most sanitary bathing, our ozone system is a natural germicidal agent and kills 99.9% of germs, bacteria and viruses while you bathe. Ozone is how bottled water is filtered. Can you imagine taking a bath in the equivalent of bottled water? Your tub is full and now it is time to turn on the hydro-jets. These 10 jets, 6 behind your back in a lumbar cluster, 2 in front for the bottoms of your feet and the remaining two for the calves and ankles. Increase the infusion of air through the jets, up to a 50% mix with the adjustment valve next to the on off button. Jacuzzi's® Point Pro™ mix allows a mild but effective experience, never harsh like a garden hose.

E) Now that you have experienced the therapeutic part of your bath, it is now time for the hygienic portion. First turn off the hydro and air pumps. Next reach and turn the valve ¼"to open the main drain and start letting water out of the tub. The next thing to do is turn the hot valve on and then adjust the temp to your liking with the cold. There is a diverter on the back side of the spigot. When you pull it up, water will smoothly flow out of the shower head provided for you. Grasp the shower head and cover your hair and shoulders with warm, fresh water and then begin to shampoo your hair. Pick up the running shower head and rinse your hair and shoulders completely. The water is low enough to use body wash so soap up the arms neck back and chest. Reach over and grasp the running shower head and again rinse off. This process will keep you very warm while the tub is emptying. Lastly soap up the legs and feet and rinse them off in the same fashion. Take the shower and give the inside of the tub a thorough last rinse and one for yourself too. Reach for your towel and dry completely off before getting out.

Don't forget to lack the door behind you.

FIRST004753
0909

6. Pre-Close

The pre-close is the transition from selling into closing and there is no more important time to have your timing and confidence at its highest level. In order to close the deal, the sales representative needs. The following sequence is the pre-close.

Sales Rep - ***Let me ask you one last question, I'll get you the price you've been so patiently waiting for and then I'll get out of your hair; sound good? I've been with you today longer than I've been with my family.*** (Pause)

Other than price, either now or in the future, is this the tub you want to buy for your home… and what's not to want?

Prospect's Response – *Other than price, you're right!*

Congratulations Mr. / Ms. _____, we have never sat across the table from someone who wanted to buy this tub and tried make it as affordable as possible. You'll never regret doing business with Jacuzzi® ® ---- you're going to love this tub!

The pre-close is a rhetorical concept as you can see in the last question, however it is designed to purge out objections prior to price delivery. Remember, the close is worthless if they don't like or want your product

OR-

Wait After the final slide leave the picture of the tub on the screen.

Sales Rep - ***Do you like the tub? You'd want it in your house if price is right?***
Wait for a response, should be a yes

That's why I made a special trip out to see you today. You see at Jacuzzi® we have two responsibilities. My first is to you making sure what we are doing makes sense and solves your issues. The idea is you're so happy you tell everyone. What's the best form of advertising a company can have? My second is to Jacuzzi® as we have factory workers, installers an office manager that have nothing to do unless we do our job first; which is to bring in orders on a daily basis. Simply put —we need your business. If we could do three things for you would you keep an open mind?

1. ***Show you an attractive price***
2. ***Show you an affordable payment***
3. ***Show you a way to save a lot of money***

FIRST004754
0910

Is there any reason why you wouldn't place an order with me?

If a yes explain step pricing and if they give you an objection, here is what you say:

I can appreciate that all I'm asking is you keep your mind open to a fantastic offer.
If you like it tell me yes if not tell me no, you can do that right John Mary?

Then explain step pricing

7. Romancing the Price

Sales Rep- ***In order for you to be perfectly clear about this Jacuzzi® tub let me share an investment review so you know what you get for your price. The entire project, including the water and air jets, lights, heater, the aromas, the sanitary water, the inline heater, installation and applicable taxes and everything we talked about is included.***

When you are completely satisfied with the project would you be in a position to write us a check for only $_____ (pause) ***or you plan using your credit card to take advantage of the points-or-like a lot of customers possibly your 401K retirement?***

Prospect's Response – ***We will probably write a check, but not just yet!***

By isolating the objections to money, you may successfully proceed to lowering the price in a credible fashion.

Sales Rep - ***You do know that the second price that we're offering includes a sale of $750 which was advertised in many different magazines and on television. You may recall seeing them? With the promotion code —, that brings your total down to only $_____.***

$1,000

Go about by talking about something different or begin packing your things. Give them a brochure and a business card.

If you were to purchase the tub would take advantage of the promotion code within 45 days?

-or-

Start by romancing the project. Lay out list price (example)

18700. Good for 1 year. Show promo (example)
-$750.00 promo
$17,950 is good for 45 days. Show half down. Ask how does that look and shut up to wait for a response. Now if positive and they buy shake their hand and welcome them to Jacuzzi®. Is it doing business with Jacuzzi® is that what you need to think about?

1. ***Is it the fact that you need it?***
2. ***Is it putting in the Jacuzzi® tub?***
3. ***That leaves us one last thing. The Money.***

Is it the money?

Statement A. ***I don't think you're telling me my Tub is not worth this much. It's just more then you anticipated on spending right?***

Statement B. ***However I think you would agree this is more of Tub then what expected when I showed up right?***
So if I could save you some money you would want to see it right?

8. Incentives

By obtaining positive qualification you are receiving positive stimulus, and thus obtain permission to earn their business.

Qualifying Question Sequence:

Sales Rep - ***If - I kind of got the feeling that you fell in love with this walk in tub isn't that true?***

Let me ask you a question. At sometime in the future are you definitely going to put a walk in tub in your home?

When the time comes, is Jacuzzi® the tub and are we the company that you want to do business with?

Then obviously the only thing that would stop us from getting together is the money, isn't that true?

Look for confirmation from the consumer.

Sales Rep - ***If we were able to save you a substantial amount of money, you'd at least want to hear about it wouldn't you?***

FIRST004756
0912

Qualification Statement

You must get the prospect's buy-in of the incentive offer before going into detail and actually giving the incentive.
Example:

Sales Rep – ***(Mr. and Mrs. Prospect) - Our Company has just created a program whereby we can save you a substantial amount of money. The only way we can save you money, without sacrificing quality, which we will never do, is by reducing our costs. I am going to explain this program to you. Very simply, if you feel comfortable with it great - then we can save you money and get together with you while I'm here-***
If not, that's okay too. You can simply say no and we will still hold the regular price for 45 days. Fair enough?

Again, all I ask is that once you know the details of the savings plan you give me a simple yes or no.

A. **Instant Rewards Program** (have the ad)

Sales Rep- ***As you must remember I mentioned something called an Instant reward? We are often asked if there is any assistance to pay for this; such as Medicare or private insurance. Unfortunately they are not known to pay for walk in tubs or for anything in the bathroom for that matter.***

Jacuzzi® ® realized that most of their customer's were disappointed when they heard this; but still needed a device for safety and therapeutic purposes. Our goal was to find those individuals (through the AARP and like magazines) who were looking to stay in their homes. Remember Boomers told us they wanted to age in place and our goal was to match them with a product that was both luxurious, functional and affordable.

In order to satisfy the average Boomer (and let's face it they wanted the tub) but couldn't say yes, they inevitably procrastinated. Therefore we realized by taking less money while we were there, would save time, gas, expenses and marketing dollars. We all know what type of marketing works the best—That's right word of mouth. All we ask is that you will share the good experience with a friend, relative or neighbor.

FIRST004757
0913

-or-

B. **Time-Line Close**

Take out the letter and read the first two paragraphs. Read with them, not at them, and then explain the following on your talking pad.

Letter:

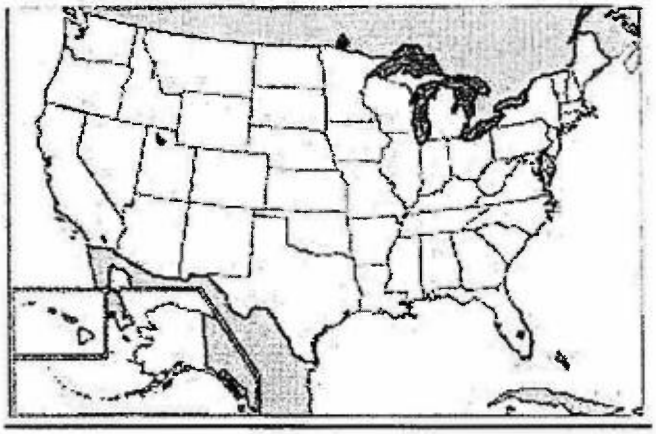
Sales Rep – ***As you know, this is one of the busiest times of the season for most home improvement remodeling. There is just not enough time in day. The demand is incredible; therefore to those customers who are willing to help us expand our business we are introducing the following savings plan. Realistically, there is only one way we can lower costs to our clients without sacrificing quality or service, which we will not do. That is by reducing our overhead without sacrificing or losing business.***

It is evident that we can reduce our overhead and marketing costs when we get people involved on the FIRST VISIT. By reducing callbacks we can see more people and cut down on rescheduling appointments, which will allow us to produce more volume, while reducing our cost per sale.

Time Study (Use a Talking Pad)

Begin to draw on a pad of paper a State outline or of your territory

Sales Rep - ***Let me explain to you the way we operate. We can't see enough people in a week, because we are just too busy. We generally see two people a day. Here is a map of our state (territory) and here are the cities that we cover. It takes me 2 hrs to drive to_____ (city) and then it may take me another 4 hrs to drive to _____ (city.) In a normal week, I see two families on Monday, two on Tuesday and...*** (Finish out).



FIRST004758
0914

I generally go on about 12 appointments during a week. We're proud of the fact that 38% of our customers get together with us on the first visit. We also realize that this product may not be for everyone and 30% of the people actually say 'no'. It's the rest…the 32% that say we need to think it over, check our finances, and talk to our families' etc. and that becomes troublesome. Here's why... Now, I want you to know that I will do whatever it takes to earn your business. If I need to come here 3 times, 4 times, whatever it takes. The problem is they have me traveling all over the area, I could be driving to_____ or _____ and then I get a call from you telling me you're ready to get together, what do you think I would do?

Write out 38% - yes, 30% - no and 32% maybe. Let them answer

Of course, I would turn around and drive right to your door because want to take care of you - I want to service you. Now most people are fairly reasonable and they will reschedule, but sometimes we occasionally upset someone and they will not allow us to reschedule. If you were me, would you go to the appointment that called you to come back for the sure sale…. or go to the appointment that was already scheduled for that day; either way someone is mad. You can see the dilemma.

Realizing this, our President came up with this program to reward those people who get together with us on the first visit, since they are helping us cut down on our expenses. You would agree that this is a good idea for everybody right?

Bring a letter back out and read the reminder (Last two paragraphs)

Sales Rep –***This way we can lower overhead is by reducing our marketing costs. Therefore, any customer who is willing to participate in the following marketing program while placing an order upon an initial visit would become eligible.***

With this in mind we are authorizing a savings to those clients who place an order with us upon the initial presentation while, cooperating with our marketing program, thus reduces our overhead.

Close*

-or-

FIRST004759
0915

B. Marketing Close

Write on the Talking Pad: OVERHEAD, LABOR, PROFIT, MATERIAL, and MARKETING

Sales Rep –***In every can of coke, every new car, everything we have there are certain costs built in. That's the American way. It's the same with a new walk in tub project. Now, there are areas where we possibly could cut costs — one is in LABOR, we could stop using trained installers, plumbers and electricians. We could just call a labor pool every morning and take who's available, or standing outside with a sign that says 'will work for food'... but you wouldn't want untrained men installing your tub... so LABOR (as you put a line through it) isn't really an area that you want us to cut, is it?***

With MATERIAL, if we didn't use Jacuzzi® ®, we could be like every other tub company and use some standard Chinese made painted fiberglass shell. But you wouldn't want that kind of tub in your home, right? So MATERIAL (as you put a line through it) isn't really an area that you want us to cut, is it?

OVERHEAD, this is an area where all our costs are fixed... rent, utilities, salaries, and I must admit our Chief Finance Officer does an excellent job of keeping those costs as low as possible. So OVERHEAD (as you put a line through it) is really as low as we can go. Would you do business with a company who didn't have a place and worked directly out of their trucks? Of course not!

PROFIT, most people tell us initially they don't care if a profit is made but; what good is a warranty if the company that charged too little was out of business? So it's not that a small profit margin is bad — Just excessive, true?

But then there's MARKETING. You know how expensive marketing is. You remember what it costs to run a TV commercial on the Super Bowl something in the neighborhood of $2mm dollars for 30 sec. As expensive as marketing is, it is an area where, with your help we can cut costs and let you the customer share the savings with us.

Bring back out Letter and Go through each line item and say,

****Obviously, you can see how this would help us. Would you have a problem helping us out with this?*** (Wait for Prospects Response)

Great, I am authorized to save you $_____ on your walk in tub project in exchange for your help. NOW your new tub is ONLY $_____

FIRST004760
0916

Negotiating the deposit (commitment)

Sales Rep – ***How much are you going to give us with the order?***

Prospect's Response – ***Oh, do we have to give a deposit? (Is it mandatory?)***

I really hadn't planned on any deposit. (None)
I can't afford a deposit (or much of deposit).
How much do you need?

Sales Rep – ***Normally we get 40%. What amount are you comfortable with?***

Wait then repeat

Sales Rep –***How much did you decide to give us with this order? — This is a custom ordered tub we're required to get at least a third, but the good news is that you have total control of the project as you hold on to the balance. You're the one who decides when you are satisfied, so you decide when the job is finished***

9. Warm down/Post Close Assurance

Sales Rep – ***Once I leave here today, people in your neighborhood or even your children are going to ask you…What was that person from Jacuzzi doing at your house for so long yesterday? You'll be excited and tell them you've made a decision to purchase a walk in tub. What do you think is the first thing you think they'll ask you? That's right… how much is it, as if they are paying for it or experts themselves? Then they'll tell you you're paying too much and they saw one on the internet for half the price or their cousin's nephew can buy one at a Big Box store and save you a couple hundred dollars***

Prospect's Response – *Oh, you're right!*

Sales Rep – ***This is not the lowest priced product in the market; but neither is anything in your house. You may be able to find a contractor that will install a cheap imitation for half the amount. The real question is… Do you want to do this twice? With any other tub you'll probably have to. Tell me, what made you decide on a Jacuzzi ®?***

What else? What else? That's why this spa is so perfect for you!

Don't allow someone or something to deny you of enjoying and improving the quality of life you deserve. It's your money, enjoy it.

Have the customer take the time to revisit why they bought it and will likely reduce the amount of cancels or third party interference. Remember: Comment on wise decision, handshake and congratulations.

FIRST004761
0917

Sales Rep – ***You are really going to enjoy this bathroom with a state of the art spa in it.- I look forward to seeing you again when this room with your tub is complete - I'm looking forward to it as much as you.***

Sales Rep – ***What do you think your children will say when they hear about this? If they knew that you really want this, and you do, why would their motivation to say no? Remember we've found the best reactions is when the tub is installed the first time the children see it and the reaction is always WOW, can I try it?***

Once you've made the sale, avoid hasty departure. Refer to recommendations and referrals

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PETITIONERS' APPENDIX
TAB "4"

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

DISTRICT COURT

CLARK COUNTY, NEVADA

ROBERT ANSARA, as Special Administrator of the Estate of SHERRY LYNN CUNNISON, Deceased; MICHAEL SMITH individually, and heir to the Estate of SHERRY LYNN CUNNISON, Deceased; and DEBORAH TAMANTINI individually, and heir to the Estate of SHERRY LYNN CUNNISON, Deceased, Plaintiffs, vs. FIRST STREET FOR BOOMERS & BEYOND, INC.; AITHR DEALER, INC.; HALE BENTON, Individually; 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	CASE NO. A-16-731244-C DEPT. NO. 2 **DEFENDANTS FIRSTSTREET AND AITHR'S CORRECTED EXHIBITS 2, 6, 7 AND 11 TO OPPOSITION TO PLAINTIFFS' MOTION TO STRIKE DEFENDANTS FIRSTSTREET AND AITHR'S ANSWERS FOR DISCOVERY ABUSES, ON ORDER SHORTENING TIME** **Hearing Date: 2/4/19** **Hearing Time: 10:30 am**

through 20; DOE EMPLOYEES 1 through 20; DOE MANUFACTURERS 1 through 20; DOE 20 INSTALLERS 1 through 20; DOE CONTRACTORS 1 through 20; and DOE 21 SUBCONTRACTORS 1 through 20, inclusive,

Defendants.

HOMECLICK, LLC,

Cross-Plaintiff,

vs.

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

Cross-Defendants.

HOMECLICK, LLC, a New Jersey limited liability company,

Third-Party Plaintiff,

vs.

CHICAGO FAUCETS, an unknown entity,

Third-Party Defendant.

BESTWAY BUILDING & REMODELING, INC.,

Cross-Claimant,

vs.

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

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,

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.; 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,

Cross-Defendants.

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

Cross-Claimants,

v.

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

Cross-Defendants.

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

EXHIBIT 2

INTR
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Attorneys for Defendants/Cross-Defendants, FIRSTSTREET FOR BOOMERS AND BEYOND, INC., and AITHR DEALER, INC.

DISTRICT COURT

CLARK COUNTY, NEVADA

ROBERT ANSARA, as Special Administrator of the Estate of SHERRY LYNN CUNNISON, Deceased; MICHAEL SMITH individually, and heir to the Estate of SHERRY LYNN CUNNISON, Deceased; and DEBORAH TAMANTINI individually, and heir to the Estate of SHERRY LYNN CUNNISON, Deceased, Plaintiffs, vs. FIRST STREET FOR BOOMERS & BEYOND, INC.; AITHR DEALER, INC.; HALE BENTON, Individually; HOMECLICK, LLC; JACUZZI INC., doing business as JACUZZI LUXURY BATH; BESTWAY BUILDING & REMODELING, INC.; WILLIAM BUDD, Individually and as BUDDS PLUMBING; DOES 1 through 20; ROE CORPORATIONS 1 through 20; DOE EMPLOYEES 1 through 20; DOE MANUFACTURERS 1 through 20; DOE 20 INSTALLERS 1 through 20; DOE CONTRACTORS 1 through 20; and DOE 21 SUBCONTRACTORS 1 through 20, inclusive,	CASE NO. A-16-731244-C DEPT. NO. 2 **DEFENDANT, FIRSTSTREET FOR BOOMERS AND BEYOND, INC.'S ANSWERS TO PLAINTIFF, ROBERT ANSARA'S FIRST SET OF INTERROGATORIES**

Defendants.

HOMECLICK, LLC,

Cross-Plaintiff,

vs.

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

Cross-Defendants.

HOMECLICK, LLC, a New Jersey limited liability company,

Third-Party Plaintiff,

vs.

CHICAGO FAUCETS, an unknown entity,

Third-Party Defendant.

BESTWAY BUILDING & REMODELING, INC.,

Cross-Claimant,

vs.

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

---

Cross-Defendants.

WILLIAM BUDD, individually and as BUDDS PLUMBING,

Cross-Claimants,

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.; 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,

Cross-Defendants.

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

Cross-Claimants,

v.

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

Cross-Defendants.

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

TO: ROBERT ANSARA, Plaintiff; and

TO: RICHARD HARRIS LAW FIRM, attorneys for Plaintiff:

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

INTERROGATORY NO.:

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

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

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

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

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

2. Robert Ansara, as Special Administrator of the Estate of Michael Smith,
   c/o Benjamin P. Cloward, Esq.
   Richard Harris Law Firm
   801 S. 4th Street
   Las Vegas, Nevada 89101 (702)444-4444

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

4. Corporate Representative(s) and/or Custodian of Records
Firststreet for Boomers & Beyond, Inc. c/o Meghan M. Goodwin, Esq.
THORNDAL ARMSTRONG DELK BALKENBUSH & EISINGER
1100 E. Bridger Avenue Las Vegas, NV 89101 (702) 366-0622

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

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

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

8. Corporate Representative(s) and/or Custodian of Records
Jacuzzi Brands, LLC
c/o Vaughn A. Crawford, Esq. SNELL & WILMER LLP
3883 Howard Hughes Parkway, Suite 1100 Las Vegas, NV 89169
(702) 784-5200

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

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

11. William Bud
c/o Joseph P. Garin, Esq.
Lipson, Neilson, Cole, Selzer & Garin
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144 (702) 382-1500

12. Corporate Representative(s) and/or Custodian of Records
Clark County Coroner
1704 Pinto Lane
Las Vegas, NV 89106
(702) 455-3210

13. 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

14. Hale Benton
1176 Ponce de Leon Avenue
Las Vegas, NV 89123-1458
(702) 498-9012

15. Corporate Representative(s) and/or Custodian of Records
Palm Eastern Cemetery
7600 S. Eastern Avenue
Las Vegas, NV 89123
(702) 464-8500

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

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

18. Carlos Fonseca, Paramedic MedicWest Ambulance
9 W. Delhi Avenue
North Las Vegas, NV 89032
(702) 650-9900

19. Brennan Demille, EMT Intermediate
MedicWest Ambulance
9 W. Delhi Avenue
North Las Vegas, NV 89032
(702) 650-9900

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

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

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

23. Kitty Ho Cain, M.D.
Sunrise Hospital & Medical Center
3186 S. Maryland Parkway
Las Vegas, NV 89109
(702) 731-8000

24. Lindsey C. Blake, M.D.
Sunrise Hospital & Medical Center
3186 S. Maryland Parkway
Las Vegas, NV 89109
(702) 731-8000

25. Holman Chan, M.D.
Sunrise Hospital & Medical Center
3186 S. Maryland Parkway
Las Vegas, NV 89109
(702) 731-8000

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

27. Sayed Z. Qazi, M.D.
Sunrise Hospital & Medical Center

3186 S. Maryland Parkway
Las Vegas, NV 89109
(702) 731-8000

28. Muhammad Bhatti, M.D.
Sunrise Hospital & Medical Center
3186 S. Maryland Parkway
Las Vegas, NV 89109
(702) 731-8000

29. Wayne Jacobs, M.D.
Sunrise Hospital & Medical Center
3186 S. Maryland Parkway
Las Vegas, NV 89109
(702) 731-8000

30. Yekaterina K.hronusova, M.D.
Sunrise Hospital & Medical Center
3186 S. Maryland Parkway
Las Vegas, NV 89109
702) 731-8000

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

32. Chris J. Fischer, M.D.
Sunrise Hospital & Medical Center
23186 S. Maryland Parkway
Las Vegas, NV 89109
(702) 731-8000

33. Shirin Rahman, M.D.
Sunrise Hospital & Medical Center
3186 S. Maryland Parkway
Las Vegas, NV 89109
(702) 731-8000

34. Sean D. Beaty, M.D.
Sunrise Hospital & Medical Center
3186 S. Maryland Parkway
Las Vegas, NV 89109
(702) 731-8000

35. Joshua Owen, M.D.
Sunrise Hospital & Medical Center

3186 S. Maryland Parkway
Las Vegas, NV 89109
(702) 731-8000

36. Rafael Valencia, M.D.
Sunrise Hospital & Medical Center
3186 S. Maryland Parkway
Las Vegas, NV 89109 (702) 731-8000

37. David P. Gorczyca, M.D.
Sunrise Hospital & Medical Center
3186 S. Maryland Parkway
Las Vegas, NV 89109
(702) 731-8000

38. Dean P. Berthoty, M.D.
Sunrise Hospital & Medical Center
3186 S. Maryland Parkway
Las Vegas, NV 89109
(702) 731-8000

39. Robert N. Berkley, M.D.
Sunrise Hospital & Medical Center
3186 S. Maryland Parkway
Las Vegas, NV 89109
(702) 731-8000

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

41. Kristen Peters, Investigator
Clark County Coroner 1704 Pinto Lane
Las Vegas, NV 89106
(702) 455-3210

42. Jesse Blanchard, Paramedic
MedicWest Ambulance
9 W. Delhi Avenue
North Las Vegas, NV 89032
(702) 650-9900

43. Victor Montecerin, Paramedic
MedicWest Ambulance
9 W. Delhi Avenue
North Las Vegas, NV 89032

(702) 650-9900

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

45. Luke Crawford, EMT Intermediate
MedicWest Ambulance
9 W. Delhi Avenue
North Las Vegas, NV 89032
(702) 650-9900

46. Jenna Lamperti, EMT Intermediate
MedicWest Ambulance
9 W. Delhi Avenue
North Las Vegas, NV 89032
(702) 650-9900

47. Jacob Stamer, EMT
MedicWest Ambulance 9 W. Delhi Avenue
North Las Vegas, NV 89032
(702) 650-9900

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

49. Officer, Matthew Scanlon
Las Vegas Metropolitan Police Department
400 S. Martin Luther King Boulevard
Las Vegas, NV 89106
(702) 828-3111

50. Officer, Kevin Lemire
Las Vegas Metropolitan Police Department
400 S. Martin Luther King Boulevard
Las Vegas, NV 89106
(702) 828-3111

51. Officer, Matthew Shake
Las Vegas Metropolitan Police Department
400 S. Martin Luther King Boulevard
Las Vegas, NV 89106
(702) 828-3111

52. Officer, Keith Bryant
Las Vegas Metropolitan Police Department
400 S. Martin Luther King Boulevard
Las Vegas, NV 89106
(702) 828-3111

53. Officer, Shakeel Abdal-Karim
Las Vegas Metropolitan Police Department
400 S. Martin Luther King Boulevard
Las Vegas, NV 89106
(702) 828-3111

54. Officer, B. Van Pamel
Las Vegas Metropolitan Police Department
400 S. Martin Luther King Boulevard
Las Vegas, NV 89106
(702) 828-3111

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

56. Sergeant, Allen Larsen
Las Vegas Metropolitan Police Department
400 S. Martin Luther King Boulevard
Las Vegas, NV 89106
(702) 828-3111

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

58. Nicholas Stahlberger, Paramedic
Clark County Fire Department
575 E. Flamingo Road
Las Vegas, NV 89119
(702) 455-7311

59. William Lewis
5354 Camden Avenue
Las Vegas, NV 89122
(702) 580-0017

60. Michael Zuvar

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

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

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

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

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

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

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

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

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

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

subject design.

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

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

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

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

ANSWER: Objection. The terms "design" and "development" are vague and ambiguous. This Answering Defendant did not design or develop the subject Jacuzzi Walk-In Tub.

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

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

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

(a) the date it was performed;

(b) the name, company position, and present address of the person responsible for the test or study;

(c) the method used;

(d) the purpose of the test or study; and

(e) the results of the test or study

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

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

ANSWER: N/A

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

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

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

If so, please state:

(a) The date of each such notice

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

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

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

1. Leonard Baize, served June 28, 2016. Mr. Baize alleged he was sold a tub too small for him after being advised by the sales representative that he would fit.
2. Mack Smith, received notice of claim January 2017. The claimants allege Mr. Smith drowned in the tub. This Answering Defendant is not aware of any further facts or the current status of this claim.

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

If so, please state as to each:

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

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

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

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

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

(f) the date of the alleged injury or damage

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

"damage." This Answering Defendant has received notice of the following incidents:

1. Leonard Baize, filed in the 128th Judicial District Court, Orange County, Texas on June 17, 2016. He named R.G. Galls, Aging in the Home Remoderlers (sic), Inc. (AIHR), firstSTREET for Boomers and Beyond, Inc. (firstSTREET), and Jacuzzi, Inc. as Defendants.
2. Walter O'Donnell, filed in the Court of Common Pleas of Allegheny County, Pennsylvania in February 2016. He named firstSTREET and Aging in the Home Remodelers as Defendants for a claimed tub leak causing property damage.

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

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

(b) the title, including chapter, section, and paragraph numbers;

(c) the date of establishment, enactment, or promulgation; and

(d) the subject matter addressed

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) the title, including chapter, section, and paragraph numbers;

(c) the date of establishment, enactment, or promulgation; and

(d) the subject matter addressed.

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

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

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

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

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

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

(a) the name and last known address of each;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

DATED this 10th day of October, 2018.

THORNDAL ARMSTRONG DELK
BALKENBUSH & EISINGER

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.

CERTIFICATE OF SERVICE

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

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

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

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

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

Karen Berk

An employee of THORNDAL ARMSTRONG DELK BALKENBUSH & EISINGER

DECLARATION

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

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

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

DATED this 10th day of October, 2018.

Stacy L. Hackney

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

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A PROFESSIONAL CORPORATION
ATTORNEYS
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EXHIBIT 6

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Steven D. Grierson
CLERK OF THE COURT

ACOMP
BENJAMIN P. CLOWARD, ESQ.
Nevada Bar No. 11087
RICHARD HARRIS LAW FIRM
801 South Fourth Street
Las Vegas, NV 89101
Telephone: (702) 444-4444
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Attorneys for Plaintiffs

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 l through 20; DOE 20 INSTALLERS I through 20; DOE CONTRACTORS 1 through 20; and DOE 21 SUBCONTRACTORS 1 through 20, inclusive	CASE NO. A-16-731244-C DEPT. NO. XVIII **FOURTH AMENDED COMPLAINT**

Defendants.

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

I.

PARTIES AND JURISDICTION

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

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

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

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

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

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

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

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

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

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

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

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

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

II.

GENERAL FACTUAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FIRST CAUSE OF ACTION
Negligence as to All Defendants

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

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

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

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

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

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

a. The negligent and improper design, testing, manufacture, installation assembly, instructions for use and warnings for the Jacuzzi walk-in tub; and

b. The failure to provide adequate, accurate, and effective warnings and instructions to owners, operators, and users of the subject Jacuzzi walk-in tub.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

THIRD CAUSE OF ACTION

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

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

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

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

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

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

FOURTH CAUSE OF ACTION

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

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

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

67. Defendants had reason to know:

a. The particular purpose for which the walk-in bathtub would be used, and;

b. That SHERRY was relying on Defendants' skill and judgment to provide a suitable product.

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

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

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

FIFTH CAUSE OF ACTION

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

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

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

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

PUNITIVE DAMAGES

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

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

75. The Defendants JACUZZI INC., doing business as JACUZZI LUXURY BATH, FIRST STREET FOR BOOMERS & BEYOND, INC., AITHR DEALER, INC., and HOMECLICK, LLC, and/or ROE/DOE Defendants, knew or should have known of the subject product's defect which rendered it unreasonably dangerous at the time of placing the subject product into the stream of commerce and failed to undertake measures to prohibit it from entering into the stream of commerce and into the hands of users in the State of Nevada, including warnings of the risks for product failure, proper use and maintenance of the product and proper inspection of the product for potential hazards and/or defects.

76. Defendants conduct was wrongful because Defendants engaged in oppression, malice and with a conscious disregard toward individuals like SHERRY who purchased and used the walk-in bathtub and said conduct was despicable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. For reasonable attorney's fees, pre-judgment interest and costs of incurred herein;

6. For such other and further relief as the Court may deem just and proper in the premises.

DATED this 20th day of June, 2017.

RICHARD HARRIS LAW FIRM

BENJAMIN P. CLOWARD, ESQ.
Nevada Bar No. 11087
801 South Fourth Street
Las Vegas, Nevada 89101
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the RICHARD HARRIS LAW FIRM and that on the 21 day of June 2017, I caused the foregoing **FOURTH AMENDED COMPLAINT** to be served as follows:

[X] pursuant to N.E.F.C.R. 9 by serving it via electronic service

to the attorneys listed below:

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ANGULO & STOBERSKI
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Sarai L. Brown, Esq.
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Attorneys for Defendant/CrossDefendant/ Cross-Claimant BESTWAY BUILDING & REMODELING, INC.

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Joshua D. Cools
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Attorneys for Defendants WILLIAM BUDD and BUDDS PLUMBING

/

An employee of RICHARD HARRIS LAW FIRM

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

EXHIBIT 7

DISTRICT COURT CIVIL COVER SHEET

A-16-731244-C

County, Nevada

I

Case No. _____
(Assigned by Clerk's Office)

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

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

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

Civil Case Filing Types

Real Property	Torts	
Landlord/Tenant	**Negligence**	**Other Torts**
☐ Unlawful Detainer	☐ Auto	☒ Product Liability
☐ Other Landlord/Tenant	☐ Premises Liability	☐ Intentional Misconduct
Title to Property	☐ Other Negligence	☐ Employment Tort
☐ Judicial Foreclosure	**Malpractice**	☐ Insurance Tort
☐ Other Title to Property	☐ Medical/Dental	☐ Other Tort
Other Real Property	☐ Legal	
☐ Condemnation/Eminent Domain	☐ Accounting	
☐ Other Real Property	☐ Other Malpractice	

Probate	Construction Defect & Contract	Judicial Review/Appeal
Probate *(select case type and estate value)*	**Construction Defect**	**Judicial Review**
☐ Summary Administration	☐ Chapter 40	☐ Foreclosure Mediation Case
☐ General Administration	☐ Other Construction Defect	☐ Petition to Seal Records
☐ Special Administration	**Contract Case**	☐ Mental Competency
☐ Set Aside	☐ Uniform Commercial Code	**Nevada State Agency Appeal**
☐ Trust/Conservatorship	☐ Building and Construction	☐ Department of Motor Vehicle
☐ Other Probate	☐ Insurance Carrier	☐ Worker's Compensation
Estate Value	☐ Commercial Instrument	☐ Other Nevada State Agency
☐ Over $200,000	☐ Collection of Accounts	**Appeal Other**
☐ Between $100,000 and $200,000	☐ Employment Contract	☐ Appeal from Lower Court
☐ Under $100,000 or Unknown	☐ Other Contract	☐ Other Judicial Review/Appeal
☐ Under $2,500		

Civil Writ		Other Civil Filing
Civil Writ		**Other Civil Filing**
☐ Writ of Habeas Corpus	☐ Writ of Prohibition	☐ Compromise of Minor's Claim
☐ Writ of Mandamus	☐ Other Civil Writ	☐ Foreign Judgment
☐ Writ of Quo Warrant		☐ Other Civil Matters

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

2/3/16
Date

Signature of initiating party or representative

See other side for family-related case filings.

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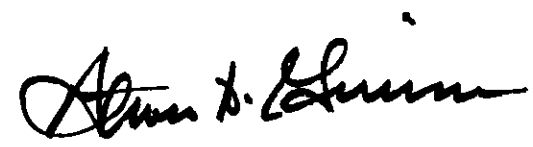

CLERK OF THE COURT

COMP
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Attorneys for Plaintiff

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, HOMECLICK, LLC.; JACUZZI BRANDS LLC.; BESTWAY BUILDING & REMODELING, INC.; WILLIAM BUDD, Individually and as BUDDS PLUMBING; DOES 1 through 20; ROE CORPORATIONS 1 through 20; DOE EMPLOYEES 1 through 20; DOE MANUFACTURERS 1 through 20; DOE 20 INSTALLERS I through 20; DOE CONTRACTORS 1 through 20; and DOE 21 SUBCONTRACTORS 1 through 20, inclusive Defendants.	CASE NO. A-16-731244-C DEPT. NO. I **COMPLAINT**

COME NOW, Plaintiffs 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 by through their attorneys BENJAMIN P. CLOWARD, ESQ. and for their causes of action against all Defendant's, and each of them, alleges as follows:

I.

PARTIES AND JURISDICTION

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

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

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

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

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

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

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

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

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

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

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

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

II.

GENERAL FACTUAL ALLEGATIONS

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

FIRST CAUSE OF ACTION
Negligence as to All Defendants

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

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

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

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

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

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

a. The negligent and improper design, testing, manufacture, installation assembly, instructions for use and warnings for the Jacuzzi walk-in tub; and

b. The failure to provide adequate, accurate, and effective warnings and instructions to owners, operators, and users of the subject Jacuzzi walk-in tub.

SECOND CAUSE OF ACTION

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. For reasonable attorney's fees, pre-judgment interest and costs of incurred herein;

6. For such other and further relief as the Court may deem just and proper in the premises.

DATED this 3rd day of February 2016

CLOWARD, HICKS & BRASIER, PLLC

BENJAMIN P. CLOWARD, ESQ.
Nevada Bar No. 11087
721 S. 6th Street
Las Vegas, NV 89101
Attorneys for Plaintiffs

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DISTRICT COURT

CLARK COUNTY, NEVADA

ROBERT ANSARA, as Special Administrator of the Estate of SHERRY LYNN CUNNISON, Deceased; MICHAEL SMITH individually, and heir to the Estate of SHERRY LYNN CUNNISON, Deceased; and DEBORAH TAMANTINI individually, and heir to the Estate of SHERRY LYNN CUNNISON, Deceased; Plaintiffs, vs. FIRST STREET FOR BOOMERS & BEYOND, INC.; AITHR DEALER, INC.; HALE BENTON, Individually, HOMECLICK, LLC.; JACUZZI BRANDS LLC.; BESTWAY BUILDING & REMODELING, INC.; WILLIAM BUDD, Individually and as BUDDS PLUMBING; DOES 1 through 20; ROE CORPORATIONS 1 through 20; DOE EMPLOYEES 1 through 20; DOE MANUFACTURERS 1 through 20; DOE 20 INSTALLERS I through 20; DOE CONTRACTORS 1 through 20; and DOE 21 SUBCONTRACTORS 1 through 20, inclusive Defendants.	CASE NO. DEPT. NO. **INITIAL APPEARANCE FEE DISCLOSURE**

INITIAL APPEARANCE FEE DISCLOSURE

Pursuant to NRS Chapter 19, as amended by Senate Bill 106, filing fees are submitted for fees appearing in the above entitled action as indicated below:

ROBERT ANSARA, as Special Administrator of the Estate of SHERRY LYNN CUNNISON, Deceased	$270.00
MICHAEL SMITH individually, and heir to the Estate of SHERRY LYNN CUNNISON	$30.00
DEBORAH TAMANTINI individually, and heir to the Estate of SHERRY LYNN CUNNISON, Deceased	$30.00
TOTAL REMITTED:	**$330.00**

DATED this 3RD day of February, 2016

CLOWARD HICKS & BRASIER, PLLC

BENJAMIN P. CLOWARD, ESQ.
Nevada Bar No. 11087
721 South 6th Street
Las Vegas, NV 89101
Attorneys for Plaintiffs

THORNDAL
ARMSTRONG
DELK BALKENBUSH & EISINGER
A PROFESSIONAL CORPORATION
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EXHIBIT 11

INTG
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Attorneys for Plaintiff

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiff,

vs.

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

Defendants.

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

PLAINTIFF DEBORAH TAMANTINI'S FIRST SET OF INTERROGATORIES TO DEFENDANT, FIRST STREET FOR BOOMERS & BEYOND, INC.

AND ALL RELATED MATTERS

PLAINTIFF DEBORAH TAMANTINI'S FIRST SET OF INTERROGATORIES TO DEFENDANT, FIRST STREET FOR BOOMERS & BEYOND, INC.

ROBERT ANSARA individually, and heir to the Estate of SHERRY LYNN CUNNISON, Deceased; under the authority of Rule 33 of the Nevada Rules of Civil Procedure, by and through his attorney, BENJAMIN P. CLOWARD, ESQ. of the RICHARD HARRIS LAW FIRM and hereby requests that Defendant, FIRST STREET BOOMERS & BEYOND, INC. ("FIRST STREET"), answer, in writing and under oath, within thirty (30) days of receipt hereof, the Interrogatories, hereinafter, set forth.

NOTE: When used in these interrogatories, the term "Defendant", its plural or any synonym thereof, is intended to and shall embrace and include in addition to the named party or parties, counsel for said party, and all agents, servants, employees, representatives, investigators, and others who are in possession of or may have obtained information for or on behalf of the named party or parties Defendant. As to each person named in response to each question herein, state the person's full name, last known residence address and telephone number, his last known business address and telephone number, and his job title, capacity or position at such last known employment.

If you cannot answer any of the following Interrogatories in full and complete detail, after exercising due diligence to secure the information to do so, so state, and answer to the extent possible, specifying your inability to answer the remainder, and stating whatever information or knowledge you have concerning the unanswered portion.

These Interrogatories shall be deemed continuing so as to require supplemental answers if you or your attorneys obtain further information between the time answers are served and the time of trial.

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RICHARD HARRIS LAW FIRM

PRELIMINARY STATEMENT AND DEFINITIONS

The following Preliminary Statement and Definitions apply to each of the Interrogatories set forth hereinafter and are deemed to be incorporated therein:

1. The singular number and the masculine gender, as used herein, also mean the plural, feminine or neuter, as may be appropriate.

2. These interrogatories call for all information (including information contained in writing) as is known or reasonably available to Defendant, Defendant's attorneys or any investigators or representatives or others acting on Defendant's behalf or under Defendant's direction or control, not merely such information as is known of Defendant's own personal knowledge.

3. If you cannot answer any of these Interrogatories in full after exercising due diligence to secure the information to do so, so state and answer the Interrogatory to the extent possible, specifying your inability to answer the remainder, the reasons therefor, the steps taken to secure the answers to the unanswered portions, and stating whatever information or knowledge you have concerning the unanswered portions, please also identify the persons you believe to have such knowledge, what you believe the correct answer to be and the facts upon which you base your answer.

4. If you consult any document or person in answering these Interrogatories, identify in regard to each such Interrogatory the person and/or document consulted.

5. The term "person" as used herein shall be deemed to mean any natural person, firm, association, partnership, corporation or any other form of legal entity or governmental body, unless the context otherwise dictates.

6. The term "document" as used in these Interrogatories means all written, recorded or graphic matters, however produced or reproduced and includes, but is not limited to, any record, report, paper, writing, book, letter, note, memorandum, correspondence, agreement, contract, journal, ledger, summary, minute of meeting, photograph, interoffice communication, telegram, schedule, diary, log, memorandum of telephone or in-person communication, meeting or conversation, Telex, cable, tape, transcript, recording, photograph, picture or film, computer printout, program or data of other graphic, symbolic, recorded or written materials of any nature whatsoever. Any document, as hereinabove defined, which contains any comment, notation, addition, insertion or marking of any kind which is part of another document, is to be considered a separate document.

7. The term "communication" as used in these Interrogatories shall mean any dissemination of information of transmission or a statement from one person to

RICHARD HARRIS LAW FIRM

another or in the presence of another, whether by writing, orally or by action or conduct.

8. The term "fact" as used in these Interrogatories shall include, without limitation, every matter occurrence, act, event, transaction, occasion, instance, circumstance, representation or other happening, by whatever name it is known.

9. The term "identify" or request to "state the identity" as used in these Interrogatories shall call for the following information:

With respect to a person:

(1) His full name;

(2) His last known business and residence address.

(3) His last known business and residence telephone numbers;

(4) His last know job title and capacity;

(5) His relationship to you, by blood or marriage, including former marriages;

(6) Whether any statement pertaining to any matter involved in this litigation, whether written or oral, or by recording device or by court reporter, or whether signed or unsigned, has been taken from him, and if so, how many such statements, and as to each statement, state the identity of thereof.

With respect to each document:

(1) Its nature (e.g., letter, memorandum, etc.);
(2) Its title;
(3) The date it bears;
(4) The date it was sent;
(5) The date it was received;
(6) The identity of all persons who prepared it or participated in anyway in its preparation;
(7) The identity of the person sending it and who such person represented at that time;
(8) The identity of the person to whom it was sent;
(9) The identity of the person who presently has custody of it and its present location;
(10) Its subject matter and its substance;
(11) Whether the document is claimed to be privileged;
(12) If you exercise the option to produce business records pursuant to NRCP 34(c), please answer, nonetheless, subparts (1) through (9) hereof in regard to each pertinent Interrogatory.

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With respect to "communication":

(1) The maker;
(2) The receiver;
(3) When made;
(4) Where made;
(5) The identity of all persons present when made;
(6) The mode of communication;
(7) The subject matter and substance;
(8) Whether the communication is claimed to be privileged.

With respect to each "fact":

(1) The date and time it occurred;
(2) The place where it occurred;
(3) The identity of each person present;
(4) An identification of the subject matter, nature and substance of the fact.

10. With respect to each document or communication identified and claimed to be privileged, state the type of privilege claimed and its basis.

11. If you object in whole or in part to any of the following Interrogatories, please state in complete detail the basis for your objection and all the facts in which you rely to support your objection.

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

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

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

INTERROGATORIES

INTERROGATORY NO. 1:

In the Manufacturing Agreement between FirstStreet and Jacuzzi, Bates stamped as Jacuzzi001588 thru Jacuzzi001606, the document indicates that FirstStreet desired Jacuzzi to

RICHARD HARRIS LAW FIRM

manufacture walk-in tubs and other bath products for FirstStreet and its network of dealers and distributors – please list all dealers and distributors within the network of FirstStreet.

INTERROGATORY NO. 2:

Please identify the name of the person who was responsible for testing the two tubs provided by FirstStreet to Jacuzzi pursuant to Section 1. G. of the Manufacturing Agreement between FirstStreet and Jacuzzi, Bates stamped as Jacuzzi001588 thru Jacuzzi001606

INTERROGATORY NO. 3:

Please identify the name of the person who was responsible for training using the two tubs provided by FirstStreet to Jacuzzi pursuant to Section 1. G. of the Manufacturing Agreement between FirstStreet and Jacuzzi, Bates stamped as Jacuzzi001588 thru Jacuzzi001606.

INTERROGATORY NO. 4:

In Section 2. A of the Manufacturing Agreement between FirstStreet and Jacuzzi, Bates stamped as Jacuzzi001588 thru Jacuzzi001606, please provide all known FirstStreet Dealers that have places advertisements in sources of "direct mail, Internet, catalog, television, radio and print media known by Jacuzzi for Jacuzzi walk-in products.

INTERROGATORY NO. 5:

In Section 2. B of the Manufacturing Agreement between FirstStreet and Jacuzzi, Bates stamped as Jacuzzi001588 thru Jacuzzi001606, the document indicates that only FirstStreet has the right to sell Jacuzzi walk-in products in the United States, please name any other company that has had the right at any time to sell Jacuzzi walk-in products in the United States.

INTERROGATORY NO. 6:

In Section 2. B of the Manufacturing Agreements between FirstStreet and Jacuzzi, Bates stamped as Jacuzzi001588 thru Jacuzzi001606, the document indicates that only FirstStreet has the right to sell Jacuzzi walk-in products in the United States, please name any and all companies who have the right to sell Jacuzzi walk-in products outside the United States.

. . .

RICHARD HARRIS LAW FIRM

INTERROGATORY NO. 7:

Please identify all past or present salesmen or saleswomen used by FirstStreet to sell Jacuzzi products. For instance, please identify the names of all individuals like Hale Benton or Jonathan Honerbrink who have been involved in selling Jacuzzi walk-in bath products.

INTERROGATORY NO. 8:

Identity the person at First Street who is in charge of the remodeling division and the network of contractors.

INTERROGATORY NO. 9:

Please identify all past and present contractors who have provided installation services with regard to a walk-in bathtub sold by FirstStreet.

INTERROGATORY NO. 10:

Please state whether FirstStreet gets any portion of the proceeds from the installation services, such as a "kickback" for authorizing the company to work with FirstStreet.

DATED this 20th day of September, 2018.

RICHARD HARRIS LAW FIRM

/s/ Benjamin P. Cloward

BENJAMIN P. CLOWARD, ESQ.
Nevada Bar No. 11087
801 South Fourth Street
Las Vegas, Nevada 89101
Attorneys for Plaintiff

RICHARD HARRIS LAW FIRM

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of RICHARD HARRIS LAW FIRM and that on this 20th day of September, 2018, I served a copy of the foregoing, **PLAINTIFF DEBORAH TAMANTINI'S FIRST SET OF INTERROGATORIES TO DEFENDANT, FIRST STREET FOR BOOMERS & BEYOND, INC.** in Ansara, Robert, et al. v. First Street for Boomers & Beyond, Inc., et al., Clark County District Court Case No. A-16-731244-C, as follows:

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

Meghan M. Goodwin, Esq.
THORNDAL ARMSTRONG DELK BALKENBUSH & EISINGER
1100 East Bridger Avenue
Las Vegas, NV 89101-5315
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Attorneys for Defendant/Cross-Defendant Jacuzzi Brands, LLC

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

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

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

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

DEFENDANT, FIRSTSTREET FOR BOOMERS AND BEYOND, INC.'S ANSWERS TO PLAINTIFF DEBORAH TAMANTINI'S FIRST SET OF INTERROGATORIES

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

Defendants.

HOMECLICK, LLC,

Cross-Plaintiff,

vs.

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

Cross-Defendants.

HOMECLICK, LLC, a New Jersey limited liability company,

Third-Party Plaintiff,

vs.

CHICAGO FAUCETS, an unknown entity,

Third-Party Defendant.

BESTWAY BUILDING & REMODELING, INC.,

Cross-Claimant,

vs.

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

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.; 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,

Cross-Defendants.

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

Cross-Claimants,

v.

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

Cross-Defendants.

. . .

. . .

DEFENDANT, FIRSTSTREET FOR BOOMERS AND BEYOND, INC.'S ANSWERS TO PLAINTIFF DEBORAH TAMANTINI'S FIRST SET OF INTERROGATORIES

TO: DEBORAH TAMANTINI, Plaintiff; and

TO: RICHARD HARRIS LAW FIRM, attorneys for Plaintiff:

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

INTERROGATORY NO.:

1. In the Manufacturing Agreement between FirstStreet and Jacuzzi, Bates stamped as Jacuzzi001588 thru Jacuzzi001606, the document indicates that FirstStreet desired Jacuzzi to manufacture walk-in tubs and other bath products for FirstStreet and its network of dealers and distributors – please list all dealers and distributors within the network of FirstStreet.

ANSWER: Objection. This Interrogatory is overbroad with respect to timeframe. Without waiving said objections, the only dealer or distributor within the network of FirstStreet is AITHR. As FirstStreet's discovery on this issue is ongoing, Defendant reserves the right to amend and/or supplement this response as additional information becomes known.

2. Please identify the name of the person who was responsible for testing the two tubs provided by FirstStreet to Jacuzzi pursuant to Section 1. G. of the Manufacturing Agreement between FirstStreet and Jacuzzi, Bates stamped as Jacuzzi001588 thru Jacuzzi001606.

ANSWER: Objection. The term "testing" is vague and ambiguous and implies that design and/or manufacturing testing was performed on the two tubs that were provided to FirstStreet under the terms of the Manufacturing Agreement. As noted in FirstStreet's Answers to Ansara's Interrogatories, FistStreet did not design or develop the subject Jacuzzi Walk-In Tub, and, therefore, performed no tests associated with the design, development or manufacturing of the subject tub. The tubs were provided to FirstStreet for photography and use in the advertising and marketing materials that FirstStreet performed pursuant to the Manufacturing Agreement.

3. Please identify the name of the person who was responsible for training using the two tubs provided by FirstStreet to Jacuzzi pursuant to Section 1. G. of the Manufacturing Agreement between FirstStreet and Jacuzzi, Bates stamped as Jacuzzi001588 thru Jacuzzi001606.

ANSWER: Objection. The phrase "using the two tubs" is vague and ambiguous. Without waiving said objection, FirstStreet is not aware of any training that was provided by Jacuzzi relative to the "use" of the two tubs that were provided to FirstStreet.

4. In Section 2. A of the Manufacturing Agreement between FirstStreet and Jacuzzi, Bates stamped as Jacuzzi001588 thru Jacuzzi001606, please provide all known FirstStreet Dealers that have places advertisements in sources of "direct mail, Internet, catalog, television, radio and print media known by Jacuzzi for Jacuzzi walk-in products.

ANSWER: Objection. This Interrogatory is overbroad with respect to timeframe. Without waiving said objections, the only dealer or distributor to have placed advertisements for Jacuzzi walk-in products would have been Defendant FirstStreet. As FirstStreet's discovery on this issue is ongoing, Defendant reserves the right to amend and/or supplement this response as additional information becomes known.

5. In Section 2. B of the Manufacturing Agreement between FirstStreet and Jacuzzi, Bates stamped as Jacuzzi001588 thru Jacuzzi001606, the document indicates that only FirstStreet has the right to sell Jacuzzi walk-in products in the United States, please name any other company that has had the right at any time to sell Jacuzzi walk-in products in the United States.

ANSWER: This answering Defendant is unaware of any other company that had the right to sell Jacuzzi walk-in tub products in the United States while the Manufacturing Agreement was in place. However, FirstStreet is aware of other companies that advertised the Jacuzzi walk-in tub products in the United States, and notified Jacuzzi of this issue.

6. In Section 2. B of the Manufacturing Agreement between FirstStreet and Jacuzzi, Bates stamped as Jacuzzi001588 thru Jacuzzi001606, the document indicates that only FirstStreet has the right to sell Jacuzzi walk-in products in the United States, please name any and all companies who have the right to sell Jacuzzi walk-in products outside the United States.

ANSWER: Objection. This Interrogatory is overbroad with respect to timeframe. Without waiving

said objection, FirstStreet has no knowledge of the companies that had the right to sell Jacuzzi walk-in products outside of the United States.

7. Please identify all past or present salesmen or saleswomen used by FirstStreet to sell Jacuzzi products. For instance, please identify the names of all individuals like Hale Benton or Jonathan Honerbrink who have been involved in selling Jacuzzi walk-in bath products.

ANSWER: Objection. This Interrogatory is overbroad with respect to timeframe. Without waiving said objections, FirstStreet is attempting to search its database of prior salespersons who would have sold Jacuzzi products in the Las Vegas area wherein this incident took place, and will supplement this response should any additional salespersons become know. As FirstStreet's discovery on this issue is ongoing, Defendant reserves the right to amend and/or supplement this response as additional information becomes known.

8. Identify the person at FirstStreet who is in charge of the remodeling division and the network of contractors.

ANSWER: Objection. This Interrogatory is overbroad with respect to timeframe. The interrogatory is also vague and ambiguous with respect to the term "remodeling division", and the interrogatory further implies that FirstStreet in fact had a "remodeling division" and that it further utilized a "network of subcontractors". Without waiving said objections, FirstStreet did not have a "remodeling division" during the time period in which the Jacuzzi product at issue was installed in Ms. Cunnison's home.

9. Please identify all past and present contractors who have provided installation services with regard to a walk-in bathtub sold by FirstStreet.

ANSWER: Objection. This Interrogatory is overbroad with respect to timeframe and lcoation. Without waiving said objections, the only contractor to provide FirstStreet with installation services for the Jacuzzi product at issue, during the time frame that Ms. Cunnison's tub was installed, was AITHR.

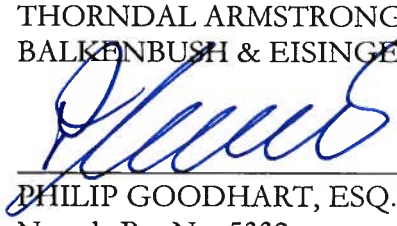
10. Please state whether FirstStreet gets any portion of the proceeds from the installation services, such as a "kickback" for authorizing the company to work with FirstStreet.

ANSWER: Objection. This Interrogatory is overbroad with respect to timeframe. The interrogatory

is also vague and ambiguous with respect to the term "kickback". Without waiving said objections, FirstStreet did not receive any "kickback".

DATED this 13th day of November, 2018.

THORNDAL ARMSTRONG DELK
BALKENBUSH & EISINGER



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.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 13 day of November, 2018, service of the above and foregoing DEFENDANT, FIRSTSTREET FOR BOOMERS AND BEYOND, INC.'S ANSWERS TO PLAINTIFF DEBORAH TAMANTINI'S FIRST SET OF INTERROGATORIES was made upon each of the parties via electronic service through the Eighth Judicial District Court's Odyssey E-File and Serve system.

Benjamin P. Cloward, Esq.
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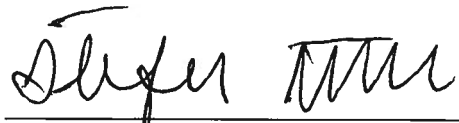
JACUZZI INC. dba JACUZZI LUXURY BATH

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



An employee of THORNDAL ARMSTRONG DELK BALKENBUSH & EISINGER

PETITIONERS' APPENDIX
TAB "5"

ELECTRONICALLY SERVED
11/18/2020 9:31 AM

Electronically Filed
11/18/2020 9:31 AM
CLERK OF THE COURT

ORDR
BENJAMIN P. CLOWARD, ESQ.
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Attorneys for Plaintiffs

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 l 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 STRIKING DEFENDANT JACUZZI INC., d/b/a JACUZZI LUXURY BATH'S ANSWER AS TO LIABILITY ONLY

On June 22, 2018, Plaintiffs ROBERT ANSARA, as Special Administrator of the Estate of SHERRY LYNN CUNNISON, Deceased; ROBERT ANSARA, as Special Administrator of the Estate of MICHAEL SMITH, Deceased heir to the Estate of SHERRY LYNN CUNNISON, Deceased; and DEBORAH TAMANTINI individually ("**Plaintiffs**"), filed a Motion to Strike Defendant Jacuzzi, Inc. d/b/a Jacuzzi Luxury Bath's ("**Jacuzzi**") Answer for Repeated, Continuous and Blatant Discovery Abuses ("**Plaintiffs' first Motion to Strike**"). This Court denied Plaintiffs' first Motion to Strike.

On January 10, 2019, Plaintiffs filed a Renewed Motion to Strike Defendant Jacuzzi's Answer for Repeated, Continuous and Blatant Discovery Abuses ("**Plaintiffs' Renewed Motion to Strike**"). Plaintiffs' Renewed Motion to Strike came on for hearing before this Honorable Court on February 4, 2019. This Court denied Plaintiffs' Renewed Motion to Strike.

On May 15, 2019, Plaintiffs' filed Plaintiffs' Motion for Reconsideration re: Plaintiffs' Renewed Motion to Strike Defendant Jacuzzi Inc.'s Answer ("**Plaintiffs' Motion for Reconsideration**"). Plaintiffs' Motion for Reconsideration came on for hearing before this Honorable Court on July 1, 2019. This Court ordered an evidentiary hearing on Plaintiffs' Motion for Reconsideration. Prior to the Evidentiary Hearing, on August 9, 2019, Plaintiffs filed Plaintiffs' Motion to Expand Scope of Evidentiary Hearing. On August 22, 2019, via Minute Order, this Court granted Plaintiffs' Motion to Expand Scope of Evidentiary Hearing.

This Court conducted a four-day Evidentiary Hearing on Plaintiffs' Motion for Reconsideration on September 16, 2019; September 17, 2019; September 18, 2019; and October 1, 2019. Plaintiffs submitted their Evidentiary Hearing Closing Brief on November 4, 2019. Jacuzzi submitted its Evidentiary Hearing Closing Brief on December 2, 2019. Plaintiffs submitted their Reply to Jacuzzi's Evidentiary Hearing Closing Brief on December 31, 2019.

On March 5, 2020, after having carefully considered the evidence presented at the Evidentiary Hearing including the live testimony of witnesses, affidavits, admitted exhibits, and documents submitted to the Court for *in camera* inspection; having carefully considered the parties' Evidentiary Hearing Closing Briefs (including all appendices and exhibits thereto); having carefully considered Plaintiffs' Motion for Reconsideration and Motion to Expand Scope

of Evidentiary Hearing, the Oppositions thereto, and the oral arguments of the parties on such motions; and having also considered the prior pleadings and papers on file in this case,[1] the Court issued a minute order setting forth certain findings and sanctions against Jacuzzi and asked Plaintiffs to prepare a final Order for the Court's consideration.

On May 19, 2020, Plaintiffs submitted a proposed Order. On May 22, 2020, Jacuzzi Objected to the proposed Order and moved the Court "to establish the limited extent of the waiver that would attend any second phase of the evidentiary proceeding" so that Jacuzzi could "make an informed decision as to whether to proceed with a second phase." On June 29, 2020, the Court temporarily stayed the sanctions against Jacuzzi and Ordered that the evidentiary hearing be reopened for Jacuzzi to present evidence of the "advice of counsel" defense. The Court set aside dates in September, October and November to allow this evidence presentation with the presentation to begin on September 22, 2020. On September 18, 2020, Jacuzzi filed a notice of waiver indicating that it was electing not to proceed with a second phase. On September 22, 2020, the parties appeared before the Court and the Court ordered the parties to appear on October 5, 2020, to discuss any remaining issues with respect to Plaintiffs' proposed Order. On October 5, 2020, the Court heard additional argument by the parties and Ordered Plaintiffs to submit a revised order that contained specific additional findings by October 9, 2020.

After full, thorough, and careful consideration, good cause appearing, the Court makes the following Findings of Fact and Conclusions of Law. The Court substantially adopts the factual and legal analysis presented by Plaintiffs in their Evidentiary Hearing Closing Brief (filed Nov. 4, 2019) and their Reply in Support of Evidentiary Closing Brief (filed Dec. 31, 2019). All findings of fact described herein are supported by substantial evidence.

I. STANDARD OF REVIEW

In reaching this decision, the Court applied the factors outlined in Young v. Johnny

[1] The Court notes that, in reaching this decision, the Court analyzed voluminous documentary evidence, numerous prior pleadings, numerous prior hearing transcripts, extensive written discovery (and responses thereto), deposition notices (and amendments thereto), deposition transcripts, *in camera* inspection of voluminous email communications, four days of live testimony, extensive briefing, and all other evidence and argument presented by the parties throughout these proceedings. Any lack of specificity in this Order shall not be construed as an omission of consideration by the Court.

RICHARD HARRIS LAW FIRM

Ribeiro Bldg., Inc., 106 Nev. 88 (1990), and its progeny. Under Young, this Court has discretion to impose any sanctions that it deems are appropriate. In fact, in Young, the Nevada Supreme Court noted that "[e]ven if [the Nevada Supreme Court] would not have imposed such sanctions in the first instance, we will not substitute our judgment for that of the district court." Id.

In reviewing the evidence presented and relied upon in reaching this decision, the Court applied the preponderance of the evidence standard. Additionally, the Court only applied Nevada case law in reaching this decision. See, Pls.' Evidentiary Hr'g Closing Br. at 34:15-38:22.

II. FINDINGS OF FACT

This is a product liability case arising out of a February 19, 2014, incident which resulted in the death of Sherry Cunnison ("**Sherry**"). Plaintiffs have alleged that Sherry purchased a Jacuzzi Walk-In Tub to assist her in her bathing. The Walk-in Tub is a tub with a step-through door in the sidewall and an integrated seat inside. Plaintiffs allege that on February 19, 2014, Sherry was in her Jacuzzi Walk-in Tub. Plaintiffs allege that due to the defective design of the tub, Sherry slipped off the seat while reaching for the tub controls and drain and became wedged in such a way that she was unable to stand back up. Plaintiffs allege that Sherry was trapped in the tub for over 3 days. Sherry was discovered trapped in the Jacuzzi walk-in tub. Plaintiffs allege that Sherry was rushed to the hospital where she died a few days later of dehydration and rhabdomyolysis. Plaintiffs allege that Sherry's death was caused by the Walk-In Tub. Plaintiffs allege that Jacuzzi knew that the Walk-In Tub presented a hazard to users like Sherry.

Plaintiffs filed their initial Complaint against Jacuzzi on February 3, 2016. The controlling complaint is Plaintiffs' Fourth Amended Complaint ("**Complaint**") which was filed on June 21, 2017. Among other causes of action, Plaintiffs assert negligence and strict products liability claims against Jacuzzi. As a product defect case, evidence of both prior or subsequent similar incidents are relevant to whether the Walk-In Tub at issue was defective and whether Jacuzzi had notice of any such defect. Additionally, customer complaints related to the alleged defects are relevant.

This Order is the culmination of a long history of discovery disputes in this case involving Plaintiffs' legitimate efforts to discover evidence regarding other incidents involving Jacuzzi

RICHARD HARRIS LAW FIRM

Case No. 83379

IN THE SUPREME COURT OF NEVADA

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

Petitioner,

vs.

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

Respondents,

and

ROBERT ANSARA, as Special Administrator of the ESTATE OF SHERRY LYNN CUNNISON, Deceased; ROBERT ANSARA, as Special Administrator of the ESTATE OF MICHAEL SMITH, Deceased heir to the ESTATE OF SHERRY LYNN CUNNISON, Deceased; and DEBORAH TAMANTINI individually, and heir to the ESTATE OF SHERRY LYNN CUNNISON, DECEASED; HALE BENTON, Individually; HOMECLICK, LLC; JACUZZI INC., doing business as JACUZZI LUXURY BATH; BESTWAY BUILDING & REMODELING, INC.; WILLIAM BUDD, Individually and as BUDDS PLUMBING; DOES 1 through 20; ROE CORPORATIONS 1 through 20; DOE EMPLOYEES 1 through 20; DOE MANUFACTURERS 1 THROUGH 20; DOE 20 INSTALLERS 1 through 20; DOE

Docket 83379 Document 2021-34952

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

Real Parties in Interest.

APPENDIX TO REAL PARTY IN INTEREST'S ANSWERING BRIEF TO PETITIONERS' firstSTREET FOR BOOMERS & BEYOND, INC.'s & AITHR DEALER, INC.'s PETITION FOR WRIT OF MANDAMUS

VOLUME 5
PAGES 1001-1030

Benjamin P. Cloward (SBN 11087)
Ian C. Estrada (SBN 12575)
Landon D. Littlefield (SBN 15268)
RICHARD HARRIS LAW FIRM, LLP
801 South Fourth Street
Las Vegas, Nevada 89101

Attorneys for Real Parties in Interest, 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

CHRONOLOGICAL TABLE OF CONTENTS TO APPENDIX

Tab	Document	Date	Vol.	Pages
1	Opposition To Defendant Jacuzzi, Inc.'s Motion For Protective Order On Order Shortening Time	9/18/18	1	1-123
2	Plaintiff's Motion To Strike Defendant firstSTREET's And AITHR's Answers For Discovery Abuses On Order Shortening Time	1/16/19	1 2 3	124-250 251-500 501-528
3	Defendants firstSTREET And AITHR's Opposition To Plaintiffs' Motion To Strike Defendants firstSTREET And AITHR's Answers For Discovery Abuses, On Order Shortening Time	1/28/19	3 4	529-750 751-918
4	Defendants firstSTREET And AITHR's Corrected Exhibits 2, 6, 7 And 11 To Opposition To Plaintiffs' Motion To Strike Defendants firstSTREET And AITHR's Answers For Discovery Abuses, On Order Shortening Time	1/28/19	4	919-996
5	Order Striking Defendant Jacuzzi Inc., d/b/a Jacuzzi Luxury Bath's Answer As To Liability Only	1/18/20	4 5	997-1000 1001-1030

ALPHABETICAL TABLE OF CONTENTS TO APPENDIX

Tab	Document	Date	Vol.	Pages
4	Defendants firstSTREET And AITHR's Corrected Exhibits 2, 6, 7 And 11 To Opposition To Plaintiffs' Motion To Strike Defendants firstSTREET And AITHR's Answers For Discovery Abuses, On Order Shortening Time	1/28/19	3	919-996
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5	Order Striking Defendant Jacuzzi Inc., d/b/a Jacuzzi Luxury Bath's Answer As To Liability Only	1/18/20	3 4	997-1000 1001-1030
2	Plaintiff's Motion To Strike Defendant firstSTREET's And AITHR's Answers For Discovery Abuses On Order Shortening Time	1/16/19	1 2 3	124-250 251-500 501-528

CERTIFICATE OF SERVICE

I certify that on December 7, 2021, I submitted the foregoing APPENDIX TO REAL PARTY IN INTEREST'S ANSWERING BRIEF TO PETITIONERS' firstSTREET FOR BOOMERS & BEYOND, INC.'s & AITHR DEALER, INC.'s PETITION FOR WRIT OF MANDAMUS for filing via the Court's eFlex electronic filing system. Electronic notification will be sent to the following:

Philip Goodhart, Esq.
Meghan M. Goodwin, Esq.
Thorndal Armstrong Delk Balkenbush & Eisinger
1100 East Bridger Ave., Las Vegas, NV 89101-5315
Mail To: P.O. Box 2070, Las Vegas, NV 89125-2070
Attorneys for Petitioners, firstSTREET For Boomers & Beyond, Inc.; AITHR Dealer, Inc. and Real Party in Interest, Hale Benton

D. Lee Roberts, Jr., Esq.
Brittany M. Llewellyn, Esq.
Johnathan T. Krawcheck, Esq.
Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC
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Attorneys for Real Party in Interest, Jacuzzi, Inc. dba Jacuzzi Luxury Bath

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Attorneys for Real Party in Interest, Jacuzzi, Inc. dba Jacuzzi Luxury Bath

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Graham Scofield, Esq.
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3575 Piedmont Road, NE, Building 15, Suite L-130
Atlanta, GA 30305
Attorneys for Real Party in Interest, Robert Ansara

I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, at Las Vegas, Nevada, addressed as follows:

The Honorable Crystal Eller
DISTRICT COURT JUDGE – DEPT. 19
200 Lewis Avenue, Las Vegas, Nevada 89155
Respondent

NOTE - DEFENDANTS HOMECLICK, 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/ Catherine Barnhill
An Employee of Richard Harris Law Firm

walk-in tubs and other evidence relevant to Jacuzzi's knowledge of the dangerousness of its tubs.[2] From the beginning of discovery, Jacuzzi failed to disclose such evidence in violation of the mandatory disclosure requirements of NRCP 16.1, in numerous responses to Plaintiffs' written discovery requests, and in deposition testimony. In fact, Jacuzzi ardently and zealously denied that such evidence exists at all. Not only did Jacuzzi fail to produce the evidence, it consistently misrepresented facts about its efforts to locate evidence in its responses (and amended responses) to written discovery, in multiple briefs submitted to the Court, in oral argument before former Discovery Commissioner Bulla ("**Commissioner Bulla**") and this Court, and in its Petition for Writ filed in the Nevada Supreme Court.[3].

As discovery continued, the Plaintiffs and Jacuzzi became involved in numerous discovery disputes before former Discovery Commissioner Bulla ("**Commissioner Bulla**") and this Court. Ultimately, Jacuzzi was ordered to (1) produce information and documents pertaining to incidents involving injury or death and (2) specifically search for such documents wherever documents created in the ordinary course of business were stored, including but not limited to, emails.

Jacuzzi violated these orders by failing to produce – and reasonably search for – relevant documents that were in Jacuzzi's possession while, at the same time, explicitly representing to Plaintiffs, the Discovery Commissioner, this Court, and the Nevada Supreme Court that **all** relevant databases had been thoroughly and diligently searched and that **all** relevant documents had been disclosed.[4] On March 7, 2019, after over a year of discovery disputes and court involvement, Jacuzzi revealed that it withheld evidence regarding a matter involving a person dying after becoming stuck in a Jacuzzi tub. Based on this late disclosure, Plaintiffs requested an evidentiary hearing which this Court granted. After this Court granted the evidentiary hearing, Jacuzzi finally began producing hundreds of pages of evidence of other incidents involving

[2] The Court adopts the stipulated Timeline of Events submitted to the Court as **Evidentiary Hr'g Ex. 198**.

[3] The specific misrepresentations found by the Court that have been made throughout this litigation are more fully set forth and discussed in this Order in sections A through L below.

[4] Again, the specific misrepresentations found by the Court are more fully set forth and discussed in sections A through L below.

Jacuzzi walk-in tubs.[5] The Court expanded the scope of the evidentiary hearing to determine whether sanctions against Jacuzzi are appropriate and necessary. Based on the following factual findings, the Court finds that striking Jacuzzi's Answer as to liability only is necessary and appropriate.

A. JACUZZI WILLFULLY & KNOWINGLY MISREPRESENTED FACTS IN RESPONSES TO PLAINTIFFS' WRITTEN DISCOVERY REQUESTS

From the beginning of discovery, Jacuzzi definitively and conclusively claimed there are no prior incidents. On May 1, 2017, Plaintiffs served their first set of Interrogatories[6] and Requests for Production of Documents[7] on Jacuzzi. Plaintiffs requested information on whether Jacuzzi had ever received notice of any bodily injury claims arising out of the use of a Jacuzzi walk-in tub. In its Answers to Interrogatories[8] and Responses to RFPDs,[9] Jacuzzi claimed to only be aware of two incidents nationwide. Coincidentally, the two incidents that Jacuzzi claimed to know about were the instant litigation and another case involving the Smith family (whom Plaintiffs' Counsel represents in an unrelated lawsuit against Jacuzzi). Jacuzzi did not disclose any other prior or subsequent incidents. Jacuzzi misrepresented the facts in its written discovery responses as was on full display at the evidentiary hearing when hundreds of pages of evidence was presented pertaining to a significant number of prior and subsequent incidents.[10]

B. JACUZZI WILLFULLY & KNOWINGLY MISREPRESENTED FACTS IN AMENDED RESPONSES TO PLAINTIFFS' MAY 1, 2017, INTERROGATORIES

Plaintiffs' Counsel, believing it odd that the only other incident that Jacuzzi knew about was the other incident where he was also plaintiff's counsel, met and conferred with Jacuzzi and challenged Jacuzzi's written discovery responses as not being full and complete. Jacuzzi

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[5] **Evidentiary Hr'g Ex. 199** is a "Master OSI (Other Similar Incidents) Summary" Excel sheet created by Plaintiffs which summarizes the contents of the relevant Jacuzzi disclosures. The Court has reviewed the Aff. of Catherine Barnhill (**Ex. 200**) and accepts that **Ex. 199** is an accurate summary of the documents it describes.

[6] See, Pl. Tamantini's 1st Set of Interrog. to Def. Jacuzzi, served May 1, 2017, previously admitted as **Evidentiary Hr'g Ex. 207**.

[7] See, Pl. Tamantini's 1st Set of Req. for Produc. of Doc. to Def. Jacuzzi, dated May 1, 2017, previously admitted as **Evidentiary Hr'g Ex. 208**.

[8] See, Jacuzzi's First Resp. to Pl. Tamantini's 1st Set of Interrog., served June 19, 2017, previously admitted as **Evidentiary Hr'g Ex. 173**.

[9] See, Jacuzzi's First Resp. to Pl. Tamantini's 1st Set of Req. for Produc. of Doc., served June 19, 2017, previously admitted as **Evidentiary Hr'g Ex. 172**.

[10] See, fn 5, *supra*.

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represented to Plaintiffs that it conducted another search of its databases to identify relevant similar incidents. Then, Jacuzzi served Amended Responses to Interrogatories on December 8, 2017. The Amended Responses again stated that there were no prior incidents.[11] As was revealed at the evidentiary hearing and proceedings leading up to that, Jacuzzi had misrepresented the facts in its Amended Responses to Interrogatories.[12]

C. JACUZZI WILLFULLY & KNOWINGLY MISREPRESENTED FACTS IN AN APRIL 23, 2018, LETTER TO PLAINTIFFS

In February of 2018, still in disbelief that the only two families nationwide that had a problem with Jacuzzi Walk-In tubs were coincidentally being represented by the same lawyers, Plaintiffs again met and conferred with Jacuzzi and asked Jacuzzi to look again for all incidents. Plaintiffs and Jacuzzi agreed upon twenty (20) search terms for Jacuzzi to utilize in its search.[13] On April 23, 2018, Jacuzzi sent a letter to Plaintiffs claiming to have performed another search utilizing the agreed-upon search terms. The letter stated: "[a]s agreed, Jacuzzi has performed a search for prior incidents, using the search terms you proposed . . . [t]he search is now complete and no responsive documents were discovered."[14] As was revealed at the evidentiary hearing and proceedings leading up to that, Jacuzzi had misrepresented the facts in its April 23, 2018, letter to Plaintiffs.[15]

D. JACUZZI WILLFULLY & KNOWINGLY MISREPRESENTED FACTS IN SEVERAL RULE 30(B)(6) DEPOSITIONS

In addition to the written discovery, Jacuzzi's NRCP 30(b)(6) witness, William Demeritt (Director of Risk Management), steadfastly testified that there were no prior **or** subsequent incidents.

E. PLAINTIFFS FIRST MOTION TO STRIKE

While Jacuzzi continued to deny the existence of other incidents, Plaintiffs independently

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[11] See, Jacuzzi's Am. Resp. to Pl. Tamantini's 1st Set of Interrog., served Dec. 8, 2017, previously admitted as **Evidentiary Hr'g Ex. 174**

[12] See, fn 5, *supra*.

[13] See, Email correspondence between Joshua Cools, Esq. and Benjamin Cloward, Esq., Feb. 12, 14 & 15, 2018, previously admitted as **Evidentiary Hr'g Ex. 209**.

[14] See, Letter from Jacuzzi to Pls., Apr. 23, 2018, previously admitted as **Evidentiary Hr'g Ex. 210.** (emphasis added).

[15] See, fn 5, *supra*.

discovered two subsequent incidents involving persons complaining of injuries from the use of a Jacuzzi walk-in tub. Because Jacuzzi failed to disclose the two subsequent incidents via NRCP 16.1 disclosures, responses to discovery requests, or deposition testimony, Plaintiffs filed a Motion to Strike Defendant Jacuzzi's Answer on June 22, 2018.[16]

F. JACUZZI MISREPRESENTED FACTS TO THE COURT IN FILED BRIEFS

Even in the face of a motion to strike, Jacuzzi continued misrepresenting the facts to Plaintiffs and began misrepresenting facts to the Court as well. In Plaintiffs' Motion to Strike Jacuzzi's Answer, Plaintiffs argued that the undisclosed subsequent incidents were evidence of Jacuzzi's bad faith discovery conduct and requested that the Court strike Jacuzzi's Answer.

On July 12, 2018, Jacuzzi filed an Opposition to Plaintiffs' (first) Motion to Strike Jacuzzi's Answer. See, Pls.' Evidentiary Hr'g Closing Br. at 6:1-8:18. Jacuzzi affirmatively stated, multiple times, that it had produced all relevant evidence related to prior incidents, that there are no prior incidents, and that it had not withheld any evidence. Jacuzzi made the following false statements to the Court:

- "In sum, **Jacuzzi has produced all relevant evidence related to other prior incidents**."[17]
- "Furthermore, Plaintiffs state: 'At this point, it has become clear that Jacuzzi is aware of prior similar incidents but has willingly withheld such evidence.' This too is false. **There are no other prior incidents**; Jacuzzi has withheld nothing."[18]
- "Jacuzzi's attorneys, in-house and outside counsel, oversaw the search and analysis of documents as described in counsel's correspondence to Plaintiffs. *See* April 23, 2018 letter from J. Cools to B. Cloward, attached as Exhibit F, and Cools Decl. at ¶ 10, attached as Exhibit E. **Fundamentally, there were no prior similar incidents to Jacuzzi's knowledge**. Neither Jacuzzi nor its attorneys withheld any evidence."[19]
- "**Jacuzzi has consistently produced all prior incidents**, which are the only documents relevant to Jacuzzi's notice—Plaintiffs' own articulated basis for production."[20]

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[16] See, Pls.' Mot. to Strike Def. Jacuzzi, Inc. d/b/a Jacuzzi Bath's Answer, **Evidentiary Hr'g Ex. 175**.
[17] Id. at 7:21 (emphasis added).
[18] Id. at 11:15-17 (emphasis added).
[19] Id. at 12:9-13 (emphasis added).
[20] Id. at 13:3-4 (emphasis added).

At the evidentiary hearing, and events preceding it, evidence of many, many prior incidents in addition to many, many subsequent incidents was produced showing that in addition to the Plaintiffs, now Jacuzzi was misrepresenting the facts to the Court.[21]

G. THE JULY 20, 2018, HEARING AND ORDER

The hearing on Plaintiffs' Motion to Strike Jacuzzi's Answer came on for hearing on July 20, 2018. At the hearing, Commissioner Bulla made her first ruling in this case regarding Jacuzzi's production obligations. Up until that time, Jacuzzi took the position that only prior incidents needed to be produced.[22] At the hearing, Commissioner Bulla granted Plaintiffs alternative relief and affirmatively, clearly, and unequivocally ordered Jacuzzi to produce information for all accidents or incidents involving injury or death from 2008 to present.[23] There was no limitation to "serious" or "significant" injuries. Instead, Jacuzzi was ordered to produce information related to **any** type of injury – even a "pinched finger."[24] The Order required Jacuzzi to produce such documents by August 17, 2018.[25] Additionally, there was no limitation to "claims" or incidents where a customer was demanding remuneration or demanding that something be done like a refund or removal of the tub as Jacuzzi's prior counsel Vaughn Crawford later tried to claim. Commissioner Bulla continued the hearing to August 29, 2018.

Just five days after the hearing on Plaintiffs' Motion to Strike Jacuzzi's Answer, on July 25, 2018, Mr. Templer, Jacuzzi's in-house counsel, sent an email to the Director of Customer Service, Kurt Bachmeyer, Regina Reyes, a customer service manager, William Demeritt, the Vice-President and Risk Manager, and Jess Castillo, an individual in Information Technology (with Anthony Lovallo, General Counsel copied).[26]

In that email, Mr. Templer, in-house counsel for Jacuzzi, instructed all recipients to search

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[21] See, fn 5, *supra*.

[22] The Court finds that Jacuzzi's argument that it was only required to produce prior incidents was a pre-textual argument which Jacuzzi made to defend against Pls.' Mot. to Strike (which was based on subsequent incidents Pls.' Counsel found).

[23] See, Rep.'s Tr. of Hr'g, July 20, 2018, **Evidentiary Hr'g Ex. 177** at 9:21-24.

[24] See, Rep.'s Tr. of Hr'g, July 20, 2018, **Evidentiary Hr'g Ex. 177** at 17:9-20.

[25] Id.

[26] Email from Ron Templer, Esq. to Various Jacuzzi Employees, July 25, 2018, (produced to Pls. on Oct. 10, 2019) attached as **Ex. 217 to Pls.' Evidentiary Hr'g Closing Br.**

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for "[a]ll letters, emails, customer service/warranty entries and all other communications and documents (written or electronic) that mention or refer to a personal injury sustained in a walk-in tub from 1/1/2008 to the present."[27] Additionally, in-house counsel, Mr. Templer, informed the recipients that a proper search "require[d] a search of **all** databases (both current and old), **email** and other potential locations where the information may be stored."[28] Finally, the email revealed that Jacuzzi knew full well the importance of the search and the consequences of not obeying the Court order. In fact, Mr. Templer's email ends with a bold, ALL CAPS warning stating the importance of the search: "**THIS SEARCH AND PRODUCTION WAS ORDERED BY A COURT, AND AS SUCH, NEEDS TO BE TIMELY AND COMPLETE, FAILURE TO PROPERLY AND THOROUGHLY CONDUCT THE SEARCH AND PRODUCE ALL REQUESTED INFORMATION WILL RESULT IN MAJOR ADVERSE CONSEQUENCES TO THE COMPANY**."[29]

This search was never performed as Jacuzzi admitted for the first time at the evidentiary hearing when Mr. Templer, in-house counsel, testified that ***some*** emails were searched, but not all.[30]

H. JACUZZI MISREPRESENTED FACTS TO COMMISSIONER BULLA ON AUGUST 29, 2018

At the continued hearing on Plaintiffs' Motion to Strike, Jacuzzi made numerous misrepresentations regarding its search efforts and the results of its search. Jacuzzi made the following representations to the Court:

- "there were no prior incidents;"[31]
- "we ran a search based off of the parameters you had provided…and we identified nothing…;"[32]

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[27] Id.

[28] Id.

[29] Id.

[30] See, Rep.'s Tr. of Evidentiary Hr'g, Day 2, **Ex. 202 to Pls.' Evidentiary Hr'g Closing Br.** at 149:19-24.

> Q: Remember I asked did Jacuzzi ever search these terms through email. Do you remember that? A: Yes. Q: And you said no. A: I said some email searches were done. **It has not been run against the entire email database**.

[31] See, Rep.'s Tr. of Hr'g, Aug. 29, 2018, previously admitted as **Evidentiary Hr'g Ex. 179** at 7:3-6 (emphasis added).

[32] Id. at 2:18-3:3 (emphasis added).

- "…there's nothing related…;"[33]
- "We have searched and it's Jacuzzi's position that there are none."[34]

As was revealed at the evidentiary hearing and proceedings leading up to that, Jacuzzi's representations to then-Commissioner Bulla were all false.[35] Jacuzzi had not in fact performed the search that Commissioner Bulla requested.[36]

I. JACUZZI MISREPRESENTED FACTS IN THE MOTION FOR PROTECTIVE ORDER

After the July 20, 2018, hearing, Plaintiffs served additional written discovery requests. On September 13, 2018, Jacuzzi filed a Motion for Protective Order regarding Plaintiffs' RFPDs in which Jacuzzi made similar misrepresentations that no other incidents existed and that Jacuzzi had complied with Commissioner Bulla's order to conduct searches for relevant documents (i.e., "Jacuzzi has complied with this Court's order and produced records **showing all incidents from 2008 to present**;" "- they did not contain any prior incidents of personal injury even remotely related to the claims.").[37] The representations set forth in Jacuzzi's Motion regarding other incidents were false.[38]

J. THE SEPTEMBER 19, 2018, HEARING: JACUZZI MISREPRESENTED FACTS AND THE COURT'S ORDER

Jacuzzi's Motion for Protective Order came on for hearing before Commissioner Bulla on September 19, 2018. At the hearing, Jacuzzi represented, in violation of Commissioner Bulla's July 20, 2018, Order, that it performed a search and that there were no other incidents. [39]

Nonetheless, Commissioner Bulla ordered Jacuzzi to conduct another search.[40] Commissioner Bulla ordered Jacuzzi to "double check" its databases and to "take a look again with fresh eyes."[41] Commissioner Bulla also ordered Jacuzzi to search for all documents prepared

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[33] Id. at 7:7-10 (emphasis added).

[34] Id. at 10:8-10; See also, Joshua Cools, Esq. Mem. to Disc. Commissioner Bulla, Oct. 12, 2018, previously admitted as **Evidentiary Hr'g Ex. 212** ("**there were no pre-incident relevant claims**.") (emphasis added).

[35] See, fn 5, *supra*.

[36] See, fn 30, *supra*.

[37] See, Jacuzzi's Mot. for Protective Order, filed Sept. 11, 2018, Pls. previously admitted as **Evidentiary Hr'g Ex. 211 (emphasis added)**.

[38] See, fn 5, *supra*.

[39] See, Rep.'s Tr. of Hr'g, Sept. 19, 2018, **Evidentiary Hr'g Ex. 180** at 7:7-10:15 (emphasis added).

[40] See, Rep.'s Tr. of Hr'g, Sept. 19, 2018, **Evidentiary Hr'g Ex. 180** at 6:6-18 (emphasis added).

[41] Id. at 23:2-6.

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in the ordinary course of business. Commissioner Bulla made it absolutely clear that the Court was requiring Jacuzzi to search all potential sources of information, including Jacuzzi's email systems.[42] Notably, it was upon Jacuzzi's request for clarification wherein Jacuzzi raised concerns about the potential burden for conducting a detailed search of emails when Commissioner Bulla made it abundantly clear that emails were to be included and that Jacuzzi was required to search all sources containing documents created in the ordinary course of business.[43] In particular, the following exchange took place:

> MR. COOLS: Can I just clarify something in regards to something like 43? All documents relating to complaints made to you about your walk-in tubs from January 1, 2012 to the present. . . .
>
> MR. COOLS: **My question is obviously, you know, that could also pertain to internal communications via <u>email</u> about that. Are you requiring us to also do an ESI search and privilege log for all privileged communications about those claims as well?**
>
> DISCOVERY COMMISSIONER: **Ordinary course of business is what I'm talking about**. . . .
>
> DISCOVERY COMMISSIONER: Okay? **<u>To the extent that the complaint gets passed on to the lawyer and the lawyer is making opinions about it, I would say you need to do a privilege log.</u>**
>
> MR. COOLS: That's just extremely costly and burdensome to have to go through and do –
>
> DISCOVERY COMMISSIONER: Okay, but we're limiting it to the time frame, and this one is January 1st of 2012 and it deals with wrongful death or bodily injury. So it wouldn't involve any of the warranties, it wouldn't involve anything where there's no injury. How many claims could you possibly have?
>
> MR. COOLS: **I'm just saying even doing the search based off of the ten or eleven claims, subsequent claims that have been produced**, having to go through and find all the custodians that may have touched that claim do a search, have counsel review for privilege, those are just very burdensome and costly endeavors. If that's part of your ruling, I understand.
>
> DISCOVERY COMMISSIONER: Well, I don't want this to be overly burdensome and costly for the defendant, but you cannot hide behind a privilege not to produce

[42] <u>See</u>, Rep.'s Tr. of Hr'g, Sept. 19, 2018, **Evidentiary Hr'g Ex. 180** at 25:2-26:24 (emphasis added).

[43] <u>See</u>, <u>Id.</u>

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> documents that were in the ordinary course of business. **And when you say something like that, it worries me.**
>
> MR. COOLS: I don't know that -- frankly, Your Honor, I don't know that any exist. **I'm just saying I'm sure there's emails about it. So, you know, if a claim came in and it's escalated or whatever – . . .**
>
> MR. COOLS: I mean, these aren't about our claim, so we're getting into a granular level on these other claims that –
>
> DISCOVERY COMMISSIONER: **All documents related to complaints made to you about your walk-in tubs from January 1st, 2012 to the present**. The complaints have to be about wrongful death or bodily injury. So any warranty claims, any non-injury claims are not part of this production. **Documents that are produced or prepared in the ordinary course of business have to be produced. If some point the claim goes to the legal department, you just need to identify the fact that any other documents are part of the legal -- it went to legal and are covered by work product privilege or whatever it is**. I mean, I don't know how many we're talking about. I don't expect you to do this for every warranty claim.[44]

Jacuzzi was required to search all locations where documents made in the ordinary course of business were stored including emails. This search was never performed as Jacuzzi admitted for the first time at the evidentiary hearing when Mr. Templer testified that ***some*** emails were searched, but not all.[45]

K. JACUZZI FULLY UNDERSTOOD THE SCOPE OF COMMISSIONER BULLA'S ORDERS

The Court finds that Commissioner Bulla's orders were clear and unambiguous. Additionally, the Court finds that Jacuzzi fully understood the Orders. The fact that Jacuzzi fully understood the Orders is illustrated in Jacuzzi's own statements to the Nevada Supreme Court and the internal email sent by Mr. Templer, in-house counsel.

Jacuzzi sought relief from the orders by filing a Petition for Writ of Prohibition with the Nevada Supreme Court. Jacuzzi's own description of the orders in its Petition shows that Jacuzzi fully understood the orders. Jacuzzi's Petition accurately describes the orders as follows:

> [T]he district court ordered Jacuzzi to disclose *all* incidents of *any* bodily injury,

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[44] See, Id.

[45] See, fn 30, *supra*, (A: I said some email searches were done. **It has not been run against the entire email database**.)

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> however slight, or however dissimilar, involving *any* model of Jacuzzi® walk-in tub, regardless of how the injury occurred (i.e., if a consumer pinched a finger closing the door of a walk-in-tub, it would be subject to the Court's order), including the private identifying information of Jacuzzi's customers. [46]
>
> [T]he district court's order … requires Jacuzzi to find and disclose *any* incident involving *any* bodily injury at all, however slight, and involving any of Jacuzzi's walk-in tubs, whether containing the same alleged defect or not, and regardless of any similarity to plaintiffs' claims of defect.[47]

Additionally, the email sent by Mr. Templer documents that Jacuzzi fully understood the importance of complying with Commissioner Bulla's order.[48]

L. JACUZZI MISREPRESENTED THE FACTS TO THE NEVADA SUPREME COURT

Jacuzzi's Petition falsely stated: "[t]o date, Jacuzzi has identified and produced to Plaintiffs all of the evidence in Jacuzzi's possession of other prior and subsequent incidents of alleged bodily injury or death related to the Jacuzzi tub in question."[49] Jacuzzi's Petition also falsely stated that Jacuzzi had "already produced the universe of possibly relevant other incidents involving the tub in question."[50] Evidence produced prior to and at the evidentiary hearing revealed that the statements to the Nevada Supreme Court were false.[51] Further, in-house counsel Mr. Templer's testimony at the evidentiary hearing reveals that Jacuzzi had not performed the requisite searches to make such statements which were also false.[52]

M. PLAINTIFFS' RENEWED MOTION TO STRIKE

In November of 2018, Jacuzzi and Defendant *first*STREET produced thousands of email correspondence. Buried in the emails, Plaintiffs discovered a woman named Jerre Chopper who made numerous complaints to Jacuzzi about the dangerousness of her walk-in tub. Plaintiffs filed a Renewed Motion to Strike arguing that Jacuzzi withheld evidence regarding Ms. Chopper as well as other evidence regarding customer complaints about the slipperiness of the tubs.

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[46] See, Jacuzzi's Writ of Prohibition, filed Dec. 7, 2018, **Evidentiary Hr'g Ex. 185** at 3-4.

[47] Id. at 16.

[48] See, fn 26, *supra ("***FAILURE TO PROPERLY AND THOROUGHLY CONDUCT THE SEARCH AND PRODUCE ALL REQUESTED INFORMATION WILL RESULT IN MAJOR ADVERSE CONSEQUENCES TO THE COMPANY**.")

[49] See, Jacuzzi's Writ of Prohibition, filed Dec. 7, 2018, **Evidentiary Hr'g Ex. 185** at 16 (emphasis added).

[50] See, Jacuzzi's Writ of Prohibition, filed Dec. 10, 2018, **Evidentiary Hr'g Ex. 185** at 8, 13, 15, (emphasis added).

[51] See, fn 5, *supra*.

[52] See, fn 30, *supra*.

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On March 4, 2019, the Court entered a ***first*** Minute Order setting an Evidentiary Hearing on the matter. The March 4, 2019, Minute Order also ordered the parties to identify, by Thursday, March 7, 2019, "[t]he names of any relevant customers of Jacuzzi/First Street that have died..."[53]

On March 12, 2019, this Court issued a ***second*** Minute Order stating that the Court concluded that "neither Jacuzzi nor First Street engaged in any egregious bad faith conduct, or intentional violation of any discovery Order, or conduct intended to harm Plaintiff."[54] Therefore, the Court vacated the previously scheduled Evidentiary Hearing. The ***second*** Minute Order was made **before** the Court appreciated that Jacuzzi had withheld the "**Pullen Death**" discussed below. Additionally, the *second* Minute Order was made **before** the Court held the evidentiary hearing where Jacuzzi's misconduct was thoroughly documented over approximately four days.

N. JACUZZI VIOLATED THE JULY 20, 2018, ORDER

The Court finds that Jacuzzi violated the July 20, 2018, order as follows:

1. Plaintiffs' Motion for Reconsideration: the Pullen Death

On March 7, 2019, in response to the Court's March 4, 2019, Minute Order, Jacuzzi filed its "Brief Pursuant to the March 4, 2019, Minute Order" which revealed that Jacuzzi had been aware ***since October 2018*** of a death involving a person, Susan Pullen, "getting stuck" in a Jacuzzi walk-in tub ("**Pullen Death**"). Plaintiffs filed a Motion for Reconsideration arguing that Jacuzzi's failure to disclose the Pullen Death until March 7, 2019, was a violation of Commissioner Bulla's clear orders to produce all evidence of injury or death involving a Jacuzzi walk-in tub.[55] The hearing on Plaintiffs' Motion for Reconsideration came on for hearing on July 1, 2019, and the Court ordered an evidentiary hearing to determine whether Jacuzzi wrongfully withheld the Pullen Death.

a. Jacuzzi Did in Fact Violate the July 20, 2018, Order by Withholding the Pullen Death

The Court expressly now finds that Jacuzzi willfully and wrongfully withheld the Pullen Death in violation of Commissioner Bulla and this Court's Orders. On October 1, 2018, Robert

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[53] See, **Ex. 1 to Pls. Mot. for Reconsideration**.

[54] See, **Ex. 2 to Pls. Mot. for Reconsideration**.

[55] See, **Ex. 2 to Pls. Mot. for Reconsideration**.

Pullen called Jacuzzi and informed Jacuzzi of his mother's death. Robert Pullen called Jacuzzi again on October 30, 2018. The relevant Salesforce (Jacuzzi's Customer Relations Management software) document states: "Customer wants to take legal action because he thinks the tub killed his mom." At the evidentiary hearing, it was revealed that Jacuzzi's Corporate Counsel, Ron Templer, was immediately made aware of the Pullen Death that same day.[56] Jacuzzi, in consultation with its outside counsel, made the decision not to produce information pertaining to the Pullen Death. The Court finds that Jacuzzi's failure to timely produce information pertaining to the Pullen Death was a violation of Commissioner Bulla's July 20, 2018, and September 19, 2018, Orders.

Additionally, the Court rejects Jacuzzi's argument that it was not required to disclose the Pullen Death because it was not a "claim." The Salesforce documents specifically state that Robert Pullen "want[ed] to take legal action because he thinks the tub killed his mom." The Court finds that Jacuzzi's narrow interpretation of the term "claim" was grossly unreasonable and in bad faith. In a previous hearing on July 1, 2019, Jacuzzi's outside counsel, Vaughn Crawford, posited that Jacuzzi's interpretation of the word "claim" was "a demand for remediation of some sort, whether it's money, whether it's reimbursement..."[57] The fact that Robert Pullen advised Jacuzzi

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[56] See, Rep.'s Tr. of Evidentiary Hr'g, Day 2, **Ex. 202 to Pls.' Evidentiary Hr'g Closing Br.** at 32:1-7.

> Q: So when did you receive notice? Because no emails have been produced with the salesforce documents, no emails from anybody internally have been produced in this case. So when did you receive notice that this individual thinks the tub killed his mom?
>
> A: The Pullen incident specific?
>
> Q: Yeah.
>
> A: October 30, 2018.

[57] See, Hr'g Tr., July 1, 2019 at 51:12-52:11; see also generally, Id. at 54:13-22, 65:18-67:8.

> THE COURT: Wait, hold on, hold on. How do you interpret the word claim? Does the individual calling have to actually use the word claim or do they have to say I want money? What is it that the Pullen family would have had to say for Jacuzzi or Jacuzzi's insured to believe that was a claim?
>
> MR. CRAWFORD: Your Honor, I think a claim is a demand for remediation of some sort, whether it's money, whether it's reimbursement, whether it's take my product back.
>
> THE COURT: What was the substance of the communication here?
>
> MR. CRAWFORD: With -- on the blood clot incident?
>
> THE COURT: I mean, I'm sure the person wasn't calling up just to say, hey, my dad died, just wanted you to know. Not a big deal, but just thought you might need to know that. Have a nice day. That wasn't what was going on here, right?

that he wanted to take legal action undermines Jacuzzi's argument. Therefore, the Court rejects Jacuzzi's argument that the Pullen Death was not a "claim."

2. Jacuzzi Willfully Violated the July 20, 2018, Order to Produce Documents Involving Personal Injury or Death

After this Court ordered an evidentiary hearing, Jacuzzi finally began producing hundreds of pages of documents containing evidence of both prior and subsequent incidents. On July 26, 2019, over a year after Commissioner Bulla's July 20, 2018, Order and the business day before the deposition of Jacuzzi's Director of Customer Service, Kurt Bachmeyer; two Customer Service Employees, Eda Rojas and Deborah Nuanes; and the assistant to Jacuzzi's Director of Customer Service (Mr. Bachmeyer), Mayra Lopez; and three business days before the court-ordered forensic computer search of Jacuzzi's Salesforce system, Jacuzzi served its Eighteenth Supplemental NRCP 16.1 Disclosure. Jacuzzi's Eighteenth Supplement contained evidence of up to forty-seven (47) prior and subsequent incidents[58] with forty-three (43) of those being **prior** to the Cunnison incident.[59] On August 12, 2019, Jacuzzi served its Nineteenth Supplemental NRCP 16.1 Disclosure which contained three **prior** incidents and **31** subsequent incidents. Jacuzzi also produced additional incidents on August 23, 2019, and August 27, 2019.[60]

Jacuzzi's July 26, 2019; August 12, 2019; August 23, 2019; and August 27, 2019; disclosures (collectively, "Jacuzzi's Late Disclosures") were a "document dump" of emails, communications and previously undisclosed Salesforce entries which reference not only **prior** customer complaints, but also reference **prior incidents involving bodily injury**.

The Court adopts Plaintiffs' Exhibit 205, which is a table summarizing the 15th, 18th, 19th, 22nd, and 23rd NRCP 16.1 Supplements.[61] A sampling of the documents shows that Jacuzzi

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MR. CRAWFORD: The substance of the claim, and again, I think 15 or 18 or 20 pages of those communications have been turned over the Plaintiffs. The substance of the claim was that --

THE COURT: See, you just used the word claim. I'm sure that was a slip, but --

MR. CRAWFORD: You got me going. You got me going, Your Honor.

[58] The Court adopts Pls.' use of the term "incident" to be synonymous with claims, occurrences, notices, episodes, warnings, notifications, occasions, events, complaints or any other word that would cause Jacuzzi to know about a defect in the walk-in tub.

[59] Notably, at this time, the case had a firm trial setting for Oct. 28, 2019.

[60] In Jacuzzi's 22nd and 23rd NRCP 16.1 Suppl.; see also, **Pls.' Ex. 205 to Evidentiary Hr'g Closing Br**.

[61] See, Tables Summarizing Pertinent Doc. of Jacuzzi's 15th, 18th, 19th, 22nd, 23rd NRCP 16.1 Suppl., **Pls.' Ex. 205 to**

knew of customers who complained of the same risks that Plaintiffs allege caused Sherry's death. For example, a December 27, 2013, email (prior to the Cunnison DOL), from one of Jacuzzi's dealers/installers to Jacuzzi informed Jacuzzi about ***frequent*** customer complaints and referenced injured customers. The email specifically referenced four customers who had slipped and two who had **seriously** injured themselves:

> Also he says the bottom of the tub is extremely slippery, he has slipped, and also a friend has slipped in using it. **We get this complaint a lot, we have two customers right now that have injured themselves seriously and are threatening law suits**. We have sent out bath mats to put in the tub to three other customers because they slipped and were afraid to use the tub.[62]

A July 9, 2012, email chain (also prior to the Cunnison DOL), with the Subject "All FirstStreet unresolved incidents" contained a reference to a customer with broken hips complaining about the slipperiness and lack of adequate grab bars.[63] An April 9, 2013, email chain (also prior to the Cunnison DOL) contained information about a customer named Donald Raidt who called to complain that he slipped and fell and hurt his back. He informed Jacuzzi that he is willing to get a lawyer if the tub is not taken out.[64] A December 2013 email (also prior to the Cunnison DOL) stated "**we have a big issue** and . . . Due to the circumstances involved with time line and **slip injuries this needs to be settled**…"[65] A June 2013, email chain (prior to Cunnison DOL) with the Subject, "Service issues on 5230/5229" from Regina Reyes to Kurt Bachmeyer referred to a customer I. Stoldt, who became "stuck in tub." [66] The same email mentioned David Greenwell, who slipped and became stuck in the footwell for two hours.[67] A second email chain showed that Mr. Greenwell actually had to call the fire department to get out.[68] Similarly, that same email references a customer "C. Lashinsky" whose partner slipped in

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Evidentiary Hr'g Closing Br.

[62] See, **Evidentiary Hr'g Ex. 11** at JACUZZI005320 (emphasis added).

[63] See, **Evidentiary Hr'g Ex. 2** at JACUZZI005287.

[64] See, **Evidentiary Hr'g Ex. 8** at JACUZZI005367.

[65] See, **Evidentiary Hr'g Ex. 41** at JACUZZI005327 (emphasis added).

[66] See, **Evidentiary Hr'g Ex. 10** at JACUZZI005374.

[67] Id.

[68] See, Id. at Jacuzzi005623.

the tub such that the customer "had to remove the door to get her out."[69]

The Court finds that these documents were relevant and discoverable documents which should have been voluntarily disclosed pursuant to NRCP 16.1 and in response to Plaintiffs' discovery requests. The Court finds that Jacuzzi did not timely disclose these documents. Additionally, the Court finds that Jacuzzi repeatedly misrepresented to Plaintiffs, the Discovery Commissioner, this Court, and the Nevada Supreme Court that these documents did not exist. By not disclosing these documents by August 17, 2018, Jacuzzi violated Commissioner Bulla's July 20, 2018, Order. Jacuzzi was in continuous violation of Court Orders with each misrepresentation described herein.

J. JACUZZI VIOLATED THE SEPTEMBER 19, 2018, ORDER TO SEARCH ALL DOCUMENTS MADE IN THE ORDINARY COURSE OF BUSINESS

In violation of Court orders, the Court finds that Jacuzzi did not search relevant emails. Jacuzzi did not look with "fresh eyes." Jacuzzi did not produce documents made in the ordinary course of business. The Court finds that Jacuzzi knowingly and willingly failed to conduct an adequate, reasonable search of its email systems.

At the Evidentiary Hearing Jacuzzi admitted for the first time that it had not, in fact, obeyed Commissioner Bulla's order when Mr. Templer, Jacuzzi's in-house counsel, testified that ***some*** emails were searched, but not all.[70] The Court rejects Mr. Templer's testimony that Jacuzzi thought that all relevant emails would be found in Jacuzzi's KBM and Salesforce databases. See, Pls.' Evidentiary Hr'g Closing Br. at 23:13-29:17; see also, Pls.' Reply Br. at 16:14-23:13; 32:3-33:17. In direct violation of Commissioner Bulla's order, the Court finds that Jacuzzi did not search for all documents made in the ordinary course of business.

1. Jacuzzi Violated Commissioner Bulla's Order When It Lied in its Responses to Plaintiffs' Recent Written Discovery Requests

At the September 19, 2018, hearing, Commissioner Bulla found that Plaintiffs' RFPD 43 sought relevant information but was overbroad. Plaintiffs served an amended RFPD 43 on November 29, 2018. Plaintiffs' amended RFPD 43 was specifically limited to the scope ordered

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[69] Id.

[70] See, fn 30, *infra*.

by Commissioner Bulla:

> **REQUEST NO. 43.**
>
> ~~All documents relating to complaints made to you about your Walk-In Tubs from January 1, 2012 to the present.~~
>
> **All documents relating to complaints involving bodily injury or death made to You (directly or indirectly) about Your Walk-In Tubs. The scope of this Request is limited to incidents which occurred (or were alleged to have occurred) from 2008 to present.**
>
> **Pursuant to the Discovery Commissioner's Report and Recommendations (as approved by the trial court), other than social security numbers, Your response to this request shall not redact the names, addresses, telephone numbers, or other contact information of customers who have made complaints or claims to Jacuzzi.**[71]

By this point, Mr. Templer, in-house counsel, had already sent his July 25, 2019, email to Mr. Bachmeyer, Ms. Reyes, Mr. Demeritt, and Mr. Castillo instructing them to search all databases, including email. By this point, Mr. Templer, in-house counsel, had already attended a November 2, 2018, hearing when Commissioner Bulla noted that complaints could come directly from dealers to Jacuzzi and that those types of complaints must be found and disclosed. By this point, Jacuzzi had already filed its Petition for Writ acknowledging the scope of the court orders. Nonetheless, on January 9, 2019, Jacuzzi served its Response to Plaintiff Ansara's Amended RFPD 43. Jacuzzi's Response simply referred to the previously disclosed ten subsequent incident documents which Jacuzzi had already produced (in redacted form):

> **AMENDED REQUEST FOR PRODUCTION NO. 43:**
>
> ~~All documents relating to complaints made to you about your Walk-In Tubs from January 1, 2012 to the present.~~
>
> **All documents relating to complaints involving bodily injury or death made to You (directly or indirectly) about Your Walk-In Tubs. The scope of this Request is limited to incidents which occurred (or were alleged to have occurred) from 2008 to present.**
>
> **Pursuant to the Discovery Commissioner's Report and Recommendations (as approved by the trial court), other than social security numbers, Your response to this request shall not redact the names, addresses, telephone numbers, or other contact information of customers who have made complaints or claims to Jacuzzi.**
>
> **RESPONSE:**
>
> Jacuzzi objects to this production request because it is overbroad

[71] See, Pl. Ansara's Am. 2nd Set of Req. for Prod. of Doc. to Jacuzzi (strikethrough in original), served Nov. 29, 2018, **Evidentiary Hr'g Ex. 184** at 13.

> and unduly burdensome, because it requires production not limited in scope to the subject Walk-In Bathtub or Plaintiffs' allegations. Jacuzzi objects to this request as vague, ambiguous and seeking information that is irrelevant to the subject matter of this action and not likely to lead to the discovery of relevant or admissible evidence. Jacuzzi further objects because the production seeks information protected from disclosure by the right of privacy of third parties.
>
> Jacuzzi refers Plaintiffs to the 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 Plaintiffs on August 17, 2018, bates nos. JACUZZI0029l2-002991. The production should not be regarded as a waiver to the documents and information's relevance or admissibility.
>
> Jacuzzi has provided redacted copies of the requested records, and has a writ pending regarding the personal information of third parties.[72]

Even though Commissioner Bulla had already ordered Jacuzzi to do more research, to look at its systems with "fresh eyes,"[73] and to supplement its responses to RFPD 43,[74] Jacuzzi still failed to identify and produce any of the documents produced nearly nine months later. Instead, Jacuzzi affirmatively represented that the only documents regarding other incidents of personal injury or death in walk-in tubs from 2008 to present were already produced. Jacuzzi did not search relevant emails. The Court finds that Jacuzzi did not look with "fresh eyes." Jacuzzi did not produce documents made in the ordinary course of business. Most troublesome, Jacuzzi did not even produce the Pullen matter.[75]

Rather than produce relevant evidence, Jacuzzi objected that the Request was overbroad and unduly burdensome. Commissioner Bulla had already considered these objections and ordered Plaintiffs to amend their Requests. Plaintiffs' Amended RFPD 43 is exactly within the scope allowed by Commissioner Bulla. Jacuzzi also objected that the Request required the production of private information of third parties. Again, Commissioner Bulla ruled that the

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[72] See, Jacuzzi's Resp. to Pl. Ansara's Am. 2nd Set of Req. for Prod. of Doc., served Jan. 9, 2019, **Evidentiary Hr'g Ex. 186** at 6-7, Resp. 43.

[73] See, Rep.'s Tr. of Hr'g, Sept. 19, 2018, **Evidentiary Hr'g Ex. 180** at 23:2-6.

[74] See, Rep.'s Tr. of Hr'g, Sept. 19, 2018, **Evidentiary Hr'g Ex. 180** at 13:24-14:1.

[75] Similarly, on Dec. 28, 2018, Jacuzzi served Suppl. Resp. to Pl. Tamantini's Interrog. No. 11, affirmatively representing that it was unaware of any prior incidents and that all subsequent incidents had already been produced. Again, Jacuzzi did not reveal the Pullen matter in this Response. Jacuzzi's Am. Resp. to Interrog. 11 was verified by William Demeritt. See, Jacuzzi's Suppl. Resp. to Pl. Tamantini's 1st Set of Interrog., at Resp. to Interrog. 11 at **Ex. 219 to Pls.' Evidentiary Hr'g Closing Br**.

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productions would be subject to protective order and ruled that Jacuzzi could only redact social security numbers. Not only were Commissioner Bulla's orders effective at the time they were made, but this Court affirmed Commissioner Bulla's Report and Recommendations on November 5, 2018. Still, Jacuzzi refused to produce additional documents.[76]

After over a year of EDCR 2.34 conferences, written discovery requests, five amended deposition notices, six discovery motions, four discovery hearings, one conference call with Commissioner Bulla, amended discovery requests, and a Petition to the Nevada Supreme Court, Jacuzzi was fully aware of its disclosure obligations. Yet, on January 9, 2019, Jacuzzi violated court orders in its Response to RFP 43 by untruthfully representing that all evidence within the scope set by Commissioner Bulla and this Court had already been produced.

In sum, Jacuzzi willfully and repeatedly violated clear and unambiguous court orders even though Jacuzzi fully understood the scope of the orders and its obligations under those orders.

K. THE COURT BIFURCATED THE EVIDENTIARY HEARING TO GIVE JACUZZI AN OPPORTUNITY TO PRESENT EVIDENCE IN SUPPORT OF AN "ADVICE OF COUNSEL" DEFENSE

The Court, recognizing the sanctity of the attorney-client privilege, decided to bifurcate the evidentiary hearing into two phases. In the first phase, the Court would hear evidence and determine whether sanctions were appropriate. If the Court did find that sanctions were appropriate, the Court would give Jacuzzi the opportunity to waive the attorney client privilege in order to present evidence in support of the "advice of counsel" defense in a second phase.

On March 5, 2020, the Court entered a Minute Order finding that "Jacuzzi willfully and repeatedly violated the orders by failing to produce all discoverable documents and by failing to conduct a reasonable search despite knowing how to do so. Jacuzzi's failure to act has irreparably harmed Plaintiffs and extraordinary relief is necessary."[77]

L. JACUZZI DID NOT PRESENT ANY EVIDENCE TO SHOW THAT IT'S MISCONDUCT WAS DUE TO ITS RELIANCE ON THE ADVICE OF ITS OUTSIDE COUNSEL

On May 22, 2020, Jacuzzi filed a Motion to Clarify the Parameters of the Waiver of

[76] See, Notice of Entry of Order Aff'g Disc. Commissioner's R. and R., Sept. 19, 2018, Hr'g, **Evidentiary Hr'g Ex. 183** at 14.

[77] See, Ct.'s Min. Order, Mar. 5, 2020.

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Attorney-Client Privilege that Would be Required in Order to Present Evidence that it was Acting on the Advice of Counsel. The Court heard Jacuzzi's Motion on June 29, 2020, and ruled that the Court could not and would not determine the scope of the waiver of attorney-client privilege without first hearing the evidence Jacuzzi elected to present.

On September 19, 2020, Jacuzzi filed a Notice of Waiver of Phase 2 Hearing and Request to Have Phase 2 of Evidentiary Hearing Vacated.[78] Thus, Jacuzzi did not present any evidence to support an "advice of counsel" defense and the Court hereby finds that Jacuzzi did not demonstrate or establish that its misconduct was due to any reliance on advice of its outside counsel.

III. ANALYSIS OF THE YOUNG FACTORS

A. Degree of Willfulness of the Offending Party

The Court finds that there is substantial evidence showing that Jacuzzi's violations were knowing and willful and meant to harm Plaintiffs. The Discovery Commissioner's and this Court's Orders were clear on the scope of productions required by Jacuzzi.

Jacuzzi has been in violation of a Court order requiring production of the documents at issue since August 17, 2018, when Jacuzzi failed to produce the documents that are at issue now. Jacuzzi continuously violated this order when it made disclosures without the documents at issue. Jacuzzi also violated the order every occasion it misrepresented written discovery responses and supplements thereto, filed briefs, made false statements in open court, made false statements in written and oral communications to Plaintiffs' counsel, and made false statements in its Petition to the Nevada Supreme Court that all relevant and discoverable documents had been found and produced. See, Pls.' Evidentiary Hr'g Closing Br. at 39-48; Pls.' Reply at 38-39.

Jacuzzi willfully and wrongfully withheld evidence of the Pullen Death in violation of multiple court orders (as discussed above). The Court rejects Jacuzzi's argument that it was not required to disclose the Pullen Death because it was not a "claim." The Salesforce documents specifically state that Robert Pullen "want[ed] to take legal action because he thinks the tub killed

[78] Jacuzzi's Notice of Waiver of Phase 2 Hr'g and Request to Have Phase 2 of Evidentiary Hr'g Vacated, filed Sept. 19, 2020.

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his mom." The Court finds that Jacuzzi's narrow interpretation of the term "claim" was unreasonable. The fact that Robert Pullen advised Jacuzzi that he wanted to take legal action undermines Jacuzzi's argument. Therefore, the Court rejects Jacuzzi's pretextual argument that the Pullen Death was not a "claim." See, Pls.' Evidentiary Hr'g Closing Br. at 14-17; Pls.' Reply at 15:13-16:7.

Based on the Court's consideration of the testimony and inferences therefrom, the Court concludes that Jacuzzi willfully and wrongfully violated court orders by failing to conduct a good faith search of all its databases to locate and produce all documents relating to any bodily injury involving Jacuzzi's walk-in tubs. Mr. Templer, Jacuzzi's in-house counsel, testified that some emails were searched, but not all. ("I said some email searches were done. It has not been run against the entire email database.")[79] The Court finds that Jacuzzi knew and understood how to conduct a complete search of its databases but did not do so. See, Pls.' Evidentiary Hr'g Closing Br. at 24:12-29:17; Pls.' Reply at 16:14-23:13.

The Court rejects Jacuzzi's assertion that Jacuzzi reasonably believed that all relevant emails would be found in Jacuzzi's KBM and Salesforce databases. See, Pls.' Evidentiary Hr'g Closing Br. at 23:13-29:17; see also, Pls.' Reply at 16:14-23:13; 32:3-33:17. Substantial evidence supports the conclusion that Jacuzzi's argument here is pre-textual. At the Evidentiary Hearing, Mr. Templer, in-house counsel. testified that in attempting to comply with Commissioner Bulla's order, "the company did a search in a place that it's reasonably expected that type of information to be maintained."[80] He testified that at the time that Jacuzzi performed its searches, it only expected to find relevant documents in the KBM and Salesforce databases:

> Q Well, let me ask you. Do you think it would be reasonably expected to find issues with regard to this tub, and that the customer service director would have information that's reasonably expected?
>
> A Mr. Bachmeyer wasn't the customer service director at that time, he was warranty, and at the time, again, in speaking with people, the understanding was that the information that was requested, incidents involving serious personal injury or death, should be within the KBM sales

[79] See, Rep.'s Tr. of Evidentiary Hr'g, Day 2, **Ex. 202 to Pls.' Evidentiary Hr'g Closing Br.** at 149:19-24.
[80] See, Id. at 136:22-24.

force customer service databases. [81]

Mr. Templer, in-house counsel, then justified Jacuzzi's failure to search Director of Customer Service, Kurt Bachmeyer's, emails because he did not expect relevant information to be found in employee emails:

> Q And my question, Mr. Templer, is this very specific question. You gave a limitation, you said, we did what we reasonably expected. We looked into places that we reasonably expected. And my question was simply, do you think, is it reasonably expected that the director of customer service would have information responsive to what the Commissioner was ordering?
>
> A At the time I expected it to be in the customer service databases, not in emails outside of those databases.[82]

Jacuzzi argued that the recent disclosures containing Kurt Bachmeyer's and Audrey Martinez's employee emails were innocently missed. The Court rejects this argument. First, Commissioner Bulla specifically ordered Jacuzzi to search its emails when she ordered Jacuzzi to review all documents made in the ordinary course of business. Second, a simple review of "Email Recipients" column of Plaintiffs' demonstrative Exhibit 199 shows that Kurt Bachmeyer (the Director of Customer Service), Audrey Martinez (Marketing Manager), Regina Reyes (a Customer Service Manager), and other customer service department employees are consistently listed as email recipients. Yet those are the emails that inexplicably were not searched.

Additionally, in-house counsel Mr. Templer's testimony is significantly undermined by his very own email sent on July 25, 2018, where he specifically directed the email to the Director of Customer Service, Kurt Bachmeyer; the Customer Service Manager, Regina Reyes; and Director of Risk Management, William Demeritt – yet testified that their emails were not searched.[83] His own email also instructed the recipients to search for "[a]ll letters, emails, customer service/warranty entries and all other communications and documents (written or electronic) that mention or refer to a personal injury sustained in a walk-in tub from 1/1/2008 to

[81] See, Id. at 137:7-14.

[82] See, Id. at 137:15-22.

[83] Email from Ron Templer, Esq. to Various Jacuzzi Employees, July 25, 2018 (produced to Pls. on Oct. 10, 2019). **Ex. 217 to Pls.' Evidentiary Hr'g Closing Br**.

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the present."[84] Yet no search of these very employees' emails was conducted. Additionally, Mr. Templer, in-house counsel, informed the recipients that a proper search "require[d] a search of **all** databases (both current and old), **email** and other potential locations where the information may be stored."[85]

Based on all evidence presented, the Court finds that Jacuzzi wrongfully and knowingly withheld numerous documents relating to the "slipperiness" of the tubs even though it was clear to this Court from the pleadings that slipperiness of the tubs has always been an issue in this case. The Court finds that the "slipperiness" of the tubs has always been an issue in this case and rejects Jacuzzi's argument to the contrary. To the extent that Jacuzzi's Late Disclosures contained information pertaining to the slipperiness of the tubs, such disclosures were untimely and were wrongfully withheld in violation of the Court's Orders. See, Pls.' Reply at 21:3-22:17; 26:16-29:2.

At the Evidentiary Hearing, he is the one person at Jacuzzi that worked with outside counsel in responding to discovery.[86] Mr. Templer also testified that all productions were done in conjunction with outside counsel and that all discovery decisions were jointly made, including the decision to withhold the Pullen matter.[87] Therefore, Jacuzzi was directly involved in the

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[84] Id.

[85] Id.

[86] See, Id.

> Q Well, I'm trying to get answers to questions about what Jacuzzi knew or didn't know. So the particular question is if you, Mr. Templer, don't know, then who at Jacuzzi would know?
>
> A In regard to responding to a discovery request?
>
> Q Yes.
>
> **A Nobody, it should be me.**
>
> **Q So you're the only guy?**
>
> **A I was the one that dealt with outside counsel in responding to discovery, if that's what you're asking**.

[87] See, Rep.'s Tr. of Evidentiary Hr'g Day 2, **Ex. 203 to Pls.' Evidentiary Hr'g Closing Br.** at 45:2-46:9.

> Q Ultimately, without getting into the -- I guess the substance of any communication, who had the decision as to what documents to turnover or not to turnover? Was that Jacuzzi's decision or was that Snell Wilmer and outside counsel's decision?

discovery abuses in this case. Based on the evidence presented, the Court finds that Jacuzzi's conduct in willfully and wrongfully withholding documents that it had been repeatedly required to produce was supervised and/or orchestrated by Jacuzzi's corporate counsel, Mr. Templer.

B. Factor Two: Extent to which Non-Offending Party Would be Prejudiced by a Lesser Sanction

The prejudice to the Plaintiffs has been massive and irreversible. Should the Court enter any less sanction, Plaintiffs would have to conduct follow up discovery to request additional information pertaining to the newly disclosed incidents and then conduct new depositions of persons found in Jacuzzi's Late Disclosures. Then, Plaintiffs would have to re-depose both Jacuzzi and firstSTREET/AITHR's Rule 30(b)(6) witnesses regarding their knowledge of each prior and subsequent incident. Plaintiffs were not given an opportunity to question Jacuzzi's witnesses on perhaps the most critical issue in the case: Jacuzzi's prior knowledge. Jacuzzi's piecemeal, "drip-drip-drip" style of production makes this Court extremely concerned that Jacuzzi has still failed to produce all relevant documents. Plaintiffs have lost their fundamental right to have their case heard expeditiously. See, Pls.' Evidentiary Hr'g Closing Br. at 48:22-50:15. It is worth noting 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.

> A All productions and discovery in the case has been in conjunction with outside counsel, both Snell Wilmer and Weinberg Wheeler, depending on the timing.
>
> Q Okay. So as I understand your response, the decision regarding the production of documents was a jointly made decision between Jacuzzi and its retained counsel, true? . . .
>
> THE WITNESS: I can't answer any more than I said it a minute ago, is that all discovery responses were done in conjunction with outside counsel.
>
> Q Okay. Was there ever, to your knowledge, a discovery response or -- and that could be interrogatories, that could be – that could be requests for production, that could be requests for admissions, so any of the discovery responses, **was there ever a time that you recall where it was not a collective decision?**
>
> A **No**. I mean, I didn't -- or, I mean, the company, exclusively, did not serve any discovery responses. All of them were served through counsel. . . . And to my knowledge and recollection, **all discovery responses were discussed with the company before being served.**

C. Factor Three: Severity of the Sanction Relative to the Severity of the Discovery Abuse

Jacuzzi's abuse of its discovery obligations was extensive, repetitive, and prolonged. Jacuzzi explicitly misrepresented the quality and comprehensiveness of its discovery efforts in an attempt to simply survive through each discovery dispute. Jacuzzi mislead Plaintiffs, the Discovery Commissioner, the Court and the Nevada Supreme Court each time it claimed that all relevant documents had been produced. Moreover, contrary to Jacuzzi's arguments, Jacuzzi's misconduct was recalcitrant. Jacuzzi knowingly conducted invalid searches by failing to search emails even though Jacuzzi understood the importance of searching them. Yet Jacuzzi continuously lied about having disclosed all relevant documents knowing that it had not even conducted a complete search of its own systems. Jacuzzi's misconduct is severe because it prevented Plaintiffs from discovering evidence relevant to the crucial issues of this case: defectiveness and notice. The sanction of striking Jacuzzi's Answer as to liability is commensurate with the extent of Jacuzzi's severe abuse and is limited to that which is necessary to remedy such abuse. See Pls.' Evidentiary Hr'g Closing Br. at 50:15-51:2.

D. Factor Four: Whether any Evidence has Been Irreparably Lost

Crucial evidence has been lost. Jacuzzi walk-in tubs are sold and marketed to the elderly. In a case where similar incident witnesses are likely elderly persons, each day that passes results in witness memories fading. Jacuzzi's Late Disclosures contained evidence of other customers who slipped and fell in a Jacuzzi tub. Plaintiffs were deprived of the ability to discover if any of those slip and falls did in fact result in injury. Due to Jacuzzi's discovery tactics, these elderly witnesses' memories have been allowed to fade for years. Witnesses have disappeared and memories have faded over the three years that Plaintiffs have been trying to obtain the information at issue. Relevant companies, like other dealers who likely have knowledge about other similar incidents – have gone out of business. See, Pls.' Evidentiary Hr'g Closing Br. at 51:3-52:3.

E. Factor Five: Feasibility and Fairness of Alternative, Less Severe Sanctions

This Court carefully considered the possible need to strike Jacuzzi's entire Answer and enter default judgment. However, after careful consideration, this Court determined that the less severe sanction of striking Jacuzzi's Answer as to liability only is the proper sanction. This

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sanction is narrowly tailored to address the exact harm caused by Jacuzzi, i.e., Plaintiffs' inability to conduct proper discovery. A less severe sanction – such as evidentiary presumptions – would not eliminate or sufficiently mitigate the prejudice suffered by Plaintiffs. It would not be fair to require Plaintiffs to expend additional time and resources to sift through Jacuzzi's disjointed, misleading, and incomplete discovery to prepare for trial.

6. Factor Six: Whether Sanctions Unfairly Operate to Penalize a Party for Misconduct of His Attorney

Based on the evidence presented, the Court finds that Jacuzzi was directly involved in its discovery misconduct. Based on the evidence presented, the Court finds that Jacuzzi knew what it was required to produce, knew how its document retention system worked, knew how to locate the relevant documents, and knew that it was not too time-consuming or difficult to take steps to obtain relevant documents In addition, it was Jacuzzi's own witnesses in depositions, letters, Affidavits, and interrogatory response verifications, by which Jacuzzi, not its outside counsel, withheld relevant documents. The fact that Jacuzzi disclosed the documents at issue now shows that Jacuzzi did have the ability to locate relevant documents. The evidence presented shows that Jacuzzi did not undertake adequate efforts to locate and obtain the relevant documents.

Based on the evidence presented, the Court finds that Jacuzzi's in-house corporate counsel, Mr. Templer, and other Jacuzzi managers were directly involved and knowledgeable about the steps Jacuzzi took regarding its supposed efforts to locate and produce relevant documents. Mr. Templer coordinated Jacuzzi's "efforts" to obtain relevant documents. Mr. Templer involved Kurt Bachmeyer (Director of Customer Service), Regina Reyes (Customer Service Manager), William Demeritt (Director of Risk Management), and Nicole Simmons (legal department) in Jacuzzi's efforts. Mr. Templer also copied Jacuzzi's General Counsel, Anthony Lovallo, in emails to Jacuzzi managers regarding Jacuzzi's search for documents. These people were involved in Jacuzzi's searches and were aware of Jacuzzi's obligation to find all relevant documents. See, Pls.' Evidentiary Hr'g Closing Br. at 27:1-29:7.

Because the evidence presented does show that Jacuzzi understood its discovery obligations yet failed to disclose the evidence at issue, the Court finds that Jacuzzi waived the "advice of counsel" defense by not presenting any evidence to support an "advice of counsel."

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The Court notes that Jacuzzi's counsel objected to the conditions under which the Court was permitting it to present an 'advice of counsel' defense.

7. Factor Seven: The Need to Deter Both Parties and Future Litigants from Similar Abuse

The judicial system in America depends on honesty, good faith, and transparency, which Jacuzzi lacked here. The extent of Jacuzzi's discovery abuse in this case is so massive that a message has to be sent not only to Jacuzzi, but to the community as a whole, that concealing evidence is abhorrent. The community must be assured that the rules of discovery and orders must be followed. The community must be assured that the judicial system in America is not broken. No party should be able to frustrate legitimate discovery by misrepresenting that good faith, thorough discovery efforts were being undertaken when they were not. Jacuzzi has impaired the adversarial system and must suffer the consequences – not Plaintiffs.

In sum, the Court finds that Commissioner Bulla's and this Court's orders were clear and Jacuzzi fully understood them. Jacuzzi willfully and repeatedly violated the orders by failing to produce all discoverable documents and by failing to conduct a reasonable search despite knowing how to do so. Jacuzzi's failure to act has irreparably harmed Plaintiffs and extraordinary relief is necessary.

IV. CONCLUSIONS OF LAW

The Court concludes that Jacuzzi intentionally, willfully, and wrongfully withheld evidence that is relevant to crucial issues of Plaintiffs' case, i.e., whether the tub at issue is defective and whether Jacuzzi was on notice of such defect. Jacuzzi's willful conduct unfairly, significantly, and irreparably prejudiced Plaintiffs.

The Court concludes that following narrowly-tailored remedy ordered immediately below is the least stringent remedy available to reverse the harm Jacuzzi caused to Plaintiffs:

ORDER

IT IS HEREBY ORDERED that Plaintiffs' Motion for Reconsideration re: Plaintiffs' Renewed Motion to Strike Defendant Jacuzzi Inc.'s Answer is GRANTED. Defendant Jacuzzi, Inc. d/b/a Jacuzzi Luxury Bath's Answer is stricken as to liability only. Liability is hereby established as to Plaintiffs' claims against Jacuzzi for (1) negligence, (2) strict product liability,

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(3) breach of express warranties, (4) breach of implied warranty of fitness for a particular purpose, and (5) breach of implied warranty of merchantability. The only remaining issue to be tried as to Jacuzzi is the nature and quantum of damages for which Jacuzzi is liable. Jacuzzi is precluded from presenting any evidence to show that it is not liable for Plaintiffs' harms as to any of Plaintiffs' causes of action against Jacuzzi.

IT IS HEREBY ORDERED that Plaintiffs are entitled to reasonable attorney's fees incurred in all briefing and hearings conducted related to Plaintiffs' efforts to obtain the relevant and Court-Ordered document productions. The matter of such fees shall be resolved at a hearing on _____, 202___.

IT IS HEREBY ORDERED that the Court is deferring its decision regarding Plaintiffs' additional requests for sanctions regarding various fees, motions in limine, and jury instructions until after additional briefing and the oral argument on December 7, 2020.

Dated this 18th day of November, 2020

DISTRICT COURT JUDGE

BBB 1E4 CE68 4406
Richard F. Scotti
District Court Judge

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CSERV

DISTRICT COURT
CLARK COUNTY, NEVADA

Robert Ansara, Plaintiff(s) vs. First Street for Boomers & Beyond Inc, Defendant(s)	CASE NO: A-16-731244-C DEPT. NO. Department 2

AUTOMATED CERTIFICATE OF SERVICE

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

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