

Case No. 83379
IN THE SUPREME COURT OF NEVADA

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

Petitioners,

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

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Case No. 83379

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

Real Party in Interest.

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

District Court Case No. A-16-731244-C (Dept. XIX)

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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*

VERIFICATION

STATE OF NEVADA)
)
COUNTY OF CLARK)

Under penalty of perjury, I declare that I am an attorney with the Richard Harris Law Firm, attorneys for Real Party 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, in the above-entitled case. I have reviewed the relevant district court papers on file in this action; I am familiar with the facts and circumstances set forth in the Petition; and I know the contents thereof to be true, except those matters stated on information and belief, and as to those matters, I believe them to be true. This verification is made pursuant to NRS 15.010.

Executed this 7th day of December, 2021.

/s/ Ian C. Estrada
IAN C. ESTRADA, ESQ.

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I. STATEMENT OF ISSUES PRESENTED FOR REVIEW

A. Whether the District Court abused its discretion in striking firstSTREET's Answer as to liability only?

B. Whether the District Court abused its discretion in striking firstSTREET's Answer as to liability only without holding an evidentiary hearing?

II. STATEMENT OF THE CASE

Nevada Rule of Civil Procedure¹ 16.1 serves as the backbone of discovery, without which, the system fails. Honesty, good faith, and trust are bedrock principles of all civil litigation throughout the United States. In a calculated and deliberate gambit, firstSTREET and its attorneys chose to violate all principles of good faith discovery and now complains that having its answer stricken was too severe for only having failed to “voluntarily” comply with its NRCP 16.1 and NRCP 26 obligations. When compared to nearly every single sanction case this Court has **ever** reviewed, firstSTREET's conduct is convincingly more egregious.

For instance, firstSTREET's actions are unquestionably much, much worse than those reviewed in Bahena v. Goodyear, and “[a] fitting penance

¹ Hereinafter NRCP.

for these sins” can only be affirmance.² The Court should take this opportunity to decisively reaffirm the importance of good faith participation in the discovery process.

On February 19, 2014, Sherry Cunnison (“Sherry”) slipped off the seat of her Jacuzzi walk-in tub and was trapped in the footwell (bottom of the tub) for three days. Sherry died at the hospital four days later of dehydration and rhabdomyolysis. Dogged and tenacious discovery revealed that before and after Sherry’s incident, other seniors, like Sherry, were trapped in their Jacuzzi walk-in tubs. Real Parties in Interest (Plaintiffs below), Robert Ansara, as special administrator of Sherry’s Estate, Deborah Tamantini, and Robert Ansara as Special Administrator of Michael Smith (Sherry’s son), brought suit for negligence and strict product liability. The walk-in tub is a tub with a step-through door and an integrated seat. Because the door opens inward, when an elderly person slips into the footwell (bottom of the tub), the door cannot be opened because the person trapped blocks the door’s path.

Petitioner (Defendant below), firstSTREET for Boomers & Beyond, Inc. (“firstSTREET”) was the exclusive marketer of the tub and Petitioner (Defendant below) AITHR Dealer, Inc. (“AITHR”) was a wholly owned

² Bahena v. Goodyear Tire & Rubber Co., 126 Nev. 606, 616, 245 P.3d 1182, 1188–89 (2010) (dissenting opinion).

subsidiary of firstSTREET that sold and installed the tub. (firstSTREET and AITHR are collectively referred to hereinafter as “firstSTREET.”)

firstSTREET’s Petition acknowledges that both Plaintiffs’ original Complaint and the controlling Fourth Amended Complaint allege both negligence **and** strict products liability claims against firstSTREET. Plaintiffs’ Complaint also seeks punitive damages against firstSTREET, which is important because it controls the types of evidence that are relevant to Plaintiffs’ claims and Defendants’ defenses. Therefore, evidence and information pertaining to the tub design and warnings (if any), are relevant to Plaintiffs’ strict product liability claims against both firstSTREET and Jacuzzi, Inc. (Real Party in Interest). Additionally, evidence pertaining to Defendants’ knowledge and understanding of the dangerousness of the tub is relevant to Plaintiffs’ punitive damages claim.

III. STATEMENT OF FACTS

Plaintiffs mostly agree with firstSTREET’s Statement of Facts but only as they pertain to the underlying incident involving Sherry. However, firstSTREET’s Petition misrepresents and mischaracterizes several facts and the circumstances relating to the Court’s Order Striking firstSTREET’s Answer as to Liability Only (“the Sanction Order”)³.

³ PA1010-1024. (“Sanction Order”)

A. PLAINTIFFS’ INITIAL MOTION TO STRIKE FIRSTSTREET’S ANSWER OPERATED AS A MOTION TO COMPEL AND RESULTED IN A DISCOVERY ORDER AGAINST FIRSTSTREET

One crucial fact asserted by firstSTREET is that “Plaintiffs never once filed a motion to compel against [firstSTREET]” and “[a]s a result, no discovery order has ever been entered against [firstSTREET] in this case and [firstSTREET] have not violated any discovery orders.”⁴ This “fact” is a major pillar of firstSTREET’s Petition because it is necessary to support the argument that the District Court could not have imposed sanctions without there first being a discovery order against firstSTREET.⁵

Plaintiffs went even further than filing a motion to compel. On January 16, 2019, Plaintiffs filed their **Initial** “Motion to Strike Defendant firstSTREET’s and AITHR’s Answers **for Discovery Abuses** on Order Shortening Time.” (“Initial Motion to Strike”).⁶ As noted in the title of the Initial Motion to Strike, the basis was for discovery abuses, which included

⁴ See, firstSTREET’s Petition at 4:2-9.

⁵ As a threshold matter more fully discussed below, firstSTREET’s argument that a discovery order is a prerequisite to sanctions is incorrect and not supported in the law. Setting that aside, Plaintiffs are addressing firstSTREET’s factual assertions here because firstSTREET’s entire argument crumbles and the analysis should end once it is shown that (1) Plaintiffs’ Initial Motion to Strike had the effect of a Motion to Compel against firstSTREET and (2) that Motion resulted in an order being issued against firstSTREET which was later violated.

⁶ 1 RA 0124.

firstSTREET's failure to produce several categories of evidence, including evidence pertaining to incidents or customer complaints about the tub's slipperiness (See, Section D).⁷

In its 2019 Opposition, firstSTREET argued that it had no reason to believe that the slipperiness of the tub was an issue in the case.⁸ This is the same sham argument that Jacuzzi made justifying Jacuzzi's non-disclosure of evidence – to which the Court found, “it was clear to this Court from the pleadings that the ‘slipperiness’ of the tubs has always been an issue in this case ... and rejects [any] argument to the contrary.”⁹ firstSTREET has known this since 2018 when critical briefing was filed by Plaintiffs documenting the insidious behavior of co-Defendant Jacuzzi and its failures to produce evidence regarding slipperiness.¹⁰ At a very minimum, firstSTREET was on notice that slipperiness was an important issue when, in January 2019, it was accused of failing to turn over slipperiness evidence and Plaintiffs sought to have firstSTREET's Answer stricken on this basis.

⁷ 1 RA 0125, 148-150. (“firstSTREET did not disclose witnesses who made complaints regarding the slipperiness of the tub.” Because Sherry slipped off the seat of the tub, incidents or complaints involving an end-user slipping or complaining about the slipperiness of the tub have consistently been sought.)

⁸ 3 RA 534-535.

⁹ 5 RA 1022:5-12.

¹⁰ 1 RA 0004-15.

While the District Court denied that motion, it filed and served a Minute Order on March 4, 2019 (“the Minute Order”). The Minute Order lifted a stay that the District Court had put in place while it was deciding the Initial Motion to Strike, and it ordered the parties to resume discovery and continue to prepare for trial.¹¹

In the Minute Order, the District Court ordered that Plaintiffs were entitled to information regarding:

“all incidents involving a Jacuzzi walk-in tub with inward opening doors, for the time period of January 1, 2008, through the date of filing of the complaint, where a person slipped and fell, whether or not there was an injury, whether or not there was any warranty claim, and whether or not there was a lawsuit.”¹²

This was a discovery order since the District Court had assumed all discovery at that point and served as a basis upon which the Sanction Order was granted. In particular, a year after the Minute Order issued, when the District Court eventually granted Plaintiffs’ *Renewed* Motion to Strike firstSTREET’s Answer,¹³ the Sanction Order cited to the 2019 Minute Order stating:

[O]n March 4, 2019, this Court ordered the

¹¹ PA0387.

¹² Id.

¹³ Hereinafter “Renewed Motion to Strike”; PA1010-1024.

defendants (which included First Street and AITHR) to produce all documents relating to any slip incident in a Jacuzzi tub whether or not there was any injury.”¹⁴

In the very next sentence, immediately after citing to the Minute Order, the District Court in its Sanction Order went on to discuss “the list of [six] most critical evidence that First Street Defendants concealed.”¹⁵

In the Sanction Order, when the District Court discussed the importance of each item of concealment, it is important to note that three of the items dealt directly with the slipperiness of the tub, which was expressly addressed and ordered by the Court in the Minute Order.

As outlined in the Sanction Order, firstSTREET concealed the following items dealing with the tub slipperiness:

- Guild Surveys: Customer complaints, some of which, documented people who had slipped and fallen or had complained about the excessive slipperiness of their tubs.¹⁶

¹⁴ PA1012:15-17.

¹⁵ Id.

¹⁶ PA0068:5-20. Samples of withheld evidence included the following:

1. “[T]he 1st time I tried to use by myself, I fell. I slipped and I fell. *I couldn’t even walk for 1 ½ months.* it was so slippery.”
2. “**I am talking to a lawyer** . . . [the tub] doesn’t have any traction on the bottom, because **both my husband and I have fallen down in the tub** . . . [t]he entire marketing aspect was absolutely ridiculous. The tub is not safe for anyone over the age of 50.”
3. “[Customers] have slipped and fell in the tub. They can’t open the door to the tub. They are afraid to go back in there now.”

- Anti-Slip Bathmat: The anti-slip bathmat dealt with evidence pertaining to anti-slip measures that the Defendants began providing to customers who had complained about the slipperiness of their tubs.¹⁷
- Other Customer Complaints Regarding Slipperiness: The Court noted that “the First Street Defendants had notice of at least 63 relevant incidents . . . [but] failed to produce these documents.”¹⁸

Therefore, firstSTREET’s assertion that there was no motion to compel or discovery order against it is demonstrably false.¹⁹

B. A *PARTY* OR ITS COUNSEL CAN VIOLATE NRCP’S 16.1 DISCLOSURE OBLIGATIONS, AND THE DISTRICT COURT FOUND MISCONDUCT ON PART OF BOTH

firstSTREET argues that the District Court’s Sanction Order finding

-
4. **“My wife fell twice in the tub because it is too slippery. She is afraid to get in there.”**
 5. **“The floor is dangerously slippery. That is a little scary.”**
 6. **“They claimed that the flooring was slip-proof and it wasn’t.”**
 7. **“I slipped the first time and they sent a slip to prevent that from happening.”**

¹⁷ PA1014.

¹⁸ PA1015.

¹⁹ Plaintiffs’ argument is not limited to disproving firstSTREET’s contention that it did not violate a Court order. Instead, the foregoing argument is solely to address firstSTREET’s mischaracterization of the procedural history of this case. Nonetheless, even if this Court agrees with firstSTREET’s that there was no prior motion or order, the District Court still had discretion to impose sanctions under NRCP 37 and had inherent equitable powers to control abusive litigation practices, as discussed below.

that NRCP 16.1 had been violated focused and relied **only** on misconduct of **the party** and that no finding of misconduct was attributable to counsel.

firstSTREET then argues that such a finding is incorrect because **a party** cannot be found to have violated NRCP 16.1 since “**it is counsel** that selects what documents are disclosed as part of the NRCP 16.1 disclosure requirements, **not the party** that counsel represents.”²⁰ Said another way, firstSTREET argues that since it is not the party that discloses the documents, but rather its counsel, any violation of NRCP 16.1 is always automatically and solely attributable to counsel only and never the party.

The arguments and factual recitations advanced by firstSTREET are not only dangerous but also factually incorrect and entirely unsupported in the law.

During discovery, Plaintiffs, on their own, found a complaint that a woman named Ruth Curnutte submitted to the Consumer Product Safety

²⁰ See, firstSTREET’s Petition at 13:20-27. (“Thus, the District Court’s sanctions were expressly based on conduct of Petitioners, who are a **party**, and the District Court expressly found that the sanctions were not a result of attorney conduct. Yet, the basis for the District Court’s ruling – the violation of NRCP 16.1’s disclosure requirements – is based entirely and solely on the conduct of counsel, **not the party**. For it is counsel that selects what documents are disclosed as part of the NRCP 16.1 disclosure requirements, not the party that counsel represents.”) (Emphasis in original).

Commission.²¹ In that complaint, Ms. Curnutte stated:

... I was thrushed forward, landed on my knees and my head was underwater. I was in panic and tried frantically to get a hold of the bar to pull myself up. I could have drowned. **The Alert 911 would have been totally useless out of reach.** The Walk-in Tub is a death trap.²²

Clearly, Plaintiffs wanted to know what the Alert 911 was that Ms. Curnutte was referencing and in multiple ways (informal, during a hearing, conversations with counsel, etc.) tried to obtain information regarding this product. The day before Ms. Curnutte's deposition, counsel for Plaintiffs sent a text message to counsel for firstSTREET asking the following:

Mr. Cloward -- "Hey I'm prepping for this [depo] tomorrow. Did you ever find out from firstSTREET who was [providing] the 911 Alert that Curnutte mentioned? Was that a Jacuzzi product? FS product? Or something that was independent of both?"

Mr. Goodhart -- "No on[e] at FirstSTREET promoted that with [walk-in-tub] customers. It might have been the installer? Or she could have just thought of that."

Mr. Cloward -- "**Are you sure?**"

Mr. Goodhart -- "Yes. That is what Dave [Modena] [the Rule 30(b)(6) designee and Vice President] told me. But he can only speak about AITHR. The independent dealers may have done some other things that was not a part of the FirstSTREET

²¹ PA0069:10-13.

²² PA0069:14-16.

program.”²³

The next day during Ms. Curnutte’s deposition, firstSTREET had a second opportunity to admit its involvement with the product and its counsel stated, “It’s my understanding, Ben, that First Street did not have any direct contact with [Ms.] Curnutte ... , so **they’re not aware of any attempts** by anybody to sell a 911 alert, badge, or whatever you want to call it, to her.”²⁴

However, later in the deposition, Ms. Curnutte was questioned about the paperwork she had received with the Alert 911—paperwork which unequivocally established that the product came **directly** from firstSTREET. Like nothing, firstSTREET’s counsel shifted gears and stated, “[w]ell, Ben, I never said that First Street did not sell it to her. My comment was neither First Street nor AITHR were directly involved in the actual sale”²⁵

Even after that, firstSTREET’s claims about the Alert 911, continued to change. At the hearing on Plaintiffs’ Renewed Motion to Strike, firstSTREET tried to downplay its involvement and then claimed, “[t]he 911 Alert . . . [t]his was an add that . . . if you purchased the tub, First Street would

²³ PA0070.

²⁴ PA0739, PA0771:8-12. (Emphasis added)

²⁵ PA0739:23-740:1.

provide or the dealer would provide you with a \$200 gift for free.”²⁶ This is not how discovery should work. Lawyers should be able to trust one another at their word.

One must wonder why a party or its counsel would go to such lengths to hide this information. The reason for this evasive conduct became clear when the firstSTREET marketing materials were examined. In those materials, firstSTREET informed customers that, “[f]or maximum safety in the bathroom, it is recommended that the Pendant always remain in the bathroom on the hook placed on the outside of the tub as shown in the diagram.”²⁷

Next, firstSTREET tries to argue that the Sanction Order only established that firstSTREET—the *Party*—had violated NRCP 16.1. In support of that, firstSTREET cites to the section of the Sanction Order wherein the Court analyzed the sixth Young factor²⁸ and stated, “the First Street defendants did not attempt to excuse its discovery abuses based on advice of counsel. Nor did the First Street Defendants identify any discovery

²⁶ PA0954:20-24.

²⁷ PA0071:4-11.

²⁸ Young, 106 Nev. at 92. (whether sanctions unfairly operate to penalize a party for misconduct of his attorney).

conduct that was done at the direction of its counsel.”²⁹

Contrary to firstSTREET’s Petition, this was not an express finding that the sanctions were **only** based on firstSTREET’s conduct. Rather, the District Court’s analysis of this Young factor only related to its finding that firstSTREET did not offer the “advice of counsel” defense in opposing Plaintiffs’ Renewed Motion to Strike. That firstSTREET did not assert this defense does not mean the District Court found no attorney misconduct. Instead, it found only that firstSTREET did not blame its failures on counsel and, accordingly, the District Court did not find that the misconduct was based on the advice of counsel. This is very different from an “express finding” that the sanctions were not the result of attorney misconduct.

This Court need only look at the exchanges between Counsel for Plaintiffs and firstSTREET regarding the Alert 911 to see the misconduct on part of **both** (firstSTREET Vice-President Modena claiming firstSTREET having not been involved with the product and then its counsel perpetuating that falsehood.) But more, the express language of the Sanction Order establishes the sanctions were based on the conduct of both firstSTREET **and** its counsel. Specifically:

First Street and AITHR have been represented by
the same counsel throughout this entire litigation

²⁹ PA1020:15-17.

and the Court finds that the discovery misconduct described herein is applicable to both First Street and AITHR and, therefore, the sanctions herein apply to both First Street and AITHR.³⁰

In finding discovery misconduct on behalf of both firstSTREET and AITHR through their shared counsel, the Court necessarily found that there was attorney misconduct. This is further illustrated by the fact that the Sanction Order quoted NRCP 16.1(e)(3) and emphasized the phrase, “If an attorney fails to reasonably comply with any provision of this rule.”³¹ The Sanction Order’s version of NRCP 16.1(e)(3) appeared as follows:

(e) Failure or Refusal to Participate in Pretrial Discovery; Sanctions.

(3) If an attorney fails to reasonably comply with any provision of this rule, or if an attorney or a party fails to comply with an order entered pursuant to subsection (d) of this rule, the court, upon motion or upon its own initiative, shall impose upon a party or a party's attorney, or both, appropriate sanctions in regard to the failure(s) as are just, including the following:

(A) Any of the sanctions available pursuant to Rule 37(b)(2) and Rule 37(f);

(B) An order prohibiting the use of any witness, document or tangible thing which

³⁰ PA1012:1-4.

³¹ PA1015:22-23; In contrast, the Sanction Order placed **no** emphasis on the next sentence which reads, “if an attorney or a party fails to comply with an order.”

should have been disclosed, produced, exhibited, or exchanged pursuant to Rule 16.1(a). (emphasis in original)

The District Court placed emphasis on the portion of the statute that allows for sanctions based on an attorney's failure to reasonably comply with the provisions of NRCP 16.1. It would make no sense for the District Court to emphasize language in the statute that it was not relying on in making its decision.

Furthermore, firstSTREET's Petition seems to have unknowingly supported Plaintiffs' position. Even under firstSTREET's incorrect statutory interpretation, the District Court can impose sanctions if an attorney fails to comply with NRCP 16.1. As firstSTREET's Petition states, "it is counsel that selects what documents are disclosed as part of the NRCP 16.1 disclosure requirements, not the party that counsel represents."³² Here, firstSTREET's counsel openly admitted to selecting what documents are disclosed as part of NRCP 16.1 disclosure requirements:

THE COURT: -- if I -- I just want to make sure I understand where you're going with this. Essentially, you're saying that First Street did not have a duty to produce evidence that might have been relevant to claims that the plaintiff had directly against and only against Jacuzzi?

[firstSTREET Counsel]: **Correct.**

³² See, firstSTREET's Petition at 13:27-28.

THE COURT: . . . [E]ven if First Street knew that it had in its possession some evidence critical to claims against Jacuzzi, one of the co-defendants, you don't have a duty under the discovery rules to produce that under 16.1?

[firstSTREET Counsel]: We did not know that we had anything in our possession until we started producing materials and that we were then asked to produce materials by plaintiffs through written discovery.

THE COURT: Okay. All right.

[firstSTREET Counsel]: We produced every single relevant piece of information relating to marketing and advertising, which is the first cause of action for negligence in plaintiff's Complaint against First Street and Aithr.

THE COURT: Okay.

[firstSTREET Counsel]: **We limited that to pre-accident marketing and advertising** . . . So, that's what we produced. . . ³³

firstSTREET *on its own* chose to limit the materials produced to marketing and advertising even though Plaintiffs **original** complaint contained strict product liability claims **against** firstSTREET.³⁴ Pursuant to counsel's own statements in open court, firstSTREET did not produce documents relevant to

³³ PA0963:13-964:15.

³⁴ PA0008.

Plaintiffs’ strict product liability claims and limited the productions to only marketing and advertising. As firstSTREET’s Petition acknowledges, “it is counsel that selects what documents are disclosed as part of the NRCP 16.1 disclosure requirements.”³⁵ By its own admission, firstSTREET’s decision to only disclose evidence pertaining to Plaintiffs’ negligence claim—but not Plaintiffs’ strict product liability claim—was the strategy and decision of firstSTREET’s attorney. The District Court properly imposed sanctions under NRCP 16.1(e)(3).

firstSTREET’s position depends on the incorrect claim that the District Court’s sanctions were only based on firstSTREET’s—not its Counsel’s—conduct. As shown here, this “claim” is not true because there was misconduct on part of **both**, and so firstSTREET’s Petition must fail.

C. FIRSTSTREET WAS FULLY AWARE OF WHAT EVIDENCE WAS RELEVANT TO PLAINTIFFS’ CLAIMS BUT CHOSE TO WITHHOLD THE EVIDENCE.

firstSTREET argues that it did not receive equal treatment to what Jacuzzi received because it was not afforded an evidentiary hearing and had not had “multiple discovery orders” issued against it like Jacuzzi did.³⁶

firstSTREET misses the point entirely. firstSTREET had a front row

³⁵ See, firstSTREET’s Petition at 13:27-28.

³⁶ See, firstSTREET’s Petition at 18.

seat the entire time yet sat idly by doing nothing. firstSTREET's actual knowledge of the scope of relevant discovery grew with each motion, each discovery hearing, each District Court hearing, each Report and Recommendation, and each Court Order, regardless of whether a particular motion was directed at firstSTREET or Jacuzzi. firstSTREET was present at each hearing, was served with each pleading, and knew fully what was expected. firstSTREET's argument is like the getaway driver trying to claim his punishment is too harsh because he was only the driver and did not actually rob the bank. Both are guilty for different reasons—just like here.

To that end, the District Court expressly stated it considered the long history of the case when granting Plaintiffs' Renewed Motion to Strike.³⁷

IV. APPLICABLE STANDARDS

A. THIS COURT SHOULD ONLY REVIEW FOR AN ABUSE OF DISCRETION BECAUSE THE SANCTION ORDER STRIKING FIRSTSTREET'S ANSWER AS TO LIABILITY ONLY IS NOT A CASE TERMINATING OR CASE CONCLUDING SANCTION

Discovery sanctions lie within the discretion of the district court.³⁸ Further, “[w]here the discovery sanctions are within the power of the district court, this court will not reverse the particular sanctions imposed

³⁷ PA0991:24-992:4; see also PA1010:12-13.

³⁸ Arnold v. Kip, 123 Nev. 410, 417, 168 P.3d 1050, 1054-55 (2007).

absent a showing of abuse of discretion.³⁹ Even if [this Court] would not have imposed such sanctions in the first instance, [this Court] will not substitute [its] judgment for that of the district court.⁴⁰

This Court **only** applies “a somewhat heightened standard of review” when a district court imposes case ending sanctions. Importantly, “however, sanctions are **not** considered case-ending when, as here, the district court strikes a party’s answer, thereby establishing liability, but allows the party to defend on the amount of damages.”⁴¹

Here, since the District Court did not impose case-ending sanctions but instead—“as to liability only”—this Court must only review the Sanction Order for an abuse of discretion.⁴²

³⁹ Young v. Johnny Ribeiro Bldg., Inc., 106 Nev. 88, 92, 787 P.2d 777, 779 (1990).

⁴⁰ Id.

⁴¹ Valley Health Sys., LLC v. Est. of Doe by & through Peterson, 134 Nev. 634, 638–39, 427 P.3d 1021, 1026–27 (2018), as corrected (Oct. 1, 2018)(citing Bahena v. Goodyear Tire & Rubber Co., 126 Nev. 243, 249, 235 P.3d 592, 596 (2010)).

⁴² firstSTREET’s Petition only challenged the District Court’s Sanction Order based on NRCP 16.1(e)(3). firstSTREET **did not** assert that the District Court abused its discretion by imposing sanctions pursuant to NRCP 37(c)(1) or its inherent equitable powers to control abusive litigation practices. Therefore, once this Court finds that it the District Court’s Sanction Order was based on more than just NRCP 16.1(e)(3), this Court’s analysis should end.

V. ARGUMENT

A. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION BECAUSE THERE WAS A PRIOR DISCOVERY ORDER AND THE SANCTIONS WERE NOT LIMITED TO *JUST* NRCP 16.1(e)(3).

The District Court considered and properly rejected firstSTREET's argument that it did not violate any court order or Discovery Commissioner Order. In Section A, *supra*, as a reminder, the Sanction Order specifically cited to the 2019 Minute Order and the District Court explained all of the ways that firstSTREET had concealed evidence that it had been ordered to turn over.

However, even more, in addition to violating the discovery order contained within the Minute Order, the District Court set out many other reasons justifying its Sanction Order.

In particular, the Court found that sanctions were appropriate due to firstSTREET's violations of NRCP 16.1 and NRCP 26:

Throughout its opposition to the Plaintiff's Renewed Motion to Strike, First Street Defendants advance the arguments that they did not violate any Court Order, that they did not violate any Discovery Commissioner Order, and that they timely responded to Plaintiff Cunnison's written discovery requests. These things have all been considered by this Court in the analysis of the degree of willfulness of the First Street Defendants' actions. But the First Street Defendants substantially ignore and overlook their obligations under NRCP 16.1 and NRCP 26, which triggered the duty to disclose and supplement prior discovery responses with all relevant evidence when the relevance should have

been known no later than February 2018. The First Street Defendants repeatedly violated these duties.⁴³

Once the District Court found that firstSTREET violated NRCP 16.1 and NRCP 26, it had several sources of authority available to impose sanctions. Contrary to firstSTREET's argument, the District Court did not rely **solely** on NRCP 16.1(e)(3), yet this is the only rule challenged by firstSTREET.

1. firstSTREET only challenged the District Court's Ruling as it relates to NRCP 16.1(e)(3); However, the District Court Also Imposed Sanctions Pursuant to NRCP 37 and its Inherent Equitable Powers

In addition to NRCP 16.1(e)(3), the District Court also imposed sanctions under NRCP 16, NRCP 26, NRCP 37, and its inherent equitable powers to control abusive litigation practices. firstSTREET solely focused on NRCP 16.1(e)(3) and did not address the other basis the District Court relied upon.

The Sanction Order states that firstSTREET violated NRCP 16.1 and NRCP 26. In particular:

The First Street Defendants are in violation of NRCP 16.1 and NRCP 26 because they have not produced significant portions of the above-mentioned evidence. Accordingly, sanctions under NRCP 16.1(e)(3) **and** NRCP 37 are appropriate.⁴⁴

⁴³ PA1013:1-9.

⁴⁴ PA1015:14-16.

Additionally, the District Court exercised its inherent equitable powers to impose sanctions for abusive litigation practices. Specifically:

Additionally, in Young v. Johnny Ribeiro Bldg., Inc., 106 Nev. 88, 787 P.2d 777 (1990), the Supreme Court of Nevada held that courts have “inherent equitable powers to dismiss actions or enter default judgments for ... abusive litigation practices. Litigants and attorneys alike should be aware that these powers may permit sanctions for discovery and other litigation abuses not specifically proscribed by statute.”⁴⁵

Therefore, even if this Court agrees with firstSTREET’s argument that NRCP 16.1(e)(3) was misinterpreted, this Court must still affirm because the sanctions were independently proper under either NRCP 26, NRCP 37 or the District Court’s inherent equitable powers. Thus, firstSTREET’s substantial rights were not affected because the District Court would have reached the same result under either NRCP 37 or its inherent powers.

The Court should deny firstSTREET’s Petition on this basis alone. Whether the District Court abused its discretion under NRCP 37 or its inherent powers is not at issue here. firstSTREET does not challenge the sanctions under NRCP 37(c)(1) or under the inherent equitable powers of the Court. Thus, once this Court determines that the District Court utilized other

⁴⁵ PA1017:6-10.

independent sources of authority to sanction firstSTREET, the Petition fails, and no other analysis is necessary. Further, firstSTREET should not be permitted present any such arguments in its Reply that were not raised in its Petition. See Weaver v. State, Dep't of Motor Vehicles, 121 Nev. 494, 502, 117 P.3d 193, 198–99 (2005) (explaining that an appellate court need not consider an argument raised for the first time in a reply brief).

2. It was Not an Abuse of Discretion to Impose Sanctions Under NRCP 37 Because NRCP 37(c)(1) Does Not Require the Violation of a Prior Order

In its opposition to Plaintiffs' Renewed Motion to Strike, firstSTREET argued that NRCP 16.1(e)(3) requires a prior court order.⁴⁶ In their Reply brief, Plaintiffs argued that sanctions are also appropriate under NRCP 37(c)(1).⁴⁷ Then, contrary to firstSTREET's assertion that the District Court solely relied on NRCP 16.1(e)(3), the Sanction Order expressly stated that sanctions were being imposed under NRCP 37.⁴⁸

Under NRCP 37(c)(1), there is no need for a prior order. NRCP 37(c) states:

⁴⁶ PA0416:19-20.

⁴⁷ PA0729:9-730:2.

⁴⁸ PA1015:15-16. (“sanctions under...NRCP 37 are appropriate.”)

**NRCP 37(c) Failure to Disclose, to Supplement
an Earlier Response, or to Admit.**

(1) Failure to Disclose or Supplement. If a party fails to provide information or identify a witness as required by Rule 16.1(a)(1), 16.2(d) or (e), 16.205(d) or (e), or 26(e), the party is not allowed to use that information or witness to supply evidence on a motion, at a hearing, or at a trial, unless the failure was substantially justified or is harmless. **In addition to or instead of this sanction,** the court, on motion and after giving an opportunity to be heard:

. . .

(B) may inform the jury of the party's failure; and

(C) **may impose other appropriate sanctions, including any of the orders listed in Rule 37(b)(1).**⁴⁹

Unlike NRCP 37(b), NRCP 37(c) does not contain any language stating that sanctions can only be imposed for violation of a court order; instead, “if a party fails to provide information or identify a witness as required by Rule 16.1(a)(1), 16.2(d) or (e), 16.205(d) or (e), or 26(e).” See also, APCO Constr., Inc. v. Zitting Bros. Constr., Inc., 136 Nev. 569, 575, 473 P.3d 1021, 1027–28 (2020) (holding that sanctions under NRCP 37(c) are appropriate when a

⁴⁹ NRCP 37(b)(1)(C) permits “striking pleadings in whole or in part.”

party fails to timely supplement as required by NRCP 26(e)(1)).

Additionally, NRCP 37(c) makes no distinction between “attorney” and “party.” It only states that sanctions are warranted if a “party” fails to provide information as required by NRCP 16.1. Therefore, even if this Court accepts firstSTREET’s argument that the District Court was only sanctioning firstSTREET—the party—NRCP 37 allows for sanctions against a “party” for failure to provide information as required by NRCP 16.1. There is no requirement in NRCP 37(c) for the party to violate a prior *order*, instead per this rule, sanctions may issue, when a party fails to provide information or identify a witness. Thus, the sanctions are valid under NRCP 37(c) independent of NRCP 16.1(e)(3).

3. It was Not an Abuse of Discretion to Impose Sanctions Under the Court’s Inherent Equitable Powers Because Equity Does Not Require a Prior Order

Independent of the above, the District Court was also within its discretion to impose sanctions without a prior discovery order because it had authority pursuant to its inherent equitable power to control abusive litigation practices. Young v. Johnny Ribeiro Bldg., Inc., 106 Nev. 88, 787 P.2d 777 (1990); Hawkins v. Eighth Jud. Dist. Ct. in & for Cty. of Clark, 133 Nev. 900, 903, 407 P.3d 766, 769 (2017). Under Young, the District Court’s inherent equitable powers permitted it to impose sanctions “for discovery and other

litigation abuses not specifically proscribed by statute.” Id. The District Court is not bound by firstSTREET’s hyper-technical and overly narrow interpretation of NRCP 16.1(e)(3).

This makes judicial sense because entire basis of firstSTREET’s argument (that without a court order or a specific discovery request a party has no obligation to turn over relevant documents voluntarily) is exactly the bad faith approach to litigation that NRCP 16.1 and NRCP 26 is meant to prevent. At its core, firstSTREET is arguing that a party should be allowed to withhold relevant evidence **until** there is a court order.

NRAP 1(c) requires that the rules of civil procedure are “liberally construed to secure the proper and efficient administration of the business and affairs of the courts and to promote and facilitate the administration of justice by the courts.” The rules are not meant to allow a party to escape the disclosure requirements under the guise of clever, hyper-technical readings of the rules.

Finally, in Bahena v. Goodyear, this Court held that a trial judge has discretion to determine what factors are to be considered when considering discovery sanctions on a case-by-case basis; just as a trial judge has discretion to determine the factors to consider when deciding the admissibility of evidence.

In Higgs v. State, 126 Nev. —, —, 222 P.3d 648, 658 (2010), we concluded that with respect to the admissibility of expert testimony, Nevada law controls, and that we only look “at federal jurisprudence for guidance—when *needed*.” **We further concluded that evidentiary authority “allows the trial judge discretion in deciding what factors are to be considered on a case-by-case basis.”** [citation omitted] **We hold that this framework also applies to discovery sanctions.**⁵⁰

Thus, the trial judge has discretion to determine what factors to consider on a case-by-case basis and may sanction under its inherent equitable powers in addition to the other rules mentioned *supra*. There is no rigid requirement that the trial judge can only impose sanctions if and only if there is a prior discovery order.

B. FIRSTSTREET’S CITED AUTHORITIES SUPPORT PLAINTIFFS’ POSITION

firstSTREET argues that “Nevada law requires violation of a court order before a district court may strike a pleading”⁵¹ and cites to four Nevada cases involving discovery sanctions: (1) Young v. Johnny Ribeiro Bldg., Inc., 106 Nev. 88, 787 P.2d 777 (1990); (2) Nevada Power Co. v. Flour Illinois, 108 Nev. 638, 837 P.2d 1354 (1992); (3) Bahena v. Goodyear Tire & Rubber Co., 126 Nev. 243, 235 P.3d 582 (2010); and (4) Foster v. Dingwall, 126 Nev.

⁵⁰ Bahena, 126 Nev. at 610.

⁵¹ See, firstSTREET’s Petition at 14:15-15:13.

56, 227 P.3d 1042 (2010).

None of these cases held that a district court can **only** strike a pleading if a party violates a court order.⁵² Instead, these cases stand for the proposition that the District Court, as the court with intimate familiarity with the proceedings below, is given broad discretion when it comes to non-case-concluding discovery sanctions.⁵³ In fact, even when a district court does impose case concluding sanctions, these cases only state that this Court applies a “somewhat heightened,” as opposed to a de novo standard of review.

The absurdity of firstSTREET’s position is highlighted by this Court’s holding in Young, where the sanction was case-ending dismissal with prejudice, this Court made clear that “while dismissal need not be preceded by other less severe sanctions, it should be imposed only after thoughtful consideration of all the factors involved in a particular case. Young v. Johnny Ribeiro Bldg., Inc., 106 Nev. 88, 92, 787 P.2d 777, 780 (1990). It logically follows that if a district court is able to dismiss a case with prejudice without

⁵² In fact, Plaintiffs can just as easily cite to cases where discovery sanctions were imposed even in the absence of a court order. See, Skeen v. Valley Bank of Nevada, 89 Nev. 301, 302–03, 511 P.2d 1053, 1053–54 (1973); Arnold v. Kip; ETT, Inc. v. Delegado, 126 Nev. 709, 367 P.3d 767 (2010) (unpublished); Freemon v. Fischer, 281 P.3d 1173 (Nev. 2009) (unpublished).

⁵³ Additionally, Young, Nevada Power, and Foster are easily distinguishable in that in each of those cases, the District Court imposed case-ending sanctions.

first imposing less severe sanctions, then surely it can impose non-case-ending sanctions without first imposing less severe sanctions. Clearly, Nevada law does not require a prior order against firstSTREET as a prerequisite to imposing non-case-ending discovery sanctions.

C. THE DISTRICT COURT DID NOT ABUSE ITS DISCRETION BY STRIKING FIRSTSTREET’S ANSWER AS TO LIABILITY ONLY WITHOUT CONDUCTING AN EVIDENTIARY HEARING

firstSTREET’s final argument is that the District Court abused its discretion by imposing sanctions without conducting an evidentiary hearing. firstSTREET relies on Nevada Power v. Flour Illinois, 108 Nev. 638, 837 P.2d 1354 (1992), to argue that an evidentiary hearing was necessary.⁵⁴ This Court considered and rejected this exact argument in Bahena v. Goodyear Tire & Rubber Co., 126 Nev. 606, 612, 245 P.3d 1182, 1186 (2010):

Goodyear relies upon the case of Nevada Power v. Flour Illinois, 108 Nev. 638, 837 P.2d 1354 (1992), to support its argument that a full evidentiary hearing is necessary when an answer is going to be dismissed as to liability. Goodyear incorrectly relies on this case because in Nevada Power, the district court dismissed the complaint of Nevada Power with prejudice without conducting an evidentiary hearing regarding alleged discovery abuses. Since the district court entered its order dismissing Nevada Power's complaint with prejudice, the case was over. The only remedy Nevada Power had was to appeal; therefore, an evidentiary hearing was appropriate. In Bahena, the district court struck Goodyear's answer as to liability only, but Goodyear had

⁵⁴ See, firstSTREET’s Petition at 15:13-19:14.

the full right to contest general, special, and punitive damages. In fact, Goodyear prevailed upon Bahena's claim for punitive damages. As distinguished from Nevada Power, Goodyear was not out of court based upon the district court's sanction order. **Therefore, we decline to extend the holding of *Nevada Power Company* for non-case concluding discovery sanctions.**⁵⁵

As noted above, the Sanction Order here is not an “ultimate discovery sanction of...striking an answer *and* damages.” The title of the Sanction Order plainly states that firstSTREET’s Answer was being stricken “AS TO LIABILITY ONLY.”⁵⁶

Therefore, the District Court had discretion to “hold such hearing as it reasonably deem[ed] necessary to consider the matters that [were] pertinent to the imposition of the appropriate sanctions.”⁵⁷ “The length and nature of the hearing for non-case concluding sanctions shall be left to the sound discretion of the district court.”⁵⁸

Here, the hearing on Plaintiffs’ Renewed Motion to Strike was over two hours long. The District Court gave both Plaintiffs’ counsel and firstSTREET’s counsel the opportunity to make factual representations about

⁵⁵ Bahena, 126 Nev. at 612.

⁵⁶ PA1010.

⁵⁷ Bahena 126 Nev. at 611 (citing Bahena v. Goodyear Tire & Rubber Co. (Bahena I), 126 Nev. 243, 256, 235 P.3d 592, 601 (2010))

⁵⁸ Id.

the discovery at issue. The Court asked very pointed questions about the issues presented including the following:

THE COURT: Okay. Thank you. Let's proceed then. Counsel, it would be helpful to me if I prepared my notes while we're going through this with particular facts identified to me in short statements that I can put into like one page sheets that I am working on.

Well, let me explain it this way. What I would like to do is for the top five pieces of evidence, Mr. Cloward, for you to identify what the piece of evidence at issue is, --

MR. CLOWARD: Okay.

THE COURT: -- and, then, the next point would be: When did the relevance of that issue or that piece of evidence become known? Next would be: When did First Street obtain that evidence? Perhaps they always had it.

The fourth piece of information I would need is: Was the production excused? And there's arguments that things might have been excused because of a discovery order, or a meet and confer, or the language used by the plaintiff in a particular document request. So, that's the fourth point.

And then the last point was: When was the evidence actually produced?⁵⁹

The Court gave Plaintiffs the opportunity to discuss certain evidence and gave firstSTREET the opportunity to address each piece of evidence raised by Plaintiffs. The Court also gave the parties the opportunity to address Plaintiffs' Motion to Strike as a whole. The Court also considered extensive briefing,

⁵⁹ PA0926:12-927:7.

exhibits, and affidavits as well as the entire history of the case. The Court stated:

THE COURT: ...Given the history of this case, the volume of material presented, the affidavits, and all of the exhibits, I don't believe that an evidentiary hearing is necessary for me at this time to resolve this. So, I'm not going to order an evidentiary hearing.⁶⁰

This Court found a similar hearing sufficient in Bahena.⁶¹

firstSTREET's argument that an evidentiary hearing was necessary was based on its disputation with the statements contained in the Affidavit of Nick Fawkes. However, firstSTREET fully briefed its arguments regarding Nick Fawkes in its Opposition to Plaintiffs' Renewed Motion to Strike.⁶² Further, the District Court heard and considered firstSTREET's Counsel's factual assertions and argument regarding Nick Fawkes during the hearing. The District Court fully considered firstSTREET's arguments and still found that, at minimum, firstSTREET violated NRCP 16.1 because neither Mr. Fawkes nor Annie Doubek were ever disclosed by firstSTREET as witnesses in any

⁶⁰ PA0991:24-992:4.

⁶¹ Bahena, 126 Nev. at 257 ("Since the district court considered all affidavits and exhibits, and permitted the attorneys for Bahena and Goodyear to make factual representations to the court, we conclude that the district court conducted a sufficient hearing.")

⁶² PA0399-402.

NRCP 16.1 disclosure. Most importantly though, the issues with respect to Mr. Fawkes and Ms. Doubek are a red herring, as they were only a very small part of the pervasive, continued misconduct of firstSTREET.

The District Court intimately understood all the issues, carefully and thoughtfully considered them, and its ruling was based on substantial evidence. The Sanction Order must be affirmed.

VI. CONCLUSION

The District Court did not abuse its discretion in striking firstSTREET's Answer as to liability only and, therefore, this Court must deny firstSTREET's Petition for Writ.

Dated this 7th day of December, 2021.

/s/ Benjamin P. Cloward
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RULE 28.2 CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because it was prepared in proportionally spaced typeface using Microsoft Word for Microsoft 365 in Times New Roman font in size 14.

2. I further certify that this brief complies with the page or type volume limitations of NRAP 32(a)(7) and NRAP 21(d) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionately spaced, has a typeface of 14 points or more, and contains 6,989 words.

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

I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 7th day of December, 2021.

/s/ Benjamin P. Cloward

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CERTIFICATE OF SERVICE

I certify that on December 7, 2021, I submitted the foregoing REAL PARTY IN INTEREST'S OPPOSITION TO MOTION FOR STAY for filing via the Court's eFlex electronic filing system. Electronic notification will be sent to the following.

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

/s/ Catherine Barnhill
An Employee of Richard Harris Law Firm

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

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' first STREET FOR BOOMERS & BEYOND, INC.'s &
AITHR DEALER, INC.'s PETITION FOR WRIT OF MANDAMUS**

**VOLUME 1
PAGES 1-250**

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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:

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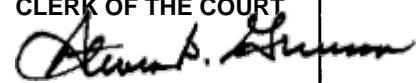
I further certify that I served a copy of this document by mailing a true and correct copy thereof, postage prepaid, at Las Vegas, Nevada, addressed as follows:

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

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

/s/ Catherine Barnhill
An Employee of Richard Harris Law Firm

PETITIONERS' APPENDIX
TAB "1"



1 **OMPO**
2 BENJAMIN P. CLOWARD, ESQ.
3 Nevada Bar No. 11087
4 **RICHARD HARRIS LAW FIRM**
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6 Las Vegas, Nevada 89101
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9 E-Mail: Benjamin@RichardHarrisLaw.com
10 *Attorneys for Plaintiff*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

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

21 Plaintiff,

22 vs.

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

Defendants.

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

**OPPOSITION TO DEFENDANT
JACUZZI, INC.'S MOTION FOR
PROTECTIVE ORDER**

Date of Hearing: September 19, 2018
Time of Hearing: 9:30a.m.

1 AND ALL RELATED MATTERS
2

3 **OPPOSITION TO DEFENDANT JACUZZI, INC.'S**
4 **MOTION FOR PROTECTIVE ORDER**
5

6 Plaintiffs, by and through their attorney of records, Benjamin P. Cloward, Esq. of the
7 Richard Harris Law Firm, hereby submits this Opposition to Defendant Jacuzzi, Inc.'s Motion
8 for Protective Order. This Opposition is made and based on the papers and pleadings on file
9 herein, the following Memorandum of Points and Authorities, and the oral argument of counsel
10 at the hearing on this Motion.

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **I. INTRODUCTION**

13 This is a product liability case arising out of a February 19, 2014 incident which resulted
14 in the tragic and prolonged death of Sherry Cunnison ("Sherry"). Like many elderly Americans,
15 Sherry had difficulty getting in and out of traditional bath tubs. Sherry purchased a Jacuzzi
16 Walk-In Tub to assist her with bathing based on the promises made by Jacuzzi regarding the
17 safety features associated with its Walk-in Tubs.

18 On February 19, 2014, just the second or third time using her newly purchased Jacuzzi
19 Walk-in Tub, Sherry began taking a bath. Due to the defective design of the Tub, Sherry slipped
20 off the front of the seat while reaching for the poorly placed tub controls and drain-lever, located
21 out of reach at the front of the tub. As her bottom slipped off from the front of the tub seat, she
22 became wedged in the footwell of the tub such that she was unable to stand back up. She
23 ultimately became trapped in a living hell remaining in that awful position for nearly 3 days.

24 After not hearing from Sherry, her family and friends became concerned. The local
25 police were contacted to perform a wellness check. Sherry was discovered trapped in the Jacuzzi
26 walk-in tub. Due to the terrible design features of the tub (having an inward opening door) even
27 four trained Firefighters/Paramedics could not initially extricate Sherry from the tub. The
28 Firefighters/Paramedics tried desperately to remove her from the tub ultimately snapping her

1 arm as they tried to pull her from the bottom of the tub. After snapping her arm, the
2 Firefighters/Paramedics finally resorted to cutting the door completely off the tub to free Sherry.
3 She was rushed to the hospital where she died a few days later of severe dehydration and
5 rhabdomyolysis.

6 After Sherry's lawsuit was filed, her attorneys were contacted by a second family in
7 Georgia (hereinafter "The Smith Case"), who had their beloved father and husband drown in his
8 Jacuzzi Walk-in tub as his 69-year-old wife struggled frantically to hold his head above water
9 while simultaneously trying to open the door and drain the tub. Ultimately, Mack Smith drown
10 in his wife Barbara's arms as she valiantly, but unsuccessfully, tried to rescue him.

11 Sherry's family has been trying to identify and learn of other cases in addition to hers
12 and The Smith Case. Their attempts have been met with obfuscation and delay – and now in
13 Jacuzzi's current Motion – accusations of harassment.

14 The discovery sought by Sherry's family is vital to proving her case. To prevail, she
15 must prove that the Walk-in Tub at issue was defective by being unreasonably dangerous or
16 failing to have adequate warnings. *See generally, Ginnis v. Mapes Hotel Corp.*, 86 Nev. 408,
17 415, 470 P.2d 135, 139 (1970)). The discovery sought is to ascertain issues relative to prior
18 notice, dangerousness of the subject tub and Jacuzzi's disregard for the safety of people like
19 Sherry. Jacuzzi has now filed a Motion for Protective Order in an attempt to prevent Plaintiffs
20 from discovering such information.

21 **II. STATEMENT OF FACTS**

22 Jacuzzi's knowledge of prior incidents is relevant to Plaintiffs' claims and it is necessary
23 for Plaintiffs to prove that Jacuzzi knew that the subject Walk-In Tub was unreasonably
24 dangerous, and that Jacuzzi knew of the heightened risk the Walk-In Tub posed to people like
25 Sherry. The information is vital to issues of prior notice and punitive damages – issues that
26 Sherry's family carries the burden of proof.

27 Plaintiffs have attempted to engage in discovery regarding Jacuzzi's knowledge of prior
28 and subsequent incidents involving injuries which arise out of the use of a Jacuzzi walk-in tub.

1 However, Plaintiffs have become increasingly concerned about whether Jacuzzi has been
2 engaged in good faith discovery. A trial is a search for the truth. *Cardinal v. Zonneveld*, 89
3 Nev. 403, 407 (Nev. 1973). However, when one party is in sole control of the facts or evidence,
4 the search for truth becomes an elusive one-sided affair.

5
6 In order to prove her case, Sherry's family must show the extent of defendant's prior
7 knowledge of a dangerous condition and evidence related to the causation of Plaintiff's injuries.
8 *See generally Reingold v. Wet N'Wild Nevada, Inc.* 113 Nev 967, 944 P.2d 800 (1997). Further,
9 evidence of subsequent, similar accidents involving the same condition may also be relevant on
10 the issues of causation and whether there is a defective and dangerous condition. *See Reingold*
11 *at* 113 Nev. 969, 944 P.2d 802 (*citing Ginnis v. Mapes Hotel Corp.*, 86 Nev. 408, 415, 470 P.2d
12 135, 139 (1970)).

13 Subsequent incidents involving the use of a similar product under similar conditions is
14 just as relevant as a prior incident to show that the product was in fact dangerous or defective
15 and that the injuries were caused by the condition. *Id.*; *Ginnis at* 86 Nev. 415, 470 P.2d 139
16 (*citing B.E. Witkin, California Evidence §353* (2d ed. 1966); *see also B.E. Witkin, California*
17 *Evidence §389* (3d ed. 1986)).

18 Obviously because Sherry's family must prove the full extent of Jacuzzi's knowledge of
19 prior and subsequent incidents to meet her burden of proof, this area of inquiry is very important.
20 For the same reasons, it is equally important to Jacuzzi to stop the disclosure of this information
21 to prevent Sherry's family from meeting the burdens of proof.

22 **A. JACUZZI HAD EVERY OPPORTUNITY TO FULLY AND FAIRLY DISCLOSE**
23 **"SIMILAR INCIDENT" DOCUMENTS BUT FAILED TO ACT IN GOOD FAITH**

24 As Jacuzzi sets forth in its Motion, the parties agreed to what terms would be included in
25 the search criteria relative to "Similar Incidents."¹ The parties agreed to the following search
26 terms:

27 . . .

28

¹ See Jacuzzi Mot. at 7:8-23.

1. Fall
2. Slip
3. Elderly
4. Overweight
5. Entering
6. Exiting
7. Door
8. Stability
9. Stable body position
10. Water controls
11. Seat
12. Hand holds
13. Hand grips
14. Grab rails
15. Grab bars
16. Grip bar
17. Design
18. Incident
19. Testing
20. Audit

See, Ex. 2 (email correspondence between Josh Cools and Ben Cloward).

Jacuzzi was questioned at deposition about what steps were taken to identify similar incidents and through William Demeritt testified that assignments were given to three employees, Mr. Castillo, Ms. Reyes and Mr. Bachmeyer to search for incidents where the 20 words that had been provided were found.² Mr. Demeritt testified that he could not give an estimate of the number of incidents that were retrieved by Mr. Castillo, Ms. Reyes and Mr.

² *See Ex. 1* William B. Demeritt - Vol. I, 23:9-15, May 24, 2018.

1 Bachmeyer, but that it was “a voluminous amount, and each word that was searched had different
2 amounts.”³

3 After the voluminous number of documents was turned over to Corporate Counsel Ron
4 Templer, Jacuzzi claimed that despite searching for similar incidents using the foregoing search
5 terms, “no prior similar incidents” existed which was “consistent with Jacuzzi’s discovery
6 responses related to prior incidents.”⁴

7
8 Prior to this Court’s intervention, Jacuzzi maintained in written discovery and sworn
9 testimony that other than Sherry’s incident, Jacuzzi was not aware of *a single* prior incident
10 involving one of its walk-in tubs and was only aware of *one* subsequent incident – coincidentally
11 The Smith Case. Other than these two cases, Jacuzzi claimed affirmatively in written discovery
12 these were the *only two* cases nationwide.

13 Believing it was more than coincidence that the only two cases that Jacuzzi claimed to
14 exist were two cases coincidentally being handled by the same Plaintiff lawyers, Sherry’s
15 counsel spent a significant amount of time trying to find other claims and indeed *did find* other
16 claims against Jacuzzi involving the walk-in bathtubs.

17 Armed with the information of other claims, Sherry’s lawyers deposed the Rule 30(b)(6)
18 designee for topics related to claims management and inquired as to whether other claims in
19 addition to Sherry’s claim and The Smith Case existed. Sherry’s lawyers also wanted to find out
20 why Jacuzzi claimed that the search did not reveal any other incidents when Sherry’s lawyers
21 knew of at least two additional incidents in addition to hers and The Smith Case. Jacuzzi
22 effectively *doubled-down* and reasserted that Sherry’s claim and The Smith Case were the only
23 two cases nationwide that existed either before or after Sherry’s incident.

24 Jacuzzi’s designee was given many, many opportunities to correct the record and testify
25 accurately that additional claims did in fact exist but chose against doing so. Specifically,
26 William Demeritt testified to the following:

27
28 ³ *Id.* at 23:19-22.

⁴ *See* Jacuzzi Mot. at 7:17-23.

1 Q. All right. Now, the answer is qualified, and it goes on further and it
2 says:

3 "This response is limited to injury claims made prior to the subject
4 incident and to the subject Jacuzzi walk-in bathtub model that are
5 similar to the vague claims that have been asserted in this action.

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

13 Now, that's a lot of legal, what I call, mumbo jumbo. **But my
14 understanding is your testimony is that regardless of whether or
15 not it's similar to the claim at issue, whether it's before or after,
16 you're only aware of two incidents of injury for a walk-in tub,
17 period.**

18 A. **Correct.**

19 See Ex. 1 William B. Demerritt - Vol. I, 76:1-77:2, May 24, 2018.

20 Several additional questions were asked to give Jacuzzi every opportunity to be truthful,
21 accurate and fully disclose all incidents involving the walk-in tub. The designee was asked
22 specifically about other lawsuits to which the following exchange took place:

23 Q. Now, I just -- I'm not interested in the property damage claims. But my
24 understanding is you're only aware -- regardless of whether or not it's
25 similar to the claims of Ms. Cunnison or not, you're only aware of this
26 lawsuit involving a walk-in bathtub; correct?

27 A. Yes. This lawsuit, yes.

28 Q. Okay. You're aware of no other lawsuits involving Jacuzzi walk-in
bathtubs?

A. Personal injury, no.

Q. Okay. Are there other lawsuits involving walk-in tubs that you are
aware of that don't involve personal injury?

A. There might be lawsuits involving property damage, but I don't have
any of them. I don't know what potentially First Street would have had.

Q. Gotcha. Okay. But it's fair to say that regardless of the limitation on
the scope, you're only aware of the one lawsuit involving personal
injury, and that's Ms. Cunnison?

A. For a walk-in tub, yeah.

1 Ex. 1 Demeritt Dep. – Vol. 1 at 78:24–79:20. This testimony was not accurate. At the deposition,
2 Jacuzzi was confronted with a lawsuit filed in Texas by a Plaintiff who was stuck inside a walk-
3 in tub and who suffered emotional and physical injuries as a result.

5 To ensure that Jacuzzi had been given an adequate opportunity to search for other
6 incidents prior to the deposition, a series of questions were asked to explore that topic which
7 resulted in the following exchange:

8 Q. Did you actually do a search to determine, to look for other claims other
9 than these two?

10 A. Well, first off, they would have come up in the search that we talked
11 about in question 4. But Ron and I -- or corporate counsel and I share
12 a wall. Our offices are right next to each other, and we talk about
13 these cases every day. So I can say with a high degree of certainty
14 that if there was a bodily injury that exceeded someone getting
15 their finger pinched in a door or something like that, something
16 that was really de minimus, we would know about it.

17 Q. Certainly if somebody filed a lawsuit against Jacuzzi, you'd know about
18 it?

19 A. You'd have to respond to the lawsuit, so, yes, Ron -- corporate counsel
20 would know.

21 Q. All right. Are there any other lawsuits that you're aware of involving
22 an injury claim other than Ms. Cunnison or the potential lawsuit of
23 Mr. Smith's family in Atlanta?

24 A. Those are the only two I'm aware of.

25 Q. Did you actually search to look for other cases?

26 A. No. But I wouldn't have had to, because I would have had an open
27 file if there was other cases.

28 Q. And you don't have any other files that are open?

A. I have -- I have a number of open files. I only have two on walk-in tubs.

22 Ex. 1 at 52:12–53:14.

23 Jacuzzi continued to provide inaccurate testimony that Sherry's case and The Smith Case
24 were the *only two* claims involving a walk-in tub with the following exchange:

25 Q. BY MR. CLOWARD: Okay. How many files do you have at this point
26 that are open?

MR. COOLS: Object to form.

27 Q. BY MR. CLOWARD: Just let him answer, please.

28 A. On all products or just walk-in tubs?

Q. Walk-in tubs.

- 1 A. One or two.
2 Q. What are those?
3 A. Well, one is Cunnison and the other one is Smith, I think.
4 Q. So those are the only two open claims that you're aware of?
5 A. On walk-in tubs, yes.
6 Q. And that's from the date they were created till the present?
7 A. Correct.
8 Q. Okay. Now, I'm not talking about just death claims. I'm talking about
9 any and all claims that you're aware of.
10 A. Yeah. Yes.
11 Q. So you're only aware of two open files regarding injury; is that fair?
12 A. I am only aware of two open files. I'm not inferring that there are only
13 two open files. I'm saying I am only aware of two.
14 Q. Would somebody else be aware of other files that were open?
15 A. Well, if the claim was for a leak or, you know, a faucet that wasn't
16 operating properly, I would not get that, and that would be handled at
17 the customer service or the warranty level.
18 Q. I'm not interested in leaks or faucet repairs or anything like that. I'm
19 interested in personal injury.
20 A. Okay. But that's not what you had said, and I wanted to answer your
21 question --
22 Q. I appreciate that.
23 A. -- as honestly as I could.
24 Q. I appreciate that.
25 A. As far as personal injury, either I would know about it or corporate
26 counsel would know about it. Can I call him "Ron" (indicating) and
27 every time I do you put down "corporate counsel"? One of the two of
28 us would know.
Q. Okay. And that would include, say, for instance, if there was an injury
that maybe wasn't very severe, but, you know, maybe somebody filed
a lawsuit. They thought it was severe enough that they actually filed a
lawsuit.
That would include those --
A. Yes.
Q. -- right?
Okay. And you're only aware of the two cases nationwide?
A. Correct.

Ex. 1 at 50:7– 52:11.

What is most troubling is that Jacuzzi's Corporate Counsel, Ron Templer was present
during the entire deposition. Ex. 1 (see appearances). According to Mr. Demeritt's deposition,
either he or Ron would have known about *any* claim. At any point Jacuzzi could have taken the

time to clarify the record and correct the inaccurate testimony. Jacuzzi chose instead to do nothing to clarify the record but instead waited until it was confronted with the evidence related to the additional claims. Yet Jacuzzi remained silent on the *additional eleven incidents that ultimately would be turned over after court intervention*.

Using the information that transpired at the deposition, Jacuzzi was ordered to produce documents relating to prior or subsequent injury claims from 2008 to present. It is worth reminding that to this point, Jacuzzi had already sworn in discovery responses, in correspondence from counsel, and under oath that an exhaustive search had been performed that did not reveal any similar incidents using the search terms agreed upon. Yet, once Jacuzzi was facing serious sanctions from the Court, conveniently the search parameters now revealed *eleven subsequent incidents!*

The fact that Jacuzzi produced evidence of eleven other incidents only after Court intervention is extremely concerning. What is also very concerning is that when the eleven other incidents are reviewed, *all of them had terms that fit squarely within the agreed upon search criteria (20 search terms)*. For instance, following is a table summarizing the eleven claims that were eventually produced⁵:

NO	DESCRIPTION	DATE	BATES NUMBER
1.	Baize v. Galls, etc; Orange County, Texas Case A160190C	June 17, 2016	JACUZZI002912 – JACUZZI002926
2.	Case 00277125 Jacuzzi Consumers Master Account – complaint of slippery floor – consumer fell in tub	February 2, 2015	JACUZZI002927 – JACUZZI002937
3.	Case 00285359 Jacuzzi Consumers Master Account – consumer slipped in tub twice	March 6, 2015	JACUZZI002938 – JACUZZI002940

⁵ See Ex. 3 Jacuzzi002912 – Jacuzzi002991.

NO.	DESCRIPTION	DATE	BATES NUMBER
4.	Case 00369880 Jacuzzi Consumers Master Account – air controls not working – could not tub the tub off and had to crawl out of tub onto toilet	April 25, 2016	JACUZZI002941 – JACUZZI002944
5.	Case 00398408 Jacuzzi Consumers Master Account – tub taking too long to drain and fell hurting herself when crawling out tub	September 26, 2016	JACUZZI002945 – JACUZZI002948
6.	Case 00407773 Jacuzzi Consumers Master Account – multiple problems with tub – flooded her bathroom	November 10, 2016	JACUZZI002949 – JACUZZI002963
7.	Notification Report 20160824-98A64-1589899 Complaint – air jets thrust them forward causing them to land on knees with head underwater	April 3, 2016	JACUZZI002964 – JACUZZI002966
8.	Notification Report 20150202-72E1B-1466080 Complaint – wife injured due to slippery floor in tub	February 2, 2015	JACUZZI002967 – JACUZZI002969
9.	Case 00223498 Jacuzzi Consumers Master Account – husband slipped from seat and broke his toe	May 7, 2014	JACUZZI002970 – JACUZZI002971
10.	Case 00282714 Jacuzzi Consumers Master Account – seat is slippery and leaving marks on her mom, faucet leaking, caulking not completed	February 25, 2015	JACUZZI002972 – JACUZZI002988
11.	Sprott Incident Slippery tub – Fell in front of seat and became wedged between open door and seat	May 22, 2015	JACUZZI002989 – JACUZZI002991

When each of the claims are evaluated it becomes very clear that they all should have been identified under the prior search. For example, incident 1, involved an individual that got

1 stuck in a walk-in tub. A lawsuit was filed by Mr. Baize against Jacuzzi and the lawsuit
2 mentioned the design issues with the seat.⁶ The lawsuit also mentioned that Mr. Baize was
3 overweight and elderly.⁷ Three (3) of the twenty (20) search terms were stated explicitly in the
5 lawsuit.

6 Incident 2 involved an individual who complained of a slippery tub floor and a slippery
7 seat causing her to fall twice striking her face on the large faucet resulting in a black eye. She
8 notes that this was her *second* complaint about slipping in the tub and that customer service
9 “ignored the first.”⁸ Importantly, her complaint also triggered three (3) of the twenty (20) search
10 terms: seat, slip and fall. What is very concerning is that she indicated she called previously and
11 that this was her *second* complaint.⁹ Jacuzzi has never turned over the first complaint.

12 Incident 3 involved an individual who slipped twice trying to get up the seat and exit the
13 tub which resulted in a fall requiring the fire department to get him out of the tub! This incident
14 triggered three (3) of the twenty (20) search terms: slip, seat, exit(ing).¹⁰

15 Incident 4 involved an individual having a hard time adjusting the air controls. A search
16 criterion was for *water controls* and because *controls* is in both, this incident should also have
17 been identified.¹¹

18 Incident 5 involved an individual who became concerned after the tub would not drain
19 (she noted it took 47 minutes to drain this time) and as a result became panicked feeling stuck
20 and tried to crawl out of the tub which resulted in her falling and banging her head directly on
21 the tile. This incident should have triggered one (1) of the twenty (20) search terms: fall (fell).¹²
22 Additionally, this resulted in the end user hitting her head directly on the tile. Based on the Rule
23 30(b)(6) testimony, this would have resulted in a claim because it involved personal injury.

24
25 ⁶ See Ex. 3 Jacuzzi002922.

26 ⁷ *Id.*

27 ⁸ See Ex. 3 Jacuzzi002932-002933.

28 ⁹ *Id.*

¹⁰ See Ex. 3 Jacuzzi002938-002940.

¹¹ See Ex. 3 Jacuzzi002941-002944.

¹² See Ex. 3 Jacuzzi002945-002948.

1 Incident 6 involved another individual who slipped and hurt herself. While this may not
2 have triggered any search terms, it certainly should have been identified because it resulted in
3 an individual who “slipped and hurt her back.”¹³

5 Incident 7 involved an individual who was thrushed (sic) forward by the jets resulting in
6 being pushed underwater. She tried frantically to get a hold of the bar to pull herself back up
7 and felt that she could have drowned and that the tub was a death trap. This triggered one (1) of
8 the twenty (20) search terms.¹⁴

9 Incident 8 involved a woman who slipped because of a slippery floor and inadequate
10 grab bar. This resulted in left foot and left knee bruising then back and tailbone bruising and
11 pain resulting in having to go to the doctor to get x-rays and pain pills. This triggered three (3)
12 of the twenty (20) search terms: slip, bar, and fall.¹⁵ Additionally, it resulted in significant
13 injuries requiring medical treatment.

14 Incident 9 involved a gentleman who slipped from the seat which resulted in a broken
15 toe. The injuries resulted in an x-ray for a swollen foot. This incident triggered three (3) of the
16 twenty (20) search terms: slip, fall (fell), and seat.¹⁶

17 Incident 10 involved a woman who was having problems with the tub she purchased for
18 her elderly mother. This triggered three (3) of the twenty (20) search words: slip, seat and grab
19 bars.¹⁷

20 Incident 11 involved an elderly man who had purchased a walk-in tub with strength and
21 mobility issues. The first time he used the tub he fell because it was slippery and became wedged
22 between the door and the seat. The inward-opening door became a trap for him. The individual’s
23 physician gave a written opinion that the tub was not safe.¹⁸ This triggered five (5) of the twenty
24 (20) search words: slip, seat, fall, door and elderly. This also involved a lawyer that had sent a
25

26 ¹³ See Ex. 3 Jacuzzi002949-002963.

27 ¹⁴ See Ex. 3 Jacuzzi002964-002966.

28 ¹⁵ See Ex. 3 Jacuzzi002967-002969.

¹⁶ See Ex. 3 Jacuzzi002970-002971.

¹⁷ See Ex. 3 Jacuzzi002972-002988.

¹⁸ See Ex. 3 Jacuzzi002989-002991.

1 letter to Jacuzzi and would certainly have been on both Ron Templer and William Demeritt's
2 radar. But neither of them mentioned anything about this during the Rule 30(b)(6) deposition.

3 The following timeline summarizes Jacuzzi's improper discovery conduct:

- 5 • Throughout written discovery, Jacuzzi maintained it was not aware of a
6 single prior incident and was only aware of one subsequent incident, The
7 Smith Case.
- 8 • On February 23, 2018 the parties agreed that Jacuzzi would perform a
9 search for similar incidents using mutually agreed upon search terms.
- 10 • On April 23, 2018, Jacuzzi's counsel sent a letter representing that Jacuzzi
11 performed a search using the agreed upon search terms. Jacuzzi
12 represented that the search returned no responsive documents.
 - 13 ○ This is belied by the fact that on May 24, 2018, Jacuzzi's Rule
14 30(b)(6) designee, William B. Demeritt, testified that search found
15 "a voluminous amount" of documents.
- 16 • On May 24, 2018, Mr. Demeritt testified over and over that there were **no**
17 similar incidents other than The Smith Case. Jacuzzi maintained this
18 position throughout the deposition even though corporate counsel, Ron
19 Templer (who also would have known about **any** claim) was also present.
 - 20 ○ Mr. Demeritt's testimony is belied by the eleven newly disclosed
21 similar incidents.
- 22 • On July 20, 2018, this Court ordered Jacuzzi to produce all similar
23 incidents involving personal injury from 2008 to present.
- 24 • On August 17, 2018, **only after Court intervention**, Jacuzzi produced
25 eleven new similar incidents.
 - 26 ○ A review of the newly disclosed documents shows that **each**
27 **document contains several of the mutually agreed upon search**
28 **terms**. Therefore, these documents should have been produced
voluntarily without the need for Plaintiffs' original Motion to
Strike.

27 Jacuzzi's recent disclosure only confirms that Jacuzzi has not engaged in good faith
28 discovery. Only under threat of significant sanctions did Jacuzzi finally produce *some* documents

1 responsive to Plaintiffs' original requests for production. There is no way for Plaintiffs – or this
2 Court – to know whether Jacuzzi has indeed produced all evidence of similar incidents. It is
3 worth reminding again that all of the 11 incidents either contained agreed upon search terms or
5 injuries (which Mr. Demerritt testified would have triggered a claim). Yet despite that – Jacuzzi
6 claimed that after a diligent search only “false positive” incidents were identified.

7 **B. DISCOVERY AT ISSUE**

8 To confirm whether additional similar incidents exist, Plaintiffs have attempted to
9 conduct additional discovery on this issue. Plaintiffs have set the depositions of the three Jacuzzi
10 employees identified by the Rule 30(b)(6) designee who were involved in conducting the
11 searches for similar incidents. These three witnesses are believed to have knowledge of other
12 incidents which have occurred. Plaintiffs have also sent additional written discovery aimed at
13 determining whether Jacuzzi has, in fact, disclosed all relevant material.

14 **III. LEGAL ARGUMENT**

15 At a recent hearing before this Court, Plaintiffs' counsel informed the Court that
16 Plaintiffs believe that the only way to truly know whether Jacuzzi has disclosed all evidence
17 relating to similar incidents is to have a third-party vendor conduct a forensic analysis of
18 Jacuzzi's ESI. The Court instructed Plaintiffs to file a motion to request such relief. The Court
19 also advised Plaintiffs to conduct additional discovery before filing the motion. The Court
20 advised Plaintiffs to attempt to find additional support for such a motion. The Court noted that
21 if additional discovery reveals that, for example, an employee testifies that there were additional
22 incidents which have not been disclosed, then such a motion may be granted. Accordingly,
23 Plaintiffs are attempting to engage in additional discovery.

24 The discovery at issue in the instant Motion is Plaintiffs' attempt to do exactly as the
25 Court advised. Plaintiffs are conducting additional discovery to determine whether additional
26 similar incidents exist. In order for the Court to be able to determine whether additional relief
27 is necessary, Plaintiffs must be allowed to continue to explore the “similar incidents” issue.

28

A. PLAINTIFFS ARE ENTITLED TO DEPOSE JACUZZI EMPLOYEES WHO HAVE KNOWLEDGE OF RELEVANT INFORMATION

Plaintiffs must be allowed to depose any Jacuzzi employees who may know facts relevant to this case. Jess Castillo, Regina Reyes, and Curt Bachmeyer are three Jacuzzi employees who Jacuzzi's own Rule 30(b)(6) designee has identified as employees with knowledge regarding prior similar incidents. Jess Castillo ("Castillo") is an employee in the I.T. department. Castillo performed a search for documents relating to prior similar incidents. Regina Reyes ("Reyes") is the customer service manager. Reyes also performed a search for prior incident documents. Curt Bachmeyer ("Bachmeyer") is the warranty manager. He also performed a search. Plaintiffs are entitled to discover what facts these employees know.

Each of these employees performed a search for documents relating to prior incidents and, therefore, each of these employees potentially have knowledge of relevant information. Plaintiffs are entitled to depose these employees to determine what they know about similar incidents. Similarly, as the customer service manager and warranty manager, Reyes and Bachmeyer will likely have personal knowledge about similar incidents.

1. Plaintiffs Are Not Seeking Privileged Information

Contrary to Jacuzzi's assertions, Plaintiffs are not seeking privileged information. Plaintiffs are fully aware that communications with counsel may be privileged. Additionally, Plaintiffs are not seeking counsel's mental impressions. Plaintiffs are simply seeking to know what facts these employees know.

2. Plaintiffs Are Not Seeking Disproportionate Discovery

Given the facts of this case and the amount in controversy, the depositions at issue are not disproportionate to the needs of the case. Discovery shall be limited by the court if it determines that "(iii) the discovery is unduly burdensome or expensive, taking into account the needs of the case, the amount in controversy, limitations of the parties, resources, and the importance of the issues at stake in the litigation." NRCP 26(a)(2).

Here, the depositions will not be unduly burdensome given the large amount in controversy (especially considering the circumstances of Sherry's passing and Plaintiffs'

1 legitimate punitive damages claim). Jacuzzi is a large corporation with the resources to produce
2 three employees for short depositions. Additionally, the discovery sought is crucial to the issues
3 at stake. These depositions relate to Jacuzzi's knowledge of prior or subsequent incidents. Such
5 evidence goes towards the important issues of prior knowledge and punitive damages. Plaintiffs
6 must be able to take the depositions at issue in order to fully explore whether there have been
7 prior or subsequent incidents.

8 **3. Plaintiffs Are Not Seeking Cumulative Testimony**

9 Plaintiffs are entitled to ask these employees what facts they know about prior or similar
10 incident because they are the employees who have this information, not Mr. Demeritt. Demeritt
11 testified that Castillo, Reyes, and Bachmeyer performed searches for documents related to
12 similar incidents. However, he testified that he did not review the documents that the employees
13 found. He also testified that he did not have substantive conversations about what was found.
14 He only engaged in quick conversations where he simply asked them if they had completed their
15 search and whether they had provided the results of their search to Jacuzzi's corporate counsel.
16 He did not know the substance of the employees' search results. He only knew that they
17 completed their searches and provided the results to corporate counsel. Demeritt did not know
18 what documents were found and did not testify as to what was found. The employees' testimony
19 will not be duplicative.

20 Based on the foregoing, Plaintiffs must be allowed to depose Castillo, Reyes, and
21 Bachmeyer to determine what facts they know about this case.

22 **B. PLAINTIFFS' WRITTEN DISCOVERY REQUESTS ARE PROPER**

23 Additionally, Jacuzzi must be ordered to respond to Plaintiffs' Requests for Production
24 of Documents ("RFPDs") as discussed below.

25 **1. Requests for Production 11-15 Do Not Seek Privileged Information**

26 RFPDs 11 to 15 seek communications relating to the preserving, saving, or reloading of
27 documents relating to the subject incident. Jacuzzi argues that these requests are improper
28 because any such communications would have been at the direction of counsel. If responsive

1 documents are protected by the attorney work product doctrine, Jacuzzi must produce an
2 appropriate privilege log.

3 Plaintiff recognizes that the attorney-client privilege or work-product privilege may
4 apply to some responsive documents. However, the Court should reject Jacuzzi's blanket
5 assertion that all responsive documents are protected. The Nevada Supreme Court has expressly
6 acknowledged that documents cannot be immunized from disclosure under the work product
7 doctrine if they were "created in the ordinary course of business regardless of counsel's presence
8 or involvement." *Columbia HCA Healthcare Corp.*, 113 Nev. 521, 936 P.2d 844, 848 (1997).
9 Plaintiffs are entitled to any responsive documents which do not reveal the mental impressions
10 of counsel or which are not direct communications between Jacuzzi and its counsel.
11

12 2. Request for Production 17

13 RFPD seeks the production of a forensic duplicate of the hard drives of William B.
14 Demerit (Director of Engineering) and Michael A. Dominguez (V.P. and Director of Risk
15 Management). As noted above, Plaintiffs have become increasingly worried that Jacuzzi has not
16 disclosed all relevant evidence in this case. Prior to Plaintiffs' Motion to Strike Jacuzzi's
17 Answer, Jacuzzi consistently represented that it was not aware of any subsequent incidents.
18 When Plaintiffs revealed to the Court that Plaintiffs own research revealed at least two similar
19 subsequent incidents, the Court ordered Jacuzzi to conduct an additional search and produce
20 documents relating to any similar incidents, both prior and subsequent. Then, and only then, did
21 Jacuzzi produce similar incident documents. And, quite interestingly, Jacuzzi only produced
22 documents for subsequent incidents.

23 In short, Jacuzzi vigorously claimed for two years of discovery that there were no other
24 similar incidents despite all eleven incidents containing information that should have triggered
25 them being produced. After court intervention, Jacuzzi has now produced evidence of over ten
26 subsequent incidents. Conveniently, Jacuzzi claims that their additional search still found no
27 documents for prior incidents.
28

1 It has already been established that Jacuzzi has withheld information relating to similar
2 incidents. Because of this fact, there is no way for the Court or Plaintiffs to be able to know how
3 many other prior or subsequent incidents Jacuzzi has failed to disclose. Plaintiffs should not be
4 forced to go to trial in the dark, relying on Jacuzzi's self-serving assertions that no other prior or
5 subsequent incidents exist. The only fair way to truly determine whether other incidents exist is
6 to allow an independent forensic expert to analyze Demeritt and Dominguez's hard drives.

7
8 Should the analysis of these two hard drives show that other incidents exist, then
9 Plaintiffs would be able to seek additional relief through additional motion work as noted by the
10 Court.

11 **3. Requests for Production 24-25 and 41-43**

12 RFPDs 24-25 and 41-43 seeks additional information relating to injury claims or
13 lawsuits. Jacuzzi argues that these requests are improper because Jacuzzi has already complied
14 with the Court's recent ruling by disclosing new "similar incidents" evidence. The fact that the
15 Court granted alternative relief does not preclude Plaintiffs from seeking additional information
16 relating to prior or subsequent claims. Plaintiffs are entitled to any other documents which may
17 relate to the new "similar incident" documents which Jacuzzi recently produced.

18 **4. Requests for Production 26, 27, and 36**

19 Jacuzzi argues that RFPDs 26, 27, and 36 are improper because they are duplicative of
20 prior RFPDs. Jacuzzi is obligated to supplement prior discovery responses throughout the
21 pendency of the litigation. Therefore, Jacuzzi is not prejudiced in any way by responding to
22 these requests.

23 **5. Requests for Production 39-40**

24 RFPDs 39 seek information regarding Jacuzzi's "post-incident protocols" and "analysis
25 intended to promote product safety." This information is relevant to show Jacuzzi's conduct in
26 designing, manufacturing, and producing the subject walk-in tub. It is necessary for Plaintiffs
27 to know what Jacuzzi did in response to other incidents because such conduct goes to the
28

1 reasonableness of Jacuzzi's design and manufacture of the subject tub. It is also necessary for
2 Plaintiffs to know what type of analysis Jacuzzi did regarding product safety.

3 **6. Request for Production 46**

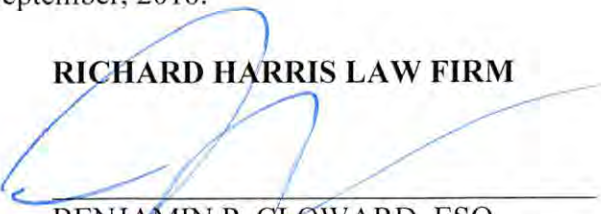
4 RFPD 46 seeks documents showing Jacuzzi's efforts to preserve photos of the subject
5 tub after the subject incident. Plaintiffs acknowledge that the Court denied their Motion for
6 Sanctions against Jacuzzi for failing to produce photographs of the subject tub. However, RFPD
7 seeks information relating to Jacuzzi's document retention policies. These policies are relevant
8 for Plaintiffs to understand how Jacuzzi preserves evidence.
9

10 **IV. CONCLUSION**

11 Plaintiffs have legitimate concerns about whether Jacuzzi has engaged in good faith
12 discovery. The fact that this Court granted Plaintiffs' alternative relief in its ruling on Plaintiffs'
13 Motion to Strike Jacuzzi's Answer shows that Plaintiffs concerns are not unfounded. Despite
14 the alternative relief, Plaintiffs are still in the dark. It is still impossible for Plaintiffs to know
15 whether Jacuzzi has disclosed all relevant information. Therefore, Plaintiffs must be permitted
16 to conduct the discovery at issue here. Based on the foregoing, Plaintiffs respectfully request
17 that the Court deny Jacuzzi's Motion for Protective Order.

18 DATED this 18th day of September, 2018.

19 **RICHARD HARRIS LAW FIRM**

20
21 
22 BENJAMIN P. CLOWARD, ESQ.
23 Nevada Bar No. 11087
24 801 South Fourth Street
25 Las Vegas, Nevada 89101
26 *Attorneys for Plaintiff*
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of RICHARD HARRIS LAW FIRM and that on this 18th day of September, 2018, I served a copy of the foregoing, **OPPOSITION TO DEFENDANT JACUZZI, INC.'S MOTION FOR PROTECTIVE ORDER**, 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:

- ☐ 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.).
- ☐ 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 in the confirmation sheet filed herewith. Consent to service under NRCP 5(b)(2)(D) shall be assumed unless an objection to service by facsimile transmission is made in writing and sent to the sender via facsimile within 24 hours of receipt of this Certificate of Service; and/or
- ☐ Hand Delivery—By hand-delivery to the addresses listed below.

SEE ATTACHED SERVICE LIST

**


An employee of RICHARD HARRIS LAW FIRM

SERVICE LIST

Ansara, Robert, et al. v. First Street for Boomers & Beyond, Inc., et al.
Clark County District Court Case No. A-16-731244-C

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Jacuzzi Brands, LLC

EXHIBIT 1

EXHIBIT 1

1 DISTRICT COURT
2 CLARK COUNTY, NEVADA
3
4 ROBERT ANSARA, as Special)
Administrator of the Estate of)
5 SHERRY LYNN CUNNISON, Deceased;)
et al.,)
6 Plaintiffs,)
7 vs.) No. A-16-731244-C
8 FIRST STREET FOR BOOMERS & BEYOND,)
INC.; et al.,)
9 Defendants.) (Pages 1 - 120)
10 _____)
11 AND RELATED CROSS-ACTIONS.)
12 _____)
(Complete Caption On Following Page)

13
14
15 V O L U M E I

16
17 Videotaped deposition of WILLIAM B.
18 DEMERITT, Rule 30(b)(6) Corporate Designee
19 for Jacuzzi, taken on behalf of the Plaintiffs,
20 at 600 Anton Boulevard, Suite 1400, Costa Mesa,
21 California, commencing at 9:49 a.m., on Thursday,
22 May 24, 2018, before Kathleen Mary O'Neill,
23 CSR 5023, RPR.
24
25

1	DISTRICT COURT	
2	CLARK COUNTY, NEVADA	
3		
4	ROBERT ANSARA, as Special)
	Administrator of the Estate of)
5	SHERRY LYNN CUNNISON, Deceased;)
	MICHAEL SMITH individually, and)
6	heir to the Estate of SHERRY LYNN)
	CUNNISON, Deceased; and DEBORAH)
7	TAMANTINI individually, and heir)
	to the Estate of SHERRY LYNN)
8	CUNNISON, Deceased;)
)
9	Plaintiffs,)
)
10	vs.) No. A-16-731244-C
)
11	FIRST STREET FOR BOOMERS & BEYOND,)
	INC.; AITHR DEALER, INC.; HALE)
12	BENTON, Individually, HOMECCLICK,)
	LLC.; JACUZZI LUXURY BATH, doing)
13	business as JACUZZI INC.; BESTWAY)
	BUILDING & REMODELING, INC;)
14	WILLIAM BUDD, Individually and as)
	BUDDS PLUMBING; DOES 1 through 20;)
15	ROE 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)
18	20, inclusive,)
)
19	Defendants.)
)
20)
	AND RELATED CROSS-ACTIONS.)
21)
)
22		
23		
24		
25		

1 APPEARANCES:

2 For Plaintiffs:

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16 benjamin@richardharrislaw.com

17

18 For Defendant/Cross-Defendant Jacuzzi Brands LLC:

19 SNELL & WILMER LLP

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23 Las Vegas, Nevada 89169

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25 jcools@swlaw.com

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3 & Beyond, Inc. and AITHR Dealer, Inc.:

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11

12 Videographer:

13 DEAN JONES

14 OASIS REPORTING SERVICES

15 702/476-4500

16

17 Also present:

18 RON TEMPLER

19 (Corporate representative for Jacuzzi)

20

21

22

23

24

25

1	I N D E X		
2	DEPONENT	EXAMINED BY	PAGE
3	William B. Demeritt	Mr. Cloward	7
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8	EXHIBITS FOR IDENTIFICATION:		PAGE
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15	4 Homeability.com "Walk-in Tubs:		105
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18	5 Ohio Department of Developmental		110
19	Disability, "Safety Is Not an		
20	Accident It's Everyone's Business,"		
21	2 pages		
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23			
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25			

1 COSTA MESA, CALIFORNIA

2 THURSDAY, MAY 24, 2018

3 9:49 A.M.

4

5 THE VIDEOGRAPHER: Good morning.

6 This is the videotaped deposition of William B.
7 Demeritt. Today we are located at 600 Anton Boulevard,
8 Suite 1400 in Costa Mesa, California.

9 Today is Thursday, May 24th in the year 2018.

10 We're here today in the matter of Robert Ansara
11 vs. First Street for Boomers & Beyond, Incorporated.

12 The case number of this deposition is A-16-731244-C.

13 This case is being heard in the District Court
14 for the State of Nevada, in and for the County of Clark.

15 My name is Dean Jones with Oasis Reporting
16 Services.

17 Would all present please identify themselves
18 beginning with the deponent.

19 THE WITNESS: William Demeritt.

20 MR. COOLS: Joshua Cools, attorney on behalf of
21 Jacuzzi.

22 MR. TEMPLER: Ron Templer, corporate
23 representative for Jacuzzi.

24 MS. GOODWIN: Meghan Goodwin on behalf of
25 defendant First Street for Boomers & Beyond and AITHR

1 And that would be the gentleman sitting --

2 A. Yes.

3 Q. -- to your right?

4 A. My right.

5 Q. Okay. So what were you informed by

6 Mr. Castillo about what he found?

7 A. That he had gathered the documents and provided
8 them to -- to our corporate counsel.

9 Q. What documents did he gather?

10 A. Incident reports where the 20 words that you
11 had provided were found.

12 Q. How many incident reports?

13 A. I have no idea.

14 Q. Do you have an estimate?

15 A. No. I don't.

16 Q. I mean, was it more than --

17 A. I don't know.

18 Q. -- five?

19 A. If I had an idea, I would have told you. No.
20 I don't have an idea. I know that it was a voluminous
21 amount, and each word that was searched had different
22 amounts.

23 Q. So each word had maybe X number of --

24 A. X is a good --

25 Q. -- documents?

1 happens with that claim, whether that's referred to
2 legal and the insurance, legal only, or whether it just
3 stays with you?

4 MR. COOLS: Object to form.

5 THE WITNESS: I open a file, and I maintain the
6 file until I know the file's closed.

7 Q. BY MR. CLOWARD: Okay. How many files do you
8 have at this point that are open?

9 MR. COOLS: Object to form.

10 Q. BY MR. CLOWARD: Just let him answer, please.

11 A. On all products or just walk-in tubs?

12 Q. Walk-in tubs.

13 A. One or two.

14 Q. What are those?

15 A. Well, one is Cunnison and the other one is
16 Smith, I think.

17 Q. So those are the only two open claims that
18 you're aware of?

19 A. On walk-in tubs, yes.

20 Q. And that's from the date they were created till
21 the present?

22 A. Correct.

23 Q. Okay. Now, I'm not talking about just death
24 claims. I'm talking about any and all claims that
25 you're aware of.

1 A. Yeah. Yes.

2 Q. So you're only aware of two open files
3 regarding injury; is that fair?

4 A. I am only aware of two open files. I'm not
5 inferring that there are only two open files. I'm
6 saying I am only aware of two.

7 Q. Would somebody else be aware of other files
8 that were open?

9 A. Well, if the claim was for a leak or, you know,
10 a faucet that wasn't operating properly, I would not get
11 that, and that would be handled at the customer service
12 or the warranty level.

13 Q. I'm not interested in leaks or faucet repairs
14 or anything like that. I'm interested in personal
15 injury.

16 A. Okay. But that's not what you had said, and I
17 wanted to answer your question --

18 Q. I appreciate that.

19 A. -- as honestly as I could.

20 Q. I appreciate that.

21 A. As far as personal injury, either I would know
22 about it or corporate counsel would know about it.

23 Can I call him "Ron" (indicating) and every
24 time I do you put down "corporate counsel"?

25 One of the two of us would know.

1 Q. Okay. And that would include, say, for
2 instance, if there was an injury that maybe wasn't very
3 severe, but, you know, maybe somebody filed a lawsuit.
4 They thought it was severe enough that they actually
5 filed a lawsuit.

6 That would include those --

7 A. Yes.

8 Q. -- right?

9 Okay. And you're only aware of the two cases
10 nationwide?

11 A. Correct.

12 Q. Did you actually do a search to determine, to
13 look for other claims other than these two?

14 A. Well, first off, they would have come up in the
15 search that we talked about in question 4. But Ron and
16 I -- or corporate counsel and I share a wall. Our
17 offices are right next to each other, and we talk about
18 these cases every day. So I can say with a high degree
19 of certainty that if there was a bodily injury that
20 exceeded someone getting their finger pinched in a
21 door or something like that, something that was really
22 de minimus, we would know about it.

23 Q. Certainly if somebody filed a lawsuit against
24 Jacuzzi, you'd know about it?

25 A. You'd have to respond to the lawsuit, so, yes,

1 Ron -- corporate counsel would know.

2 Q. All right. Are there any other lawsuits that
3 you're aware of involving an injury claim other than
4 Ms. Cunnison or the potential lawsuit of Mr. Smith's
5 family in Atlanta?

6 A. Those are the only two I'm aware of.

7 Q. Did you actually search to look for other
8 cases?

9 A. No. But I wouldn't have had to, because I
10 would have had an open file if there was other cases.

11 Q. And you don't have any other files that are
12 open?

13 A. I have -- I have a number of open files.
14 I only have two on walk-in tubs.

15 Q. Okay. Now, when you say "open files," are you
16 aware of any -- of any files that may be -- that were
17 opened, you know, in a year or two or five years before
18 this incident involving Ms. Cunnison that were closed,
19 say, for instance, in 2017 or 2016 or even earlier this
20 year, 2018?

21 A. Off the top of my head, no.

22 Q. I mean, as you sit here today, are you aware
23 of any other cases against Jacuzzi for injury in a
24 walk-in tub?

25 A. No.

1 Q. All right. Now, the answer is qualified, and
2 it goes on further and it says:

3 "This response is limited to
4 injury claims made prior to the
5 subject incident and to the subject
6 Jacuzzi walk-in bathtub model that
7 are similar to the vague claims that
8 have been asserted in this action.

9 "Defendant objects because the
10 interrogatory is overly broad without
11 reasonable limitation in scope, unduly
12 burdensome, and seeks information
13 irrelevant to the subject matter of
14 this action and is not likely to lead
15 to the discovery of relevant or admissible
16 evidence. The interrogatory is vague
17 and ambiguous. The interrogatory seeks
18 information protected from disclosure
19 by the right of privacy of third parties."

20 Now, that's a lot of legal, what I call,
21 mumbo jumbo.

22 But my understanding is your testimony is that
23 regardless of whether or not it's similar to the claim
24 at issue, whether it's before or after, you're only
25 aware of two incidents of injury for a walk-in tub,

1 period.

2 A. Correct.

3 Q. Okay. It will save me from having to come back
4 down and --

5 A. Yes.

6 Q. All right. Now, let's see . . . No. 12, same
7 thing here:

8 "Has the defendant ever been
9 named as a defendant ..."

10 If you'd just go ahead and read --

11 A. Yep.

12 Q. -- Interrogatory No. 12 and the response, and
13 let me know when you're prepared to discuss that, and we
14 can chat.

15 A. (The witness reviews a document.)

16 Okay.

17 Q. Now, again, the response is:

18 "Other than this suit" --
19 which is referring to the Cunnison
20 matter -- "defendant has never been
21 named as a defendant, respondent, or
22 other involuntary participant in a
23 lawsuit or other proceeding arising
24 out of personal injury in connection
25 with the subject Jacuzzi walk-in

1 bathtub involving claims similar to
2 the claims presented in this action.
3 This response is limited to information
4 potentially relevant to the vague
5 defect claims asserted by plaintiffs.

6 "Defendant objects to this
7 interrogatory because it is overly
8 broad without reasonable limitation in
9 scope, unduly burdensome, and seeks
10 information irrelevant to the subject
11 matter of this action, and is not
12 likely to lead to the discovery of
13 relevant or admissible evidence.

14 "The interrogatory is vague and
15 ambiguous. Defendant objects to this
16 request as overbroad to the extent it
17 would include unrelated claims, such
18 as property damage claims or claims
19 unrelated to the vague defects claimed
20 to have caused plaintiff's injuries.
21 Such claims are outside the scope of
22 Rule 26 and not included in defendant's
23 response."

24 Now, I just -- I'm not interested in the
25 property damage claims. But my understanding is you're

1 only aware -- regardless of whether or not it's similar
2 to the claims of Ms. Cunnison or not, you're only aware
3 of this lawsuit involving a walk-in bathtub; correct?

4 A. Yes. This lawsuit, yes.

5 Q. Okay. You're aware of no other lawsuits
6 involving Jacuzzi walk-in bathtubs?

7 A. Personal injury, no.

8 Q. Okay.

9 Are there other lawsuits involving walk-in tubs
10 that you are aware of that don't involve personal
11 injury?

12 A. There might be lawsuits involving property
13 damage, but I don't have any of them. I don't know what
14 potentially First Street would have had.

15 Q. Gotcha. Okay.

16 But it's fair to say that regardless of the
17 limitation on the scope, you're only aware of the one
18 lawsuit involving personal injury, and that's
19 Ms. Cunnison?

20 A. For a walk-in tub, yeah.

21 Q. Okay. Now, if you would turn to page 14. It's
22 Interrogatory No. 18.

23 A. (The witness reviews a document.)

24 Okay.

25 Q. Have you had a chance to review that?

REPORTER'S CERTIFICATE

I, Kathleen Mary O'Neill, Certified Shorthand Reporter No. 5023, RPR, duly empowered to administer oaths, do hereby certify:

I am the deposition officer that stenographically recorded the testimony in the foregoing deposition;

Prior to being examined, the deponent was by me first duly sworn;

Said deposition is a true, correct, and complete transcript of said proceedings taken to the best of my ability.

The dismantling, unsealing, or unbinding of the original transcript will render the Reporter's Certificate null and void.

Pursuant to Rule 30(e) of the Federal Rules of Civil Procedure, no request being made for review, the transcript was sealed and sent to the noticing attorney.

Dated: May 29, 2018


KATHLEEN MARY O'NEILL
CSR 5023, RPR, CLR



EXHIBIT 2

EXHIBIT 2

Nicole Griffin

From: Cools, Joshua <jcools@swlaw.com>
Sent: Thursday, February 15, 2018 9:09 AM
To: Benjamin Cloward
Cc: Nicole Griffin
Subject: RE: Cunnison

Ben – Please give me a call today to discuss these terms. I would like to clarify that you are proposing these terms for the “other incident” search, not internal communications about Ms. Cunnison’s claim. Thanks. – Josh

From: Cools, Joshua
Sent: Wednesday, February 14, 2018 9:18 AM
To: 'Benjamin Cloward'
Cc: Nicole Griffin
Subject: RE: Cunnison

Ben – In addition to giving me a call about these terms, please let me know asap if March 21 or 22 are going to work for you for the 30b6 deposition. I need to let my client know if they need to continue holding that or look for new dates. – Josh

From: Benjamin Cloward [<mailto:Benjamin@richardharrislaw.com>]
Sent: Monday, February 12, 2018 7:23 PM
To: Cools, Joshua
Cc: Nicole Griffin
Subject: Cunnison

Hi Josh,

We would like for your client to add the following search terms:

1. Fall
2. Slip
3. Elderly
4. Overweight
5. Entering
6. Exiting
7. Door
8. Stability
9. Stable body position
10. Water controls
11. Seat
12. Hand holds
13. Hand grips
14. Grab rails
15. Grab bars
16. Grip bar
17. Design
18. Incident

19. Testing

20. Audit

Please let me know if you have questions.

Thank you,

Benjamin P. Cloward, Esq.

-Nevada Trial Lawyer of the Year (Nevada Justice Association) – 2016

-Board Certified Personal Injury Specialist (State Bar of Nevada) – Since 2016

-ABOTA Member Since 2016, Graduate of Gerry Spence Trial Lawyer College 2013



801 South 4th Street | Las Vegas, NV 89101
tel (702) 444-4444 x 303 | fax (702) 444-4455



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EXHIBIT 3

EXHIBIT 3

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



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 \$ 006.88⁵
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

JACUZZI002914

0046

A160190-C
CAUSE NO.:

LEONARD BAIZE and
ALICE BAIZE
Plaintiffs

V.

R. G. GALLS, AGING IN THE HOME
REMODERLERS, INC
(AIHR), FIRSTSTREET FOR
BOOMERS AND
BEYOND, INC. (FIRSTSTREET) AND
JACUZZI, INC

§
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IN THE DISTRICT COURT

128th
JUDICIAL DISTRICT

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.

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 inches across. Due to the Baizes concern, Mr. Galls measured him three times 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 or 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

Case: 00277125

Case Number	00277125	Date/Time Opened	2/2/2015 6:33 AM
Contact Name	[REDACTED]	Case Owner	[REDACTED]
Account Name	Jacuzzi Consumers Master Account	Case Record Type	Extended
Warranty	LW45 BDKPJK	Contact Email	[REDACTED]
Model Description	FS 5229 C RH SLN HTR SKT WHT	Contact Phone	[REDACTED]
Part Number		Case Age	 (1)
Case Origin	Phone	Early Warning	
Sub-Origin		Serial # (Text)	
Email Origin		Part Number (Text)	
Brand	JB	Type	Product

Case Summary

Case Title	[REDACTED] - Jacuzzi Consumers Master Account - General Inquiry - Pre-delivery/installation/operation - Educate caller/NMDF - 2015-02-02
Priority	High
Status	Closed
Case Reason	
Subject	COMPLAINT OF SLIPPERY FLOOR - WANTS JLB TO DO SOMETHING OR TUB BE REMOVED
Description	

Quality Metrics

UFC Category	Process	Feedback	
UFC Component	Documentation	Feedback Detail	
UFC Sub-Component	Pre-delivery/installation/operation	Early Warning Comments	
UFC Behavior	General Inquiry	Early Warning	
Warranty		EW Date	
		Observed Symptom/Issue	General Inquiry
		Sub-component	

Service

Balance Due	Claim Date
Date Service Center Contacted	Claim Number
Current Servicing Dealer/Customer Name	Order Date
Current Servicing Dealer/Agent Number	Order Number

Current Servicing
Dealer/Contact Name

Service Date

Tech onsite

Training Required

Service Liability

Charge Back No

Shipping Carrier

Tracking Number

Track Order

Replacement Serial #

Concierge Services

Date Customer
Contacted 2/3/2015 1:43 PM

Quantity

System Information

Created By [REDACTED], 2/2/2015 6:33 AM

Date/Time Closed 2/3/2015 1:43 PM

Last Modified By [REDACTED], 2/13/2015 9:06 AM

Escalated

Source 

Contact Information

Account Information

Account Name [REDACTED]

Account Owner No Reply

Email [REDACTED]

Phone [REDACTED] 

Contact Preference

Mobile

Declined to provide
Email

Home Phone

ProspectId

Address Information

Billing Address United States

Mailing Address United States

Nearest D1 ISP Map Map Closest ISP (D1)

Nearest Spa Service
Center Map Closest Spa Service Center

Historical - Read Only - Update to proper Billing and Mailing Fields

Address 1 [REDACTED]

Address 2

City

State WA

Zip

Country

SmartTub Information

Account Id

Receive Smart Tub
Emails

IoT Contact

Terms of Service Opt
Out

Pardot URL

Messaging Opt Out

Additional Information

Email Opt Out

Do Not Call

Fax Opt Out

System Information

Created By [REDACTED], 11/30/2016 11:41 PM

Last Modified By [REDACTED], 12/15/2016 4:22 AM

Activity History

Outbound Consumer

Name [REDACTED]

Task ✓

Due Date 2/13/2015

Assigned To [REDACTED]

Last Modified Date/Time 2/13/2015 9:02 AM

Comments LVM for h/o to see if her issue was taken care of.

2015-02-13 09:01:49

Name [REDACTED]

Task ✓

Due Date 2/13/2015

Assigned To [REDACTED]

Last Modified Date/Time 2/13/2015 9:02 AM

Comments

Outbound Consumer

Name [REDACTED]

Task ✓

Due Date 2/5/2015

Assigned To [REDACTED]

Last Modified Date/Time 2/5/2015 3:10 PM

Comments Spoke to [REDACTED] and [REDACTED] just called her. Let Her know that in the future to give me a call if she has any questions or concerns.

Outbound AITH [REDACTED]

Name [REDACTED]

Task ✓

Due Date 2/5/2015

Assigned To [REDACTED]

Last Modified Date/Time 2/5/2015 2:58 PM

Comments Check to see if anyone called [REDACTED] - [REDACTED] was going her as we spoke

Inbound Consumer

Name [REDACTED]

Task ✓

Due Date 2/4/2015

Assigned To [REDACTED]

Last Modified Date/Time 2/4/2015 3:45 PM

Comments called to let me know that no one from AITH has called her back.

2015-02-04 15:43:07

JACUZZI002929

0061

Name
Task ✓
Due Date 2/4/2015
Assigned To [REDACTED]
Last Modified Date/Time 2/4/2015 3:44 PM
Comments

2015-02-04 15:41:16

Name
Task ✓
Due Date 2/4/2015
Assigned To [REDACTED]
Last Modified Date/Time 2/4/2015 3:42 PM
Comments

Outbound Consumer

Name [REDACTED]
Task ✓
Due Date 2/3/2015
Assigned To [REDACTED]
Last Modified Date/Time 2/3/2015 1:38 PM
Comments Spoke to [REDACTED] to let her know that I contact AITH and to give you a call regarding the slippery floor and the product they have Solid Step Cote. She thank me and she will not file. She appreciate that I return her call and help her with her situation.

2015-02-03 13:34:35

Name
Task ✓
Due Date 2/3/2015
Assigned To [REDACTED]
Last Modified Date/Time 2/3/2015 1:35 PM
Comments

Email: [REDACTED] [ref:_00DG0kX3r_500G0diNeP:ref]

Name [REDACTED]
Task ✓
Due Date 2/3/2015
Assigned To [REDACTED]
Last Modified Date/Time 2/3/2015 1:34 PM
Additional To: [REDACTED]
CC:
BCC: [REDACTED]
Attachment:
Subject: [REDACTED] [ref:_00DG0kX3r_500G0diNeP:ref]
Body:
Hello [REDACTED]

This is a follow up to our conversation on [REDACTED]. Complaint of slippery floor; she fell in her tub. You were going to talk to [REDACTED]. Please confirm that someone will contact the customer today to go over the product you sell Solid Step Cote.

PURCHASE DATE 111614 DATE WARRANTY CARD RECEIVED 121814

CONSUMERS NAME [REDACTED]
ADDRESS LINE 1 [REDACTED]
ADDRESS LINE 2 [REDACTED]
CITY-STATE-ZIP [REDACTED]
HOME PHONE NUMBER [REDACTED]

JACUZZI002930 0062

Comments WORK PHONE NUMBER [REDACTED]
E-MAIL ADDRESS [REDACTED]

[REDACTED]
Consumer Relations, Aging in Place

[REDACTED]

This email and any attachments are confidential and may be legally privileged. If you are not the intended recipient, please notify the author by replying to this email message, and then delete all copies of the email on your system. If you are not the intended recipient, you must not disclose, distribute, copy, print, or use this email in any manner. Email messages and attachments may contain viruses. Although we take precautions to check for viruses, we make no assurances about the absence of viruses. We accept no liability and suggest that you carry out your own virus checks.
ref:_00DG0kX3r_500G0diNeP:ref

2015-02-03 08:49:43

Name
Task ✓
Due Date 2/3/2015
Assigned To [REDACTED]
Last Modified Date/Time 2/3/2015 8:50 AM
Comments

2015-02-03 08:38:43

Name
Task ✓
Due Date 2/3/2015
Assigned To [REDACTED]
Last Modified Date/Time 2/3/2015 8:39 AM
Comments

2015-02-03 08:38:43

Name
Task ✓
Due Date 2/3/2015
Assigned To [REDACTED]
Last Modified Date/Time 2/3/2015 8:39 AM
Comments

2015-02-02 14:08:28

Name [REDACTED]
Task ✓
Due Date 2/2/2015
Assigned To [REDACTED]
Last Modified Date/Time 2/2/2015 2:11 PM
Comments

2015-02-02 14:02:45

Name
Task ✓
Due Date 2/2/2015

Assigned To [REDACTED]
Last Modified Date/Time 2/2/2015 2:04 PM
Comments

Outbound Consumer

Name [REDACTED]
Task ✓
Due Date 2/2/2015
Assigned To [REDACTED]
Last Modified Date/Time 2/2/2015 1:34 PM
Comments Tried to explain that our tub have a anti slip. The company that we mfg the tub has a product. She didn't want to hear it and wanted me to call and take care of it. She is in contact with her attorney. She is going to fill

2015-02-02 13:28:40

Name [REDACTED]
Task ✓
Due Date 2/2/2015
Assigned To [REDACTED]
Last Modified Date/Time 2/2/2015 1:32 PM
Comments

2015-02-02 09:55:00

Name [REDACTED]
Task ✓
Due Date 2/2/2015
Assigned To [REDACTED]
Last Modified Date/Time 2/2/2015 6:57 AM
Comments

Email: Complaint on walk in unit - slippery tub and seat - bruised his face from faucet impact. [re [ref: _00DG0kX3r_500G0diNeP:ref]

Name [REDACTED]
Task ✓
Due Date 2/2/2015
Assigned To [REDACTED]
Last Modified Date/Time 2/2/2015 6:55 AM

Additional To: [REDACTED]
CC:
BCC:
Attachment:

Subject: [REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

From: [REDACTED]
Sent: Sunday, February 01, 2015 2:42 PM
To: [REDACTED]
Subject: Fwd: walk-in tub model dangerous!

[REDACTED]

----- Forwarded message -----

From: [REDACTED] >
Date: Sat, Jan 31, 2015 at 1:21 PM
Subject: walk-in tub model dangerous!
To: [REDACTED]

RE: Serial Number: BDKPJK
Item: LW45959 FS 5229 C RH SLN HTR SKT
Date Manufactured: 09/11/14
First Name: [REDACTED]
Last Name: [REDACTED]
Date Purchased: 11/16/14
Address: [REDACTED]
Bainbridge Island, WA 98110
[REDACTED]

Comments

Both the floor and the seat are slippery! I have slipped twice; 10 days ago My face struck the large faucet; now I sport a black eye.

This is my second 'complaint' about slipping in your tub. Customer Service ignored the first.

I ask that you fix this problem, either by 'repairing' the coating so that it is no longer slippery or removing the tub and replacing it at your expense.

You should know that I am filing a complaint with the Attorney General of [REDACTED] state, and the AG of your home state. I am willing to wait until the morning of Feb. 3, 2015 in order that you may respond with your offer.

[REDACTED]
[REDACTED],
Consumer Service Representative,
Jacuzzi Luxury Bath
[REDACTED]
ref:_00DG0kX3r_500G0diNeP:ref

[REDACTED],
Consumer Service Representative,
Jacuzzi Luxury Bath
[REDACTED]

2015-02-02 09:51:43

Name [REDACTED]
Task ✓
Due Date 2/2/2015
Assigned To [REDACTED]
Last Modified Date/Time 2/2/2015 6:54 AM
Comments

Email: complaint on walk in unit - slippery tub and seat - bruised his face from faucet impact. [ref:_00DG0kX3r_500G0diNeP:ref]

Name [REDACTED]
Task ✓
Due Date 2/2/2015
Assigned To [REDACTED]

JACUZZI002933 0065

Last Modified Date/Time 2/2/2015 6:53 AM

Additional To: [REDACTED]

CC:

BCC:

Attachment:

Subject: [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

From: [REDACTED]

Sent: Sunday, February 01, 2015 2:42 PM

To: [REDACTED]

Subject: Fwd: walk-in tub model dangerous!

----- Forwarded message -----

From: [REDACTED]

Date: Sat, Jan 31, 2015 at 1:21 PM

Subject: walk-in tub model dangerous!

To: [REDACTED]

RE: Serial Number: BDKPJK

Item: LW45959 FS 5229 C RH SLN HTR SKT

Date Manufactured: 09/11/14

Comments

First Name: [REDACTED]

Last Name: [REDACTED]

Date Purchased: 11/16/14
[REDACTED]
[REDACTED]
[REDACTED]

Both the floor and the seat are slippery! I have slipped twice; 10 days ago My face struck the large faucet; now I sport a black eye.

This is my second 'complaint' about slipping in your tub. Customer Service ignored the first.

I ask that you fix this problem, either by 'repairing' the coating so that it is no longer slippery or removing the tub and replacing it at your expense.

You should know that I am filing a complaint with the Attorney General of [REDACTED] state, and the AG of your home state. I am willing to wait until the morning of Feb. 3, 2015 in order that you may respond with your offer.

[REDACTED]
[REDACTED]
Consumer Service Representative,
Jacuzzi Luxury Bath

[REDACTED]
ref:_00DG0kX3r_500G0diNeP:ref

Emails

JACUZZI002934 0066

[ref:_00DG0kX3r_500G0diNeP:ref]

Message Date 2/3/2015 1:34 PM

Has Attachment

Email Address [REDACTED]

Status Sent

Subject [REDACTED] [ref:_00DG0kX3r_500G0diNeP:ref]

Hello [REDACTED]

This is a follow up to our conversation on [REDACTED]. Complaint of slippery floor; she fell in her tub. You were going to talk to [REDACTED]. Please confirm that someone will contact the customer today to go over the product you sell Solid Step Cote.

PURCHASE DATE 111614 DATE WARRANTY CARD RECEIVED 121814

CONSUMERS NAME [REDACTED]

ADDRESS LINE 1 [REDACTED]

ADDRESS LINE 2 [REDACTED]

CITY-STATE-ZIP [REDACTED]

E-MAIL ADDRESS [REDACTED]

Text Body [REDACTED]

Consumer Relations, Aging in Place

[REDACTED]

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ref:_00DG0kX3r_500G0diNeP:ref

Complaint on walk in unit - slippery tub and seat - bruised his face from faucet impact. [re [ref:_00DG0kX3r_500G0diNeP:ref]

Message Date 2/2/2015 6:55 AM

Has Attachment

Email Address [REDACTED]

Status Sent

Subject Complaint on walk in unit - slippery tub and seat - bruised his face from faucet impact. [re [ref:_00DG0kX3r_500G0diNeP:ref]

[REDACTED]

[REDACTED]

From: [REDACTED]

Sent: Sunday, February 01, 2015 2:42 PM

To: [REDACTED]

Subject: Fwd: walk-in tub model dangerous!

[REDACTED]

----- Forwarded message -----

From: [REDACTED] >

Date: Sat, Jan 31, 2015 at 1:21 PM

Subject: walk-in tub model dangerous!

JACUZZI002935

0067

To: [REDACTED]

RE: Serial Number: BDKPJK
Item: LW45959 FS 5229 C RH SLN HTR SKT
Date Manufactured: 09/11/14
First Name: [REDACTED]
Last Name: [REDACTED]
Date Purchased: 11/16/14
Address: [REDACTED]
[REDACTED]
[REDACTED]

Text Body

Both the floor and the seat are slippery! I have slipped twice; 10 days ago My face struck the large faucet; now I sport a black eye.

This is my second 'complaint' about slipping in your tub. Customer Service ignored the first.

I ask that you fix this problem, either by 'repairing' the coating so that it is no longer slippery or removing the tub and replacing it at your expense.

You should know that I am filing a complaint with the Attorney General of [REDACTED] state, and the AG of your home state. I am willing to wait until the morning of Feb. 3, 2015 in order that you may respond with your offer.

[REDACTED]

[REDACTED],
Consumer Service Representative,
Jacuzzi Luxury Bath
[REDACTED]
ref:_00DG0kX3r_500G0diNeP:ref

[REDACTED],
Consumer Service Representative,
Jacuzzi Luxury Bath
[REDACTED]

Open Activities

[REDACTED]	
Name	[REDACTED]
Task	✓
Due Date	2/5/2015
Status	Open
Priority	High
Assigned To	[REDACTED]
Comments	Check to see if AITH called her regarding her slippery floor in tub.

Case History

2/3/2015 1:43 PM

User	[REDACTED]
Action	Changed Status from In Progress to Closed. Closed.

2/2/2015 2:06 PM

User	[REDACTED]
Action	Changed Priority from Medium to High.

2/2/2015 1:34 PM

User [REDACTED]

Action Changed Case Record Type from General to Extended.

2/2/2015 8:13 AM

User [REDACTED]

Action Changed Case Owner from [REDACTED] to [REDACTED].

2/2/2015 8:12 AM

User [REDACTED]

Action Changed Status from Closed to In Progress.

2/2/2015 6:33 AM

User [REDACTED]

Action Changed Status from New to Closed. Closed.

2/2/2015 6:33 AM

User [REDACTED]

Action Created.

Chatter

Text Posts

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Case: 00285359

Case Number	00285359	Date/Time Opened	3/6/2015 12:44 PM
Contact Name	[REDACTED]	Case Owner	[REDACTED]
Account Name	Jacuzzi Consumers Master Account	Case Record Type	General
Warranty	LW50 BDKSYD	Contact Email	
Model Description	FS 5229 C LH SLN HTR SKT WHT	Contact Phone	[REDACTED]
Part Number		Case Age	(0)
Case Origin	Phone	Early Warning	
Email Origin		Serial # (Text)	
Brand	JB	Part Number (Text)	
Contact Type	Person Account	Type	
Asset			

Case Summary

Priority	Medium
Status	Closed
Case Title	[REDACTED] - Jacuzzi Consumers Master Account - - - Referral - 2015-03-06
Case Reason	
Subject	Unsafe tub,wants it remove.

Description Per daughter's home owner, her dad has slipped twice on this tub. The first time happened three months ago and second time on 2/28/15, her dad was trying to get up the seat and exit the tub and he slipped and hurt his elbows and back. [REDACTED] end-up calling the fire department to assist her with getting her husband out of the tub. [REDACTED] do not feel safe using their Walk-In tub and they are requesting dealer to remove and return their money back.

Quality Metrics

UFC Category	Frame/Panelling/WIT	Feedback
UFC Component	Other	Feedback Detail
UFC Sub-Component	Unidentified	Early Warning Comments
UFC Behavior	Missing/Damaged/Broken	Early Warning
		EW Date
		Observed Symptom/Issue
		Sub-component

Service

Current Servicing Dealer/Customer Name	Claim Date
Current Servicing Dealer/Agent Number	Claim Number

Current Servicing
Dealer/Contact Name

Tech onsite

Training Required

Order Date

Order Number

Shipping Carrier

Tracking Number

Track Order

System Information

Created By [REDACTED], 3/6/2015 12:44 PM

Date/Time Closed 3/6/2015 12:44 PM

Last Modified By [REDACTED], 3/6/2015 12:44 PM

Escalated

Source



Contact Information

Account Information

Account Name

Email

Contact Preference

Declined to provide
Email

Prospectid

Account Owner

No Reply

Phone

Mobile

Home Phone

Address Information

Billing Address United States

Mailing Address United States

Nearest D1 ISP Map Map Closest ISP (D1)

Nearest Spa Service
Center Map Closest Spa Service Center

Historical - Read Only - Update to proper Billing and Mailing Fields

Address 1

City

Zip

Address 2

State

Country

SmartTub Information

Account Id

IoT Contact

Pardot URL

Receive Smart Tub
Emails

Terms of Service Opt
Out

Messaging Opt Out

Additional Information

Email Opt Out

Fax Opt Out

Do Not Call

JACUZZI002939

0071

System Information

Created By [REDACTED] 11/30/2016 11:43 PM

Last Modified By [REDACTED] 12/15/2016 4:23 AM

Case Comments

3/6/2015 12:44 PM

User [REDACTED]

Public

Comment I referred customer to contact dealer [REDACTED]
[REDACTED]

Case History

3/6/2015 12:44 PM

User [REDACTED]

Action Changed Status from New to Closed. Closed.

3/6/2015 12:44 PM

User [REDACTED]

Action Created.

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Case: 00369880

Case Number	00369880	Date/Time Opened	4/25/2016 11:28 AM
Contact Name	[REDACTED]	Case Owner	[REDACTED]
Account Name	Jacuzzi Consumers Master Account	Case Record Type	Extended
Warranty	LW50 BDMN16	Contact Email	[REDACTED]
Model Description	FS 5229 C LH SLN HTR SKT071318	Contact Phone	[REDACTED]
Part Number	LW50959	Case Age	 (11)
Case Origin	Phone	Early Warning	
Sub-Origin		Serial # (Text)	BDMN16
Email Origin		Part Number (Text)	LW50959
Brand	JB	Type	

Case Summary

Case Title	[REDACTED] - Jacuzzi Consumers Master Account - - - Referral - 2016-04-25
Priority	Medium
Status	Closed
Case Reason	Service Request
Subject	AIR CONTROLS NOT WORKING
Description	Buttons hurt her fingers and she could not turn the tub off the other night and had to crawl out of tub onto her toilet.

Quality Metrics

UFC Category	Electrical	Feedback	
UFC Component	Topside/Control Panel	Feedback Detail	
UFC Sub-Component	Buttons (cap)	Early Warning Comments	
UFC Behavior	Inop/Intermittent	Early Warning	
Warranty		EW Date	
		Observed Symptom/Issue	
		Sub-component	

Service

Balance Due		Claim Date	4/25/2016
Date Service Center Contacted	4/25/2016 4:15 PM	Claim Number	0074769
Current Servicing Dealer/Customer Name	[REDACTED]	Order Date	4/25/2016
Current Servicing Dealer/Agent Number	30158031	Order Number	213994

Current Servicing
Dealer/Contact Name

Shipping Carrier FedEx

Service Date 5/5/2016

Tracking Number 673521889375

Tech onsite

Track Order Track Order

Training Required

Replacement Serial #

Service Liability

Charge Back No

Concierge Services

Date Customer
Contacted 4/25/2016 4:15 PM

Quantity

System Information

Created By [REDACTED], 4/25/2016 11:28 AM

Date/Time Closed 5/6/2016 9:56 AM

Last Modified By [REDACTED], 5/6/2016 9:56 AM

Escalated

Source 

Contact Information

Account Information

Account Name [REDACTED]

Account Owner No Reply

Email [REDACTED]

Phone [REDACTED] 

Contact Preference

Mobile

Declined to provide
Email

Home Phone

Prospectid

Address Information

Billing Address United States

Mailing Address United States

Nearest D1 ISP Map Map Closest ISP (D1)

Nearest Spa Service
Center Map Closest Spa Service Center

Historical - Read Only - Update to proper Billing and Mailing Fields

Address 1 [REDACTED]

Address 2

City [REDACTED]

State [REDACTED]

Zip [REDACTED]

Country

SmartTub Information

Account Id

Receive Smart Tub
Emails

IoT Contact

Terms of Service Opt
Out

Pardot URL

Messaging Opt Out

Additional Information

Email Opt Out

Do Not Call

Fax Opt Out

System Information

Created By [REDACTED] 12/1/2016 12:59 AM

Last Modified By [REDACTED], 12/15/2016 3:52 AM

Case Comments

4/25/2016 11:41 AM

User [REDACTED]

Public

Comment Sent email to [REDACTED] to ask to do service.

Activity History

outbound Consumer

Name [REDACTED]

Task ✓

Due Date 5/6/2016

Assigned To [REDACTED]

Last Modified Date/Time 5/6/2016 9:56 AM

Comments Spoke to customer service is all done and it works

2016-05-06 09:54:58

Name [REDACTED]

Task ✓

Due Date 5/6/2016

Assigned To [REDACTED]

Last Modified Date/Time 5/6/2016 9:55 AM

Comments

2016-05-06 09:53:08

Name [REDACTED]

Task ✓

Due Date 5/6/2016

Assigned To [REDACTED]

Last Modified Date/Time 5/6/2016 9:54 AM

Comments

outbound to agent

Name [REDACTED]

Task ✓

Due Date 5/6/2016

Assigned To [REDACTED]

Last Modified Date/Time 5/6/2016 9:54 AM

Comments Spoke to tech she said they changed out the pump

Outbound [REDACTED]

Name [REDACTED]

Task ✓

Due Date 4/29/2016
Assigned To [REDACTED]
Last Modified Date/Time 4/29/2016 1:40 PM
Comments Service set up 5/5 .

Outbound [REDACTED]

Name [REDACTED]
Task ✓
Due Date 4/28/2016
Assigned To [REDACTED]
Last Modified Date/Time 4/28/2016 3:14 PM
Comments - LVM
- follow up on service

2016-04-25 17:08:58

Name [REDACTED]
Task ✓
Due Date 4/25/2016
Assigned To [REDACTED] [REDACTED]
Last Modified Date/Time 4/25/2016 2:18 PM
Comments

Case History

5/6/2016 9:56 AM

User [REDACTED]
Action Changed Status from On Hold - Waiting on Customer to Closed. Closed.

4/25/2016 4:17 PM

User [REDACTED]
Action Changed Case Owner from [REDACTED] to [REDACTED].

4/25/2016 4:17 PM

User [REDACTED]
Action Changed Case Record Type from General to Extended.

4/25/2016 11:30 AM

User [REDACTED]
Action Changed Description. Changed Status from New to On Hold - Waiting on Customer.

4/25/2016 11:28 AM

User [REDACTED]
Action Created.

Case: 00398408

Case Number	00398408	Date/Time Opened	9/26/2016 11:32 AM
Contact Name	[REDACTED]	Case Owner	[REDACTED]
Account Name	Jacuzzi Consumers Master Account	Case Record Type	Extended
Warranty	LW50 BDG073	Contact Email	
Model Description	FS 5229 C LH SLN HTR SKT WHT	Contact Phone	[REDACTED]
Part Number		Case Age	(1)
Case Origin	Phone	Early Warning	
Sub-Origin		Serial # (Text)	
Email Origin		Part Number (Text)	
Brand	JB	Type	

Case Summary

Case Title	[REDACTED] - Jacuzzi Consumers Master Account - - - Inquiry/Process transaction - 2016-09-26		
Priority	Medium		
Status	Closed		
Case Reason	Service Request		
Subject	Parts only. Tub takes too long to drain.		
Description	<p>tub has problems draining- wife [REDACTED] got injured</p> <p>tub takes a long long time to drain out- about 20 min</p> <p>-last time it took 47 min to drain, she could not wait, felt stuck and tried to crawl out of the tub but fell and hurt herself</p> <p>-she wants a tub that is going to drain faster and feels there has been this defect since it was installed</p>		

Quality Metrics

UFC Category	Plumbing	Feedback	Complaint
UFC Component	Drain assembly	Feedback Detail	Product
UFC Sub-Component	Unidentified	Early Warning Comments	tub would not drain and customer felt stuck so she decided to try to climb out of tub. She banged her head directly on tile and has bruises.
UFC Behavior	Inop/Intermittent	Early Warning	
Warranty		EW Date	
		Observed Symptom/Issue	
		Sub-component	

Service

Balance Due	Claim Date
Date Service Center Contacted	Claim Number

Current Servicing
Dealer/Customer Name

Order Date 9/26/2016

Current Servicing
Dealer/Agent Number

Order Number 353790

Current Servicing
Dealer/Contact Name

Shipping Carrier FedEx

Service Date

Tracking Number

Tech onsite

Track Order Track Order

Training Required

Replacement Serial #

Service Liability

Charge Back

Concierge Services

Date Customer
Contacted

Quantity

System Information

Created By [REDACTED], 9/26/2016 11:32 AM

Date/Time Closed 9/27/2016 3:16 PM

Last Modified By [REDACTED], 9/27/2016 3:16 PM

Escalated

Source



Contact Information

Account Information

Account Name

Account Owner No Reply

Email

Phone

Contact Preference

Mobile

Declined to provide
Email

Home Phone

Prospectid

Address Information

Billing Address United States

Mailing Address United States

Nearest D1 ISP Map Map Closest ISP (D1)

Nearest Spa Service
Center Map Closest Spa Service Center

Historical - Read Only - Update to proper Billing and Mailing Fields

Address 1

Address 2

City

State

Zip

Country

SmartTub Information

Account Id

Receive Smart Tub
Emails

Terms of Service Opt

JACUZZI002946

0078

IoT Contact

Out

Pardot URL

Messaging Opt Out

Additional Information

Email Opt Out

Do Not Call

Fax Opt Out

System Information

Created By [REDACTED] 11/30/2016 3:43 AM

Last Modified By [REDACTED] 12/14/2016 10:23 PM

Case Comments

9/26/2016 11:32 AM

User [REDACTED]

Public

- she really does not want to sue for this but wants the tub to drain faster.

Comment Explained drain could be clogged and she needs to consult her plumber or AITHR. We will send a drain kit as a 1x courtesy

Case History

9/27/2016 3:16 PM

User [REDACTED]

Action Changed Status from On Hold - Waiting on Colleague to Closed. Closed.

9/27/2016 3:15 PM

User [REDACTED]

Action Changed Subject from tub takes too long to drain to Parts only. Tub takes too long to drain..

9/27/2016 3:13 PM

User [REDACTED]

Action Changed Case Record Type from General to Extended.

9/26/2016 11:54 AM

User [REDACTED]

Action Changed Description.

9/26/2016 11:42 AM

User [REDACTED]

Action Changed Description.

9/26/2016 11:41 AM

User [REDACTED]

Action Changed Status from New to On Hold - Waiting on Colleague.

9/26/2016 11:32 AM

User [REDACTED]

Action Created.

Chatter

Text Posts

JACUZZI002947

0079



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Case: 00407773

Case Number	00407773	Date/Time Opened	11/10/2016 7:27 AM
Contact Name	[REDACTED]	Case Owner	[REDACTED]
Account Name	Jacuzzi Consumers Master Account	Case Record Type	Extended
Warranty	LW50 BDPMK9	Contact Email	
Model Description	FS 5229 C LH SLN HTR SKT071318	Contact Phone	[REDACTED]
Part Number		Case Age	(6)
Case Origin	Email	Early Warning	
Sub-Origin		Serial # (Text)	
Email Origin	[REDACTED]	Part Number (Text)	
Brand	JB	Type	

Case Summary

Case Title [REDACTED] - Jacuzzi Consumers Master Account - - - Inquiry/Process transaction - 2016-11-10

Priority Medium

Status Closed

Case Reason Service Request

Subject Replaced Escutcheon to CMP Jet, Shortened lines to WP & PA and went over function of the tub.

Hi, [REDACTED] is really having issues. [REDACTED] emailed you about this issue on 9/7/16 and no one has contacted her.

1. RH jet not working and aromatherapy has never worked. Customer not able to troubleshoot. Emailed Jacuzzi.

2. jets aren't working; she is very distressed...bathroom is flooded and she is now sorry that she spent so much money on this tub.

3. The jets are shooting water everywhere. Flooded her bathroom. Would not drain she had to sit in the tub for a long time. She had to hold them hard until it stops she slipped and hurt her back.
Can we get this repair set up ASAP please?

[cid:image001.png@01D23B2B.BAEAD3B0]
Serial #BDPMK9
Installed 3/22/2016

Thank you,

Description [REDACTED]
Warranty and Service Manager [REDACTED]

Office: [REDACTED]

Direct: [REDACTED]

[logosmall]

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JACUZZI002949

0081

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Quality Metrics

UFC Category	Plumbing	Feedback
UFC Component	Jet	Feedback Detail
UFC Sub-Component	Jet face/escutcheon/Wall fitting	Early Warning Comments
UFC Behavior	Inop/Intermittent	Early Warning
Warranty		EW Date
		Observed Symptom/Issue
		Sub-component


Service

Balance Due		Claim Date	
Date Service Center Contacted	11/10/2016 9:51 AM	Claim Number	0075302
Current Servicing Dealer/Customer Name	[REDACTED]	Order Date	
Current Servicing Dealer/Agent Number	30324455	Order Number	
Current Servicing Dealer/Contact Name		Shipping Carrier	
Service Date	11/16/2016	Tracking Number	
Tech onsite		Track Order	
Training Required		Replacement Serial #	
Service Liability			
Charge Back	No		

Concierge Services

Date Customer Contacted	11/16/2016 9:06 AM	Quantity	
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System Information

Created By	[REDACTED], 11/10/2016 7:27 AM	Date/Time Closed	11/16/2016 9:24 AM
Web Name	[REDACTED]	Last Modified By	[REDACTED], 11/16/2016 9:24 AM
Web Email	[REDACTED]	Escalated	
Web Phone		Source	

Contact Information

JACUZZI002950 0082

Account Information

Account Name	[REDACTED]	Account Owner	No Reply
Email		Phone	[REDACTED]
Contact Preference		Mobile	
Declined to provide Email		Home Phone	
Prospectid			

Address Information

Billing Address	United States	Mailing Address	United States
Nearest D1 ISP Map	Map Closest ISP (D1)	Nearest Spa Service Center	Map Closest Spa Service Center

Historical - Read Only - Update to proper Billing and Mailing Fields

Address 1	[REDACTED]	Address 2	
City	[REDACTED]	State	[REDACTED]
Zip	[REDACTED]	Country	

SmartTub Information

Account Id		Receive Smart Tub Emails	
IoT Contact		Terms of Service Opt Out	
Pardot URL		Messaging Opt Out	

Additional Information

Email Opt Out		Do Not Call	
Fax Opt Out			

System Information

Created By	[REDACTED] 11/29/2016 10:16 PM	Last Modified By	[REDACTED] 12/14/2016 7:43 PM
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Special Authorizations

Pending

Requested Date/Time

Requested By	[REDACTED]
Warranty	LW50 BDPMK9

Case Comments

11/10/2016 10:22 AM

User	[REDACTED]
Public	
Comment	Parts were shipped back on 9/14 Order: 218359

Activity History

JACUZZI002951 0083

Email: RE: [REDACTED] #19945 [ref:_00DG0kX3r_500G0156G5E:ref]

Name

Task ✓

Due Date 11/16/2016

Assigned To [REDACTED]

Last Modified Date/Time 11/16/2016 9:23 AM

Additional To: [REDACTED]

CC: [REDACTED]

BCC: [REDACTED]

Attachment:

Subject: RE: [REDACTED] #19945 [ref:_00DG0kX3r_500G0156G5E:ref]

Body:

Service was completed yesterday. Notes below for my service provider. Courtesy call to [REDACTED] and she confirmed service, I will be closing case.

Notes from service provider:

[REDACTED]
I took care of the jet issue at the [REDACTED] residence, I also shorten the air lines to the pump and blower to make it easier to turn them off and on, could find no issue with the drain (something she mentioned while I was there) and showed her in-depth how to operate the tub features. I also explained the aromatherapy, and installed a new capsule that had arrived by mail. If you have any questions please let me know.

[REDACTED]

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

From: [REDACTED]

Sent: 11/10/2016 10:27 AM

To: [REDACTED]

Cc: [REDACTED]

Subject: RE: [REDACTED] #19945 []

[REDACTED]

I'm sorry to hear the consumer is very distressed.

- Consumer was contacted on 9/8, 9/14, 9/16 & 9/19
- My agent tried to set up service but she was going out of town
- Was not going to be back until October
- Consumer was to call my agent when she returns to arrange service
- 9/16 I emailed [REDACTED] to advise him
- I will contact my service provider to call her to arrange service
- Regarding jets shooting water everywhere. Either she is not filling the tub all the way or the jets are pointing up
- [REDACTED] will have to address the drain.

Thank you,

[REDACTED]

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

From: [REDACTED]

Sent: 11/10/2016 7:26 AM

To: [REDACTED] m

Cc: [REDACTED]

Subject: [REDACTED] #19945

Hi, [REDACTED] is really having issues. [REDACTED] emailed you about this issue on 9/7/16 and no one has contacted her.

1. RH jet not working and aromatherapy has never worked. Customer not able to troubleshoot.
Emailed Jacuzzi.

JACUZZI002952

0084

2. jets aren't working; she is very distressed...bathroom is flooded and she is now sorry that she spent so much money on this tub.

Comments

3. The jets are shooting water everywhere. Flooded her bathroom. Would not drain she had to sit in the tub for a long time. She had to hold them hard until it stops she slipped and hurt her back. Can we get this repair set up ASAP please?

[cid:image001.png@01D23B2B.BAEAD3B0]
Serial #BDPMK9
Installed 3/22/2016

Thank you,

[REDACTED]
Warranty and Service Manager
[REDACTED]

Office: [REDACTED]
Direct: [REDACTED]
[logosmall]

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[REDACTED]
Consumer Relations, Aging in Place
Jacuzzi
[REDACTED]

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[REDACTED]
Consumer Relations, Aging in Place
Jacuzzi
[REDACTED]

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ref:_00DG0kX3r_500G0156G5E:ref

JACUZZI002953

0085

Outbound Consumer

Name [REDACTED]
Task ✓
Due Date 11/16/2016
Assigned To [REDACTED]
Last Modified Date/Time 11/16/2016 9:06 AM
Spoke to [REDACTED]
Comments - confirmed service
- confirmed that [REDACTED] went over function on the tub with her

2016-11-16 09:05:19

Name [REDACTED]
Task ✓
Due Date 11/16/2016
Assigned To [REDACTED]
Last Modified Date/Time 11/16/2016 9:06 AM
Comments

Inbound Email [REDACTED] Jacuzzi

Name [REDACTED]
Task ✓
Due Date 11/16/2016
Assigned To [REDACTED]
Last Modified Date/Time 11/16/2016 9:04 AM
From: [REDACTED]
Sent: Tuesday, November 15, 2016 9:07 PM
To: [REDACTED]
Subject: [REDACTED] residence
[REDACTED]
Comments I took care of the jet issue at the [REDACTED] residence, I also shorten the air lines to the pump and blower to make it easier to turn them off and on, could find no issue with the drain (something she mentioned while I was there) and showed her in-depth how to operate the tub features, I also explained the aromatherapy, and installed a new capsule that had arrived by mail. If you have any questions please let me know.
[REDACTED]

Repair Details

Name [REDACTED]
Task ✓
Due Date 11/16/2016
Assigned To [REDACTED]
Last Modified Date/Time 11/16/2016 9:03 AM
Comments - Replaced Escutcheon CMP Jets
- Shortened air lines to WP & PA
- showed how to operation the tub

Email: [REDACTED] [ref:_00DG0kX3r._500G0156G5E:ref]

Name [REDACTED]
Task ✓
Due Date 11/10/2016
Assigned To [REDACTED]
Last Modified Date/Time 11/10/2016 10:36 AM
Additional To: [REDACTED]
CC: [REDACTED]
BCC: [REDACTED]

JACUZZI002954

0086

Attachment: [REDACTED] BDPMK9 WO [REDACTED].pdf

Subject: [REDACTED] [ref:_00DG0kX3r_500G0156G5E:ref]

Body:

Hi [REDACTED]

Attached is your work order for \$370.00. Please add special authorization SA-004240 on your work order.

Issue: CMP V Jet at bottom inop and can not smell the aromatherapy.
We sent her a new Aromatherapy scent.

Comments Thank you,

[REDACTED]

[REDACTED]

Consumer Relations, Aging in Place
Jacuzzi

[REDACTED]
[REDACTED]
[REDACTED]

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ref:_00DG0kX3r_500G0156G5E:ref

Email: RE: [REDACTED] #19945 [ref:_00DG0kX3r_500G0156G5E:ref]

Name

Task ✓

Due Date 11/10/2016

Assigned To [REDACTED]

Last Modified Date/Time 11/10/2016 10:27 AM

Additional To: [REDACTED]

CC: [REDACTED]

BCC: [REDACTED]

Attachment:

Subject: RE: [REDACTED] #19945 [ref:_00DG0kX3r_500G0156G5E:ref]

Body:

[REDACTED]

I'm sorry to hear the consumer is very distressed.

- Consumer was contacted on 9/8, 9/14, 9/16 & 9/19
- My agent tried to set up service but she was going out of town
- Was not going to be back until October
- Consumer was to call my agent when she returns to arrange service
- 9/16 I emailed [REDACTED] to advise him
- I will contact my service provider to call her to arrange service
- Regarding jets shooting water everywhere. Either she is not filling the tub all the way or the jets are pointing up
- [REDACTED] will have to address the drain.

Thank you,

[REDACTED]

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

From: [REDACTED]

Sent: 11/10/2016 7:26 AM

To: [REDACTED]

JACUZZI002955

0087

Cc: [REDACTED]
Subject: [REDACTED] #19945

Hi, [REDACTED] is really having issues. [REDACTED] emailed you about this issue on 9/7/16 and no one has contacted her.

1. RH jet not working and aromatherapy has never worked. Customer not able to troubleshoot. Emailed Jacuzzi.

2. jets aren't working; she is very distressed...bathroom is flooded and she is now sorry that she spent so much money on this tub.

3. The jets are shooting water everywhere. Flooded her bathroom. Would not drain she had to sit in the tub for a long time. She had to hold them hard until it stops she slipped and hurt her back. Can we get this repair set up ASAP please?

Comments [cid:image001.png@01D23B2B.BAEAD3B0]
Serial #BDPMK9
Installed 3/22/2016

Thank you,

[REDACTED]
Warranty and Service Manager
[REDACTED]

Office: [REDACTED]

Direct: [REDACTED]

[logosmall]

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[REDACTED]
Consumer Relations, Aging in Place
Jacuzzi
[REDACTED]

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ref:_00DG0kX3r_500G0156G5E:ref

Outbound [REDACTED] Jacuzzi

Name [REDACTED]

Task ✓

Due Date 11/10/2016

JACUZZI002956

0088

Assigned To [REDACTED]
Last Modified Date/Time 11/10/2016 10:21 AM
Spoke to [REDACTED]
Comments - will call the consumer
- will arrange service for 11/16

2016-11-10 10:14:40

Name [REDACTED]
Task ✓
Due Date 11/10/2016
Assigned To [REDACTED]
Last Modified Date/Time 11/10/2016 10:17 AM
Comments

Emails

RE: [REDACTED] #19945 [ref:_00DG0kX3r_500G0156G5E:ref]

Message Date 11/16/2016 9:23 AM

Has Attachment

Email Address [REDACTED]

Status Sent

Subject RE: [REDACTED] #19945 [ref:_00DG0kX3r_500G0156G5E:ref]

[REDACTED]
Service was completed yesterday. Notes below for my service provider. Courtesy call to [REDACTED] and she confirmed service. I will be closing case.

Notes from service provider:

[REDACTED]
I took care of the jet issue at the [REDACTED] residence, I also shorten the air lines to the pump and blower to make it easier to turn them off and on, could find no issue with the drain (something she mentioned while I was there) and showed her in-depth how to operate the tub features. I also explained the aromatherapy, and installed a new capsule that had arrived by mail. If you have any questions please let me know.

[REDACTED]

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

From: [REDACTED]

Sent: 11/10/2016 10:27 AM

To: [REDACTED]

Cc: [REDACTED]

Subject: RE: [REDACTED] #19945 []

[REDACTED]

I'm sorry to hear the consumer is very distressed.

- Consumer was contacted on 9/8, 9/14, 9/16 & 9/19
- My agent tried to set up service put she was going out of town
- Was not going to be back until October
- Consumer was to call my agent when she returns to arrange service
- 9/16 I emailed [REDACTED] to advise him
- I will contact my service provider to call her to arrange service
- Regarding jets shooting water everywhere. Either she is not filling the tub all the way or the jets are pointing up
- [REDACTED] will have to address the drain.

Thank you,

[REDACTED]

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

JACUZZI002957

0089

From: [REDACTED]
Sent: 11/10/2016 7:26 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: [REDACTED] #19945

Hi, [REDACTED] is really having issues. [REDACTED] emailed you about this issue on 9/7/16 and no one has contacted her.

1. RH jet not working and aromatherapy has never worked. Customer not able to troubleshoot. Emailed Jacuzzi.
2. jets aren't working; she is very distressed...bathroom is flooded and she is now sorry that she spent so much money on this tub.
3. The jets are shooting water everywhere. Flooded her bathroom. Would not drain she had to sit in the tub for a long time. She had to hold them hard until it stops she slipped and hurt her back.
Can we get this repair set up ASAP please?

Text Body

[cid:image001.png@01D23B2B.BAEAD3B0]
Serial #BDPMK9
Installed 3/22/2016

Thank you,

[REDACTED]
Warranty and Service Manager
[REDACTED]

Office: [REDACTED]
Direct: [REDACTED]
[logosmall]

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[REDACTED]
Consumer Relations, Aging in Place
Jacuzzi
[REDACTED]
[REDACTED]

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[REDACTED]
Consumer Relations, Aging in Place
Jacuzzi
[REDACTED]
[REDACTED]

JACUZZI002958

0090

[REDACTED]

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ref:_00DG0kX3r_500G0156G5E:ref

Re: [REDACTED] [ref:_00DG0kX3r_500G0156G5E:ref]

Message Date 11/10/2016 11:07 AM

Has Attachment

Email Address [REDACTED]

Status Read

Subject Re: [REDACTED] [ref:_00DG0kX3r_500G0156G5E:ref]
Got it, thank you.

[REDACTED]

> On Nov 10, 2016, at 11:36 AM, [REDACTED] > wrote:

>

> Hi [REDACTED]

>

> Attached is your work order for \$370.00. Please add special authorization SA-004240 on your work order.

>

> Issue: CMP V Jet at bottom inop and can not smell the aromatherapy.

> We sent her a new Aromatherapy scent.

>

>

> Thank you,

> [REDACTED]

>

> [REDACTED]

Text Body > Consumer Relations, Aging in Place
> Jacuzzi

> [REDACTED]

>

>

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> ref:_00DG0kX3r_500G0156G5E:ref

> <Jone BDPMK9 WO Alan'.pdf>

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JACUZZI002959

0091

[ref: 00DG0kX3r_500G0156G5E:ref]

Message Date 11/10/2016 10:36 AM

Has Attachment ✓

Email Address [REDACTED]

Status Sent

Subject [REDACTED] [ref: 00DG0kX3r_500G0156G5E:ref]

Hi [REDACTED]

Attached is your work order for \$370.00. Please add special authorization SA-004240 on your work order.

Issue: CMP V Jet at bottom inop and can not smell the aromatherapy.
We sent her a new Aromatherapy scent.

Thank you,
[REDACTED]

Text Body

[REDACTED]
Consumer Relations, Aging in Place
Jacuzzi

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ref: 00DG0kX3r_500G0156G5E:ref

RE: [REDACTED] #19945 [ref: 00DG0kX3r_500G0156G5E:ref]

Message Date 11/10/2016 10:27 AM

Has Attachment

Email Address [REDACTED]

Status Replied

Subject RE: [REDACTED] #19945 [ref: 00DG0kX3r_500G0156G5E:ref]

I'm sorry to hear the consumer is very distressed.

- Consumer was contacted on 9/8, 9/14, 9/16 & 9/19
- My agent tried to set up service but she was going out of town
- Was not going to be back until October
- Consumer was to call my agent when she returns to arrange service
- 9/16 I emailed [REDACTED] to advise him
- I will contact my service provider to call her to arrange service
- Regarding jets shooting water everywhere. Either she is not filling the tub all the way or the jets are pointing up
- [REDACTED] will have to address the drain.

Thank you,
[REDACTED]

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

From: [REDACTED]

Sent: 11/10/2016 7:26 AM

To: [REDACTED]

Cc: [REDACTED]

Subject: [REDACTED] #19945

Hi, [REDACTED] is really having issues. [REDACTED] emailed you about this issue on 9/7/16 and we have not contacted

JACUZZI002960

0092

her.

1. RH Jet not working and aromatherapy has never worked. Customer not able to troubleshoot. Emailed Jacuzzi.

2. Jets aren't working; she is very distressed...bathroom is flooded and she is now sorry that she spent so much money on this tub.

3. The jets are shooting water everywhere. Flooded her bathroom. Would not drain she had to sit in the tub for a long time. She had to hold them hard until it stops she slipped and hurt her back.
Can we get this repair set up ASAP please?

[cid:image001.png@01D23B2B.BAEAD3B0]
Serial #BDPMK9
Installed 3/22/2016

Text Body

Thank you,

[REDACTED]
Warranty and Service Manager
[REDACTED]

Office: [REDACTED]

Direct [REDACTED]

[logosmall]

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[REDACTED]
Consumer Relations, Aging in Place
Jacuzzi
[REDACTED]

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ref:_00DG0kX3r_500G0156G5E:ref

[REDACTED] #19945

Message Date 11/10/2016 7:27 AM

Has Attachment ✓

Email Address [REDACTED]

Status Replied

Subject [REDACTED] #19945

Hi, [REDACTED] is really having issues. [REDACTED] emailed you about this issue on 9/7/16 and no one has contacted her.

JACUZZI002961

0093

1. RH Jet not working and aromatherapy has never worked. Customer not able to troubleshoot. Emailed Jacuzzi.
2. Jets aren't working; she is very distressed...bathroom is flooded and she is now sorry that she spent so much money on this tub.
3. The jets are shooting water everywhere. Flooded her bathroom. Would not drain she had to sit in the tub for a long time. She had to hold them hard until it stops she slipped and hurt her back. Can we get this repair set up ASAP please?

[cid:image001.png@01D23B2B.BAEAD3B0]
Serial #BDPMK9
Installed 3/22/2016

Thank you,

Text Body [REDACTED]
Warranty and Service Manager
[REDACTED]

Office: [REDACTED]
Direct: [REDACTED]
[logosmall]

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Attachments

[REDACTED] BDPMK9 WO [REDACTED].pdf

Size 35KB

Ownership [REDACTED]

View [View file](#)

Last Modified 11/16/2016 8:58 AM

[REDACTED] BDPMK9 Completed Work Order.jpg

Size 2.29MB

Ownership [REDACTED]

View [View file](#)

Last Modified 11/16/2016 8:58 AM

Case History

11/16/2016 9:24 AM

User [REDACTED]

Action Changed Status from On Hold - Waiting on Customer to Closed. Closed.

11/16/2016 9:09 AM

User [REDACTED]

Action Changed Subject from [REDACTED] #19945 to Replaced Escutcheon to CMP Jet, Shortened lines to WP & PA and went over function of the tub.. Changed Case Reason from Warranty Admin Support to Service Request.

11/10/2016 9:56 AM

User [REDACTED]

Action Changed Contact Name from [REDACTED] to [REDACTED]

11/10/2016 9:51 AM

JACUZZI002962

0094

User [REDACTED]
Action **Changed Description. Changed Case Reason to Warranty Admin Support. Changed Status from New to On Hold - Waiting on Customer.**

11/10/2016 9:50 AM

User [REDACTED]
Action **Changed Case Owner from Concierge Service to [REDACTED]**

11/10/2016 7:27 AM

User [REDACTED]
Action **Changed Owner (Assignment) from [REDACTED] to Concierge Service. Created.**

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Report #20160824-98A64-1589899

[Report Details](#)

Report No.

20160824-98A64-1589899

Report Date

8/24/2016

Sent to Manufacturer / Importer / Private Labeler

9/16/2016

Category of Submitter

Consumer

[Product Details](#)

Product Description

Jacuzzi Walk-In Tub

Product Category

Home Maintenance and Structures

Product Type

Plumbing & Bath

Product Code

Hot Tubs or Home Spas

Manufacturer / Importer / Private Labeler Name

JACUZZI BRANDS CORP.

Manufacturer / Importer / Private Labeler Address

13925 City Center Drive, Suite 200, Chino Hills, California, 91710, United States

Brand Name

Model Name or Number

LW45

Serial Number

BDPK7

UPC Code

Date Manufactured

Manufacturer Date Code

Retailer

Retailer State

Purchase Date

4/3/2016 This date is an estimate

[Incident Details](#)

Incident Description

Dear Gentlemen,

Ser # BDPK7, model: LW45, Job: 16198

Subj: DeathTrap - Jacuzzi Walk-In Tub.

On April 3, 2016, I signed a contract for installation of a Walk-In Tub. The agent was [REDACTED]. The Fairbanks construction Co. of Ocala Fl., installed the unit 4-1-2016. I was advised never to use the tub without the 911 alert system in reach.

On July 18, 2016, after finally receiving the 911 alert, I decided to try the Walk-In Tub.

After 30 minutes the tub filled with 50 gal. of water. I opened the air jets at my back. At that moment, I was thrusted forward, landed on my knees and my head was underwater. I was in panic and tried frantically to get a hold of the bar to pull myself up. I could have drowned. The Alert 911 would have been totally useless out of reach. The Walk-In Tub is a death trap.

The tape demonstration and brochures given by the agent [REDACTED] do not compare to the tub installed. The Tub is an old model. The new models (copies encl.) require 30 gal of water and are half the size which was actually installed.

It takes 30 min. to fill the tub with 50 gallons. The shower head is barely in trickle mode and does not work properly. Numerous calls to the agent, the Fairbanks Construction Co., and [REDACTED], installation supervisor, [REDACTED]; were not returned. [REDACTED] of the Fairbanks Co, was rude, who returned the phone call stated "you got what you ordered, you do not get another tub!"

The agent [REDACTED], did not return any of my calls. Details re: water capacity was not disclosed and the publications were misrepresented.

I am a senior citizen, 85 yrs. + and a victim of exploitation of the elderly. I live on fixed income and invested \$15,500.- of my savings for health reasons, because my net worth does not qualify me for a senior establishment.

I live alone and after my experience of almost drowning, I have not used the tub since. I cannot afford the loss of \$15,500.- .

I would appreciate your help desperately. I have enclosed copies and documents for your review.

I look forward to your reply and a resolution of an exchange to my problem within the next 2 weeks.

Please contact me at your earliest at above address or by phone at [REDACTED]. Please, please help!

Sincerely,

[REDACTED]

Incident Date

7/18/2016

Incident Location

Unspecified

[Victims Involved](#)

Injury Information

Injury→Injury, Level of care not known

My Relationship to the Victim

Unspecified

Unknown

Unspecified

Submitter has product?

Product was damaged before incident?

N/A

Product was modified before incident?

N/A

If yes to any, explanation

Have you contacted the manufacturer?

N/A

If Not, Do You Plan To?

N/A

Associated Recall Details

Associated Recall

Submitter Details

First Name

114

Last Name

110

Address

Phone

██████████

E-mail

Verification of a Report can include information such as:

- Identity of the submitter;
- Victim details such as location, age, and gender;
- Consumer product, including model, serial number, date code, color, and size;
- Harm or risk of harm;
- Description of the incident;
- Incident date or approximate date;
- Category of submitter.

Verification must not include activities such as sales, promotion, marketing, warranty, or any other commercial purpose.

CPSC does not guarantee the accuracy, completeness, or adequacy of the contents of the Publicly Available Consumer Product Safety Information Database on SaferProducts.gov, particularly with respect to information submitted by people outside of CPSC.

Report #20150202-72E1B-1466080

[Report Details](#)

Report No.

20150202-72E1B-1466080

Report Date

2/2/2015

Sent to Manufacturer / Importer / Private Labeler

2/24/2015

Category of Submitter

Consumer

[Product Details](#)

Product Description

Walk in bathtub

Product Category

Home Maintenance and Structures

Product Type

Plumbing & Bath

Product Code

Bathtubs or Showers

Manufacturer / Importer / Private Labeler Name

JACUZZI BRANDS CORP.

Manufacturer / Importer / Private Labeler Address

13925 City Center Drive, Suite 200, Chino Hills, California, 91710, United States

Brand Name

Model Name or Number

LW45

Serial Number

BDK86N

UPC Code

Date Manufactured

Manufacturer Date Code

Retailer

Door to Door Sales

Retailer State

Missouri

Purchase Date

11/28/2014

[Incident Details](#)

Incident Description

Purchased walk in bathtub wife was sitting in possibly half the tub of water, water is lower than seat.

Caller's wife was going to stand, used the bar to brace herself but her feet slid out causing her to fall.

The bar should give her leverage and floor is supposed to be slip free.

The bar held but the floor was not slip free.

The caller's wife sustained minor injuries including left foot and left knee bruising then back and tailbone bruising and pain.

The caller's wife treated herself the first week, just taking pain pills but the pain was too bad for self treatment.

He took his wife to the physician who obtained xrays to be sure there were no broken bones and advised the caller to continue taking the pain pills.

The callers spoke with the manufacturer January 20th, 2015, spoke with [REDACTED] and on the 21st, caller doesn't remember name of representative. January 22nd, he spoke with [REDACTED] who was a manager but of no assistance.

He will try again but does plan to contact Consumer Protection.

Submitter added [REDACTED] called him on 2/5/15 and said she ordered the part for his tub and as soon as it comes in she will call them to set a date to have it installed..Submitter noted today in 2/9/15 and they have not heard from her.

Incident Date

1/17/2015

Incident Location

Home/Apartment/Condominium

[Victims Involved](#)

Injury Information

Injury→Injury, Seen by Medical Professional

My Relationship to the Victim

My Spouse

Gender

Female

Victim's Age When Incident Occurred

71 years

[Additional Details](#)

Submitter has product?

Yes

Product was damaged before incident?

No

Product was modified before incident?

No

If yes to any, explanation

Submitter added [REDACTED] called him on 2/5/15 and said she ordered the part for his tub and as soon as it comes in she will call them to set a date to have it installed..Submitter noted today in 2/9/15 and they have not heard from her.

Have you contacted the manufacturer?

Yes

If Not, Do You Plan To?

N/A

[Associated Recall Details](#)

Associated Recall

[Submitter Details](#)

Submitter Requested to Not Release Contact Information to The Manufacturer



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Case: 00223498

Contact Name	Case Owner	
Account Name	Asset	
Brand	Warranty	
Demo/Red Tag	Serial # (Text)	
	Part Number	
	Part Number (Text)	

Additional Information

Status	Closed	Type	
Case Reason		Case Origin	Legacy RightNow
Case Sub-Reason		Priority	Medium
Subject	Customer called in to notify us that the FS unit they just purchased was very slippery and husband () fell and hurt/broke his big toe.		
Description			

Resolution Information

Category	Product
Product Issue	Product Component
Other Product Issue	Other Reason
Case Resolution	

System Information

Created By		5/7/2014 8:32 PM	Last Modified By		5/12/2014 11:36 PM
Business Hours	Default		Entitlement Name		
			Case Record Type	Legacy	

Case Comments

5/8/2014 8:58 PM

5/7/2014 8:32 PM

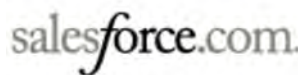
User		User	
Public	<input type="checkbox"/>	Public	<input type="checkbox"/>
Comment	<p>Called () and said we were sorry about his experience. I advised that our units exceed the standard by 1.5 times. Said he slipped from the seat and broke his toe. SAid only plain water no bath additives were used. Said he was holding onto both handles on the right side with his right hand. () said that our unit is unsafe and we need to do something about it. He is asking for compensation for suffering and x-ray swollen foot his suffering. He said he doesn't know if we want to sue him or not. He said we can send someone to take a look. Not interested in suing anyone but he is 80 years old and he wants compensation. He is very upset and scared to use the bath. She said no one advised that the tub could be slippery. Now they cover the seat and put strips on the floor. This happened 2.5 to 3 weeks ago. They contacted () the installer. They want compensation for the suffering. They asked to call back if we have any other questions.</p>		
		Comment	<p>() called for us to note that the tub she purchased had a very slippery seat and floor. Her husband slipped and fell and his big toe got caught in the drain and it broke the toe. He is in extreme pain. She did not realize something like this could happen because we advertise a safe walk in tub. I apologized and told her I would note this compliant and talk with my superior and give them a call back within 24 hours.</p>

JACUZZI002970

Case History
6/7/2014 2:40 PM

User	
Action	Created.

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Case: 00282714

Case Number	00282714	Date/Time Opened	2/25/2015 10:30 AM
Contact Name		Case Owner	
Account Name	Jacuzzi Consumers Master Account	Case Record Type	Extended
Model Description	FS 5229 C RH SLN HTR SKT ALM	Contact Email	
Case Origin	Phone	Contact Phone	
Email Origin		Serial # (Text)	
Brand	JB	Part Number (Text)	
		Type	

Case Summary

Case Title	- Jacuzzi Consumers Master Account - - - Educate caller/NMDF - 2015-02-25		
Priority	Medium		
Status	Closed		
Case Reason			
Subject	Complaint on		
Description	<p> called in. She bought tub for her mom. Was installed 7/2014. She bought this tub due to the flyer and what it offered. Seat - Slippery - came out and sprayed something on the seat not it ruff and due to her moms age the skin is thin and is leaving marks on her. Caulking - not completed Faucet leaking - Replaced once When you have the hand held water comes out from the spout too. Water temperature is either cold or hot,</p> <p>Tried called but they will not return her call anymore. Her last phone call was that she would need to buy a new tub.</p>		

Quality Metrics

UFC Category	Process	Feedback Detail
UFC Component	Product	Early Warning Comments
UFC Sub-Component	Experience	EW Date
UFC Behavior	General Inquiry	
Warranty	<input type="checkbox"/>	

Service

Date Service Center
Contacted

System Information

JACUZZI002972 0104

Created By [REDACTED], 2/25/2015 10:30 AM

Date/Time Closed 2/26/2015 11:48 AM

Last Modified By [REDACTED] 4/2/2015 7:27 AM

Contact Information

Account Information

Account Name	[REDACTED]	Account Owner	No Reply
Email	[REDACTED]	Phone	[REDACTED]
Contact Preference		Mobile	
Declined to provide Email	<input type="checkbox"/>	Home Phone	
Prospectid		Fax	

Address Information

Billing Address	United States	Mailing Address	United States
Nearest D1 ISP Map	Map Closest ISP (D1)	Nearest Spa Service Center	Map Closest Spa Service Center

SmartTub Information

Account Id		Receive Smart Tub Emails	<input type="checkbox"/>
IoT Contact	<input type="checkbox"/>	Terms of Service Opt Out	<input type="checkbox"/>
Pardot URL		Messaging Opt Out	<input type="checkbox"/>

Additional Information

Email Opt Out	<input type="checkbox"/>
---------------	--------------------------

System Information

Created By [REDACTED] 12/1/2016 12:08 AM

Last Modified By [REDACTED] 12/15/2016 4:24 AM

Activity History

Email: [REDACTED] - Serial BDJ6HT [ref:_00DG0kX3r_500G0enJk8:ref]

Name	[REDACTED]
Task	<input checked="" type="checkbox"/>
Due Date	3/19/2015
Assigned To	[REDACTED]
Last Modified Date/Time	3/19/2015 9:49 AM

Additional To: [REDACTED]

Comments

Attachment:

Subject: [REDACTED] - Serial BDJ6HT [ref:_00DG0kX3r_500G0enJk8:ref]
Body:

JACUZZI002973 0105

[REDACTED],

I placed an order for a new faucet assembly for consumer [REDACTED] Part will ship to you by FedEx. Once I received tracking number I will email it to you.

Thank you,

[REDACTED]

From: [REDACTED]
Sent: Thursday, March 19, 2015 8:02 AM
To: [REDACTED]
Cc: [REDACTED]

Subject: RE: Jacuzzi Walk In Tub ADA Contoured Seat Design and Grab Bars - [REDACTED]

[REDACTED]

Thanks [REDACTED]

[REDACTED]

[REDACTED]

Marketing Manager- Aging In Place Bathing

www.jacuzzi.com
13925 City Center Drive, Suite 200/ Chino Hills, CA 91709

[REDACTED]

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From: [REDACTED]
Sent: Thursday, March 19, 2015 7:56 AM
To: [REDACTED]
Cc: [REDACTED]

Subject: RE: Jacuzzi Walk In Tub ADA Contoured Seat Design and Grab Bars - [REDACTED]

[REDACTED]

[REDACTED] just wanted to let you know that the material for [REDACTED] is scheduled to arrive to us 3-20-15. I talked to her and this was the first time her schedule would work with ours. Can you send us a faucet and hand held to repair that part of issue? Let me know please.

[REDACTED]

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JACUZZI002974 0106

[REDACTED]
Consumer Relations, Aging in Place

14525 Monte Vista, Chino CA 91710
[REDACTED]
[REDACTED]

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ref:_00DG0kX3r_500G0enJk8:ref

Outbound call to customer.

Name	[REDACTED]
Task	<input checked="" type="checkbox"/>
Due Date	3/6/2015
Assigned To	[REDACTED]
Last Modified Date/Time	3/6/2015 11:04 AM
Comments	called customer back advised she would need to spake to fairbanks. Advised she wants tub that has the hump in the middle of the seat advised we do not make that unit, aadvised out seat has been the same since we launched the product. Proved PH to [REDACTED] as [REDACTED] requested.

2015-03-06 10:56:15

Name	[REDACTED]
Task	<input checked="" type="checkbox"/>
Due Date	3/6/2015
Assigned To	[REDACTED]
Last Modified Date/Time	3/6/2015 11:02 AM
Comments	

2015-03-06 08:33:33


Name	[REDACTED]
Task	<input checked="" type="checkbox"/>
Due Date	3/6/2015
Assigned To	[REDACTED]
Last Modified Date/Time	3/6/2015 8:58 AM
Comments	

Spoke to [REDACTED]


Name	[REDACTED]
Task	<input checked="" type="checkbox"/>
Due Date	3/6/2015
Assigned To	[REDACTED]
Last Modified Date/Time	3/6/2015 8:56 AM
Comments	Spoke to [REDACTED] he said he will have someone out ASAP to fix. Call [REDACTED] and ask to speak to [REDACTED]

JACUZZI002975 0107


2015-03-06 07:15:07

Name [REDACTED]
Task 
Due Date **3/6/2015**
Assigned To [REDACTED]
Last Modified Date/Time **3/6/2015 7:28 AM**
Comments


2015-03-03 08:08:24

Name [REDACTED]
Task 
Due Date **3/3/2015**
Assigned To [REDACTED]
Last Modified Date/Time **3/3/2015 8:08 AM**
Comments


Outbound call to customer.

Name [REDACTED]
Task 
Due Date **3/3/2015**
Assigned To [REDACTED]
Last Modified Date/Time **3/3/2015 8:08 AM**
Comments **Follow up w/ [REDACTED] in regards to seat questions.. LVM ..**


2015-03-02 10:28:31

Name [REDACTED]
Task 
Due Date **3/2/2015**
Assigned To [REDACTED]
Last Modified Date/Time **3/2/2015 10:38 AM**
Comments

2015-03-02 09:46:39

Name [REDACTED]
Task 
Due Date **3/2/2015**
Assigned To [REDACTED]
Last Modified Date/Time **3/2/2015 9:47 AM**
Comments

Inbound call from consumer

Name [REDACTED]
Task 
Due Date **3/2/2015**
Assigned To [REDACTED]
Last Modified Date/Time **3/2/2015 9:33 AM**
Comments **Rec VM from consumer concerned about contour seat. Tried to call number listed but VM says memory fulll and just beeps.**

2015-03-02 09:32:11

JACUZZI002976 0108

Name
Task ☒
Due Date **3/2/2015**
Assigned To [REDACTED]
Last Modified Date/Time **3/2/2015 9:32 AM**
Comments

Email: RE: [REDACTED] [ref:_00DG0kX3r._500G0enJk8:ref]

Name [REDACTED]
Task ☒
Due Date **2/26/2015**
Assigned To [REDACTED]
Last Modified Date/Time **2/26/2015 11:42 AM**

Additional To: [REDACTED]
CC:
BCC: [REDACTED]
Attachment:

Subject: RE: [REDACTED] [ref:_00DG0kX3r._500G0enJk8:ref]

Body:

[REDACTED]

Phone number for [REDACTED]

Send email to: [REDACTED]

[REDACTED]

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

From: [REDACTED]
Sent: 2/26/2015 10:27 AM
To: [REDACTED]
Subject: [REDACTED] [ref:_00DG0kX3r._500G0enJk8:ref]

Hi [REDACTED]

Comments I just wanted to let you know that regarding our seat for the walk in tub the ADA standard for seating is 17" and the seat is compliant on all of our walk in tub models. It does not mention ADA Contoured seat. We also sent an email [REDACTED] regarding your concerns. I tried calling you but your voice mail is full.

[REDACTED]
Consumer Relations, Aging in Place

14525 Monte Vista, Chino CA 91710

[REDACTED]
[REDACTED]

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ref:_00DG0kX3r._500G0enJk8:ref

[REDACTED]

Consumer Relations, Aging in Place

JACUZZI002977 0109

14525 Monte Vista, Chino CA 91710



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Inbound Consumer

Name [REDACTED]
Task ☒
Due Date 2/26/2015
Assigned To [REDACTED]
Last Modified Date/Time 2/26/2015 11:14 AM
Comments [REDACTED] called and was able to located the serial number BDF78Y

2015-02-26 11:09:08

Name [REDACTED]
Task ☒
Due Date 2/26/2015
Assigned To [REDACTED]
Last Modified Date/Time 2/26/2015 11:12 AM
Comments

Outbound Consumer

Name [REDACTED]
Task ☒
Due Date 2/26/2015
Assigned To [REDACTED]
Last Modified Date/Time 2/26/2015 10:31 AM
Comments Tried calling - no answer and vm was full.

Email: [REDACTED] [ref:_00DG0kX3r._500G0enJk8:ref]

Name [REDACTED]
Task ☒
Due Date 2/26/2015
Assigned To [REDACTED]
Last Modified Date/Time 2/26/2015 10:27 AM
Additional To: [REDACTED]
CC:
BCC: [REDACTED]
Attachment:
Comments Subject: [REDACTED] [ref:_00DG0kX3r._500G0enJk8:ref]
Body:
Hi [REDACTED]

I just wanted to let you know that regarding our seat for the walk in tub the ADA standard for seating is 17" and the seat is compliant on all of our walk in tub models. It does not mention ADA

JACUZZI002978 0110

ref:_00DG0kX3r._500G0enJk8:ref

Due Date **2/26/2015**
Assigned To [REDACTED]
Last Modified Date/Time **2/26/2015 10:17 AM**
Comments

Email: ADA Contoured Seat Design and Grab Bars [ref:_00DG0kX3r._500G0enJk8:ref]

Name [REDACTED]
Task ☒
Due Date **2/25/2015**
Assigned To [REDACTED]
Last Modified Date/Time **2/25/2015 10:38 AM**

Additional To: [REDACTED]
CC:
BCC: [REDACTED]
Attachment: [REDACTED] Jacuzzi Walk-In Tub Contoured ADA seat_02.pdf

Subject: ADA Contoured Seat Design and Grab Bars [ref:_00DG0kX3r._500G0enJk8:ref]

Body:

Hello [REDACTED]

I need your assistance, I received a call to day for consumer [REDACTED] She purchased a Walk in Tub 07/2014 for her mom. The main reason she purchased the tub was ADA Contoured Seat Design. Do we offer that?

Other issues she is having:

Seat - Slippery - [REDACTED] came out and sprayed something on the seat now it ruff and due to her moms age the skin is thin and is leaving marks (scratches) on her. (FS recommend Solid Step Cote which you have to brush or rolled in on).

Caulking - not completed

Faucet leaking - Replaced once

When you have the hand held water comes out from the spout too.

Comments Water temperature is either cold or hot,

Tried called [REDACTED] but they will not return her call anymore.
Her last phone call was that she would need to buy a new tub.

[REDACTED]
Consumer Relations, Aging in Place

14525 Monte Vista, Chino CA 91710

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ref:_00DG0kX3r._500G0enJk8:ref

Need to email tracking number to fairbanks.

Name [REDACTED]
Task ☒
Due Date
Assigned To [REDACTED]

JACUZZI002980

0112

Last Modified Date/Time **4/2/2015 8:32 AM**

Comments

Contact Roles

[REDACTED]

Account Name **Service technician**
Title **Marketing Manager**
Role **Customer Service Contact**
Email [REDACTED]
Phone [REDACTED]
Fax [REDACTED]
Mobile [REDACTED]
Owner [REDACTED]

[REDACTED]

Account Name [REDACTED]
Title **Field Manager**
Role **Customer Service Contact**
Email [REDACTED]
Phone [REDACTED]
Fax [REDACTED]
Mobile [REDACTED]
Owner [REDACTED]

Emails**RE: [REDACTED] - Serial BDJ6HT [ref:_00DG0kX3r_500G0enJk8:ref]**

Message Date **3/19/2015 10:01 AM**
Has Attachment ☐
Email Address [REDACTED]
Status **Read**
Subject **RE: [REDACTED] - Serial BDJ6HT [ref:_00DG0kX3r_500G0enJk8:ref]**
thanks

[REDACTED]

Text Body

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

From: [REDACTED]
Sent: Thursday, March 19, 2015 12:49 PM
To: [REDACTED]
Cc: [REDACTED]

JACUZZI002981

0113

Subject: [REDACTED] - Serial BDJ6HT [ref:_00DG0kX3r_500G0enJk8:ref]

[REDACTED]

I placed an order for a new faucet assembly for consumer [REDACTED]. Part will ship to you by FedEx. Once I received tracking number I will email it to you.

Thank you,
[REDACTED]

From: [REDACTED]
Sent: Thursday, March 19, 2015 8:02 AM
To: [REDACTED]
Cc: [REDACTED]

Subject: RE: Jacuzzi Walk In Tub ADA Contoured Seat Design and Grab Bars - [REDACTED]

Thanks [REDACTED]

[REDACTED] this customer contacted [REDACTED] directly so I'm not sure if you have any record of them but we need to get [REDACTED] a faucet for repair. Please confirm. Thanks!

[REDACTED]
Marketing Manager- Aging In Place Bathing

www.jacuzzi.com
13925 City Center Drive, Suite 200/ Chino Hills, CA 91709
[REDACTED]

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From: [REDACTED]
Sent: Thursday, March 19, 2015 7:56 AM
To: [REDACTED]
Cc: [REDACTED]

Subject: RE: Jacuzzi Walk In Tub ADA Contoured Seat Design and Grab Bars - [REDACTED]

[REDACTED] just wanted to let you know that the material for [REDACTED] is scheduled to arrive to us 3-20-15. I talked to her and this was the first time her schedule would work with ours. Can you send us a faucet and hand held to repair that part of issue? Let me know please.

[REDACTED]

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JACUZZI002982 0114

[REDACTED]
Consumer Relations, Aging in Place

14525 Monte Vista, Chino CA 91710
[REDACTED]
[REDACTED]

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ref:_00DG0kX3r._500G0enJk8:ref

Automatic reply: [REDACTED] - Serial BDJ6HT [ref:_00DG0kX3r._500G0enJk8:ref]

Message Date 3/19/2015 9:49 AM

Has Attachment ☐

Email Address [REDACTED]

Status New

Subject Automatic reply: [REDACTED] - Serial BDJ6HT [ref:_00DG0kX3r._500G0enJk8:ref]

Please pardon my delayed response; I will be out of the office until Friday March 20th. I will respond to your email promptly when I return. For immediate assistance please call my cell phone, 909.306.6193

Thank you,
[REDACTED]

Text Body

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[REDACTED] - Serial BDJ6HT [ref:_00DG0kX3r._500G0enJk8:ref]

Message Date 3/19/2015 9:49 AM

Has Attachment ☐

Email Address [REDACTED]

Status Sent

Subject [REDACTED] - Serial BDJ6HT [ref:_00DG0kX3r._500G0enJk8:ref]
[REDACTED]

I placed an order for a new faucet assembly for consumer [REDACTED] Part will ship to you by FedEx. Once I received tracking number I will email it to you.

Thank you,
[REDACTED]

Text Body

From: [REDACTED]
Sent: Thursday, March 19, 2015 8:02 AM
To: [REDACTED]
Cc: [REDACTED]
Subject: RE: Jacuzzi Walk In Tub ADA Contoured Seat Design and Grab Bars - [REDACTED]

JACUZZI002983

0115

Thanks [REDACTED]

[REDACTED]

[REDACTED]

Marketing Manager- Aging In Place Bathing

www.jacuzzi.com

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

[REDACTED]

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From: [REDACTED]

Sent: Thursday, March 19, 2015 7:56 AM

To: [REDACTED]

Cc: [REDACTED]

Subject: RE: Jacuzzi Walk In Tub ADA Contoured Seat Design and Grab Bars - [REDACTED]

[REDACTED], just wanted to let you know that the material for [REDACTED] is scheduled to arrive to us 3-20-15. I talked to her and this was the first time her schedule would work with ours. Can you send us a faucet and hand held to repair that part of issue? Let me know please.

[REDACTED]

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[REDACTED]

Consumer Relations, Aging in Place

14525 Monte Vista, Chino CA 91710

[REDACTED]

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ref:_00DG0kX3r._500G0enJk8:ref

JACUZZI002984

0116

RE: [REDACTED] [ref:_00DG0kX3r_500G0enJk8:ref]

Message Date **2/26/2015 11:42 AM**Has Attachment ☐

Email Address [REDACTED]

Status **Sent**Subject **RE: [REDACTED] [ref:_00DG0kX3r_500G0enJk8:ref]**

[REDACTED].

Phone number for [REDACTED]

Send email to: [REDACTED]

[REDACTED]

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

From: [REDACTED]

Sent: 2/26/2015 10:27 AM

To: [REDACTED]

Subject: [REDACTED] [ref:_00DG0kX3r_500G0enJk8:ref]

Hi [REDACTED]

I just wanted to let you know that regarding our seat for the walk in tub the ADA standard for seating is 17" and the seat is compliant on all of our walk in tub models. It does not mention ADA Contoured seat. We also sent an email [REDACTED] regarding your concerns. I tried calling you but your voice mail is full.

[REDACTED]

Consumer Relations, Aging in Place

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Text Body [REDACTED]

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ref:_00DG0kX3r_500G0enJk8:ref

[REDACTED]

Consumer Relations, Aging in Place

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[REDACTED]

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[REDACTED] [ref:_00DG0kX3r_500G0enJk8:ref]

Message Date **2/26/2015 10:27 AM**Has Attachment ☐**JACUZZI002985** 0117

Email Address [REDACTED]
Status **Replied**
Subject [REDACTED] [ref:_00DG0kX3r._500G0enJk8:ref]
Hi [REDACTED]

I just wanted to let you know that regarding our seat for the walk in tub the ADA standard for seating is 17" and the seat is compliant on all of our walk in tub models. It does not mention ADA Contoured seat. We also sent an email [REDACTED] regarding your concerns. I tried calling you but your voice mail is full.

[REDACTED]
Consumer Relations, Aging in Place

14525 Monte Vista, Chino CA 91710

Text Body

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ref:_00DG0kX3r._500G0enJk8:ref

RE: ADA Contoured Seat Design and Grab Bars [ref:_00DG0kX3r._500G0enJk8:ref]

Message Date **2/25/2015 10:42 AM**
Has Attachment ☐
Email Address [REDACTED]
Status **Read**
Subject **RE: ADA Contoured Seat Design and Grab Bars [ref:_00DG0kX3r._500G0enJk8:ref]**

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
Marketing Manager- Aging In Place Bathing

www.jacuzzi.com
13925 City Center Drive, Suite 200/ Chino Hills, CA 91709
[REDACTED]

Text Body

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

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

From: [REDACTED]
Sent: Wednesday, February 25, 2015 10:39 AM
To: [REDACTED]
Subject: ADA Contoured Seat Design and Grab Bars [ref:_00DG0kX3r._500G0enJk8:ref]

Hello [REDACTED]

JACUZZI002986

0118

I need your assistance, I received a call to day for consumer [REDACTED]. She purchased a Walk in Tub 07/2014 for her mom. The main reason she purchased the tub was ADA Contoured Seat Design. Do we offer that?

Other issues she is having:

Seat - Slippery - [REDACTED] came out and sprayed something on the seat now it ruff and due to her moms age the skin is thin and is leaving marks (scratches) on her. (FS recommend Solid Step Cote which you have to brush or rolled in on).

Caulking - not completed

Faucet leaking - Replaced once

When you have the hand held water comes out from the spout too.

Water temperature is either cold or hot,

Tried called [REDACTED] but they will not return her call anymore.

Her last phone call was that she would need to buy a new tub.

[REDACTED]

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[REDACTED]

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ref:_00DG0kX3r._500G0enJk8:ref

ADA Contoured Seat Design and Grab Bars [ref:_00DG0kX3r._500G0enJk8:ref]

Message Date 2/25/2015 10:38 AM

Has Attachment ☒

Email Address [REDACTED]

Status Sent

Subject ADA Contoured Seat Design and Grab Bars [ref:_00DG0kX3r._500G0enJk8:ref]

Hello [REDACTED]

[REDACTED]

[REDACTED]

Text Body

[REDACTED]

[REDACTED]

[REDACTED]

Consumer Relations, Aging in Place

14525 Monte Vista, Chino CA 91710

[REDACTED]

JACUZZI002987 0119

[REDACTED]

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ref:_00DG0kX3r_500G0enJk8:ref

Attachments

[REDACTED] Jacuzzi Walk-In Tub Contoured ADA
seat_02.pdf

Size 330KB

Ownership [REDACTED]

View [View file](#)

Last Modified 2/25/2015 10:31 AM

Case History

2/26/2015 11:48 AM

User [REDACTED]

Action Changed Status from On Hold - Waiting on Customer to Closed. Closed.

2/25/2015 10:30 AM

User [REDACTED]

Action Created.

Chatter

Text Posts

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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JACUZZI002988 0120

LAW OFFICES OF
Sprott & Golden

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May 22, 2015

Attention: [REDACTED]
[REDACTED]

RE: [REDACTED]

Dear Mr. [REDACTED]:

I have been asked by [REDACTED] to contact you regarding the sale of a Jacuzzi Walk-In Tub which was installed on the [REDACTED] property.

The [REDACTED] household was contacted by your sales agent. The [REDACTED] agreed to allow a representative to visit their home for some 3 hours. The sales agent visited for several hours before the sale was made, and during that time had the opportunity to observe and talk with Mr. [REDACTED] an elderly man with obvious strength and mobility problems. The conversation culminated in a contract for sale and installation for the sum of \$16,000.00. Enclosed is a copy of the agreement.

On May 2, 2015, the first time [REDACTED] used the tub, he fell in front of the seat and became wedged between the open door and the seat. He suffered significant injury as a result of this incident. [REDACTED] would not have fallen if the tub had not been excessively slippery, and would have suffered much less if he had not become wedged in by the inward-opening door, which became a trap for him.

[REDACTED] was seen by his physician who has been treating him since that time for this injury. The physician has given us his written opinion that the tub is not safe. A copy of his note is enclosed.

There are other issues: [REDACTED] has an additional issue that the tub was promised to have 26 jets but appears to have 12. [REDACTED] and his wife will not use the tub because it is slippery and because the inward swinging door appears to be a hazard. There is inadequate sealing between the tub and the floor which allows intrusions of insects and the like from the airspace under and around the outside of the tub into the bathroom.

Letter to [REDACTED]
May 22, 2015
Page | 2

Based on the foregoing, it is clear that the tub is of no use to the [REDACTED]. The sales agent knew or should have known that it would not be suitable for [REDACTED]. The [REDACTED] had no way of judging the suitability of this tub before the first use of it. [REDACTED] would like the bathtub removed from the premises as soon as possible, a different tub or shower furnished by the [REDACTED] installed, all plumbing to be restored for the purpose of accommodating a new tub or shower, and the price refunded.


I hope you will contact me about this at your earliest convenience.

Very truly yours,




Catherine F. Golden

CFG
Cc: [REDACTED]



May 18, 2015

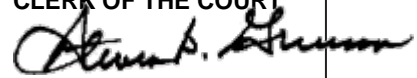
To whom it may concern,

 received a walk in tub from your company that is not safe for him to use.





**PETITIONERS' APPENDIX
TAB "2"**



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

Plaintiff,

vs.

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

Defendants.

AND ALL RELATED MATTERS

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

**PLAINTIFF'S MOTION TO STRIKE
DEFENDANT FIRSTSTREET'S and
AITHR'S ANSWERS FOR
DISCOVERY ABUSES ON ORDER
SHORTENING TIME**

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**PLAINTIFFS' MOTION TO STRIKE FIRSTSTREET'S and AITHR'S ANSWERS FOR
DISCOVERY ABUSES ON ORDER SHORTENING TIME**

Plaintiffs, by and through their attorney of record, Benjamin P. Cloward, Esq. of the Richard Harris Law Firm, hereby submits Plaintiffs' Renewed Motion to Strike Defendant FirstStreet for Boomers & Beyond ("FirstStreet") and AITHER DEALERS, INC. ("AITHR") for Discovery Abuses on Order Shortening Time. This Motion is made and based on the papers and pleadings on file herein, the Affidavit of Benjamin P. Cloward, Esq., the following Memorandum of Points and Authorities and the oral argument of counsel at the hearing on this Motion.


ORDER SHORTENING TIME

It, appearing to the satisfaction of the Court, and good cause appearing therefore, IT IS HEREBY ORDERED, that the foregoing **MOTION TO STRIKE FIRSTSTREET'S and AITHR'S ANSWERS FOR DISCOVERY ABUSES ON ORDER SHORTENING TIME**

shall be heard before the Discovery Commissioner on the 4th day of February, 2019 at the hour of 10:30 a.m. / p.m. DEPT. 2
OPPOSITION DUE BY JANUARY 28, 2019.
REPLY DUE BY JANUARY 31, 2019.
DATED THIS 15 day of January, 2019.


DISCOVERY COMMISSIONER
DISTRICT COURT
JUDGE RICHARD SCOTT

Submitted by:
RICHARD HARRIS LAW FIRM

 #12575
BENJAMIN P. CLOWARD, ESQ.
Nevada Bar No. 11087
801 South Fourth Street
Las Vegas, Nevada 89101
Attorney for Plaintiffs

AFFIDAVIT OF IAN C. ESTRADA, ESQ. PURSUANT TO E.D.C.R. 2.34 AND E.D.C.R. 2.26
IN SUPPORT OF PLAINTIFFS' MOTION TO STRIKE FIRSTSTREET'S and AITHR'S
ANSWERS FOR DISCOVERY ABUSES ON ORDER SHORTENING TIME

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

IAN C. ESTRADA, ESQ., being first duly sworn, deposes and says:

1. That I am an attorney at law duly licensed to practice in the State of Nevada.
2. That I am counsel for Plaintiff in the above-entitled matter.
3. That the Discovery cut-off deadline in this matter is on January 25, 2019.
4. That trial in this matter is currently set on the five-week stack commencing April 22, 2019.
5. 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.
6. As a result of said 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.
7. That pursuant to E.D.C.R. 2.26, there is good cause shown that Plaintiff's Motion must be heard on an Order Shortening Time due to the imminent Discovery cut-off deadline and trial date starting in approximately 3 ½ months.
8. The parties further conferred off the record at the deposition of Dave Modena, the 30(b)(6) designee for AITHR & *first*STREET on December 11, 2018.

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

FURTHER AFFIANT SAYETH NAUGHT.

RICHARD HARRIS LAW FIRM

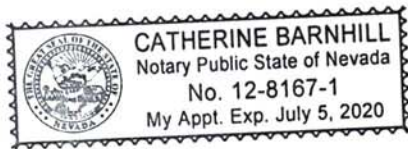


IAN C. ESTRADA, ESQ.

Subscribed and sworn to before me
this 7th day of January, 2019.



NOTARY PUBLIC, in and for said
County and State



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MEMORANDUM OF POINTS AND AUTHORITIES

I. PRELIMINARY STATEMENT

Within the last **three weeks**, Plaintiffs have taken the depositions of several witnesses and have learned that all remaining Defendants in this action have been engaged in blatant, bad faith discovery abuse by actively concealing relevant and material evidence – specifically, evidence of prior and subsequent incidents and complaints made by consumers about safety concerns with the Jacuzzi Walk-in Tub (hereinafter “**Tub**”) at issue.

As this Court is aware, in a product liability case, a Plaintiff proves his or her case by showing that the product was dangerous (dangerousness of the product) and that the manufacturers or distributors knew or should have known of the dangerous character of the product before the Plaintiff’s use (notice).¹

This product liability case arises out of Sherry’s purchase and use of a Jacuzzi Walk-in Tub in ***February of 2014*** that resulted in her untimely and tragic death. Due to the defective design of the Tub, Sherry **slipped** off the seat while reaching for the Tub controls and became wedged in such a way that she was unable to stand back up. Sherry was trapped in the Tub for three days when, due to a wellness check request, rescuers discovered Sherry. Ultimately, the firefighters were forced to cut the door off the walk-in Tub to free Sherry. She was rushed to the hospital where she later died of dehydration and rhabdomyolysis.

Throughout the course of this case, Plaintiffs have diligently attempted to discover similar incidents involving the Tub and substantially similar models.²

Plaintiffs recently took the deposition of Defendants *firstSTREET* and AITHR Dealer,

¹ See generally *Reingold v. Wet N’Wild Nevada, Inc.*, 113 Nev 967, 944 P.2d 800 (1997); *Ginnis v. Mapes Hotel Corp.*, 86 Nev. 408, 470 P.2d 139 (1970); see also B.E. Witkin, *California Evidence* §389 (3d ed. 1986)).

² Evidence of subsequent, similar accidents involving the same condition are relevant to the issues of causation and whether there is a defective and dangerous condition. See *Reingold* at 113 Nev. 969, 944 P.2d 802 (citing *Ginnis v. Mapes Hotel Corp.*, 86 Nev. 408, 415, 470 P.2d 135, 139 (1970)). A subsequent accident at the same or a similar place, under the same or similar conditions, is just as relevant as a prior accident to show the condition was in fact dangerous or defective, or that the injury was caused by the condition. See *Ginnis* at 86 Nev. 415, 470 P.2d 139 (citing B.E. Witkin, *California Evidence* §353 (2d ed. 1966); see also B.E. Witkin, *California Evidence* §389 (3d ed. 1986)).

Inc.’s³ Corporate Representative and discovered that there were up to thirteen dealers (in addition to Defendant AITHR Dealers, Inc.) who sold Jacuzzi walk-in products throughout the nation prior to the subject incident. These dealers should have been identified and disclosed immediately because these dealers likely have material information regarding the issues of notice and dangerousness. In fact, these dealers are the best source of evidence of customer complaints regarding any design defects or any similar incidents. As *firstSTREET*’s Rule 30(b)(6) designee testified, these dealers were the main point of contact with the final, end-users of Jacuzzi walk-in tubs because the dealers were the sales and installation people that had in-home, face-to-face interactions with the customers. Therefore, *firstSTREET*’s designee testified that when customers had a safety complaint about a tub that he/she had purchased, that customer would usually **contact the dealer first**.

firstSTREET (and Jacuzzi) failed to disclose the identities of any of the other dealers who sold Jacuzzi products even though discovery has been open for more than two years. Each dealer should have been voluntarily disclosed. Moreover, *firstSTREET* affirmatively stated that AITHR was the only dealer *in its network* in response to specific discovery requests seeking information about *any* other dealers.

Plaintiffs also discovered that there had been ongoing complaints about the slipperiness of the Tub from customers dating back to **2012**.⁴ The slipperiness of the Tub became such a concern that the Defendants identified a product called Kahuna-Grip, which was a grip used on surfboards and similar surfaces, that could be installed into the Tub to provide additional grip.⁵

The Defendants have entirely failed to produce:

- Any internal e-mails regarding the slipperiness issues
- Any e-mails among Defendants regarding the slipperiness issues
- Any e-mails regarding the Kahuna Grip product

³ Hereinafter, Defendants’ *firstSTREET* and AITHR Dealers, Inc. shall be collectively referred to as “*firstSTREET*.”

⁴ See, Ex. 1, (Affidavit of Benjamin P. Cloward, Esq., ¶’s 124-134.)

⁵ See, Ex. 1, (Affidavit of Benjamin P. Cloward, Esq., ¶’s 131.)

- Any internal e-mails about customer complaints about the slipperiness of the Tub
- Any e-mails among Defendants regarding customer complaints about the slipperiness of the Tub
- Any customer complaints on this issue

Additionally, on December 20, 2018, Plaintiffs deposed an elderly woman, Jerre Chopper in Hamilton, Montana, and discovered that she had written *no less than six letters to Jacuzzi* (who then informed *firstSTREET*). Mrs. Chopper also contacted *firstSTREET* and AITHR directly. The letters date back to *August 2012*, where she informed the Defendants of many dangers associated with the Tub.⁶

Mrs. Chopper informed Defendants that the Tub was:

- A “death trap for any senior experiencing a medical emergency while bathing [and] should be recalled.”⁷
- Is not safe because the “tub is wet, your feet are wet and the threshold is too high and slick . . .”⁸
- A problem because, “[i]f a senior lives alone, it seems to me that it could be hours or even days before the victim is discovered.”⁹
- Dangerous “For anyone suffering a medical emergency (I have a balance problem and periodic blackouts) there was no way to get out. The door opens inward and the pressure of the water would negate its opening.”¹⁰

Mrs. Chopper’s complaints went all the way to the top of the company, to the President

⁶ See, Ex. 1, (Affidavit of Benjamin P. Cloward, Esq., ¶’s 108-119.)

⁷ See, Ex. 1, (Affidavit of Benjamin P. Cloward, Esq., ¶’s 114.)

⁸ See, Ex. 1, (Affidavit of Benjamin P. Cloward, Esq., ¶’s 112.)

⁹ See, Ex. 1, (Affidavit of Benjamin P. Cloward, Esq., ¶’s 113.)

¹⁰ Letter from Jerre Chopper to Stacey Hackney at *firstSTREET*, dated December 4, 2012 (with Royce McCarty, Jennifer Lint, and Kurt Bachmeyer copied), **Exhibit 18**

of Jacuzzi.¹¹ **Mrs. Chopper's complaints were shared with firstSTREET.**¹² In addition to firstSTREET, Mrs. Chopper also made a complaint with AITHR.¹³ Some of Mrs. Choppers letters were addressed directly to firstSTREET's General Counsel, Stacey Hackney, Esq.

The Defendants had failed to disclose the identity of Mrs. Chopper during any written discovery responses or answers, failed to identify her pursuant to NRCP 16.1 and failed to provide her name during any of the many corporate depositions that have been taken in this matter. These failures can only mean that her identity was concealed in a deliberate, conscious effort to prevent the full and fair disclosure of evidence in this matter given the very specific nature of Mrs. Chopper's complaints which call the Tub a "death trap" to the elderly and specifically complain about the ability for an elderly person to remain trapped for hours or even days.

Defendants' failures to produce this evidence were deliberate, and consciously calculated to prevent the full and fair disclosure of evidence in this matter and have significantly prejudiced Plaintiffs in this matter. firstSTREET has repeatedly acted in bad faith throughout the entire course of discovery by failing to disclose material and relevant information despite an ongoing obligation to do so and this Honorable Court should strike firstSTREET Answer because of the significant prejudice to Plaintiffs as a result of firstSTREET's calculated efforts to thwart fair discovery in this matter.

II. INTRODUCTION

Sherry's case began on January 27, 2014, when she purchased a Jacuzzi Walk-in Tub (hereinafter "**Tub**"). The Jacuzzi Walk-in Tub was manufactured by Jacuzzi, marketed by firstSTREET and distributed by AITHR Dealer, Inc..¹⁴ On February 18, 2014, Sherry attempted to use the Tub. It was only her 2nd or 3rd use of the Tub. As she was seated in the Tub, Sherry

¹¹ See, Ex. 1, (Affidavit of Benjamin P. Cloward, Esq., ¶'s 115.)

¹² See, Ex. 1, (Affidavit of Benjamin P. Cloward, Esq., ¶'s 118.)

¹³ See, Ex. 1, (Affidavit of Benjamin P. Cloward, Esq., ¶'s 116.)

¹⁴ Jacuzzi and firstSTREET entered a Manufacturing Agreement (hereinafter "**Manufacturing Agreement**") on October 1, 2011, attached hereto as **Exhibit 2**.

reached for the Tub controls located at the front of the tub and her bottom slipped off the front of the Tub seat and slipped down toward the footwell of the Tub.¹⁵

She became wedged in a squatted position unable to move due to her limited strength.¹⁶ Because the door of the Tub opened inward, Sherry was unable to open the door. Tragically, she remained in this position for *three days*, until a well-check was requested, because no one had heard from her. Even when four trained paramedics arrived, they could not lift her out of the Tub due to the inward opening door and the Tub's high, slick walls. The paramedics snapped her arm trying to lift Sherry out of the Tub. After trying in vain, the paramedics resorted to cutting the door completely off the Tub to remove her. Sherry was rushed to the hospital, but ultimately died about a week later from complications related to being trapped for three days in the Tub. A wrongful death product liability and negligence lawsuit was filed by her family in Clark County, which is the basis of case A-16-731244-C (hereinafter "**Cunnison case**").

Also relevant to the issues presented in this Motion to Strike the Answer is a brief background of another case Sherry's attorneys are involved with that also deals with the death of a family member who used a Jacuzzi Walk-in Tub. After filing suit in Sherry's case, her attorneys were contacted by the family of Mack Smith, who lived in Georgia, and who drowned while using his Jacuzzi Walk-in Tub (hereinafter "**Smith case**"). Mack was relaxing in his Tub, sitting on the seat, in a reclined position with his feet against the wall, when his bottom slipped off the seat, similar to Sherry, and he struggled to get his bottom back up on the seat. Mack's wife Barbara rushed into the bathroom to help him, but due to the inward opening doors, she was unable to open the door, hold his head above water, and call for help all at the same time. After she had summoned help, while she was waiting for help to arrive, her husband Mack, drowned in the Tub.

¹⁵ The police officers and paramedics who responded when she became trapped testified that she told them what happened.

¹⁶ To envision how Sherry became trapped, imagine firmly bolting a chair about two feet away from a wall, facing the wall. Next, imagine the person seated in the chair scooting his/her bottom toward the wall, until his/her bottom slipped off the front of the chair. Because of the immobile nature of the chair in this example, the person would be wedged in the narrow area. This is similar to the Tub at issue – it has a very limited space should one fall or slip into the footwell area. See, Photograph of Jacuzzi Walk-in Tub, attached hereto as **Exhibit 3**.

1 Plaintiffs set forth in great detail the specific allegations against the Defendants in the
2 Fourth Amended Complaint. Specifically, the Complaint alleged:

3 40. Defendants, and each of them, knew or should have known that
4 unreasonably dangerous conditions existed with the Jacuzzi walk-in tub, being
5 used by Plaintiff, namely the inability to get up or exit if Plaintiff fell.

6
7 50. The Defendants and/or DOE/ROE Defendants, knew or should have
8 known of the subject product's defect which rendered it unreasonably dangerous
9 at the time of placing the subject product into the stream of commerce and failed
10 to undertake measures to prohibit it from entering into the stream of commerce
11 and into the hands of users in the state of Nevada, including warnings for product
12 failure, proper use and maintenance of the product and proper inspection of the
13 product for potential hazards and/or defects.

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

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

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

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

22 . . .

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

25 85. Despite knowing that the users of the Jacuzzi walk-in bathtub are weak,
26 feeble and at a significant risk for falling down, Defendants did nothing to plan for
27 the foreseeable event of having a user like SHERRY fall down inside the walk-in
28 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.

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.*”¹⁷

III. STATEMENT OF FACTS¹⁸

Discovery has been open in this case for approximately two and a half years. The JCCR in this case was filed on August 23, 2016. Now, with trial set on the April 22, 2019 stack (just four months away) Plaintiffs have learned that *firstSTREET* did not disclose the names of vital witnesses who have information regarding the dangerousness of the Tub and Defendants’ notice of such dangerousness.

firstSTREET did not disclose the identities of any other dealers, did not disclose any of the high number of customers who had complained about the slipperiness of the Tub, and did not disclose Jerre Chopper (who specifically complained to all Defendants about the very same design defects that are alleged in this case). *firstSTREET* also failed to disclose vital documents. *firstSTREET* did not disclose customer complaints, communications with Jacuzzi about customer complaints, and letters from Jerre Chopper. They also did not produce thousands of pages of emails with Jacuzzi about marketing until Jacuzzi forced their hand by taking the position that Jacuzzi had absolutely no involvement in the marketing of the Tub. Essentially, Plaintiffs have

¹⁷ See, Plaintiffs’ Fourth Amended Complaint, filed June 21, 2017, attached hereto as **Exhibit 5**.

¹⁸ As an initial matter, Plaintiffs hereby incorporate Plaintiffs’ Renewed Motion to Strike Defendant Jacuzzi, Inc.’s Answer (filed concurrently with this Motion) into this Motion as though set forth completely herein because Jacuzzi’s discovery abuses are relevant to *firstSTREET*’s discovery abuses. At worst, *firstSTREET* has withheld evidence in a coordinated effort with Jacuzzi. At best, *firstSTREET* knew that Jacuzzi was withholding evidence and failed to disclose the same.

just learned that they have been conducting discovery on only a miniscule portion of the complete universe of relevant evidence.

A. FIRSTSTREET DID NOT DISCLOSE THE IDENTITIES OF APPROXIMATELY 10 TO 14 OTHER DEALERS

Dealers, like AITHR, are vital witnesses in this case. Dealers are the best source of information regarding prior and subsequent similar incidents. They are also the best source of information regarding customer complaints.

firstSTREET's Rules 30(b)(6) designee, Dave Modena, testified that customer complaints of all types (whether the complaint is in regard to an injury, a design defect complaint, a warranty complaint, an installation issue, or a safety issue) normally go to the dealer **first**. Mr. Modena testified:

Q Okay. Now, after the tub is sold and installed, and let's say there's a problem with the drain or a problem with, you know, the faucet or whatever it is --

A Yes.

Q -- in any issue, let's say it's even a safety issue, or let's say it's a -- you know, somebody got hurt, do they call the dealer or are they told to call Jacuzzi or are they told to call First Street?

A The customer normally would call the dealer. That's who they dealt with. That's who they -- that's who they -- that's who they know. That was the face.

So this Jacuzzi dealer, when they give them their company story and Airtite would give them their information, so in the leave-behind packet that you're pulling out now, you would -- you would put -- you would put -- they would put their name and information in there. That's what they are supposed to do.

So, now, they would -- also would receive a Jacuzzi manual, as well, which -- which would have a Jacuzzi number. So as true in many cases in home improvement, they may call the person that sold it to them, because that's their first point of contact. **That's where they typically go to.** But in a manufacturer situation, too, they would -- especially if they thought it was warranty situation, they would contact the manufacturer.

But, normally, the first point of contact, and I would say most of the time, it would come back to the dealer, because --

Q Okay.

A -- that's who they dealt with.

Modena, David, (Pages 109:6 to 110:10)

1. *firstSTREET* did not Disclose the Dealers Voluntarily

firstSTREET did not disclose the identities of any dealers other than AITHR in any of its voluntary disclosures. See, *firstSTREET*'s 3rd Supplemental NRCP 16.1 Disclosure. Pursuant to NRCP 16.1, the dealers should have been disclosed in *firstSTREET*'s initial disclosures. And pursuant to NRCP 26, *firstSTREET* had a duty to supplement its disclosures to include the identities of all dealers. This is especially true in light of the fact that *firstSTREET* knows that Plaintiffs have been seeking similar incident evidence throughout discovery in this case. *firstSTREET* has been served with every discovery motion before this Court and has been present at every hearing before the Discovery Commissioner. Each of the recent string of discovery disputes have all related to Plaintiffs' attempts to discover similar incidents evidence. Knowing this, *firstSTREET* has been acutely aware of the relevance of the dealer witnesses but chose not to disclose this information voluntarily.

2. *firstSTREET* did not Disclose the Dealers in Response to Written Discovery Requests

Not only did *firstSTREET* refuse to voluntarily disclose the dealers, *firstSTREET* affirmatively stated in written discovery responses that AITHR is the only dealer. Plaintiffs' very first interrogatory to *firstSTREET* asked for the list of all dealers. *firstSTREET* responded that AITHR was the only dealer:

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.¹⁹

firstSTREET's response is obstructionist gamesmanship. Currently, the only dealer in *firstSTREET's* network of dealers that sells Jacuzzi products is AITHR. *See generally*, Dave Modena Tran. at pp. 102-104. However, at the time that Sherry purchased the Tub, there were approximately ten dealers in *firstSTREET's* network that sold Jacuzzi products. *See generally*, Dave Modena Tran. at pp. 102-104. Knowing this, the evasive and misleading nature of *firstSTREET's* interrogatory response becomes clear. First, *firstSTREET* objected to Interrogatory 1, stating that it is overbroad with respect to time. Then, *firstSTREET* responded that the only dealer in *firstSTREET's* network is AITHR. While that may be true today, it is not true for the period most relevant to this case. *firstSTREET* knowingly evaded Plaintiffs' interrogatory and provided a misleading answer.

2. *firstSTREET* finally Reveals the other Dealers in Deposition

On December 11, 2018, Plaintiffs deposed *firstSTREET's* Corporate Representative, David Modena in Richmond, Indiana. At the deposition, *firstSTREET* revealed for the first time that there were up to fourteen dealers selling Jacuzzi walk-in tubs prior to the subject incident and up to twelve dealers at the time Sherry purchased her Tub. Mr. Modena testified:

Q Okay. So I'm just trying to figure out, I guess, what other dealers there are of --

A At the time, there were Ken Jenkins Home Safety Bath, American Home Design. We had about 13 dealers when we started. At this time, we probably still had 10 to 11 dealers that we sent leads to. And our Denver AITHR Dealer

¹⁹ *firstSTREET's* Response to Plaintiff Tamatini's First Set of Interrogatories, **Exhibit 8**

organization was carrying -- was covering the states in the middle of the country. Some of the large states represented 13 percent of the leads and population.

Q So what are -- what are the other -- you have given me Home Safety Bath, Home Living Solutions, American Home Design --

A Home Living Solutions -- Home Living Solutions was not a dealer for us. They were a company that had a relationship with Jacuzzi you had asked about earlier. They were the company that was responsible in trying to distribute and sell and market Jacuzzi tubs at the time. They had some sort of exclusive arrangement. This wasn't going anywhere.

Q So is it fair to say that Home -- Home Living Solutions was kind of like the First Street before First Street?

A In fact, they came to us to see if we could help them with their marketing because they're not a marketing company.

Q Okay. So American Home Design is a dealer, though?

A Yes. They were at the time.

Q All right. You said there were --

A I think there were 13 when we started this program with Jacuzzi, in setting up **our own dealer network** and working with Jacuzzi exclusively, and then we covered the country, with the exception of the -- ourself being a dealer for those states in the middle of the country, and we can define that for you at a later date if you'd like to know who those were at the time.

Q Yeah. Your testimony today is, is that there are still, I think you said, 10 to 12?

A Not now. Not now. There are no dealers now. We are the only -- AITHR Dealer is the only company that's doing Jacuzzi tubs for us, that's still doing our tub program.

At that time -- at the time there were probably at least 10 during this time of this event we're talking about, the Cunnison situation. There were -- I would have to go back and look and see exactly how many we still had. But we had most of them in place at the time. As time went on, if the dealer was not doing a good job, we would -- we would stop that relationship and take that territory ourself.

Modena, David, (Pages 100:10 to 103:6)

Mr. Modena went on to name numerous other dealers that were in *firstSTREET*'s network at the time Sherry purchased her Tub:

Q As you sit here today, are there any others that you can recall?

A Absolutely. The two that I told you I recalled was those that were already doing business with Jacuzzi prior to our relationship.

Q Okay.

A That's the two that were mentioned to you. They -- they were already doing business with them, so that's how we got access to them, their

1 information, their knowledge of them being pretty good partners, competent
2 enough to be a part of our dealer network. But, no, we had -- we had -- I can
3 name a bunch of them for you, if you'd like. There's -- I mean, do you want
4 me to name --

5 Q Hold on a second. Yeah, I do. Just one moment. Thank you very much.

6 A This may not be a hundred percent complete, but I can give you most of
7 them, many of them. I'm getting older.

8 Q Okay. Yeah, if you have those names, that would be great.

9 A Fairbanks. Fairbanks Construction.

10 Q Okay.

11 A Beldon, B-e-l-d-o-n. Hausner, H-a-u-s-n-e-r. OBR.

12 Q OD?

13 A O-B, as in boy.

14 Q Okay.

15 A OBR.

16 Q And are these construction companies?

17 A These are home improvement companies. These are companies that know
18 how to sell and install home improvement. They do siding, windows,
19 typically the type of dealers we dealt with go into homes and sell and close
20 and install.

21 Q Gotcha. Okay.

22 A Airtite, one word, A-i-r-t-i-t-e. OBR. Fairbanks. Home Safety.
23 American Home Design. Beldon. I'm trying to think of the one up in New
24 York that we just -- didn't last very long. I'm forgetting. Did I say Atlas? Did
25 I say Atlas?

26 Q Huh-uh.

27 A Atlas. I'm trying to think of the one in New York. Can't think of their
28 name. They didn't last long. Shoot.

Beldon was one of our largest ones. They had, like, 27 percent of the
country. They were their first dealer. Hausner. American Home Design.
Atlas. OBR. Airtite. Fairbanks. There was a guy in Georgia. He may have
been gone by then. Tub Doctor, Tub Doctor was one. They were in Georgia.
They didn't last long. He may not have been around at this point in time.
There's one up in New York. I just can't think of their name.

Modena, David, (Pages 104:1 to 105:25)

firstSTREET never disclosed any of these dealers until Mr. Modena was deposed and
required to answer questions without the assistance of counsel. *firstSTREET* should have
disclosed this information years ago. This caused irreparable prejudice to Plaintiffs, as will be
discussed fully below.

1 **B. FIRSTSTREET'S EVASIVE DEPOSITION TESTIMONY**

2 While Mr. Modena offered information on the other dealers, he avoided providing
3 complete and truthful answers when asked about similar incidents. Mr. Modena evasively testified
4 that he was only aware of one significant incident involving a safety aspect of the Tub: the instant
5 case. Mr. Modena's testimony was evasive and incomplete. He testified that he "must have been
6 a couple" incidents, but he stated that "I just don't recall incidents like this." A review of Mr.
7 Modena's testimony reveals that he was attempting to dodge the questions:
8
9

10
11 Q How about we focus now on kind of the safety aspect of the tub. How
12 often and what types of claims are called in on that?

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

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

20 A You would think so.

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

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

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

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

Modena, David, (Pages 26:4 to 27:8)

Mr. Modena testified that significant incidents did not occur often, yet at the same time, testified that he could not recall the rare times that they did occur. Mr. Modena went on to testify that he did not have information regarding any other lawsuits involving *firstSTREET*:

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

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

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

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

Modena, David, (Page 27:9 to 27:23)

Mr. Modena testified that he could not answer the simple question of whether *firstSTREET* is aware of any other lawsuits. Mr. Modena testified that *firstSTREET*'s General Counsel, Stacey Hackney would have more knowledge than he had. Thus, the undersigned requested to depose Ms. Hackney on this topic. Instead, a recess was taken so that Counsel for *firstSTREET*'s and Ms. Hackney could re-educate Mr. Modena on the topic of similar incidents:

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

A Sure.

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

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

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

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

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

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

MR. CLOWARD: Yeah.

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

MR. CLOWARD: Yeah.

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

MR. CLOWARD: Yeah.

MR. GOODHART: -- in a Jacuzzi product?

MR. CLOWARD: Correct.

MR. GOODHART: Okay. All right. Why don't we take two minutes and we'll clear it up for you.

MR. CLOWARD: Okay. Do you want me to leave or --

MR. GOODHART: No. We can just go out there.

MR. CLOWARD: Okay.

MR. GOODHART: That's fine. Thank you.

THE VIDEOGRAPHER: We are going off the record at 11:01 a.m.

(Recess from 11:01 a.m. to 11:07 a.m.)

Modena, David, (Pages 27:24 to 29:10)

After the recess, Mr. Modena testified that *firstSTREET* was aware of two other incidents: conveniently, the Smith case and the Baize case (which Plaintiffs disclosed months prior). However, in discussing *firstSTREET*'s knowledge of the Smith and Baize case, Mr. Modena revealed that he had reviewed notes regarding both the Smith and Baize case recently while preparing for his deposition:

Q So what other reasonably significant events are -- is First Street aware of?

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

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

Q Okay. So --

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

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

3 A Well, the one -- certainly the one in Georgia. That's probably the one that
4 would -- the more significant issue that was obviously an injury-related type
5 issue. The one in Texas, we weren't sure about, so to say I absolutely a
6 hundred percent remember that one, it sounds familiar. You know, it -- the -
7 - I was -- **and I've looked at it since then, too, since -- in prepping for this,**
8 too, as well, and the notes were even unclear on it, as well, so it was -- it's one
9 that I could see if I was notified of -- it was relatively unclear what had even
10 happened so it --

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

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

15 Q Is there a reason you weren't able to recall reviewing those notes five
16 minutes ago?

17 A Well, I thought we were -- actually, I was going to bring that up, because
18 that's the Baez thing, the one -- that's -- because that is the one that I remember
19 that, because I looked at it recently, but when I looked at the notes, and -- it
20 wasn't in our -- in our LP system that I talked about earlier. There really
21 wasn't much in there, so that's why I was having a hard time. We didn't -- it
22 didn't show up as a -- as a -- you know, an injury report, so I was like -- I knew
23 that that was potentially an issue that we could discuss, but I couldn't find
24 anything in the note that even shows it as an injury, so I didn't -- didn't
25 designate it as an injury type of an incident --

26 Q Okay. And did you --

27 A -- in my mind.

28 **Q Did you review notes in the system, as well, regarding the Smith case?**

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

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

A Yes.

Q You were informed --

A Yes.

Q -- of that?

A Yes. Yes.

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

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

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

A Those would be it.

Q Just those three?

A That I would be aware of.

Modena, David, (Pages 29:24 to 32:25)

Thus, Mr. Modena reviewed documents about the Smith and Baize case before his deposition but testified that he could not recall any other incidents. Then, only after he spoke to defense counsel and General Counsel, he was conveniently only able to recall the two other incidents which Plaintiffs have disclosed and testified that *firstSTREET* is only aware of three incidents: this case, the Smith case, and the Baize case.

C. FIRSTSTREET DID NOT DISCLOSE COMPLAINTS MADE BY CUSTOMER JERRE CHOPPER

Mr. Modena's testimony is troublesome because Plaintiffs recently learned of another claimant named Jerry Chopper. Plaintiffs learned of Mrs. Chopper in the attachment to a rouge e-mail that was likely inadvertently produced by Jacuzzi (as part of a 1,530 page "document dump").

On December 20, 2018, Plaintiffs took Mrs. Chopper's deposition and discovered that **she sent no less than six** letters to Jacuzzi back in 2012, which was well-before Mrs. Cunnison's incident.²⁰ Mrs. Chopper also sent a letter directly to Stacey Hackney, *firstSTREET*'s General Counsel.²¹ Mrs. Chopper, by herself or through her attorney, also sent other letters to *firstSTREET*.²²

These letters are the "smoking gun" in this case because they: 1) are proof that the Walk-in Tub was dangerous, but more importantly, 2) that Jacuzzi was well-aware of all of the dangerous issues with the Tub.²³ In the letters, Mrs. Chopper notified Jacuzzi that the Tub was not safe because the "tub is wet, your feet are wet and the threshold is too high and slick. The

²⁰ See, Deposition of Jerre Chopper, dated December 20, 2018, attached hereto as **Exhibit 17**.

²¹ Letter from Jerre Chopper to Stacey Hackney at *firstSTREET*, dated December 4, 2012 (with Royce McCarty, Jennifer Lint, and Kurt Bachmeyer copied), **Exhibit 18**

²² See Multiple letters between Jerre Chopper or her lawyer to Corporate Counsel for *firstSTREET* and AITHR, Stacy Hackney, dated September 28, November 29 and December 4, 2012, attached hereto as **Exhibit 19**

²³ See, Plaintiffs' Fourth Amended Complaint, ¶ 75-91, attached hereto as **Exhibit 5**.

only way to make a safe exit is by doing what commercial truck drivers are trained to do when exiting the cab of a big rig. You back out so you can use the grab bar for stability.”²⁴

Mrs. Chopper also notified Jacuzzi that “[i]f a senior lives alone, it seems to me that it could be hours or even days before the victim is discovered.”²⁵ Mrs. Chopper also notified Jacuzzi that its product was a “*death trap for any senior experiencing a medical emergency while bathing [and] should be recalled.*”²⁶ Jacuzzi even acknowledged the complaints made by Mrs. Chopper and Kurt Bachmeyer promised that he had “confirmed with our President of Jacuzzi that they will be responding to [her] concerns and issues outlined in [her] letters . . .”²⁷

In addition to Jacuzzi, **Mrs. Chopper also notified firstSTREET and AITHR** of her safety concerns with the Walk-in Tub (which is part of the Motion to Strike the Answers of Defendants *firstSTREET* and AITHR).²⁸ In fact, some of the letters to firstSTREET were directly addressed to General Counsel, Stacey Hackney, **who was present at Mr. Modena’s deposition.** Additionally, the rogue email thread that Jacuzzi disclosed shows Jacuzzi forwarded Mrs. Chopper’s letters to Mr. Modena.

1. FirstSTREET did not Disclose Jerre Chopper Voluntarily or in response to written discovery requests

firstSTREET did not disclose Mrs. Chopper as a witness in any of its NRCP 16.1 disclosures even though her letters specifically show that Defendants had notice of the exact same

²⁴ Id.; see also, Letter from Jerre Chopper to Kurt Bachmeyer, Jacuzzi Director of Customer Service, dated **September 1, 2012**, attached hereto as **Exhibit 21** (emphasis added).

²⁵ Id.; see also, Letter from Jerre Chopper to Kurt Bachmeyer, Jacuzzi Director of Customer Service, dated **September 12, 2012**, attached hereto as **Exhibit 22** (emphasis added).

²⁶ Id.; see also, Letter from Jerre Chopper to Kurt Bachmeyer, Jacuzzi Director of Customer Service, dated **October 15, 2012**, attached hereto as **Exhibit 23** (emphasis added).

²⁷ Id.; see also, E-mails between Kurt Bachmeyer and Jerre Chopper, dated November 5-6, 2012, attached hereto as **Exhibit 36**.

²⁸ Id.; see also, Multiple letters between Jerre Chopper or her lawyer to Corporate Counsel for *firstSTREET* and AITHR, Stacy Hackney, dated September 28, November 29 and December 4, 2012, attached hereto as **Exhibit 19**.

design defect Plaintiffs are alleging in this case. Additionally, *firstSTREET* did not disclose Mrs. Chopper in response to written discovery specifically asking whether any customer had ever made a complaint about the design of the walk-in tub. In Plaintiff Robert Ansara's First Set of Interrogatories to *firstSTREET*, it was asked:

No. 19: State if 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.²⁹

Notably, *firstSTREET*'s responses were verified by *firstSTREET*'s General Counsel, Stacey Hackney. Even though Mrs. Chopper specifically addressed some of her letters to Ms. Hackney, *firstSTREET* did not disclose Mrs. Chopper, or her numerous letters, in any of its productions, responses to written discovery, or in deposition testimony.

D. FIRSTSTREET DID NOT DISCLOSE WITNESSES WHO MADE COMPLAINTS REGARDING THE SLIPPERINESS OF THE TUB

firstSTREET has also prevented Plaintiffs from proving other aspects of their case by acting in bad faith in other areas of discovery. Specifically, Plaintiffs have asserted from the time that the Fourth Amended Complaint was filed back in 2017 that Jacuzzi made improper claims with respect to the Walk-in Tub's actual safety benefits.³⁰ A critical part of Plaintiffs' allegations dealt with the slipperiness of the Tub as compared to the slipperiness of a bathroom in general.³¹ Therefore, the slipperiness of the Tub is at issue in this case.

Plaintiffs written discovery was aimed at discovering any complaints of safety which would have included complaints that the Tub was too slippery. However, in recent depositions,

²⁹ *firstSTREET*'s Responses to Plaintiff Ansara's First Set of Interrogatories, **Exhibit 9**

³⁰ See, Plaintiffs' Fourth Amended Complaint, ¶'s 75-91, attached hereto as **Exhibit 5**.

³¹ See, Plaintiffs' Fourth Amended Complaint, ¶'s 75-91, attached hereto as **Exhibit 5**.

Plaintiffs have learned that *firstSTREET* has, in bad faith, clearly been withholding evidence on this important issue in an apparent attempt to prevent Plaintiffs from proving their case. Specifically, on **December 11, 2018** at Dave Modena’s deposition, Plaintiffs learned for the first time that the slipperiness of the Tub has been a **significant**, ongoing issue since **2012** (prior to Sherry’s death).

Particularly, Mr. Modena testified that not long after the Defendants entered into the Manufacturing Agreement, *firstSTREET* and AITHR began receiving feedback from customers regarding the slipperiness of the tub.³² Because of these customer complaints, Mr. Modena testified that *firstSTREET* contacted Jacuzzi via e-mail³³ to inquire about this issue.³⁴ Mr. Modena testified that in response to *firstSTREET*’s inquiries and concerns about the slipperiness of the walk-in bathtubs, Jacuzzi, through Ray Torres, the VP of Engineering at Jacuzzi, provided documentation purporting to show that the tub surfaces met the standards with regard to what Mr. Modena called “the coefficient.”³⁵

Mr. Modena testified that AITHR/*firstSTREET* continued having customer complaints and/or concerns regarding the slipperiness of the tub and that the Defendants actually found a product called “Kahuna Grip” which was a grip used on surfboards and similar surfaces that could be installed into the Jacuzzi walk-in tub to provide additional grip.³⁶ Mr. Modena testified that there were many e-mails exchanged between Jacuzzi and AITHR/*firstSTREET* regarding the slipperiness of the tub based on the ongoing complaints of customers as the tubs were installed.³⁷ Jacuzzi has failed entirely to produce any information about the slipperiness of the tub despite valid discovery requests from Plaintiffs seeking this information.

³² See, Deposition of Dave Modena - Vol. I, 39:5—40:25; 59:2-25, December 11, 2018, attached hereto as **Exhibit 6**;

³³ The disclosure and production of the e-mails by Defendants was coordinated and calculated and not in good faith – which will be addressed herein.

³⁴ See, Deposition of Dave Modena - Vol. I, 41:3-25, December 11, 2018, attached hereto as **Exhibit 6**.

³⁵ See, Deposition of Dave Modena - Vol. I, 41:3–42:14, December 11, 2018, attached hereto as **Exhibit 6**.

³⁶ See, Deposition of Dave Modena - Vol. I, 42:23—44:11, December 11, 2018, attached hereto as **Exhibit 6**.

³⁷ See, Deposition of Dave Modena - Vol. I, 47:1-51:1, December 11, 2018, attached hereto as **Exhibit 6**.

firstSTREET has failed to produce any evidence regarding these complaints. For example, *firstSTREET* has not produced:

- Any internal e-mails regarding the slipperiness issues
- Any e-mails among Defendants regarding the slipperiness issues
- Any e-mails regarding the Kahuna Grip product
- Any internal e-mails about customer complaints about the slipperiness of the Tub
- Any e-mails among Defendants regarding customer complaints about the slipperiness of the Tub
- Any customer complaints on this issue

E. FIRSTSTREET DID NOT DISCLOSE EMAIL COMMUNICATIONS WITH JACUZZI

In addition to slipperiness issues, *firstSTREET* is also acting in bad faith with regard to the advertising of the tub. Jacuzzi has denied involvement in the marketing of the Tub. When Plaintiffs were requested to supplement their Complaint, they looked no further than the marketing literature that was provided to Sherry Cunnison. The marketing literature gives statistics regarding falls in the home and the safety of the elderly in the bathroom.³⁸ Plaintiffs believed early-on that the marketing claims being made were unsubstantiated, unsupported and false. Based on that belief, Plaintiffs sought to investigate the claims made with respect to the Jacuzzi Walk-in Tubs. *firstSTREET* is the “exclusive marketing” partner for Jacuzzi’s Walk-in Tubs.³⁹ In the Manufacturing Agreement, Jacuzzi promised to provide *firstSTREET* with the “existing approved advertising claims and claims support documentation . . . for use in *firstSTREET*’s advertisements and marketing materials.”⁴⁰ Jacuzzi promised that the information provided to *firstSTREET* supporting Jacuzzi’s advertising claims would be “truthful, accurate, non-misleading, and adequately substantiated (meaning claims based on tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area . . .)”⁴¹

³⁸ See, Jacuzzi Brochure, attached hereto as **Exhibit 13**

³⁹ See generally, Manufacturing Agreement, at pg. 5, attached hereto as **Exhibit 2**.

⁴⁰ See, Manufacturing Agreement, at pg. 2, attached hereto as **Exhibit 2**.

⁴¹ See, Manufacturing Agreement, at pg. 2, attached hereto as **Exhibit 2**.

The Manufacturing Agreement between Jacuzzi and *firstSTREET/AITHR* required *firstSTREET* to submit all national marketing to Jacuzzi for approval to ensure it complied with brand guidelines and to ensure that any claims were accurate and truthful.⁴² Based in part on the plain language of the Manufacturing Agreement, Plaintiffs sought more information about the advertising claims that were used to induce Sherry and other Americans into purchasing a walk-in tub. In written discovery and deposition testimony Jacuzzi categorically denied having any involvement whatsoever in the marketing of the tub. All of Jacuzzi's denials are untrue as will be shown below.

After a hearing, the Discovery Commissioner ordered that a second deposition of Jacuzzi's corporate representative take place.⁴³ At some point after the hearing and just days before the continued Second deposition, *Counsel for firstSTREET/AITHR* called Counsel for Plaintiffs and revealed that Jacuzzi's testimony regarding its level of involvement in the marketing was not accurate and that *firstSTREET/AITHR* had thousands of emails that would be produced which directly contradicted the sworn testimony of Jacuzzi.⁴⁴

Counsel for *firstSTREET/AITHR* indicated that due to the volume of emails at issue, they may not be produced prior to the continued Second Jacuzzi deposition but that they certainly would be produced the week following the deposition. Counsel for *firstSTREET/AITHR* did not produce the emails prior to the continued Second deposition and only after *repeated requests* and preparation of a Motion to Compel the Documents, were the emails finally turned over nearly two months after the First deposition.⁴⁵ These emails should have been disclosed voluntarily, without request.

⁴² See, Manufacturing Agreement, at pg. 4, attached hereto as **Exhibit 2**.

⁴³ See, Discovery Commissioner's Report and Recommendation, served August 23, 2018, attached hereto as **Exhibit 14**.

⁴⁴ See, Affidavit of Benjamin P. Cloward, Esq., attached hereto as **Exhibit 1**.

⁴⁵ See, Plaintiffs' Motion to Compel Defendant *firstSTREET* to Produce Documents on Order Shortening Time, attached hereto as **Exhibit 15**. This motion was returned by the Discovery Commissioner, who sought clarification as to when Plaintiffs needed it to be heard. It became moot because Defendant *firstSTREET* in a coordinated effort with Jacuzzi dumped on Plaintiffs nearly 3,000 emails well *after* the Second Jacuzzi deposition and just a couple weeks *before* the depositions of *firstSTREET* and AITHR.

Overall, Plaintiffs have been significantly prejudiced in their ability to prosecute their claims against Jacuzzi, *firstSTREET* and AITHR. Plaintiffs are not ready for the upcoming April trial without significant additional discovery. Plaintiffs have been unfairly prejudiced by having their experts be forced to give incomplete and partial opinions because of *firstSTREET*'s calculated and coordinated efforts to prevent the full and fair disclosure of evidence in this matter.

IV. LEGAL ARGUMENT

The Court should strike *firstSTREET* and AITHR's Answers because their actions are in complete contravention of the rules of discovery. The purpose of discovery is to remove surprise from trial preparation and enable the parties to obtain evidence necessary to evaluate and resolve their dispute. The discovery rules accomplish this objective by advancing the time at which disclosure can be compelled from the trial to the period preceding it, thereby reducing the possibility of surprise and obviating the need to conduct a trial in the dark or blindly. 23 Am. Jur. 2d, Depositions and Discovery § 1. Discovery also is designed to aid a party in preparing and presenting his or her case or defense, and to enable the parties to narrow and clarify the basic issues between them. Discovery should expedite the disposition of the litigation, by educating the parties in advance of trial of the real value of their claims and defenses, which may encourage settlements. Id. Here, Plaintiffs are being forced to prepare for trial in the dark because Jacuzzi has withheld relevant evidence.

NRCP 16.1 and NRCP 26 are intended to accomplish the full-disclosure purpose of the discovery rules. They do so by requiring parties to make initial disclosures voluntarily without awaiting request. Thus, NRCP 16.1 creates an obligation on parties to fully disclose discoverable evidence at the outset of litigation:

NRCP 16.1 is intended to promote and facilitate prompt investigation, preparation, prosecution, **and full disclosure**, so that cases can be resolved quickly – by settlement or otherwise – thereby minimizing litigation delay and needless expenses to all parties and the judicial system as a whole.

Craig R. Delk, Nevada Civil Practice Manual, §16.02[1] (Jeffrey W. Stempel et al. eds., 5th ed. 2012).

Additionally, not only must the parties make initial disclosures under NRCP 16.1, they must also supplement their disclosures under NRCP 26(e).

The purpose of voluntary disclosure and supplementation rules is to promote the timely prosecution of litigation. Arnold v. Kip, 123 Nev. 410, 418, 168 P.3d 1050, 1055 (2007). Further, the rules are intended to provide the parties an informed basis upon which to meaningfully approach the litigation rather than only providing such a basis after a substantial expenditure of time and resources in discovery and pretrial preparation. Craig R. Delk, Nevada Civil Practice Manual, §16.02[1] (Jeffrey W. Stempel et al. eds., 5th ed. 2012). They are also intended to compel cooperation among the parties to accomplish the full disclosure objectives of the discovery rules with a minimum of time and expense consumed in procedural requirements, thereby resulting in the most efficient use of professional and judicial time. Id. Accomplishing these goals requires the cooperation of the parties along with firm and consistent judicial action to encourage those refusing to cooperate or honor their NRCP 16.1 obligations to do so by the imposition of meaningful sanctions. Id.

Here, *firstSTREET* has failed to promote the timely prosecution of this litigation by knowingly failing to provide Plaintiffs with an informed basis upon which to approach this litigation. Each of Jacuzzi's NRCP 16.1 disclosures and supplements did not contain any similar incidents evidence. Jacuzzi is in violation of NRCP 16.1 and NRCP 26 because it did not produce any of the above-mentioned evidence. Accordingly, sanctions under NRCP 16.1(e)(3) and NRCP 37 are appropriate.

A. NEVADA LAW GRANTS THIS COURT BROAD AUTHORITY AND DISCRETION TO STRIKE DEFENDANTS' ANSWERS.

This Court is invested with authority to issue sanctions for discovery violations. Nevada Power v. Fluor Illinois, 108 Nev. 638, 644, 837 P.2d 1354, 1358-59 (1992); Young v. Johnny Ribiero Building, 106 Nev. 88, 92, 787 P.2d 777, 779 (1990). Under 16.1(e)(3), sanctions can be

1 imposed upon motion or the court's own initiative for failure to reasonably comply with any
2 provision of NRCP 16.1 without prior entry of a court order compelling the discovery in question.

3 NRCP 16.1(e)(3) provides:

5 **(e) Failure or Refusal to Participate in Pretrial Discovery; Sanctions.**

6 (3) If an attorney fails to reasonably comply with any provision of
7 this rule, or if an attorney or a party fails to comply with an order
8 entered pursuant to subsection (d) of this rule, the court, upon
9 motion or upon its own initiative, shall impose upon a party or a
party's attorney, or both, appropriate sanctions in regard to the
failure(s) as are just, including the following:

10 (A) Any of the sanctions available pursuant to Rule 37(b)(2)
11 and Rule 37(f);

12 (B) An order prohibiting the use of any witness, document
13 or tangible thing which should have been disclosed,
produced, exhibited, or exchanged pursuant to Rule 16.1(a).

14 NRCP 16.1(e)(3).

15 As a result, under NRCP 16.1(e)(3), any sanctions available under NRCP 37 are
16 immediately available. A noncompliant attorney or party is not afforded an opportunity to cure a
17 violation of the discovery disclosure rules because NRCP 16.1(e)(3) does not require the entry and
18 violation of a court order before sanctions can be imposed. Craig R. Delk, Nevada Civil Practice
19 Manual, §16.02[3] (Jeffrey W. Stempel et al. eds., 5th ed. 2012).

20 Sanctions under NRCP 37(b)(2) are as follows:

21 (A) An order that the matters regarding which the order was
22 made or any other designated facts shall be taken to be
23 established for the purposes of the action in accordance with
the claim of the party obtaining the order;

24 (B) An order refusing to allow the disobedient party to
25 support or oppose designated claims or defenses, or
26 prohibiting that party from introducing designated matters in
evidence;

27 (C) An order striking out pleadings or parts thereof, or
28 staying further proceedings until the order is obeyed, or
dismissing the action or proceeding or any part thereof,

1 or rendering a judgment by default against the
2 disobedient party;

3 (D) In lieu of any of the foregoing orders or in addition
4 thereto, an order treating as a contempt of court the failure
5 to obey any orders except an order to submit to a physical or
6 mental examination;

7 In lieu of any of the foregoing orders or in addition thereto, the court
8 shall require the party failing to obey the order or the attorney
9 advising that party or both to pay the reasonable expenses, including
10 attorney's fees, caused by the failure, unless the court finds that the
11 failure was substantially justified or that other circumstances make
12 an award of expenses unjust.

13 NRCP 37(b)(2).

14 This Court is also granted authority under Nevada statutes to ensure compliance with its
15 orders and to impose sanctions upon those who fail to do so. NRS 22.010 states:

16 **NRS 22.010 Acts or omissions constituting contempts.**

17 The following acts or omissions shall be deemed contempts:

18

- 19 3. Disobedience or resistance to any lawful writ, order, rule or process
20 issued by the court or judge at chambers.

21 Finally, EDCR 7.60 likewise grants this Court wide authority to issue the sanctions
22 requested here. It states in relevant part as follows:

23 **Rule 7.60. Sanctions.**

24 (a) If without just excuse or because of failure to give reasonable attention to
25 the matter, no appearance is made on behalf of a party on the call of a
26 calendar, at the time set for the hearing of any matter, at a pre-trial
27 conference, or on the date of trial, the court may order any one or more of
28 the following:

....

(3) Dismissal of the complaint, cross-claim, counter-claim or motion or the
striking of the answers and entry of judgment by default, or the granting of
the motion.

(4) Any other action it deems appropriate, including, without limitation,
imposition of fines.

The Nevada Supreme Court has stated that EDCR 7.60 permits a court to impose all of the sanctions provided under NRCP 37(b). *See Nevada Power Co. v. Fluor Illinois*, 108 Nev. 638, 837 P.2d 1354 (1992); *see also Temora Trading Co. Ltd v. Perry*, 98 Nev. 229, 645 P.2d 436 (1982) (affirming the district court's order striking the defendant's **answer** and entering judgment in favor of the plaintiff for violating court orders); *Skeen v. Valley Bank of Nevada*, 89 Nev. 301, 511 P.2d 1053 (1973) (striking the defendant's answer and awarding attorney's fees pursuant to NRCP 37).

Thus, a district court may impose sanctions, including striking pleadings, when there has been willful noncompliance with a discovery order or willful failure to produce documents as required under NRCP 16.1. In this case, *firstSTREET* has willfully withheld crucial, discoverable evidence in noncompliance with NRCP 16.1 and NRCP 26.

B. FIRSTSTREET'S ANSWER SHOULD BE STRICKEN AS TO LIABILITY DUE TO ITS ABUSIVE DISCOVERY TACTICS

In *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 787 P.2d 777 (1990), the Supreme Court of Nevada held that courts have “inherent equitable powers to dismiss actions or enter default judgments for ... abusive litigation practices. Litigants and attorneys alike should be aware that these powers may permit sanctions for discovery and other litigation abuses not specifically proscribed by statute.” *Id.*, 106 Nev. at 92, 787 P.2d at 779. (Internal quotation and citation omitted). The Supreme Court further stated that “while dismissal need not be preceded by other less severe sanctions, it should be imposed only after thoughtful consideration of all the factors involved in a particular case.” *Id.* at 92, 787 P.2d at 780. In discussing the legal basis for dismissal, the Supreme Court held:

that every order of dismissal with prejudice as a discovery sanction be supported by an express, careful and preferably written explanation of the court's analysis of the pertinent factors. The factors a court may properly consider include, but are not limited to, the degree of willfulness of the offending party, the extent to which the non-offending party would be prejudiced by a lesser sanction, the severity of the sanction of dismissal relative to the severity of the discovery abuse, whether any evidence has been irreparably lost, the feasibility and fairness of alternative, less severe

sanctions, such as an order deeming facts relating to improperly withheld or destroyed evidence to be admitted by the offending party, the policy favoring the adjudication on the merits, whether sanctions unfairly operate to penalize a party for the misconduct of his or her attorney, and the need to deter both the parties and future litigants from similar abuses.

Id. at 93, 787 P.2d at 780.

An analysis of the aforementioned Young factors reveals that striking Jacuzzi's Answer is appropriate in this case.

1. Degree of Willfulness of the Offending Party

firstSTREET's violations have been willful. *firstSTREET* sat silent while Jacuzzi denied involvement in the marketing and advertising of the Tubs. It was not until after the Second Jacuzzi 30(b)(6) deposition that *firstSTREET* finally disclosed communications with Jacuzzi regarding marketing (after threat of a motion to compel). *firstSTREET* knew that there were approximately fourteen other dealers who are the best source of information regarding similar incidents and customer complaints, yet did not disclose the identities of these dealers. Both Dave Modena and Stacey Hackney received Mrs. Chopper's letters, yet *firstSTREET* never disclosed Mrs. Chopper. Notably, Plaintiffs learned about Mrs. Chopper from Jacuzzi's document dump; *firstSTREET* disclosed nothing from Mrs. Chopper, despite receiving correspondence directly from her and from Jacuzzi regarding the safety concerns associated with the tub.

And while the recent string of discovery disputes before this Court have been disputes between Plaintiffs and Jacuzzi, *firstSTREET* cannot claim to have clean hands in this matter. *firstSTREET* has been involved in this case from the beginning. They have attended every hearing and every deposition, they have been served with all discovery from all parties, they have seen each discovery dispute before this Court. They are intimately familiar with the fact that Plaintiffs have been consistently seeking similar incidents information for years. They are aware that Plaintiffs have been seeking the identities of other dealers, of customers who have lodged complaints (about design defects, not just complaints about injuries), and of evidence regarding Jacuzzi's involvement in marketing. Yet, *firstSTREET* has sat silent throughout this entire

litigation, only providing information when its hand is forced and only producing information that Plaintiffs discovered on their own. Again, *firstSTREET* did not disclose emails between *firstSTREET* and Jacuzzi until Jacuzzi began taking the position that *firstSTREET* was solely in control of marketing. Similarly, *firstSTREET* did not disclose the other dealers until its corporate witness was forced to answer questions under oath (as opposed to written discovery requests which were prepared by in-house counsel, Stacey Hackney). Clearly, *firstSTREET*'s discovery abuses have been willful.

2. Extent to which Non-Offending Party Would be Prejudiced by a Lesser Sanction

Plaintiffs would be severely prejudiced if they are forced to litigate liability at trial or continue this "cat and mouse" type of discovery.

a. Trial is Four Months Away and Plaintiffs Have Only Now Learned of the Other Dealers

Dealers are a vital source of evidence in this case. Jacuzzi manufactures the walk-in products. *firstSTREET* markets the products to potential customers. The dealers, like AITHR, (and their production teams) go to the customers homes and sell and install the products. Therefore, it is crucial to note that the dealers are the main point of contact with the customers. They are the party that has the "face to face" to with the customers. In fact, the evidence in this case shows that the sales pitches to customers occur in the customers' homes and last hours. The salesman utilize tactics which are aimed at engendering trust. Therefore, it naturally follows that the customers' main point of contact is the dealer. As *firstSTREET*'s own corporate witness testified when he was specifically asked who a customer would contact first in a situation involving a customer complaint: "normally, the first point of contact, and I would say most of the time, it would come back to the dealer, because ... that's who they dealt with." Modena, David, (Page 110:6 to 110:10).

As the first point of contact, these dealers are the main source of information regarding customer complaints. That means that the dealers are the best source of evidence on the issues of

1 notice and dangerousness. Plaintiffs should have been given the opportunity to conduct discovery
2 on each of the other dealers who sold Jacuzzi products.

3 The prejudice to Plaintiffs cannot be understated, especially given the fact that discovery
4 is set to close on January 25, 2019. Plaintiffs were limited to information from one dealer, AITHR,
5 who happens to be the only dealer named as a defendant in this case. *firstSTREET* prevented
6 Plaintiffs from being able to seek similar incident and customer complaint evidence from
7 approximately 13 other non-party dealers. Plaintiffs were prevented from subpoenaing documents
8 and depositions from the other 13 dealers who sold Jacuzzi walk-in products. To analogize, there
9 were thirteen rivers of information in this case (one for each dealer that sold Jacuzzi products)
10 which should have emptied into the lake of evidence. *firstSTREET* knowingly put a dam on
11 twelve of those rivers. It is too late to open up the dams. With trial in April, the damage has
12 been done. Plaintiffs are now being forced to go to trial having only conducted discovery on a
13 limited portion of the evidence.
14

15 **b. Witnesses' (whose identities are still unknown) Are Being**
16 **Lost and Their Memories Are Fading**

17 As Mr. Modena testified, *firstSTREET* was aware of customer complaints regarding the
18 slipperiness of the tubs **prior** to Sherry's death. *firstSTREET* and Jacuzzi had received so many
19 complaints about the tub's slipperiness that they began offering "Kahuna Tape" to customers.
20 Again, *firstSTREET* and Jacuzzi specifically offered an after market product to customers which
21 specifically dealt with one of the alleged design defects **in this case**. This entire case started when
22 Sherry's bottom slipped off the Tub seat. And now, over two years after discovery opened,
23 *firstSTREET* has revealed that the Defendants had received so many customer complaints about
24 slipperiness that they were offering a special product specifically designed to address the very
25 design defect of the tub that started this entire case.

26 Clearly, there are numerous customers who made complaints about slipperiness. Naturally,
27 then, there are numerous customers who have slipped in Jacuzzi walk-in tubs. *firstSTREET* knew
28 about these customers and knew about a high enough volume of these customers to take the

remedial measure of offering Kahuna Tape. Yet, not one single customer complaint was ever disclosed to Plaintiffs via voluntary disclosure or discovery response. These customers should have been disclosed at the outset of discovery, not mentioned in passing during a Rule 30(b)(6) deposition.

Now, after discovery has already been extended six times and the parties are six months away from trial in a court where the trial judge has indicated that he is disinclined to continue trial any longer, Plaintiffs find themselves with this crucial information. Plaintiffs should have been able to locate and depose the customers who complained of the slipperiness of the tub. Plaintiffs should have been able to determine the facts pertaining to any customer slips.

These customers are vital witnesses in this case. Importantly, though, these customers are likely elderly persons. Therefore, these customers should have been disclosed immediately because as Defendants are acutely aware (especially given the fact that their target market is the elderly): memories fade. It is a well-established tenet of fair litigation that witnesses are disclosed as early as possible specifically because memories fade. *firstSTREET*'s refusal to disclose the identities of these witnesses – who are likely elderly – has significantly prejudiced Plaintiffs ability to obtain evidence related to these customers. For example, this case also deals with issues of prior notice. Dates are extremely important. Even if these customers are identified now, their memories will likely have faded. Specific dates of phone calls to notify defendants would likely be forgotten. Similarly, the specifics of conversations regarding issues of prior notice will also likely have been forgotten. Even worse, some of these witnesses may have passed during the course of discovery in this case and their testimony has been forever lost.

c. Plaintiffs, and this Court, Can Never Know How Many Other Witnesses or Documents Have Been Withheld

Discovery on issues pertaining to customer complaints and prior and subsequent similar incidents has been dependent on *firstSTREET*'s good faith. Plaintiffs do not have the ability to search through *firstSTREET*'s internal systems. Nor do they have the ability to search through

every single court in every single jurisdiction. Therefore, Plaintiffs have been at the mercy of *firstSTREET*'s willingness to produce documents and witnesses on these issues.

firstSTREET has demonstrated such an unwillingness to participate in good faith discovery that it is impossible to know the true "universe" of relevant evidence. It is unknown how many other dealers received letters from customers. It is unknown how many other incident reports or other investigation materials exist and which might be held by any of the other dealers. It is unknown what other Customer Relations Management companies have contracts with the other dealers and, therefore, might have evidence of similar incidents. Simply put, it is a complete mystery what other evidence exists.

d. Plaintiffs right to present their case at trial expeditiously has been destroyed

Sherry's family has a fundamental right to a litigate this case in an expeditious manner. Plaintiffs have been engaged in a "cat and mouse" game with the Defendants in this case for years. Plaintiffs have spent significant amount of time, resources, and money in this case. Extending discovery would increase the cost to Plaintiffs exponentially. Plaintiffs will have to subpoena documents thirteen dealers, depose thirteen dealer 30(b)(6) witnesses (who will likely be out of state), subpoena documents from the other dealers CRM vendors, depose any other customers who have depose customers who have complained; the list goes on and on. Plaintiffs litigation strategy – and budget – has been based on the information provided. Plaintiffs should not be forced to expend significantly more money in discovery due to *firstSTREET*'s failure to provide information that should have been produced voluntarily without request.

e. Plaintiffs Cannot Fairly Present their Case at Trial

Taken as a whole, Plaintiffs still remain "in the dark" on the crucial issues of notice and dangerousness. Even more worrisome, witnesses (i.e., customers who have complained and dealers who those customers would have complained to) have still not been disclosed. These witnesses' memories continue to fade and this crucial evidence continues to disappear. Plaintiffs continue to expend valuable resources during this never-ending "cat and mouse" game with Defendants. Plaintiffs have a fundamental right to have their case heard expeditiously

1 It would be extremely prejudicial to force Plaintiffs to go to trial without evidence of all
2 similar incidents, without deposing the unidentified witnesses in the eleven subsequent incident
3 documents, or the 11-13 other dealers because such evidence germane to the issue of whether the
5 tub was defective or whether Jacuzzi had notice of such defects. Additionally, prior similar
6 incidents evidence goes directly to the core of Plaintiffs' claim for punitive damages. Plaintiffs
7 are now unable to go to trial with all relevant evidence and cannot present a complete case to the
8 jury – that alone is so prejudicial that striking *firstSTREET*'s Answer is the only appropriate
9 sanction.

10 3. Severity of the Sanction Relative to the Severity of the Discovery 11 Abuse

12 While striking an answer is a severe sanction, doing so is proper in this case. *firstSTREET*
13 has withheld the identity of the persons/companies that are most likely to have information
14 regarding customer complaints: the approximately 10 to 13 other dealers who sold Jacuzzi
15 products. These dealers have information that goes directly to the issues of prior notice and design
16 defect. *firstSTREET* has withheld the identities of customers who have complained about the
17 slipperiness of Jacuzzi walk-in tubs. Again, this information goes directly to the issue of prior
18 notice and design defect. *firstSTREET* also failed to disclose documents, i.e., communications
19 from complaining customers, communications with Jacuzzi, and any other documents related to
20 customer complaints. Given the allegations in Plaintiffs' Complaint, *firstSTREET* knew that this
21 evidence is relevant and chose not to disclose it. As discussed below, FirstSTREET's the severity
22 of *firstSTREET*'s abuse is compounded by the fact that *firstSTREET*'s own General Counsel is
23 the party representative who signed the verification for both *firstSTREET* and AITHR's
24 interrogatory responses.

25 4. Whether any Evidence has Been Irreparably Lost

26 At the time of the writing of this motion, it is unknown whether *firstSTREET* has destroyed
27 similar incidents evidence. It is unknown whether complaining customers have passed away. At
28

1 minimum, as discussed above, discovery has been open of over two years. These witnesses'
 2 memories have faded for that much time and continue to fade. Any facts forgotten are now lost.

3 **5. Feasibility and Fairness of Alternative, Less Severe Sanctions**

5 Less severe sanctions are not feasible because *firstSTREET* has already displayed its
 6 willingness to withhold critical evidence. An order to compel production is dependent on
 7 *firstSTREET*'s willingness to participate in good faith. *firstSTREET* has already demonstrated
 8 that an order compelling the production of documents or witnesses would be futile. Therefore,
 9 the only feasible sanction is striking *firstSTREET*'s Answer.

10 **6. Whether Sanctions Unfairly Operate to Penalize a Party for Misconduct of His Attorney**

11 *firstSTREET* has an in-house General Counsel, Stacey Hackney, Esq, has been intimately
 12 involved in this case. Ms. Hackney was identified as the "person or persons responding to
 13 [Plaintiffs'] interrogatories" to both *firstSTREET* and AITHR. Additionally, Ms. Hackney is the
 14 corporate representative who signed the verifications for *firstSTREET* and AITHR's responses to
 15 Interrogatories. Notably, Ms. Hackney was also the recipient of some of the letters from Jerre
 16 Chopper. Therefore, she should have made sure that Mrs. Chopper's letters were disclosed.

17 Additionally, Ms. Hackney was present at Mr. Modena's deposition and was even part of
 18 the off-record discussions with Mr. Modena that were supposed to educate Mr. Modena on similar
 19 incidents evidence. As a licensed attorney, she had an ethical obligation to step in and correct Mr.
 20 Modena's testimony. Moreover, as an attorney, she was aware of the obligation to educate Mr.
 21 Modena about all prior complaints about design defects, i.e., the complaints of Jerry Chopper.

22 Clearly, *firstSTREET*'s has been a knowing participant in *firstSTREET*'s obstructionist
 23 discovery tactics. This is not a case where an attorney has undertaken abusive discovery tactics
 24 on behalf of his client. This is not a case where the party was unaware of his attorney's discovery
 25 abuse. Rather, this case involves the actual party defendant – through its own General Counsel
 26 who affirmatively signed interrogatory response verifications – taking part in withholding
 27 evidence. Striking *firstSTREET*'s Answer would not unfairly operate to punish *firstSTREET* for
 28 the actions of its defense counsel.

7. **The Need to Deter Both Parties and Future Litigants from Similar Abuses**

The Supreme Court of Nevada has held that entering default is proper when “litigants are unresponsive and engaged in abusive litigation practices that cause interminable delays.” Bahena v. Goodyear Tire & Rubber Co., 235 P.3d 592, 599 (Nev. 2010). Further, such sanctions are “necessary to demonstrate to future litigants that they are not free to act with wayward disregard of a court's orders,” and that the conduct of the appellants evidenced “their willful and recalcitrant disregard of the judicial process.” Id. (internal citations omitted). Here, it is absolutely necessary to deter not only *firstSTREET* but also future litigants from withholding evidence. Litigants cannot be permitted to abuse discovery to the detriment of the opposing party. The purpose of discovery is to enable parties to access all relevant evidence so that they can evaluate and resolve their dispute. Striking *firstSTREET*’s Answer is necessary to prevent similar misconduct.

V. **CONCLUSION**

A plaintiff can only have a fair trial if the defendant litigates in good faith. In a product liability case, a plaintiff must be able to fairly discover whether other similar incidents have occurred because such incidents go to the heart of the dangerousness issue. Similar incidents also go directly to the issue of notice (if they are prior incidents). For the same reason, a product liability plaintiff must be able to discover both prior and subsequent customer complaints.

In this case, *firstSTREET* has sat idly by while Plaintiffs have been trying to discover similar incident and customer complaint evidence from only the named Defendants **even though *firstSTREET* knew that there were up to thirteen (possibly more) other dealers who sold Jacuzzi products. Based on firstSTREET’s deposition testimony, those dealers are the best source of information regarding similar incidents and customer complaints.** With trial four months away, Plaintiffs now find themselves in a situation where they have only been able collect evidence from one of the fourteen dealers: AITHR (i.e., the only dealer that is a named defendant and therefore has an interest in withholding evidence). Plaintiffs have been denied the opportunity

1 to conduct discovery on the other non-party dealers. *firstSTREET*'s failure to disclose the dealers,
2 along with its failure to disclose Mrs. Chopper and the other customers who complained about the
3 slipperiness of the tubs, has irreparably prejudiced Plaintiffs' ability to present their case at trial.
4 Striking *firstSTREET*'s Answer is the only appropriate sanction because *firstSTREET*'s has
5 shown that it refuses to litigate in good faith. *firstSTREET* had email communications regarding
6 marketing and advertising but did not disclose them until Jacuzzi forced *firstSTREET*'s hand by
7 completely denying any involvement in the Tub's marketing. Additionally, *firstSTREET*'s
8 corporate witness, Mr. Modena, evaded similar incidents questions and even claimed that
9 *firstSTREET* was not aware of any other incidents until he was coached during a recess. Even
10 then, he failed to mention Mrs. Chopper and her specific complaints regarding the danger of a
11 person becoming trapped in the tub. *firstSTREET* discovery abuses are intentional and, therefore,
12 *firstSTREET*'s Answer should be stricken.

13
14 DATED this 7th day of January 2019.

15
16 **RICHARD HARRIS LAW FIRM**

17
18 
19 BENJAMIN P. CLOWARD, ESQ.

20 Nevada Bar No. 11087
21 801 South Fourth Street
22 Las Vegas, Nevada 89101
23 *Attorneys for Plaintiff*
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26
27
28

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 16th day of January, 2019, I caused to be served a true copy of the foregoing **PLAINTIFF'S MOTION TO STRIKE DEFENDANT FIRSTSTREET'S and AITHR'S ANSWERS FOR DISCOVERY ABUSES ON ORDER SHORTENING TIME** 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 (*Exhibit 16 only*)

☐ 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.).

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/s/ Catherine Barnhill
An employee of RICHARD HARRIS LAW FIRM

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EXHIBIT “1”

AFFT

BENJAMIN P. CLOWARD, ESQ.

Nevada Bar No. 11087

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DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

CASE NO.: A-16-731244-C

DEPT NO.: II

AND ALL RELATED MATTERS

AFFIDAVIT OF BENJAMIN P. CLOWARD, ESQ., IN SUPPORT OF MOTION TO STRIKE DEFENDANTS FIRST STREET FOR BOOMERS AND AITHR DEALERS, INC.'S ANSWERS FOR REPEATED, CONTINUOUS AND BLATANT DISCOVERY ABUSES

STATE OF NEVADA)
) ss:
COUNTY OF CLARK)

A. General Information

1. I, BENJAMIN P. CLOWARD, ESQ., being first duly sworn, depose and say:
2. I am qualified to testify regarding the following information contained within this affidavit in support of Plaintiffs' Motion to Strike the Answer of Defendants *firstSTREET* for Boomers ("***firstSTREET***") and AITHR Dealers, Inc. ("**AITHR**") for Repeated, Continuous and Blatant Discovery Abuses.
3. I am the attorney for the family of Decedent, Sherry Cunnison ("**Sherry**"), who lived in Las Vegas prior to her death.
4. Sherry's case began on January 27, 2014, when she purchased a Jacuzzi Walk-in Tub (hereinafter "**Tub**").
5. The Tub was manufactured by Jacuzzi, marketed by *firstSTREET* and distributed by AITHR.¹
6. On February 18, 2014, Sherry attempted to use the Tub.
7. This was only her second or third use of the Tub.
8. As she was seated in the Tub, Sherry reached for the Tub controls located at the front of the tub and her bottom slipped off the front of the Tub seat and down toward the footwell of the Tub.²
9. Sherry became wedged in a squatted position in the footwell, unable to move due to her

¹ Jacuzzi and *firstSTREET* entered a Manufacturing Agreement (hereinafter "Manufacturing Agreement") on October 1, 2011, attached hereto as **Exhibit 2**.

² The police officers and paramedics who responded when she became trapped testified that she told them what happened.

limited strength.³

10. Sherry was unable to open the Tub door because it only opened inwardly.
11. Tragically, Sherry remained in this position for **three days**; Sherry's family requested a wellness-check because no one had heard from her.
12. Even when four trained paramedics arrived, they could not lift her out of the Tub due to the inward opening door and the Tub's high, slick walls.
13. The paramedics snapped Sherry's arm trying to lift her out of the Tub.
14. After trying to remove Sherry in vain, the paramedics resorted to cutting the door completely off the Tub to remove her.
15. Sherry was rushed to the hospital, but ultimately died about a week later from complications related to being trapped for three days in the Tub.
16. Sherry's family filed a wrongful death product liability and negligence lawsuit Clark County, Nevada which is the basis of this case, case number A-16-731244-C (hereinafter "**Cunnison case**").

B. The Smith Case

17. Also relevant to the issues presented in this Motion to Strike *first* STREET and AITHR's Answer is a brief background of another case that I am involved with that also deals with the death of a plaintiff's family member which arose out of the use of a Jacuzzi Walk-in Tub.
18. After filing suit in Sherry's case, I was contacted by the family of Mack Smith, who lived in Georgia.
19. Mack drowned while using his Jacuzzi Walk-in Tub (hereinafter "**Smith case**").
20. Mack was relaxing in his Tub, sitting on the seat, in a reclined position with his feet against the wall, when his bottom slipped off the seat, similar to Sherry, and he struggled to get his bottom back up on the seat.
21. Mack's wife Barbara rushed into the bathroom to help him, but due to the inward opening doors, she was unable to open the door, hold his head above water, and call for help all at the same time.

³ To envision how Sherry became trapped, imagine firmly bolting a chair about two feet away from a wall, facing the wall. Next imagine the person seated in the chair scooting his/her bottom toward the wall, until his/her bottom slipped off of the front of the chair. Because of the immobile nature of the chair in this example, the person would be wedged in the narrow area. This is similar to the Tub at issue – it has a very limited space should one fall or slip into the footwell area. See, Photograph of Jacuzzi Walk-in Tub, attached hereto as **Exhibit 3**.

22. After she had summoned help, while she was waiting for help to arrive, her husband Mack, drowned in the Tub.

C. The Allegations in Plaintiffs’ Fourth Amended Complaint

23. After the Cunnison family filed suit against Jacuzzi, AITHR and *firstSTREET* in Las Vegas, some of the Defendants filed motions to strike the punitive damages claims.

24. The Cunnison family was ordered by the Court to revise their Complaint to include more specific allegations to support the punitive damage claims asserted against Defendants.⁴

25. In Plaintiffs’ Fourth Amended Complaint, filed June 21, 2017, Plaintiffs set forth numerous allegations regarding the suspicious sales practices, advertising and marketing methods used by Jacuzzi, *firstSTREET* and AITHR in the sales and marketing of the walk-in tub at issue.⁵ Further, Plaintiffs set forth design flaws with the tub and the danger it posed to elderly and infirm folks.⁶

26. Specifically, ¶s 75-91 of the Fourth Amended Complaint contained allegations asserting that:

- a. ¶ 77. “Defendants market the walk-in tub to elderly individuals like SHERRY who are weak, feeble and at a significant risk for falling down.”
- b. ¶ 78. “Defendants advertise that millions of Americans with mobility concerns know that simply taking a bath can be a hazardous experience.”
- c. ¶ 79. “Defendants advertise that the solution to having a hazardous experience while taking a bath is the Jacuzzi Walk-in Tub.”
- d. ¶ 80. “Defendants advertise that those who purchase a walk-in tub can feel safe and feel better with every bath.”
- e. . . .
- f. ¶ 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.”
- g. ¶ 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

⁴ See, Order, filed 9/9/16, attached hereto as **Exhibit 4**.

⁵ See, Plaintiffs’ Fourth Amended Complaint, filed June 21, 2017, attached hereto as **Exhibit 5**.

⁶ *Id.*

bathtub.

h. . . .

i. ¶ 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.”⁷*

27. The additional details provided in the Fourth Amended Complaint were based in part on advertising materials the parties had identified.

28. In order to prove the allegations in their Fourth Amended Complaint, Plaintiffs began trying to find other similar incidents to prove: 1) that the product at issue was in fact dangerous and 2) that Defendants *knew* it was in fact dangerous (notice).

D. Discovery Attempts to Attain Information Related to Other Dealers or Distributors

29. On December 12, 2018, the deposition of the Rule 30(b)(6) designee for AITHR and *firstSTREET* was conducted in Richmond, Virginia.

30. Present at the deposition was outside counsel, Phil Goodhart and *firstSTREET*’s General Counsel, Stacy Hackney.⁸

31. The designee, Mr. David Modena, testified that in September of 2011, Jacuzzi and *firstSTREET* (collectively “**Defendants**”) entered into an agreement (hereinafter “**Manufacturing Agreement**”) for Jacuzzi to manufacture and sell Jacuzzi-brand walk-in tubs.

32. Mr. Modena testified that Jacuzzi manufactured the tubs that *firstSTREET* marketed.

33. Mr. Modena testified that the dealers would then use the leads to go and make house calls to sell and install the tubs to the elderly.

34. Importantly, Mr. Modena testified that if a customer had any issue, whether a problem with a drain or a safety issue, or even an injury, the customer would normally call the dealer **first**.⁹

35. Mr. Modena testified that customer complaints normally go to the dealer **first** because

⁷ See, Plaintiffs’ Fourth Amended Complaint ¶’s 77-91 (emphasis added), **Exhibit 5**.

⁸ See, Deposition of Rule 30(b)(6) designee David Modena, taken on December 11, 2018. The relevancy of Stacy Hackney’s involvement will be addressed throughout the motion.

⁹ Deposition of Modena, David, (Pages 109:6 to 110:10), attached hereto as **Exhibit 6**.

“that’s who [customers] dealt with” and “that’s who they know.”¹⁰

36. Therefore, dealers are clearly a vital source of evidence in this case for the issues of notice and dangerousness.

E. *firstSTREET* did not disclose any other dealers in any NRCP 16.1 Disclosure or in response to Plaintiffs’ written discovery requests

37. *firstSTREET* did not disclose the identities of any dealers other than AITHR in any of its voluntary disclosures.¹¹

38. Plaintiffs sought the identity of other dealers and distributors in *firstSTREET*’s network of dealers so that Plaintiffs can seek discovery from those other dealers/distributors regarding similar incidents or prior knowledge of the dangerousness of the Tub in written discovery.

39. Plaintiff Deborah Tamantini’s very first Interrogatory to *firstSTREET* sought the identity of all dealers and distributors in *firstSTREET*’s network.

40. Plaintiff Deborah Tamantini’s very first Interrogatory and *firstSTREET*’s response was as follows:

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.¹²

41. As will be discussed below, *firstSTREET*’s response that AITHR was the only dealer or distributor within its network was false.

F. On December 12, 2018, *firstSTREET* reveals for the first time that there were up to fourteen dealers

42. *firstSTREET* finally revealed the existence of up to fourteen other dealers for the first time

¹⁰ Deposition of Modena, David, (Pages 109:6 to 110:10), **Exhibit 6**.

¹¹ See, *firstSTREET*’s 3rd NRCP 16.1 Disclosure, attached hereto as **Exhibit 7**.

¹² *firstStreet*’s Response to Plaintiff Tamantini’s First Set of Interrogatories, attached hereto as **Exhibit 8**.

at Mr. Modena's deposition (when *firstSTREET*'s answers could not be filtered by counsel).

43. Mr. Modena testified that one of the dealers was a company named AITHR¹³, a named Defendant in the instant lawsuit.

44. Mr. Modena testified that AITHR is a division within *firstSTREET* and is wholly owned by *firstSTREET*.¹⁴

45. Mr. Modena testified that *firstSTREET*'s marketing efforts generated leads which were then routed to a network of dealers (approximately 12-14).¹⁵

46. Mr. Modena testified that AITHR was the dealer for the middle of the country. Other dealers were responsible for other parts of the country. One dealer, Beldon, covered about 27 percent of the country.

47. Plaintiffs were never made aware of any of these dealers until December 12, 2018 (with discovery set to close in late January 2019).

G. Slipperiness of the Tub

48. *firstSTREET* has also prevented Plaintiffs from proving other aspects of their case by acting in bad faith in other areas of discovery. A critical part of Plaintiffs' allegations dealt with the slipperiness of the Tub as compared to the slipperiness of a bathroom in general.¹⁶ Therefore, the slipperiness of the Tub is at issue in this case.

49. Plaintiffs learned at Mr. Modena's deposition that *firstSTREET* has withheld witnesses and documents that are relevant to the issue of the Tub's design defect, i.e., the slipperiness of the tub.

50. Plaintiffs learned for the first time at Mr. Modena's deposition that the slipperiness of the Tub has been a significant, ongoing issue since 2012 (prior to Sherry's death).

51. Mr. Modena testified that not long after the Defendants entered into the Manufacturing Agreement, *firstSTREET* and AITHR began receiving feedback from customers regarding the slipperiness of the tub.

52. Because of these customer complaints, Mr. Modena testified that *firstSTREET* contacted

¹⁴ The fact that AITHR is wholly owned by *firstSTREET* is likely the reason it was the only dealer that was disclosed to Plaintiffs.

¹⁵ Deposition of Modena, David, (Pages 100:10 to 103:6); (Pages 104:1 to 105:25), **Exhibit 6**.

¹⁶ See, Plaintiffs' Fourth Amended Complaint, ¶'s 75-91, **Exhibit 5**.

Jacuzzi via e-mail¹⁷ to inquire about this issue.

53. Mr. Modena testified that in response to *firstSTREET*'s inquiries and concerns about the slipperiness of the walk-in bathtubs, Jacuzzi, through Ray Torres, the VP of Engineering at Jacuzzi, provided documentation purporting to show that the tub surfaces met the standards with regard to what Mr. Modena called the grip or friction (likely coefficient of friction).

54. Mr. Modena testified that AITHR/*firstSTREET* continued having customer complaints and/or concerns regarding the slipperiness of the tub and that the Defendants actually found a product called "Kahuna Grip" which was a grip used on surfboards and similar surfaces that could be installed into the Jacuzzi walk-in tub to provide additional grip.

55. Mr. Modena testified that there were many e-mails exchanged between Jacuzzi and AITHR/*firstSTREET* regarding the slipperiness of the tub based on the ongoing complaints of customers as the tubs were installed.

56. The Defendants have failed entirely to produce any information about the slipperiness of the tub despite valid discovery requests from Plaintiffs seeking this information.

57. *firstSTREET* entirely failed to produce:

- Any internal e-mails regarding the slipperiness issues
- Any e-mails among Defendants regarding the slipperiness issues
- Any e-mails regarding the Kahuna Grip product
- Any internal e-mails about customer complaints about the slipperiness of the Tub
- Any e-mails among Defendants regarding customer complaints about the slipperiness of the Tub
- Any customer complaints on this issue

H. Plaintiffs Attempts to Discover Evidence Regarding Similar Incidents

58. Plaintiffs have also sought discovery regarding similar incidents from *firstSTREET* and AITHR.

59. In written discovery, Plaintiffs requested information regarding notice of any person claiming injury or damage from the use of a Jacuzzi Walk-In Tub. *firstSTREET*'s response only included two cases: (1) the Smith case which obviously Plaintiffs were aware of as Smith's counsel, and (2) the Baize case which Plaintiffs found and had previously disclosed:

Interrogatory 11. Please state whether the Defendant FIRST STREET has ever received notice, either verbal or written, from or on behalf of any person claiming

¹⁷ The disclosure and production of the e-mails by Defendants was coordinated and calculated and not in good faith – which will be addressed herein.

injury or damage from his use of 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.¹⁸

60. Plaintiffs also sought information regarding documents pertaining to the inward opening doors in Requests for Production of Documents to both *firstSTREET* and AITHR.

34. Please produce all documentation, emails, memorandums, technical data, and internal documents of any and all discussion, communication or otherwise pertaining to safe 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.¹⁹

61. Notably, *firstSTREET*'s responses were verified by *firstSTREET*'s General Counsel, Stacey Hackney, Esq.

I. *firstSTREET*'s Deposition Obstructions

62. While Mr. Modena offered information on the other dealers, he avoided providing complete and truthful answers when asked about similar incidents.

63. Mr. Modena evasively testified that he was only aware of one significant incident involving a safety aspect of the Tub: the instant case.²⁰

64. When first asked about what significant incidents *firstSTREET* is aware of, Mr. Modena testified that he was only aware of **one** significant incident involving a safety aspect of the

¹⁸ *firstSTREET*'s Responses to Plaintiff Ansara's First Set of Interrogatories, attached hereto as **Exhibit 9**.

¹⁹ *firstSTREET*'s Responses to Plaintiff Ansara's First Set of Request for Production of Documents, attached hereto as **Exhibit 10**; see also, AITHR's Responses to Plaintiff Ansara's First Set of Request for Production of Documents, attached hereto as **Exhibit 11**.

²⁰ Deposition of Modena, David, (Pages 26:4 to 27:8), **Exhibit 6**.

Tub: the instant case.

65. He testified that there “must have been a couple” incidents, but he stated that “I just don’t recall incidents like this.”²¹

66. Mr. Modena testified that significant incidents did not occur often, yet at the same time, testified that he could not recall the rare times that they did occur.²²

67. Mr. Modena went on to testify that he did not have information regarding any other lawsuits involving *firstSTREET*.²³

68. Mr. Modena testified that he could not answer the simple question of whether *firstSTREET* is aware of any other lawsuits. Mr. Modena testified that *firstSTREET*’s General Counsel, Stacey Hackney would have more knowledge than he had.²⁴

69. Plaintiffs therefore requested to swear-in and depose Ms. Hackney, who was sitting next to Mr. Modena, on this topic.²⁵

70. Instead, a recess was taken so that Counsel for *firstSTREET* and Ms. Hackney could re-educate Mr. Modena on the topic of similar incidents.²⁶

71. After the recess, Mr. Modena testified that *firstSTREET* was aware of two other incidents: conveniently, the Smith case and the Baize case.²⁷

72. However, in discussing *firstSTREET*’s knowledge of the Smith and Baize case, Mr. Modena revealed that he had reviewed notes regarding both the Smith and Baize case just recently while preparing for his deposition.²⁸

73. When confronted with this, Mr. Modena hedged and claimed it was “a property damage” claim.²⁹

74. In direct contravention with Mr. Modena’s claim that Mr. Baize’s claim was only related to property damage, the complaint itself unequivocally stated, “Plaintiff Leonard Baize got into the tub causing bruising to his stomach area and scrapes. He was very traumatized...”³⁰

75. Mr. Modena’s testimony is concerning given what Plaintiffs recently learned of another claimant named Jerry Chopper.

²¹ Deposition of Modena, David, (Pages 26:4 to 27:8), **Exhibit 6.**

²² Deposition of Modena, David, (Page 27:9 to 27:23), **Exhibit 6.**

²³ Deposition of Modena, David, (Page 27:9 to 27:23), **Exhibit 6.**

²⁴ Deposition of Modena, David, (Pages 27:24 to 29:10), **Exhibit 6.**

²⁵ Deposition of Modena, David, (Pages 27:24 to 29:10), **Exhibit 6.**

²⁶ Deposition of Modena, David, (Pages 27:24 to 29:10), **Exhibit 6.**

²⁷ Deposition of Modena, David, (Pages 29:24 to 32:25), **Exhibit 6.**

²⁸ Deposition of Modena, David, (Pages 29:24 to 32:25), **Exhibit 6.**

²⁹ Deposition of Modena, David, (Pages 29:24 to 32:25), **Exhibit 6.**

³⁰ Complaint of Leonard Baize v. Jacuzzi et. al, attached hereto as **Exhibit 12.**

76. In order to explain the significance of Mrs. Chopper, a review of Plaintiffs’ discovery attempts regarding the marketing of the tubs is necessary.

J. The Defendants Bad Faith Conduct Regarding Advertising Materials

77. When Plaintiffs were requested to supplement their complaint, they looked no further than the marketing literature that was provided to Sherry Cunnison.

78. The marketing literature gives statistics regarding falls in the home and the safety of the elderly in the bathroom.³¹

79. Plaintiffs believed early-on that the marketing claims being made were unsubstantiated, unsupported and false.

80. Based on that belief, Plaintiffs sought to investigate the claims made with respect to the Jacuzzi Walk-in Tubs.

81. *firstSTREET* is the “exclusive marketing” partner for Jacuzzi’s Walk-in Tubs.³²

82. In the Manufacturing Agreement, Jacuzzi promised to provide *firstSTREET* with the “existing approved advertising claims and claims support documentation . . . for use in *firstSTREET*’s advertisements and marketing materials.”³³

83. Jacuzzi promised that the information provided to *firstSTREET* supporting Jacuzzi’s advertising claims would be “truthful, accurate, non-misleading, and adequately substantiated (meaning claims based on tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area”³⁴

84. The Manufacturing Agreement between Jacuzzi and *firstSTREET*/AITHR required *firstSTREET* to submit all national marketing to Jacuzzi for approval to ensure it complied with brand guidelines and to ensure that any claims were accurate and truthful.³⁵

85. Based in part on the plain language of the Manufacturing Agreement, Plaintiffs sought more information about the advertising claims that were used to induce Sherry and other Americans into purchasing a walk-in tub.

86. In written discovery and deposition testimony Jacuzzi categorically denied having any

³¹ See, Jacuzzi Brochure (Bates range: JAC000001-JAC000012), attached hereto as **Exhibit 13**.

³² See generally, Manufacturing Agreement, at p. 5, **Exhibit 2**.

³³ See, Manufacturing Agreement, at pg. 2, **Exhibit 2**.

³⁴ See, Manufacturing Agreement, at pg. 2, **Exhibit 2**.

³⁵ See, Manufacturing Agreement, at p. 4, **Exhibit 2**.

involvement whatsoever in the marketing of the tub.³⁶

87. During this time, Plaintiffs were engaged in a discovery dispute with Jacuzzi regarding the deposition of Jacuzzi's Rule 30(b)(6) witness.

88. This led to Plaintiffs' Motion to Compel Jacuzzi, Inc. to Produce a Knowledgeable NRCP 30(b)(6) Designee and for Leave of Court to Take the Additional NRCP 30(b)(6) Deposition.

89. Ultimately, the Discovery Commissioner ordered that a Second Deposition of Jacuzzi's witness take place.³⁷

90. At some point after the hearing and just days before the continued Second deposition, **Counsel for firstSTREET/AITHR** called me and revealed that Jacuzzi's testimony its level of involvement in the marketing was not accurate and that *firstSTREET/AITHR* had thousands of e-mails that would be produced which directly contradicted the sworn testimony of Jacuzzi.

91. Counsel for *firstSTREET/AITHR* indicated that due to the volume of e-mails at issue, they may not be produced prior to the continued Second Jacuzzi deposition but that they certainly would be produced the week following the deposition.

92. Counsel for *firstSTREET/AITHR* did not produce the e-mails prior to the continued Second deposition and only after **repeated requests** and preparation of a Motion to Compel the Documents, were the e-mails finally turned over nearly two months after the First deposition.³⁸

93. *firstSTREET's* Counsel still has not provided a privilege log for the e-mail production, despite numerous requests.

94. **After** the Second deposition of Jacuzzi's witness, in a calculated and coordinated effort³⁹, Jacuzzi and *firstSTREET* produced (thousands) of e-mail correspondence at the end of November 2018.⁴⁰

³⁶ For a full discussion regarding Jacuzzi's misconduct regarding advertising materials, see Affidavit of Benjamin Cloward in Support of Plaintiffs' Renewed Motion to Strike Jacuzzi, Inc.'s Answer, Section G.

³⁷ See, Discovery Commissioner's Report and Recommendation, served August 23, 2018, attached hereto as **Exhibit 14**.

³⁸ See, Plaintiffs' Motion to Compel Defendant *firstSTREET* to Produce Documents on Order Shortening Time, attached hereto as **Exhibit 15**. This motion was returned by the Discovery Commissioner, who sought clarification as to when Plaintiffs needed it to be heard. It became moot because Defendant *firstSTREET* in a coordinated effort with Jacuzzi dumped on Plaintiffs nearly 3,000 e-mails well **after** the Second Jacuzzi deposition and just a couple weeks **before** the depositions of *firstSTREET* and AITHR

³⁹ As discussed more fully below, the production of the e-mails was due in large part based on Jacuzzi's material misrepresentations regarding the advertising and marketing of the Tub.

⁴⁰ See, Jacuzzi's Twelfth Supplemental NRCP 16.1 Disclosure, served November 27, 2018 (exhibits were not served until December 5, 2018), (Bates range: JACUZZI002992-004521); see also, *firstSTREET & AITHR's* Second

K. Plaintiffs Learn of a New Claimant, Jerre Chopper

95. Based on a rouge e-mail that was likely inadvertently produced by Jacuzzi, Plaintiffs learned of the identity of a **twelfth** claimant, named Jerre Chopper, who resides in Hamilton, Montana.⁴¹

96. Plaintiffs learned of Mrs. Chopper in the attachment to a rouge e-mail that was likely inadvertently produced by Jacuzzi (as part of a 1,530 page “document dump”).

97. The Jerre Chopper letters were disclosed by Jacuzzi (likely inadvertently), but not by *firstSTREET*.

98. On December 20, 2018, Mrs. Chopper’s deposition was taken and it was discovered that **she sent correspondence to *firstSTREET* and AITHR herself and through her attorney.**⁴²

99. These letters are the “smoking gun” in this case because they: 1) are proof that the Walk-in Tub was dangerous, but more importantly, 2) that Defendants were well-aware of all of the dangerous issues with the Tub.⁴³

100. In a December 4, 2012, letter to Stacey Hackney, General Counsel of *firstSTREET*, Mrs. Chopper notified *firstSTREET* that the tub she purchased “in no way delivered what your advertisement led one to believe.”⁴⁴

101. She stated that “when ready to get out one had to sit and wait for the tub to drain before opening the door. It was neither comfortable, convenient, nor safe. For anyone suffering a medical emergency (I have a balance problem and periodic blackouts) there was no way to get out. The door opens inward and the pressure of the water would negate its opening.”⁴⁵

102. She informed *firstSTREET* that there were several communications to Jacuzzi about design flaws and the risks associated.⁴⁶

Supplemental NRCP 16.1 Disclosure, served November 5, 2018, (Bates range: FIRST000424-FIRST001320); attached hereto (on CD format due to volume size) as **Exhibit 16**.

⁴¹ See, Deposition of Jerre Chopper, dated December 20, 2018, attached hereto as **Exhibit 17**.

⁴² See, Deposition of Jerre Chopper, dated December 20, 2018, **Exhibit 17**.

⁴³ See, Plaintiffs’ Fourth Amended Complaint, ¶ 75-91, **Exhibit 5**.

⁴⁴ Letter from Jerre Chopper to Stacey Hackney at *firstSTREET*, dated December 4, 2012 (with Royce McCarty, Jennifer Lint, and Kurt Bachmeyer copied), attached hereto as **Exhibit 18**.

⁴⁵ Letter from Jerre Chopper to Stacey Hackney at *firstSTREET*, dated December 4, 2012 (with Royce McCarty, Jennifer Lint, and Kurt Bachmeyer copied), **Exhibit 18**.

⁴⁶ Letter from Jerre Chopper to Stacey Hackney at *firstSTREET*, dated December 4, 2012 (with Royce McCarty, Jennifer Lint, and Kurt Bachmeyer copied), **Exhibit 18**.

103. Additionally, Mrs. Chopper had several other prior communications with *firstSTREET* directly, or through her attorney, about her dissatisfaction with the tub.⁴⁷
104. Mrs. Chopper had also sent at least numerous letters to Jacuzzi describing the Tub as a “deathtrap.”⁴⁸
105. *firstSTREET* was aware of Mrs. Chopper’s letters to Jacuzzi because Jacuzzi forwarded her letters to David Modena.⁴⁹
106. Accordingly, Mr. Modena’s testimony that *firstSTREET* is only aware of three incidents is evasive because *firstSTREET* was in contact with Mrs. Chopper. In fact, some of Mrs. Choppers were directly addressed to General Counsel, Stacey Hackney, Esq., **who was present at Mr. Modena’s deposition.**⁵⁰
107. Plaintiffs have been significantly prejudiced in their ability to prosecute their claims against Jacuzzi, *firstSTREET* and AITHR.
108. Plaintiffs are not ready for the upcoming April trial without significant additional discovery.
109. Plaintiffs have been unfairly prejudiced by having their experts be forced to give incomplete and partial opinions because of *firstSTREET* and AITHR’s calculated and coordinated efforts to prevent the full and fair disclosure of evidence in this matter.
110. Because of the significant prejudice created by Jacuzzi, the only remedy is to Strike *firstSTREET* and AITHR’s Answers in their entirety so that Plaintiffs can proceed to trial on damages only.
111. Because of the upcoming Discovery Cut-Off Deadline on January 25, 2019, Plaintiffs request that this motion (and the concurrently filed Motion for Leave to Exceed Page

⁴⁷ See Multiple letters between Jerre Chopper or her lawyer to Corporate Counsel for *firstSTREET* and AITHR, Stacy Hackney, dated September 28, October 5, November 29 and December 4, 2012, attached hereto as **Exhibit 19**.

⁴⁸ See, Deposition of Jerre Chopper, dated December 20, 2018, attached hereto as **Exhibit 17**; see also Letter from Jerre Chopper to Kurt Bachmeyer, Jacuzzi Director of Customer Service, dated September 1, 2012, **Exhibit 21**; Letter from Jerre Chopper to Kurt Bachmeyer, Jacuzzi Director of Customer Service, dated September 12, 2012, **Exhibit 22**; and Letter from Jerre Chopper to Kurt Bachmeyer, Jacuzzi Director of Customer Service, dated October 15, 2012, **Exhibit 23**.

⁴⁹ E-mail from Bob Rowan, President of Jacuzzi, to David Modena forwarding Jerre Chopper letters, dated September 7, 2012, **Exhibit 24**.

⁵⁰ Id.; see also, Multiple letters between Jerre Chopper or her lawyer to Corporate Counsel for *firstSTREET* and AITHR, Stacy Hackney, dated September 28, October 5, November 29 and December 4, 2012, attached hereto as **Exhibit 22**.

Limitation) be heard on an Order Shortening Time in order to allow time.

112. The foregoing is true and accurate to the best of this Declarant's Knowledge and Belief.


113. That this Declarant is willing to testify regarding any or all of the foregoing should the Court require clarification or additional detail.

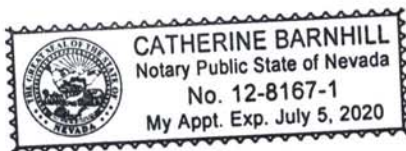
FURTHER, AFFIANT SAYETH NAUGHT

Dated this 7th day of January, 2019.


BENJAMIN P. CLOWARD, ESQ.

SUBSCRIBED AND SWORN to before me
this 7th day of January, 2019.


NOTARY PUBLIC in and for
said County and State



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EXHIBIT “2”

MANUFACTURING AGREEMENT

This Manufacturing Agreement (the "Agreement") is entered into and effective as of October 1, 2011 ("Effective Date"), by and between firstSTREET for Boomers and Beyond, Inc. ("FS"), a Virginia corporation, with its principal place of business at 1998 Ruffin Mill Road, Colonial Heights, Virginia 23834 ("FS"), and Jacuzzi Inc., a Delaware corporation ("JI"), with its principal place of business at 13925 City Center Drive, Suite 200, Chino Hills, California 91709.

WHEREAS, FS desires to retain JI to manufacture walk-in tubs and other bath products including other tubs for FS and its network of dealers and distributors ("FS Dealers"), and JI desires to be retained.

NOW, THEREFORE, in consideration of the mutual covenants, agreements, representations, and warranties contained in this Agreement, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. JI OBLIGATIONS: JI agrees to the following:

- A. JI will manufacture a walk-in tub for FS according to the specifications in Exhibit A-1 ("Product One") and a second walk-in tub according to the specifications in Exhibit A-2 ("Product Two"). Product One, Product Two, and the Additional Products (as defined below) are sometimes referred to herein collectively as the "Products." The JACUZZI trademark and logo, a copy of which is attached as Exhibit B (the "Mark"), will be placed on the Products and associated packaging. The Mark does not include the tagline "The Water that Moves You" or any other slogan. The phrase, DESIGNED FOR SENIORS WALK-IN TUB (the "FS Slogan"), will be placed on Product One and Product Two, and on the packaging associated with Product One and Product Two, including the user manual and any other paperwork or documents associated with Product One and Product Two, subject to JI's and FS's prior approval of such placement, including its placement in relation to the Mark. In no circumstances shall the FS Slogan and the Mark be used or placed next to each other on any Product, Product packaging, or Product documentation in a manner that suggests that the FS Slogan and the Mark constitute a single trademark. The Mark and the FS Slogan will both be prominent on any Product, Product packaging and Product documentation. The Mark shall be identified on Product packaging and in other documents associated with the Products as a registered trademark of JI.
- B. Subject to mutual written agreement on pricing and other terms and conditions, at the request of FS, JI will manufacture and sell to FS its existing Finestra model on a non-exclusive basis, which is a walk-in tub intended for new construction (any such product or an equivalent sized product, regardless of its model name, is hereinafter referred to as the "Finestra Product") and FS's pricing for the Finestra

Product will be similar and consistent with the pricing that is extended by JI to other dealers or entities that sell the Finestra Product. JI will also sell FS all its other JACUZZI-branded bath products (not subject to an exclusive supply or a license agreement), including but not limited to all other walk-in tubs, whirlpool tubs and jetted tubs (collectively, including the Finestra Product, the "Additional Products").

- C. JI will use commercially reasonable efforts to provide installation support to FS Dealers and FS. The installation support will include acting as a general installation resource, answering questions, following up with customers to the extent required, training FS and FS Dealers without additional cost to FS or FS Dealers. JI will also use commercially reasonable efforts to address any issues that arise with a customer installation of the Product.
- D. JI agrees that it will comply with all local, state and federal laws, regulations and guidelines, which includes but is not limited to compliance with all EPA and OSHA requirements, obtaining any necessary permits and certificates of workers' compensation insurance, and compliance with any other state and federal manufacturing guidelines, requirements and laws.
- E. Within a commercially reasonable time period JI will provide FS with the same kind of information regarding the Products as it provides the dealers and distributors of its other products. Said information shall include: 1) Product Summary Sheet, Accessory Product Sheets, and Vendor Information Sheet; 2) electronic version of owner or user manuals; 3) images and videos when available; and 4) all documentation, information and literature relating to the Products, including without limitation, product descriptions, warranties, user testimonials or endorsements of the Products (with appropriate releases), and laboratory tests or clinical studies involving the Products, if any, including ETL or similar or equivalent certification.
- F. JI will provide FS with its existing approved advertising claims and claims support documentation, if any, and JI's brand equity guidelines and standards and trademark usage guidelines (collectively, the "Guidelines"), for use in FS's advertisements and marketing materials. The Guidelines are attached as Exhibits D-1, D-2, and D-3. The claims and claims support provided to FS from JI, if any, will be truthful, accurate, non-misleading, and adequately substantiated (meaning claims based on tests, analyses, research, studies, or other evidence based on the expertise of professionals in the relevant area have been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results).
- G. JI will provide one "no charge" sample of Product One and one "no-charge" sample of Product Two for testing and training to FS, and agrees that all units of Product One and Product Two sold to FS and their customers will substantially

conform to the applicable sample.

- H. JI represents and warrants that it has terminated its license agreement with Home Living Solutions ("HLS") and has no further contractual obligations to HLS with respect to the HLS dealers or otherwise.

2. FS OBLIGATIONS: FS agrees to the following:

- A. FS has exclusive advertising and marketing rights to Product One, Product Two, and any walk-in tub manufactured by JI except for the Finestra Product and the exceptions noted in Section 3 of this Agreement. FS will promote the sale of Product One and Product Two by developing and placing advertisements in and generating leads through various sources and media, including but not limited to direct mail, Internet, catalog, television, radio and print media, based solely FS's discretion. FS also has the non-exclusive right to place advertisements for the Additional Products, which includes allowing FS Dealers to place advertisements for the Products.
- B. FS has the exclusive rights to sell in the United States (the "Territory") Product One, Product Two, and any walk-in tub manufactured by JI (which will include the right of FS Dealers to sell these products), except for the Finestra Product and the exceptions noted in Section 3 of this Agreement.
- C. Without the prior written consent of JI, FS shall not sell or distribute any of the Products (i) outside the Territory, or (ii) to any person or entity other than the FS Dealers except that FS may sell the Products inside the Territory directly to persons that are located in areas that are not covered by the FS Dealer network or represented by a FS Dealer who call or make an inquiry from any such area as a result of advertising by FS or an FS Dealer.
- D. FS shall strictly comply with the Guidelines in all uses of the Mark and, subject to the provisions of this Agreement, has the right to use the Mark in all of its advertising and marketing of the Products. FS recognizes the value of the goodwill associated with the Mark and acknowledges that such goodwill belongs exclusively to JI. FS acknowledges the exclusive right, title and interest of JI in and to the Mark, and agrees that it will not claim or represent that it owns any right, title, or interest in or to the Mark. FS will not, during or after the term of this Agreement, do or suffer to be done, directly or indirectly, any act or thing which will, in any way, impair or adversely affect the ownership or the rights of JI in or to the Mark or its reputation or assert any ownership rights in or to the Mark in the Territory or elsewhere. FS agrees that its use of the Mark inures to the benefit of JI and agrees not to register, attempt to register, or attempt to obtain ownership, on its own behalf or through a third party, in any jurisdiction, of the Mark. FS will contractually obligate the FS Dealers to use the Mark in a manner

consistent with the restrictions on such use to which FS is subject under this Agreement, including, without limitation, the Guidelines and the restrictions set forth above in this Section 2 D and below in Section 6.

- E. FS will use the materials and standards provided by JI as specified in Section 1.F. of this Agreement to develop its advertisements and marketing material for the Products, and FS agrees that its advertisements and marketing materials for the Products will be consistent with those materials and standards. FS will submit its national advertising and marketing materials to JI to allow JI to confirm that the claims are accurate and that the advertisements and marketing materials comply with the Guidelines. JI agrees to respond to such submissions not later than three (3) business days after receipt of each such submission, and may require FS to change the advertising and marketing materials if such materials do not comply with the materials and standards provided by JI as specified in Section 1.F. of this Agreement and the Guidelines. JI cannot require FS to change the advertising and marketing materials based on the style and concept of the advertisements and marketing materials, including television advertising. Subject to the foregoing, for television advertising, JI can review the story board for factual and brand inconsistencies within the reasonable time frame specified by FS, and request changes to the story board based on any factual or brand inconsistencies only. JI does not have input into the creative concepts or style of the commercial or advertisement. Once a television commercial or advertisement is made, as long as it is consistent with the story board, JI cannot request any changes.

Additionally, FS will ensure that all of its advertisements and marketing material will comply with federal, state and local laws. FS may make minor stylistic and textual changes to advertisements as FS deems necessary, in its reasonable discretion, to accommodate specific media placements so long as such changes do not affect conformance with the trademark usage guidelines. Further, FS reserves the right, in its reasonable discretion, to reduce or increase advertisement size and copy in response to sales demand, market conditions and other strategic marketing needs as determined by FS.

If it comes to the attention of JI that an FS Dealer is advertising the Products in a manner that is inconsistent with the Guidelines or is otherwise inconsistent with the reputation of the Mark or JI, JI shall notify FS and FS shall use commercially reasonable efforts to address the issue with the FS Dealer.

- F. FS and FS Dealers shall use the highest professional standards, including the treatment of all customers and prospective customers in a respectful manner, in the conduct of their respective businesses, including in closing sales, selling, marketing and installing the Products. In the event any such selling, marketing or installation methods are unacceptable to JI, JI will notify FS and FS shall attempt to remedy such methods. FS maintains the sole right to discipline, control, terminate and hire its FS Dealers and salespersons; provided that if JI determines

in its sole discretion that the conduct of any FS Dealer is likely to damage the Mark or JI's reputation, JI shall give FS written notice, and FS agrees to use commercially reasonable efforts to address JI's concerns with such FS Dealer.

- G. Subject to mutual written agreement on pricing and other terms and conditions, FS may, in its sole discretion, purchase other Jacuzzi-branded bath products from JI, including but not limited to grab bars, faucet heads, tub to shower conversion, and shower heads, which shall be treated as "Additional Products." Notwithstanding the previous sentence, FS may purchase any other bath products (other than walk-in tubs) from another manufacturer or supplier if it so desires. If FS purchases such other bath products from another manufacturer or supplier, it may request that JI provide FS with a limited, non-exclusive license to use the Mark on such products. JI shall have the right to approve such request for a license in its sole discretion, and any such license will be granted pursuant to a separate written trademark license agreement. If JI approves FS's request, the licensing fee charged by JI for use of the Mark on such other bath products ("Licensed Products") will not exceed 5% of the total net amount charged to FS Dealers for the sale of such Licensed Products.
- H. FS shall use its best efforts to sell and promote the sale of Products within the Territory, which best efforts shall include but not be limited to prompt performance of all of its obligations under this Agreement.

3. EXCLUSIVITY:

A. Except for the Finestra Product, JI will not, through itself or others (including any outside agency, dealer or third party), place, publish or run any advertisements for Product One, Product Two, or any other walk-in tubs for sale in the Territory in print media, radio, television, direct mail, Internet, catalog or any other advertising medium; provided, however, JI shall have the right to refer to Product One, Product Two, and other walk-in tubs manufactured by JI, in coordination with FS, on its websites. If it comes to the attention of FS that any dealers selling or advertising the Finestra Product (other than FS or FS Dealers) are engaging in advertising that conflicts with FS/FS Dealer advertising of other walk-in tub Products, FS shall give written notice to JI and JI will use commercially reasonable efforts to address the issue with such dealers.

B. JI will not directly or indirectly, sell or distribute Product One and Product Two or any other walk-in tubs in the Territory to or for any other person or entity other than FS. Notwithstanding the previous sentence, JI can sell and distribute the Finestra product (which for the sake of clarity, is defined to include an equivalent sized product under any model name that is available for installation in new construction) to its dealers/distributors and the Home Center Channel. For purposes of this Agreement, "Home Center Channel" means the retail stores located in the United States whose principal business is the retail sale of products for the repair, maintenance, improvement, decorating or redecorating of residential homes, including, without limitation, Ace

Hardware, Costco, IKEA, Masco Corporation, Lowe's, Menard, Inc., The Home Depot, and Wal-Mart Stores, Inc.

C. FS and its Affiliates shall not manufacture or purchase, directly or indirectly, any walk in tubs from any person or entity other than JI during the term of this Agreement. FS shall not sell any walk-in tubs to the FS Dealers other than those manufactured by JI. For purposes of this Agreement, "Affiliate" means, with respect to any person or entity, any other person or entity that at the time of determination, directly or indirectly through one or more intermediaries controls, is controlled by, or is under common control with such person or entity. The fact that an entity is an FS Dealer does not, in and of itself, make such entity an Affiliate of FS.

4. PRICING AND PAYMENT: The sale by JI to FS of Products shall be subject to the provisions of this Agreement, including Exhibit B. Any provision of any purchase order placed by FS that is inconsistent with any term of this Agreement shall be null and void unless expressly accepted by JI in writing. No purchase order shall be binding on JI until accepted in writing by a duly authorized officer or employee of JI.
5. NON-COMPETE: The restrictions set forth in this Section 5 shall apply during this Agreement and for a period of two years after the expiration or any other termination of this Agreement for any reason other than a termination resulting from (a) the failure of FS to make any payment due under this Agreement in excess of \$50,000 within ten (10) days after receipt of notice from JI, (b) breach of Sections 3 B or 3 C of this Agreement, or (c) an insolvency event described in Section 10(E). During such period, JI will not, directly or indirectly, (i) solicit or do business with any FS Dealer for the purpose of selling, marketing or distributing a walk-in tub and related products and accessories; (ii) cause or attempt to cause any major supplier of FS, such as FS's "1-800" service or its electronic data processing service, or any FS Dealer to cease doing business with FS or in any way interfere with its relationship with FS, solely as related to FS's walk-in tub business; or (iii) solicit or hire any FS employee, FS Dealer, or independent contractor of FS that worked on FS's walk-in tub business; provided that the solicitation of any such person through a general advertisement not targeted at FS employees, FS Dealers, or independent contractors and any resulting hiring of any such person, other than an FS director, Vice President, or higher position, shall not be a violation of this Section 5. Notwithstanding the foregoing provision, JI shall at all times have the right (A) to engage in any home installation program in the Home Center Channel and (B) use FS Dealers for home installation programs in the Home Center Channel as long as JI works with and through FS on terms to be approved by both parties. Furthermore, notwithstanding anything in this Agreement to the contrary, JI will have the right to work with any former HLS Dealers after expiration or other termination of this Agreement and the provisions in this Section 5(i)-(iii) that reference FS Dealer(s) will be limited to twenty-five (25) FS Dealers that are chosen by FS in its sole discretion.
6. OWNERSHIP OF INFORMATION AND INTELLECTUAL PROPERTY:

A. The format, style and content of the advertisements and marketing materials developed by FS, including the marketing methods developed by FS, insofar as they are not derivative of any materials provided by JI, shall belong exclusively to FS. Nothing in this Agreement shall cause any intellectual property rights of JI to be transferred to FS, and JI shall maintain sole ownership of its intellectual property rights, including, without limitation, trademarks, patents, trade dress rights, and all copyrighted material relating to the Products and in all materials provided to FS by JI. FS shall, and shall cause the FS Dealers to, at all times follow the Guidelines. FS and its Affiliates shall not, and shall cause the FS Dealers not to, register or, except as set forth below, use any uniform resource locator or domain name that contains the term "Jacuzzi" or any variation thereof ("Jacuzzi URL's) without first executing a domain name license agreement with JI with respect to such url or domain name in the form of Exhibit E hereto. JI hereby grants to FS, and FS hereby accepts, during the term of and subject to the provisions of this Agreement, a non-transferable, royalty-free license to use the jacuzziwalkintub.com and jacuzziwalkintubs.com domain names (collectively, the "Approved URL's") as the domain name(s) for a web site owned and operated by FS that promotes the sale of the Products (but no other business), subject to the provisions of this Agreement. JI shall be the registrant party for the URL and the technical contact and billing contact for the Approved URL(s) during the term of this Agreement. FS shall reimburse JI on demand for any costs incurred by JI to maintain the registration of the Approved URL(s). FS shall not use the Approved URL(s) in connection with the promotion, advertisement, marketing, or distribution of any other goods or services of FS or of any third party. Upon the expiration or other termination of this Agreement, FS shall contact search engines with whom FS or any Affiliate has entered into service agreements, including any online telephone listings, or any other internet advertisement, to delete references to any JACUZZI URL, including the Approved URL's, and similarly to take any steps necessary to delete references to any such url's from any yellow page listings or other published advertisements prior to the next publication thereof.

B. The names and contact information of any leads or customers that contact FS or FS Dealers regarding the Products, will belong exclusively to FS.

7. WARRANTY:

- A. JI will keep FS informed of JI's warranty or warranties applicable to Products as in effect from time to time (such warranty or warranties, as the case may be, being herein called the "Warranty"), and JI will extend the appropriate Warranty to each customer who purchases a Product from an FS Dealer upon the purchase of that Product by such customer. FS will cause the Warranty to be included, in the form and content specified by JI, in each agreement for the sale of Products by an FS Dealer, and cause the FS Dealers to furnish a copy of the Warranty to the customer upon delivery of that Product.
- B. NO WARRANTIES, EXPRESS OR IMPLIED, OTHER THAN THOSE ABOUT WHICH FS IS INFORMED PURSUANT TO SECTION 7(A) HEREOF, ARE GIVEN IN RESPECT OF PRODUCTS, AND ANY IMPLIED WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PURPOSE IS HEREBY

EXPRESSLY DISCLAIMED.

- C. FS is familiar with JI's Products and will become familiar with the requirements of the safety codes and laws of the states in which the FS Dealers sell and deliver Products pursuant to this Agreement. Whenever FS learns of any changes in any such code or law that would require changes in the Products, FS will advise and consult with JI about such changes.

8. INDEMNIFICATION:

- A. JI will indemnify and hold harmless FS and its directors, officers, employees and agents from and against any and all third-party claims, liabilities, demands, losses, causes of action, damages and expenses (including reasonable attorneys' fees) arising out of or in connection with (i) the design, manufacture, packaging of the Products, (ii) any breach of any warranty or representation or covenant made by JI to FS in this Agreement, (iii) the failure of JI to perform any of its obligations contained in this Agreement, and (iv) any warranty claim asserted by any purchaser of the Products. JI's obligation to indemnify and hold FS harmless will survive the expiration or other termination of this Agreement.
 - B. FS will indemnify and hold harmless JI and its directors, officers, employees and agents from and against any and all third-party claims, liabilities, demands, losses, causes of action, damages and expenses (including reasonable attorneys' fees) arising out of or in connection with (i) FS's advertising or promotion of the Products (except to the extent that is not related to or based on materials or information provided by JI to FS), and distribution or sale of the Products; (ii) any breach of any warranty or representation or covenant made by FS to JI in this Agreement, (iii) the failure of FS to perform any of its obligations contained in this Agreement, and (iv) any claims by any FS Dealer. FS's obligation to indemnify and hold harmless will survive the expiration or other termination of the Agreement.
9. INSURANCE: Within ten (10) days of execution of the Agreement, and throughout the term of this Agreement, JI will provide FS with a certificate of insurance evidencing (i) the name of the insurance company; (ii) the policy number; (iii) at least \$2,000,000 of general liability (including product liability) coverage; (iv) inclusion of FS as an "Additional Insured"; (v) a policy endorsement including contractual liability coverage for the indemnification provided above (if so requested by FS); and (vi) that FS will receive at least thirty (30) days prior written notice of any cancellation or non-renewal of such coverage. JI must provide FS written notice of a cancellation or modification of the insurance within forty-eight (48) hours of its receipt of notice. FS shall require the FS Dealers to maintain insurance in coverage consistent with industry standards. FS shall provide evidence of such insurance upon request of JI.

10. TERM AND TERMINATION:

- A. The initial term of the Agreement shall begin as of the Effective Date and continue until January 31, 2013 ("Initial Term") unless earlier terminated. Except as set forth in this Section 10, the Agreement will be extended automatically for eight (8) successive one (1) year periods after the Initial Term, through January 31, 2021.
- B. The following total gross sales of Products (to include any licensing revenue) purchased by FS during the applicable contract period or year ("Period") are referred to herein as the "Minimum Performance Requirements":

Applicable Period	Minimum Performance 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	\$12,000,000
2/1/15 – 1/31/16	\$13,000,000
2/1/16 – 1/31/17	\$14,000,000
2/1/17 – 1/31/18	\$14,000,000
2/1/18 – 1/31/19	\$14,000,000
2/1/19 – 1/31/20	\$14,000,000

JI shall have the right to terminate this Agreement upon sixty (60) days written notice to FS (i) if FS purchases Products totaling \$3,000,000 or more (total gross sales) but less than one hundred percent (100%) of the Minimum Performance 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 Performance 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 \$3,000,000 of Products for such Period, 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 Performance Requirements in any two (2) consecutive Periods.

- C. JI agrees to fill all orders of 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, (i) 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 (ii) 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.

11. FORCE MAJEURE: Neither party shall be responsible or liable for, or deemed in breach hereof because of, any delay in the performance of their respective obligations under the Agreement, other than the payment obligations of FS hereunder, due solely to circumstances beyond the reasonable control and without the fault or negligence of the party experiencing such delay, including but not limited to: acts of God; unusually severe weather; war; riots; requirements, actions or failures to act on the part of governmental authorities preventing performance; inability despite due diligence to obtain required licenses; or fire (such causes hereinafter called "Force Majeure"); provided, however, that the party experiencing the Force Majeure shall exercise due diligence in endeavoring to overcome any Force Majeure impediment to its performance, but settlement of its labor difficulties shall be entirely within such party's own discretion.

12. MISCELLANEOUS: This Agreement represents the complete agreement between the parties and supersedes any prior oral or written agreement concerning the subject matter. This Agreement may not be amended or waived except in writing signed by both parties. Neither party may assign this Agreement, in whole or in part, without the prior written consent of the other party, except that either party shall have the right to assign this Agreement to any Affiliate, including a subsidiary, or to any successor other than a successor that is a direct competitor of the non-assigning party. The Agreement is binding upon permitted successors and permitted assigns of the parties. The captions in this Agreement are for convenience and reference only, and should not be used to interpret the Agreement. Any provision within this Agreement that could reasonably be read as surviving termination or expiration of this Agreement will survive termination or expiration of this Agreement. FS shall conduct its business in the purchase and resale of Products as a principal for its own account and at its own expense and risk. This Agreement does not in any way create the relationship of principal and agent, or any similar relationship, between JI and FS. FS covenants and warrants that it will not act or represent itself directly or by implication as agent for JI and will not attempt to create any obligation, or make any representation, on behalf of or in the name of JI. All payments owing by FS hereunder that are not paid by FS when due shall bear interest at the lesser of one and one half percent (1.5%) per month or the maximum rate permitted by law.

Time is of the essence with respect to all payments under this Agreement.

13. CHOICE OF LAW: The Agreement and all matters collateral hereto shall be governed by the laws of the Commonwealth of Delaware without regard to the conflict of laws provisions thereof. The parties agree that if JI files suit under this Agreement, it may do so only in the Eastern District of Virginia, Richmond Division, or the Circuit Court of the County of Chesterfield, Virginia, and if FS files suit under this Agreement, it may do so only the U.S. District Court for the Central District of California or a state court of competent jurisdiction located in Riverside County, California. Each party expressly consents to the in personam jurisdiction and venue of each court specified in this Section 13 and hereby expressly waives any objection to the same. Violation of this Section 13 will bar recovery by either party in any other court.
14. NOTICE: Any notices much be provided in writing and shall be effective when delivered in person, upon receipt of certified mail, return receipt requested, or by overnight courier, postage prepaid to the addresses listed as the principal place of business in this Agreement or any other address as to which notice is given as set forth herein.
15. SEVERABILITY AND WAIVER: If any provision of this Agreement is held invalid or unenforceable, the remaining provisions shall remain in effect. A waiver by either party of any of the terms and conditions of this Agreement in one or more instances will not constitute a permanent waiver of the terms and conditions.
16. COUNTERPARTS: This Agreement may be executed in counterparts, each of which when taken together shall constitute one and the same instrument. A facsimile or other electronically transmitted copy of an original signed version of this Agreement will be treated for all purposes as a signed original thereof.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be duly executed as of the date and year first above written.

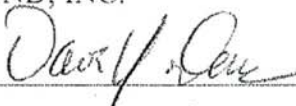
JACUZZI INC.

By: _____

Title: _____

Date: _____

FIRSTSTREET FOR BOOMERS AND
BEYOND, INC.

By: 

Title: SP. V.P.

Date: 9/29/11

EXHIBIT A-1

Product One Specifications

To follow

EXHIBIT A-2

Product Two Specifications

To Follow

EXHIBIT B



EXHIBIT C

This Exhibit C is governed by the terms of the Manufacturing Agreement ("Agreement") by and between firstSTREET for Boomers and Beyond, Inc. ("FS") and Jacuzzi Inc. ("JI"). Any item in this Exhibit B that is inconsistent with that Agreement is invalid and the Agreement will govern. This Exhibit B may not be amended except in writing signed by both parties. Capitalized terms used herein but not defined herein have the same meaning set forth in the Agreement.

1. Pricing:

A. FS unit cost for Product One will be: \$2225.00 for Product One during the term of this Agreement.

B. FS unit cost for Product Two will not exceed \$1900.00 during the term of this Agreement.

C. Delivery to FS or FS Dealers shall be F.O.B. any plant or warehouse of JI or such other point of origin or port of entry as JI shall designate as long as it located in the United States. JI shall not thereafter be liable for transportation or for loss or damage in transit. Claims for shortages or damages to shipments thereafter shall be made against carrier by FS.

D. The parties acknowledge that FS's use of the Mark for any Products (which excludes any Licensed Products) and any licensing fee associated with that use of the Mark is included in the unit cost in this Section 1.

2. Payment: At the end of each week, JI will invoice FS for the units of Products shipped to FS and FS Dealers during the previous week, and FS will pay JI within 30 days after receipt of the invoice.

3. Shipping. JI will ship within five (5) days from receipt of accepted purchase order.

4. Price Increases. Notwithstanding Section 1A and B above of this Exhibit B, in the event JI needs to increase the unit cost of either Product One or Product Two due to conditions that lead to documented higher manufacturing input costs, the parties will negotiate in good faith towards a mutually agreeable cost increase. If the parties are unable to reach agreement on pricing within sixty (60) days after JI gives notice of its need to increase prices (an "Unresolved Pricing Dispute"), either party may thereafter terminate this Agreement upon not less than thirty (30) days written notice to the other party.

EXHIBIT D-1

EXHIBIT D-2

EXHIBIT D-3

To Follow

EXHIBIT E

UNIFORM RESOURCE LOCATOR LICENSE AGREEMENT

THIS UNIFORM RESOURCE LOCATOR LICENSE AGREEMENT ("Agreement") is made as of October 1st, 2011 ("Effective Date") by and between Jacuzzi Inc., a Delaware corporation ("Licensor"), and FS Boomers & Beyond, Inc. Virginia corporation ("Licensee," and together with Licensor, individually a "Party" and collectively the "Parties."

RECITAL:

WHEREAS, Licensor is the owner of the well-known trademark JACUZZI, and Licensor is willing to grant to Licensee a license to use in connection with the operation of Licensee's business of distributing and selling Licensor's products (the "Licensee Business") the following uniform resource locator(s): "http://www._____.com" and "http://www._____.com" (collectively, the "Approved URLs").

Jacuzziwalkintab
Jacuzziwalkintab
NOW, THEREFORE, in consideration of the foregoing and the mutual promises contained herein, the Parties agree as follows:

1. Grant of License. Licensor hereby grants to Licensee, and Licensee hereby accepts, subject to the provisions of this Agreement, a non-transferable, royalty-free license ("License") during the term of this Agreement to use the Approved URL's as the domain name(s) for web site(s) that promotes the Licensee Business (but no other business). Licensee shall not use the Approved URL(s) in connection with the promotion, advertisement, marketing, or distribution of any other goods or services of Licensee or of any third party. Licensee and its Affiliates shall not register, otherwise acquire any ownership interest in, or use (except for the licensed use of the Approved URL's hereunder) any uniform resource locator or domain name that contains the term "JACUZZI," any variation thereof or any similar term (each, a "JACUZZI URL") at any time during or after the term of this Agreement without Licensor's express knowledge and written consent. (An "Affiliate" of Licensee is any person or entity that directly or indirectly controls, is controlled by, or is under common control with, Licensee.) Upon execution of this Agreement, Licensee shall transfer to Licensor, and take all actions requested by Licensor to effect the transfer of, all JACUZZI URL's that are registered in the name of Licensee or any Affiliate of Licensee (collectively, the "Transferred URL's"). Licensee has provided to Licensor a complete and correct list of any such JACUZZI URL's.

2. Payment for Registration and Transfer Fees. Licensor shall be the registrant party and the technical and billing contact for the Approved URL(s) during the term of this Agreement. Licensee shall reimburse Licensor on demand for any costs incurred by Licensor to maintain the registration of the Approved URL(s) and for all costs associated with effecting the transfer of ownership of all Transferred URLs to Licensor.

3. Term and Termination. The term of this Agreement shall be one year (1) year, unless sooner terminated; provided, however, that this Agreement shall be automatically extended for successive one-year extension periods unless terminated by written notice by either Party to the other Party not later than thirty (30) days prior to the end of then-applicable term. This Agreement and the License shall terminate immediately upon the first to occur of: (a) the expiration or other termination of Licensee's dealer agreement between FirstSTREET for Boomers and Beyond, Inc. ("FS"); (b) the expiration or other termination of the manufacturing agreement between Licensor and FS; and (c) a breach of this Agreement by Licensee that is not cured within ten (10) days after written notice of such breach by Licensor or FS to Licensee. Licensee agrees, upon termination of this Agreement to immediately discontinue all use of the Approved URL(s) (or any other JACUZZI URL's) and to destroy all printed and other materials bearing the URL(s), to cease making accessible via any JACUZZI URL any website controlled by Licensee or any Affiliate, and to contact search engines with whom Licensee or any Affiliate has entered into service agreements, including any online telephone listings, or any other internet advertisement, to delete references to any JACUZZI URL, and similarly to take any steps necessary to delete references to the same from any yellow page listings or other published advertisements prior to the next publication thereof.

4. Miscellaneous. Licensor shall have the right to assign its rights under this Agreement. Licensee shall have no right to assign (by operation of law or otherwise), delegate, sublicense, or grant any interest in this Agreement, the

License, or any other right hereunder or in the Approved URL(s) or its use to any person without first obtaining the prior written consent of Licensor, which consent may be granted, withheld, or conditioned in Licensor's sole and absolute discretion. The provisions of this Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of each Party. No amendment or modification of this Agreement shall be valid or binding unless expressed in writing and signed by both Parties. This Agreement shall be governed by and interpreted in accordance with the laws of the State of California without regard to its conflict of laws provisions, and each Party irrevocably agrees to submit to the jurisdiction of any appropriate state court or federal court in Riverside County in the State of California and specifically waives any objections to venue or personal jurisdiction in any such court on the grounds that the forum is inconvenient or otherwise improper or that personal jurisdiction is lacking. Licensee acknowledges that Licensor will be irreparably harmed if Licensee's obligations under this Agreement are not specifically enforced and that Licensor would not have an adequate remedy at law in the event of an actual or threatened violation by Licensee of its obligations despite the availability of monetary damages. Therefore, Licensee agrees that Licensor shall be entitled to an injunction or any appropriate decree of specific performance for any actual or threatened violations or breaches by Licensee without the necessity of Licensor showing actual damages, that monetary damages would not afford an adequate remedy, or posting a bond or other security. If any provision of this Agreement is held to be invalid or unenforceable for any reason, the remaining provisions shall continue in full force and effect without being impaired or invalidated in any way. In any litigation or other proceeding by which one Party either seeks to enforce its rights under this Agreement or seeks a declaration of any rights or obligations under this Agreement, the prevailing Party shall be awarded reasonable attorneys' fees, together with any costs and expenses, to resolve the dispute and to enforce the final judgment. The failure of a Party to comply with any provision of this Agreement may be waived by the Party entitled to the benefits thereof only by a written instrument signed by the Party granting such waiver. A waiver of any breach of any provision of this Agreement shall not be deemed a waiver of any repetition of such breach or in any manner affect any other terms or conditions of this Agreement. This Agreement shall be interpreted in accordance with its fair meaning and not for or against the drafter. This Agreement constitutes the entire understanding between the Parties with respect to the subject matter hereof and supersedes any and all prior agreements or understandings between the Parties with respect thereto. This Agreement may be executed in counterparts, each of which shall be deemed an original and which shall be deemed to be one instrument. This Agreement may be executed by signature transmitted electronically via facsimile machine or as email attachment (e.g., in .pdf format) and shall be treated in all manner and respects as an original document with the same binding legal effect as an original document.

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the date first written above.

LICENSOR:

JACUZZI INC.

By: _____

Name: _____

Title: _____

LICENSEE:

FIRST STREET

By: COLO

Name: DAVE MORGANA

Title: S.E.U.P.

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EXHIBIT “3”

Call Now: (888) 508-4940

FAST FILL™

Blends safety and hydromassage to keep you healthy and happy in your home. Designed to fit in place of a standard bathtub. Also comes in compact and large sizes.



- 10 jets for maximum pain relief
- Wide-opening, guaranteed leak-proof door
- New Fast Fill™ faucet – quickest anywhere

NEW FAST FILL™ BATHTUB DESIGN

JACUZZI DEALER FULL SERVICE
INSTALLATION

The Finestra® bathtub is designed for new construction or a complete bathroom remodel. Crafted with precision, it marries luxury and comfort for safe, easy bathing.

22-2



- Up to 10 jets for a relaxing massage
- Precision-close double seal door
- Available in white, almond and oyster



DIY / NEW CONSTRUCTION
INSTALLATION



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EXHIBIT “4”



CLERK OF THE COURT

1 ORDR
2 BENJAMIN P. CLOWARD, ESQ.
3 Nevada Bar No. 11087
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5 4101 Meadows Lane, Suite 210
6 Las Vegas, Nevada 89107
7 Phone: (702) 628-9888
8 Fax: (702) 960-4118
9 bcloward@chblawyers.com
10 *Attorneys for Plaintiffs*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

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

21 Plaintiffs,

22 vs.

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

23 Defendants.

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

**ORDER REGARDING DEFENDANT
JACUZZI INC.'S MOTION TO
DISMISS PUNITIVE DAMAGES,
DEFENDANTS, WILLIAM BUDD
AND BUDDS PLUMBING'S
DEFENDANTS/CROSS-
DEFENDANTS, FIRST STREET FOR
BOOMERS AND BEYOND, INC.,
AITHR DEALER, INC.'S, THIRD-
PARTY DEFENDANT CHICAGO
FAUCET COMPANY'S,
DEFENDANT/CROSS-DEFENDANT
BESTWAY BUILDING &
REMODELING INC.'S JOINDER TO
DEFENDANT JACUZZI, INC.'S
MOTION TO DISMISS PUNITIVE
DAMAGES**

1
2 **ORDER REGARDING DEFENDANT JACUZZI INC.'S MOTION TO DISMISS**
3 **PUNITIVE DAMAGES, DEFENDANTS, WILLIAM BUDD AND BUDDS PLUMBING'S**
4 **DEFENDANTS/CROSS-DEFENDANTS, FIRST STREET FOR BOOMERS AND**
5 **BEYOND, INC., AITHR DEALER, INC.'S, THIRD-PARTY DEFENDANT CHICAGO**
6 **FAUCET COMPANY'S, DEFENDANT/CROSS-DEFENDANT BESTWAY BUILDING &**
7 **REMODELING INC.'S JOINDER TO DEFENDANT JACUZZI, INC.'S MOTION TO**
8 **DISMISS PUNITIVE DAMAGES**

9 Defendant, Jacuzzi Inc.'s Motion to Dismiss Punitive Damages and Defendant, Third
10 Party Defendants and Cross Defendant's Joinder thereto having come on regularly for hearing
11 on the 2nd day of August, 2016, in Department I , the Honorable Kenneth C. Cory presiding,
12 Benjamin P. Cloward appearing on behalf of the Plaintiffs, Joshua Cools, Esq. appearing on
13 behalf of the Defendant, Jacuzzi Inc., doing business as Jacuzzi Luxury Bath, Joseph P. Garin,
14 Esq. appearing on behalf of Defendants, William Bud and Budds Plumbing, Meghan M.
15 Goodwin, Esq. appearing on behalf of Defendants First Street for Boomers & Beyond and
16 AITHR Dealers, Daniela LaBounty, Esq. appearing on behalf of Defendant Homeclick,
17 Jennifer Micheli, Esq. appearing on behalf of Third Party Defendant The Chicago Faucet
18 Company, and Dione C. Wrenn, Esq. appearing on behalf of Attorneys for Defendant Bestway
19 Building & Remodeling,
20

21 Mr. Cools argued that Plaintiffs' punitive damages claims failed to state a claim for
22 relief as required by NRCP 8. The Court inquired of Mr. Cloward as to how the defendants
23 should be on notice as to which one of them is liable for punitive damages and for what
24 actions. Mr. Cloward proposed submitting an amended complaint to make specific allegations
25 related to the punitive damages claims. The Court indicated that Plaintiffs' counsel should
26 submit an amended complaint that stated specific allegations as to which actions by which
27 parties constitute a basis for punitive damages claims.
28

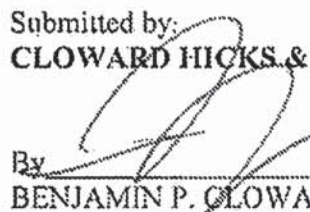
IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendants' Motion and Third Party Defendants and Cross Defendant's Joinders to Dismiss Punitive Damages is DENIED.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff is required to file an amended complaint within thirty (30) days specifying which parties and what actions constitute the basis for the punitive damage claim.

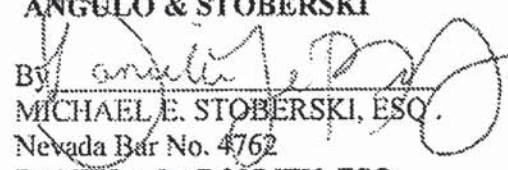
DATED this 31 day of August, 2016.


DISTRICT JUDGE

Submitted by:
CLOWARD HICKS & BRASIER, PLLC

By 
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Nevada Bar No. 11087
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Approved as to form and content
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ANGULO & STOBERSKI**

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BALKENBUSH & EISINGER**

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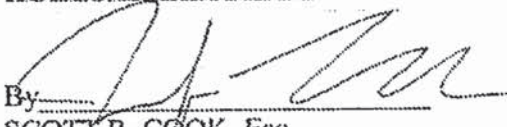
Approved as to form and content
**THORNDAL ARMSTRONG DELK
BALKENBUSH & EISINGER**

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Boomers & Beyond and AITHR Dealers*

Approved as to form and content
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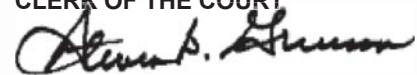
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EXHIBIT “5”



1 **ACOMP**
2 BENJAMIN P. CLOWARD, ESQ.
3 Nevada Bar No. 11087
4 RICHARD HARRIS LAW FIRM
5 801 South Fourth Street
6 Las Vegas, NV 89101
7 Telephone: (702) 444-4444
8 Facsimile: (702) 444-4458
9 Benjamin@richardharrislaw.com
10 *Attorneys for Plaintiffs*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

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

23 **Plaintiffs,**

24 **vs.**

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

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

FOURTH AMENDED COMPLAINT

Defendants.

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

I.

PARTIES AND JURISDICTION

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

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

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

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

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

1 6. That at all times relevant to these proceedings, Plaintiff, DEBORAH TAMANTINI
2 (hereinafter "DEBORAH") individually, and heir to the Estate of SHERRY LYNN CUNNISON, was
3 and is a resident of the state of California.
4

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

9 8. That at all times relevant hereto, upon information and belief, Defendant, AITHR
10 DEALER, INC., (hereinafter "AITHR") is and was a foreign Corporation doing business in the State
11 of Nevada.
12

13 9. That at all times relevant hereto, upon information and belief, Defendant HALE
14 BENTON, was and is a resident of Clark County, Nevada.
15

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

20 11. That at all times relevant hereto, upon information and belief, Defendant JACUZZI
21 INC., doing business as JACUZZI LUXURY BATH (hereinafter "JACUZZI") is and was a foreign
22 Corporation doing business in Clark County, Nevada,
23

24 12. That at all times relevant hereto, upon information and belief, Defendant, BESTWAY
25 BUILDING & REMODELING, INC., a Domestic Limited-Liability Company; (hereinafter
26 "BESTWAY"), doing business in the State of Nevada.
27

28 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.

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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.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 40. Defendants, and each of them, knew or should have known that unreasonably
24 dangerous conditions existed with the Jacuzzi walk-in tub, being used by Plaintiff, namely the inability
25 to get back up or exit the tub if Plaintiff fell.
26
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1 41. Defendants owed a duty of due care to Plaintiffs, and others similarly situated, in the
2 design, testing, manufacture, installation, assembly, marketing, instructions for use and warnings for
3 the subject Jacuzzi walk-in tub.

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

- 6
- 7 a. The negligent and improper design, testing, manufacture, installation assembly,
 - 8 instructions for use and warnings for the Jacuzzi walk-in tub; and
 - 9 b. The failure to provide adequate, accurate, and effective warnings and instructions to
 - 10 owners, operators, and users of the subject Jacuzzi walk-in tub.
 - 11

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

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

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

20 45. That the true names and capacities, whether individual, corporate, agents, association or
21 otherwise of the DOE and ROE, are unknown to Plaintiff, who therefore sues said Defendants by such
22 fictitious names. Plaintiff is informed and believes, and thereupon alleges, that each of the Defendants
23 designated herein as DOE and/or ROE are responsible in some manner for the events and happenings
24 herein referred to, and in some manner caused the injuries and damages proximately thereby to the
25 Plaintiff as herein alleged; that the Plaintiff will ask leave of this court to amend this Complaint to
26 insert the true names and capacities of said DOE and/or ROE Defendants, when the same have been
27
28

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16
17 59. The Defendants and/or DOE/ROE Defendants are strictly liable to the Plaintiffs jointly
18 and severally for the damages they have sustained.

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

21
22 **THIRD CAUSE OF ACTION**

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

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

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

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

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

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

7 **FOURTH CAUSE OF ACTION**

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

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

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

17 67. Defendants had reason to know:

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

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

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

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

1 **FIFTH CAUSE OF ACTION**

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

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

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

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

12 **PUNITIVE DAMAGES**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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 10th 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:

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

to the attorneys listed below:

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INC. and AITHR DEALER, INC.*

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WILLIAM BUDD and BUDDS PLUMBING*


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EXHIBIT “6”

DAVID MODENA - 12/11/2018

Page 1

1 DISTRICT COURT
CLARK COUNTY, NEVADA
2
3 ROBERT ANSARA, as Special
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,
8 vs. CASE NO. A-16-731244-C
DEPT. NO.
9 FIRST STREET FOR BOOMERS &
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

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

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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.

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- 1 **A Dave's good.**
 2 Q Dave, I appreciate that. My name is Ben, and I
 3 represent the plaintiffs. As I'm sure you're aware, this is
 4 what's called a Rule 30(b)(6) deposition. And what that
 5 means is you've been designated as kind of the corporate
 6 spokesperson to speak on behalf of the companies designated
 7 in the notice. Are you aware of that?
 8 **A Yes.**
 9 Q Okay. And so I always like to just give a couple
 10 admonitions. I'm sure you've been deposed before.
 11 **A Not -- not -- no, I don't think so.**
 12 Q First time?
 13 **A Probably so. I don't -- I can't recall to this**
 14 **level, yes -- so, no.**
 15 Q Hopefully it will be a decent experience for you.
 16 **A It's going to be.**
 17 Q Try not to make it too rough on you. But as the
 18 designee, the corporate designee, because you're speaking on
 19 behalf of the company, at times I may ask a question and
 20 maybe you have a personal opinion about a specific topic,
 21 but you know that the company does it a different way, I
 22 mean no disrespect by this at all, I'm not interested to
 23 know your personal opinion, because your testimony is
 24 binding on the company. You know, that's what I'm
 25 interested in.

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- 1 you, but I meant to mean -- meant to say that we changed
 2 things, and that's not the way that we did it back then. We
 3 do that now, so that didn't apply back then. Does that make
 4 sense?
 5 **A Absolutely, yeah. I will --**
 6 Q So I kind of just want to be able to rely on the
 7 testimony, and so if there are, you know, changes, I would
 8 just ask that you, you know, let me know. I guess, qualify
 9 your answer.
 10 And then the other thing, in Nevada we have a case
 11 called Coyote Springs. It's kind of a weird case that took
 12 a lot of practitioners, a lot of lawyers off guard, but what
 13 that stands for is, is that during breaks, any conversation
 14 that you have with counsel is no longer privileged while the
 15 deposition is going, and I always -- I think it's fair to
 16 just let people know that, so if, you know -- if there's a
 17 big, long discussion during a break, I'm going to ask you
 18 about it. I just think that that's fair for me to tell you
 19 that, so I just would caution you about that.
 20 Do you have any -- any questions about the process
 21 before we begin?
 22 **A The only thing I can think of, and I can -- I can**
 23 **raise the question, maybe, when the time comes up, but there**
 24 **will be situations, I suspect, you'll ask me a question and**
 25 **I won't know for sure, and I can --**

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- 1 You know, maybe if there are certain issues that
 2 you have a personal opinion about, we can talk about those
 3 another day. Does that make sense?
 4 **A Yes. Yes.**
 5 Q Okay. And then, similarly, companies obviously
 6 change, policies change, people change, the way things are
 7 done changes sometimes. And so if, say, for instance,
 8 things are done differently today than they were back in
 9 2011 through early 2014, I'm not interested to know today,
 10 as I am interested in the operative time period that I've
 11 just given you.
 12 And when I say the operative time period, what I
 13 mean by that is from, you know, the inception of the
 14 agreement between Jacuzzi and First Street and AITHR to the
 15 time shortly after, maybe one month after my client died, so
 16 that's kind of the period when I talk about policies and
 17 things like that, advertising practices, things of that
 18 nature.
 19 **A Sure.**
 20 Q If, say, for instance, something is -- has
 21 changed, I'm asking you, you know, in -- urging you to
 22 please let me know in your testimony, because what I don't
 23 want to have happen is I ask you a question and you give me
 24 an answer and we kind of rely on that answer. And then we
 25 go to trial and then at trial you say, "Well, I didn't tell

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- 1 Q Okay.
 2 **A -- this is not a matter of my personal opinion**
 3 **versus a corporate policy, but just the situation itself, I**
 4 **may not know the actual fact or the answer, and so I can**
 5 **speculate why something may have been done or may have been**
 6 **done, may not have been done, if you want me to do that. Or**
 7 **I can just tell you it would be pure speculation, so I don't**
 8 **know how you want to handle that.**
 9 Q Sure.
 10 **A I suspect there will be questions I won't know for**
 11 **a hundred percent sure. I just -- I suspect I won't know**
 12 **it.**
 13 Q I appreciate that. You -- you're represented by a
 14 great attorney, a great firm, very highly respected, and I
 15 have a lot of respect for Mr. Goodhart, so I'm sure that he
 16 did a nice job preparing you for your deposition.
 17 We have -- we have cases in Nevada regarding this
 18 deposition in particular, the 30(b)(6). There is a duty to
 19 prepare the witness, so -- but there's also -- you know,
 20 there's a lot of information, so I -- I understand you're
 21 just one person. You're not a computer, so I would just say
 22 this: If it gets to a point where maybe there's an
 23 individual that might, I guess, have more information --
 24 **A Uh-huh, right.**
 25 Q -- maybe you just let me know, but please just do

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1 the best job that you can answering the questions. Again, I
2 don't want you to speculate, but, because this is a
3 corporate deposition, there's -- there's an obligation that
4 you be an actual prepared witness.

5 **A Uh-huh.**

6 **Q** If we start to run into, maybe, a topic area that,
7 you know, there's a lot of speculation, maybe we can revisit
8 that topic down the road.

9 **A Okay.**

10 **Q** How does that sound?

11 **A Sure.**

12 **Q** Okay. I do appreciate that.

13 **A Okay.**

14 **Q** Please let me know if there's any subject that,
15 you know, you -- you're just not sure on --

16 **A Okay.**

17 **Q** -- let me know.

18 **A Okay.**

19 **Q** Is there anything else? Any other questions?

20 **A I don't think so.**

21 **Q** Okay. So have you been given a copy of the
22 notice, deposition notice? Did you receive a copy of that?

23 **A Uh-huh, yes. That's --**

24 **Q** Okay.

25 **A -- in many documents that we received, I think,**

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1 **marketing, and so I think he'll -- he's best, you know, to**
2 **answer those. And probably when it comes to sales**
3 **techniques and those type of operational issues, that would**
4 **be me.**

5 **Q** Okay. Perfect.

6 **MR. CLOWARD:** So, Mr. Goodhart, did you have
7 an opportunity to, I guess, go through the list?

8 **MR. GOODHART:** Yeah.

9 **MR. CLOWARD:** Could you just maybe give us a
10 rundown of what topics which one will address and then I
11 won't waste --

12 **MR. GOODHART:** Really, Mr. Modena's --

13 **MR. CLOWARD:** -- Mr. Modena's time.

14 **MR. GOODHART:** -- going to be addressing all
15 of the topic areas, because they're all, in my view,
16 addressed, to a certain extent, his area of knowledge, with
17 respect to the -- or the sales force, the negotiation of the
18 contract with Jacuzzi, and how it was implemented by First
19 Street and by AITHR.

20 **Mr. Fleming** is dealing mainly with the
21 advertising and marketing, so there are some crossovers with
22 some of the topic areas. For example, when you get to 20,
23 which is sales and marketing testimony general, there is
24 information in there that Mr. Modena would have knowledge
25 about, because he was in charge of the sales force, more or

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1 **from -- from -- yes.**

2 **Q** Okay. And then I'm assuming that you also -- my
3 understanding is, is that you -- you're going to be the
4 30(b)(6) for both AITHR and for First Street; is that
5 accurate?

6 **A That's correct. My understanding is that's**
7 **correct, yes.**

8 **Q** Okay. So --

9 **A There's two people -- there's two of us being**
10 **deposed today, so is John in a different position? Am I**
11 **allowed to ask that? We have another person that's coming**
12 **later. Is he in a similar role or not?**

13 **Q** My understanding is that he's in a similar --
14 similar role but for different topics.

15 **A Yes.**

16 **Q** So --

17 **A Yes.**

18 **Q** Maybe -- do you know what topics you have been
19 designated to actually address?

20 **A Well, largely, the operations. I was responsible**
21 **for the overall sales and operations of the AITHR group,**
22 **where the second gentlemen, John Fleming, he was our vice**
23 **president of marketing.**

24 **Q** Okay.

25 **A So there seems to be a lot of questions around the**

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1 less, however, the actual advertising, print advertising,
2 online advertising and marketing, that would be Mr. Fleming.

3 **MR. CLOWARD:** Okay.

4 **MR. GOODHART:** So there's going to be
5 crossover with some of these areas, but, again, the vast
6 majority of the areas, my -- my impression is that
7 Mr. Modena would be able to respond to those ones.

8 **MR. CLOWARD:** Okay. Do you -- do you know,
9 number-wise, which one will do which one?

10 **MR. GOODHART:** Well, as I indicated,
11 Mr. Modena will do all of them, with respect to his area of
12 knowledge. I think Mr. Fleming is really going to be
13 focusing on 20, 21, and, to a certain extent, 22, with
14 respect to their applications to the advertising and
15 marketing.

16 For example, number 22, you have First Street
17 sales department generally concerning the advertising,
18 marketing, sale and post-sale matters concerning the subject
19 Jacuzzi design of walk-in tubs.

20 I know what you're trying to get at there,
21 but it's more or less -- it's compound because we're going
22 to have different people, for example, Mr. Modena will talk
23 about the sale and post-sale matters, as well as the sales
24 department.

25 **MR. CLOWARD:** Okay.

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1 MR. GOODHART: However, Mr. Fleming will talk
2 about the advertising and marketing materials.
3 MR. CLOWARD: Okay.
4 MR. GOODHART: I don't know if that helps.
5 MR. CLOWARD: A little bit.
6 BY MR. CLOWARD:
7 Q Sir, I would just ask, one thing that I don't want
8 to have happen, I don't want to have you give testimony and
9 then, when we depose Mr. Fleming, he says, well, actually,
10 I'm the person that's best knowledgeable on that, and the
11 answer is actually not this. It's not X. It's Y.
12 A Uh-huh.
13 Q And so I'm just going to ask that if before you
14 even answer a question, please just don't even give me an
15 answer if you don't believe that you're the person for that.
16 A I'll tell you. If it's clearly right in his area
17 of responsibility, I'll just say that's what -- would be
18 better for John.
19 Q Perfect. Thank you very much.
20 Okay. So we can begin. Now, one thing that I
21 also would like to know is: What did you do to prepare for
22 the deposition today? And when I ask that question,
23 generally speaking, I'm not entitled to know anything that
24 was discussed among the lawyers. However, because you're
25 what's designated as a Rule 30(b)(6) deposition, if certain

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1 thing, just to pull all the information we possibly had
2 together --
3 Q Okay.
4 A -- to provide and make available.
5 From that point, we've had a few discussions, and
6 then I met with Mr. Goodhart and he sort of went over the
7 case at a -- at a good level but not going down too far into
8 what happened and what's been said, other than the basic
9 facts of it --
10 Q Sure.
11 A -- and not a lot of detail from anyone else that's
12 been deposed, really. It's really about the case itself,
13 the facts and being prepared to answer the questions that we
14 needed to answer.
15 Q Okay. And what is First Street and AITHR? May I
16 just refer to both parties as just First Street?
17 A Sure.
18 Q That will include AITHR. That way we don't make
19 the court reporter work more than she has to.
20 A That's fine by me, if that's -- you know, if
21 there's any legal issues between the -- they're -- belong to
22 the same company so I don't know if that makes a difference
23 or not.
24 Q Well, I guess let me -- one more qualification.
25 If, say, for instance, an answer is different for First

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1 facts were shared with you, I am entitled to know about
2 those facts.
3 Now, any legal conclusion that is drawn from that,
4 I am not entitled to that. I don't want to know that. I
5 don't even want to get close to that area. An example of
6 that would be let's say Mr. Goodhart told you Hale Benton
7 testified X, Y, and Z, so that was a fact that was
8 communicated to you. And then the next thing he said, "And
9 what that means for our case is," I'm not entitled to the
10 second part of that.
11 A Got it.
12 Q But I am entitled to know if you've been informed
13 of certain facts. Does that make sense?
14 A Uh-huh, yes.
15 Q Is there any uncertainty about that with you?
16 A I don't think so. If so, I'll let you know.
17 Q Okay. So can you just walk me through, generally,
18 the process of what you did to prepare for the deposition?
19 A Just reviewing a lot, a lot of documentation.
20 First, just trying to provide documentation to, you know,
21 in-house and outside counsel, to Mr. Goodhart, so just
22 pulling information back during that time frame, any
23 correspondence about this issue or about this particular
24 situation, you know, from our internal documentation and in
25 my emails that I would have held onto, so that was the first

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1 Street than it might be for AITHR, just let me know,
2 otherwise can we assume that all answers are the same for
3 both?
4 A Sure.
5 Q Okay. So let me know: What is First Street's
6 basic understanding of the facts and what happened in the
7 case?
8 A I know myself, personally, and -- well, I
9 shouldn't say that personally, but very, very little
10 information that came to me that was --
11 Originally, we heard about it, came in from -- I
12 guess it was in March or February, whenever it came up,
13 April, I think, maybe is when it was, and -- and we heard
14 about it from the insurance company calling us, and I
15 immediately went to our in-house counsel, to Stacy Hackney,
16 and was told to turn it over to her, so -- and that was
17 almost the extent of pretty much what I understood and never
18 heard much more about -- it was just: You're not involved.
19 We'll take it from here.
20 Not until, frankly, recently did I know a few more
21 of the details of what happened. I honestly didn't know
22 many of the details at all and have heard more about it when
23 we met with Mr. Goodhart and some details I wasn't aware of
24 and that's about it.
25 Q Okay. And what are the facts that you have

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1 learned about the -- the case?

2 **A** What I've understood was she -- she was stuck --
3 she got herself into the well of the tub, was unable to open
4 the door. After a couple, three days, I believe, medics
5 came in, was -- had -- was difficult to remove her and
6 removed an arm, I think is what I understood, to help get
7 her out of the tub, was taken out of the tub, and that then
8 a short period of time after that, she passed away.

9 **Q** Okay. And is that the extent of your knowledge to
10 this point?

11 **A** That is the extent of my knowledge, yes, it is.

12 **Q** Thank you, Dave.

13 And that's an easy name to remember because that's
14 my dad's name.

15 **A** Okay.

16 **Q** Let me ask, I guess, how does -- how does First
17 Street obtain information regarding incidents? Say, for
18 instance, if there's a claim or an injury or something along
19 those lines, you mentioned that you were informed by the
20 insurance company. Do consumers -- do they actually call
21 First Street at times --

22 **A** Yes.

23 **Q** -- directly?

24 **A** Depends on what the issue is. There's -- they may
25 be calling because the drain was -- I think in her case, the

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1 to handle this? We knew it was a serious situation and was
2 advised to let it be turned over to legal counsel.

3 **Q** Is that -- is that atypical for it to come that
4 direction versus maybe coming through the call center?

5 **A** Well, it -- issues -- any significant issue like
6 that where we may get contacted by, like, an attorney,
7 there -- they knew then if it was an outside attorney
8 contacting, typically, our Denver office is where they will
9 normally contact.

10 They knew to immediately get that to myself and
11 our legal counsel and turn -- if it's a letter, typically we
12 get a letter, you may get a phone call, but normally we
13 would receive letters from -- from outside legal counsel
14 if -- if it got to that -- to that point, and then that --
15 they would immediately get those to me and over to Stacy
16 Hackney, our legal counsel inside.

17 So they knew they needed to turn that over. They
18 weren't to try to reply or respond or to answer or remedy
19 the situation.

20 **Q** Is it only when a -- when a claim comes through a
21 lawyer, does it -- does it go to you or -- or if a consumer
22 calls and -- does that sometimes -- is that also routed --

23 **A** If it --

24 **Q** -- to you?

25 **A** It would need to be reasonably significant,

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1 history and documentation says she may have had some drain
2 issues.

3 So they'll call in for all types of reasons,
4 whether it's faulty -- warranty issues, questions, so we --
5 a lot of calls come right into us, into the -- into -- our
6 headquarters are in Denver, and it gets routed to the right
7 people, customer service, the production department, who
8 handles installations. They try to answer the -- answer the
9 questions, take care of it, contact Jacuzzi if it's a
10 warranty claim that needed Jacuzzi's, you know, assistance.

11 And in all cases, they're supposed to then put
12 that information into our CRM system, Lead Perfection, so
13 there's notes made. You know, anyone has access to it
14 that's involved at that level of taking that information,
15 and it goes into the system, logs in the date and time, and
16 puts it in their notes, and so it's just -- it's a -- it
17 goes on file so there's a running record of any information
18 that comes in on a particular incident.

19 Sometimes we can -- the communication can come in
20 around about ways. It can come directly from the consumer
21 and user right to us, or it can -- in this case, I think it
22 came -- my understanding is it came from the insurance
23 company, and they contacted our Denver office, and our
24 Denver office contacted me, and so then I contacted our
25 legal counsel going: What should we do? What should we do

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1 because they had a general manager and a sales manager.
2 They had a team that was responsible for the day-to-day
3 operations.

4 So depending upon the situation, they would
5 obviously try to remedy the situation, whether it's working
6 with the customer or working with the -- you know, the
7 manufacturer Jacuzzi to help with the warranty claim. But
8 if it was something extremely significant, and there are
9 very rare situations that it would, that they would probably
10 need to come to me without -- without first trying to remedy
11 it themselves.

12 **Q** Okay. How many times, say, for instance, do you
13 receive -- how often do you receive, like, a letter from a
14 lawyer or something along those lines?

15 **MR. GOODHART:** Object to form. Ben, can you
16 be a little bit more definitive? Are you talking about any
17 type of claim, or is it a warranty claim, a property damage
18 claim? Here we're talking about a personal injury claim.
19 Do you want everything or --

20 **MR. CLOWARD:** Yeah. We'll just do
21 everything.

22 **MR. GOODHART:** Everything?

23 **MR. CLOWARD:** And narrow it down from there.

24 **MR. GOODHART:** All right. Thank you.

25 **A** We would -- I guess we started -- was it 2012?

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1 And so, to answer your question fairly, these -- the
2 frequency would probably be one every six months. But then
3 as time goes on, as more -- more installations occurred in
4 the field and we were doing hundreds a month, so probably by
5 '13, we may be getting one every couple months at that
6 point. I'm guessing a little bit, but they would -- as
7 business went on into the thousands of tubs being installed
8 and --

9 Q Sure.

10 A -- then the opportunity for issues to come up,
11 like warranty claims, you know, just build over time. So my
12 sense would be that it would be around once every two or
13 three months at that time we'd get a letter of some sort,
14 not very often.

15 Q I mean, that makes sense. The more tubs there are
16 out there, the more folks are using --

17 A More opportunities for --

18 Q Sure.

19 A -- something to happen.

20 Q That makes sense. So you indicated that when it's
21 serious, it comes to your, I guess, attention. Do you also
22 address warranty claims, if it's a --

23 A If -- if -- if the situation just wasn't getting
24 done, they would come to me to say, you know, can you -- can
25 you go to your guy at Jacuzzi, because we're not -- our

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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

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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

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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

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- 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.

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- 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.

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- 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?

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- 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.

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1 MR. GOODHART: Okay. All right. Why don't
2 we take two minutes and we'll clear it up for you.
3 MR. CLOWARD: Okay. Do you want me to leave
4 or --
5 MR. GOODHART: No. We can just go out there.
6 MR. CLOWARD: Okay.
7 MR. GOODHART: That's fine. Thank you.
8 THE VIDEOGRAPHER: We are going off the
9 record at 11:01 a.m.
10 (Recess from 11:01 a.m. to 11:07 a.m.)
11 THE VIDEOGRAPHER: We are back on the record
12 at 11:07 a.m.
13 BY MR. CLOWARD:
14 Q Dave, have you had a chance to talk with your
15 counsel, both in-house and outside counsel?
16 A Yes.
17 Q Okay. Were you able to discuss, I guess, the
18 other reasonably significant events that you're --
19 A Uh-huh.
20 Q -- that First Street is aware of?
21 A Right. Right.
22 Q Okay.
23 A Yeah.
24 Q So what other reasonably significant events are --
25 is First Street aware of?

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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 --

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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

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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.

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- 1 Q Okay. Tell me about the system in Denver. What
2 is the system?
- 3 A It's called a CRM system. That's just a customer
4 retention system. That's pretty common to any home
5 improvement company, you -- you -- any lead that comes into
6 the organization, it then is given an ID, and that -- that
7 person's information is put into the system and it's tracked
8 all the way through. So from the date that customer either
9 calls in from an ad, or in this -- I think with -- the
10 Cunnison case actually was an Internet, I think, lead, and
11 they may have submitted a form and then we'd get back in
12 touch with them.
- 13 But that creates a file, and so at that point,
14 anytime anything happens after that, you -- you make -- you
15 make your -- there's a central place that customer has an ID
16 and you go in and you put that information in. It's dated,
17 time stamped, and it stays.
- 18 Q Who has access to that database?
- 19 A The primary users at the Denver office. I would
20 have access to it. People that would need to be able to run
21 reports, things like that, because it's not only just for
22 putting data in or information in, but it -- for pulling
23 information out, sales history, things like that.
- 24 So in the Denver office, you would probably have a
25 handful of people that -- that have access to that, at that

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- 1 If it turned into a warranty issue, then we
2 would -- we would contact their customer service. We had a
3 direct relationship. We had a line to them and they would
4 log it in and they kept good records of any warranty issue
5 until resolved.
- 6 Q What about when there is an injury claim made
7 through Jacuzzi? Are -- does First Street become
8 knowledgeable of that?
- 9 A If --
- 10 MR. GOODHART: Object to the form. Calls for
11 speculation.
- 12 MR. COOLS: Join.
- 13 MR. GOODHART: I'm objecting to form.
14 Calling for speculation. From time to time, I may object to
15 questions.
- 16 THE DEPONENT: Sure.
- 17 MR. GOODHART: Allow me to get my objection
18 out. Once I have finished my objection, you can then go
19 ahead and answer the question, unless I instruct you not to.
- 20 THE DEPONENT: Okay. Go ahead and answer?
- 21 MR. GOODHART: Yeah.
- 22 A Okay. So assuming that they -- if they then came
23 to us and went to us, they would have probably come to me or
24 our legal counsel on a situation like that.
- 25 BY MR. CLOWARD:

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- 1 level, because whether it's customer service or production
2 or sales, they'd have different points of contact, different
3 reasons for talking to them, so they would need to be able
4 to not have to run to someone to put it in. They could put
5 it in themselves.
- 6 Q Okay. That's internally. Who outside the company
7 has access to that?
- 8 A The only one would be the -- the administrator of
9 the actual software company, Lead Perfection. They'd have
10 access to it, as the company itself, which provides us that
11 software.
- 12 Q What about Jacuzzi?
- 13 A Jacuzzi would not have access to that, no. I
14 don't think so. I don't -- I don't think they were ever
15 given a password or something to go. I don't believe so.
- 16 Q Does --
- 17 A That's not something they would use. I think they
18 have their own CRM system, as far as I understand.
- 19 Q Does First Street have access to salesforce.com?
- 20 A No.
- 21 Q Okay. When there is an incident that occurs, is
22 there a communication between First Street and Jacuzzi?
- 23 A Depending upon the issue. If it was an
24 installation issue where it was our installer didn't caulk
25 it properly or whatever, then that would stay between us.

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- 1 Q Okay. How many times has First Street been
2 notified of an incident?
- 3 A From -- by Jacuzzi?
- 4 Q Yeah.
- 5 A I would not know. I would not know. I -- again,
6 if I only know of two or three incidents at all, I would say
7 not many, if any. Obviously, the Cunnison came through an
8 insurance company, I believe.
- 9 Q Okay.
- 10 A Or, actually, I take that back. The -- I
11 received -- well, the -- Audry Martinez, who was working at
12 the time, was looking for information is how that worked
13 out. I think she actually contacted our Denver office, and
14 Denver office asked me was it okay for them to provide them
15 information, what should we do. That's when I went to our
16 legal counsel. So Audry Martinez was looking for
17 information on behalf of their insurance company is how that
18 actually came to us.
- 19 MR. CLOWARD: Okay. Phil, I think what I'm
20 going to -- what I'm going to have to do is we're going to
21 have to come back on this topic, because, clearly, in the
22 documents from sales force, there's communication going back
23 and forth between AITHR and First Street, so I don't believe
24 that this witness has been properly educated on this topic.
- 25 So I'm going to just move on, and I'm just

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1 making my record that I'm going to -- I'm going to come back
2 into this area after there's been more done to prepare this
3 witness on First Street's knowledge on this area, because it
4 appears as though Dave is relying on his own memory, rather
5 than what First Street knows.

6 So with that -- and just an example so that
7 you have -- so that you can review would be Bates labeled
8 Jacuzzi 002927. This is a complaint that came in of the tub
9 being too slippery. And in the claim notes, it indicates
10 that specifically on Jacuzzi 002929 called to let me know
11 that no one from AITHR has called her back.

12 And then there's also Jacuzzi 2930, spoke to
13 blank -- the name is redacted -- to let her know that I
14 contacted AITHR and to give you a call regarding the
15 slippery floor and so forth, so, clearly, there's -- there's
16 communication back and forth between the two parties, so I'm
17 just going to reserve my right to come back into this area
18 and we can move on.

19 MR. GOODHART: Well, I guess my comment to
20 that would be: You've asked him questions about injuries
21 and warranty claims and things like that. The question that
22 has not been asked so far: Would a slippery floor complaint
23 from a customer be considered a safety complaint in his
24 mind?

25 MR. CLOWARD: Okay. I can go into that.

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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

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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

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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.

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- 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

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- 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

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- 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

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- 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

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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?

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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

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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 --

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1 as you can about the -- the Kahuna Grip emails.

2 **A When -- when the issue -- when we -- I guess, when**
3 **the issue was raised, I don't know the exact date when we**
4 **had a discussion with them to where -- what would have**
5 **instigated them going to the next level of trying to find**
6 **something, may have been, you know, the second email or**
7 **something that --**

8 Anyway, we started a discussion with them, and it
9 was just back and forth on here are some -- first they
10 provided us the information the tub is to specs. This is --
11 satisfied that. But then what else can we do? Is there
12 something else we can do? Is there something that could be
13 done to make it more aggressive?

14 And they came up with this solution, and it was
15 just an off-the-shelf product that, I think, was used in --
16 I think maybe for boats or things that are for wet surfaces,
17 and so I think the -- probably was designed for -- I'm just
18 going off recollection here -- for, like, surfboards, but,
19 anyway, it's a product that --

20 And so they worked with that, looked at that and
21 tried to see if there's any issues that -- would it work?
22 Is there any other alternative situation that would come
23 from using that and deemed it was certainly more aggressive
24 and would give you another solution on top of what they've
25 already done in manufacturing the tub.

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1 They then decided to -- there was an issue came
 2 up, they will make it available to us, and we would -- if
 3 it -- if it was something that was -- a customer raised as
 4 an issue, we could contact them directly and they would send
 5 one out and we'd put it -- you could install it right --
 6 since you could lay it out on the floor, it'd stick to the
 7 floor of the tub.
 8 Q Okay. Is it fair to say that there were concerns
 9 about the tub being slippery from the time that First Street
 10 requested from Mr. Torres information about the slip
 11 resistance of the tub?
 12 MR. COOLS: Object to the form.
 13 MR. GOODHART: Join.
 14 A I'm sorry. Ask that question again. I didn't
 15 quite understand.
 16 MR. CLOWARD: Sure. Madam reporter, would
 17 you mind reading that again?
 18 (The record was read.)
 19 A Did Jacuzzi show concern --
 20 MR. GOODHART: Same objection.
 21 THE DEPONENT: Are you done?
 22 MR. CLOWARD: Join.
 23 THE DEPONENT: I'm sorry.
 24 MR. GOODHART: Go ahead.
 25 BY MR. CLOWARD:

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1 called in to our production area and just asked.
 2 BY MR. CLOWARD:
 3 Q Okay. So someone would call into that CRM system
 4 and --
 5 A They'd call into our Denver office, and -- and
 6 they would get, typically, production, and they would be the
 7 one that would notate that.
 8 Q Okay. And, obviously, it was enough of a concern
 9 that First Street requested information from Ray Torres
 10 about the slipperiness of the tub itself, true?
 11 MR. GOODHART: Object to form.
 12 Argumentative.
 13 MR. COOLS: Join.
 14 THE DEPONENT: Answer?
 15 MR. GOODHART: Yeah.
 16 A Any concern like that, yes, we -- we would brought
 17 to their attention, because those are potential liability
 18 issues so we would have brought to their attention just as
 19 an issue that warrants discussing, make sure we're doing all
 20 we could.
 21 BY MR. CLOWARD:
 22 Q Okay. And just so that you're aware of how the
 23 objections -- how that plays out, that way, you know, you
 24 can feel confident knowing when you're supposed to answer
 25 and --

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1 Q So now that we -- just to make sure we have a
 2 clean record with clean question, clean objections, and then
 3 hopefully a clean answer: Fair to say there was concern
 4 about the slipperiness of the tub from the time First Street
 5 was requesting information about the slip resistance from
 6 Ray Torres?
 7 A Yes.
 8 MR. GOODHART: Object to the form of the
 9 question.
 10 MR. COOLS: Join.
 11 BY MR. CLOWARD:
 12 Q Okay. And that concern came from consumers
 13 themselves?
 14 MR. GOODHART: Object to form.
 15 MR. COOLS: Join.
 16 THE DEPONENT: Go ahead and answer?
 17 MR. GOODHART: Yeah.
 18 A Yes. It would have been from consumers probably
 19 bringing it to our attention through an installer or
 20 something. It wouldn't have been through a salesperson,
 21 because they wouldn't be together at the time. They'd
 22 normally be from an installer. The consumer may have said
 23 she was concerned, may have asked about it, had a concern,
 24 or it could come in through our production department. They
 25 would -- if they were having used the tub, they may have

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1 A Okay.
 2 Q -- when you're not supposed to. We don't have the
 3 luxury of having a judge here before us today. I know a lot
 4 of times we watch Court TV, Law and Order things, and you'll
 5 see, "Objection," and then the judge will say, "Overruled,"
 6 or, "I'll allow it."
 7 A Right.
 8 Q You know, the things that judges say. Because we
 9 don't have that luxury today, what happens is we actually
 10 take the objections at an appropriate time before the judge
 11 and, in this case, Judge Scotty would rule on those. He
 12 would make a determination as to whether the testimony is
 13 allowed or not, and so feel comfortable --
 14 A Answering.
 15 Q -- giving an answer. Even if there are a whole
 16 bunch of objections, you're supposed to answer.
 17 A Okay.
 18 Q The only time you're really not supposed to answer
 19 is if counsel actually instructs you not to answer, says,
 20 "Hey, I'm instructing you not to answer." That's very rare.
 21 We have a case called In Re Stratosphere that kind of talks
 22 about when that's appropriate. It's very rare so --
 23 A Got it.
 24 Q -- feel confident to give the answers.
 25 A I'll quit asking. Sure.

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1 Q No, no.
 2 A **No, no, no, I appreciate that. I'm good.**
 3 Q Witnesses -- it's every time there's -- you know,
 4 it's a first time witness and there's an objection, they
 5 don't really know what to do, and we all do it all the time
 6 so --
 7 A **Sure.**
 8 Q -- I just feel bad that sometimes we don't
 9 communicate to the witnesses --
 10 A **I appreciate it.**
 11 Q -- a little more of the process.
 12 A **I appreciate the clarification.**
 13 Q No problem. All right. Now, I've also seen
 14 emails about the grab bars --
 15 A **Uh-huh.**
 16 Q -- as being a concern. How often was that voiced
 17 to -- to Jacuzzi?
 18 MR. GOODHART: Objection to form.
 19 MR. COOLS: Join.
 20 A **Not very often. We -- grab bars were -- were**
 21 **there, obviously, to help get them in and out of the tub and**
 22 **while in the tub, and we offered additional grab bars, if**
 23 **necessary, if they requested it, but those grab bars were**
 24 **put on the -- on the bathroom wall where the tub was, not on**
 25 **the tub, necessarily, could be so . . .**

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1 record at 11:39 a.m.
 2 (Discussion off the record.)
 3 THE VIDEOGRAPHER: We are back on the record
 4 at 11:41 a.m.
 5 MR. CLOWARD: Okay. So, preliminarily,
 6 there's a brief discussion held off site -- or off the
 7 record between counsel. Some of the -- the emails, there
 8 have been two productions recently. One was by First
 9 Street. One was by Jacuzzi. Both were, you know, a couple
 10 thousand pages, approximately.
 11 The Jacuzzi production didn't happen until
 12 just recently, maybe a week or so, within the last 10 days.
 13 Counsel, would you agree?
 14 MR. COOLS: I think -- I thought it was in
 15 November, but -- thought it was before Thanksgiving, but
 16 I'll --
 17 MR. CLOWARD: In any case --
 18 MR. COOLS: It is what it is.
 19 MR. CLOWARD: Sure. In any case, the
 20 deposition notice that we prepared indicated that -- because
 21 at that time, I believe we had received the First Street
 22 records, so it talked about the records from First Street.
 23 Counsel has informed me that due to the --
 24 which is reasonable, Counsel for First Street has notified
 25 me that due to the production of emails, his witness has not

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1 BY MR. CLOWARD:
 2 Q Okay. I noted that in -- in some of the
 3 correspondence that was an issue, though, that was raised by
 4 consumers, true?
 5 MR. GOODHART: Object to form.
 6 MR. COOLS: Join.
 7 MR. GOODHART: Assumes facts not in evidence.
 8 MS. HACKNEY: Join.
 9 A **Could you be more specific? What concern? Not**
 10 **having enough? Not being appropriate? I'm not sure that I**
 11 **understand the question.**
 12 BY MR. CLOWARD:
 13 Q Sure. So the binder that you have there in front
 14 of you -- or to your left, these are binders that we're
 15 going to be using today.
 16 A **Uh-huh.**
 17 Q And I can direct you -- I can direct you to those.
 18 THE VIDEOGRAPHER: Mr. Modena, your
 19 microphone's falling off a little bit.
 20 THE DEPONENT: Okay. Get back up there
 21 fella.
 22 THE VIDEOGRAPHER: Do you guys mind if we go
 23 off the record for a minute?
 24 MR. GOODHART: Go ahead.
 25 THE VIDEOGRAPHER: Okay. Going off the

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1 had a chance to review the production from Jacuzzi, so I
 2 guess what we would do is when we come back, I'm going to
 3 revise the scope of the deposition notice to include these
 4 documents, and then that way when we come back -- because
 5 there are some -- there are some emails in here that are not
 6 in the First Street production. I've had a chance to go
 7 through the majority of them.
 8 So is that a fair compromise? I'll ask him,
 9 maybe, some questions. If he can answer them, great. If
 10 not, then no problem.
 11 MR. GOODHART: Yeah. I would just request
 12 that prior to resuming the deposition, if there are specific
 13 pages that you would want to make sure that Mr. Modena is
 14 familiar with and aware of, that you notify me because
 15 there's 2,500-plus pages of documents that were produced by
 16 Jacuzzi within the last 10 days.
 17 The notice of deposition is November the 7th,
 18 so that was well before Jacuzzi's production. First Street
 19 produced it's thousand or so pages of emails, I believe it
 20 was at the end of October, prior to this deposition notice
 21 coming out. So that is what Mr. Modena is prepared to talk
 22 about. That's what he's been prepared for.
 23 I have not had an opportunity to prepare him
 24 for the extra 2,500, 3,000, whatever it is documents that
 25 was recently produced by Jacuzzi. It will be a lot to ask

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1 Mr. Modena to go through 3,000 pages.
 2 MR. CLOWARD: Yeah, I'm not --
 3 MR. GOODHART: So if, prior to us resuming
 4 this deposition, you can give me an idea of which of those
 5 3,000 or so pages that Jacuzzi produced you would like him
 6 to focus on, I think I can do that. But to say I'm going to
 7 maybe ask him questions about all 3,000 pages, I think I
 8 might have an objection to that.
 9 MR. COOLS: And just for the record, they
 10 were disclosed on November 27th. I think that they were
 11 sent to Megan and not you, which is why there was a delay in
 12 you getting the actual documents, but they were disclosed on
 13 November 27th.
 14 MR. CLOWARD: Okay.
 15 BY MR. CLOWARD:
 16 Q So I guess what we'll do is because we've got to
 17 come back, we'll talk to you a little bit. And then, also,
 18 I would just ask you to review internally, because these
 19 documents I did not see in First Street's production, but
 20 they're clearly -- one is authored by Mark Gordon, who is --
 21 my understanding was the president and CEO of First Street;
 22 is that accurate?
 23 A Right.
 24 Q Do you know why, say, for instance, the email on
 25 October 31 on page 3196 was not produced in First Street's

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1 have -- our counsel would have it.
 2 Q Okay. So let's just -- let's just take a look
 3 here. We'll go to page -- back to page 3196. This is Mark
 4 Gordon's response. And, Mark Gordon, again, is the
 5 president of First Street at the time, true?
 6 A CEO, yes.
 7 Q What was your position at the time?
 8 A I would have been president of AITHR, I believe,
 9 at this October 31st -- I think so. Yes, president of
 10 AITHR.
 11 Q Okay. And what is your current position?
 12 A Senior vice president of First Street.
 13 Q Is -- is Mark Gordon still the president and CEO?
 14 A Yes.
 15 Q Okay. So, here, Mark is responding to you, it
 16 looks like, and he says -- I'm going to go about the
 17 third -- the third line down. He says, quote, anything
 18 related to safety, more, slash, better position grab bars or
 19 nonslip surfaces, etc. Can't they spray gritty surface in
 20 the bottom of the tub for almost no cost, question.
 21 A Uh-huh.
 22 Q And then earlier we were talking about kind of the
 23 slipperiness of the tub. There was some communications
 24 between First Street and Jacuzzi, true?
 25 A Yes.

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1 production?
 2 A No, I wouldn't. I -- I -- obviously, I didn't
 3 author that one, so anything that I authored, I typically
 4 always kept in my folder, in my Jacuzzi folder on the
 5 server, which was turned over, so it was --
 6 Q Okay.
 7 A That was all provided. This coming from another
 8 source, potentially, is maybe why. I can only speculate.
 9 Q Can you go to the next page, page 3197? Do you
 10 see at the bottom of the page there, that's --
 11 A Uh-huh.
 12 Q -- an email that's authored by you?
 13 A Uh-huh.
 14 Q Is that true?
 15 A Yes, uh-huh.
 16 Q Do you know why this email wasn't produced?
 17 Because it's part of the same chain, it should have.
 18 A No. I would assume -- I would have to see if this
 19 is -- was kept in my folder. That's the only place --
 20 because they have -- our counsel has access to the entire
 21 folder that anything that I kept from Jacuzzi was -- stayed
 22 in.
 23 So -- and did I keep every email that I sent? I'm
 24 sure I didn't. I mean, I just -- you delete some, but if
 25 it's in my folder, if this was in my folder, then we would

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1 Q And so now I'm asking about the positioning of the
 2 grab bars and additional grab bars.
 3 A Right.
 4 Q What communication was -- was there on that?
 5 MR. COOLS: Object to the form.
 6 MR. GOODHART: Join.
 7 A The -- as far as grab bar, Mark's questions, nine
 8 times out of ten, is always from a marketing point of view
 9 is: Are there things -- as we design this next phase two
 10 tub, what things are we going to be able to talk about? You
 11 know, and there's features in our tubs that are -- that are
 12 just competitive issues, you know, like, karomatherapy and
 13 aroma, things you have in the tub. So you're always looking
 14 for something to -- in your marketing, something to talk
 15 about.
 16 So when you do new and improved -- he comes from
 17 Proctor and Gamble, so he was brought up on new and improved
 18 and how you sustain a brand and how do you -- how do you
 19 market, so that's his forte. So his point of view always --
 20 I can't say always -- 95 percent of the time is about: What
 21 are we going to be able to say about it? How are we going
 22 to continue to do the marketing and bring more life to the
 23 marketing?
 24 So as you consider things to do with, you know,
 25 the -- the -- as you're -- as you develop this new tub with

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1 Jacuzzi, are there things like better positioned grab bars?
 2 Not knowing that they're not positioned -- I mean, just are
 3 there things -- what should we be thinking about that we can
 4 talk to Jacuzzi about, that we can talk about in marketing
 5 that makes -- that makes sense, that sounds like it's even
 6 better still. That's his point of view, normally.

7 BY MR. CLOWARD:

8 Q So it wasn't a true concern for safety; is that
 9 what your testimony is?

10 A No. I think --

11 MR. COOLS: Object to form.

12 MR. GOODHART: Join. Argumentative.

13 A I mean, safety was a -- was the reason that tub
 14 was designed. It was designed to help people. That's why
 15 the threshold was important, so it could be the lowest step
 16 possible getting into the tub. That tub is there for safety
 17 and independence first and foremost.

18 And then you -- then from there, the hydrotherapy
 19 and the other features that Jacuzzi's known for. So safety,
 20 obviously, is always at the forefront of that product. That
 21 safety and independence is sort of the hallmark of aging in
 22 home in -- in the walk-in tub category.

23 So that was -- so you always think of the things
 24 that are important, as you talk about a product, and that's
 25 certainly one of them is safety, so what can you talk about

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1 was -- he'd ask those kind of questions. We knew that
 2 customers would sometimes ask us to put in extra grab bars,
 3 not on the tub, but on the wall and places like that. So it
 4 was just one of those things that I can even recall talking
 5 about, so we put another one on top of the tub, just another
 6 one to -- it's just --

7 And not many other perspective, other than just
 8 what should I be asking -- what should we be talking
 9 about -- should we be talking about to them, because there
 10 would also be the experts in the product and designing and
 11 engineering and safety standards and meeting all the codes
 12 and requirements, so -- so he --

13 So as you went down the list of -- of the low step
 14 and the hydrotherapy and that benefits, safety is always
 15 going to be something we're going to talk about. So what
 16 other things should we be thinking about to enhance the
 17 safety feature of that product? Grab bars.

18 To my knowledge, there was no particular issue he
 19 had in mind at all, other than grab bars were there to help
 20 get in and out of the tub. Should we be thinking about
 21 that? Is there something better we can do? That's his
 22 question.

23 BY MR. CLOWARD:

24 Q And, obviously, like the slipperiness of the tub,
 25 with customers telling you about that, you're also getting

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1 from a safety point of view? What are the safety features
 2 you can talk about? So that is why that tub is designed the
 3 way it's designed, for safety reasons.

4 BY MR. CLOWARD:

5 Q Okay. So we initially talked about -- you
 6 informed me that there were concerns with the safety, told
 7 me about the safety of the slipperiness of the tub, told me
 8 about, you know, the Kahuna Grip, told me about the email
 9 from Ray Torres providing that documentation regarding the
 10 slipperiness of the tub.

11 Here, it appears as though that's what the focus
 12 of Mark's comment was -- was, you know, were some issues
 13 with regard to safety, said anything with regard to safety.
 14 And so I guess my concern or my question is, is was there a
 15 safety issue with regard to the grab bar, similarly to the
 16 slip- -- slipperiness and that's why Mark is pointing that
 17 out, or is it your testimony there was never an issue at all
 18 about the grab bars?

19 MR. COOLS: Object to form.

20 MR. GOODHART: Join.

21 A We were always looking to find ways to -- to
 22 enhance our marketing, to enhance the key elements of the --
 23 of the product's benefits, which is -- safety was front and
 24 center to why it was even designed the way it was.

25 He, clearly, is not an engineer, Mark, and he

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1 feedback on the grab bars from the customers, as well?

2 MR. COOLS: Object to form.

3 MR. GOODHART: Join.

4 A I don't recall that. I don't recall that on
 5 the -- on the grab bars, other than what I mentioned before.
 6 Sometimes we would -- we'd install additional grab bars on
 7 the wall on -- just for another point of contact, not
 8 necessarily on the tub. I'm not sure that answers your
 9 question or not but that's --

10 The slipperiness was -- at that time wouldn't have
 11 been a lot of issues with it come up. It was more just a
 12 general understanding of tubs are slippery, so there's --
 13 what do other tubs do? What are the other things we should
 14 we be thinking about that you do for tubs, even though it's
 15 a small -- small well versus what a full tub has.

16 BY MR. CLOWARD:

17 Q Okay. Now, the -- if you want to, I'll come grab
 18 that. Set that aside.

19 I'm going to hand you what will be marked as
 20 Exhibit 1 and this is the documents that have been produced
 21 in this case. There is a table of contents, if you want to
 22 just turn to A first.

23 MR. COOLS: You're marking the whole binder
 24 as Exhibit 1?

25 MR. CLOWARD: Yeah. I'm just going to have

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- 1 him authenticate so we can use them at the time of trial.
 2 MR. GOODHART: It's my understanding, Ben, I
 3 don't mean to interrupt, these are all documents that were
 4 produced by First Street --
 5 MR. CLOWARD: Correct.
 6 MR. GOODHART: -- and/or AITHR, correct?
 7 MR. CLOWARD: Correct.
 8 MR. GOODHART: And they should all have Bates
 9 stamps that begin with First, F-i-r-s-t?
 10 MR. CLOWARD: Correct.
 11 MR. GOODHART: Okay.
 12 THE DEPONENT: All right.
 13 (Exhibit 1 was marked.)
 14 MR. CLOWARD: Yes. Counsel, on page -- at
 15 the table of contents, if you want to just peek over there,
 16 it lists in the column, the third column, all the Bates
 17 labels and, basically, First 1 through --
 18 MR. GOODHART: Okay.
 19 MR. CLOWARD: -- First 1320.
 20 MR. GOODHART: All right. If there's a
 21 particular document that you're going to be referring to, if
 22 you can let me know the Bates number so I can pull it up on
 23 my computer, that way I'm not going to have to lean over
 24 Mr. Modena's shoulder.
 25 MR. CLOWARD: Okay. No problem.

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- 1 Q Sure.
 2 A -- to turn the drain.
 3 Q Okay. And then let's do Exhibit B. I would
 4 imagine this came with that product?
 5 A Uh-huh.
 6 Q Is that your understanding?
 7 A Yes.
 8 Q Okay.
 9 A Looks familiar. Looks like the piece that would
 10 have been attached.
 11 Q And now we can go to Exhibit C. Do you know why
 12 the billing -- it says bill to Jacuzzi, but the address
 13 that's given is the AITHR address there in Denver -- or
 14 Littleton.
 15 A Sometimes -- who would have this come from? This
 16 was Budds Plumbing. Sometimes people, and in this case I'm
 17 speculating, but we -- you know, we would wear Jacuzzi on
 18 our shirt when we were in the home, because we were
 19 installing a Jacuzzi brand. People would sometimes think of
 20 us as Jacuzzi.
 21 Q Gotcha.
 22 A And we're not. Our contract said AITHR but people
 23 would say you're not Jacuzzi? No, we're not Jacuzzi. We
 24 never, you know, tried to portray ourselves as Jacuzzi, so
 25 my only assumption here would be Budds Plumbing just because

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- 1 MR. GOODHART: Thank you.
 2 BY MR. CLOWARD:
 3 Q Let's first start with Exhibit A. This is First
 4 0001, and the question I have is about HomeClick. Is there
 5 any relation between First Street or AITHR and HomeClick?
 6 A Not to my knowledge, no.
 7 Q Okay. This invoice indicates that there is a
 8 handle, and it shipped to Ralph Stout. Who is Ralph Stout?
 9 A Ralph Stout was our production manager for
 10 installation.
 11 Q Okay. And so I guess it's a -- it's a part that
 12 he orders and then gives that to the install folks to have
 13 them install it. Is that how it usually goes?
 14 A Not -- not normally, because normally the parts
 15 are -- would typically come from Jacuzzi, if it's a standard
 16 part. So this is a handle that was a modification to the --
 17 to the -- to how you release the drain, and I wasn't -- I'm
 18 not familiar with HomeClick, but it must be the manufacturer
 19 that provided it.
 20 And he -- and he may or may not have worked with
 21 Jacuzzi directly on -- you know, sometimes you can find
 22 things locally that could help, you know, in a situation on
 23 a given installation, but this, I believe, was that piece
 24 that just gives an extension for people with a much weaker
 25 grip.

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- 1 they -- they knew us as Jacuzzi.
 2 Q Fair enough.
 3 A I guess so.
 4 Q Fair enough. Now, Exhibit D --
 5 MR. COOLS: Could you just identify the last
 6 three of the Bates number when you're looking at the exhibit
 7 numbers --
 8 MR. CLOWARD: Absolutely.
 9 MR. COOLS: -- agreement?
 10 MR. CLOWARD: No problem at all. And I
 11 referred to -- this is somewhat confusing. The entire
 12 binder is going to be marked as Exhibit 1. Within the
 13 binder, there is table of contents, and then there are
 14 dividers A, B, C, D, E through O. We've just covered
 15 Exhibit A, which was Bates labeled First 001. Exhibit B,
 16 which is the ADA install- -- installation manual for the --
 17 the lever that's First 00002 through 3. And then Exhibit C,
 18 which is the Budds Plumbing invoice, which is First 0004.
 19 And I will try to do a better job going
 20 forward.
 21 MR. COOLS: Thanks.
 22 MR. GOODHART: I don't think you need to put
 23 the zero, zero, zero.
 24 MR. CLOWARD: Okay. Good.
 25 MR. GOODHART: We'll know what you mean.

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1 MR. COOLS: I don't even care if you do the
 2 range. If you just want to do at least the first number --
 3 MR. CLOWARD: Perfect.
 4 MR. COOLS: -- in the file, that's enough to
 5 identify it for me.
 6 MR. CLOWARD: Okay. Fair enough.
 7 BY MR. CLOWARD:
 8 Q So this will be Exhibit D and it's First 5 through
 9 First 022. Do you recognize this document?
 10 A Yes.
 11 Q What is this document?
 12 A It's our basic operating manufacturing agreement
 13 with Jacuzzi.
 14 Q All right. Is this document still active, meaning
 15 is it still -- is the relationship still ongoing?
 16 A It's been amended, but, yes.
 17 Q When was it amended?
 18 A I would have to look. It's been amended a couple
 19 times. Am I able to ask Stacy?
 20 This is the basic agreement. We don't have the
 21 amendment in here, I guess. We -- we amended it. I don't
 22 know if we amended it a couple different times with pricing
 23 and all, but we, I guess, most recently amended, I couldn't
 24 tell you the date, but it was when the -- when the
 25 exclusivity was -- was removed, which would have been --

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1 next 10 days.
 2 MR. CLOWARD: Fair enough. Thank you.
 3 THE DEPONENT: Sure.
 4 BY MR. CLOWARD:
 5 Q Do you know what other companies now sell the
 6 Jacuzzi tub?
 7 A Jacuzzi purchased Liners Direct, correct?
 8 Q Purchased what?
 9 A Purchase a company called Liners Direct. It's --
 10 it's another company that's in the bathtub/shower business,
 11 about a year and a half ago, I believe. I could be wrong on
 12 the date, as well.
 13 And part of that exclusivity was they were going
 14 to start to sell to that network of dealers. Liners Direct
 15 is a company that does tub to shower conversions, probably
 16 have a hundred dealers across the country, so they made
 17 their product available to their newfound partner, which
 18 is -- they now wholly own, is my understanding.
 19 They may also be selling to other people, but I
 20 don't know.
 21 Q And that's Liners?
 22 A Liners Direct. It's a separate company that --
 23 yeah. That all happened at the same time, the purchase of
 24 that company, them removing the exclusivity, them turning
 25 that tub over to their -- their dealers.

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1 it's been a couple years now, where we were -- just decided
 2 to -- we removed the "not hitting volumes" that was part of
 3 this agreement.
 4 We said, okay, we're going to continue the
 5 relationship, but the exclusivity is -- is pulled off. They
 6 were free then to sell to other -- other people, but, yeah,
 7 we still continued to purchase product from Jacuzzi.
 8 That would have -- is it -- am I able to ask?
 9 Stacy may be able to answer that. She may remember. If
 10 not, I don't have record of it, but it would have been --
 11 how long has it been since we did that? A couple years, I
 12 think it was. I don't know when we actually -- you know,
 13 discussion started on exclusivity and by the time we
 14 actually had an amendment, probably six months later, so I'm
 15 going to say it's been a year and a half, but we can find
 16 that out and give you a date on it.
 17 MR. GOODHART: What I'll do --
 18 MR. CLOWARD: Sure.
 19 MR. GOODHART: -- Ben, is I'll provide you
 20 with the dates of the amendments --
 21 MR. CLOWARD: Okay.
 22 MR. GOODHART: -- as well as the amendments.
 23 MR. CLOWARD: Fair enough.
 24 MR. GOODHART: Just via correspondence
 25 through a supplement. I can do that probably within the

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1 Q Okay. Now, my understanding is that the
 2 manufacturing agreement dealt with the 5229 model; is that
 3 your understanding?
 4 A Not at the time, because at that time we had --
 5 they had the Laura, which was their existing tub. When this
 6 agreement was done, they had an existing walk-in tub called
 7 the Laura, and then the 5229 was the product two that you
 8 saw earlier being designed to improve to make it a better --
 9 you know, come up with a new tub for us.
 10 Q Okay. So there was the Laura, then the 5229?
 11 A 5229. That became the -- it was just a tub the
 12 Cunnison family purchased.
 13 Q What about the Finestra?
 14 A Finestra was an existing tub. It was a tub
 15 designed for new construction. It was larger, so a standard
 16 tub opening is 60 by 30. A typical tub in a house is 60 by
 17 30. To put a walk-in tub in, you have to have some relief
 18 so you can do plumbing, so that's why it's 52 wide so you
 19 can still have a panel to do access to plumbing.
 20 The Finestra was 60", because you didn't need
 21 access, because you were building the house from scratch, so
 22 Finestras were, you know, very seldom sold, but in a case,
 23 if you needed a larger tub, they had two or three different
 24 sizes, so we didn't have exclusivity on that, which the
 25 agreement stated, but it was one we had access to at a

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- 1 wholesale price --
 2 Q Okay.
 3 A -- for when you needed a larger tub.
 4 Q So the Finestra was 60", whereas the 5229 is --
 5 A 52" wide, also long, if you're looking at the
 6 length -- you know, the width of the tub. So a standard
 7 opening of the tub 60". Your wall's typically 60". The
 8 whole tub fills up 60". Those walk-in tubs are
 9 traditionally 51, 52 to fit in there so you can then access
 10 plumbing.
 11 Q Okay.
 12 A Finestra was 60.
 13 Q Other than the width, were there any other --
 14 A There were some --
 15 Q -- changes?
 16 A -- within -- well, there was a couple of different
 17 ones of Finestra, but that was -- the 60" was a deal. Then
 18 they had different feature sets, you know, where they have
 19 jets or not, those type of things. From a dimensional point
 20 of view, it was just -- it was just a larger tub.
 21 Q Was the door -- did the door open inward on all of
 22 those models?
 23 A All do. Yes.
 24 Q Okay. So the door opening inward was
 25 substantially similar for all the models?

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- 1 Q Do you know what these photographs are?
 2 A It looks like with and without that extra
 3 attachment for the handle.
 4 Q Okay. And then the next is -- because I, we don't
 5 need to talk about that one, so we'll go to J.
 6 MR. GOODHART: Bates number for the first
 7 page?
 8 MR. CLOWARD: First 280 through First 296.
 9 A Okay.
 10 BY MR. CLOWARD:
 11 Q And we'll, actually, redact First 296. Actually
 12 just -- why don't you go ahead and --
 13 MR. GOODHART: Take that page out?
 14 MR. CLOWARD: Yeah.
 15 BY MR. CLOWARD:
 16 Q Let me ask you a quick question before you take it
 17 out, though. You agree that the commissions were district
 18 deposited into the independent contractor's bank accounts?
 19 A That's the way they were normally set up, so I'd
 20 assume yes.
 21 MR. CLOWARD: Okay. So we'll just go ahead
 22 and remove that page. You have to open the red thing first.
 23 Thanks.
 24 THE DEPONENT: Uh-huh. Thank you.
 25 MR. GOODHART: Ben, it's my understanding a

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- 1 MR. COOLS: Object to form.
 2 A Yes.
 3 BY MR. CLOWARD:
 4 Q Okay. Now, E, which is First 23, I believe this
 5 is just the signature page. Is that your signature there,
 6 sir?
 7 A Yes.
 8 Q Okay. So the contract was effective
 9 September 29th of 2011?
 10 A Uh-huh, yes. September, yes.
 11 Q Okay. And then we'll go to Exhibit F, which is
 12 First 24. This is a letter that was sent by my office.
 13 A Yeah.
 14 Q True?
 15 A Yes.
 16 Q Okay.
 17 A That's --
 18 Q Exhibit G -- oh, I removed that. That's just a
 19 copy of the policy. We don't need to address that.
 20 A Okay.
 21 Q So Exhibit H --
 22 MR. GOODHART: What is the first page in
 23 Bates numbers?
 24 MR. CLOWARD: First 225.
 25 BY MR. CLOWARD:

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- 1 redacted version of some of these documents was provided in
 2 an errata. I'm not sure whether they made it into here or
 3 not.
 4 MR. CLOWARD: On this Exhibit J?
 5 MR. GOODHART: Yeah.
 6 MR. CLOWARD: 281 through -- I don't see
 7 anything that's redacted.
 8 MR. GOODHART: Yeah. There was -- just for
 9 the record, there was a redaction that was provided to you
 10 as -- I'm trying to find the name of the document. Hang on
 11 one second.
 12 It's entitled First Street and AITHR's -- I
 13 thought I had it. Initial early case conference production
 14 that was redacted with privileged information removed. And
 15 by privileged information, I mean financial information. It
 16 was an errata to Defendants First Street's and AITHR's
 17 initial early case conference, and that would have been
 18 provided to you on December 12, 2017.
 19 MR. CLOWARD: Do you want to just thumb
 20 through this? Because this exhibit that I have here, I
 21 don't see anything --
 22 MR. GOODHART: Yes.
 23 MR. CLOWARD: -- redacted, so maybe this is
 24 the full version. I don't know. Maybe you could --
 25 MR. GOODHART: This --

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1 MR. CLOWARD: -- compare them, or was it a
2 supplement?
3 MR. GOODHART: No. It was an errata. Like,
4 for example, on First Street 280, okay, which is part of the
5 exhibit you handed to me, it contains Mr. Benson's Social
6 Security number.
7 MR. CLOWARD: Uh-huh.
8 MR. GOODHART: That had been redacted in the
9 errata that was produced on December the 7th, so you have
10 the original here.
11 MR. CLOWARD: I have the original unredacted.
12 MR. GOODHART: Correct.
13 MR. CLOWARD: Okay. Perfect. Thanks.
14 And that's -- I'm glad you pointed that out,
15 because First 280 --
16 MR. GOODHART: Right. The only things that
17 were redacted were First 280 and First 296. I think we just
18 dealt with 296. And First 347 had a redaction on it, as
19 well.
20 MR. CLOWARD: Okay. So we'll redact the
21 first page of 280, with the -- leave that in there. We'll
22 just get a black marker and cross it off.
23 MR. GOODHART: Just cross off the Social
24 Security Number, yeah, and we've dealt with 296. The only
25 other one redaction was 347.

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1 **change in the exhibit material provided, something like**
2 **that, but this was, obviously, one he signed.**
3 Q Okay. If there is an amendment to Mr. Benton's
4 specific agreement, are you aware of that?
5 A **No. No. I wouldn't know.**
6 Q So is it fair to say what you have in front of you
7 is -- is the full breadth of the agreement between --
8 A **It should be.**
9 Q -- Mr. Benton --
10 A **Should be.**
11 Q Okay. Now, I noted at the first that the
12 agreement was between AITHR Dealer, Inc., and Mr. Benton.
13 Is there a reason why the agreement wasn't between First
14 Street and AITHR and the contractor?
15 A **AITHR is a separate -- separate entity under First**
16 **Street, so all business done out of that Denver office was**
17 **AITHR Dealer.**
18 Q Okay. Can you explain to me the --
19 MR. CLOWARD: We good to go?
20 THE VIDEOGRAPHER: Yeah, yeah.
21 BY MR. CLOWARD:
22 Q -- the relationship between First Street and
23 AITHR? Are there any contracts between those two companies?
24 Are they solely --
25 A **It's wholly owned by First Street. There's no**

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1 MR. CLOWARD: Okay.
2 MR. GOODHART: I apologize.
3 MR. CLOWARD: It's fine. It's not a problem.
4 MR. GOODHART: And on 347, again, Mr. Edward
5 Tilt's Social Security Number was redacted.
6 MR. CLOWARD: Sounds good.
7 BY MR. CLOWARD:
8 Q Okay. So on this document, what is that document
9 in front of you?
10 A **The agreement with our 1099 salespersons.**
11 Q Okay.
12 A **Direct seller agreement.**
13 Q Is it fair to say that this is the agreement that
14 governed the relationship between independent contractors
15 and First Street, slash, AITHR?
16 A **Yes. He signed it. Yes.**
17 Q Were there any other amendments or supplements to
18 this agreement?
19 A **We made them probably every -- maybe a couple of**
20 **years, we would update how the commission might work, if**
21 **something significantly had changed. But we'd try to,**
22 **frankly, do that within an exhibit way of doing things,**
23 **versus the basic agreement, which stayed intact.**
24 **So it's typically -- yeah, most of them -- all**
25 **should have been this way, largely. It may have been a**

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1 **contracts between the two. It's just a division of First**
2 **Street.**
3 Q So it's just a -- it's just a division within
4 First Street?
5 A **LLC. Is it LLC? Am I able to ask -- I mean,**
6 **technically --**
7 MS. HACKNEY: Can I answer?
8 MR. GOODHART: No.
9 THE DEPONENT: You can't answer?
10 A **I'm not sure I understand the technical term.**
11 **I'm -- we have our own number. It was -- I don't know if**
12 **it's an LLC. I could be wrong. I don't know what it was.**
13 BY MR. CLOWARD:
14 Q I'm not too concerned about that.
15 A **Okay.**
16 Q What I am interested in, though, is knowing, for
17 instance, do some folks have dual roles, maybe one position
18 within First Street and one position within AITHR?
19 A **Once we set this up and I became president of**
20 **AITHR, I worked with the First Street people. So I was**
21 **working with the marketing people who were under First**
22 **Street, so -- so I had a working relationship with First**
23 **Street. I worked with them directly in developing**
24 **marketing, as far as understanding what's going on there.**
25 **But if they were First Street people, they**

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1 would -- there were First Street people, like the marketing
2 people that did marketing activities that supported the
3 AITHR business, but they were under -- under the First
4 Street corporation, technically, if I answered your question
5 or not.

6 Q Kind of. I'm still trying to figure out, I guess,
7 the distinction between AITHR, First Street, what each
8 company does.

9 A It's a different -- it was a -- it was a different
10 business model unit by itself, supported by First Street's
11 marketing and some -- some other supportive services like
12 accounting.

13 But AITHR was a -- ended up forming a separate
14 company under First Street and they operated independently,
15 but we had our own business, our own CRM, our own phone
16 system. And, of course, the Denver office, which is the
17 AITHR Dealer, Inc., was an entity within AITHR, because we
18 also had dealers that reported in to AITHR that we worked
19 with outside -- outside dealers.

20 So at the beginning, we had dealers as well as our
21 own dealer, which Denver was one of, thus the dealer
22 designation. They were -- they controlled only part of the
23 country.

24 MR. COOLS: Can we take a break when you're
25 in a good spot?

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1 but documents that they have produced, they will agree to
2 authentication. Is that --

3 MR. GOODHART: Yeah.

4 MR. CLOWARD: -- state that correctly?

5 MR. GOODHART: If there's a document that
6 First Street and/or AITHR generated and we produced, we have
7 no problem with the authenticity of those.

8 And as I indicated to you, the only question
9 then becomes documents that First Street and/or AITHR
10 received from third parties at their request. We can say we
11 received this document that we have produced in this
12 litigation, but we can't necessarily authenticate that
13 particular document.

14 MR. CLOWARD: Okay.

15 MR. GOODHART: If that makes sense.

16 MR. CLOWARD: Yeah, that does.

17 BY MR. CLOWARD:

18 Q So just to clean this up, I think that the next
19 exhibit is probably the largest exhibit and is really
20 probably the most -- the one that we would have the most use
21 of, and that's Exhibit O.

22 MR. GOODHART: What Bates number does that
23 begin on?

24 MR. CLOWARD: Let's see.

25 MR. COOLS: Just for clarity, that's still

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1 MR. CLOWARD: Yeah. Let's just take a break
2 now.

3 MR. COOLS: Bathroom break.

4 THE VIDEOGRAPHER: We're going off the record
5 at 12:16 p.m.

6 (Recess from 12:16 p.m. to 12:18 p.m.)

7 THE VIDEOGRAPHER: This is the end of disc 1,
8 and we are ending this at 12:18 p.m.

9 (Recess from 12:18 p.m. to 12:30 p.m.)

10 THE VIDEOGRAPHER: This is the beginning of
11 disc number 2, and we're back on the record at 12:30 p.m.

12 MR. CLOWARD: Okay. There was a brief
13 discussion off the record. I voiced my concerns about
14 authenticating the documents. I understand that I cannot
15 compel an out-of-state Rule 30(b)(6) designee to attend
16 trial, and I voiced my concerns with both counsel for First
17 Street and AITHR as well as Jacuzzi that a lot of my work
18 through the RFAs as well as some of the deposition work is
19 to simply authenticate the documents so that we can use them
20 for time of trial.

21 Both counsel have indicated that we can have
22 further discussions, have indicated that counsel for Jacuzzi
23 is going to at least talk to his client about some sort of
24 stipulation on the documents. Counsel for First Street and
25 AITHR has indicated that -- and correct me if I'm wrong --

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1 Exhibit 1. It's tab O in Exhibit 1?

2 MR. CLOWARD: Correct. Where did my
3 little -- I have so many papers here. It's hard to keep it
4 all straight. There it is.

5 MR. GOODHART: It looks like it begins on --

6 THE DEPONENT: 424.

7 MR. GOODHART: First 424, which are the
8 emails?

9 MR. CLOWARD: Correct.

10 MR. GOODHART: Okay.

11 MR. CLOWARD: The emails, the range on that
12 is --

13 MR. GOODHART: It should go to First 1320.

14 MR. CLOWARD: First 1320 and then it starts
15 at First 424. Is that accurate, Counsel?

16 MR. GOODHART: Yeah. That's correct.

17 MR. CLOWARD: Okay. So as to the
18 authenticity, genuineness and -- these are true and correct
19 copies of the emails in First 424 through First 1320. Do we
20 have an agreement on that?

21 MR. GOODHART: Yeah. Those are -- those
22 emails are authentic of -- the contents of the emails are
23 authentic. We're not going to object to any of that. Any
24 of the attachments to the emails that First Street produced
25 or First Street generated, there will be no question about

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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

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' first STREET FOR BOOMERS & BEYOND, INC.'s &
AITHR DEALER, INC.'s PETITION FOR WRIT OF MANDAMUS**

**VOLUME 2
PAGES 251-500**

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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
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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:

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

/s/ Catherine Barnhill
An Employee of Richard Harris Law Firm

1 that either.

2 However, there are some attachments that
3 First Street received from Jacuzzi and other entities. I
4 can say that, as far as us receiving that, that is what was
5 received by First Street. As to whether that is the actual
6 authentic document that a third party actually generated, I
7 cannot authenticate that, obviously, because it's a third
8 party's document. Does that make sense?

9 MR. CLOWARD: Kind of.

10 MR. GOODHART: Like, for example, there was
11 an email where I believe Jacuzzi provided First Street with
12 a 30-second movie or commercial. What I can say is that,
13 yes, this is the 30-second movie or commercial that we
14 received from Jacuzzi. However, how Jacuzzi produced it,
15 how they manufactured it or generated it or videoed it, I
16 cannot say.

17 MR. CLOWARD: Sure.

18 MR. GOODHART: Does that -- that's kind of
19 what I'm trying to get at.

20 MR. CLOWARD: Yeah. That makes sense. You
21 can't speak to the -- to the creation of the document
22 itself, but you -- you're not going to -- you're not going
23 to object that the document was, in fact, received by First
24 Street.

25 MR. GOODHART: Correct.

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1 with Cunnisons. Building permits for the installation of
2 the tub, notes in our CRM system that we talked about.

3 Q Is that page 312? 312?

4 A Yes. Yes. 312, those are the notes in our CRM
5 system we talked about, so that would be their sort of
6 recordkeeping of that installation.

7 Wikipedia on rhabdo. I'm not sure what that is.
8 I'm not as familiar with that document.

9 MR. GOODHART: Which Bates number is that?

10 A It's 318 through 320 -- it's an old Wikipedia --
11 through 327. 318 through 327. I'm not familiar with that
12 information. That's on dehydration and I guess,
13 potentially, what the -- Cunnison may have suffered from,
14 I'm assuming. I don't recall seeing this documentation. I
15 may have missed it somewhere.

16 BY MR. CLOWARD:

17 Q Do you know where -- where it came from? You
18 don't know?

19 A What's -- I mean, I -- this is obviously from
20 Wikipedia is where this has come from about this particular
21 condition, but I don't recall reading this.

22 Q Okay.

23 A I may have -- I may have just recently received
24 it, but I thought I have gone through all the documentation
25 I've received, but I may have missed this. This would not

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1 MR. CLOWARD: And that the document -- you
2 know, whatever it says it says.

3 MR. GOODHART: Correct.

4 MR. CLOWARD: Okay.

5 MR. GOODHART: If that helps you.

6 MR. CLOWARD: Yeah. That does.

7 BY MR. CLOWARD:

8 Q And then -- so that's First 424 through First
9 1320. I skipped over some documents --

10 MR. GOODHART: Yeah.

11 BY MR. CLOWARD:

12 Q -- by mistake. Exhibit K, which is First 297
13 through 356. Sir, do you recognize those documents? And it
14 appears as though this -- some of these are the same that we
15 have gone over.

16 A Under section K?

17 Q Yes.

18 MR. COOLS: What are the Bates range?

19 MR. CLOWARD: 297 through 356.

20 MR. COOLS: Thanks.

21 A These look familiar, yes.

22 BY MR. CLOWARD:

23 Q What do you recognize these documents to be?

24 A Sales contracts initially, which would have been
25 the sales contracts that Hale Benton would have used to work

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1 be one of our documents, obviously. This is just
2 information, correct?

3 Q I don't know. It was produced as --

4 A Right.

5 Q -- as part of the documents that First Street --

6 A This might have -- this might have been -- yeah, I
7 can speculate this could have been a document that was put
8 into our CRM, possibly. I -- but I sure didn't -- I don't
9 remember seeing it.

10 Q Okay.

11 MR. GOODHART: If you want --

12 A It's come out of the documents in there, and I --
13 contract for sure but --

14 MR. GOODHART: Ben, I can track down and find
15 out how that got included in this for you.

16 MR. CLOWARD: That would be helpful. Thank
17 you.

18 I mean, I note that the -- the date is '14.

19 As we the lawyers know, Ms. Cunnison had a bout of rhabdo
20 before the incident and that was one of the diagnoses that
21 she had at the time of death.

22 MR. GOODHART: Right.

23 MR. CLOWARD: But the bottom of this
24 document, so it's -- I don't want to create confusion
25 unfairly, but the bottom of the document is dated 4/24/14,

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1 so I would imagine that this was probably relative to after,
2 but let me ask some questions about that.

3 BY MR. CLOWARD:

4 Q Are independent contractors -- are they trained to
5 obtain medical history from patients?

6 A No.

7 Q Okay. So it wouldn't necessarily be something
8 that the independent contractor would have gone through the
9 history of health concerns with the patient?

10 A No. They would talk about just challenges they
11 might have, but when you get into medical conditions,
12 they're not qualified to do that.

13 Q Okay.

14 MR. GOODHART: And, Ben, you had referenced
15 the initial representation of letter -- initial
16 representation letter, which you sent to AITHR, dated
17 April 9, 2014. And the Wikipedia research post-dates that
18 letter, so I'm thinking, as Mr. -- as David testified to
19 earlier, it may have been something that was prompted by
20 your letter or something.

21 MR. CLOWARD: Fair enough. That's --

22 MR. GOODHART: But I will double check on
23 that for you, let you know.

24 MR. CLOWARD: Sounds good.

25 BY MR. CLOWARD:

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1 Brands, Inc., and then we changed to First Street. And to
2 my recollection and understanding, Techno Brands still was
3 the -- was the incorporated name, and First Street came
4 under that for some period of time is my understanding.

5 Because Techno Brands was our original
6 corporate -- was our corporate name, First Street came after
7 that as a -- as a separate -- as a different name, and I --
8 my recollection and understanding, and I could absolutely be
9 wrong, that -- that we were still technically operating
10 under Techno Brands because this was -- this was drafted up
11 by an outside legal counsel, who -- who I thought would have
12 got that part of trying to make sure we get it right, what
13 was the technically legal name for our company, so that
14 would be my assumption why Techno Brands, because that was
15 our original corporate name.

16 Q Okay. Do you know: Is First Street still
17 technically considered Techno Brands or --

18 A I don't know that. I don't know. I thought --
19 just my understanding is that I thought at some point in
20 time First Street became sort of independent of that name,
21 but I don't know that. I mean, it's -- our legal counsel
22 could answer that, but I couldn't to be a hundred percent --
23 with a hundred percent accuracy but . . .

24 Q Okay. First Street was doing business as, I
25 guess, itself, though, true?

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1 Q Sir, the next thing, 328, First 328, what do you
2 recognize that to be?

3 A This looks like the person that would have
4 installed the tub. His license, general contractor license
5 shows that he's licensed to do work as a general contractor.

6 Q And that goes to, it looks like, First 330.

7 A Uh-huh.

8 MR. GOODHART: Is that a yes?

9 A Yes. I'm sorry. Yes.

10 BY MR. CLOWARD:

11 Q No problem. Next you have 331. First 331 through
12 approximately --

13 A 6.

14 Q Looks like 355?

15 A Uh-huh.

16 Q Is that accurate?

17 A Yes. Yeah, that -- that's similar to our sales
18 independent agreement. We have another agreement for our
19 contractors. It's similar but different, relative to what
20 they're performing installations for us.

21 Q Okay. Now, it appears as though the -- this
22 agreement starting on 331 through 355 is between Best Way
23 Building and Remodeling and Techno Brands Inc. d/b/a First
24 Street. Could you talk to that a little bit?

25 A Techno Brands was -- was our company name, Techno

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1 A Uh-huh.

2 MR. GOODHART: Is that a yes?

3 A Yes. Yes. I'm sorry.

4 BY MR. CLOWARD:

5 Q And then AITHR was a division within First Street?

6 A Yes.

7 Q Okay. Next is L, which is First 357 through 362,
8 and this appears just to be duplication of the CRM; is that
9 accurate?

10 A Yes.

11 Q Okay. While we're here, has the entire CRM file
12 been provided? Are those all of the pages?

13 A To my knowledge it's -- it -- I'd have -- I would
14 have to go back and compare. It should be and it -- it
15 appears to be. Let's -- you can also tell by looking at the
16 first date of -- let's see here. Yeah. 10/21 is -- would
17 be the beginning, because I think it was sold to her on --
18 right there at that date, so this would thus begin her
19 record of installation.

20 So it does start here and runs through to the end.
21 Yes, it should be complete.

22 Q And then next you have First 363. This is M. 363
23 through 385.

24 A Brand guide, uh-huh.

25 Q These are the brand guidelines First Street

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- 1 received from Jacuzzi, true?
- 2 **A Yes, uh-huh.**
- 3 **Q** And next is First 386 through 423, correct?
- 4 **A Yes. Mine is not numbered, so say that again,**
- 5 **please.**
- 6 **Q** They are. It's just hard to see. They're in red
- 7 in the corner.
- 8 **MR. GOODHART:** Can I point to him?
- 9 **A Yes. Okay. Yes. Sorry.**
- 10 **BY MR. CLOWARD:**
- 11 **Q** First 386 through --
- 12 **A Yes.**
- 13 **Q** -- First 423?
- 14 **A Yes.**
- 15 **Q** What are these?
- 16 **A This is the sales presentation Hale should have**
- 17 **provided to Cunnison in her home.**
- 18 **Q** Okay. Now, was this in video format, or was this
- 19 in --
- 20 **A It should have been on his laptop.**
- 21 **Q** Okay.
- 22 **A You pull up a slide at a time.**
- 23 **Q** So it's a PowerPoint?
- 24 **A PowerPoint with video embedded, so you can click**
- 25 **on certain parts of this and a -- and a video would play.**

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- 1 sales presentation at this point in time, but we use that
- 2 for a -- for two or three, four years for sure.
- 3 **Q** Okay.
- 4 **A It should have been used 10 and thereafter.**
- 5 **Q** Okay. So --
- 6 **A It's just the basis of -- it's just the basics --**
- 7 **basis of normalizing the situation that they're in, of -- of**
- 8 **the tendency to fall and, you know, unfortunate**
- 9 **circumstances when people do.**
- 10 **MR. GOODHART:** And I'll get you a copy of
- 11 that video.
- 12 **MR. CLOWARD:** Thank you.
- 13 **A Yeah. Then here's the one that Jacuzzi provided**
- 14 **on 412, which shows the jets, one of the key selling points**
- 15 **with Jacuzzi, obviously. They're synonymous with**
- 16 **hydrotherapy and so that was obviously a very important part**
- 17 **of our sales presentation, the therapeutic features of**
- 18 **hydrotherapy, which they also help us with, but the video**
- 19 **came from them.**
- 20 **MR. GOODHART:** And I'll also try and get a
- 21 copy of that video, as well.
- 22 **MR. CLOWARD:** Thank you.
- 23 **MR. COOLS:** I'll do the same.
- 24 **A I think there was one more video. I don't see the**
- 25 **obvious place, but I thought that we had a video at the very**

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- 1 **Q** Can we walk through the pages and can you tell me
- 2 which -- which pages have the video and which ones --
- 3 **A I could, I think, pretty close to it, but I can --**
- 4 **with reasonable accuracy, I should because, normally, they**
- 5 **show up as a -- there's only a couple, and I'm trying to**
- 6 **find where that would have been. There's a Katie Couric**
- 7 **news story on people falling. That was one of the videos.**
- 8 **It should have been one that we showed Jacuzzi jets. Let me**
- 9 **see if I can find --**
- 10 **Okay. So this is -- this is where it would have**
- 11 **been, so as you move into 406, 407, 408, that blank screen,**
- 12 **that's where a video would be.**
- 13 **Q** Do you know which one would --
- 14 **A That should be -- that should be the Katie Couric,**
- 15 **and it's about falls.**
- 16 **Q** Okay.
- 17 **A One of them is a -- is a news story from Katie**
- 18 **Couric that's just a national news about people falling.**
- 19 **MR. GOODHART:** What's the Bates number on
- 20 that, Mr. Modena?
- 21 **THE DEPONENT:** This is 408.
- 22 **BY MR. CLOWARD:**
- 23 **Q** And do you still have access to that video? Is
- 24 that still shown? Is that a yes?
- 25 **A I don't know, because I'm not involved with the**

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- 1 end for customer testimonials that we would play. There you
- 2 go. Right here. 421. We would -- we had customers that
- 3 had the Jacuzzi tub testimonials was played at the end, just
- 4 as sort of an affirmation of those people that have
- 5 purchased a Jacuzzi tub, what they liked about it.
- 6 **BY MR. CLOWARD:**
- 7 **Q** Were those paid testimonials, or were those actual
- 8 clients?
- 9 **A** These were -- these were testimonials we
- 10 actually -- we had a Jacuzzi -- prior to us becoming -- our
- 11 relationship with Jacuzzi, so prior to that agreement being
- 12 signed, Jacuzzi was working with some -- a couple other
- 13 dealers. One was in Northern California, Home Safety Bath,
- 14 and Ken Jenkins was the owner and he was one of their better
- 15 dealers.
- 16 **And Ken Jenkins at Home Safety Bath did a lot of**
- 17 **TV advertising, so they used -- so they -- they were**
- 18 **customers of theirs that they had sold Jacuzzi products to,**
- 19 **and he used it in his -- in his advertising, and so we were**
- 20 **allowed to use those testimonials, although they weren't our**
- 21 **specific customers at the time.**
- 22 **Q** They were customers of a walk-in tub?
- 23 **A Of a Jacuzzi walk-in tub.**
- 24 **Q** Okay. And then who are some of the other -- you
- 25 said there were a couple others, other than --

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- 1 A Testimonials?
- 2 Q -- Ken Jenkins.
- 3 A Oh, other dealers or --
- 4 Q Yeah.
- 5 A Back before then, I don't -- I couldn't tell you
- 6 who they were. I could tell you on a couple of them, but
- 7 Ken Jenkins -- Home Safety became one of our dealers as part
- 8 of us taking over Jacuzzi distribution and sales for this
- 9 walk-in tub category. They recommended us meet with them
- 10 and they could be one of our dealers for that part of the
- 11 country, Northern California.
- 12 He became -- he subsequently became a dealer.
- 13 That's why he allowed us to use his information, and they
- 14 had another dealer. That's not true. That was another one
- 15 in Tennessee, but that wasn't -- they were not a Jacuzzi --
- 16 Well, there was another dealer in Tennessee,
- 17 because they had sold Jacuzzi products and recommended we
- 18 talk to them, so that was another one. Those are probably
- 19 the only two I can think of that ended up becoming dealers
- 20 for us, taking over whole states and territories that had
- 21 sold Jacuzzi previously.
- 22 Q What was the one in Tennessee?
- 23 A American Home Design, based out of Nashville.
- 24 Q What can you tell me about Home Living Solutions?
- 25 A Yes. Bless you. That was a company that they

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- 1 describe this relationship, this --
- 2 A This was -- would be a page that we -- because at
- 3 this time we had dealers across the country, so -- so when
- 4 we would sit with a customer, just try to explain who we
- 5 were, so not to be taken that we weren't Jacuzzi, because
- 6 people could get that confused. You had a great brand and a
- 7 great product. You have the company First Street behind
- 8 doing the marketing, first-class marketing company. And in
- 9 this case, the dealer, like a Home Safety Bath, then that's
- 10 how they fit in, so they're there.
- 11 We do the marketing. They do the selling and
- 12 installation, and Jacuzzi, the manufacturer with the quality
- 13 product, so we're just trying to show the relationship and
- 14 so they could understand how this all works together and
- 15 who's behind it.
- 16 Hopefully, with the pedigree the first three has,
- 17 the dealer that he has his own, you know, history of being
- 18 in the market for 20 or 30 years, give that information, BBB
- 19 information. They would tell their company story and
- 20 Jacuzzi spoke for itself. They knew the name, the company.
- 21 Trusted the name.
- 22 Q Now, Jacuzzi dealer, would that be AITHR?
- 23 A No. It could have been -- this was a generic
- 24 slide that all of our dealers could have -- would have used.
- 25 They're just a dealer, so they were a dealer that sold

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- 1 were working with, and they were based out of Southern
- 2 California, Jacuzzi's headquarters. And they were
- 3 apparently working together to try to do what we did and
- 4 cobble together some marketing and some dealers and -- and
- 5 put together this dealer-type network that we eventually put
- 6 together.
- 7 And, in fact, Michael Schulze, the owner of that
- 8 company, we actually had come to know because we had -- when
- 9 we first started getting into the walk-in tub business, they
- 10 were a company that we actually bought tubs from, so
- 11 happens, Home Living Solutions. They provided us our first
- 12 walk-in tub that we actually sold and marketed to our
- 13 customers directly.
- 14 Q And then --
- 15 A But anyway -- but they ended up -- Mike Schulze
- 16 and Home Living Solutions ended up partnering up with
- 17 Jacuzzi. My sense it was some sort of an exclusive deal. I
- 18 don't know but it was some sort of deal like that, and it
- 19 wasn't going anywhere. There weren't any sales happening
- 20 and that's why Tom Koons, the CEO at that time, contacted me
- 21 and said we understand you might be available, and we're not
- 22 getting anywhere here. We would like to talk to you.
- 23 Q Do you know how to spell Michael's last name?
- 24 A S-c-h-u-l-z-e, I believe, should be correct.
- 25 Q Okay. On this last page 423, can you just

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- 1 Jacuzzi products, so they were authorized in that matter,
- 2 but their dealer relationship, although they purchased --
- 3 they purchased through us, Jacuzzi would ship directly to
- 4 them.
- 5 Invoicing would happen through us. That may be a
- 6 little too technical, but they were authorized to sell and
- 7 install Jacuzzi products. Their relationship was with us,
- 8 not Jacuzzi, because we did the marketing for them and all
- 9 the transactions occurred between us and the dealer.
- 10 Q So who was the dealer in this case?
- 11 A Depends on who was -- well, in this particular
- 12 case, it would have been us, AITHR Dealer, if this was the
- 13 slide that -- that he would have used, then that would have
- 14 been us. That would have been Denver operation AITHR
- 15 Dealer. That's why we gave it the dealer name. They were
- 16 dealing like any other dealer, as far as they were
- 17 concerned.
- 18 Q Are there other dealer divisions within First
- 19 Street?
- 20 A No.
- 21 Q So AITHR is the only dealer division within First
- 22 Street?
- 23 A Yes.
- 24 Q So looking at 423, Jacuzzi is at the top, correct?
- 25 And then First Street would be in the bottom left hand

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1 corner?

2 **A Marketing company. AITHR Dealer is the sales**

3 **organization, sales and installation.**

4 **Q That's represented on the right hand of the --**

5 **A Yes.**

6 **Q -- triangle?**

7 **A Uh-huh.**

8 **Q Okay. So I'm just trying to figure out, I guess,**

9 **what other dealers there are of --**

10 **A At the time, there were Ken Jenkins Home Safety**

11 **Bath, American Home Design. We had about 13 dealers when we**

12 **started. At this time, we probably still had 10 to 11**

13 **dealers that we sent leads to. And our Denver AITHR Dealer**

14 **organization was carrying -- was covering the states in the**

15 **middle of the country. Some of the large states represented**

16 **13 percent of the leads and population.**

17 **Q So what are -- what are the other -- you have**

18 **given me Home Safety Bath, Home Living Solutions, American**

19 **Home Design --**

20 **A Home Living Solutions -- Home Living Solutions was**

21 **not a dealer for us. They were a company that had a**

22 **relationship with Jacuzzi you had asked about earlier. They**

23 **were the company that was responsible in trying to**

24 **distribute and sell and market Jacuzzi tubs at the time.**

25 **They had some sort of exclusive arrangement. This wasn't**

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1 **least 10 during this time of this event we're talking about,**

2 **the Cunnison situation. There were -- I would have to go**

3 **back and look and see exactly how many we still had. But we**

4 **had most of them in place at the time. As time went on, if**

5 **the dealer was not doing a good job, we would -- we would**

6 **stop that relationship and take that territory ourself.**

7 **Q Okay. Let me just see if I nail this part down,**

8 **see if I understand it. So just let's use this 4- -- 423.**

9 **The top you had Jacuzzi. Bottom left is First Street.**

10 **Bottom right would be one of the dealers, which, at the time**

11 **the agreement started in, approximately, September of 2011,**

12 **there were 13 dealers. At the time this incident took**

13 **place, at the first of 2014, there were at least still 10**

14 **dealers.**

15 **A Give or take one or two. It may have been 14. I**

16 **don't know -- I want to -- we can -- we can be very precise,**

17 **if you'd like exactly how many there were, but most of them**

18 **were still in place at this time. They were still part of**

19 **the program. We probably had not, you know, stopped but**

20 **maybe one or two at the time, by that time.**

21 **Q Okay. Fair enough. Now, the two that you recall**

22 **as you sit here today are American Home Design, based out of**

23 **the Nashville, Home Safety Bath, based out of California,**

24 **and that's Ken Jenkins.**

25 **A Uh-huh.**

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1 **going anywhere.**

2 **Q So is it fair to say that Home -- Home Living**

3 **Solutions was kind of like the First Street before First**

4 **Street?**

5 **A In fact, they came to us to see if we could help**

6 **them with their marketing because they're not a marketing**

7 **company.**

8 **Q Okay. So American Home Design is a dealer,**

9 **though?**

10 **A Yes. They were at the time.**

11 **Q All right. You said there were --**

12 **A I think there were 13 when we started this program**

13 **with Jacuzzi, in setting up our own dealer network and**

14 **working with Jacuzzi exclusively, and then we covered the**

15 **country, with the exception of the -- ourself being a dealer**

16 **for those states in the middle of the country, and we can**

17 **define that for you at a later date if you'd like to know**

18 **who those were at the time.**

19 **Q Yeah. Your testimony today is, is that there are**

20 **still, I think you said, 10 to 12?**

21 **A Not now. Not now. There are no dealers now. We**

22 **are the only -- AITHR Dealer is the only company that's**

23 **doing Jacuzzi tubs for us, that's still doing our tub**

24 **program.**

25 **At that time -- at the time there were probably at**

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1 **Q As you sit here today, are there any others that**

2 **you can recall?**

3 **A Absolutely. The two that I told you I recalled**

4 **was those that were already doing business with Jacuzzi**

5 **prior to our relationship.**

6 **Q Okay.**

7 **A That's the two that were mentioned to you.**

8 **They -- they were already doing business with them, so**

9 **that's how we got access to them, their information, their**

10 **knowledge of them being pretty good partners, competent**

11 **enough to be a part of our dealer network. But, no, we**

12 **had -- we had -- I can name a bunch of them for you, if**

13 **you'd like. There's -- I mean, do you want me to name --**

14 **Q Hold on a second. Yeah, I do. Just one moment.**

15 **Thank you very much.**

16 **A This may not be a hundred percent complete, but I**

17 **can give you most of them, many of them. I'm getting older.**

18 **Q Okay. Yeah, if you have those names, that would**

19 **be great.**

20 **A Fairbanks. Fairbanks Construction.**

21 **Q Okay.**

22 **A Beldon, B-e-l-d-o-n. Hausner, H-a-u-s-n-e-r. OBR.**

23 **Q OD?**

24 **A O-B, as in boy.**

25 **Q Okay.**

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1 A OBR.
2 Q And are these construction companies?
3 A These are home improvement companies. These are
4 companies that know how to sell and install home
5 improvement. They do siding, windows, typically the type of
6 dealers we dealt with go into homes and sell and close and
7 install.
8 Q Gotcha. Okay.
9 A Airtite, one word, A-i-r-t-i-t-e. OBR.
10 Fairbanks. Home Safety. American Home Design. Beldon.
11 I'm trying to think of the one up in New York that we
12 just -- didn't last very long. I'm forgetting. Did I say
13 Atlas? Did I say Atlas?
14 Q Huh-uh.
15 A Atlas. I'm trying to think of the one in New
16 York. Can't think of their name. They didn't last long.
17 Shoot.
18 Beldon was one of our largest ones. They had,
19 like, 27 percent of the country. They were their first
20 dealer. Hausner. American Home Design. Atlas. OBR.
21 Airtite. Fairbanks. There was a guy in Georgia. He may
22 have been gone by then. Tub Doctor, Tub Doctor was one.
23 They were in Georgia. They didn't last long. He may not
24 have been around at this point in time. There's one up in
25 New York. I just can't think of their name.

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1 understand if you want to do it again, so every ad had a
2 unique number.
3 That unique number then went into a third party
4 contact, the call center that then knew, based on where the
5 call was coming in from, it was coming in from the state of
6 New York, that goes to Airtite. That call then just got
7 routed as they heard sort of the call may be monitored
8 for -- for, you know, quality control. While you're hearing
9 that, it was routing the call to the direct -- to the
10 dealer.
11 So those calls, based on the origination of the
12 caller and based on the territories those dealers were
13 responsible for, it would be routed to them directly and
14 immediately.
15 Q Okay. Now, is there a map of the territories?
16 Could that be also provided to counsel?
17 A Yes.
18 Q Okay. Thank you.
19 Now, back to the initial question. So the first
20 contact that an individual would have would actually be with
21 one of the dealers, not necessarily with First Street?
22 A Well, not -- well, in this case, be specific,
23 since we had Nevada at the time, so that lead would have
24 gone into Denver.
25 Q Through AITHR?

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1 Q It's okay.
2 A Yeah.
3 MR. CLOWARD: Counsel, if you could just
4 provide that.
5 MR. GOODHART: Yeah. Yeah, and just so I'm
6 clear on what I'm providing as well, I'm going to ask him
7 just one question about --
8 MR. CLOWARD: Sure.
9 MR. GOODHART: Would AITHR Dealer be a
10 dealer?
11 THE DEPONENT: Yes. That's us. Yes.
12 MR. GOODHART: Okay. Okay. I'll get that
13 information to you, Ben.
14 MR. CLOWARD: Thank you.
15 BY MR. CLOWARD:
16 Q Okay. So would -- would -- would an individual,
17 let's say that back around the time that this -- this
18 incident took place in 2013, 2014, let's say that someone
19 sees an ad in AARP. What number is generally listed as the
20 individual they call?
21 A The number is -- every ad we run has a unique
22 number for marketing purposes so we can measure response of
23 an ad. That's what we do as a company. The ad may be the
24 same, but the date and the place and the time and what
25 magazine we were in, you need to measure the response to

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1 A Right into the Denver AITHR Dealer office.
2 Q Okay.
3 A Because she -- her number -- her location was
4 inside the territory they were responsible for, so they
5 would have been the first point of contact. I think it was
6 an Internet lead, but that's -- may not be important, other
7 than it's either a phone call or web form that comes in,
8 still to the same place.
9 Q Now, let's say somebody, just using the knowledge
10 that we have gained recently in this deposition, assume
11 somebody called in New York, that would --
12 A We never -- we'd have a record of it corporately,
13 as a managing of the whole program. Denver would never have
14 received that call. It would have no record of it either.
15 Q So that would be routed to whoever the dealer --
16 A Airtite, yeah.
17 Q -- is up in New York? Was it Airtite that was in
18 New York? So that was the name of the New York one that you
19 couldn't remember?
20 A No, no. There was one that had New York City,
21 Long Island, and I just can't think of them, but they didn't
22 last long. They weren't very good.
23 Q Okay.
24 A There was another one down in Virginia Beach, Ray
25 Melani. I just cannot think of -- because he's changed the

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1 name of his company, so there's two names and we can get you
2 a full list.

3 Q Ray Melani?

4 A Ray Melani is the owner of the one that had
5 Virginia, Maryland area. M-e-l-a-n-i.

6 Q Okay. Now, after the tub is sold and installed,
7 and let's say there's a problem with the drain or a problem
8 with, you know, the faucet or whatever it is --

9 A Yes.

10 Q -- in any issue, let's say it's even a safety
11 issue, or let's say it's a -- you know, somebody got hurt,
12 do they call the dealer or are they told to call Jacuzzi or
13 are they told to call First Street?

14 A The customer normally would call the dealer.
15 That's who they dealt with. That's who they -- that's who
16 they -- that's who they know. That was the face.

17 So this Jacuzzi dealer, when they give them their
18 company story and Airtite would give them their information,
19 so in the leave-behind packet that you're pulling out now,
20 you would -- you would put -- you would put -- they would
21 put their name and information in there. That's what they
22 are supposed to do.

23 So, now, they would -- also would receive a
24 Jacuzzi manual, as well, which -- which would have a Jacuzzi
25 number. So as true in many cases in home improvement, they

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1 told them who to contact if there was an issue. They left
2 the warranty, because they left the manual behind, you know,
3 to go over the tub. The manual came with the product. They
4 could have referred them to that Jacuzzi number, which was
5 in there, but, again, most people typically would go back to
6 the sales contract that they received, which had a
7 customer -- had the home improvement company's information,
8 just like ours did.

9 You know, the contract that you have in one of the
10 other exhibits was the AITHR Dealer contract. That
11 information rang into -- into our production center, not
12 Jacuzzi.

13 Q Okay. So I'm going to show you these documents.
14 Be careful because it's kind of coming apart, but I'm going
15 to show you these documents and then I'm going to attach as
16 an exhibit, but as a photographed exhibit, because this is
17 the original, so I'm not going to leave it with you.

18 So take a look there. Let me know. I'm handing
19 you what will be marked as Exhibit 2, and we'll take
20 photographs of that and provide the photographs to the court
21 reporter. I can actually take photos now and then email the
22 court reporter and copy you and everybody on that email that
23 way --

24 MR. GOODHART: Okay.

25 MR. CLOWARD: -if you say that the photograph

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1 may call the person that sold it to them, because that's
2 their first point of contact. That's where they typically
3 go to. But in a manufacturer situation, too, they would --
4 especially if they thought it was warranty situation, they
5 would contact the manufacturer.

6 But, normally, the first point of contact, and I
7 would say most of the time, it would come back to the
8 dealer, because --

9 Q Okay.

10 A -- that's who they dealt with.

11 Q Okay. And that -- is that who they were trained
12 to deal with, I guess?

13 A Yes.

14 MR. GOODHART: Object to form.

15 MR. COOLS: Join.

16 A Yes.

17 BY MR. CLOWARD:

18 Q Did First Street train the independent contractors
19 to instruct or advise the end user, consumer, to contact the
20 dealer as the first point of contact for issues?

21 A I can't say for sure. They were -- they were
22 trained to -- to take certain paperwork, leave certain
23 paperwork. Take the last payment. Show them how to use the
24 tub.

25 I would -- it would be an assumption on if they

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1 isn't true and correct.

2 MR. GOODHART: We're coming up to 1:15 and
3 you wanted to break at 1:15. This is the first time that I
4 am able to see this document as well. I know you sent me
5 photographs last week of it, so I would like to also take a
6 look at it. I don't know if that's going to result in us
7 not have enough time to ask any questions specifically about
8 that document. I don't know.

9 MR. CLOWARD: I just want him to authenticate
10 that that's an actual document that First Street produced
11 and that it was left.

12 MR. GOODHART: Yeah.

13 MR. CLOWARD: That's it.

14 MR. GOODHART: Okay.

15 A A couple -- obviously, Clark County, that would
16 not be our document. That came from an inspection report.
17 That would not be ours. The sales contract would be. The
18 contract amendment would be. This would not be. This is --
19 there's some record of there home, I assume, but this would
20 not be something. This obviously is not our document.
21 Something -- this is obviously -- that's not an AITHR
22 document.

23 The folder, the leave-behind information on what
24 to do next, the testimonials, and then a contract, all those
25 would be our documents.

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1 Q Okay. Thank you. And they're -- these would have
2 been provided and were provided you agree?

3 A At the point of sale.

4 MR. CLOWARD: Okay. So because of the time
5 constraint, I'm going to just end the deposition or, I
6 guess, suspend the deposition, continue it. I'll take a
7 picture of this and email them to you and I'll copy both
8 counsel on this.

9 I hesitate to leave this in the possession of
10 the court reporter just because it's the original document,
11 but now that we have it, I don't think there's a dispute. I
12 think there was initially, but is everybody okay with that?

13 MR. GOODHART: Yeah.

14 MR. CLOWARD: Okay.

15 MR. GOODHART: Yeah. I don't have a problem
16 with that. Josh, do you?

17 MR. COOLS: Yeah. I don't have a problem, as
18 long as we all get to look at it first.

19 MR. CLOWARD: Absolutely. Okay. So we can
20 go off the record.

21 THE VIDEOGRAPHER: Okay. This is the end
22 of -- end of disc 2 in this part of the deposition, but it
23 will continue. We are going off the record at 1:14 p.m.

24 (Exhibit 2 was scanned to PDF.)
25

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

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1 And further this deponent saith not.
2 (Whereupon this deposition was suspended at 1:18 p.m.)
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1 ERRATA SHEET
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5 I declare under penalty of perjury that I have read the
6 foregoing _____ pages of my testimony, taken
7 on _____ (date) at
8 _____ (city), _____ (state),
9
10 and that the same is a true record of the testimony given
11 by me at the time and place herein
12 above set forth, with the following exceptions:
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14 Page Line Should read: Reason for Change:
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1 ERRATA SHEET

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EXHIBIT “7”

ECC
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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; HOMECCLICK, LLC;
JACUZZI INC., doing business as JACUZZI
LUXURY BATH; BESTWAY BUILDING &
REMODELING, INC.; WILLIAM BUDD,
Individually and as BUDD'S PLUMBING; DOES
1 through 20; ROE CORPORATIONS 1
through 20; DOE EMPLOYEES 1 through 20;
DOE MANUFACTURERS 1 through 20; DOE
20 INSTALLERS 1 through 20; DOE

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

**DEFENDANTS FIRSTSTREET FOR
BOOMERS AND BEYOND, INC., AND
AITHR DEALER, INC.'S THIRD
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,

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

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

15 TO: ALL PARTIES HEREIN; and

16 TO: THEIR COUNSEL OF RECORD:

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

21 **I.**

22 **WITNESS LIST**

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

...

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

4 2. Michael Smith individually, and heir to the Estate of Sherry Lyn Cunnison
5 c/o Benjamin P. Cloward, Esq.
6 Richard Harris Law Firm
7 801 S. 4th Street
8 Las Vegas, Nevada 89101
9 (702)444-4444

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

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

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

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

28 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.

...

...

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

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

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

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

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

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

...

1 8. Corporate Representative(s) and/or Custodian of Records
2 Jacuzzi Brands, LLC
3 c/o Vaughn A. Crawford, Esq.
4 SNELL & WILMER LLP
5 3883 Howard Hughes Parkway, Suite 1100
6 Las Vegas, NV 89169
7 (702) 784-5200

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

11 9. Corporate Representative(s) and/or Custodian of Records
12 Bestway Building & Remodeling, Inc.
13 c/o Stephen J. Erigero
14 Ropers, Majeski, Kohn & Bentley
15 3753 Howard Hughes Pkwy, Suite 200
16 Las Vegas, NV 89169
17 (702) 954-8300

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

21 10. Corporate Representative(s) and/or Custodian of Records
22 Budd's Plumbing
23 c/o Joseph P. Garin, Esq.
24 Lipson, Neilson, Cole, Selzer & Garin
25 9900 Covington Cross Drive, Suite 120
26 Las Vegas, Nevada 89144
27 (702) 382-1500

28 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

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

3 12. Corporate Representative(s) and/or Custodian of Records
4 Clark County Coroner
5 1704 Pinto Lane
6 Las Vegas, NV 89106
7 (702) 455-3210

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

11 13. Timothy Dutra, M.D., Coroner
12 Kristen Peters, Coroner Investigator
13 Daniel S. Isenschmid, Ph.D., D-ABFT, Forensic Toxicologist
14 Clark County Coroner
15 1704 Pinto Lane
16 Las Vegas, NV 89106
17 (702) 455-3210

18 Dr. Dutra, Kristen Peters, and Dr. Isenschmid are expected testify as to his/her
19 understanding of the facts and circumstances surrounding the subject incident, including the
20 investigation and subsequent findings thereof.

21 14. Corporate Representative(s) and/or Custodian of Records
22 Hale Benton
23 1176 Ponce de Leon Avenue
24 Las Vegas, NV 89123-1458
25 (702) 498-9012

26 Mr. Benton is expected to testify as to his understanding of the facts and circumstances
27 surrounding the subject incident, including all goods and services provided to any party involved in
28 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

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

5 16. Corporate Representative(s) and/or Custodian of Records
6 Las Vegas Fire & Rescue
7 500 N. Casino Center Boulevard
8 Las Vegas, NV 89101
(702) 383-2888

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

12 17. Corporate Representative(s) and/or Custodian of Records
13 MedicWest Ambulance
14 9 W. Delhi Avenue
15 North Las Vegas, NV 89032
(702) 650-9900

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

19 18. Carlos Fonseca, Paramedic MedicWest Ambulance
20 9 W. Delhi Avenue
21 North Las Vegas, NV 89032
22 (702) 650-9900

23 Medic Fonseca is expected to testify as to the care and treatment provided to Decedent.

24 19. Brennan Demille, EMT Intermediate
25 MedicWest Ambulance
26 9 W. Delhi Avenue
27 North Las Vegas, NV 89032
28 (702) 650-9900

Medic Demille is expected to testify as to the care and treatment provided to Decedent.

...

1 20. Corporate Representative(s) and/or Custodian of Records
2 Sunrise Hospital & Medical Center
3 3186 S. Maryland Parkway
4 Las Vegas, NV 89109
5 (702) 731-8000

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

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

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

15 22. James Walker, D.O.
16 Sunrise Hospital & Medical Center
17 3186 S. Maryland Parkway
18 Las Vegas, NV 89109
19 (702) 731-8000

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

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

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

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

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

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

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

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

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

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

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

24 28. Muhammad Bhatti, M.D.
25 Sunrise Hospital & Medical Center
26 3186 S. Maryland Parkway
27 Las Vegas, NV 89109
28 (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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1 29. Wayne Jacobs, M.D.
2 Sunrise Hospital & Medical Center
3 3186 S. Maryland Parkway
4 Las Vegas, NV 89109
5 (702) 731-8000

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

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

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

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

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

22 32. Chris J. Fischer, M.D.
23 Sunrise Hospital & Medical Center
24 23186 S. Maryland Parkway
25 Las Vegas, NV 89109
26 (702) 731-8000

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

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

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

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

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

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

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

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

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

24 37. David P. Gorczyca, M.D.
25 Sunrise Hospital & Medical Center
26 3186 S. Maryland Parkway
27 Las Vegas, NV 89109
28 (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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1 38. Dean P. Berthoty, M.D.
2 Sunrise Hospital & Medical Center
3 3186 S. Maryland Parkway
4 Las Vegas, NV 89109
5 (702) 731-8000

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

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

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

15 40. Corporate Representative(s) and/or Custodian of Records
16 Davis Funeral Homes & Memorial Park
17 6200 S. Eastern Avenue
18 Las Vegas, NV 89119
19 (702) 736-6200

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

24 41. Kristen Peters, Investigator
25 Clark County Coroner
26 1704 Pinto Lane
27 Las Vegas, NV 89106
28 (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.

...

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

6 Medic Blanchard is expected to testify as to the care and treatment provided to Decedent.

7 43. Vactor Montecerin, Paramedic
8 MedicWest Ambulance
9 9 W. Delhi Avenue
10 North Las Vegas, NV 89032
11 (702) 650-9900

12 Medic Montecerin is expected to testify as to the care and treatment provided to Decedent.

13 44. Jimmy Chavez, Paramedic
14 MedicWest Ambulance
15 9 W. Delhi Avenue
16 North Las Vegas, NV 89032 (702) 650-9900

17 Medic Chavez is expected to testify as to the care and treatment provided to Decedent.

18 45. Luke Crawford, EMT Intermediate
19 MedicWest Ambulance
20 9 W. Delhi Avenue
21 North Las Vegas, NV 89032
22 (702) 650-9900

23 Medic Crawford is expected to testify as to the care and treatment provided to Decedent.

24 46. Jenna Lamperti, EMT Intermediate
25 MedicWest Ambulance
26 9 W. Delhi Avenue
27 North Las Vegas, NV 89032
28 (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.

1 48. Corporate Representative(s) and/or Custodian of Records
2 Kindred Hospital Las Vegas-Flamingo
3 2250 E. Flamingo Road Las Vegas, NV 89119
4 (702) 784-4300

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

8 49. Corporate Representative(s) and/or Custodian of Records
9 Southern Nevada Medical & Rehab Center
10 2945 Casa Vegas Street
11 Las Vegas, NV 89109
12 (702) 735-7179

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

16 50. Corporate Representative(s) and/or Custodian of Records
17 Walgreens Pharmacy
18 4895 Boulder Highway
19 Las Vegas, NV 89121
20 (702) 898-5264

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

24 51. Corporate Representative(s) and/or Custodian of Records
25 MountainView Hospital
26 3100 N. Tenaya Way
27 Las Vegas, NV 89128
28 (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.

1 52. Corporate Representative(s) and/or Custodian of Records
2 Desert Springs Hospital
3 2075 E. Flamingo Road
4 Las Vegas, NV 89119
5 (702) 733-8800

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

9 53. Daniel D. Lee, M.D.
10 Sunrise Hospital & Medical Center
11 3186 S. Maryland Parkway
12 Las Vegas, NV 89109
13 (702) 731-8000

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

16 54. Shameyel Roshan, D.O.
17 Sunrise Hospital & Medical Center
18 3186 S. Maryland Parkway
19 Las Vegas, NV 89109
20 (702) 731-8000

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

23 55. Arjun V. Gururaj, M.D.
24 Sunrise Hospital & Medical Center
25 3186 S. Maryland Parkway
26 Las Vegas, NV 89109
27 (702) 731-8000

28 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

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

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

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

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

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

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

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

24 60. Douglas M. Sides, M.D.
25 Sunrise Hospital & Medical Center
26 3186 S. Maryland Parkway
27 Las Vegas, NV 89109
28 (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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1 61. Richard A. Schwartz, M.D.
2 Sunrise Hospital & Medical Center
3 3186 S. Maryland Parkway
4 Las Vegas, NV 89109
5 (702) 731-8000

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

8 62. Ronald F. Sauer, Jr., D.O.
9 Sunrise Hospital & Medical Center
10 3186 S. Maryland Parkway
11 Las Vegas, NV 89109
12 (702) 731-8000

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

15 63. Corporate Representative(s) and/or Custodian of Records
16 Las Vegas Metropolitan Police Department
17 400 S. Martin Luther King Boulevard
18 Las Vegas, NV 89106
19 (702) 828-3111

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

24 64. Officer, Matthew Scanlon
25 Las Vegas Metropolitan Police Department
26 400 S. Martin Luther King Boulevard
27 Las Vegas, NV 89106
28 (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.

...

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

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

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

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

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

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

25 68. Officer, Shakeel Abdal-Karim
26 Las Vegas Metropolitan Police Department
27 400 S. Martin Luther King Boulevard
28 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.

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

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

9 70. Sergeant, Dana Pickerel
10 Las Vegas Metropolitan Police Department
11 400 S. Martin Luther King Boulevard
12 Las Vegas, NV 89106
13 (702) 828-3111

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

17 71. Sergeant, Allen Larsen
18 Las Vegas Metropolitan Police Department
19 400 S. Martin Luther King Boulevard
20 Las Vegas, NV 89106
21 (702) 828-3111

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

25 72. Corporate Representative(s) and/or Custodian of Records
26 Clark County Fire Department
27 575 E. Flamingo Road
28 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.

1 73. Nicholas Stahlberger, Paramedic
2 Clark County Fire Department
3 575 E. Flamingo Road
4 Las Vegas, NV 89119
5 (702) 455-7311

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

9 74. William Lewis
10 5354 Camden Avenue
11 Las Vegas, NV 89122
12 (702) 580-0017

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

16 75. Michael Zuvar
17 746655 Willow Drive
18 Doyle, CA 96109
19 (775) 560-7791

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

22 76. Michael Showalter
23 5500 Celestial Way
24 Citrus Heights, CA 95610
25 (831) 595-1015 (cell)
26 (916) 903-7186 (home)

27 Michael Showalter is expected to testify as to the facts and circumstances surrounding the
28 subject incident.

 77. Frederick J. Tanenggee, M.D.
 Health Care Partners Nevada
 129 W. Lake Mead, Suite 10
 Henderson, NV 89015

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

3 78. Sachit Das, M.D.
4 Kindred Hospital Las Vegas-Flamingo
5 2250 E. Flamingo Road
6 Las Vegas, NV 89119
7 (702) 784-4300

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

10 79. Robert M. Yeh, M.D.
11 Kindred Hospital Las Vegas-Flamingo
12 2250 E. Flamingo Road
13 Las Vegas, NV 89119
14 (702) 784-4300

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

17 80. Prashant Bharucha, M.D.
18 Desert Springs Hospital
19 2075 E. Flamingo Road
20 Las Vegas, NV 89119
21 (702) 733-8800

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

24 81. Randal Shelin, M.D.
25 Desert Springs Hospital
26 32075 E. Flamingo Road
27 Las Vegas, NV 89119
28 (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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1 82. Armen Hovanessian, M.D.
2 Desert Springs Hospital
3 2075 E. Flamingo Road
4 Las Vegas, NV 89119
5 (702) 733-8800

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

8 83. Michael Showalter
9 5500 Celestial Way
10 Citrus Heights, CA 95610
11 (916) 903-7186

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

14 84. Scott Cunnison
15 23840 Southpoint Drive
16 Denham Springs, LA 70726

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

19 85. James T. Cunnison
20 418 Burnham Street
21 Hampton, VA 23669

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

24 86. John S. Cunnison
25 501 S.W. 16th Street
26 Blue Springs, MO 64015

27 Mr. Cunnison is expected to testify as to his understanding of the facts and circumstances
28 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

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

4 88. Benjamin Muir, M.D.
5 HealthCare Partners
6 700 E. Warm Springs Road, Suite 110
7 Las Vegas, NV 89119
8 (702) 318-24

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

11 89. Michael Carducci, M.D. HealthCare Partners
12 700 E. Warm Springs Road, Suite 110
13 Las Vegas, NV 89119
14 (702) 318-2400

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

17 90. Corporate Representative and/or Custodian of Records
18 Comprehensive & Interventional Pain Management
19 10561 Jeffreys Street, Suite 211
20 Henderson, NV 89052
21 (702) 990-4530

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

25 91. Daniel Fabito, M.D.
26 Comprehensive & Interventional Pain Management
27 10561 Jeffreys Street, Suite 211
28 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.

1 92. Othella A. Jurani-Suarez, M.D. HealthCare Partners
2 9280 W. Sunset Road
3 Las Vegas, NV 89148
4 (702) 534-5464

5 Dr. Jurani-Suarez expected to testify as to the care and treatment provided to Decedent,
6 Sherry Lyn Cunnison.

7 93. Michael Her, M.D.
8 1236 N. Magnolia Avenue
9 Anaheim, CA 92801
10 (714) 995-1000

11 Dr. Her expected to testify as to the care and treatment provided to Decedent, Sherry Lyn
12 Cunnison.

13 Further, Defendants reserves the right to designate the following witnesses upon
14 identification through discovery:

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

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

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

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

24 Defendants reserve the right to call any witnesses named by Plaintiff or any other party for
25 the purpose of rebuttal, impeachment, and/or as an expert witness.

26 Defendants may call at trial as non-retained expert witnesses any and all of Plaintiff's
27 treating medical professionals, and/or any other expert witness, retained or non-retained, identified
28

1 by any party during litigation.

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

4 **II.**

5 **DOCUMENTS**

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

- 1 M. The Jacuzzi Brand Guide, bates numbered FIRST000363-FIRST000385;
- 2 N. Sales Presentation, bates numbered FIRST000386-FIRST000423;
- 3 O. Various internal and external emails regarding Jacuzzi Walk In Tub between
- 4 October 1, 2011 (Effective Date of Jacuzzi / firstSTREET Manufacturing
- 5 Agreement) and February 21, 2014 (date Plaintiffs allege Ms. Cunnison became
- 6 trapped in the Jacuzzi Walk In Tub), bates numbered FIRST000424 to
- 7 FIRST001320;
- 8
- 9 P. Emails located on the desktop computer of David Modena, bates numbered
- 10 FIRST001321-FIRST004666;
- 11 Q. Installer Checklist for Cunnison Installation, bates numbered FIRST004667-
- 12 FIRST004670;
- 13
- 14 R. Leave Behind Boucher for Jacuzzi Walk in Bathtubs, bates numbered
- 15 FIRST004671-004696; and
- 16 S. Testimonials, bates numbered FIRST004697-FIRST004704.

17 Further, Defendants will produce the following upon receipt:

18 Any and all other relevant documents and tangible things unknown to Defendants at this

19 time which are or become relevant to this litigation.

20

21 No inclusion of any documents within this disclosure made pursuant to NRCP 16.1 and no

22 acceptance of any documents provided by any other party hereto in a disclosure made pursuant to

23 NRCP 16.1 shall be deemed as a waiver by Defendants of any evidentiary rights Defendants may

24 have with respect to those documents, including, but not limited to, objections related to

25 authenticity, materiality, relevance, foundation, hearsay, or any other right as may be permitted

26 pursuant to the Nevada Rules of Evidence.

27

28 Defendants reserves the right to supplement this list as discovery progresses, upon

1 reasonable notice to all parties.

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

5 DATED this 26th day of December, 2018.

6 THORNDAL ARMSTRONG DELK
7 BALKENBUSH & EISINGER

8
9 */s/ Philip Goodhart*

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

Pursuant to NRCP 5(b), on the 26th day of December, 2018, service of the above and foregoing DEFENDANTS FIRSTSTREET FOR BOOMERS AND BEYOND, INC., AND AITHR DEALER, INC.'S THIRD 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.
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 BRANDS LLC

Hale Benton
26479 West Potter Drive
Buckeye, AZ 85396

/s/ Stefanie Mitchell

An employee of THORNDAL ARMSTRONG
DELK BALKENBUSH & EISINGER

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EXHIBIT “8”

INTR

PHILIP GOODHART, ESQ.

Nevada Bar No. 5332

MEGHAN M. GOODWIN, ESQ.

Nevada Bar No. 11974

THORNDAL ARMSTRONG DELK

BALKENBUSH & EISINGER

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Las Vegas, NV 89125-2070

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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; HOMECCLICK, LLC;
JACUZZI INC., doing business as JACUZZI
LUXURY BATH; BESTWAY BUILDING &
REMODELING, INC.; WILLIAM BUDD,
Individually and as BUDDS PLUMBING; DOES
1 through 20; ROE CORPORATIONS 1
through 20; DOE EMPLOYEES 1 through 20;
DOE MANUFACTURERS 1 through 20; DOE

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

1 INC.; WILLIAM BUDD, individually and as
2 BUDD'S PLUMBING; ROES I through X,

3 Cross-Defendants.

4 WILLIAM BUDD, individually and as BUDDS
5 PLUMBING,

6 Cross-Claimants,

7 vs.

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

20 Cross-Defendants.

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

23 Cross-Claimants,

24 v.

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

28 Cross-Defendants.

...

...

1 **DEFENDANT, FIRSTSTREET FOR BOOMERS AND BEYOND, INC.'S ANSWERS**
2 **TO PLAINTIFF DEBORAH TAMANTINI'S FIRST SET OF INTERROGATORIES**

3 TO: DEBORAH TAMANTINI, Plaintiff; and

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

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

10 **INTERROGATORY NO.:**

11 1. In the Manufacturing Agreement between FirstStreet and Jacuzzi, Bates stamped as
12 Jacuzzi001588 thru Jacuzzi001606, the document indicates that FirstStreet desired Jacuzzi to
13 manufacture walk-in tubs and other bath products for FirstStreet and its network of dealers and
14 distributors – please list all dealers and distributors within the network of FirstStreet.

15 **ANSWER:** Objection. This Interrogatory is overbroad with respect to timeframe. Without waiving
16 said objections, the only dealer or distributor within the network of FirstStreet is AITHR. As
17 FirstStreet's discovery on this issue is ongoing, Defendant reserves the right to amend and/or
18 supplement this response as additional information becomes known.

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

22 **ANSWER:** Objection. The term "testing" is vague and ambiguous and implies that design and/or
23 manufacturing testing was performed on the two tubs that were provided to FirstStreet under the
24 terms of the Manufacturing Agreement. As noted in FirstStreet's Answers to Ansara's
25 Interrogatories, FirstStreet did not design or develop the subject Jacuzzi Walk-In Tub, and, therefore,
26 performed no tests associated with the design, development or manufacturing of the subject tub.
27 The tubs were provided to FirstStreet for photography and use in the advertising and marketing
28 materials that FirstStreet performed pursuant to the Manufacturing Agreement.

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

4 **ANSWER:** Objection. The phrase “using the two tubs” is vague and ambiguous. Without waiving
5 said objection, FirstStreet is not aware of any training that was provided by Jacuzzi relative to the
6 “use” of the two tubs that were provided to FirstStreet.

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

11 **ANSWER:** Objection. This Interrogatory is overbroad with respect to timeframe. Without waiving
12 said objections, the only dealer or distributor to have placed advertisements for Jacuzzi walk-in
13 products would have been Defendant FirstStreet. As FirstStreet’s discovery on this issue is ongoing,
14 Defendant reserves the right to amend and/or supplement this response as additional information
15 becomes known.

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

20 **ANSWER:** This answering Defendant is unaware of any other company that had the right to sell
21 Jacuzzi walk-in tub products in the United States while the Manufacturing Agreement was in place.
22 However, FirstStreet is aware of other companies that advertised the Jacuzzi walk-in tub products in
23 the United States, and notified Jacuzzi of this issue.

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

28 **ANSWER:** Objection. This Interrogatory is overbroad with respect to timeframe. Without waiving

1 said objection, FirstStreet has no knowledge of the companies that had the right to sell Jacuzzi walk-
2 in products outside of the United States.

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

6 **ANSWER:** Objection. This Interrogatory is overbroad with respect to timeframe. Without waiving
7 said objections, FirstStreet is attempting to search its database of prior salespersons who would have
8 sold Jacuzzi products in the Las Vegas area wherein this incident took place, and will supplement
9 this response should any additional salespersons become know. As FirstStreet's discovery on this
10 issue is ongoing, Defendant reserves the right to amend and/or supplement this response as
11 additional information becomes known.

12 8. Identify the person at FirstStreet who is in charge of the remodeling division and the
13 network of contractors.

14 **ANSWER:** Objection. This Interrogatory is overbroad with respect to timeframe.
15 The interrogatory is also vague and ambiguous with respect to the term "remodeling division", and
16 the interrogatory further implies that FirstStreet in fact had a "remodeling division" and that it
17 further utilized a "network of subcontractors". Without waiving said objections, FirstStreet did not
18 have a "remodeling division" during the time period in which the Jacuzzi product at issue was
19 installed in Ms. Cunnison's home.

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

22 **ANSWER:** Objection. This Interrogatory is overbroad with respect to timeframe and lcoation.
23 Without waiving said objections, the only contractor to provide FirstStreet with installation services
24 for the Jacuzzi product at issue, during the time frame that Ms. Cunnison's tub was installed, was
25 AITHR.

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

28 **ANSWER:** Objection. This Interrogatory is overbroad with respect to timeframe. The interrogatory

1 is also vague and ambiguous with respect to the term "kickback". Without waiving said objections,
2 FirstStreet did not receive any "kickback".

3 DATED this 13th day of November, 2018.

4 THORNDAL ARMSTRONG DELK
5 BALKENBUSH & EISINGER

6 
7 PHILIP GOODHART, ESQ.

8 Nevada Bar No. 5332

9 MEGHAN M. GOODWIN, ESQ.

10 Nevada Bar No. 11974

11 1100 East Bridger Avenue

12 Las Vegas, Nevada 89101

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

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.
Richard Harris Law Firm
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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 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

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EXHIBIT “9”

1 **INTR**

2 MEGHAN M. GOODWIN, ESQ.
3 Nevada Bar No. 11974
4 THORNDAL ARMSTRONG DELK
5 BALKENBUSH & EISINGER
6 Mailing Address: PO Box 2070
7 Las Vegas, Nevada 89125-2070
8 1100 East Bridger Avenue
9 Las Vegas, NV 89101-5315
10 Mail To:
11 P.O. Box 2070
12 Las Vegas, NV 89125-2070
13 Tel.: (702) 366-0622
14 Fax: (702) 366-0327
15 mmg@thorndal.com

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

20 **DISTRICT COURT**

21 **CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

29 FIRST STREET FOR BOOMERS & BEYOND,
30 INC.; AITHR DEALER, INC.; HALE
31 BENTON, Individually; HOMECCLICK, LLC;
32 JACUZZI INC., doing business as JACUZZI
33 LUXURY BATH; BESTWAY BUILDING &
34 REMODELING, INC.; WILLIAM BUDD,
35 Individually and as BUDDS PLUMBING; DOES
36 1 through 20; ROE CORPORATIONS 1
37 through 20; DOE EMPLOYEES 1 through 20;
38 DOE MANUFACTURERS 1 through 20; DOE
39 20 INSTALLERS 1 through 20; DOE
40 CONTRACTORS 1 through 20; and DOE 21
41 SUBCONTRACTORS 1 through 20, inclusive,

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

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

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Defendants.

HOMECLICK, LLC,

Cross-Plaintiff,

vs.

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

Cross-Defendants.

HOMECLICK, LLC, a New Jersey limited liability company,

Third-Party Plaintiff,

vs.

CHICAGO FAUCETS, an unknown entity,

Third-Party Defendant.

BESTWAY BUILDING & REMODELING, INC.,

Cross-Claimant,

vs.

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

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

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

TO: ROBERT ANSARA, Plaintiff; and

TO: RICHARD HARRIS LAW FIRM, attorneys for Plaintiff:

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

INTERROGATORY NO.:

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

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

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

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

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
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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
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10. Corporate Representative(s) and/or Custodian of Records
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c/o Joseph P. Garin, Esq.
Lipson, Neilson, Cole, Selzer & Garin
9900 Covington Cross Drive, Suite 120
Las Vegas, Nevada 89144 (702) 382-1500

- 1 11. William Bud
2 c/o Joseph P. Garin, Esq.
3 Lipson, Neilson, Cole, Selzer & Garin
4 9900 Covington Cross Drive, Suite 120
5 Las Vegas, Nevada 89144 (702) 382-1500
- 6 12. Corporate Representative(s) and/or Custodian of Records
7 Clark County Coroner
8 1704 Pinto Lane
9 Las Vegas, NV 89106
10 (702) 455-3210
- 11 13. Timothy Dutra, M.D., Coroner
12 Kristen Peters, Coroner Investigator
13 Daniel S. Isenschmid, Ph.D., D-ABFT, Forensic Toxicologist
14 Clark County Coroner
15 1704 Pinto Lane
16 Las Vegas, NV 89106
- 17 14. Hale Benton
18 1176 Ponce de Leon Avenue
19 Las Vegas, NV 89123-1458
20 (702) 498-9012
- 21 15. Corporate Representative(s) and/or Custodian of Records
22 Palm Eastern Cemetery
23 7600 S. Eastern Avenue
24 Las Vegas, NV 89123
25 (702) 464-8500
- 26 16. Corporate Representative(s) and/or Custodian of Records
27 Las Vegas Fire & Rescue
28 500 N. Casino Center Boulevard
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(702) 383-2888
17. Corporate Representative(s) and/or Custodian of Records
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18. Carlos Fonseca, Paramedic MedicWest Ambulance
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19. Brennan Demille, EMT Intermediate
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20. Corporate Representative(s) and/or Custodian of Records
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21. Muhammad A. Syed, M.D. Sunrise Hospital & Medical Center
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- 4 28. Muhammad Bhatti, M.D.
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- 19 31. Mark Vandebosch, M.D.
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- 24 32. Chris J. Fischer, M.D.
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- 8 37. David P. Gorczyca, M.D.
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- 13 38. Dean P. Berthoty, M.D.
14 Sunrise Hospital & Medical Center
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- 18 39. Robert N. Berkley, M.D.
19 Sunrise Hospital & Medical Center
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22 (702) 731-8000
- 23 40. Corporate Representative(s) and/or Custodian of Records
24 Davis Funeral Homes & Memorial Park
25 6200 S. Eastern Avenue
26 Las Vegas, NV 89119
27 (702) 736-6200
- 28 41. Kristen Peters, Investigator
Clark County Coroner 1704 Pinto Lane
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(702) 455-3210
42. Jesse Blanchard, Paramedic
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43. Victor Montecerin, Paramedic
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44. Jimmy Chavez, Paramedic
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45. Luke Crawford, EMT Intermediate
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46. Jenna Lamperti, EMT Intermediate
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47. Jacob Stamer, EMT
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48. Corporate Representative(s) and/or Custodian of Records
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(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
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Las Vegas, NV 89106
(702) 828-3111

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

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Doyle, CA 96109
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61. Michael Showalter
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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

1 subject design.

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

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

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

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

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

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

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

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

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

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

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

ANSWER: N/A

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

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

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

If so, please state:

1 (a) The date of each such notice

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

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

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

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

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

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

16 If so, please state as to each:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 22. Do you contend that the Plaintiff misused or abused the subject Jacuzzi Walk-In-
7 Tub and/or applied a use that was neither intended nor reasonably foreseeable by you, or was
8 otherwise contributorily negligent? If so, please state the particulars therefor.
9

10 **ANSWER:** Objection. This Interrogatory calls for expert opinion, legal conclusion, invades
11 attorney-client privilege, and invades attorney work product doctrine. This Answering Defendant
12 has no personal knowledge as to how the subject incident occurred.
13

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

17 **ANSWER:** Objection. This Interrogatory calls for an expert opinion and/or legal conclusion. This
18 Answering Defendant was never in possession of the subject Walk-In-Tub as it was shipped directly
19 from Jacuzzi to installer Bestway Building & Remodeling, Inc., therefore this Answering Defendant
20 has no personal knowledge as to the condition of the tub.
21

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

- 25 (a) the name and last known address of each;
26
27 (b) a brief description of the facts known to the Defendant in support of such
28 contention as to each such party named in answer to this Interrogatory; and

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

3 **ANSWER:** This Answering Defendant has no personal knowledge as to any "person, partnership,
4 corporation or other entity," aside from Sherry Cunnison and/or the Defendants to this litigation,
5 including Jacuzzi, Homeclick, Bestway Building, Chicago Faucet, and Budd's Plumbing.
6

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

10 **ANSWER:** Objection. This Interrogatory calls for a legal conclusion and expert opinion. This
11 Answering Defendant contends it has no liability for the subject incident as this Answering
12 Defendant did not design, manufacture, install, or ever have possession of the subject tub. This
13 Answering Defendant has no personal knowledge of the facts pertaining to the subject incident.
14 Discovery is ongoing and this Answer to Interrogatory will be supplemented.
15

16 26. Please identify each of your employees and/or agents who has conducted any
17 analysis or investigation of subject Jacuzzi Walk-In-Tub or conducted any interviews with other
18 persons who claim to have knowledge of facts in connection with the subject incident.
19

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 ...

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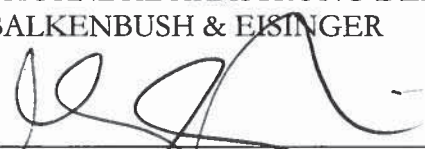
28 ...

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

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

4 DATED this 10th day of October, 2018.

5 THORNDAL ARMSTRONG DELK
6 BALKENBUSH & EISINGER

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

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

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

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

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

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



An employee of THORNDAL ARMSTRONG
DELK BALKENBUSH & EISINGER

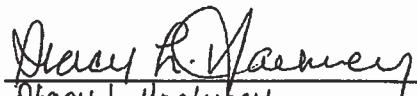
DECLARATION

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

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

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

DATED this 10th day of October, 2018.


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

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EXHIBIT “10”

RSPN

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

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

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

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

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

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Defendants.

HOMECLICK, LLC,

Cross-Plaintiff,

vs.

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

Cross-Defendants.

HOMECLICK, LLC, a New Jersey limited
liability company,

Third-Party Plaintiff,

vs.

CHICAGO FAUCETS, an unknown entity,

Third-Party Defendant.

BESTWAY BUILDING & REMODELING,
INC.,

Cross-Claimant,

vs.

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

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

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

TO: ROBERT ANSARA, Plaintiff; and

TO: RICHARD HARRIS LAW FIRM, attorneys for Plaintiff;

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

REQUEST NO.:

1. All documents identified in your answers to Interrogatories.

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

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

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

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

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

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

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

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

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

5 **RESPONSE:** Objection. This Request is premature, as discovery is ongoing and this Request calls
6 for a legal conclusion, as well as invades attorney-client privilege and/or attorney work product.
7 Please see Plaintiff’s medical records produced to date.
8

9 6. Any and all documents, manuals, policies, memoranda letters or the like setting forth
10 proper standards, policies and/or procedures, concerning the use of the subject Jacuzzi Walk-In-
11 Tub at issue. (These should be documents that were effective on the date of loss of February 27,
12 2014.)
13

14 **RESPONSE:** Objection. This Request is vague, ambiguous, and overbroad with respect to the
15 phrase “concerning the use of the subject Jacuzzi Walk-In Tub.” This Responding Defendant is not
16 in possession of documents responsive to this Request other than those previously produced in the
17 course of litigation.
18

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

22 **RESPONSE:** Objection. This Request is vague, ambiguous, and overbroad with respect to
23 timeframe. This responding Defendant is not in possession of any documents responsive to this
24 Request other than those documents previously produced in litigation, specifically Exhibits “C,”
25 “D,” “E,” “J,” “K,” and “L.”
26

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

24 18. Any and all documentary evidence regarding failures and malfunctions of the Jacuzzi
25
26
27
28

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

4 **RESPONSE:** Objection. This Request seeks expert opinion and calls for a legal conclusion.
5 Further, this Request is vague, ambiguous, and overbroad as to time, subject matter, and the term
6 “failures and malfunctions.” This Responding Defendant is not in possession of evidence
7 documenting any definitive “failure or malfunction.”
8

9 19. Any and all documents and communications containing the name, home and
10 business address and qualifications of all persons who have been retained or specially employed by
11 Defendant(s) in *anticipation* of litigation or *preparation* for trial and who are *not* expected to be called as
12 witnesses at trial or as to whom no such decision has yet been made, and attach any documents or
13 communications received from said person(s). If there are no documents or communications, then
14 the name of said person(s) as well as their home and business addresses should be provided.
15

16 **RESPONSE:** Objection. This Request seeks to invade attorney-client privilege and/or attorney
17 work product, as the time for expert disclosures has not yet passed.
18

19 20. The entire claims and investigation file or files including but not limited to daily
20 activity sheets, diary sheets, and status sheets of any insurance adjuster and/or risk
21 employee/manager, internal memoranda regarding this claim created, sent and/or received by any
22 insurance adjuster or other adjuster, risk employee/manager and/or by the Defendant(s) or an
23 agent/employee of the Defendant(s), communications to and from all insurance carriers, parties,
24 Defendant(s), or potential parties, request(s) for investigation, and/or reports/findings of
25 investigators, both in-house and/or independent and/or all insurance policies of the Defendant(s),
26 excluding references to mental impressions, conclusions, or opinions representing the value or merit
27 of the claim or defense or respecting strategy or tactics and privileged communications from
28

1 counsel.

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

12
13
14 21. All statements and communications of any and all witnesses including any and all
15 statements of Plaintiff(s) and Defendant(s), including taped recordings, whether transcribed or not,
16 as well as all written statements.

17 **RESPONSE:** Objection. This Request seeks to invade attorney client privilege and attorney work
18 product. This Responding Defendant is not in possession of any documents responsive to this
19 request, other than those documents previously produced in litigation.
20

21 22. The name, home and business address of the insurance carrier investigators
22 employed by the Defendant(s) or its insurance carrier to investigate this claim, treatment of the
23 Plaintiff(s), witnesses, or any other aspect of the incidents that form the basis of Plaintiff(s)
24 Complaint. Also, attach any documents, records or communications of or prepared by the
25 investigator acquired as a result of their investigation(s), including but not limited to telephone calls,
26 correspondence, facsimiles, e-mail, billing, inspections or observations, interviews, statements
27 and/or findings.
28

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

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

6 **RESPONSE:** Objection. This Request is premature, seeks to invade attorney-client privilege, and
7 attorney work product. Please see this Responding Defendant's NRCP 16.1 Initial Document
8 Production and Witness List and all Supplements thereto, specifically the list of witnesses. Please
9 also see this Responding Defendant's Answer to Interrogatory No. 2.
10

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

13 **RESPONSE:** Objection. This Request is premature, seeks to invade attorney-client privilege, and
14 attorney work product. Please see this Responding Defendant's NRCP 16.1 Initial Document
15 Production and Witness List and all Supplements thereto, specifically the list of witnesses. Please
16 also see this Responding Defendant's Answer to Interrogatory No. 2.
17

18 25. Any and all documents and communication substantiating any defense to Plaintiffs'
19 Complaint.
20

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

25 26. Any all *[sic]* videotapes, photographs, notes, memorandums, technical data, and
26 internal documents of any and all testing conducted by this Defendant's research and design experts
27 on the same model as the subject Jacuzzi Walk-In-Tub.
28

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

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

7 **RESPONSE:** Objection. This Request is vague and ambiguous with respect to the term “safety
8 features.” Please see Exhibit B attached hereto, in addition to any sales materials produced through
9 the course of litigation.
10

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

14 **RESPONSE:** Objection. This Request is vague and ambiguous with respect to the term “ease of
15 use.” Please see Exhibit B attached hereto, in addition to any sales materials produced through the
16 course of litigation.
17

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

21 **RESPONSE:** Objection. This Request is vague and ambiguous with respect to the term
22 “overweight folks.” This Responding Defendant is not in possession of documents responsive to
23 this request.
24

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

1 **RESPONSE:** Objection. This Request is vague and ambiguous with respect to the term
2 “overweight folks.” This Responding Defendant is not in possession of documents responsive to
3 this request.

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

7 **RESPONSE:** Objection. This Request is vague and ambiguous with respect to the term “folks
8 with mobility issues” and “safety features.” This Responding Defendant is not in possession of
9 documents responsive to this request.
10

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

14 **RESPONSE:** Objection. This Request is vague and ambiguous with respect to the term “folks
15 with mobility issues.” Please see Exhibit B attached hereto, in addition to any sales materials
16 produced through the course of litigation.
17

18 33. Please produce all documents pertaining to the design and function of the door.
19

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

23 34. Please produce all documentation, emails, memorandums, technical data, and
24 internal documents of any and all discussion, communication or otherwise pertaining to safety
25 considerations regarding the inward opening door versus an outward opening door.
26

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

1 did not design the door.

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

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

7
8 36. Please produce all scientific research validating or supporting the ease of use claims
9 made by Jacuzzi regarding the tub at issue.

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

13
14 37. Please produce all technical, architectural, and design documents pertaining to the
15 inward opening door of the tub at issue.

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

19
20 38. Please produce any and all documents produced by any other claimant who claimed
21 injury or death in any and all tubs designed, manufactured, distributed, marketed or sold by Jacuzzi.

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

26
27 39. Please produce any and all documentation in support of the safety statistics
28 pertaining to falls; that are used in any marketing materials (whether those materials be written, oral,

1 video or otherwise) that are distributed by Jacuzzi.

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

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

7 **RESPONSE:** Objection. This request is vague, ambiguous and unintelligible, and is directed at
8 Jacuzzi. This Responding Defendant seeks clarification as to the information sought by Plaintiff to
9 adequately respond.
10

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

13 **RESPONSE:** Objection. This request is vague, ambiguous and unintelligible, and is directed at
14 Jacuzzi. This Responding Defendant seeks clarification as to the information sought by Plaintiff to
15 adequately respond.
16

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

19 **RESPONSE:** Objection. This request is vague, ambiguous and unintelligible, and is directed at
20 Jacuzzi. This Responding Defendant seeks clarification as to the information sought by Plaintiff to
21 adequately respond.
22

23 43. For YouTube Marketing video: <https://www.youtube.com/watch?v=kTsrCTwOrAk>
24 Please produce the building codes, association criteria and product safety and performance standards
25 that Jacuzzi claims to exceed as mentioned in the video.
26

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

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

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

7 45. For YouTube Marketing video: <https://www.youtube.com/watch?v=kTsrCTwOrAk>
8
9 Please produce the documentation supporting Jacuzzi's claim that its tubs provide therapeutic
10 benefit and pain relief for ailments such as: muscle cramps, diabetes, circulatory disease, arthritis,
11 osteoarthritis, & back pain.

12 **RESPONSE:** This Responding Defendant did not create the YouTube Marketing video therefore
13 is not in possession of documents responsive to this Request.
14

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

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

19 47. Please produce the qualification of Mark J. Sontag, M.D.
20

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

24 48. Please produce the contract between Jacuzzi and Mark J. Sontag, M.D.
25

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

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

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

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

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

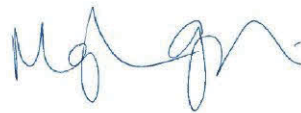
6 **RESPONSE:** Objection. This Request is vague, ambiguous, overbroad and unintelligible with
7 respect to the information sought through this Request. This Responding Defendant seeks
8 clarification of the information sought in order to properly respond to this Request.
9

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

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

17 DATED this 14th day of September, 2018.

18 THORNDAL ARMSTRONG DELK
19 BALKENBUSH & EISINGER

20 
21

22 MEGHAN M. GOODWIN, ESQ.
23 Nevada Bar No. 11974
24 1100 East Bridger Avenue
25 Las Vegas, Nevada 89101
26 Attorneys for Defendants/Cross-Defendants,
27 FIRSTSTREET FOR BOOMERS AND BEYOND,
28 INC., and AITHR DEALER, INC.

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.
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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



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.

EXHIBIT “B”

Comfort
in your
HOME



FIRST000386






At the beginning of THE 20th CENTURY



^a Family of INNOVATORS *and* INVENTORS
came to AMERICA

The JACUZZI
Brothers

FIRST000389

Their early SUCCESS
with PROPELLERS and

the first original
MONOPLANE

1920



lead to
INNOVATIONS
with WATER
PUMPS *used for*
IRRIGATION

1926



FIRST000390



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

1948

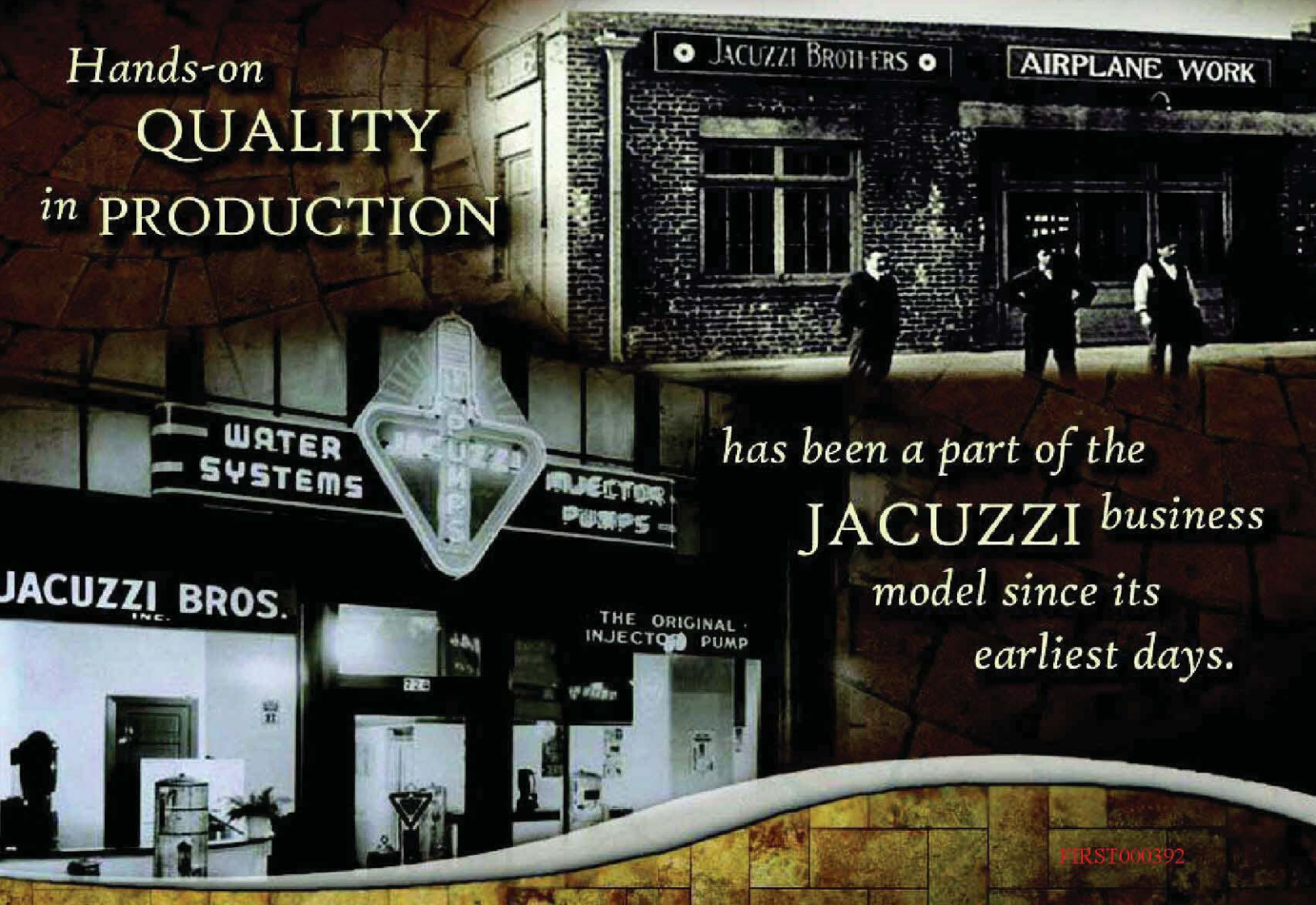
To help his youngest son, Kenneth, cope with the pain of Rheumatoid Arthritis (RA), Candido developed a version of their pump to work in a bath tub, and changed the direction of history.

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

1956

FIRST000391

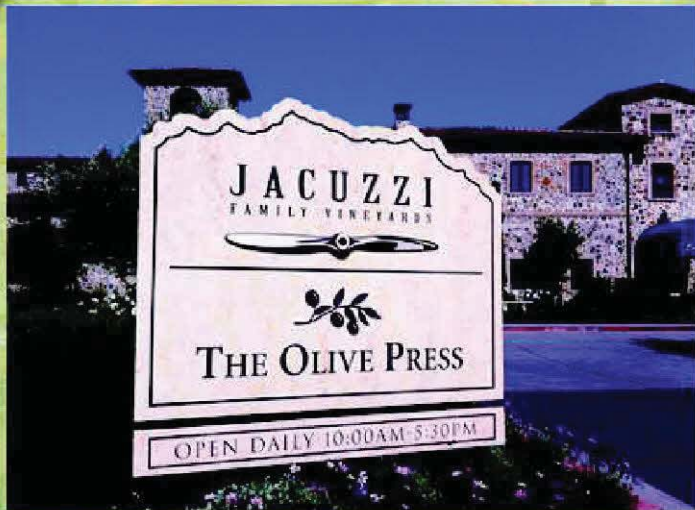
Hands-on
QUALITY
in **PRODUCTION**



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

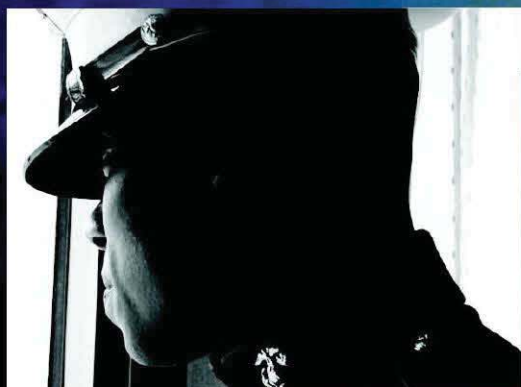
FIRST000392

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



FIRST000393

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



1946-1964 — the POST-WWII BABY BOOM



76 MILLION
U.S. BIRTHS

US Birthrate

Great
Depression

1900

1914
WWI

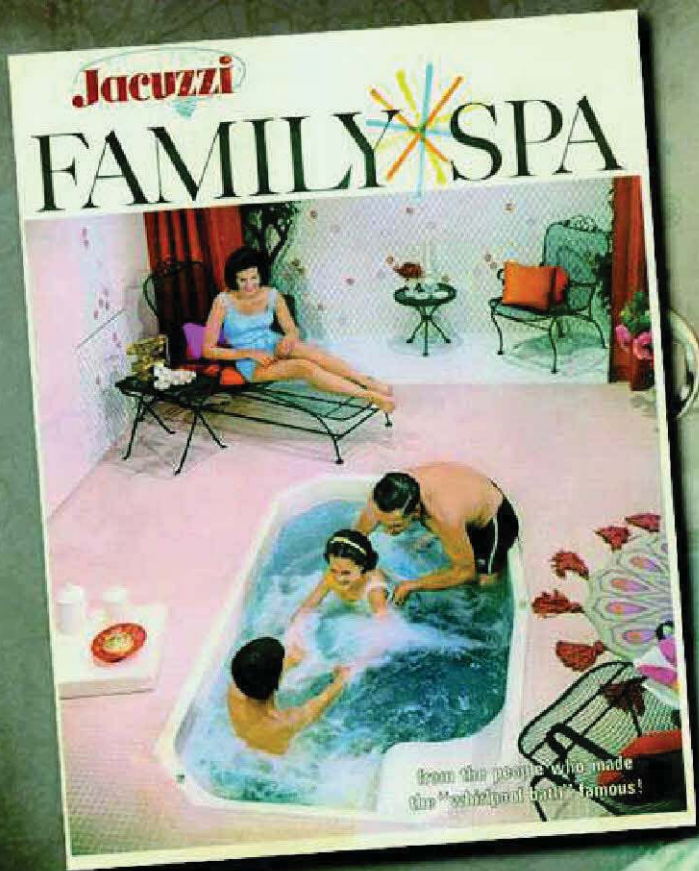
1929
Stock Market
Crash

1946
WWII
Ends

1957
Space Race begins

1964
Beatles on Ed Sullivan

FIRST000395

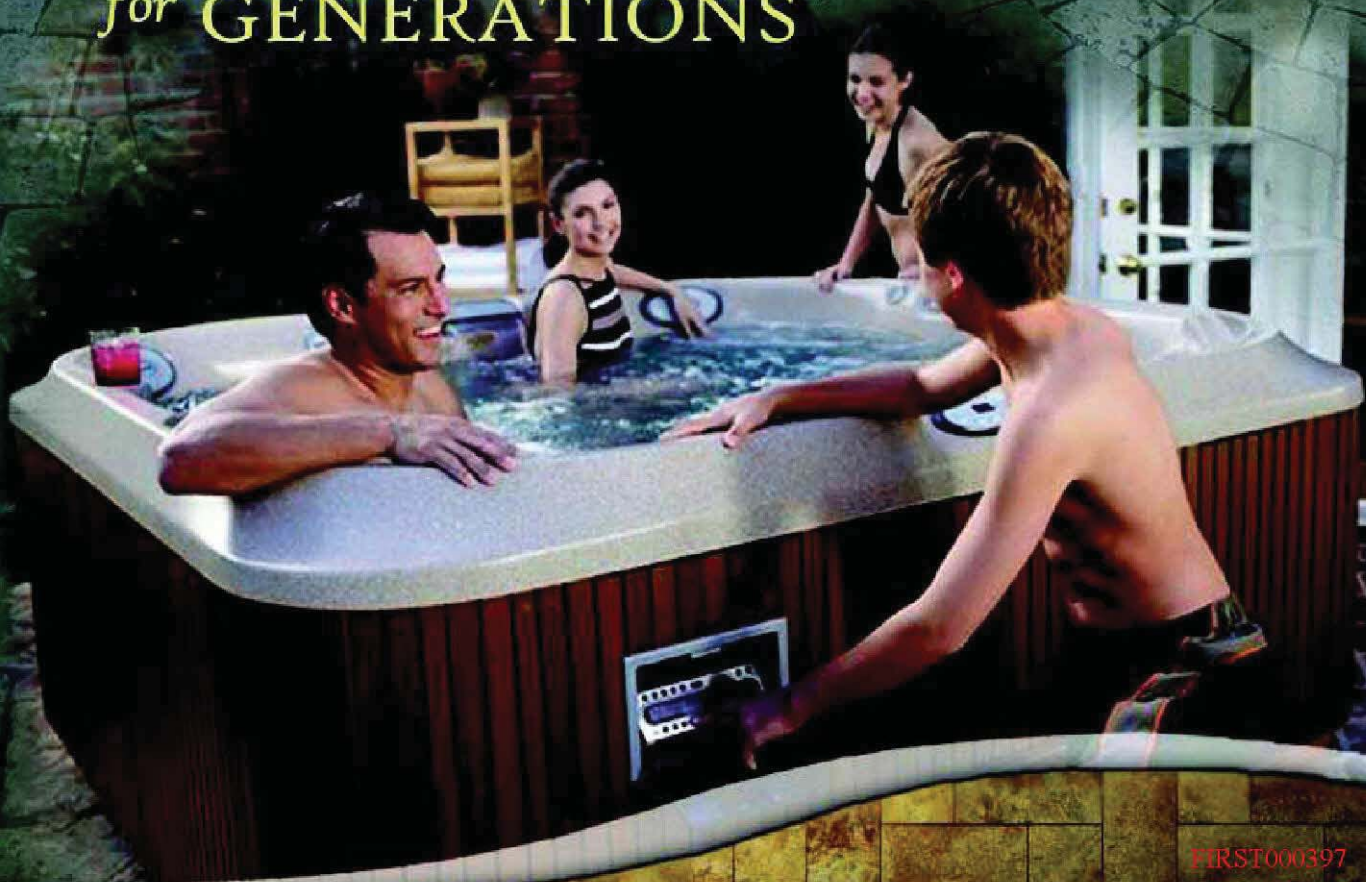


for most,
an **IN-HOME SPA** was
an **ELUSIVE LUXURY**

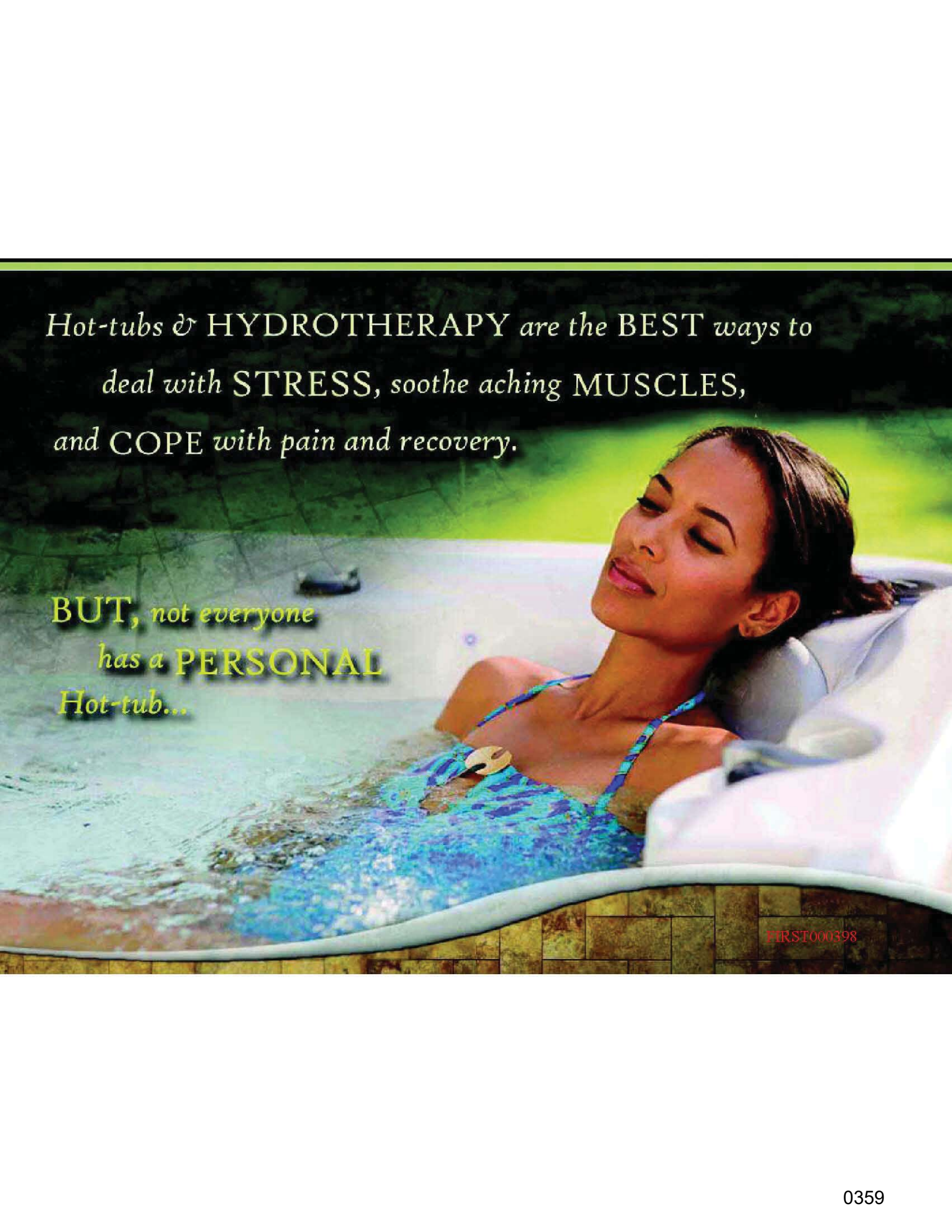


FIRST000396

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



FIRST000397

A woman with dark hair is relaxing in a white hot tub. She is wearing a blue and green patterned swimsuit and has her eyes closed, leaning back against a white cushion. The hot tub is set outdoors on a stone patio, with a green lawn and trees in the background. The water in the tub is bubbling.

*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...*

FIRST000398

HOT TUBS are designed to step DOWN INTO or climb UP and OVER

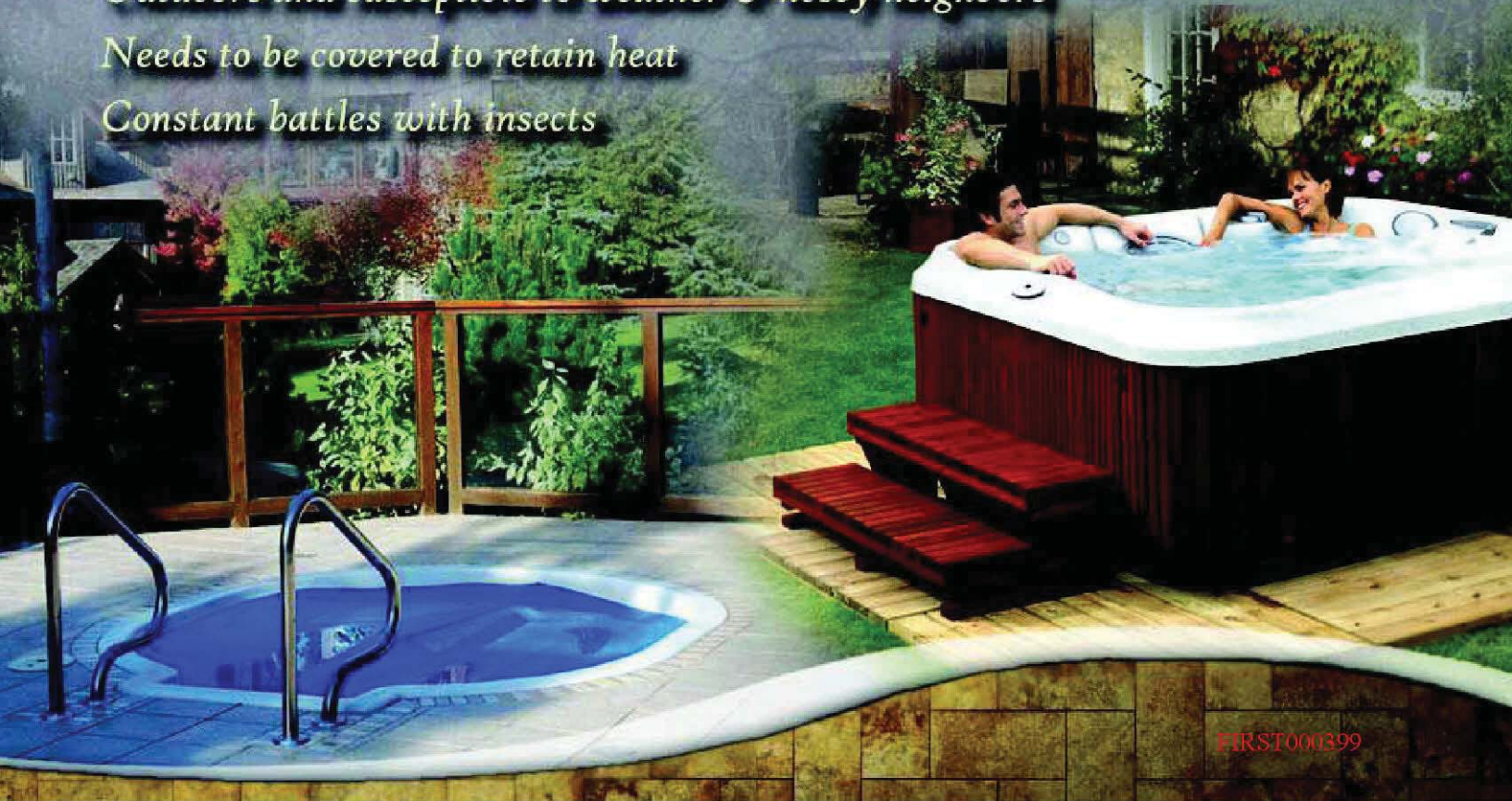
Always soak in the same community water

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



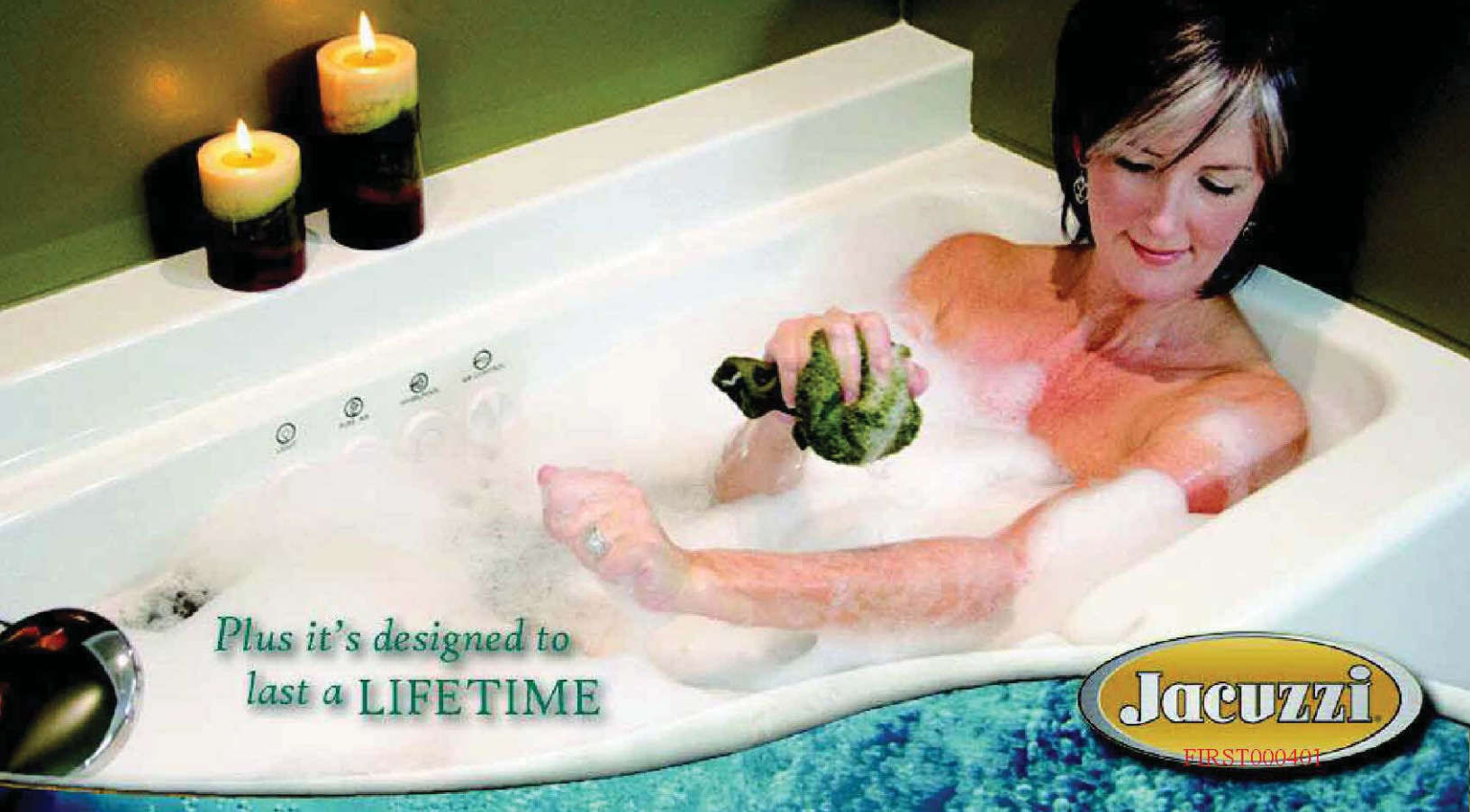
FIRST000399



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



JACUZZI Walk-in Tubs bring that PERSONAL
hot-tub experience to your MOST
PERSONAL space.



Plus it's designed to
last a LIFETIME



water that moves you™





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



FIRST000404


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.



FIRST000405

A photograph of an older man and a woman smiling and taking a picture with a digital camera. They are outdoors in a park-like setting with trees and a stone wall in the background. The man is holding the camera, and the woman is looking at the screen. The image is framed by a dark, textured border.

*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.*

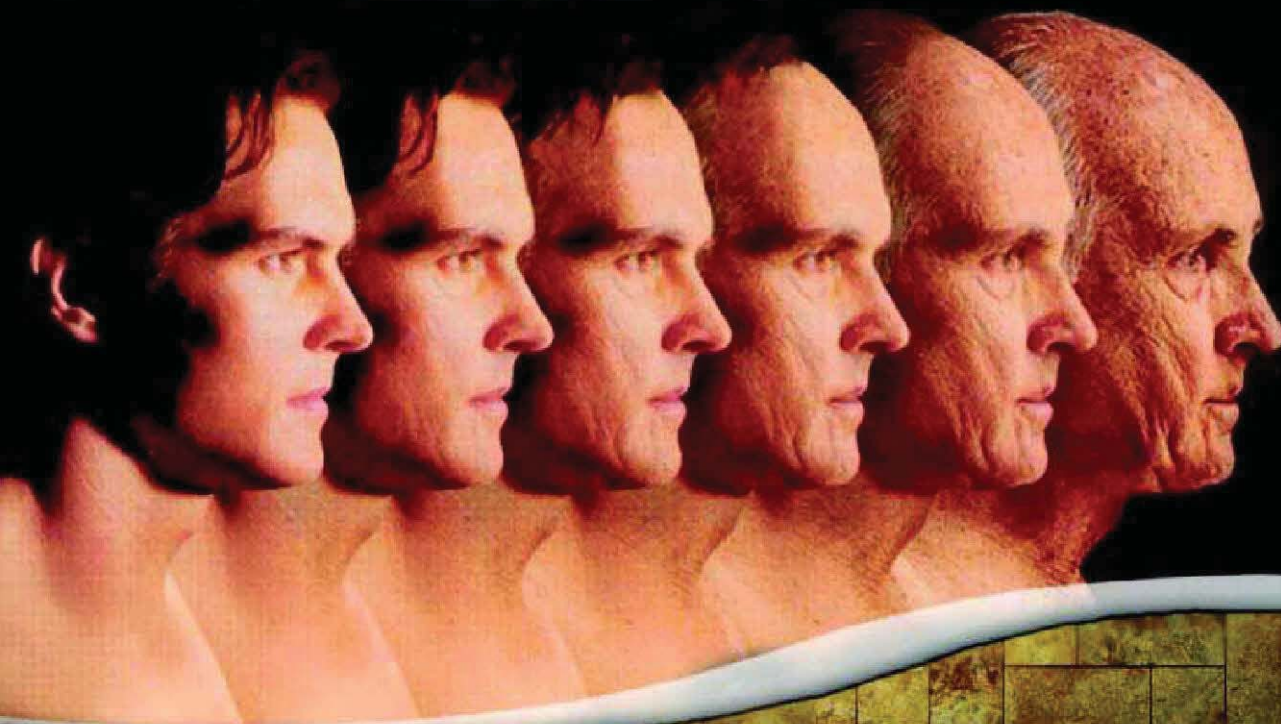
FIRST000406



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?



FIRST000407



Comfort in your HOME™

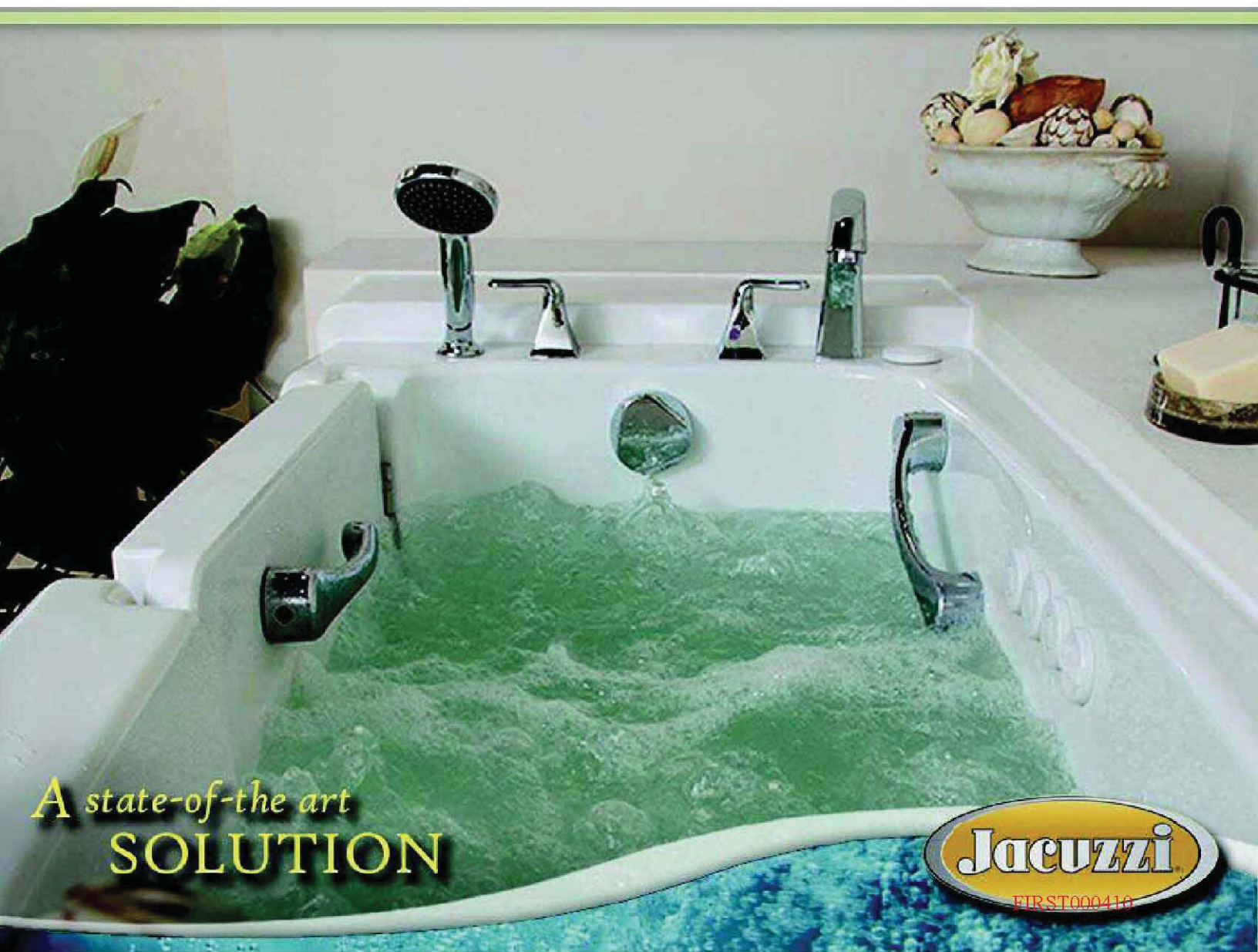
41RST900408

either **OLD**
or **NEWER**



your **BATHROOM** *is*
now **DANGEROUS and**
OBSOLETE

Comfort in your HOME™



A state-of-the art
SOLUTION





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® PointPro™ Jet System

Therapeutic FEATURES





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





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.*



Industry CERTIFICATIONS



- Made in USA -



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 others, persons, pets, or rodents, or resulting from, without limitation, any of the following: careless handling, abuse, misuse, plumbing, abrading finish, etc.) including its own negligence; modification of any type; or installation (including installation not in accordance with the unit), connections supplied by the installer.

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

Who else can
say that?





	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

Marketer

**Jacuzzi
Dealer**

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EXHIBIT “11”

RSPN

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

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

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

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

**DEFENDANT, AITHR DEALER,
INC.'S RESPONSE TO PLAINTIFF
ROBERT ANSARA'S FIRST SET OF
REQUEST FOR PRODUCTION OF
DOCUMENTS**

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Defendants.

HOMECLICK, LLC,

Cross-Plaintiff,

vs.

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

Cross-Defendants.

HOMECLICK, LLC, a New Jersey limited
liability company,

Third-Party Plaintiff,

vs.

CHICAGO FAUCETS, an unknown entity,

Third-Party Defendant.

BESTWAY BUILDING & REMODELING,
INC.,

Cross-Claimant,

vs.

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

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

**DEFENDANT, AITHR DEALER, 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, AITHR DEALER, INC., by and through its attorneys, the law firm of THORNDAL ARMSTRONG DELK BALKENBUSH & EISINGER, and hereby responds to Plaintiff ROBERT ANSARA'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: This Responding Defendant is not in possession of any documents responsive to this Request.

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

1 for expert opinion, legal conclusion, as well as invades attorney-client privilege and/or attorney work
2 product. Please see Plaintiff's medical records produced to date.

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

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

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

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

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

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

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

26 **RESPONSE:** Objection. This Request is vague, ambiguous and overbroad with respect to subject
27 matter and the term "literature." This Responding Defendant is not in possession of documents
28 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, including installation or construction specifications.

RESPONSE: This Responding Defendant is not in possession of documents responsive to this request other than those documents previously produced in litigation. Specifically, please see this Responding Defendant's NRCP 16.1 Initial Document Production and Witness List and all supplements thereto, including Exhibits "B" and "K."

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

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

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

RESPONSE: This Responding Defendant did not install the subject Jacuzzi Walk-In Tub. Please see 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."

13. 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 "D," "G" and "I."

14. Any and all documents that relate to the schematics used for installation 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 install or design the subject Jacuzzi Walk-In Tub. Please see this Responding Defendant's NRCP 16.1 Initial Document Production and Witness List, specifically Exhibits "A," "B," "C," "K" and "L."

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

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

4 16. Any and all documentary evidence regarding failures and malfunctions of the Jacuzzi
5 Walk-In Tub. This may be in the form of direct complaints from customers to the manufacturer, or
6 indirect reports such as warranty claims through dealers. It may also be derived from developmental
7 testing, investigations by government agencies, and product liability lawsuits.

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

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

18 **RESPONSE:** Objection. This Request seeks to invade attorney-client privilege and/or attorney
19 work product, as the time for expert disclosures has not yet passed. Scott Meek of Forensic
20 Engineering Consultants, LLC participated in an inspection of the subject tub on October 19, 2016.
21 5861 Pine Avenue, Suite B, Chino Hills, CA 91709.

22 18. The entire claims and investigation file or files including but not limited to daily
23 activity sheets, diary sheets, and status sheets of any insurance adjuster and/or risk
24 employee/manager, internal memoranda regarding this claim created, sent and/or received by any
25 insurance adjuster or other adjuster, risk employee/manager and/or by the Defendant(s) or an
26 agent/employee of the Defendant(s), communications to and from all insurance carriers, parties,
27 Defendant(s), or potential parties, request(s) for investigation, and/or reports/findings of
28 investigators, both in-house and/or independent and/or all insurance policies of the Defendant(s),

1 excluding references to mental impressions, conclusions, or opinions representing the value or merit
2 of the claim or defense or respecting strategy or tactics and privileged communications from
3 counsel.

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

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

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

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

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

21. 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.

22. 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.

23. 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 "N." Please also see medical records for Sherry Cunnison produced throughout the course of litigation.

24. 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.

25. 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.)

1 **RESPONSE:** Objection. This Request is vague and ambiguous with respect to the term “safety
2 features.” Please see this responding Defendant’s NRCP 16.1 Initial Document Production and
3 Witness Lists and all supplements thereto, specifically Exhibit “N”, in addition to any sales materials
4 produced through the course of litigation.

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

8 **RESPONSE:** Objection. This Request is vague and ambiguous with respect to the term “ease of
9 use.” Please see this responding Defendant’s NRCP 16.1 Initial Document Production and Witness
10 Lists and all supplements thereto, specifically Exhibit “N”, in addition to any sales materials
11 produced through the course of litigation.

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

15 **RESPONSE:** Objection. This Request is vague and ambiguous with respect to the term
16 “overweight folks,” “safety features,” and “sales materials.” This Responding Defendant is not in
17 possession of documents responsive to this request other than those previously produced in
18 litigation, specifically Exhibit “N,” which was provided regardless of weight.

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

22 **RESPONSE:** Objection. This Request is vague and ambiguous with respect to the term
23 “overweight folks,” “ease of use” and “sales materials.” This Responding Defendant is not in
24 possession of documents responsive to this request other than those previously produced in
25 litigation, specifically Exhibit “N,” which was provided regardless of weight.

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

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

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

7 **RESPONSE:** Objection. This Request is vague and ambiguous with respect to the term “folks
8 with mobility issues” and “ease of use.” Please see this responding Defendant’s NRCP 16.1 Initial
9 Document Production and Witness Lists and all supplements thereto, specifically Exhibit “N”, in
10 addition to any sales materials produced through the course of litigation.

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

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

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

18 **RESPONSE:** Objection. This Request is vague, ambiguous, and overbroad with respect to the
19 term “safety considerations.” This Responding Defendant is not in possession of any documents
20 responsive to this request as this Responding Defendant did not design or manufacture the door.

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

23 **RESPONSE:** Objection. The term “safety claims” is vague, ambiguous, and overbroad. This
24 Responding Defendant is not in possession of any documents responsive to this request other than
25 those produced during the course of litigation as this Responding Defendant did not design or
26 manufacture the subject tub, and this Request appears directed at Jacuzzi.

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

1 **RESPONSE:** Objection. The term “ease of use” is vague, ambiguous, and overbroad. This
2 Responding Defendant is not in possession of any documents responsive to this request other than
3 those produced during the course of litigation as this Responding Defendant did not design or
4 manufacture the subject tub.

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

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

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

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

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

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

22 38. Please produce any documentation in support of the claim by Jacuzzi that “bathing,
23 for seniors is one of the most common causes of injury.”

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

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

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

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

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

9 41. For all individual inspections that were performed during the construction period of
10 Sherry Cunnison’s bathtub, please produce the written documentation pertaining to each inspection
11 that was performed.

12 **RESPONSE:** This Responding Defendant did not construct or install the subject tub, therefore is
13 not in possession of any documents responsive to this Request, other than those documents already
14 produced in the course of litigation. Please see this Responding Defendant’s NRCP 16.1 Initial
15 Document Production and Witness List, specifically Exhibit “L.”

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

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

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

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

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

27 **RESPONSE:** Objection. This Request is vague, overbroad and unintelligible in the information
28 sought from this Responding Defendant. This Responding Defendant is not in possession of

documents pertaining to Mark J. Sontag, M.D.

45. 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, and it is directed at Jacuzzi.

46. 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.

47. Please produce all agreements, including amendments, addendums, or exhibits, between Defendant AITHR and First Street for Boomers & Beyond, Inc.

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

53 *[sic]*. Please produce all marketing or advertising materials ever created or developed by Defendant AITHR, 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 this responding Defendant’s NRCP 16.1 Initial Document Production and Witness Lists and all supplements thereto, specifically Exhibit “N”, in addition to the documents previously produced in the course of litigation pertaining to the sale of Ms. Cunnison’s Jacuzzi tub.

54 *[sic]*. 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, AITHR, 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 [sic]. 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 10th day of October, 2018.

THORNDAL ARMSTRONG DELK
BALKENBUSH & EISINGER

Msgr

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 A1THR DEALER, INC.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 10th day of October, 2018, service of the above and foregoing DEFENDANT, AITHR DEALER, 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
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Las Vegas, Nevada 89101
Attorneys for Plaintiffs

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Attorneys for Defendant,
JACUZZI INC. dba JACUZZI
LUXURY BATH

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

Karen Burk

An employee of THORNDAL ARMSTRONG
DELK BALKENBUSH & EISINGER

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EXHIBIT “12”

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	§	
REMODELERS, 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.

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 inches across. Due to the Baizes concern, Mr. Galls measured him three times 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 or 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:

- (1) The Purchase Price of \$19,345.
- (2) Destruction of the previously installed whirlpool tub and bathroom fixtures in the amount of \$10,000.00.
- (3) Mental Anguish and Suffering.

These damages are within the jurisdictional limits of this Court.

XII. ADDITIONAL DAMAGES AND PUNITIVE DAMAGES

The Defendant's conduct in violation of the DTPA was committed knowingly, as that term is defined. Accordingly, the Plaintiffs seek an additional damages under the DTPA in an amount not to exceed three times the amount of their economic damages.

The damages suffered by the Plaintiffs resulted from fraud. Accordingly, the Plaintiffs alternatively seeks exemplary damages, not to exceed an amount, which in the opinion of the jury is necessary to punish the defendants and deter similar conduct in the future but the Defendants and others.

XIII. ATTORNEY'S FEES

As a result of the Defendants' conduct, the Plaintiffs have been required to obtain the services of the undersigned attorney for the filing, prosecution and trial of this case, and therefore seeks an award of reasonable and necessary attorney's fees pursuant to applicable law.

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

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EXHIBIT “13”



Pass the gift of safety on to your friends or family and get \$200.00!

We know it's hard to keep a good thing to yourself. So, we say, go right ahead and gossip! Tell a friend. Tell a neighbor. Tell a family member. Tell them all about your new Jacuzzi® Walk-In Tub and when they order theirs, we'll send you a check for \$200.00. Make sure they mention your name during the appointment. It's a win-win for everybody and our way of saying thank you for the referral. Call or mail us your referrals to:

888-926-8095
AITHR Headquarters
1460 W. Canal St.
Littleton, CO 80120

JAC000001
Some restrictions apply. Call for details.

LA 11202 (11 8 11 22)
702 478-9012

How it all began...

In 1956, the Jacuzzi brothers responded to a family member's need for pain-relieving hydrotherapy. They developed a version of their pump to work in a bath tub.

Their ingenuity and knowledge of hydraulics led to the creation of a portable hydrotherapy pump. The J-300 turned any normal bathtub into a relaxing, rejuvenating hydrotherapeutic spa. Jacuzzi quickly became a household name, known to this day for quality products and reliable pain relief.

Your own personal spa...

Jacuzzi provides you the safety and independence you would expect from this state of the art walk-in tub. No other Walk-In Tub features the patented Jacuzzi® PointPro® Jet system. These high-volume, low-pressure pumps feature a perfectly balanced water-to-air ratio to massage thoroughly yet gently. They are all arranged in precise locations designed to deliver a therapeutic massage, yet they are fully adjustable so that your bathing experience can be completely unique.

American made and serviced...

Jacuzzi® Walk-In Tubs are made in America and are designed to easily fit in your existing tub space come with a limited lifetime warranty supported by a nationwide service network.

JAC000002



The first Jacuzzi hydrotherapy pump

HALE GENTON
1176 Pante De Leon
LOS ANGELES CA 90023
(213) 498-9012

How it all began...

In 1956, the Jacuzzi brothers responded to a family member's need for pain-relieving hydrotherapy. They developed a version of their pump to work in a bathtub.

Their ingenuity and knowledge of hydraulics led to the creation of a portable hydrotherapy pump. The J-300 turned any normal bathtub into a relaxing, rejuvenating hydrotherapeutic spa. Jacuzzi quickly became a household name, known to this day for quality products and reliable pain relief.

Your own personal spa...

Jacuzzi provides you the safety and independence you would expect from a state of the art walk-in tub. No other Walk-In Tub features the patented Jacuzzi® PointPro® Jet system. These high-volume, low-pressure pumps create a perfectly balanced water-to-air ratio to massage thoroughly yet gently. They are all arranged in precise locations designed to deliver a therapeutic massage, yet they are fully adjustable so that your bathing

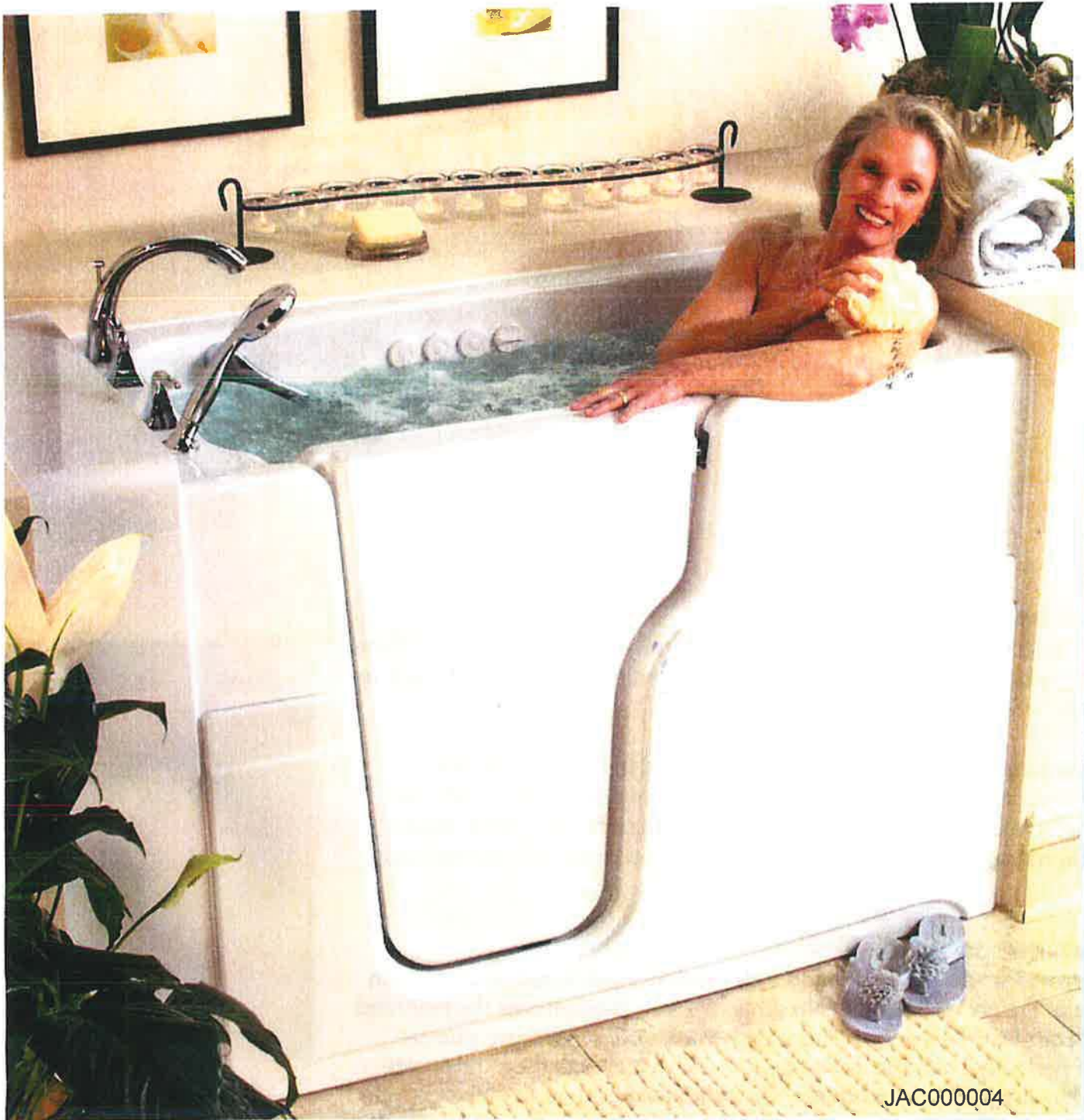


The first Jacuzzi
JAC000003
hydrotherapy pump



*Shore
P.O. Electric*

Your Jacuzzi® Walk-In Hot Tub



JAC000004

Jacuzzi® Walk-in Tubs

We turn water into therapy



Your Customer Care Team can be reached at:
888-926-8095

JAC000005



Welcome to the Family

You have made a smart choice.

Remaining safe in one's home is a top priority for America's seniors. In fact, according to the CDC, one out of every three Americans over the age of 65 will experience a fall this year. And for those who suffer injury, most never fully recover. The fear of falling has made the simple act of bathing and its therapeutic benefits a thing of the past.

That is why so many proactive seniors have turned to the safety and independence gained by installing a Jacuzzi® Walk-In Hot Tub. And in doing so, those seniors are reporting benefits they never expected.

Jacuzzi Inc., the company that perfected hydrotherapy, have created a walk-in hot tub that offers more than just safe bathing, peace-of-mind and independence. It can actually help you feel better.

The Jacuzzi® Walk-In Tub features a leak-proof door that allows you to simply step into the tub rather than stepping precariously over the side.

Seniors are reporting that the safety of the tub has taken a back seat to the therapeutic value provided by the state-of-the art features. There is nothing like the simple pleasure of taking a warm bath. The cares of the day seem to fade away, along with the aches and pains of everyday life.

No other walk-in tub features the patented Jacuzzi® PointPro® jet system, low-pressure pumps with a perfectly balanced water-to-air ratio to massage thoroughly yet gently. Some swirl, some spiral, some deliver large volumes of water and others target specific pressure points. They are all arranged in precise locations designed to deliver a therapeutic massage, yet they are fully adjustable so that your bathing experience can be completely unique.

Congratulations on your purchase. Like thousands of seniors all over the U.S. you won't spend another day wishing you could enjoy the luxury and pain-relieving benefits of a safe, comfortable bath.

—The Team at Jacuzzi® Walk-In Tubs

JAC000006



What to Expect Next



Thank you for purchasing your new Jacuzzi® Walk-In Hot Tub. We strive to make this the best possible experience. Below is an outline of what you can expect from our team.

STEP 1: You will receive a call from our Customer Care Team confirming the details of your Jacuzzi® Walk-In Tub and welcoming you to the family of happy customers.

STEP 2: Shortly thereafter, you will receive a call from our production department and our electrical contractor to schedule your electrical appointment.

STEP 3: Our production department will call and let you know when your Jacuzzi will be received by our installation department.

STEP 4: Once received we will arrange your installation, depending on your schedule. The actual installation should take one to two days depending on the complexity. Once your install is complete you will be able to enjoy a lifetime of safety and luxury in your new Jacuzzi® Walk-In Hot Tub.

DELAYS: While we do not expect any delays, they can sometimes happen; if they do we will make sure you are aware and we will be in constant communication.



WARRANTY:

Your Jacuzzi® Walk-In Tub has a limited lifetime warranty against defects, and we also provide a two-year labor warranty. Jacuzzi's warranty department can be reached at (800-288-4002).

Your Consultant's Name: HALE BELTON
Info: 902-498-9012

JAC000007



Using & Caring

Controls



Light Controls the chromatherapy lighting system. Each press of the button will cycle through the nine color sequences.

Pure Air Turns on the air injectors that mixes with the water to provide a wide plume.

Whirlpool Turns on the therapeutic whirlpool jets.

Air Control Adjusts the amount of air introduced into whirlpool jets. LESS AIR softer Hydrotherapy. MORE air more vigorous Hydrotherapy.

Cleaning



Wipe the inside surface with any non-abrasive, non-ammonia spray cleaner. To clean the whirlpool bath system, use Jacuzzi® Systems Clean™ available at: www.jacuzziaccessorystore.com or call 866-313-0544

Adjusting Jets



Each individual jet can be adjusted for more or less water by turning the outside ring clockwise and counter clockwise. Adjust the direction by simply moving the inner nozzle.

Fixture Placement

1. Hand held Shower Wand
2. Hot Water
3. Drain Release
4. Cold Water
5. Tub Filler
6. Aromatherapy Container

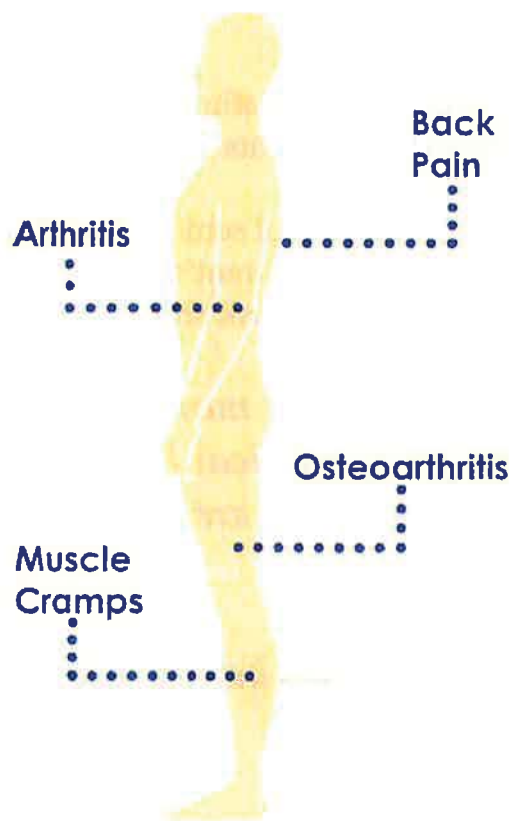


JAC000008



Features & Benefits

Jacuzzi® Walk-In Hot Tubs not only provide a safe and enjoyable way to take a bath, but also provide health benefits that can greatly improve your quality of life. The air and water jets may help to improve circulation and ease the symptoms of arthritis, back problems, muscle cramps, osteoarthritis, and other various injuries. Plus, you'll have the independence and worry-free ability to enjoy bathing again safely.



Soaking in your Jacuzzi Walk-In Tub also helps to:

- Relieve stress
- Create a relaxing environment
- Create a spa like experience with the aromatherapy fragrances
- Reduce aches and pains
- Improve blood circulation

Your New Jacuzzi® Walk-In Tub Includes:

1. Hydro & Air Therapy

Featuring the patented Jacuzzi® PointPro® Jet System, a unique network of adjustable water jets and gentle air massagers with new improved jet locations positioned to target the most common pain points.

2. Built-In Safety

Now made with an even lower entryway and wider door to ensure a safer and easier entry & exit. Non-skid floor surface and side grab bar provides added safety and support. Anti-scald water valves protect you from extreme water temperature.

3. Aroma & Chroma Therapy

Add a calming fragrance to transform your bath into a spa-like experience. Gentle LED lighting enhances moods and promotes relaxation.

4. Built-In Comfort

Ergonomically designed chrome handle and grab bars. Sit back and relax on our ADA-compliant contoured seat design. Inline heater maintains desired water temperature throughout your bath experience.

JAC000009



For Your Children



In the next 17 seconds, an older adult will be treated in a hospital emergency department for injuries related to a fall. In the next 30 minutes, an older adult will die from injuries sustained in a fall. Most falls occur in the bathroom, getting in and out of the tub.

Falls account for 65% of all home injury deaths for adults age 65-84.1 in 3 seniors will fall this year. Adults age 65 and older experience an average of 2.3 million nonfatal home injuries annually.



Cost of Assisted Living Facility:

\$900 per week
\$46,800 per year

Cost of Private Nursing Home:

\$1,300 per week
\$82,000 per year

Providing your parents with a safe alternative to assisted living is our top priority.

That is why Jacuzzi Inc. developed a bathroom retrofit solution that will help keep your parents safe.

Over the years, many adult children of seniors have wrestled with the question: Is retrofitting my parent's bathroom worth it? But the real questions they should ask are:

- *Is retrofitting the bathroom more cost effective than paying the medical bills after a fall or paying to care for my parents if they're injured?*
- *Will this make my parents happy, and is their happiness important to me?*
- *Are my parents' independence and dignity worth it?*
- *Are my parents worth it?*

We know these are challenging questions. That is why we are here to help, every step of the way.

JAC000010



Testimonials

Gentlemen,

We recently purchased and 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 would highly recommend your product."

-Laverne & Keith H

I speak from my heart to your heart, as a severely disabled person confined to my home. I have only showered and not bathed for nine years. My search for pain relief ended with my first step into my walk-in bathtub."

-Edward W

My husband Tom had a stroke and is a diabetic. He had fallen out of our regular tub and with this walk in tub he is so safe. He loves to step in (much lower) and feels safe with 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 a beautiful pink color. Every night he comments how he loves his walk in tub.

I also love this tub for numerous reasons. First of all my arthritis is so painful and with my first bath with the jets (water & air) my pains were almost 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. With the aromatherapy, which is so relaxing, and the lights to make me feel like I am not at home but on 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 Walk-In Tub) the jets, aromatherapy, & colored lights that make us feel like humans again."

-Tom & Joyce J
JAC000011



Testimonials

For years, I have been suffering with a bad knee. I have wanted a walk-in tub but I was concerned about the expense and the difficulty of installing it in my own bathroom. A friend recommended you, and thank goodness. Your installer arrived on time, was quick, polite and neat, and in two days, my tub was in place. Not only is the tub good looking, I am amazed by the healing benefits. In the months since I have installed the tub in my home, the pain in my afflicted knee has diminished. I think the warm water and the force of the air jets circulating around my body and legs have had the greatest healing effect on me."

-Roy W

The installation of our Jacuzzi tub went extremely well, due solely to Jay and Dave. 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 cheery and positive. They kept at it until it was done, careful not to damage anything, from start to finish. They gave us a feeling of trust and confidence. We would recommend their work to anyone."

-Nancy & Jim L

My husband is so pleased with the hydrotherapy. It relieves so much of the soreness he has after each therapy session, but even more importantly, it seems to be helping the circulation in his legs."

-Linda M

Our new tub has helped make our lives easier for us. The whirlpool has helped take lots of aches and pains away. It is like being on vacation all the time without all the travel. The best part is the safety of getting in and out of the bathtub. The tub has given back dignity to my husband, who has had a mild stroke, and was unable to get in the old tub without a lot of help. The peace of mind of knowing he is now able to get in and out of the tub by himself has made our lives easier."

-Sheila & Roger C

JAC000012

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EXHIBIT “14”

THIS IS YOUR COURTESY COPY
DO NOT FORWARD TO JUDGE
DO NOT ATTEMPT TO FILE

1 **DCRR**
2 BENJAMIN P. CLOWARD, ESQ.
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4 **RICHARD HARRIS LAW FIRM**
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6 Las Vegas, Nevada 89101
7 Phone: (702) 444-4444
8 Fax: (702) 444-4455
9 E-Mail: Benjamin@RichardHarrisLaw.com
10 *Attorneys for Plaintiff*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

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

21 Plaintiff,

22 vs.

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

Defendants.

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

**DISCOVERY COMMISSIONER
REPORT & RECOMMENDATIONS**

DATE OF HEARING: July 20, 2018
TIME OF HEARING: 10:00a.m.

1 AND ALL RELATED MATTERS

2
3 **HEARING DATE:** July 20, 2018

4 **HEARING TIME:** 10:00a.m.

5 **ATTORNEYS FOR PLAINTIFF:** Benjamin P. Cloward, Esq., Richard Harris Law Firm

6 **ATTORNEY FOR DEFENDANTS:** Joshua Cools, Esq., Snell & Wilmer, LLP

7
8
9 Also, present was Michael Hetey, Esq., Thorndal, Armstrong, Delk, Balkenbush, & Eisinger
10 for Defendants First Street For Boomers & Beyond, Inc. & AITHR Dealer, Inc.

11 **I.**
FINDINGS

12 The following motions having come before the Discovery Commissioner on Friday,
13 July 20, 2018 finds that as to:

14 1. Plaintiffs' Motion to Compel Defendant Jacuzzi, Inc. to Produce A
15 Knowledgeable NRCP 30(b)(6) Designee and Motion for Leave of Court to Take Additional
16 NRCP 30(b)(6) Deposition that a continued deposition will be allowed and four (4) additional
17 hours will be permitted. The Discovery Commissioner finds that the Rule 30(b)(6) witness was
18 never instructed to not answer any of Plaintiffs' counsel's questions and that Jacuzzi has already
19 offered its corporate representative to continue the deposition. In particular, Jacuzzi's
20 representative should be prepared to answer questions related to Jacuzzi's expectations
21 regarding the manufacturing agreement between Jacuzzi and FirstStreet. The Discovery
22 Commissioner finds that, sanctions are not warranted.¹

23 2. Plaintiffs' Motion to Strike Defendant Jacuzzi, Inc. d/b/a Jacuzzi Luxury Bath's
24 Answer is continued until Wednesday, August 29, 2018 at 9:00a.m. The Discovery
25 Commissioner finds that Jacuzzi, Inc. must produce any and all personal injury or death claims
26 involving a Jacuzzi walk-in tub with an inward opening door from 2008 to the present, to be
27 produced no later than August 17, 2018. Based on the results of this alternative relief, the
28

2
30(b)(6)
1 There was some confusion as to when the deponent
doesn't bind the corporation during a 30(b)(6) deposition.
Although a deponent must answer questions, his or her answers
do not bind the corporation if the deponent has not been designated
the witness for that topic. m

0431

Discovery Commissioner will either refer the matter to the District Court Judge or deny Plaintiff's motion.

3. Plaintiffs' Motion for Sanctions Against Defendant Jacuzzi, Inc. d/b/a Jacuzzi Luxury Bath for Failure to Produce Evidence is denied.

II.

RECOMMENDATIONS

IT IS THEREFORE RECOMMENDED that Plaintiffs' Motion to Compel Defendant Jacuzzi, Inc. to Produce A Knowledgeable NRCP 30(b)(6) Designee and Motion for Leave of Court to Take Additional NRCP 30(b)(6) Deposition be GRANTED, in part, and DENIED, in part.

IT IS FURTHER ORDERED THAT Defendant Jacuzzi produce its NRCP 30(b)(6) designee to continue the deposition for up to four (4) hours and that the designee or designees be prepared to answer questions regarding Jacuzzi's expectations related to the manufacturing agreement between Jacuzzi and FirstStreet in the continued deposition.


IT IS FURTHER ORDERED THAT Plaintiffs' Motion to Strike Defendant Jacuzzi, Inc. d/b/a Jacuzzi Luxury Bath's Answer be continued until Tuesday, August 29, 2018 at 9:00a.m. and that Defendant Jacuzzi, Inc. must produce any and all personal injury or death claims involving a Jacuzzi walk-in tub with an inward opening door from 2008 to the present, by August 17, 2018.

IT IS FURTHER ORDERED THAT Plaintiffs' Motion for Sanctions Against Defendant Jacuzzi, Inc. d/b/a Jacuzzi Luxury Bath for Failure to Produce Evidence is denied. DATED this 21 day of August, 2018.


DISCOVERY COMMISSIONER


Prepared and Submitted by:

RICHARD HARRIS LAW FIRM

 #14427 Forz
BENJAMIN P. CLOWARD, ESQ.
Nevada Bar No. 11087
801 South Fourth Street
Las Vegas, Nevada 89101
Attorneys for Plaintiff


Approved as to Form and Content by:

SNELL & WILMER LLP


Vaughn A. Crawford, Esq.
Joshua D. Cools, Esq.
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*

Approved as to Form and Content by:

**THORNDAL ARMSTRONG DELK
BALKENBUSH & EISINGER**


Michael Hetey, Esq.
Nevada Bar No. 5668
Meghan M. Goodwin, Esq.
Nevada Bar No. 11974
1100 East Bridger Avenue
Las Vegas, Nevada 89101-5315
Telephone: 702-366-0622
Facsimile: 702-366-0327
*Attorneys for Defendants/Cross-Defendants
Firststreet for Boomers and Beyond, Inc. and Aithr Dealer, Inc.*

NOTICE

Pursuant to NRCP 16.1(d)(2), you are hereby notified you have five (5) days from the date you receive this document within which to file written objections.

The Commissioner's Report is deemed received three (3) days after mailing to a party or the party's attorney, or three (3) days after the Clerk of the Court deposits a copy of the Report in a folder of a party's lawyer in the Clerk's Office. See EDCR 2.34(f).

A Copy of the foregoing Discovery Commissioner's Report was:

_____ Mailed to Plaintiff/Defendant at the following address on the ____ day of _____, 2018.

_____ Placed in the folder of counsel in the Clerk's Office on the ____ day of _____, 2018.

✓ Electronically served counsel on the 23 day of August, 2018, pursuant to N.E.F.C.R. Rule 9.

By: Natilie Len
Commissioner Designee

CASE NAME: ANSARA v. FIRST
CASE NUMBER: A-16-731244-C

ORDER

The Court, having reviewed the above report and recommendations prepared by the Discovery Commissioner and,

____ The parties having waived the right to object thereto,

____ No timely objection having been received in the office of the Discovery Commissioner pursuant to E.D.C.R. 2.34(f),

____ Having received the objections thereto and the written arguments in support of said objections, and good cause appearing,

* * *

AND

____ IT IS HEREBY ORDERED the Discovery Commissioner's Report & Recommendations are affirmed and adopted.

____ IT IS HEREBY ORDERED the Discovery Commissioner's Report And Recommendations are affirmed and adopted as modified In the following manner. (attached hereto)

____ IT IS HEREBY ORDERED that a hearing on the Discovery Commissioner's Report and Recommendations is set for _____, 2018, at __:__a.m.

Dated this _____ day of _____, 2018.

DISTRICT COURT JUDGE

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EXHIBIT “15”

TO: Richard Harris

THIS DOCUMENT IS BEING RETURNED BY THE DISCOVERY COMMISSIONER'S OFFICE FOR THE FOLLOWING REASON(S):

- THIS MOTION MUST CONTAIN AN AFFIDAVIT OF MOVING COUNSEL PURSUANT TO E.D.C.R. 2.34(d). THIS RULE SPECIFICALLY REQUIRES YOUR AFFIDAVIT TO CONTAIN REFERENCE TO EITHER A PERSONAL OR TELEPHONE CONFERENCE BETWEEN COUNSEL (OR WITH A PROPER PERSON) WITH AN ATTEMPT TO RESOLVE THE MATTER. LETTERS/FAXES/E-MAILS TO THE OTHER SIDE ARE NOT SUFFICIENT. (Who did counsel speak to? When? What was discussed amongst counsel? Why was counsel unable to resolve?)
- NOTICE OF MOTION PURSUANT TO E.D.C.R. 2.20(a).
- MOTION MUST CONTAIN AN ORIGINAL AFFIDAVIT.
- ✓ — DECLARATION MUST COMPLY WITH NRS 53.045/AFFIDAVIT MUST BE NOTARIZED.
- USE PROPER ORDER SHORTENING TIME LANGUAGE (See Attached).
- THIS MOTION DOES NOT COMPLY WITH E.D.C.R. 7.23. COUNSEL MUST SIGN THE ORDER SHORTENING TIME.
- ✓ — AFFIDAVIT IN SUPPORT OF OST (When do you need this heard by and why?) *What date? mid-November is not a specific date*
- MOTION MUST COMPLY WITH E.D.C.R. 2.35 (See Attached).
- RESUBMIT MOTION WITH A COURTESY COPY.
- THIS CASE IS IN ARBITRATION AND PURSUANT TO N.A.R. 4(E), THIS MOTION MUST BE HEARD BY THE ARBITRATOR ASSIGNED TO THIS CASE.
- THIS DOCUMENT MUST BE E-FILED. PLEASE BRING US BACK A FILE-STAMPED COURTESY COPY.
- THIS DOCUMENT WAS DROPPED OFF IN THE DISCOVERY COMMISSIONER'S "INCOMING" BOX AND WAS NEVER RETRIEVED BY YOUR OFFICE.
- OTHER:

IF YOU HAVE ANY QUESTIONS, PLEASE CALL THE DISCOVERY COMMISSIONER'S OFFICE AT 671-4486 OR YOU CAN REFER TO OUR WEBSITE AT www.clarkcountycourts.us (Departments - Discovery)

BENJAMIN P. CLOWARD, ESQ.
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Fax: (702) 444-4455
E-Mail: Benjamin@RichardHarrisLaw.com
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,

Plaintiff,

vs.

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

Defendants.

AND ALL RELATED MATTERS

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

**PLAINTIFFS' MOTION TO
COMPEL DEFENDANT
FIRSTSTREET TO PRODUCE
DOCUMENTS ON ORDER
SHORTENING TIME**

Date of Hearing:
Time of Hearing:

**PLAINTIFFS' MOTION TO COMPEL DEFENDANT FIRSTSTREET TO PRODUCE
DOCUMENTS ON ORDER SHORTENING TIME**

Plaintiffs, by and through their attorney of records, Benjamin P. Cloward, Esq. of the Richard Harris Law Firm, submits this Motion to Compel Defendant FirstStreet. This Motion is made and based on the papers and pleadings on file herein, the following Memorandum of Points and Authorities, and the oral argument of counsel at the hearing on this Motion.

DATED this 27th day of October, 2018.

RICHARD HARRIS LAW FIRM

 #12575

BENJAMIN P. CLOWARD, ESQ.

Nevada Bar No. 11087

801 South Fourth Street

Las Vegas, Nevada 89101

Attorneys for Plaintiffs

ORDER SHORTENING TIME

TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD

This matter having been brought on **PLAINTIFFS' MOTION TO COMPEL DEFENDANT FIRSTSTREET TO PRODUCE DOCUMENTS ON ORDER SHORTENING TIME**, the Court having examined the pleadings and papers on file herein, the affidavit in support of motion, and the points and authorities submitted herewith, and good causing appearing, IT IS HEREBY ORDERED that the time of the hearing on the motion is shortened to the ____ day of _____, 2018 at the hour of _____ a.m./p.m., in front of Discovery Commissioner Bulla, at the Regional Justice Center, 200 Lewis Avenue, Las Vegas, Nevada 89155.

DATED this ____ day of _____, 2018.

DISCOVERY COMMISSIONER

Submitted by:

RICHARD HARRIS LAW FIRM

 #12575
BENJAMIN P. CLOWARD, ESQ.

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

DECLARATION OF BENJAMIN P. CLOWARD

STATE OF NEVADA)
)
COUNTY OF CLARK)

I, BENJAMIN P. CLOWARD, being first duly sworn, depose and say:

1. I am qualified to testify regarding the foregoing.

2. Approximately 2-3 days *before* the *continued* deposition of Rule 30(b)(6) designee Michael Dominguez, counsel for Defendant FirstStreet contacted me by phone to discuss several issues.

3. FirstStreet indicated it became very upset after the Rule 30(b)(6) deposition, wherein Jacuzzi testified that Jacuzzi had no involvement in the marketing or advertising of the walk-in tubs.

4. FirstStreet explained that all advertising had to be first approved by Jacuzzi and there were thousands of emails from FirstStreet to Jacuzzi asking for approval of certain ads.

5. FirstStreet's counsel indicated that an effort was being made to produce the emails prior to the continued deposition, but that due to the sheer volume of the emails it was not possible to produce them prior to the deposition.

6. I told FirstStreet's counsel that as long as the emails were turned over very shortly after the deposition that would be fine.

7. At the continued deposition of Rule 30(b)(6) designee, Michael Dominguez, Jacuzzi again claimed it was not involved in the marketing aspects of the tub.

8. At the first of October, I contacted FirstStreet's counsel and asked for the emails and for the discovery responses which were overdue.

9. FirstStreet's counsel indicated that several lawyers at her firm had been assigned to go through the emails and that they would be forthcoming.

10. FirstStreet's counsel indicated the discovery responses would be served "the next week" and that the emails would be forthcoming hopefully near the end of the next week or the week after for sure.

1 11. The following week, FirstStreet answered the outstanding discovery, but did not
2 produce any emails.

3 12. On Friday, October 12, 2018, I contacted FirstStreet's counsel via email and
5 indicated if the emails were not forthcoming, I would need to file a motion to compel.

6 13. The following week, I contacted FirstStreet's counsel via text, email and by
7 phone in an attempt to obtain the emails and was informed that Phil Goodhart was handling the
8 emails and I should follow-up with him.

9 14. At the deposition of Rhonda Bonecutter, on October 19, 2018, I asked Mr.
10 Goodhart whether the emails were going to be produced or whether I needed to file a motion to
11 compel.

12 15. Mr. Goodhart indicated that until Plaintiffs' recent Request for Production
13 [served on September 25, 2018], the emails were not responsive to any outstanding request and
14 that they were not relevant because there were no cross-claims between the parties.

15 16. I asked Mr. Goodhart to review the allegations in the complaint and indicated that
16 they were relevant for Plaintiffs' to prove Plaintiffs' case-in-chief and that they needed to be
17 turned over via NRCP 16.1.

18 17. Mr. Goodhart indicated I should call him on Monday (October 22, 2018).

19 18. I contacted Mr. Goodhart on Monday October 22, 2018 via email and called his
20 office leaving a message trying to resolve this matter without court intervention.

21 19. At no point did FirstStreet's counsel agree to produce the emails in lieu of
22 Plaintiffs filing a motion to compel despite repeated requests to have them produced.

23 20. The emails and documents are necessary for Plaintiffs' to prepare for the
24 upcoming FirstStreet and AITHR Rule 30(b)(6) depositions currently scheduled for mid-
25 November.

26 21. Plaintiff therefore requests that this motion be heard on order shortening time in
27 order to allow time for the requested documents to be produced and reviewed prior to the Rule
28 30(b)(6) depositions.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

This is a product liability case arising out of a February 19, 2014 incident which resulted in the tragic and prolonged death of Sherry Cunnison (“Sherry”). Like many elderly Americans, Sherry had difficulty getting in and out of traditional bath tubs. Sherry purchased a Jacuzzi Walk-In Tub to assist her with bathing based on the promises made by Jacuzzi regarding the safety features associated with its Walk-in Tubs.

On February 19, 2014, just the second or third time using her newly purchased Jacuzzi Walk-in Tub, Sherry began taking a bath. Due to the defective design of the Tub, Sherry slipped off the front of the seat while reaching for the poorly placed tub controls and drain-lever, located out of reach at the front of the tub. As her bottom slipped off from the front of the tub seat, she became wedged in the footwell of the tub such that she was unable to stand back up. She ultimately became trapped in a living hell remaining in that awful position for nearly 3 days.

After not hearing from Sherry, her family and friends became concerned. The local police were contacted to perform a wellness check. Sherry was discovered trapped in the Jacuzzi walk-in tub. Due to the terrible design features of the tub (having an inward opening door) even four trained Firefighters/Paramedics could not initially extricate Sherry from the tub. The Firefighters/Paramedics tried desperately to remove her from the tub ultimately snapping her arm as they tried to pull her from the bottom of the tub. After snapping her arm, the Firefighters/Paramedics finally resorted to cutting the door completely off the tub to free Sherry. She was rushed to the hospital where she died a few days later of severe dehydration and rhabdomyolysis.

II. LEGAL ARGUMENT

The advertising claims are a central part of Plaintiffs’ complaint in this case. Plaintiff’s Fourth Amended Complaint sets forth the following relevant allegations¹:

¹ See, Plfs. 4th Amended Complaint, attached hereto as **Exhibit 1** (emphasis added).

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

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

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

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

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

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

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

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

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

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

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

5 5 88. Defendants knew of the heightened risk of having users like SHERRY fall down inside
6 6 the Jacuzzi walk-in bathtub, and have difficulties getting back up or out of the bathtub, but did nothing
7 7 to mitigate that risk.

8 8 89. Defendants knew of the heightened risk of having users like SHERRY fall down inside
9 9 the Jacuzzi walk-in bathtub, and have difficulties getting back up or out of the bathtub, but did nothing
10 10 to reduce that risk.

11 12 90. In fact, Defendants knew of alternative designs for a walk-in bathtub that were much
12 13 safer to users like SHERRY who were at a substantial risk of falling down inside the Jacuzzi walk-in
13 14 bathtub and were unable to get back up or out of the bathtub but chose against implementing
14 15 alternative designs for increased profitability.

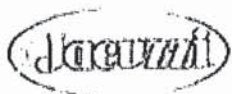
15 17 91. Because of Defendants conscious choices to put profits before safety, the Jacuzzi walk-
16 18 in bathtub is a deathtrap for nearly any elderly person who happens to fall down inside the bathtub
17 19 because there are no grab bars positioned in a way that someone can get back up if they fall down and
18 20 because the door opens inward and traps the elderly person inside the bathtub.

19
20 The allegations Plaintiffs set forth were based in part on the advertising Sherry Cunnison
21 was shown to induce her to purchase a tub.

22 The advertising she was shown suggested the Jacuzzi walk-in Tub marketed and sold by
23 FirstStreet had clear health and safety benefits compared to a regular bathtub. The advertising
24 also used fear as a primary motivating factor to induce the elderly and their children to purchase
25 a tub.

26 Specifically, the advertising made the following claims²:

27
28 ² See, Jacuzzi Brochure, attached hereto as **Exhibit 2**.



Features & Benefits

Jacuzzi® Walk-In Hot Tubs not only provide a safe and enjoyable way to take a bath, but also provide health benefits that can greatly improve your quality of life. The air and water jets may help to improve circulation and ease the symptoms of arthritis, back problems, muscle cramps, osteoarthritis, and other various injuries. Plus, you'll have the independence and worry-free ability to enjoy bathing again safely.

In the next 17 seconds, an older adult will be treated in a hospital emergency department for injuries related to a fall. In the next 30 minutes, an older adult will die from injuries sustained in a fall. Most falls occur in the bathroom, getting in and out of the tub.

Falls account for 65% of all home injury deaths for adults age 65-84.1 in 3 seniors will fall this year. Adults age 65 and older experience an average of 2.3 million nonfatal home injuries annually.

**Cost of Assisted
Living Facility:**
\$900 per week
\$46,800 per year

**Cost of Private
Nursing Home:**
\$1,300 per week
\$82,000 per year

During discovery, the Plaintiffs learned that there was a manufacturing agreement which clearly laid out the responsibilities of each party.³

A. Advertising and Marketing in this case

The Manufacturing Agreement ("MA") set out that FirstStreet was the "exclusive marketing" partner for Jacuzzi's walk-in bathtubs.⁴

...

³ See generally, Manufacturing Agreement (hereinafter referred to as MA) at pg. 5 (FIRST000006), attached hereto as **Exhibit 3**.

⁴ See, MA at pg. 5 (FIRST000006), attached hereto as **Exhibit 3**.

1 In the MA, Jacuzzi promised to provide FirstStreet with the “existing approved
2 advertising claims and claims support documentation . . . for use in FirstStreet’s advertisements
3 and marketing materials.”⁵

5 Jacuzzi promised that the information provided to FirstStreet supporting Jacuzzi’s
6 advertising claims would be “truthful, accurate, non-misleading, and adequately substantiated
7 (meaning claims based on tests, analyses, research, studies, or other evidence based on the
8 expertise of professionals in the relevant area . . .” Specifically, the MA set forth⁶:

9
10 Product will be similar and consistent with the pricing that is extended by JI to
11 other dealers or entities that sell the Finestra Product. JI will also sell FS all its
12 other JACUZZI-branded bath products (not subject to an exclusive supply or a
13 license agreement), including but not limited to all other walk-in tubs, whirlpool
14 tubs and jetted tubs (collectively, including the Finestra Product, the “Additional
15 Products”).

16 FirstStreet was required to submit all proposed marketing and advertising materials to
17 Jacuzzi prior to dissemination to the public. The agreement stated⁷:

18 . . .

19 . . .

20 . . .

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27 ⁵ See, MA at pg. 2 (FIRST000006), attached hereto as **Exhibit 3**.

28 ⁶ See, MA at pg. 2 (FIRST000006), attached hereto as **Exhibit 3**.

⁷ See, MA at pg. 4 (FIRST000006), attached hereto as **Exhibit 3**.

1 E. FS will use the materials and standards provided by JI as specified in Section 1.F.
2 of this Agreement to develop its advertisements and marketing material for the
3 Products, and FS agrees that its advertisements and marketing materials for the
4 Products will be consistent with those materials and standards. FS will submit its
5 national advertising and marketing materials to JI to allow JI to confirm that the
6 claims are accurate and that the advertisements and marketing materials comply
7 with the Guidelines. JI agrees to respond to such submissions not later than three
8 (3) business days after receipt of each such submission, and may require FS to
9 change the advertising and marketing materials if such materials do not comply
10 with the materials and standards provided by JI as specified in Section 1.F. of this
11 Agreement and the Guidelines. JI cannot require FS to change the advertising and
12 marketing materials based on the style and concept of the advertisements and
13 marketing materials, including television advertising. Subject to the foregoing, for
14 television advertising, JI can review the story board for factual and brand
15 inconsistencies within the reasonable time frame specified by FS, and request
16 changes to the story board based on any factual or brand inconsistencies only. JI
17 does not have input into the creative concepts or style of the commercial or
18 advertisement. Once a television commercial or advertisement is made, as long as
19 it is consistent with the story board, JI cannot request any changes.

20 As shown above, the MA required FirstStreet to submit the advertising to confirm that
21 "the claims are accurate and that the advertisements and marketing materials comply with the
22 Guidelines [and that Jacuzzi] can review the story board for factual and brand inconsistencies."⁸

23 To assist FirstStreet with its marketing efforts, Jacuzzi promised to provide FirstStreet
24 with the "existing approved advertising claims and claims support documentation . . . [and that]
25 the claims and claims support provided to FS from JI, if any, will be truthful, accurate, non-
26 misleading, and adequately substantiated..."⁹

27 . . .

28 . . .

. . .

⁸ See, MA at pg. 4 (FIRST000006), attached hereto as **Exhibit 3**.

⁹ See, MA at pg. 2 (FIRST000006), attached hereto as **Exhibit 3**.

Product will be similar and consistent with the pricing that is extended by JI to other dealers or entities that sell the Finestra Product. JI will also sell FS all its other JACUZZI-branded bath products (not subject to an exclusive supply or a license agreement), including but not limited to all other walk-in tubs, whirlpool tubs and jetted tubs (collectively, including the Finestra Product, the "Additional Products").

Plaintiffs sought to have Defendants Jacuzzi and FirstStreet identify and produce the marketing materials used to induce the elderly, including Sherry, to purchase its walk-in bathtub.

One of the first things Plaintiffs did was to send requests for production to Jacuzzi asking for the marketing and advertising materials used to promote the Jacuzzi Walk-in Tub.

Despite the MA clearly stating that:

- 1) Jacuzzi would provide FirstStreet with "existing approved advertising claims"; and
- 2) FirstStreet "will submit its national advertising and marketing claims to Jacuzzi . . . to confirm that the claims are accurate. . . ."¹⁰

Jacuzzi claimed in written discovery that it was unaware of any sales materials used to market the walk-in bathtubs.¹¹

...

...

...

¹⁰ See, MA at pg. 4 (FIRST000006), attached hereto as **Exhibit 3**.

¹¹ See, Jacuzzi Resp. to Pltf Req. for Prod. No. 27, attached hereto as **Exhibit 4**; Jacuzzi was also asked in Nos. 28-32 for sales and marketing materials provided to overweight patients or patients with mobility issues. The response was the same, "*Defendant is unaware of any specific sales materials . . . Jacuzzi did not produce marketing materials related to this tub.*"

REQUEST FOR PRODUCTION NO. 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:

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

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

Finding it hard to believe that despite the clear language in the MA setting forth the obligations of each party, Plaintiffs sought to confirm with Jacuzzi that it was not involved in the marketing and set forth the following Rule 30(b)(6) topics¹²:

...

...

...

¹² See, Plfs. Rule 30(b)(6) deposition notice, attached hereto as **Exhibit 5**.

SALES AND MARKETING TESTIMONY GENERAL

21. Testimony regarding the policies and procedures used by Jacuzzi to advertise and sell Jacuzzi walk in tubs.
22. Jacuzzi, Inc.'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.
23. Jacuzzi, Inc.'s, sales department, generally, concerning the advertising, marketing, sale and post-sale matters concerning the subject Jacuzzi design of walk in tubs.
24. Identification of all persons known to Defendant who trained, directed or supervised to advise end users of the safety of Jacuzzi tubs.
25. Identification of all persons known to Defendant who trained, directed or supervised individuals to design walk in tubs that could cause or contribute to user being trapped in tub resulting in injury or death.

At the deposition, Jacuzzi "doubled-down" that it was not involved in any way with the marketing and that it was solely FirstStreet's obligation to produce any and all advertisement. The following testimony is important¹³:

¹³ See, Deposition of Rule 30(b)(6) designee Michael Dominguez, at 117-118, attached hereto as **Exhibit 6** (emphasis added).

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Q. Okay.

"FS will submit its national
advertising and marketing materials
to JI to allow Jacuzzi to confirm that
the claims are accurate and that the
advertisements and marketing materials
comply with the guidelines."

Did I read that correct?

A. That's correct.

Q. Have they done that, have they submitted -- did
they submit those?

A. Not to my knowledge.

Q. And if not you, then who would have that
knowledge, Mr. Torres?

A. Yes.

Q. Okay. And he left how long ago?

A. Four years ago.

Q. Four years ago.

And so the last four years they haven't come
to you and asked you to approve any of their

Michael A. Dominguez, Volume I Robert Ansara, et al. v. First Street for Boomers & Beyond, Inc., et al.

1 advertisements --

2 A. No.

3 Q. -- is that correct?

4 A. That's correct.

After the *first* deposition of Mr. Dominguez, and several days before the continued *second* deposition, counsel for FirstStreet contacted counsel for the Plaintiffs and indicated that there were thousands of emails that contradicted what was said at the deposition.¹⁴ Specifically, FirstStreet indicated that FirstStreet was not allowed to do any advertising *without first* getting Jacuzzi's approval and that any and all claims ever made by FirstStreet were first submitted to Jacuzzi for approval.¹⁵


Both Jacuzzi and FirstStreet have an obligation pursuant to NRCP 16.1 to produce documents that are relevant regardless of whether any party has requested them pursuant to Rule 34. Specifically, the *mandatory language of NRCP 16.1 states, "a party must, without awaiting a discovery request, provide to the other parties: . . . (B) A copy of, or a description by category and location of, all documents, data compilations, and tangible things that are in the possession, custody, or control of the party and which are discoverable under Rule 26(b)."* See, NRCP 16.1 (a)(1) (emphasis added).

IV. CONCLUSION

Based on the foregoing, Plaintiffs respectfully request that the Court grant Plaintiffs' Motion to Compel Defendant FirstStreet to produce the e-mails and documents requested.

DATED this 24th day of October, 2018.

RICHARD HARRIS LAW FIRM

 #12575
BENJAMIN P. CLOWARD, ESQ.
Nevada Bar No. 11087
801 South Fourth Street
Las Vegas, Nevada 89101
Attorneys for Plaintiff

¹⁴ See, Declaration of Benjamin Cloward.

¹⁵ See, Id.

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of RICHARD HARRIS LAW FIRM and that on this _____ day of October, 2018, I served a copy of the foregoing, **PLAINTIFFS' MOTION TO COMPEL DEFENDANT FIRSTSTREET TO PRODUCE DOCUMENTS ON ORDER SHORTENING TIME**, 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:

- ☐ 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.).
- ☐ 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 in the confirmation sheet filed herewith. Consent to service under NRCP 5(b)(2)(D) shall be assumed unless an objection to service by facsimile transmission is made in writing and sent to the sender via facsimile within 24 hours of receipt of this Certificate of Service; and/or
- ☐ Hand Delivery—By hand-delivery to the addresses listed below.

SEE ATTACHED SERVICE LIST

**

An employee of RICHARD HARRIS LAW FIRM

SERVICE LIST

Ansara, Robert, et al. v. First Street for Boomers & Beyond, Inc., et al.
Clark County District Court Case No. A-16-731244-C

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EXHIBIT “16”

provided on CD due to volume of exhibit

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EXHIBIT “17”

Condensed Transcript

Jerre Chopper

Volume I

Date: December 20, 2018

Robert Ansara, et al. v. First Street For Boomers & Beyond, Inc., et
al.

Case No. A-16-731244-C

Oasis Reporting Services, LLC
Phone: 702-476-4500
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Internet: www.oasisreporting.com

Page 1	Page 3
<p>1 DISTRICT COURT CLARK COUNTY, NEVADA</p> <p>2 ROBERT ANSARA, as Special) 3 Administrator of the Estate) 4 of SHERRY LYNN CUNNISON,) Deceased; MICHAEL SMITH,) 5 individually, and heir to) CASE NO. the Estate of SHERRY LYNN) A-16-731244-C 6 CUNNISON, Deceased; and) DEBORAH TAMANTINI,) DEPT NO. II 7 Individually; and heir to) the Estate of SHERRY LYNN) CUNNISON, Deceased,) 8) Plaintiffs,) 9) Taken at 139 -vs-) Bitterroot Plaza Dr. 10) Hamilton, Montana FIRST STREET FOR BOOMERS &) Thursday, 11 BEYOND, INC.; AITHR DEALER,) December 20, 2018 INC.; HALE BENTON,) 12:00 P.M. 12 Individually; HOMELICK,) LLC; JACUZZI INC., doing) 13 business as JACUZZI LUXURY) BATH; BESTWAY BUILDING &) 14 REMODELING, INC.; WILLIAM) BUDD, Individually and as) 15 BUDDS PLUMBING; DOES 1) through 20; ROE CORPORATIONS) VIDEOTAPED DEPOSITION 16 1 through 20; DOE EMPLOYEES) 1 through 20; DOE) OF 17 MANUFACTURERS 1 through 20;) DOE INSTALLERS 1 through 20;) JERRE CHOPPER 18 DOE CONTRACTORS 1 through) 20; and DOE SUBCONTRACTORS 1) 19 through 20, inclusive,) 20 Defendants.) 21) 22) 23) 24 Reported by: Terra Rohlfs, RPR Freelance Court Reporter and Notary Public for the State of Montana 25</p>	<p>1 INDEX</p> <p>2</p> <p>3 WITNESS: PAGE:</p> <p>4 JERRE CHOPPER</p> <p>5 Examination by Mr. Cloward 5 6 Examination by Mr. Goodhart 117 7 Examination by Mr. Cools 130 8 Examination by Mr. Cloward 144 9 EXHIBITS: 10 Deposition Exhibit Number 1 Marked for Identification 8 11 Deposition Exhibit Number 2 Marked for Identification 23 12 Deposition Exhibit Number 3 Marked for Identification 44 13 Deposition Exhibit Number 4 Marked for Identification 49 14 Deposition Exhibit Number 5 Marked for Identification 57 15 Deposition Exhibit Number 6 Marked for Identification 62 16 Deposition Exhibit Number 7 Marked for Identification 66 17 Deposition Exhibit Number 8 Marked for Identification 69 18 Deposition Exhibit Number 9 Marked for Identification 76 19 Deposition Exhibit Numbers 10 and 11 Marked for Identification 78 20 Deposition Exhibit Number 12 Marked for Identification 79 21 Deposition Exhibit Number 13 Marked for Identification 80 22 Deposition Exhibit Number 14 Marked for Identification 86 23 Deposition Exhibit Number 15 Marked for Identification 86 24 Deposition Exhibit Number 16 Marked for Identification 11 25 Deposition Exhibit Numbers 17 and 18 Marked for Identification 88 Certificate of Court Reporter 151</p>
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<p>1 APPEARANCES</p> <p>2</p> <p>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.</p> <p>7</p> <p>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</p> <p>14 Joshua D. Cools, Esq. 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</p>	<p>1 THURSDAY, DECEMBER 20, 2018</p> <p>2 VIDEOGRAPHER SIMONICH: Today is</p> <p>3 Thursday, December 20th. The time is approximately</p> <p>4 12 p.m. The court reporter is Terra Rohlfs, and I</p> <p>5 am your videographer Candace Simonich. We are here</p> <p>6 on behalf of Oasis Reporting Services.</p> <p>7 The witness today is Jerre Chopper. And</p> <p>8 we are here in the case of Robert Ansara, et al.</p> <p>9 versus firstSTREET for Boomers & Beyond,</p> <p>10 Incorporated, et al.</p> <p>11 Will the counsel please state your</p> <p>12 appearances, and the court reporter will then</p> <p>13 administer the oath.</p> <p>14 MR. CLOWARD: My name is Ben Cloward for</p> <p>15 the Cunnison family.</p> <p>16 MR. GOODHART: Philip Goodhart on behalf</p> <p>17 of firstSTREET and AITHR Dealers.</p> <p>18 MS. LLEWELLYN: Brittany Llewellyn on</p> <p>19 behalf of Jacuzzi, Inc.</p> <p>20 MR. COOLS: Josh Cools on behalf of</p> <p>21 Jacuzzi, Inc.</p> <p>22 COURT REPORTER: Okay. I'll have you</p> <p>23 raise your right hand.</p> <p>24 Thereupon,</p> <p>25 //</p>

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 Q. So the first one I will mark as
2 Exhibit 1 --

3 MR. GOODHART: Actually, before you
4 continue on with this, I just want to interpose an
5 objection that these documents have not been
6 produced by plaintiffs' counsel. This morning,
7 about five minutes ago was the first time that they
8 were provided to me to review. There is a stack of
9 documents approximately three-quarters of an inch
10 thick, as well as some larger documents of what
11 appears to be magazines. And I just want to make
12 sure that the record is very clear that this is the
13 first time that either myself or Jacuzzi's counsel
14 have had a chance to look at these or were even
15 aware that they existed.

16 MR. COOLS: I'd join in that.

17 MR. CLOWARD: And for the record, these
18 documents have been in the defendants' possession,
19 all three defendants, Jacuzzi, first STREET and
20 Aging In The Home's, for approximately six years,
21 and they were never provided to me. So I would
22 actually have the same objection that unfortunately
23 these documents that were in your clients'
24 possession for the last six years never were made
25 available to me. Thanks to Ms. Chopper yesterday

1 providing me with a copy, I do now have a copy of
2 those. And I stayed up until 2:00 last night
3 trying to be as prepared as I could, given the
4 circumstances. But it certainly would've been nice
5 had these been produced in the regular course of
6 litigation.

7 MR. GOODHART: And just to quickly
8 respond to that, Ben, in my quick review of these
9 documents --

10 MR. CLOWARD: We can fight over the
11 documents later, but --

12 MR. GOODHART: I'm just responding to
13 your comment --

14 MR. CLOWARD: -- I don't want to waste
15 her time.

16 MR. GOODHART: I think I need to do this
17 on the record right now before we start the
18 deposition or the trial, whatever you want to call
19 this.

20 In review of these documents, none of
21 them reference any type of injury that Ms. Chopper
22 actually sustained. The only documents you have
23 requested in this litigation relate to injuries
24 sustained by people using the Jacuzzi tub, period.
25 These documents reflect complaints about

1 installation. And as of right now the installers
2 in this particular litigation were dismissed by the
3 plaintiffs; and I'm just talking about right now.
4 I don't know why, I don't know what the
5 circumstances are, and I'm not gonna hypothesize
6 about what those are, I'm just stating a fact. As
7 of today the installers are not in this litigation.
8 And that is why none of these documents have been
9 produced to you.

10 MR. COOLS: Additionally, not having had
11 a chance to thoroughly review them, I don't know if
12 what you say is accurate in terms of them being in
13 the defendants' possession.

14 MR. CLOWARD: Okay. We'll go through
15 that now.

16 EXHIBITS:

17 (Deposition Exhibit Number 1 marked for
18 identification.)

19 Q. (BY MR. CLOWARD) Okay. So the first
20 thing I will have you identify is Exhibit 1. Can
21 you tell us what that stack of documents is.

22 A. Confirmation of online registration of
23 your Jacuzzi product. Welcome to the Jacuzzi
24 family, and it is with a description of the tub. I
25 don't see a signature on here. Can I take this

1 apart?

2 Q. Absolutely.

3 A. Oh, here's the first one. Welcome --
4 Let's see, I'm writing to thank you for visiting
5 with our Jacuzzi technician in your home in 2012,
6 et cetera, et cetera, et cetera, signed by John
7 Bassett, division manager, and it's on Jacuzzi
8 letterhead, wholesale division. Do you want me to
9 read the P.S.?

10 Q. If you -- if you would like, you don't
11 need to.

12 I'm just ultimately asking, I guess, if
13 you recognize these documents?

14 A. Yes.

15 Q. Are these documents that you provided to
16 me yesterday?

17 A. Yes.

18 Q. Okay. Now, before we get any further,
19 you also provided my office with a copy of
20 documents last week, do you remember that?

21 A. Yes, I mailed them after I talked to you
22 on the phone.

23 Q. Okay. Approximately, can you estimate
24 how many documents you mailed?

25 A. I can't re -- I can't tell you how many,

1 but when I put them in the envelope it was 5
2 ounces.

3 Q. Okay.

4 A. So it was a fairly large --

5 Q. Okay. Was it as large as this stack of
6 documents that we have before us today?

7 A. I don't know. Does that weigh 5 ounces?
8 I think it might weigh a little more -- oh, yeah, I
9 don't know how many, but like I say, it was 5
10 ounces, and it was approximately this thick
11 (indicating) when I got them in the envelope.

12 MR. GOODHART: Can I just for the record,
13 verbal record, the court reporter record, when you
14 say this thick, you used your fingers.

15 THE WITNESS: I would say maybe a little
16 over an inch. All I know it is I put it on the
17 scale and it weighed 5 ounces.

18 MR. GOODHART: Thank you. And again, I
19 apologize for interrupting, the court reporter can
20 only take down words.

21 THE WITNESS: Yeah.

22 MR. GOODHART: Even though there's a
23 videographer and the video will show you saying
24 "this much" --

25 THE WITNESS: Yeah.

1 MR. GOODHART: -- the court reporter will
2 just say "this much," and we're going to go, how
3 much was that?

4 THE WITNESS: I wish you all would raise
5 your voices a little bit because I'm hard of
6 hearing. Did you get that, Ben?

7 MR. CLOWARD: Yes, I will try and raise
8 my voice. (Laughter.)

9 THE WITNESS: I assume that this is
10 supporting documents for this.

11 MR. CLOWARD: Yes. We're going to go
12 through those. I'm going to actually attach a copy
13 of this binder as Exhibit, we'll just do 16. And
14 this is a copy of all of the documents that were
15 provided last week, Madam reporter. If you want to
16 just hand that to her. (Witness hands Exhibit 16
17 to the court reporter.)

18 EXHIBITS:

19 (Deposition Exhibit Number 16 marked for
20 identification.)

21 MR. GOODHART: Do you have another copy
22 for us, Ben?

23 MR. CLOWARD: I don't.

24 MR. GOODHART: Have they been
25 supplemented since last week?

1 MR. CLOWARD: No, they have not.

2 MR. COOLS: Can we take a look at that
3 binder first?

4 MR. GOODHART: Yeah, absolutely. (Hands
5 Mr. Cools Exhibit 16.)

6 Q. (BY MR. CLOWARD) Okay. So why don't you
7 go ahead and -- Exhibit 1 there, go ahead and look
8 through that again, if you will, and just identify
9 what that stack of documents are.

10 A. Okay. The first letter is dated
11 August 24th, 2012 and it is addressed to Mr. Kurt
12 Bachmeyer, director of customer relations for
13 Jacuzzi.

14 Q. Did you author that letter?

15 A. I did.

16 Q. Is that a true and correct copy of the
17 letter that you authored?

18 A. Yes.

19 Q. What is the next letter in line?

20 A. The next thing is from Jacuzzi survey,
21 subject is Jacuzzi customer service survey, dated
22 August 24th, 2012. And it says, We want to hear
23 from you. Please participate in our customer
24 service survey.

25 Q. Is that an email you received from

1 Jacuzzi?

2 **A. Yes.**

3 Q. Is that a true and correct copy of an
4 email that you received?

5 **A. Yes.**

6 Q. What is the next letter in line?

7 **A. The next letter is to Mr. Kurt Bachmeyer,**
8 **director of customer service at Jacuzzi, dated**
9 **September 1, and the subject is, The Jacuzzi**
10 **designed for seniors walk-in tub.**

11 Q. Is that a letter you authored?

12 **A. Yes.**

13 Q. Is that a true and correct copy of the
14 letter you sent?

15 **A. Yes, it is.**

16 MR. GOODHART: Object to form,
17 foundation.

18 Q. (BY MR. CLOWARD) Okay. What is the next
19 in line?

20 **A. The next letter is also to Mr. Bachmeyer,**
21 **dated September 12th, 2012, subject is Jacuzzi**
22 **designed for seniors walk-in tub.**

23 Q. Is that a letter you wrote?

24 **A. It is.**

25 Q. Is that a true and correct copy of the

1 today. We have a good judge, Judge Scotty, but
2 he's not here, so he can't rule on those
3 objections. So the way that works is we'll present
4 those objections down the road and he'll rule on
5 them at a later date.

6 **A. Oh, I understand.**

7 Q. And so it's okay -- if they make the
8 objection, it's okay for you to just give the
9 answer after they make the objection.

10 **A. Okay.**

11 MR. GOODHART: I would just request that
12 you maybe pause for one second before you answer so
13 if there is an objection, we can do the objection
14 and we don't talk over each other.

15 THE WITNESS: Oh, okay.

16 MR. GOODHART: Thank you.

17 Q. (BY MR. CLOWARD) What was the next in
18 line?

19 **A. The next in line is another letter to**
20 **Mr. --**

21 Q. I think we -- I'm so sorry, I think we
22 actually skipped the September 12th letter.

23 **A. Oh, did we?**

24 Q. Yeah.

25 **A. Okay. September 12th, 2012, to**

1 letter you sent?

2 **A. That's correct.**

3 MR. GOODHART: Objection, form,
4 foundation and leading.

5 Q. (BY MR. CLOWARD) What is the next in
6 line?

7 **A. The next in line is a letter dated**
8 **October 15th, 2012, also directed to Mr. Kurt**
9 **Bachmeyer, director of customer service at Jacuzzi.**

10 Q. Is that a letter you wrote?

11 **A. Yes, it is.**

12 Q. Is that a true and correct copy of the
13 letter you sent?

14 **A. Yes, it is.**

15 MR. GOODHART: Objection, form,
16 foundation and leading.

17 THE WITNESS: I didn't hear what you
18 said.

19 Q. (BY MR. CLOWARD) He's going to object
20 from time to time --

21 **A. Oh.**

22 Q. -- counsel will object. And on Court TV
23 we see there's usually a judge there, and the judge
24 will say, sustained or overruled or I'll allow it.
25 We don't have the luxury of having a judge here

1 **Mr. Bachmeyer also, and the subject again is the**
2 **Jacuzzi designed for seniors walk-in tub.**

3 Q. Is that a letter you authored?

4 **A. I did.**

5 Q. Is that a true and correct copy of the
6 letter you sent?

7 MR. GOODHART: Object, form, foundation,
8 leading. You can answer the question.

9 Q. (BY MR. CLOWARD) Is that a true and
10 correct copy of the letter you would've sent?

11 **A. It is.**

12 Q. Okay. Now, the next letter in line?

13 **A. Is September 1, 2012, to Mr. Bachmeyer,**
14 **same subject.**

15 Q. Did you author that letter?

16 **A. I did.**

17 Q. Is that a true and correct copy of the
18 letter you would've sent?

19 MR. GOODHART: Objection, form,
20 foundation and leading. Go ahead.

21 **A. It is.**

22 MR. GOODHART: Thank you.

23 Q. (BY MR. CLOWARD) Now, are these your
24 handwritten notes?

25 **A. Yes.**

1 Q. Okay. And that's the Donaldson Brothers
2 Readymix?

3 A. No, no, that's just the tablet I had.

4 Q. Okay.

5 A. These handwritten notes are mine that I
6 just put in my file.

7 Q. Okay. We can move to the next -- the
8 next in line.

9 A. Well, what I did is I talked to Carol at
10 Jacuzzi in Daisy, Florida.

11 Q. Okay. So those are notes of phone calls
12 that you would've made contacting Jacuzzi?

13 A. Yes, yes.

14 Q. And that would've been two different
15 phone calls?

16 A. Well, it looks like --

17 Q. One to Carol -- I'm sorry, one to --

18 A. I don't know -- I don't know what the
19 date is that I talked to Carol at Jacuzzi because I
20 wrote down only the phone number and the price.
21 Same with Mr. Bachmeyer, I didn't write -- I talked
22 to Myra, but I don't remember what the date was.
23 On the 30th of August of '12 I talked to Diane at
24 Consumer Protection. And on 8/31/12, I talked to
25 the secretary of state.

1 Q. Okay. What is this document, this --

2 A. I sent certified mail, I think, but I
3 don't remember which one.

4 Q. Okay.

5 A. The date on it is August 24th.

6 Q. Okay. This is another copy, I believe,
7 of the letter to Mr. Bachmeyer that we already
8 discussed.

9 A. Oh, okay, that's reasonable.

10 But here's the letter dated August 24th,
11 so maybe this was one I sent certified mail because
12 the stamp is August 24th, so I don't know. But it
13 also is a letter to Mr. Bachmeyer.

14 Q. Okay.

15 A. It says, Your email survey arrived this
16 morning, et cetera, et cetera.

17 Q. Okay. And after the letter, what is next
18 in that packet?

19 A. Oh, this must be the receipt from the
20 post office for the certified mail --

21 Q. Okay.

22 A. -- it's dated August 24th.

23 Q. Okay. And the next in line?

24 A. Is a letter from Jacuzzi, Jacuzzi Group
25 World, it came -- I think it came via email, but

1 I'm not sure. Yeah, it came -- reply is dated
2 August 24th, 2012.

3 Q. Is this a true and correct copy of the
4 email you received from Jacuzzi --

5 A. Yes.

6 Q. -- on the 24th?

7 A. Yes.

8 Q. Is this the survey that you referenced in
9 your letter to Mr. Bachmeyer?

10 A. Yes. He wanted to -- he wanted to -- he
11 wanted me to fill out the survey, and I didn't, I
12 wrote the letter.

13 Q. Okay. And then the next --

14 A. Do you want to go back to that, what I
15 wrote to him?

16 Q. We will, I'm just going to lay some
17 foundation for the documents --

18 A. Oh, okay.

19 Q. -- and then we can discuss them
20 afterwards.

21 A. Okay. The next document is an email from
22 Jacuzzi, dated August 23rd, 2012, regarding the
23 tub.

24 Q. And is that a true and correct copy of
25 the email?

1 A. Yeah.

2 Q. Okay.

3 A. Next one is another email from Bachmeyer.

4 Q. What is the date?

5 A. November 5th, 2012. And he apologizes
6 for not receiving a response from firstSTREET
7 representative.

8 Q. And is this a true and correct copy of
9 the email you --

10 A. Yes.

11 Q. -- received from Mr. Bachmeyer?

12 A. Yes.

13 Q. Okay.

14 A. Next one is another email dated
15 November 6th, 2012, from Mr. Bachmeyer.

16 Q. Is this a true and correct copy of the
17 email you received on November 6th?

18 A. Yes.

19 Q. Okay.

20 A. Next one is an email to Mr. Bachmeyer
21 regarding the walk-in tub.

22 Q. Did you send that email?

23 A. Yes. And then Mr. Bachmeyer's -- let's
24 see, this is November 6th.

25 Q. Is that a true and correct copy of the

1 email you sent?

2 **A. Yes, it is. And it records that the tub**
3 **was removed from my premises on October 18th by the**
4 **original installer from Bigfork, Montana, for which**
5 **I paid \$700.**

6 **Next thing is the -- Let's see, oh,**
7 **that's just a reply from Mr. Bachmeyer.**

8 **The next document is an email from me to**
9 **Bachmeyer on November 5th.**

10 Q. Did you draft that email?

11 **A. Yes.**

12 Q. Is that true and correct copy of the
13 email you sent?

14 **A. Yes.**

15 **The next document is from Kurt Bachmeyer,**
16 **director of customer service, and it's -- I don't**
17 **know the date here, I can't see a date on this**
18 **particular one.**

19 Q. I think it's actually --

20 **A. Part of the other -- previous?**

21 Q. Yeah, we already covered that, it was --

22 **A. Okay. And it says, I have confirmed with**
23 **our president of Jacuzzi that they will be**
24 **responding to your concerns and issues as outlined**
25 **in your letter.**

1 Q. Did the president of Jacuzzi ever get
2 with you?

3 **A. No, not to my knowledge.**

4 Q. Okay. And I think --

5 **A. The last letter here is dated July 25th,**
6 **2013, and it's directed to Mrs. Sarah Johnson,**
7 **Aging In The Home advisor, Jacuzzi marketing**
8 **department at Colonial Heights, Virginia.**

9 Q. Is that a letter that you drafted?

10 **A. Yes.**

11 Q. Is that a true and correct copy of the
12 letter you sent?

13 **A. Yes.**

14 MR. GOODHART: Object, form, foundation,
15 leading.

16 Q. (BY MR. CLOWARD) Now, on the January 11
17 letter from the wholesale division, that letter, I
18 think that I asked you, but I just need to make
19 sure --

20 **A. January 11th, 2013?**

21 Q. Okay. Is that a true and correct copy of
22 the letter --

23 **A. Yes.**

24 Q. -- you received?

25 **A. Yes.**

1 Q. Okay.

2 **A. It's the one signed by John Bassett,**
3 **division manager.**

4 Q. Okay. So we will set those aside. Let
5 me paper clip those for you. This stack will be
6 Exhibit 1. And I forgot to --

7 **A. Do I give these to Terry {sic}?**

8 Q. You can just leave them.

9 **A. Oh, just leave it as is?**

10 Q. Yeah. I forgot to give you your
11 paperclip remover. So there you go, there's that
12 back.

13 **A. I've got lots of clips at home that you**
14 **gave me back.**

15 Q. Okay. Now, if we can go through this
16 next stack of documents.

17 EXHIBITS:

18 (Deposition Exhibit Number 2 marked for
19 identification.)

20 MR. GOODHART: Ben, can you identify the
21 first page of those documents, so I can find it in
22 the ones you've provided?

23 MR. CLOWARD: Yeah it's the one that says
24 from Jerre Chopper to Nick Fawkes, nick.fawkes, and
25 the subject is Installation of tub. And it should

1 be clipped together, in front of that it might be a
2 letter to Royce A. McCarthy {sic}, it should be the
3 same documents. Look for that letter.

4 MR. GOODHART: Royce McCarthy?

5 MR. CLOWARD: Yeah, either Royce
6 McCarthy -- or that one right there in your hand, I
7 think, is that it or not?

8 MR. GOODHART: No.

9 MR. COOLS: This is the right one.

10 THE WITNESS: Terry, would you help me
11 with my jacket, please? (Speaking to court
12 reporter.)

13 MR. GOODHART: Let's go off the record
14 for a second.

15 THE WITNESS: Just take it off my
16 shoulders --

17 VIDEOGRAPHER SIMONICH: Let the record
18 reflect a break was taken at 12:25.

19 THE WITNESS: -- and put it on the back
20 of the chair.

21 (Discussion held off the record.)

22 VIDEOGRAPHER SIMONICH: The deposition is
23 being resumed at 12:25 p.m.

24 MR. GOODHART: Just real quickly, it's my
25 understanding, Ben, off the record we had a

1 discussion about the next documents you're going to
 2 show to Ms. Chopper, it's my understanding they
 3 were not included in the packet of documents you
 4 provided to me this morning, through no fault of
 5 anybody's, it's you didn't have enough copies?
 6 MR. CLOWARD: Correct. But my
 7 understanding is --
 8 MR. GOODHART: I'm going to try to share
 9 them with Jacuzzi's counsel the best we can.
 10 MR. CLOWARD: Because Jacuzzi's counsel
 11 has two copies.
 12 MR. COOLS: You can have that one.
 13 MR. GOODHART: Oh, you have two copies?
 14 It was Jacuzzi's counsel that stole it.
 15 (Laughter.)
 16 MR. CLOWARD: No, I meant to make sure
 17 that I alerted you or whoever got the S packet that
 18 it was short --
 19 MR. COOLS: He made sure that you had the
 20 S packet.
 21 MR. CLOWARD: -- one copy.
 22 That is not true. That is not true.
 23 MS. LLEWELLYN: We had an extra copy.
 24 MR. GOODHART: Thank you.
 25 Q. (BY MR. CLOWARD) Okay. So now I'm going

1 to hand you what we've marked as Exhibit 2. And
 2 the front page of this stack is an email dated
 3 July 11 from Ms. Chopper to Nick Fawkes?
 4 **A. Yes, July 11th, 2012, directed to Nick**
 5 **Fawkes, general manager of firstSTREET and AIHR**
 6 **Remodelers --**
 7 Q. All right. Is that a --
 8 **A. -- references my visit with production**
 9 **person Tracy Dierkens.**
 10 Q. Is that a letter that you drafted -- or
 11 an email that you wrote?
 12 **A. Let's see, it was an email, I guess, an**
 13 **email addressed to Nick Fawkes at Aging In the Home**
 14 **Remodelers.**
 15 Q. Did you draft that email?
 16 **A. I did.**
 17 Q. Is that a true and correct copy of the
 18 email?
 19 **A. It is.**
 20 Q. What is the next in line?
 21 **A. The next in line is an email from Nick**
 22 **Fawkes to me, dated July 13th, 2012.**
 23 Q. Is that a true and correct copy of an
 24 email you received from Nick Fawkes?
 25 **A. Yes.**

1 Q. Okay. What is the next?
 2 **A. And then my reply to that.**
 3 Q. What is the next?
 4 **A. August 15th, 2012, to AIHR at Littleton,**
 5 **Colorado.**
 6 Q. Is that a letter you drafted?
 7 **A. Yes.**
 8 Q. Is that a true and correct copy of the
 9 letter you would've sent?
 10 **A. Yes.**
 11 MR. GOODHART: Objection, form,
 12 foundation, leading.
 13 Q. (BY MR. CLOWARD) What is the next?
 14 **A. The next is an invoice from Aging In The**
 15 **Home Remodelers at Littleton, Colorado, to me, and**
 16 **it is an invoice for designed for seniors Jacuzzi**
 17 **walk-in tub and installation, \$14,700.**
 18 Q. Okay. At the bottom I see it says Amount
 19 Paid, 5,000.
 20 **A. Well, the \$5,000 was what I gave the**
 21 **salesman when I signed the contract.**
 22 Q. Okay. And is this a true and correct
 23 copy of the invoice you received?
 24 **A. Right.**
 25 Q. And if you flip the next page, is this

1 the 5,000 payment that you were referencing?
 2 **A. Yes.**
 3 Q. Is that a true and correct copy of that
 4 document?
 5 **A. Yes.**
 6 Q. Okay. Now, the next is?
 7 **A. Next is email from me to Nick Fawkes --**
 8 Q. Okay.
 9 **A. -- regarding the installer Mike Kirchner**
 10 **in Bigfork, Montana.**
 11 Q. What is the date of that?
 12 **A. July 11th, 2012.**
 13 MR. COOLS: Where are you at?
 14 MR. CLOWARD: Oh, I think that's just
 15 another copy of the -- That's probably your copy,
 16 Phil, that's your copy. (Laughter.)
 17 THE WITNESS: Do you want me to tear it
 18 out?
 19 MR. GOODHART: I don't have that email.
 20 MR. CLOWARD: Yeah, tear that out and
 21 let's give that to Phil. Because I don't have that
 22 in my stack, so that's probably where the extra
 23 copy went.
 24 THE WITNESS: Just a minute.
 25 MR. GOODHART: I'm confused, but that's

1 okay.

2 MR. COOLS: Is there one copy that has
3 the additional documents and all the other copies
4 don't, is that what it is?

5 MR. CLOWARD: His was the only one that
6 did not have a copy of that email. Because when I
7 was putting everything together, I would put -- I
8 had a stack from the copy center like this, and it
9 was literally like making five -- one, two, three,
10 four, five stacks, and I remember that one was the
11 one that didn't --

12 MR. COOLS: Which email are we talking
13 about?

14 MR. CLOWARD: You can have that, you can
15 have that.

16 MR. GOODHART: But nobody else has it?

17 MR. CLOWARD: No, that's the first one
18 that we talked about, July 11, that's a copy of
19 that.

20 MS. LLEWELLYN: So just to be clear, we
21 have the whole packet marked as Exhibit 2; is that
22 right?

23 MR. CLOWARD: Yes.

24 MS. LLEWELLYN: And is it that the
25 entirety of Exhibit 2 was not included with one of

1 the packets, or was it just the one email that was
2 at the front?

3 MR. CLOWARD: This one email was not
4 originally in Phil's packet.

5 MR. COOLS: I see it got mixed in with
6 another pile, so it was in the middle of hers and
7 was not in Phil's at all?

8 MR. CLOWARD: Exactly --

9 THE WITNESS: And this --

10 MR. CLOWARD: -- it got mixed in with her
11 pile. So this is the email, so now everyone has a
12 copy of the email. I looked for that thing for
13 half an hour last night and I was like, I know she
14 made five copies of everything, where did it go?
15 Well, problem solved.

16 **A. Well, and the next one is the original**
17 **invoice, whereas the one before was a copy of the**
18 **invoice.**

19 Q. (BY MR. CLOWARD) Okay. So what is
20 the --

21 **A. Oh, no, wait a minute, it's a different**
22 **invoice, it says Final Invoice, dated August 21st,**
23 **2012, and it is a demand for payment of \$4,850.**

24 Q. Okay. And is that a true and correct
25 copy of the invoice you received?

1 **A. Yes.**

2 Q. Okay. What is the next in line?

3 **A. Apparently they sent me a paid invoice,**
4 **paid \$4,850.**

5 Q. And is that a true and correct copy of
6 the document you received?

7 **A. Yeah, yes.**

8 Q. Okay. What is next in line?

9 **A. Well, let's see, what is this? Oh, it's**
10 **a stop payment request. And I can't read the date**
11 **on it. Account number.**

12 Q. I believe it's right there.

13 **A. Date of request 8/16 of '12.**

14 Q. Okay.

15 MR. COOLS: I think at least in my stack
16 we skipped an email; right?

17 MR. CLOWARD: Is that the Nick Fawkes
18 email?

19 MR. COOLS: Yeah, but it's a July 13,
20 wasn't the other one a July 11 email?

21 MR. GOODHART: There's also a July 13th
22 from Nick Fawkes.

23 MR. CLOWARD: His response.

24 MR. COOLS: I guess I just want to make
25 sure that I know what's in her --

1 MR. CLOWARD: At the very first of your
2 stack there's a July 11 --

3 MR. COOLS: Right.

4 MR. CLOWARD: -- and then a July 13
5 response, so that's probably just a duplicate of
6 that.

7 MR. COOLS: Well, yeah, so -- here, just
8 so you see my order, so we've got the invoice,
9 we've got her payment authorization, then I have
10 the July 13 email --

11 MR. CLOWARD: Okay.

12 MR. COOLS: -- which I don't believe she
13 identified as she's going through her stack; right?

14 MR. CLOWARD: Yeah.

15 MR. COOLS: And then the stop payment, so
16 I just want to make sure I know what's in her
17 stack.

18 MR. CLOWARD: So that's page 2 of the
19 missing email from your stack.

20 MR. GOODHART: It was just they were
21 assembled out of order.

22 MR. CLOWARD: At 2 a.m., yeah.

23 MR. COOLS: Okay. So does she have -- I
24 guess, does she have this email --

25 MR. CLOWARD: No, no.

1 MR. COOLS: -- the July 13 one in her
2 stack?

3 MR. CLOWARD: No. Well, she has it as
4 the very first page of Exhibit 2. The first two
5 pages are those, and those are the ones that Phil
6 did not get.

7 MR. COOLS: Oh, I see, okay.

8 MR. CLOWARD: So if you rip that out and
9 hand that -- now everybody's --

10 MR. GOODHART: We're getting there, okay.
11 (Parties speaking over each other,
12 unintelligible.)

13 MR. GOODHART: We're getting there
14 though. We're getting there.

15 Q. (BY MR. CLOWARD) Okay. And what is the
16 blue document there, stop payment?

17 A. That's the stop payment request.

18 Q. Okay. And what is the next in line?

19 A. Well, it's a check dated -- on my account
20 on 9/10/12 for \$4,850, but it's not signed, it was
21 never sent.

22 Q. Okay. And what is the last in line?

23 A. The next is Aging In The Home Remodelers
24 at Littleton, Colorado, addressed to me, dated 22nd
25 of August of 2012.

1 Q. Okay.

2 MR. COOLS: Before I forget, can we just
3 maybe put on the record that the exhibits be
4 marked -- or be sealed as part of the -- under the
5 confidentiality and protective order, since it has
6 her bank account information?

7 MR. CLOWARD: I would not agree to seal
8 the entirety of the documents under the
9 confidentiality, but I would absolutely --

10 MR. COOLS: Well, I'm not suggesting the
11 whole of the documents, but anything that has her
12 personal identifying information should not be --

13 MR. CLOWARD: Absolutely, absolutely.

14 MR. GOODHART: Yeah, I agree with that as
15 well.

16 MR. CLOWARD: I'm more than happy to
17 protect those documents. As I see it, the two
18 documents in that stack would be the check and the
19 stop payment.

20 MR. GOODHART: There's also some banking
21 information on the ACH debit withdrawal which has
22 routing numbers.

23 THE WITNESS: Yeah, there's information
24 on my check.

25 MR. GOODHART: Yeah. What we can do,

1 Ben, so I don't want to interrupt this, we'll go
2 through this together and we can agree that any
3 banking information be redacted from those pages in
4 those documents.

5 MR. CLOWARD: That's fine.

6 Q. (BY MR. CLOWARD) Okay. Now the next
7 letter?

8 A. The next letter is August 9th, 2013,
9 addressed to Royce McCarty, Junior, PC, Attorney At
10 Law in Hamilton, Montana.

11 Q. Is that a letter you drafted?

12 A. Yes.

13 Q. Is that a true and correct copy of the
14 letter --

15 A. Yes.

16 MR. COOLS: Can I ask a question? Sorry.
17 I've got this page before the letter, do we know
18 what this goes to?

19 MR. CLOWARD: I believe that goes to the
20 letter -- or the invoice dated August 21st, the
21 final invoice that's coming from Aging in the Home
22 out of Littleton.

23 MR. COOLS: Okay.

24 MR. CLOWARD: I believe that's where it
25 comes from.

1 Q. (BY MR. CLOWARD) What is next in line?

2 A. Next in line is an email from Royce
3 McCarty, addressed to me, August 22nd, 2013, and he
4 apologizes for taking so long to respond to my
5 letter of August 9th.

6 Q. And is that an email you received?

7 A. Yes.

8 Q. And that's a true and correct copy of the
9 email you received?

10 A. Yes.

11 Q. Okay. What is the next in line?

12 A. The next in line is a letter addressed to
13 Royce McCarty, dated September 16th, 2012, subject
14 is Jacuzzi designed for seniors walk-in tub, and it
15 says, Enclosed is my check owing for our time
16 discussing, et cetera, et cetera.

17 Q. Is that a letter you drafted?

18 A. Yes.

19 Q. Is that a true and correct copy of the
20 letter?

21 A. Yes.

22 Q. What is next in line?

23 A. The next one is on Boatwright Law Office,
24 PC, Jennifer P. Lint, and it's a transmittal
25 memorandum dated September 28th, 2012, regarding

1 **the Jacuzzi tub, Attached please find the following**
 2 **letter to Aging In The Home Remodelers, signed by**
 3 **Jennifer Lint.**

4 Q. Is that a true and correct copy of the
 5 document you received?

6 **A. Yes, yes.**

7 Q. Okay. Is the next in line the letter
 8 that you received?

9 **A. No, the next one in my packet is from the**
 10 **Boatwright Law Offices, addressed to Monique**
 11 **Trujillo.**

12 Q. Okay. If you see -- if you go back to
 13 the previous page, do you see where it says,
 14 Attached please find the following letter to Aging
 15 In The Home Remodelers, dated September 28th, 2012?

16 **A. Yes.**

17 Q. Was -- and then if you flip the page, is
 18 that the letter that was attached?

19 MR. GOODHART: Objection, leading, form,
 20 foundation.

21 **A. No, I think something must be out of**
 22 **line out of -- oh, wait a minute, maybe there's two**
 23 **pages stuck together. No, I guess not. I don't**
 24 **think so anyway. My hand is dry. It doesn't --**
 25 **no, it's not.**

1 Q. (BY MR. CLOWARD) Okay. Who is the
 2 letter -- the next letter addressed to?

3 **A. Monique Trujillo.**

4 Q. Of where?

5 **A. Aging In The Home Remodelers at**
 6 **Littleton, and it's on Boatwright Law Office**
 7 **letterhead, Jennifer P. Lint.**

8 Q. Okay. What's the date of that letter?

9 **A. September 28th, 2012.**

10 Q. Now go back one page.

11 **A. Go back one page?**

12 Q. Yeah. Okay.

13 **A. Another one?**

14 Q. Nope, right there.

15 So here they're referencing a letter
 16 provided to you that they sent, would you agree
 17 with that?

18 MR. GOODHART: Objection, leading, form
 19 and foundation, assumes facts.

20 MR. COOLS: Join.

21 **A. This stationary is so thick.**

22 Q. (BY MR. CLOWARD) Yeah, it is.

23 Okay. So do you see here where it says,
 24 Letter to Aging in the Home, and this says Attached
 25 please find... So would you agree that Boatwright

1 offices wrote a letter to you attaching a letter
 2 that they wrote?

3 MR. GOODHART: Objection, leading,
 4 assumes facts, form and foundation.

5 MR. COOLS: Join.

6 **A. Well, that's not -- oh, yes, yes, the**
 7 **next one is on Boatwright Law Office letterhead,**
 8 **dated September 28th, and it's addressed to Monique**
 9 **Trujillo, Aging In The Home Remodelers, referencing**
 10 **Jerre Chopper, 225 Hillcrest Drive, Hamilton,**
 11 **Montana.**

12 Q. (BY MR. CLOWARD) Okay. So is the letter
 13 of September 28th addressed to Monique Trujillo --

14 **A. Yes.**

15 Q. -- a copy of the letter that was sent to
 16 you by Boatwright Law?

17 **A. Yeah.**

18 MR. GOODHART: Objection, leading, form
 19 and foundation.

20 Q. (BY MR. CLOWARD) Okay. What is the next
 21 document?

22 **A. The next document is also on Boatwright**
 23 **Law Office letterhead, Jennifer P. Lint, addressed**
 24 **to me, regarding Jacuzzi tub, and it is signed by**
 25 **Jennifer Lint. It says, We received a telephone**

1 **call from AIHR in response to our letter.**

2 Q. What is the date of that letter?

3 **A. October 5th, 2012.**

4 Q. Okay. And is that a true and correct
 5 copy of the letter you received?

6 **A. Yeah.**

7 MR. GOODHART: Object to form,
 8 foundation.

9 **A. It's an original.**

10 Q. (BY MR. CLOWARD) Okay. What is the next
 11 in line?

12 **A. The next letter is on firstSTREET**
 13 **letterhead, dated November 29th, addressed to me**
 14 **and signed by Stacey L. Hackney.**

15 Q. Is that a true and correct copy --

16 **A. Yes.**

17 Q. -- of the letter you received?

18 **A. Yes, it's the original.**

19 Q. And next in line is an envelope?

20 **A. Yes.**

21 Q. And the stamp date on the envelope is
 22 November 30th --

23 **A. November 30th, 2012. And it's addressed**
 24 **to me, and it came from firstSTREET at Colonial**
 25 **Heights.**

1 Q. And that's a true and correct copy of
2 that?

3 **A. Yeah.**

4 Q. Okay. Now what is the next in line?

5 **A. Next in line is the letter dated**
6 **December 4th, 2012, addressed to Ms. Stacey L.**
7 **Hackney at firstSTREET Boomers & Beyond at Colonial**
8 **Heights, Virginia, subject is Jacuzzi tub.**

9 Q. Did you draft that letter?

10 **A. Yes.**

11 Q. Is that a true and correct copy of the
12 letter you sent?

13 **A. Yes --**

14 MR. GOODHART: Object to form,
15 foundation --

16 **A. -- it was a two-paged letter.**

17 MR. GOODHART: I'm sorry, let me have my
18 objections. That's just for the court reporter
19 because she cannot take down what we're saying when
20 we --

21 THE WITNESS: Well, I probably can't hear
22 you.

23 MR. GOODHART: I apologize. I'll try and
24 speak up. My objection was form, foundation and
25 leading. And now you can answer the question,

1 ma'am.

2 **A. Yes, I drafted the letter. There were**
3 **copies sent to Royce McCarty, Jennifer Lint and**
4 **Kurt Bachmeyer.**

5 **And the next is a hand-scribbled note to**
6 **myself, I guess, message machine 9/12 -- oh, I**
7 **guess I must've left a message, I don't know**
8 **exactly. It's dated September 19th, 2012,**
9 **addressed to Monique Trujillo, customer service**
10 **manager.**

11 Q. (BY MR. CLOWARD) And the next in line?

12 **A. Next in line is a letter --**

13 MR. COOLS: I don't have that on my --

14 **A. -- on firstSTREET letterhead, dated**
15 **September 12th, 2012, addressed to me and signed by**
16 **Monique Trujillo, customer service manager.**

17 Q. (BY MR. CLOWARD) Okay. And that's a
18 true and correct copy of the letter --

19 **A. Yes.**

20 Q. -- you received from --

21 **A. Yes.**

22 MR. CLOWARD: Okay. Did everyone get a
23 copy of that sticky note with the letter from
24 firstSTREET? I have an extra one here.

25 MR. GOODHART: No, I didn't have the

1 sticky note on mine.

2 MR. COOLS: That's this?

3 MR. GOODHART: I have a copy of that, but
4 I don't have the sticky note.

5 MR. COOLS: He's just referring to this.

6 MR. GOODHART: Oh, okay, I got it, I got
7 it.

8 MR. CLOWARD: So you have it?

9 MR. GOODHART: I have it.

10 MS. LLEWELLYN: I have received it
11 earlier, but if you want to give me a copy, that
12 would be great.

13 MR. CLOWARD: There you go.

14 Okay. So we're going to -- that entire
15 packet will be Exhibit 2. You can just leave those
16 right there.

17 THE WITNESS: Okay.

18 MR. CLOWARD: With the nice reporter,
19 madam reporter. And then the next in line will be
20 an email from Ms. Chopper to Camp Kirchner, the
21 subject is Tub.

22 MR. GOODHART: Is it September 12th?

23 MR. CLOWARD: Correct.

24 MR. GOODHART: Okay.

25 MR. CLOWARD: This will be Exhibit 3.

1 EXHIBITS:

2 (Deposition Exhibit Number 3 marked for
3 identification.)

4 Q. (BY MR. CLOWARD) Do you recognize that
5 document?

6 **A. Yes, it's addressed to Camp Kirchner,**
7 **that's the email address, regarding the tub.**

8 Q. Did you draft that email?

9 **A. Yes.**

10 Q. Is that a true and correct copy of the
11 email --

12 **A. Yes.**

13 Q. -- you had sent?

14 **A. Yes.**

15 Q. Okay. What is the next in line?

16 **A. The next in line is an email from Camp**
17 **Kirchner, to me, dated September 14th, 2012, and**
18 **there's no subject line, but it says, I have heard**
19 **nothing, still have a tub in my storage.**

20 Q. Is that a true and correct copy of the
21 email --

22 **A. Yes.**

23 Q. -- you received?

24 **A. Yes.**

25 Q. Okay. And you're doing a really nice job

1 with making sure to give everybody an opportunity,
 2 but the court reporter, she has to type things down
 3 in sequence, so if I'm not finished with my
 4 question when you start to give your answer, on the
 5 transcript it'll actually give half of my
 6 question --
 7 **A. Oh.**
 8 Q. -- then your answer, then the latter part
 9 of my --
 10 **A. I'm sorry.**
 11 Q. It's okay.
 12 **A. I will speak slower.**
 13 Q. No, it's no problem. We just want to
 14 make her job as easy as possible because it's
 15 already tough enough.
 16 Okay. Now what is the next in line?
 17 **A. It's an email from Camp Kirchner**
 18 **regarding tub, dated September 15th, 2012.**
 19 Q. Is this a true and correct copy of the
 20 email you received?
 21 **A. Yes, and then my reply is on the bottom**
 22 **of that.**
 23 Q. Okay. Or is his email a reply to yours?
 24 **A. I mean, it's a reply to Camp Kirchner.**
 25 Q. Okay. And then the next in line?

1 **A. Is an email from me to Camp Kirchner,**
 2 **subject is AIHR.**
 3 Q. Is that a true and correct copy of the
 4 email you sent?
 5 **A. Yes.**
 6 Q. And the next in line?
 7 **A. It is an email from me to Camp Kirchner,**
 8 **the subject is, The continuing saga, dated**
 9 **September 18th, 2012.**
 10 Q. Is that a true and correct copy of the
 11 email you sent?
 12 **A. Yes.**
 13 Q. And then the next in line?
 14 **A. Is an email from Camp Kirchner to me,**
 15 **dated September 19th, 2012, and the subject, It was**
 16 **clear.**
 17 Q. And is that a true and correct copy of
 18 the email --
 19 **A. Yes.**
 20 Q. -- you received?
 21 **A. Yes.**
 22 Q. Okay. Next in line?
 23 **A. Next in line is a letter dated**
 24 **October 5th, 2013, addressed to Mr. Mike Kirchner**
 25 **at Bigfork, Montana.**

1 Q. Is that a letter you drafted?
 2 **A. It is.**
 3 Q. And is it true and correct of the letter
 4 you sent?
 5 **A. Yes.**
 6 MR. GOODHART: Objection, form,
 7 foundation, leading.
 8 Q. (BY MR. CLOWARD) And the next in line?
 9 **A. Is a letter dated -- Well, there's two**
 10 **copies of the same letter, so somehow you got them**
 11 **mixed up, I guess. Do you want me to cut this one**
 12 **out?**
 13 Q. Well, it looks like one is dated
 14 October 5th and one is October 7th and then another
 15 on October 5th --
 16 **A. Well, there's two copies of the**
 17 **October 5th letter, that's what I'm getting at.**
 18 Q. Oh, okay.
 19 **A. Do you want me to --**
 20 Q. Well, why don't you compare the first and
 21 the last one on October 5th, compare this letter --
 22 **A. Uh-huh.**
 23 Q. -- with this letter -- or no -- yeah,
 24 sorry, yeah. Which one of those would've been the
 25 one sent?

1 MR. GOODHART: Object to form,
 2 foundation --
 3 **A. Well, they're two copies --**
 4 MR. GOODHART: -- leading.
 5 **A. -- of the same letter.**
 6 Q. (BY MR. CLOWARD) Okay.
 7 **A. It's a duplicate.**
 8 Q. Okay. We can move on to October 7th.
 9 **A. October 7th is a letter from me to Mike**
 10 **Kirchner at Bigfork, Montana.**
 11 Q. Okay. And that's a letter that you
 12 would've drafted?
 13 **A. It is.**
 14 Q. And it's a true and correct copy of the
 15 letter you would've sent?
 16 **A. It is.**
 17 MR. GOODHART: Object to form,
 18 foundation --
 19 MR. COOLS: Join.
 20 MR. GOODHART: -- leading.
 21 MR. COOLS: Join.
 22 MR. CLOWARD: Okay. So now let's go to
 23 the next stack of documents, which will be the
 24 letters to the U.S. Consumer Product Safety
 25 Commission, which we'll mark as Exhibit 4.

1 Oh, man, I marked the wrong one.
2 MR. GOODHART: Do you want a clean copy,
3 Ben?

4 MR. CLOWARD: No, I've got it over here.
5 EXHIBITS:
6 (Deposition Exhibit Number 4 marked for
7 identification.)

8 Q. (BY MR. CLOWARD) Okay. This will be
9 marked as Exhibit 4, this next stack. What do you
10 recognize this document to be?

11 **A. It's a letter dated October 10th, 2012,**
12 **to the U.S. Consumer Product Safety Commission at**
13 **Bethesda, Maryland.**

14 Q. Is this a letter you drafted?

15 **A. It is.**

16 Q. Is that a true and correct copy of the
17 letter you sent?

18 **A. It is.**

19 Q. And what is the next letter -- or the
20 next thing in line?

21 **A. Well, it's a hand-scribbled note, Federal**
22 **Trade Commission -- it was an email addressed to**
23 **the Federal Trade Commission. And then there's a**
24 **note here from the BBB, Federal Product Safety**
25 **Commission, I don't know, I talked to somebody**

1 **named Sandra.**

2 Q. Okay. What is next in line?

3 **A. It's a letter from the Federal Trade**
4 **Commission protecting -- Federal Trade Commission**
5 **report and general complaint, I don't see a date**
6 **here.**

7 Q. Looks like -- at the bottom right it
8 looks like there's a date that maybe that's when
9 you printed it.

10 **A. Oh, yes, I don't know. It says it's**
11 **October 9th, 2012, 11:23 a.m.**

12 Q. Okay. What's the next in line?

13 **A. It also is a Federal Trade Commission,**
14 **and it's a -- it says Last Modified Tuesday,**
15 **September 16th -- September 18th, 2012, but it**
16 **must've been a phone call or it references a phone**
17 **call and it's from area code 202, for RN and**
18 **related information.**

19 Q. Okay. Do you recognize the post
20 office --

21 **A. It went express mail.**

22 Q. And where did that go?

23 **A. To the U.S. Consumer Product Safety**
24 **Commission in Bethesda, Maryland.**

25 Q. And was that the postage for the letter

1 you sent on the 10th?

2 **A. Yes, October 10th, 2012 --**

3 Q. Okay.

4 **A. -- the postage for that letter.**

5 Q. And is the next in line a receipt that
6 you paid? Is that the receipt for the --

7 **A. Yeah, it's a copy of the receipt.**

8 Q. Okay. Now, the next in line is a
9 document, looks like it's date stamped or received
10 by CPSC, October 12 at 4:46, by the office of the
11 secretary.

12 **A. Yes.**

13 Q. Is this a letter that they sent back to
14 you, stamping that they had received your letter?

15 **A. Uh-huh, yes.**

16 MR. GOODHART: Objection, leading.

17 Q. (BY MR. CLOWARD) Okay. Is that a true
18 and correct copy of the letter that you received
19 from them?

20 **A. Yes.**

21 Q. And that's three pages?

22 **A. Yes.**

23 Q. And what is this next document?

24 **A. This is a copy of your report to the U.S.**

25 **Consumer Product Safety Commission submitted on**

1 **October 17th, 2012. In order for this report to be**
2 **included in the CPSC's database, the Publicity**
3 **Available Consumer Product Safety Information**
4 **database available on www.saferproducts.gov, you**
5 **must complete the last page of the report and**
6 **return it to CS -- CPSC.**

7 Q. So is this a true and correct copy of a
8 document you received --

9 **A. Yes.**

10 Q. -- from the U.S. Consumer Product Safety
11 Commission?

12 **A. Yes.**

13 Q. All right. Did you in fact -- I guess
14 we'll get there.

15 **A. Yes, it's multiple pages here.**

16 Q. So we'll just go page by page. Let's
17 start on the 10/17 date.

18 **A. Okay.**

19 Q. Now, flip to the next page.

20 **A. The next page is --**

21 Q. Is that a continuation?

22 **A. It's a continuation of this document.**

23 Q. And at the top, for identification, the
24 top of that document starts out saying --

25 **A. On August 15th.**

1 Q. Okay. Now, if you'll flip to the next
2 page, is the next page a continuation?

3 **A. Yes.**

4 Q. And what does it say at the top of that
5 page for identification?

6 **A. An email with my email address, with my
7 phone number.**

8 Q. Okay. And then the next page, is there a
9 continuation?

10 **A. Yes, it's the -- at the top of the letter
11 it says Explanation.**

12 Q. Okay. Now, go to the next page.

13 **A. The next page is a letter addressed --
14 let's see, it's from CPSC at Bethesda, addressed to
15 me, it's dated 10/18/2012, subject, My report
16 pending your consent and validation, so that's the
17 subject.**

18 Q. Is this a document you received from
19 CPSC?

20 **A. Yes.**

21 Q. A true and correct copy?

22 **A. Yes.**

23 Q. Is the next page a continuation of that?

24 **A. It's a continuation of that.**

25 Q. Okay. Now, what is this next document?

1 **A. It's a consent and submit report
2 regarding, then it gives the numbers there. Please
3 let us know how you would like to handle your
4 report. And I said, yes, you may include my report
5 in the public database, and yes, you may release my
6 name and contact information to the product
7 manufacturer or private labeler.**

8 Q. Okay.

9 **A. It's dated 10/23, and I signed it.**

10 Q. And did you return that to --

11 **A. Yes.**

12 Q. -- the CPSC?

13 **A. Yes.**

14 Q. Okay.

15 **A. The next -- I don't know, this is a copy
16 of an envelope addressed to them, but it's also
17 from them, business reply mail.**

18 Q. Okay. And what is the next in line?

19 **A. The next one is addendum dated -- I guess
20 it was an addendum dated to my -- my submission
21 to -- because it goes to the U.S. Consumer Product
22 Safety Commission.**

23 Q. Okay. Is that -- did you draft that?

24 **A. Yes.**

25 Q. And you would've sent that?

1 **A. Yes.**

2 Q. Is that a true and correct copy of the
3 letter you sent?

4 **A. Yes.**

5 MR. GOODHART: Objection, form,
6 foundation and leading.

7 MR. COOLS: Join.

8 Q. (BY MR. CLOWARD) Now, the next in line?

9 **A. The next in line is dated November 23rd,**

10 **2012, the subject is CPSC, Notified the**

11 **manufacturer about your report number, et cetera,**

12 **et cetera. And it says, On Friday, November 23rd,**

13 **2012, the U.S. Consumer Product Safety Commission**

14 **sent your report number so-and-so to the**

15 **manufacturer or the private labeler of the consumer**

16 **product described in your report number. If you**

17 **consented to give your contact information to**

18 **the -- if you consented to give your contact**

19 **information to the manufacturer, this information**

20 **was also provided.**

21 Q. Okay. Is that a true and correct copy of
22 the --

23 **A. Yeah.**

24 Q. -- email you received --

25 **A. Right.**

1 Q. -- on November 23rd from the CPSC?

2 **A. Yes.**

3 Q. Okay. Now, it looks like the next page
4 is a duplicate of that --

5 MR. GOODHART: Object to form.

6 Q. (BY MR. CLOWARD) -- is that accurate?

7 MR. GOODHART: Object to form.

8 MR. COOLS: Join.

9 **A. I think it is. Yes, it's a duplicate.**

10 Q. (BY MR. CLOWARD) And the next page I
11 believe is also a duplicate?

12 MR. GOODHART: Object to form.

13 MR. COOLS: Join.

14 **A. Yes, it's a duplicate. But apparently --**

15 **apparently they sent an email to**

16 **www.saferproducts.gov.**

17 Q. (BY MR. CLOWARD) Okay. What is the next
18 in line there?

19 **A. The next in line is an email from**

20 **December 19th, 2012, and the subject is, Report**

21 **number, and it's all that regarding the tub.**

22 Q. Is this an email that you received from
23 the CPSC?

24 **A. Yes.**

25 Q. A true and correct copy of the email you

1 received?

2 **A. Yes.**

3 Q. Is the next in line just a duplicate?

4 **A. It appears to be.**

5 Q. Okay. Do you know what this document is?

6 **A. Federal Product Safety Commission, and**
7 **I -- it's -- I don't know whether it was an email**

8 **or what it was, it was -- I don't know, it says**

9 **here the same thing, www.saferproducts.gov.**

10 Q. Okay. And the next in line?

11 **A. Is a copy of an envelope that I received**
12 **from the Consumer Product Safety Commission in**
13 **Bethesda.**

14 Q. And what was the date of that stamp?

15 **A. October 19th, 2012.**

16 Q. Okay. And that's a true and correct copy
17 of the envelope?

18 **A. Yes.**

19 EXHIBITS:

20 (Deposition Exhibit Number 5 marked for
21 identification.)

22 Q. (BY MR. CLOWARD) All right. So the next
23 exhibit will be Exhibit 5, and it is a letter to
24 Michael Shin -- or a stack with the first letter in
25 the stack addressed to Michael Shin.

1 **A. The letter is dated September 5th, 2012,**
2 **addressed to Mr. Michael Shin, Department of Elder**
3 **Fraud, U.S. Attorney General in Billings, Montana.**
4 **The subject is Jacuzzi designed for seniors walk-in**
5 **tub. It's signed by me. And I don't know, here's**
6 **a phone number or -- apparently I talked to**
7 **somebody named Laurie.**

8 Q. Okay. Is this -- did you draft this
9 letter?

10 **A. Yes.**

11 Q. And it's a true and correct copy of the
12 letter you would've sent?

13 **A. Yes.**

14 MR. GOODHART: Object to form,
15 foundation, leading.

16 MR. COOLS: Join.

17 Q. (BY MR. CLOWARD) All right. What is the
18 next in line?

19 **A. The next in line is a letter dated**
20 **September 26th, addressed to Michael Shin, Subject**
21 **is Jacuzzi designed for seniors walk-in tub, and I**
22 **sent that letter.**

23 Q. And that's a true and correct copy of the
24 letter you sent?

25 **A. Yes.**

1 Q. Okay. And the next in line?

2 MR. GOODHART: Object to form,
3 foundation, leading.

4 MR. COOLS: Join.

5 Q. (BY MR. CLOWARD) And what is the next in
6 line?

7 **A. The next in line is a letter dated**
8 **September 10th, 2012, addressed to Steve Bullock,**
9 **Attorney General of Montana, in Helena, Montana.**
10 **Attention offices of consumer protection and elder**
11 **fraud, subject is Jacuzzi designed for seniors**
12 **walk-in tub. And it is -- I drafted it.**

13 Q. And is that a true and correct copy of
14 the letter you drafted?

15 **A. Yes.**

16 MR. GOODHART: Objection, form,
17 foundation, leading.

18 MR. COOLS: Join.

19 Q. (BY MR. CLOWARD) Okay. What is the next
20 in line?

21 **A. The next in line is a letter from the**
22 **State of Montana Department of Justice, Office of**
23 **Consumer Protection, and it is from Steve Bullock,**
24 **Attorney General, dated September 13th, 2012, it's**
25 **signed by Marcus Myer, Office of Consumer**

1 **Protection.**

2 Q. Okay. And that's a true and correct
3 copy --

4 **A. Yes.**

5 Q. -- of the document --

6 **A. Yes.**

7 Q. -- you received?

8 **A. Yes.**

9 Q. And next in line is the consumer
10 complaint form?

11 **A. Form, yeah, but I didn't fill it out, not**
12 **that form.**

13 Q. Okay. So you did not return that form?

14 **A. No.**

15 Q. Okay.

16 **A. No, what I did is I think I wrote them a**
17 **letter. Next --**

18 Q. Next is --

19 **A. -- next is a copy of an envelope that**
20 **came from the Department of Justice, Office of**
21 **Consumer Protection, State of Montana, Helena,**
22 **Montana, and the date on that is September 13th,**
23 **2012.**

24 Q. Okay. And that's a true and correct copy
25 of that?

1 **A. Yes.**
 2 Q. Okay. What is the next in line?
 3 **A. The next in line is a letter dated**
 4 **September 17th, 2012, addressed to Ms. Janet**
 5 **Eranblett, Office of Elder Fraud, Montana Attorney**
 6 **General, Helena, Montana, subject is Jacuzzi**
 7 **designed for seniors walk-in tub, it was a letter I**
 8 **drafted and sent.**
 9 Q. That's a true and correct copy of the
 10 letter you would've sent?
 11 MR. GOODHART: Objection, form,
 12 foundation, leading.
 13 MR. COOLS: Join.
 14 Q. (BY MR. CLOWARD) And finally the last
 15 document?
 16 **A. The last document is a letter dated**
 17 **October 24th, 2012, it's addressed to Mr. Matt**
 18 **Volz, Associated Press in Helena, Montana, and it's**
 19 **a letter that I drafted and sent.**
 20 Q. And that's a true and correct copy of the
 21 letter you would've sent?
 22 **A. Yes.**
 23 MR. GOODHART: Objection, form,
 24 foundation, leading.
 25 MR. COOLS: Join.

1 MR. CLOWARD: The next stack of documents
 2 will be the installation check sheet, which will be
 3 Exhibit 6. Crap, I did it again.
 4 EXHIBITS:
 5 (Deposition Exhibit Number 6 marked for
 6 identification.)
 7 MR. COOLS: Did she identify -- my stack
 8 has the Janet Eranblett letter and then a letter to
 9 Matt Volz, did she identify those?
 10 MR. GOODHART: Yeah, she identified a
 11 letter to Matt Volz.
 12 Q. (BY MR. CLOWARD) So the next will be
 13 Exhibit 6.
 14 **A. This is an installation check sheet from**
 15 **Facilities Management Services, and it's -- the**
 16 **things are checked off, and then it's dated**
 17 **August 20th, 2012, signed by Mike Kirchner, and my**
 18 **signature.**
 19 Q. And the next document?
 20 **A. A completion certificate from Facilities**
 21 **Management Services, dated October -- no, dated 8,**
 22 **that would be August 20th, 2012. And apparently**
 23 **they had asked for my signature because I signed it**
 24 **and dated it, so I must've returned it to them.**
 25 Q. Okay. The next stack of documents, do

1 you recognize what --
 2 **A. Yes.**
 3 Q. -- those are?
 4 **A. It's an advertisement that says the**
 5 **lead-safe certified guide to renovate right.**
 6 Q. Okay.
 7 **A. It's multiple pages.**
 8 **And then the next --**
 9 Q. Fair to say that is four pages
 10 double-sided?
 11 **A. One, two, three -- one, two -- yes, four**
 12 **pages double-sided.**
 13 Q. Okay. And the next document?
 14 **A. The next document has got a letterhead of**
 15 **AIHR, and it says Install independent and**
 16 **dignity -- independence and dignity. And it is**
 17 **dated -- well, I don't know when it's dated, it**
 18 **came from the Littleton, Colorado address. And it**
 19 **says, Thank you for purchasing new design. And**
 20 **down at the bottom it's got the information,**
 21 **General Manager Nick Fawkes, Production Tracy**
 22 **Dierkens, and the electrical is Jamie, USA**
 23 **Services, and then John Brown's name was added in**
 24 **cursive.**
 25 Q. Okay. Do you recognize the next

1 documents -- or the next document?
 2 **A. Well, it says Metro News, and it's got an**
 3 **area code of 303, but that's my scribble. And**
 4 **then delivery confirmation receipt for something,**
 5 **John -- it's dated September 1, 2012. And then it**
 6 **has a copy of John Brown's business card with the**
 7 **regular number scratched out and then a number put**
 8 **in of 651-368-5945.**
 9 Q. Okay. And then what is the next in line?
 10 **A. Home improvement agreement, notice of**
 11 **cancellation, dated June 28th, 2012. You may**
 12 **cancel this transaction without penalty or**
 13 **obligation within three business days of the above**
 14 **date. Came from Littleton, Colorado.**
 15 Q. Okay. Do you recognize the next
 16 document?
 17 **A. Well, at the top it says Jacuzzi Warranty**
 18 **Registration Card. And somebody has written -- oh,**
 19 **Mike Kirchner has written in, warranty information,**
 20 **once regular, one something the tub on Jacuzzi.com,**
 21 **you are covered under the warranty as in your**
 22 **owners manual. And, I did not fill out the**
 23 **questions to the left, they don't need to know all**
 24 **your personal and -- info.**
 25 Q. Is that something that Mike Kirchner --

1 **A. He filled it out.**
2 Q. Okay. And then the next document, do you
3 recognize that?
4 **A. It's the warranty information.**
5 Q. Okay. And at the top of that, just for
6 reference, it says, Warranty information, model
7 number, it's two-sided?
8 **A. There's no information, there's no model**
9 **number on it.**
10 Q. Okay. And then the next in line, do you
11 recognize that?
12 **A. Well, it's the same thing only it's in**
13 **another language.**
14 Q. Oh, on the back?
15 **A. Yeah --**
16 Q. Okay.
17 **A. -- on the back.**
18 Q. And then what's the next in line?
19 **A. Model -- this is Wilkins, a Zurn company,**
20 **model ZW1070, Auqa-Gard Thermostatic Mixing Valve.**
21 **And that's all it is is installation instructions,**
22 **nobody wrote anything.**
23 Q. Okay.
24 **A. Oh, on the back of it -- no, nothing on**
25 **the back of it either.**

1 Q. Then two more to go. Do you recognize
2 this document?
3 **A. This next one is a document from Jacuzzi,**
4 **Certificate of Quality. It came from corporate**
5 **headquarters Jacuzzi Whirlpool Bath, 14525 Monte**
6 **Vista Avenue in Chino, California. Proudly**
7 **manufactured in Valdosta, Georgia.**
8 Q. And the next in line?
9 **A. The next is a Jacuzzi, it came from**
10 **Jacuzzi Technical Specifications, and all it is is**
11 **installation information.**
12 Q. Okay. Was this -- this stack of
13 documents in Exhibit 6, were these documents that
14 were left behind by the installers?
15 **A. Yes, I think they -- yes, they were in a**
16 **packet that Mike Kirchner signed when he installed**
17 **the tub.**
18 MR. CLOWARD: Okay. Now, the next in
19 line will be Exhibit 7, and it's -- for counsels'
20 reference, it's a yellow sticky note from -- that
21 says Troy Brown, Denver, dated June 18, 2012, with
22 what was a magazine cutout or a paper.
23 EXHIBITS:
24 (Deposition Exhibit Number 7 marked for
25 identification.)

1 Q. (BY MR. CLOWARD) What is this document,
2 Ms. Chopper?
3 **A. Well, I cut out the copy of the page that**
4 **came out in the Parade magazine inserted in the**
5 **paper. And it's Jacuzzi firstSTREET for Boomers &**
6 **Beyond. And I called this number -- the number**
7 **given was 866-986-5156, and on -- I called that**
8 **number, and as I recall, I didn't get an answer**
9 **until the next day. But anyway, I got an answer**
10 **from Troy Brown in Denver, and he said that my**
11 **installer would be Larry something,**
12 **C-i-n-q-u-e-m-a-n-i, and he was the installer for**
13 **Montana and Idaho. Design senior rebate, I don't**
14 **know what that's about. 11:30 the 28th, Thursday,**
15 **oh, he was supposed to come to my house at 11:30 in**
16 **the morning on the 28th.**
17 Q. Okay. So this is a note that you made
18 regarding your phone call with firstSTREET?
19 **A. Yes.**
20 Q. Or the number --
21 **A. Troy Brown, it turned out it was a call**
22 **center in Denver.**
23 Q. Okay. And the next page is the paper
24 clipping that -- from Parade --
25 **A. Yes.**

1 Q. -- that alerted you to Jacuzzi --
2 **A. Right.**
3 Q. -- the walk-in tub?
4 **A. Right.**
5 MR. COOLS: Object to form.
6 MR. GOODHART: Join.
7 Q. (BY MR. CLOWARD) Okay. Is this a true
8 and correct copy of the ad that you cut out of the
9 paper?
10 **A. Yes.**
11 Q. And this is the ad that you --
12 **A. It's what I responded to, this 866**
13 **number.**
14 Q. Okay. And that's a true and correct copy
15 of that ad that you cut out?
16 **A. Yeah.**
17 Q. Is that a yes?
18 **A. Yes.**
19 Q. Okay.
20 MR. CLOWARD: Okay. Now, next is just
21 some kind of miscellaneous documents that were in
22 your file, we can kind of go through those. That
23 will be Exhibit 8, and that's a document -- the
24 first page of the document says Saturday, Hi Mike
25 and Teri.

1 EXHIBITS:

2 (Deposition Exhibit Number 8 marked for
3 identification.)

4 Q. (BY MR. CLOWARD) I'm going to actually
5 include these two behind.

6 A. Behind?

7 Q. Yep.

8 A. Well, I -- it's something that I drafted
9 that says, Saturday, Hi Mike and Teri, the enclosed
10 is to give you a heads-up as to what is going on
11 with me. I am completely dissatisfied with the
12 tub, et cetera, et cetera. My prediction about
13 Nick Fawkes and his posse is that one of two things
14 is gonna happen, either they will grab the cash and
15 head for a country without reciprocity, or they
16 will crash and go to jail.

17 Q. What did you mean by that?

18 A. (Laughter.) That he's crooked.

19 Q. Okay. Do you know where -- who you sent
20 this to or --

21 A. Mike Kirchner.

22 Q. Okay. All right. What is the next in
23 line there?

24 A. Well, it's written on a pad that I had
25 with my name at the bottom, but I don't know who I

1 sent it to.

2 Q. Okay.

3 A. Their claim of getting in and out of a
4 warm bath is impossible. So I don't know who I
5 made it to, if I mailed it at all; I must've.

6 Q. No problem. If you don't know, that's
7 okay.

8 MS. LLEWELLYN: Object to foundation.

9 A. The next is a note dated Friday,
10 August the 24th. Hi, Jerre, Mike and I both wanted
11 to take a moment to thank you for having an
12 opportunity to work for you, et cetera, et cetera.
13 And it's signed by Teri K.

14 Q. (BY MR. CLOWARD) Do you know who that
15 is?

16 A. It's Mike's wife.

17 Q. Okay. That was a note that Mike
18 Kirchner's wife wrote to you on August 24th?

19 A. Uh-huh.

20 Q. All right. And that's a true and correct
21 copy of that note?

22 A. Yes.

23 Q. All right. Now, the next we just have --
24 do you recognize --

25 A. It's just stuff that I wrote down for my

1 own.

2 Q. Just notes with addresses and so forth?

3 A. Yeah, firstSTREET for Boomers & Beyond,
4 Colonial Heights, I talked to Simona Robertson.
5 Dealer representative --

6 Q. Okay.

7 A. -- Littleton, Colorado, John Brown.

8 Installer Mike Kirchner. Production manager Tracy
9 Dierkens. Shipping Sebastian. Secretary of State
10 of Montana. Secretary of State Colorado. Attorney
11 General Colorado. Consumer Protection. City of
12 Littleton. I talked to a Joanne Ricca. Steve
13 Miller. And that's when I got the name Janet
14 Eranblett, it must've have been a phone call when I
15 got the name of her for the elder fraud.

16 Q. Okay.

17 A. And the next is just some miscellaneous
18 for my own information. FirstSTREET for Boomers &
19 Beyond. AIHR Dealer, Inc. Nick Fawkes, general
20 manager. Installer Mike Kirchner. Secretary of
21 State -- secretary of Montana, Secretary of State
22 Colorado. Attorney General of Colorado. City of
23 Littleton. I talked to Joanne Ricca, and she
24 reported on 7/26/12, First report does not show
25 subject at address given, is going to instruct

1 police to check with building manager to see who
2 rents that office. Later it was reported that they
3 do rent the space, but whether they maintain an
4 office or use a -- use it as a warehouse is not
5 determined. In any event, they are a legitimate
6 tenant. It is reported that they are not
7 registered with the city and therefore, have not
8 been paying business tax.

9 Q. Those are notes of your investigation?

10 MR. GOODHART: Objection to form,
11 foundation, leading.

12 MR. COOLS: And hearsay.

13 A. Things -- notes to myself, mostly.

14 Q. (BY MR. CLOWARD) Okay.

15 A. Next is a firstSTREET for Boomers &
16 Beyond that I pulled off of the internet, it's one,
17 two, three -- and I pulled this off on July 15th of
18 2012, and it goes on to give the names of the
19 management team.

20 Q. It looks like there's actually two,
21 one -- the first two pages are dated July 25th, and
22 then the next two pages -- or the next few pages
23 are July 15th.

24 A. Right, that's right.

25 Q. So fair to say --

1 **A. So they're out of order, I guess.**

2 Q. Okay. But those are documents that you
3 printed and --

4 **A. I pulled off of the internet.**

5 Q. Okay.

6 **A. That was two pages long. And then**
7 **there's note to myself that's called, Scoundrels**
8 **involved in practice to deceive and fleece the**
9 **American public.**

10 Q. Okay.

11 **A. Next is -- Oh, do you want me to**
12 **continue?**

13 Q. Yeah. After the Scoundrels one, what is
14 the next?

15 **A. The next document is what I pulled off of**
16 **the internet for the Better Business Bureau in**
17 **Denver and Boulder, Colorado. And it says, This**
18 **business is not BBB accredited, First Source Home**
19 **Improvements, that's the first page.**

20 **Then the second page, Additional**
21 **information, BBB file opened 6/9/88, Licensing,**
22 **Type of -- corporation incorporated in May 1998 in**
23 **Colorado. Principal contact was Jonathan Nick**
24 **Fawkes, owner. Business category was windows.**
25 **Alternate business names was Pure Platinum**

1 **Enterprises, Front Rage -- Front Range Mechanical**
2 **Company. Industry tips when a business closes or**
3 **goes bankrupt.**

4 Q. What was the -- what was this document
5 for? This was the First Source Home Improvements,
6 what were you researching this document for?

7 **A. What was I searching for? I don't know**
8 **why I was searching for First -- I don't know why I**
9 **was searching for improvement business review in**
10 **Littleton. Home -- home improvement business**
11 **review in Littleton.**

12 Q. I see in page 2 of that is Nick Fawkes'
13 information --

14 **A. Yes.**

15 Q. -- were you trying to research him,
16 potentially?

17 **A. Yes, I guess.**

18 MR. GOODHART: Objection, form,
19 foundation, leading.

20 MR. COOLS: Join.

21 **A. I was trying to find out some history**
22 **about Nick Fawkes.**

23 Q. (BY MR. CLOWARD) Okay. And what is the
24 next in line?

25 **A. Well, apparently this is something that I**

1 **pulled off the internet, New England Facilities**
2 **Management, LLC. And it said, Todd Stout updated**
3 **his company profile on August 27th, 2012.**

4 Q. And do you know why you were --

5 **A. Because I wasn't sure about Stout. New**
6 **England Facilities Management at 5 Scary Street,**
7 **Salem, Maine.**

8 Q. So you were trying to find additional
9 information?

10 **A. I was getting a -- I was Googling it.**

11 Q. Okay. All right. So that's I think the
12 last thing -- or just the last page of that, what
13 is that; just your notes?

14 **A. These are just notes to myself, I guess.**

15 **I wrote, July 26th, and then I wrote first STREET**
16 **for Boomers, Samora Robertson dealer liaison, Nick**
17 **Fawkes, John Brown, Tracy Dikerson {sic}, Mike**
18 **Kirchner. Order came from New England Facilities**
19 **Management somewhere in Massachusetts, I think it**
20 **was Maine, but -- Secretary of State, Secretary of**
21 **Montana. Secretary of Colorado.**

22 **I think this must be a dupli -- well, no,**
23 **because Steve Bullock, Attorney General for**
24 **Montana. And then I wrote in here 2225 11th**
25 **Avenue, Marcus 9/13/12. Attorney General of**

1 **Colorado. City of Littleton. Joanne Ricca. Those**
2 **are just notes to myself of what I'd been doing.**

3 Q. Okay. So if you want to hand me the clip
4 back.

5 **A. I've still got some stuff here.**

6 Q. Oh, yeah, two more documents.

7 MR. GOODHART: These are going to be part
8 of Exhibit 8?

9 MR. CLOWARD: Actually we'll do -- we'll
10 just do these -- the next ones as Exhibit 9.

11 Q. (BY MR. CLOWARD) Okay. So --

12 **A. Oh.**

13 Q. -- if you can hand me the clip.

14 **A. I handed you the clip.**

15 Q. Oh, you did, sorry it's right there.
16 Okay.

17 Now we'll look at these, these will be
18 Exhibit 9.

19 EXHIBITS:

20 (Deposition Exhibit Number 9 marked for
21 identification.)

22 MR. COOLS: Can you show me what they
23 are?

24 MR. CLOWARD: It's a draft to Mark Gordon
25 and then the subpoena.

1 MR. COOLS: Okay.
 2 Q. (BY MR. CLOWARD) Let me see your copy
 3 there.
 4 Okay. Exhibit 9, do you know what that
 5 document --
 6 **A. This is a draft of a letter that I never**
 7 **sent. It was dated sometime in September of 2012,**
 8 **but like I said, it's a letter that I never sent,**
 9 **but it was addressed to Mr. Mark Gordon, CEO of**
 10 **firstSTREET for Boomers, in Colonial Heights,**
 11 **Virginia.**
 12 Q. Okay. And then what is the next document
 13 there?
 14 **A. The next document is the subpoena that I**
 15 **received.**
 16 Q. Okay. And that's the subpoena for your
 17 appearance today?
 18 **A. Yes.**
 19 Q. All right. Now, a few more documents.
 20 It's actually only I think three --
 21 **A. They kept sending me stuff --**
 22 Q. -- three main ones.
 23 **A. -- day after day after day.**
 24 Q. Okay. Let's see, I'm going to do this
 25 whole stack as one --

1 MR. COOLS: These are the firstSTREET
 2 magazines?
 3 MR. CLOWARD: Yeah, let me -- I'll just
 4 do those first.
 5 MR. COOLS: There are two stapled
 6 documents; is that right?
 7 MR. CLOWARD: Yeah.
 8 MR. COOLS: One yellow, one green.
 9 MR. CLOWARD: Yep. So we will mark the
 10 green one Exhibit 10 and the yellow one Exhibit 11.
 11 EXHIBITS:
 12 (Deposition Exhibit Numbers 10 and 11
 13 marked for identification.)
 14 Q. (BY MR. CLOWARD) There's Exhibit 10,
 15 what do you recognize that document to be?
 16 **A. Well, it's a magazine that was addressed**
 17 **to me that came from firstSTREET, Colonial Heights,**
 18 **Virginia, and it's for -- it's a catalog.**
 19 Q. Okay. And what is the date of that
 20 publication? I believe it might be --
 21 **A. It says early fall of 2012.**
 22 Q. Okay. So we'll attach that as
 23 Exhibit 10. And then the next will be Exhibit 11,
 24 the yellow one.
 25 And I guess, is that a true and

1 correct -- is Exhibit 10 a true and correct copy --
 2 **A. Yeah.**
 3 Q. -- of the catalog you received --
 4 **A. Yes.**
 5 Q. -- back in the fall of 2012?
 6 **A. Yes.**
 7 Q. Okay. Now, the next is Exhibit 11, what
 8 is that document?
 9 **A. It's also a magazine firstSTREET for**
 10 **Boomers & Beyond, late summer 2012, it was**
 11 **addressed to me, came from Colonial Heights,**
 12 **Virginia, firstSTREET.**
 13 Q. Is that a true and correct copy of the --
 14 **A. Yes.**
 15 Q. -- magazine you received in the summer of
 16 2012?
 17 **A. Yes.**
 18 EXHIBITS:
 19 (Deposition Exhibit Number 12 marked for
 20 identification.)
 21 Q. (BY MR. CLOWARD) Okay. All right. The
 22 next in line will be Exhibit 12, which will be the
 23 owners manual for the 5230 walk-in tub series. Do
 24 you recognize this document?
 25 **A. Yes, it's instructions that came with the**

1 **tub for installation designed for seniors walk-in**
 2 **bathtub series, installation and operation**
 3 **instructions. It came from Jacuzzi Luxury Bath at**
 4 **Chino, California.**
 5 Q. Is that a true and correct copy of the
 6 manual you received?
 7 **A. Yes.**
 8 Q. All right.
 9 **A. Oh, and on the second page it says here,**
 10 **Product Information, and it was filled out on**
 11 **June 28th, 2012, Attention: IAHR, installed by Mike**
 12 **Kirchner, P.O. Box 635, Bigfork, Montana, then it's**
 13 **got the serial number and the model number.**
 14 EXHIBITS:
 15 (Deposition Exhibit Number 13 marked for
 16 identification.)
 17 Q. (BY MR. CLOWARD) Okay. And then the
 18 next in line will be Exhibit 13, which is the
 19 Customer Agreement, that's the yellow and pink page
 20 document. What do you recognize that to be?
 21 **A. That's the contract I signed with John**
 22 **Brown, it's dated 6/28/12.**
 23 Q. Okay. And it --
 24 MR. GOODHART: Can we stipulate that this
 25 was not this size?

<p style="text-align: right;">Page 81</p> <p>1 MR. CLOWARD: I think it actually was.</p> <p>2 MR. GOODHART: Oh, it's multiple pages,</p> <p>3 got it.</p> <p>4 MR. COOLS: It's folded.</p> <p>5 MR. CLOWARD: I think that it actually --</p> <p>6 I don't even think it was folded. It was -- you</p> <p>7 know how you peel them? It actually was connected</p> <p>8 at the top of the document and I had to undo it to</p> <p>9 send it through the scanner, but I'm like 99</p> <p>10 percent positive that's the actual size of the</p> <p>11 document.</p> <p>12 MR. GOODHART: Do you have the original?</p> <p>13 MR. CLOWARD: She has the originals.</p> <p>14 MR. GOODHART: Are they here today?</p> <p>15 MR. CLOWARD: No. Did you bring all the</p> <p>16 documents, the package that I copied?</p> <p>17 THE WITNESS: No, I didn't.</p> <p>18 MR. CLOWARD: Okay.</p> <p>19 THE WITNESS: I had it laid out and then</p> <p>20 I thought, well, no, I don't need to take all of</p> <p>21 that stuff because it was this thick (indicating).</p> <p>22 MR. CLOWARD: Okay.</p> <p>23 MR. GOODHART: So as I understand it,</p> <p>24 then, everything we've been looking at so far are</p> <p>25 photocopies of the originals?</p>	<p style="text-align: right;">Page 83</p> <p>1 attach a copy of the file?</p> <p>2 THE WITNESS: Claudia?</p> <p>3 MS. WILLIAMSON: Yes?</p> <p>4 THE WITNESS: Claudia, would you drive to</p> <p>5 my house and -- Come here.</p> <p>6 MS. WILLIAMSON: I can do that, Mom.</p> <p>7 VIDEOGRAPHER SIMONICH: They're laid out</p> <p>8 by my desk. There are three packets, there's a</p> <p>9 yellow folder that's called Jacuzzi, and then</p> <p>10 there's another manila envelope that called</p> <p>11 Jennifer Lint, and then there's another package</p> <p>12 that has the -- anyway, there's three packets, if</p> <p>13 you would gather those up and bring them down here.</p> <p>14 MS. WILLIAMSON: Certainly. When do you</p> <p>15 need them?</p> <p>16 THE WITNESS: Now.</p> <p>17 MR. GOODHART: How far away do you live?</p> <p>18 THE WITNESS: Ten minutes.</p> <p>19 MR. GOODHART: I know there's probably a</p> <p>20 lot to mail to the court reporter, I don't want to</p> <p>21 inconvenience either you or your daughter to get</p> <p>22 them here.</p> <p>23 It's up to you, Ben.</p> <p>24 MR. CLOWARD: Well, I just don't want to</p> <p>25 get an objection down the road that I somehow</p>
<p style="text-align: right;">Page 82</p> <p>1 MR. CLOWARD: Correct.</p> <p>2 MR. GOODHART: And it's my understanding</p> <p>3 as well that you took the photographs of the</p> <p>4 originals --</p> <p>5 MR. CLOWARD: UPS did.</p> <p>6 MR. GOODHART: -- or took photocopies of</p> <p>7 the originals?</p> <p>8 MR. CLOWARD: UPS did.</p> <p>9 MR. GOODHART: Okay. But you provided</p> <p>10 the originals to UPS to photocopy?</p> <p>11 MR. CLOWARD: Yes.</p> <p>12 MR. GOODHART: And then Ms. Chopper is</p> <p>13 still in possession of the original documents?</p> <p>14 MR. CLOWARD: Correct.</p> <p>15 MR. GOODHART: But the original documents</p> <p>16 are not here with her today?</p> <p>17 MR. CLOWARD: Correct.</p> <p>18 MR. GOODHART: Okay.</p> <p>19 THE WITNESS: I laid them out and then I</p> <p>20 thought at the last minute, well, why do I need to</p> <p>21 take those, because they were so big and bulky.</p> <p>22 MR. CLOWARD: Yeah, it's okay. We</p> <p>23 would -- we'll just -- would it be okay if you</p> <p>24 worked with the nice court reporter to get those --</p> <p>25 a copy of those and she can just make a copy and</p>	<p style="text-align: right;">Page 84</p> <p>1 manipulated the documents or that they're not true</p> <p>2 and correct or anything like that, so if you -- for</p> <p>3 your comfort, if you want to make a copy and have</p> <p>4 it attached to the record, then I think that's what</p> <p>5 we need to do.</p> <p>6 But I can tell you, as an officer of the</p> <p>7 court, I took three stacks of documents directly to</p> <p>8 UPS, gave them to the lady and said, I need five</p> <p>9 copies of all of these documents. She gave them</p> <p>10 back and I took them straight back to Ms. Chopper.</p> <p>11 And I actually -- in this box over here, I'm going</p> <p>12 to attach this box as an additional exhibit because</p> <p>13 there are a whole bunch of duplicates in that box.</p> <p>14 MR. GOODHART: Yeah, I guess -- I guess</p> <p>15 we're -- it's not that I don't trust you, Ben --</p> <p>16 MR. CLOWARD: More than happy to have</p> <p>17 them attached.</p> <p>18 MR. GOODHART: Yeah, I think we need to</p> <p>19 because some were missed, weren't put together</p> <p>20 properly, you have multiple copies of certain</p> <p>21 things. I know from past experiences dealing with</p> <p>22 people that go in and photocopy medical records and</p> <p>23 things get missed and things like that, so I think</p> <p>24 we would need to have the originals attached, just</p> <p>25 to make sure, a) you're covered, and that we have</p>

<p style="text-align: right;">Page 85</p> <p>1 everything that we -- everything that has been 2 represented to us as being here together. 3 MR. CLOWARD: Okay. I would just ask, 4 since I spent 500 bucks yesterday copying all of 5 this, that you bear the cost of that. 6 MR. GOODHART: Yeah, I think that's fair, 7 the defendants will bear the costs of the originals 8 being photocopied. 9 MR. CLOWARD: Okay. Would you mind doing 10 that for us? 11 MS. WILLIAMSON: I do not mind. May I 12 ask a question? 13 MR. CLOWARD: Sure. 14 COURT REPORTER: Does all of this need to 15 be on the record? 16 MR. GOODHART: No. Let's go off the 17 record, then, the video record. 18 MS. WILLIAMSON: Are you planning on -- 19 COURT REPORTER: Hold on, hold on, let's 20 let her get us off the record. 21 VIDEOGRAPHER SIMONICH: So let the record 22 reflect we are going off at 1:45. 23 (Discussion held off the record.) 24 VIDEOGRAPHER SIMONICH: The deposition is 25 being resumed at 1:48.</p>	<p style="text-align: right;">Page 87</p> <p>1 so that's Exhibit 15, so as Exhibit 16 -- 2 COURT REPORTER: 17. 3 MR. CLOWARD: Oh, that's 17? 4 COURT REPORTER: No, the binder. 5 MR. GOODHART: 16 is the binder. 6 MR. CLOWARD: Oh, the binder is 16. 17, 7 thank you, will be that entire box of essentially 8 duplicate emails and so forth. 9 So where do you want me to put the 10 sticker? 11 COURT REPORTER: Just leave it there. 12 MR. CLOWARD: Okay. 13 MR. GOODHART: And then just so we can 14 clear this up, Exhibit 18, as we discussed off the 15 record, are going to be photocopies of the original 16 documents that Ms. Chopper is going to provide to 17 the court reporter, and they're going to be copied 18 by the court reporter and the court reporter is to 19 send the original documents back to Ms. Chopper, 20 and that will be Exhibit 18. 21 MR. CLOWARD: Correct. 22 MR. GOODHART: Okay. 23 MR. CLOWARD: Okay. So we can go off. 24 MR. GOODHART: Yeah, let's go off the 25 record.</p>
<p style="text-align: right;">Page 86</p> <p>1 EXHIBITS: 2 (Deposition Exhibit Number 14 marked for 3 identification.) 4 Q. (BY MR. CLOWARD) Okay. So now the next 5 in line we will mark as Exhibit 14, and what do you 6 recognize that document to be? 7 A. Well, it's from first STREET, designed for 8 seniors, and it's an advertisement for the tub. 9 And so I must have received it in the mail. I 10 finally either called or wrote or something and 11 said, quit sending me all this stuff. 12 EXHIBITS: 13 (Deposition Exhibit Number 15 marked for 14 identification.) 15 Q. (BY MR. CLOWARD) Okay. And then the 16 next will be Exhibit 15, do you recognize that 17 document? 18 A. Yes, it was part of the package. 19 Q. Okay. 20 A. Mike brought it with him, Mike Kirchner 21 brought with him. 22 Q. Is that a copy of the envelope that 23 contained the owners manual? 24 A. Yes. 25 Q. Okay. Now, I am going to just attach --</p>	<p style="text-align: right;">Page 88</p> <p>1 VIDEOGRAPHER SIMONICH: Okay. Let the 2 reflect a break is being taken at 1:50. 3 (Whereupon, the proceedings were in 4 recess at 1:50 p.m. and subsequently reconvened at 5 2:03 p.m., and the following proceedings were 6 entered of record.) 7 VIDEOGRAPHER SIMONICH: Let the record 8 reflect the deposition is being resumed at 2:03 9 p.m. 10 EXHIBITS: 11 (Deposition Exhibit Numbers 17 and 18 12 marked for identification.) 13 Q. (BY MR. CLOWARD) Okay. Ms. Chopper 14 we've gone through and laid some foundation 15 regarding the documents in front of you. 16 Can you just tell us -- tell the jurors 17 what were your concerns with the tub and why, I 18 guess, you were writing all of the letters, as 19 outlined in Exhibits 1 through 17? 20 A. Well, as soon -- 21 MR. GOODHART: Objection, leading. 22 A. As soon as the tub was installed, I 23 looked at that and I thought, my God, if I pass out 24 in here, in this tub -- honestly I thought it was a 25 death trap because it took 75 gallons of water</p>

1 before you could run the jets. And the tub was
2 high, and I thought, you know, if you had an
3 attendant, it would be a different story, but the
4 attendant would have to have the strength of
5 Goliath to lift a person out of that tub, because
6 there was so much stuff that went under that tub
7 that it was no longer a walk-in, I mean, it was a
8 step-in.

9 And I just -- as soon as I -- it was
10 installed and I used it a couple of times, I never
11 used it more than twice. Like I told my attorney,
12 after I figured out that it was a death trap, I
13 would run 10 inches of water in the bottom of the
14 tub and take what I called a spit bath.
15 (Laughter.)

16 Q. (BY MR. CLOWARD) Okay.

17 A. So I was anxious to get the tub out and
18 get something that was safe.

19 Q. All right. Did any of the parties that
20 you wrote letters to, meaning AIHR or AITHR or
21 firstSTREET, or Jacuzzi, did they ever refund your
22 money?

23 A. No.

24 MR. GOODHART: Object to form,
25 foundation, assumes facts, and leading.

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 harassing me daily by phone.

2 I want them stopped before other seniors
3 are sucked in like I was. All I can say is
4 normally I am smarter than that, but I do concede
5 that my faculties have been declining as I have
6 aged, and attendant physical -- and discomforts due
7 to aging.

8 What I want is for the tub to be removed
9 and my money refunded. With those funds I can hire
10 a contractor to come in and install a custom
11 walk-in shower and a bath truly designed for
12 seniors.

13 Respectfully submitted for your
14 consideration, and my name.

15 MR. GOODHART: Objection and move to
16 strike the answer as nonresponsive to the question
17 that was posed.

18 MR. COOLS: Join.

19 Q. (BY MR. CLOWARD) Okay. So that was the
20 letter that you wrote to U.S. Attorney General,
21 Department of Elder Fraud, based on the concerns
22 that you had with the tub?

23 A. Yeah.

24 MR. GOODHART: Objection, form,
25 foundation, leading.

1 to hire salesman, tutor them in high practice -- or
2 high-pressure tactics, who go out, blanket multiple
3 states, sell tubs to seniors, collect down payments
4 with no clue as to how these tubs are going to be
5 installed. But that's not the worst-case scenario.

6 These tubs do not deliver what seniors are
7 expecting. This I believe bears some
8 investigation, end quote.

9 Did I read that correctly?

10 A. Yes.

11 MR. GOODHART: Objection, form,
12 foundation, leading, and is a wholly improper
13 question.

14 MR. COOLS: Join.

15 Q. (BY MR. CLOWARD) And that's something
16 that you wrote to Steve Bullock?

17 A. Yes.

18 MR. GOODHART: Objection, form,
19 foundation, leading.

20 MR. COOLS: Join.

21 Q. (BY MR. CLOWARD) Was that a yes?

22 A. Yes. Steve Bullock is now the governor
23 of our state.

24 Q. Okay. And then the second paragraph --
25 or third paragraph of that letter, September 10,

1 MR. COOLS: Join.

2 Q. (BY MR. CLOWARD) And next in that same
3 packet, Exhibit 5, is a letter dated to Steve --
4 dated September 10, 2012, addressed to Steve
5 Bullock, the Attorney General of Montana.

6 A. He's now governor.

7 MR. GOODHART: Objection, lacks
8 foundation, form, leading.

9 Q. (BY MR. CLOWARD) And in that letter you
10 indicate you're also wanting an investigation and
11 you're wanting the tub company's, quote, stopped
12 before other seniors are sucked in like you were --

13 MR. GOODHART: Objection --

14 Q. (BY MR. CLOWARD) -- end quote.

15 MR. GOODHART: Objection, form,
16 foundation, leading.

17 MR. COOLS: Join.

18 A. I don't find a letter in this packet
19 dated -- dated what, September 12th?

20 Q. (BY MR. CLOWARD) September 10.

21 A. Oh, yeah, okay.

22 Q. Let me just read it for you and just see
23 if I read this correctly. It's starting the second
24 paragraph, quote, Although I have no concrete
25 facts, it is my suspicion that AITHR is continuing

1 2012 addressed to Steve Bullock, says, quote, I
2 know nothing about firstSTREET, other than they are
3 a mail order company. How their partnership with
4 Jacuzzi evolved, and hence their partnership with
5 AIHR, I have no idea. What I believe is they are
6 perpetrating a fraud. Since my first encounter
7 with them they have changed their identity and
8 started answering their phones as Jacuzzi, which is
9 a deception. And additionally, they have been
10 harassing me daily by phone, end quote.

11 Did I read that correctly?

12 MR. GOODHART: Object --

13 A. Right.

14 MR. GOODHART: Objection to the form of
15 the question, leading.

16 A. Right.

17 THE WITNESS: I need to wait for him,
18 don't I? (Speaking to court reporter.)

19 COURT REPORTER: (Nods head.)

20 MR. COOLS: Join.

21 Q. (BY MR. CLOWARD) And that's what you put
22 in the letter to Steve Bullock on September 10,
23 2012?

24 A. (Witness nods head.)

25 MR. GOODHART: Object to form,

1 foundation, leading.

2 MR. COOLS: Join.

3 Q. (BY MR. CLOWARD) Is that a yes?

4 A. Yes.

5 Q. Okay. Now, next, September 17th 2012, so
6 a couple pages back, is to Ms. Janet Eranblett.

7 This is a letter --

8 A. Yes.

9 Q. -- and I'm going to read it -- Actually,
10 why don't you just read the letter that you wrote
11 to Janet Eranblett, if you would?

12 MR. GOODHART: Objection to form,
13 foundation, leading.

14 MR. COOLS: Join.

15 A. Do you still want me to read the letter?

16 Q. (BY MR. CLOWARD) Yes.

17 A. It's dated September 17th, 2012, To
18 Ms. Janet Eranblett, Office of Elder Fraud, Montana
19 Attorney General, Helena, the subject is the
20 Jacuzzi.

21 Dear Mrs. Eranblett, enclosed are copies
22 of documents sent to 215 North Sanders, along with
23 copies of emails I neglected to send. It is only
24 after two and a half months of distress over the
25 purchase of this tub that realization dawned on how

1 dangerous this piece of equipment is. I should
2 never have been targeted -- it should never have
3 been targeted to seniors or anyone else with
4 disabilities. Anyone experiencing a medical
5 emergency would have a hard time exiting this tub
6 alive unless they had an attendant with the
7 strength of Goliath.

8 The overflow is at the top of the tub.
9 The tub door opens inward. Someone without the
10 strength to turn off the water could never unlock
11 the door and open it, the pressure from inside
12 would be to great.

13 I am most anxious to have this tub
14 removed so that I can get started installing
15 something is -- I can safely use. Please help me
16 in any way you can.

17 P.S. A message on my answering machine a
18 few days ago was from Nick Fawkes, who identified
19 himself as Jacuzzi walk-in tubs, so the deception
20 continues. He also sent a threatening letter, see
21 enclosed, the handwriting on the envelope was his.

22 Q. Okay. So you were trying to -- is it
23 fair to say you were trying to raise the flag of
24 the dangerousness of this tub?

25 MR. GOODHART: Objection, form,

1 foundation, leading --

2 MR. COOLS: Join.

3 MR. GOODHART: -- and assumes facts.

4 A. Yes, I was.

5 Q. (BY MR. CLOWARD) Why don't you tell the
6 jurors, why were you writing letters to Mr. Shin,
7 Mr. Bullock and Ms. Eranblett?

8 MR. GOODHART: Objection, form,
9 foundation, leading.

10 A. Well, I think -- I think my description
11 describes why, because I felt that anybody with a
12 physical disability of any kind was in danger if
13 they got into the tub and filled it up.

14 Q. (BY MR. CLOWARD) Okay. And is that the
15 same reason you wrote the letter to the U.S.
16 Consumer Product Safety Commission?

17 A. Yes, yes, I didn't want to get anybody
18 else sucked in like I was.

19 Q. Okay. And did you notify firstSTREET,
20 AIHR, otherwise know as AITHR, and Jacuzzi of these
21 concerns?

22 MR. GOODHART: Objection, form,
23 foundation, leading.

24 MR. COOLS: Join.

25 A. I think my first contact to Mr. Bachmeyer

1 would do that, because he sent me this survey and I
2 didn't fill out the survey, but I wrote him.

3 Q. (BY MR. CLOWARD) And that is -- what you
4 sent to Mr. Bachmeyer is contained in Exhibit 1,
5 true?

6 MR. GOODHART: Objection, leading.

7 MR. COOLS: Join.

8 A. What -- what -- what exhibit is that?

9 Q. (BY MR. CLOWARD) Here is Exhibit 1.

10 A. Well, let's see, from Jacuzzi,
11 continuation -- Confirmation of online registration
12 of your Jacuzzi product. August 24th of 2012, I
13 wrote Mr. Kurt Bachmeyer, director of customer
14 service, in Chino -- for Jacuzzi, in Chino,
15 California.

16 And I said, Your email survey arrived
17 this morning. It in no way describes my unpleasant
18 experience with the people representing your
19 product. Mine is buyer's remorse. I wish I had
20 never heard of them.

21 This all began in late June, when
22 firstSTREET ran a full-page add in Parade magazine
23 that is inserted in the Sunday paper of almost all
24 publishers. It gave an 800 number, which I called
25 and got a recording to leave a message; I didn't.

1 However, early Monday morning I received a call
2 from Troy Brown in Denver, that I later learned was
3 a call center. He made an appointment with me to
4 be called on by Larry -- I don't know how to
5 pronounce that name -- Cinquemani, who said he was
6 the dealer rep for Montana and Idaho, for 11:30 on
7 Thursday, June 28th.

8 On that day he called to tell the rep --
9 tell me the rep who would be arriving would be John
10 Brown, and he would be delayed beyond the appointed
11 time, as he was coming from quite a distance.

12 At 5:30 John Brown arrived. He was a
13 likeable fellow who told me all about his family
14 and showed me pictures of them. He said his normal
15 territory was five states in the upper midwest, but
16 that Cinquemani had quit the company, and he had
17 agreed to cover the territory. He gave me the
18 pitch and I told him I'd have to sleep on it. Then
19 came the hard sell.

20 Q. What did you mean by "then came the hard
21 sell"?

22 MR. GOODHART: Objection, form --

23 A. When I told him I had to sleep on it,
24 that I wasn't going to sign the contract that day.

25 MR. GOODHART: Objection, form,

1 foundation, and leading.

2 MR. COOLS: Join.

3 Q. (BY MR. CLOWARD) So you told him that
4 you wanted to sleep on it, did you feel that he
5 pressured you into buying that tub?

6 A. Oh, yeah.

7 MR. GOODHART: Objection, form,
8 foundation, leading.

9 MR. COOLS: Join.

10 A. Oh, yes.

11 {Continues reading.} He said that if I
12 didn't sign the contract on that day, the tub would
13 cost \$3,000 more. I was pretty sure that I wanted
14 the tub because I have osteoarthritis and middle
15 ear disturbance that causes balance problems and
16 vertigo. Mr. Brown whipped out a contract that
17 read AIHR, at 1460 West Canal Street, Suite 202, in
18 Littleton, Colorado.

19 Do I need to read all of this?

20 Q. (BY MR. CLOWARD) No. I just wanted to
21 know mainly what you meant by, "then came the hard
22 sell."

23 A. When I told him --

24 MR. GOODHART: Objection, form,
25 foundation, leading.

1 A. -- that I wasn't going to sign the
2 contract until I had a good night's sleep and
3 thought about it some more --

4 Q. (BY MR. CLOWARD) Okay.

5 A. Anything else in packet 1?

6 Q. Yeah, I want to talk about a couple of
7 them. The next letter I want you to just answer
8 some questions, if you would, is the September 1,
9 2012 letter.

10 A. 2012?

11 Q. Yeah.

12 A. What's the date?

13 Q. September 1, it's addressed to Kurt
14 Bachmeyer.

15 A. September 1, 2012. This letter was
16 directed to Mr. Kurt Bachmeyer, director of
17 customer service at Jacuzzi. Subject was the tub.
18 The name Jacuzzi is an old and respected name, a
19 legend in its own time.

20 Want me to continue?

21 Q. I just want to ask one question regarding
22 the first paragraph, and you specifically say,
23 quote, Besides the outrageous behavior and pricing
24 of AIHR, I have now had time to use the tub. It is
25 in no way satisfactory. I can't imagine what

1 testing was done before production began, end
2 quote.

3 First, did I read that correctly?

4 A. Yes.

5 MR. GOODHART: Object to form,
6 foundation, leading.

7 MR. COOLS: Join.

8 A. Yes.

9 Q. (BY MR. CLOWARD) So the second question
10 I have is, what did you mean by "it is in no way
11 satisfactory"?

12 MR. GOODHART: Object to form,
13 foundation, leading.

14 MR. COOLS: Join.

15 A. There was nothing about the tub that
16 was -- that I was happy with.

17 Q. (BY MR. CLOWARD) Okay. And is that what
18 you outlined in the second paragraph there --

19 MR. GOODHART: Objection to form,
20 foundation --

21 Q. (BY MR. CLOWARD) -- as well as the third
22 paragraph?

23 MR. GOODHART: Sorry. Objection, form,
24 foundation, leading.

25 MR. COOLS: Join.

1 **A. Do you want me to read that?**

2 Q. (BY MR. CLOWARD) Just read that and you
3 can confirm whether that's accurate or not.

4 MR. GOODHART: Objection, form,
5 foundation, leading.

6 MR. COOLS: Join.

7 **A. There is no such thing as getting in and**
8 **out of a hot bath. You walk in, close the drain,**
9 **close and lock the door, and turn on the water.**
10 **You sit there and wait for 20 minutes -- 20-plus**
11 **minutes, depending upon pressure, and however long**
12 **the hot water holds out, while the tub fills**
13 **through enough to cover the jets. I don't know how**
14 **many gallons it takes, but it's a lot. If you**
15 **don't have enough hot water to cover you, you can't**
16 **use them.**

17 **Then you decide the bath is over and you**
18 **open the drain and wait while the tub drains, so**
19 **you can open the door and walk out. The only thing**
20 **is, you cannot safely walk out. The tub is wet,**
21 **your feet are wet, and the threshold is too high**
22 **and slick. The only way you could make a safe exit**
23 **is by doing what commercial truck drivers are**
24 **trained to do when exiting the cab of a big rig,**
25 **you back out so you can use a grab bar for**

1 **stability. You stand there, chilled.**

2 Q. (BY MR. CLOWARD) Okay. Were those the
3 complaints that you had --

4 MR. GOODHART: Objection --

5 Q. (BY MR. CLOWARD) -- regarding the tub?

6 MR. GOODHART: Objection, form,
7 foundation, leading.

8 MR. COOLS: Join.

9 **A. Would you repeat the question?**

10 Q. (BY MR. CLOWARD) Were those some of the
11 complaints that you had about the tub?

12 **A. Yes, some.**

13 MR. GOODHART: Objection, form,
14 foundation, leading.

15 MR. COOLS: Join.

16 Q. (BY MR. CLOWARD) And let's go to your
17 next letter of September 12. This is -- we've
18 already covered this, but this is a letter you sent
19 to Mr. Bachmeyer regarding this tub; correct?

20 **A. Well, I said, Your tub has no overflows,**
21 **near as I could see.**

22 **What happened was that Mike emailed me**
23 **and told me where the -- where the -- where the**
24 **overflow was, it was hidden behind something, I**
25 **can't remember what he said, but it did have an**

1 **overflow, but it wasn't visible to me.**

2 Q. Okay. You were voicing your concerns
3 with Jacuzzi?

4 **A. {Continues reading.} What happens when a**
5 **senior experiences a medical emergency while in the**
6 **tub and is unable to turn off the water? If this**
7 **senior lives alone, it seems to me that it would be**
8 **hours or even days before the victim is discovered.**
9 **Running water over a period of time could literally**
10 **demolish the house. Not a very smart design.**

11 Q. So you were --

12 MR. GOODHART: Objection, move to strike
13 as nonresponsive.

14 MR. COOLS: Join.

15 Q. (BY MR. CLOWARD) So back in 2012,
16 September 12th, you were critical of the design of
17 the Jacuzzi tub, and you were voicing that to
18 Jacuzzi?

19 MR. GOODHART: Object to form --

20 **A. In addition --**

21 MR. GOODHART: Object to form,
22 foundation, leading.

23 MR. COOLS: Join.

24 **A. {Continues reading.} In addition to my**
25 **previous communications, detailed sales and**

1 **designs, I believe all things considered, you are**
2 **leaving yourselves quite vulnerable to litigation.**

3 **The tub sold to me by first STREET through their**
4 **so-called dealer is a rip off. I want the tub**
5 **removed immediately at their expense and refunded**
6 **the money I have paid.**

7 MR. GOODHART: Objection, move to strike
8 as not responsive.

9 MR. COOLS: Join.

10 Q. (BY MR. CLOWARD) So this letter is
11 detailing the concerns and criticisms that you
12 have; true?

13 MR. GOODHART: Objection, form,
14 foundation --

15 **A. Yes.**

16 MR. GOODHART: -- leading.

17 MR. COOLS: Join.

18 Q. (BY MR. CLOWARD) Okay. And then the
19 next letter, October 15, 2012, you point out -- I
20 think it should be maybe just the next one in line,
21 October 15th, 2012.

22 **A. Yes.**

23 Q. In this letter -- let me just see if I
24 read this correctly and then I'll ask you a
25 question about it. Question -- or excuse me,

1 quote, This is my fourth communication to you, end
 2 quote. Did I receive that -- or did I read that
 3 correctly?
 4 **A. Yes.**
 5 MR. GOODHART: Objection, form,
 6 foundation, leading.
 7 Q. (BY MR. CLOWARD) So was this October 15,
 8 2012 letter the fourth letter you'd sent to Jacuzzi
 9 regarding your concerns with this walk-in tub?
 10 MR. GOODHART: Objection, form,
 11 foundation, leading.
 12 **A. Yes.**
 13 MR. COOLS: Join.
 14 Q. (BY MR. CLOWARD) And then you go on to
 15 state, quote, To date I have received no response,
 16 end quote. Did I read that correctly?
 17 MR. GOODHART: Objection, form,
 18 foundation, leading.
 19 MR. COOLS: Join.
 20 **A. Yes.**
 21 Q. (BY MR. CLOWARD) So up to this point
 22 Jacuzzi didn't even respond to the three previous
 23 letters?
 24 MR. GOODHART: Objection, form,
 25 foundation, leading.

1 MR. COOLS: Join.
 2 **A. No response.**
 3 Q. (BY MR. CLOWARD) Okay. And in this
 4 letter the third paragraph, let me see if I read
 5 this correctly, but it says, quote, Your tub in no
 6 way delivers what seniors are expecting from
 7 reading the advertisements put out by firstSTREET.
 8 It is misleading, to say the least, and false in
 9 many respects. Furthermore, this tub is a death
 10 trap for any senior experiencing a medical
 11 emergency while bathing. It should be recalled,
 12 end quote.
 13 Did I read that correctly?
 14 MR. GOODHART: Objection, form,
 15 foundation, leading.
 16 **A. Yes, you read it correctly.**
 17 MR. COOLS: Join.
 18 Q. (BY MR. CLOWARD) And explain for the
 19 jurors what you meant when you said, quote, this
 20 tub is a death trap for any senior experiencing a
 21 medical emergency while bathing, end quote.
 22 MR. GOODHART: Objection, form,
 23 foundation, leading.
 24 MR. COOLS: Join.
 25 **A. What I meant was -- what I meant was, if**

1 **I got in the tub and I blacked out and I slipped**
 2 **down in the water, there was no way I could get**
 3 **out.**
 4 Q. (BY MR. CLOWARD) And were you concerned
 5 about that?
 6 **A. Yes, because of my various disabilities,**
 7 **I, on occasion, do black out.**
 8 Q. Is that why you were informing Jacuzzi of
 9 this defect with the design?
 10 MR. GOODHART: Objection, form,
 11 foundation, leading.
 12 **A. Yes.**
 13 MR. COOLS: Join.
 14 Q. (BY MR. CLOWARD) Why were you sending
 15 these letters to Jacuzzi?
 16 MR. GOODHART: Objection, form,
 17 foundation, leading.
 18 **A. I wanted to document my problems with the**
 19 **tub.**
 20 Q. (BY MR. CLOWARD) Okay. And your
 21 concerns?
 22 MR. GOODHART: Objection, leading.
 23 **A. Yes.**
 24 MR. COOLS: Join.
 25 Q. (BY MR. CLOWARD) Other than your

1 problems, were there other reasons you were
 2 contacting Jacuzzi?
 3 **A. I didn't want other seniors to be taken**
 4 **in like I was.**
 5 Q. Okay.
 6 **A. If you go back to the letter, the first**
 7 **letter I wrote to him, where was it, that I**
 8 **discussed that the Jacuzzi brothers had invented**
 9 **the propeller, and what a profound impact that had**
 10 **on the country, and so Jacuzzi was a revered name.**
 11 **A don't remember which letter a put that in but it**
 12 **was one of the first.**
 13 Anyway, that was my concern, you know,
 14 **the Jacuzzi brothers did have a patent on the**
 15 **propeller, and the propeller was a profound**
 16 **invention for everything, every industry, and so it**
 17 **was a revered name. And so the tub was advertised**
 18 **as a Jacuzzi, I was just sure it was what I was**
 19 **looking for.**
 20 Q. Was it?
 21 **A. No.**
 22 Q. And how was it not?
 23 MR. GOODHART: Objection, asked and
 24 answered.
 25 **A. For Heaven's sakes, there was nothing**

1 **about it that was right.**

2 Q. (BY MR. CLOWARD) Okay. In addition to
3 notifying Jacuzzi by letter, did you also make
4 efforts to notify them by email?

5 MR. GOODHART: Objection, form,
6 foundation, leading, assumes facts.

7 MR. COOLS: Join.

8 **A. We had an exchange of emails -- I had an**
9 **exchange of emails with Bachmeyer.**

10 Q. (BY MR. CLOWARD) Okay. And what was the
11 purpose of the emails that you were sending to
12 Mr. Bachmeyer?

13 **A. I don't know why I used the emails**
14 **instead of letter, unless he emailed me and I was**
15 **responding.**

16 Q. Okay. In addition to Jacuzzi, did you
17 also contact any of the other parties that were
18 involved in selling you the tub?

19 MR. COOLS: Object to form, leading.

20 **A. Well, yes, I made contact with**
21 **firstSTREET and AIHR, Nick Fawkes; Tricky Nicky.**

22 Q. (BY MR. CLOWARD) And were you expressing
23 the same types of concerns with regard to the
24 safety of the tub to those parties that you were to
25 Jacuzzi?

1 MR. GOODHART: Objection, form,
2 foundation, leading.

3 MR. COOLS: Join.

4 **A. Yes.**

5 Q. (BY MR. CLOWARD) Okay. Specifically I
6 would reference -- or refer you to Exhibit 2, and
7 I'll find you the page. Why don't you just go
8 ahead and read this silently and then I'll just ask
9 you a question about that. This is, for the
10 record, the letter dated December 4th, 2012, dated
11 {sic} to Stacey L. Hackney, firstSTREET for Boomers
12 & Beyond.

13 MR. GOODHART: Object to form,
14 foundation, leading.

15 MR. COOLS: Join.

16 Q. (BY MR. CLOWARD) Did you write that
17 letter to Ms. Hackney on December 4th, 2012?

18 **A. Yes.**

19 MR. GOODHART: Objection, form,
20 foundation, leading.

21 Q. (BY MR. CLOWARD) What was the purpose of
22 you writing that letter to Ms. Hackney on
23 December 4, 2012?

24 MR. GOODHART: Objection, form,
25 foundation, leading.

1 MR. COOLS: Join.

2 **A. I had received a letter from her**
3 **demanding payment.**

4 Q. (BY MR. CLOWARD) Okay.

5 **A. She said that she was a legal**
6 **representative of firstSTREET, legal counsel I**
7 **think is the way she put it.**

8 Q. And what are some of the things there you
9 pointed out to firstSTREET in that letter?

10 MR. GOODHART: Object to form,
11 foundation, leading.

12 MR. COOLS: Join.

13 **A. Well, I pointed out -- she claimed to**
14 **have no knowledge of the defect of the tub. I**
15 **said, This is hard to fathom since there have been**
16 **several communications to Jacuzzi. And in all**
17 **instances Nick Fawkes and his cohorts have**
18 **identified themselves as Jacuzzi.**

19 Q. (BY MR. CLOWARD) Did you then go on and
20 point out any of those defects?

21 MR. GOODHART: Object to form,
22 foundation, leading.

23 MR. COOLS: Join.

24 **A. {Continues reading.} When installation**
25 **was complete, I attempted to use the tub and found**

1 **that it in no way delivered what your advertisement**
2 **led one to believe. There were several**
3 **communications to Jacuzzi about design flaws and**
4 **the risks associated with -- associated. And I**
5 **assumed, incorrectly it seems, that those were**
6 **being passed on to the proper people.**

7 Q. (BY MR. CLOWARD) Okay. So you were
8 attempting to inform or educate her about the
9 complaints that you had already made to Jacuzzi; is
10 that accurate?

11 MR. GOODHART: Object to form,
12 foundation, leading.

13 MR. COOLS: Join.

14 **A. Yes, that's correct.**

15 Q. (BY MR. CLOWARD) And in the previous
16 paragraph what did you mean when you said, quote,
17 When ready to get out, one had to sit and wait for
18 the tub to drain before opening the door, it was
19 neither comfortable, convenient, nor safe, end
20 quote?

21 What did you mean that it was not safe?

22 MR. GOODHART: Object to form,
23 foundation, leading.

24 MR. COOLS: Join.

25 **A. Because my feet were wet, the tub was**

1 wet, and by the time all of the heating and
2 equipment that was installed underneath the tub, it
3 was no longer walk-in, the threshold was this high,
4 and the flashing that was put on the threshold was
5 slick.

6 Q. (BY MR. CLOWARD) Okay. And additionally
7 when you said, quote, For anyone suffering a
8 medical emergency, I have a balance problem and
9 periodic blackouts, there was no way to get out.
10 The door opens inward and the pressure of the water
11 would negate its opening, end quote.

12 What did you mean when you were telling
13 Ms. Hackney about that?

14 MR. GOODHART: Objection, form,
15 foundation, leading.

16 MR. COOLS: Join.

17 A. I was telling her that I didn't feel safe
18 in using the tub.

19 MR. CLOWARD: Okay. I don't have any
20 other questions. Thank you very much.

21 THE WITNESS: You're welcome.

22 MR. GOODHART: I'll go first.

23 EXAMINATION

24 BY MR. GOODHART:

25 Q. Are you doing okay?

1 traditional tub and slipped down into that
2 traditional tub, would your head go underwater?

3 A. I probably wouldn't have filled the tub
4 that full.

5 Q. Okay. You've heard -- or have you ever
6 heard of stories of people drowning in an inch of
7 water?

8 A. Yes, yes.

9 Q. Okay. Do you think you would've put at
10 least an inch of water in a traditional tub when
11 you were bathing?

12 A. Oh, yes, I would put more than an inch.

13 Q. Okay. If you had slid down in a
14 traditional tub, you could have drowned?

15 A. I could have.

16 Q. Okay. I want to ask you about your
17 complaints to the Consumer Product Safety
18 Commission first. And can you have a look at
19 Exhibit 4.

20 A. It must be in here somewhere.

21 Q. Yeah. Is it okay if I come around
22 towards you and --

23 MR. GOODHART: Or Ben, can you find
24 Exhibit 4?

25 A. Yeah, I found 4.

1 A. Yes.

2 Q. All right. I introduced myself earlier,
3 my name is Philip Goodhart, and I represent
4 firstSTREET and AITHR in this particular
5 litigation.

6 I'm going to jump around a little bit,
7 and I apologize for that. You indicated that you
8 had a concern about blacking out in the tub and
9 then not being able to get out; is that right?

10 A. Correct.

11 Q. If you were in a regular tub, a normal
12 bathtub, traditional bathtub, and you blacked out
13 while you were in the bathtub, what would happen to
14 you?

15 A. I could lean over the edge of the tub.

16 Q. Okay. So your head would be above the
17 water level?

18 A. Uh-huh, yeah.

19 Q. And if you were sitting in the Jacuzzi
20 tub and you blacked out, your head would still be
21 above the water level?

22 A. My head would still be above the water
23 level, but the tub would be above my head -- the
24 top of the tub would be above my head.

25 Q. Right. If you blacked out in a

1 Q. (BY MR. GOODHART) Okay. If you can turn
2 towards the back of Exhibit 4 -- here, let me -- if
3 you can hand me Exhibit 4, please, then I can find
4 it.

5 Okay. I'm going to show you a document
6 that is towards the back of Exhibit 4. And you
7 testified earlier, I believe, that this was an
8 email you received from the Consumer Product Safety
9 Commission in response to your complaint; is that
10 correct?

11 A. I don't believe that this particular
12 document came from -- Well, it says that it came
13 from CPSC, but it was talking about the Federal
14 Trade Commission.

15 Q. Okay. But the subject of this email is
16 Report Number 20121077-B1D09-1278892 was submitted
17 to the CPSC; correct?

18 A. Right.

19 Q. And if you go midway through this
20 document, indented there's a bullet point; do you
21 see that?

22 A. Yes.

23 Q. And that says, The requirements below
24 were not met: Description of risk of harm; do you
25 see that?

1 **A. Let's see, what paragraph is that?**

2 Q. If you go to the third paragraph in this
3 email from the CPSC, it starts, Your report will
4 not be posted; do you see that?

5 **A. Because we are an agency that relies on**
6 **reports such as yours to help us do our job, we're**
7 **not -- I don't know if I'm following you.**

8 Q. Okay. Let me see. I'm going to point it
9 out to you. If you go to the third paragraph, I'm
10 just going to point it to you, which starts right
11 here, Your report will not be posted; do you see
12 that?

13 **A. Well, safe products is the Federal Trade**
14 **Commission, that's not C -- that's not CPSC.**

15 Q. Okay. I'm just asking you, at least in
16 this email, if I'm reading this correctly, the CPSC
17 was informing you that your report -- or your
18 complaint would not be posted on saferproducts.gov
19 because it does not meet the minimum requirements
20 for publication.

21 **A. That's correct.**

22 Q. And then it says, The requirements below
23 were not met, and it says, Description of risk of
24 harm.

25 **A. Where do you see that?**

1 Q. Right below the bullet point,
2 description --

3 **A. {Reading.} If you wish to submit**
4 **additional information to address the deficiency**
5 **identified above, please forward this email**
6 **together with your additions to clearinghouse --**

7 Q. Okay. Do you see that?

8 **A. Yes.**

9 Q. Okay. So when the CPSC notified you that
10 your report and complaint was deficient because it
11 did not have a description of the risk of harm, did
12 you respond to that?

13 **A. I didn't respond to the clearinghouse,**
14 **no.**

15 Q. Okay. In a number of those documents
16 there's an email address of -- for you of
17 3tippy47@bresnan.net.

18 **A. Right, that's my email address.**

19 Q. I'm just curious, and I'm just like this,
20 and I apologize, does the 3tippy47 stand for
21 anything or mean anything?

22 **A. Yes, when I was 3 years old my parents**
23 **gave me an old mongrel that we named Tippy. And in**
24 **'47 our house burned up and the dog burned up in**
25 **the house.**

1 Q. Oh, I'm sorry to hear about that, I
2 really am.

3 Now, Mr. Cloward went through the
4 complaints that you've had, did you -- other than
5 what we just read from the Consumer Product Safety
6 Commission, did you ever receive a response from
7 them with respect to your complaint?

8 **A. Well, yes, they responded and they asked**
9 **for additional information, if they could post it**
10 **in the national database, and release my contact**
11 **information. So I did fill that out and return it**
12 **to them.**

13 Q. Okay. And did they ever respond to you
14 with the results of their investigation?

15 **A. I don't know that they did. In fact, I**
16 **don't know if they do investigations. Do they? I**
17 **think they're merely a reporting entity.**

18 Q. Okay. And you also wanted the Department
19 of Elder Fraud for the U.S. Attorney General's
20 office to investigate; correct?

21 **A. Yeah -- Well, I there again, I wanted**
22 **them to be aware of my concerns.**

23 Q. Okay. Did any -- did -- were you ever
24 told of what happened to any investigation that the
25 Department of Elder Fraud may have performed?

1 **A. I don't recall that I did.**

2 Q. Okay. Do you recall being notified of
3 any investigation that the attorney general of
4 Montana did?

5 **A. I don't think that I ever received any**
6 **kind of information like that.**

7 Q. Okay. Did you receive any response as to
8 any investigation that the Associated Press may
9 have done?

10 **A. No.**

11 Q. Have you ever filed a lawsuit --

12 **A. No.**

13 Q. -- against anybody?

14 **A. No, no.**

15 Q. Have you ever been defendant in a
16 lawsuit?

17 **A. No.**

18 Q. Now, looking through the documents that
19 were provided today, it appeared as though you
20 approached a couple of lawyers to find out what
21 could be done about the concerns you had about the
22 Jacuzzi tub; is that right?

23 **A. Yes. The first one was Jennifer Lint,**
24 **and she said, I have no experience in product**
25 **liability litigation, so she said, I couldn't do**

1 that for you.

2 Well, now, Royce McCarty is my personal
3 attorney, and he has done work for me. When I
4 moved from Washington state to Montana state,
5 there -- I have a trust and it had a lot of
6 documents that had to be changed. And so I took
7 the contract to him and had him look at it, and he
8 said, it's probably legitimate, they're just inept.

9 Q. Okay. Did Mr. McCarty recommend that you
10 pursue litigation against Jacuzzi?

11 A. He did not recommend that I pursue
12 litigation. He said, you have to weigh the
13 benefits against the risk. And I decided I wasn't
14 spending a dime more, that I would chalk this up to
15 life experience and go on and forget the whole bit.

16 Q. How old are you right now?

17 A. 82.

18 Q. And are you a member of any type of
19 senior community where you live, where seniors will
20 get together and meet or anything like that?

21 A. No.

22 Q. Are you a member or do you subscribe to
23 any senior magazines?

24 A. No.

25 Q. In one of the documents that Mr. Cloward

1 personal experience in the tub?

2 A. Right.

3 Q. And when you say the word "seniors" in
4 your letters, it's not based upon other people's
5 experiences with the tub, it's just based upon your
6 own personal experience?

7 A. That's right.

8 Q. And you have no idea, because you never
9 talked to other seniors about this, about how other
10 seniors have thought about the tub?

11 A. I have not.

12 Q. Okay. So you're expanding your belief
13 about this tub to all seniors that are out there?

14 A. That's correct, I am.

15 Q. Okay. And that's just your personal
16 opinion?

17 A. Right.

18 Q. Okay. In looking through the documents
19 that were produced today, it appears as though
20 you're fairly good at going on the internet and
21 Google-searching things; is that a fair statement?

22 A. Yes.

23 Q. Okay. Before you reached out to Jacuzzi
24 using the ad that was produced here today and the
25 number, had you done any online research about

1 went over with you, you make reference to, this
2 product is not meant for seniors, do you remember
3 that?

4 A. Yes.

5 Q. Okay. When you say it's not meant for
6 seniors, do you mean it's just not meant for you?

7 A. No, that's plural.

8 Q. Okay. What seniors have you talked to?

9 A. Nobody.

10 Q. Okay.

11 A. Well, I've talked -- I've talked to
12 people about it, but -- I guess Ken Bell was the
13 first person I talked to, he's an attorney but he's
14 also member of the family. And I told him that
15 I -- you know, I was afraid I would just run up
16 more attorney's fees.

17 Q. I understand that. I'm just trying to
18 get an idea of when you put in your letters that --
19 and used the words in your drafts that these tubs
20 were not meant for seniors, that implies that it's
21 not meant for any senior, and I want to get an
22 understanding as to how you came to that
23 understanding or that idea?

24 A. The first time I used the tub.

25 Q. Okay. But that was based upon your

1 walk-in tubs?

2 A. No, I hadn't.

3 Q. Okay. After you reached out to Jacuzzi
4 and talked to them and set up an appointment, but
5 before the salesperson came into the home, did you
6 do any online research about walk-in tubs?

7 A. No.

8 Q. Do you remember if the salesperson left a
9 brochure with you, after you had signed the
10 contract, which had some promotional materials in
11 it?

12 A. I don't recall. I don't think he did,
13 but I would not say for sure.

14 Q. Okay. You've produced lot of documents
15 here today; right?

16 A. Right.

17 Q. And we've gone over a lot of them and
18 they include, for example, Exhibit 6 is the
19 installation checklist, and there was a copy of the
20 contract that was signed by you; correct?

21 A. Right.

22 Q. And would it be fair to say that you kept
23 all the information that was provided to you at the
24 time you signed -- or at the time the salesperson
25 had you sign the contract all the way through until

1 when the tub was installed?

2 **A. I've got hard copies of the Christmas**
3 **letter I've written back to 2000 and beyond that.**
4 **It is my practice to keep hard copies of --**

5 Q. And I cannot blame you for that.

6 So is it fair to say, then, that you
7 would -- had a brochure been provided to you, after
8 you signed the contract, that had promotional
9 materials in it, you would've kept that brochure?

10 **A. Well, those things that Jacuzzi sent**
11 **me -- or not Jacuzzi, first STREET, those magazines,**
12 **I kept in my file.**

13 Q. Right. So --

14 **A. I don't know that I read them.**

15 Q. So what I'm trying to find out, though,
16 Ms. Chopper, is based upon your custom and practice
17 of always keeping materials and not throwing
18 originals out, if the salesperson had left a
19 brochure with you that had several pages of
20 promotional and marketing materials about the
21 Jacuzzi product in it, that is something, based on
22 your custom and practice, you would've kept?

23 **A. I'm pretty sure I would have, and I don't**
24 **have anything like that in my possession.**

25 Q. Okay. And had you kept that, you

1 any materials -- you do not recall seeing any

2 materials related to the tub when the tub was sold
3 to you; is that correct?

4 **A. No, no, no. Mr. Brown, John Brown was a**
5 **very charming man that talked about his family and**
6 **showed me pictures and commented about my bulletin**
7 **boards and just was very ingratiating.**

8 Q. So do you recall seeing any
9 specifications about the tub or any pictures of the
10 tub before you purchased it?

11 **A. No. I think on the back of the contract**
12 **there's a diagram of where he drew, but no,**
13 **I hadn't -- no, I hadn't seen anything.**

14 Q. Before you purchased the tub did you know
15 that the door swung inward on the tub?

16 **A. No.**

17 Q. What size is your water heater?

18 **A. I don't know for sure, but I think it's**
19 **40 gallon. I know that I ran out of hot water in**
20 **14 minutes.**

21 Q. And it's the same size today as what it
22 was --

23 **A. Yeah.**

24 Q. -- when you had the tub installed?

25 **A. Yeah.**

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 Q. It's fair to say that you were an unhappy
2 customer; right?

3 **A. Very.**

4 Q. And you didn't think that the tub was
5 comfortable; correct?

6 **A. No, I did not.**

7 Q. You were unhappy with how long it took to
8 fill up; right?

9 **A. I was.**

10 Q. You were never injured in this tub, were
11 you?

12 **A. No.**

13 Q. How many times did you use the tub?

14 **A. Twice. Well, I will qualify that, I used**
15 **the jets twice. Before it was taken out, like I**
16 **explained to my attorney, I would run 10 inches at**
17 **the bottom of the tub and get in what I called a**
18 **spit bath.**

19 Q. Now, you purchased the tub on June 28th,
20 2012; is that correct?

21 **A. Without looking back through the**
22 **documentation, I can't confirm that.**

23 Q. Okay. Do you recall that the tub was
24 installed in August of 2012?

25 **A. I can't confirm that either, without**

1 going back through my documentation. But I know
 2 that sometime I got a call from Mike Kirchner in
 3 Bigfork and he said, are you waiting for a tub?
 4 And I said, yes. He said, well, I have a tub here,
 5 but the only thing with it is the name Chopper in
 6 Hamilton. He said, they haven't shipped the
 7 surrounds. So he was calling to find -- I was the
 8 only Chopper in Hamilton, so he called and said,
 9 are you waiting for a tub?

10 Q. So if you look at Exhibit 6, have you got
 11 that in front of you? There you go, it's that one
 12 there. That's your signature there at the bottom,
 13 isn't it?

14 A. Yes, that's right, it is.

15 Q. And you signed this at the time that your
 16 tub was installed?

17 A. Well, it's an installation check sheet,
 18 so I'm sure it is because everything -- or all the
 19 boxes -- well, the three bottom boxes aren't
 20 checked, but the one, two, three, four, five top
 21 ones are.

22 Q. Right. My question was, you signed this
 23 at the time that your tub was installed; correct?

24 A. Yes.

25 Q. Okay. It's fair to say that you had

1 of that page it said I talked to the City of
 2 Littleton on 72/6, so you know, I don't know what
 3 the July 26th means.

4 Q. Well, you believe that you talked to the
 5 City of Littleton on July 26th, 2012?

6 A. No, I didn't talk to them until July --
 7 July 26th -- oh, that is July 26th. Maybe
 8 that's -- maybe that's what that means.

9 Q. So do you believe this document was
 10 created sometime before July 26th, 2012?

11 A. Probably not in this form, probably on a
 12 scratch pad somewhere.

13 Q. Okay. Do you -- had you compiled this
 14 information as of July 26th, 2012?

15 A. Uh-huh, yeah.

16 Q. Yes?

17 A. Yes.

18 Q. Okay. And in fact, you'd already
 19 consulted with an attorney as of July 26th, 2012,
 20 hadn't you?

21 A. I think I would've talked to, yes,
 22 Jennifer Lint and McCarty.

23 Q. And that's all before your tub was even
 24 installed; correct?

25 A. Uh-huh, yes.

1 complaints about the process before you even had
 2 your tub installed; right?

3 A. I had my suspicion about Nick Fawkes, the
 4 guy comes off as a smartass, and that's why I did
 5 as much investigation as I did.

6 Q. So I just -- on Exhibit 8, the last page
 7 there, if you could take a look at that.

8 A. Exhibit 8?

9 Q. Yes. This is what the front of it looks
 10 like.

11 A. Saturday, yeah.

12 Q. Okay. So if you look at the last page
 13 there, I believe you previously testified that
 14 these were your notes; is that correct?

15 A. Yes, they were notes to myself.

16 Q. Okay. And there's a date up at the top
 17 of that that's July 26th; do you see that?

18 A. Yes.

19 Q. Okay. Is that your handwriting?

20 A. Yes, I'm pretty sure I wrote that.

21 Q. Do you believe that's a reference to
 22 July 26th, 2012, around the same time that you
 23 purchased the tub?

24 A. No, no. Because of my notes here of all
 25 the people that I've talked to, like at the bottom

1 Q. While -- I think it was off the record we
 2 talked a little bit about your conversation with
 3 Mr. Cloward. When did Mr. Cloward first contact
 4 you?

5 A. I can't remember the day of the phone
 6 call. I found a call on my answering machine that
 7 he had called, but since I get so many scam calls,
 8 I didn't call him because I didn't know if he was
 9 who he said he was --

10 Q. When did you first --

11 A. -- so it wasn't until I received the
 12 subpoena and saw who the -- the firm in Las Vegas,
 13 and then I called them and I said, the number that
 14 he gave me is not any number. They said, oh,
 15 that's -- he's a member here, but that's his cell
 16 number, so that's the number I called.

17 Q. And on how many occasions have you spoken
 18 with Mr. Cloward since then?

19 A. Let's see, I called him back and he asked
 20 me to make copies of stuff. And when I got
 21 finished copying, I called him and I said, where do
 22 you want me to direct this information? And he
 23 said, in Las Vegas, at the firm. So I directed it
 24 to Las Vegas.

25 Q. So do you remember how many times that

1 you actually spoke with Mr. Cloward?

2 **A. Not very many times until he -- Let's**
3 **see, I talked to him after I received the subpoena,**
4 **which directed me to appear on the 20th, which is**
5 **today. But then when I told him how much stuff I**
6 **had in my file, he said, would it be all right if I**
7 **fly in the day before and go over this stuff with**
8 **you? And I said, that would be fine.**

9 Q. And so -- and you're referring to the
10 meeting that you had with him yesterday where he --

11 **A. Right.**

12 Q. How long did he spend with you yesterday?

13 **A. Well, several hours. He was gone about**
14 **an hour more when he went down to UPS to make**
15 **copies. I have a copy machine, but I'm sure glad**
16 **that he didn't try to make all the copies he made**
17 **on that thing. Anyway, he was gone for a period of**
18 **an hour or more, and he came back with a box of**
19 **stuff and said, do you know how much money I spent**
20 **making these copies, I forget what he said, \$450,**
21 **or something.**

22 **And he came in and we talked some more**
23 **and went over some more stuff. And I don't know --**

24 THE WITNESS: What time did you leave?
25 (Speaking to Mr. Cloward.)

1 **A. I don't know what time he left, it was --**
2 **Oh, yes, I do know, it was more like 4:30 because**
3 **he said, I still have to go to Darby, and Darby is,**
4 **oh, 30, 40 minutes down the road. And so I don't**
5 **know -- I don't know -- but anyway, he showed --**

6 **First of all, he said that his plane**
7 **would get in at 1:20 -- at 1:10, so he thought by**
8 **the time he rented the car and so on and so forth**
9 **it would be close to 2:30 or 3 before he got to my**
10 **house. But then he called me and said he was in**
11 **Missoula, his plane had landed at 12-something,**
12 **and -- I don't know whether he changed flights or**
13 **whether -- you know, I don't know why he was ahead**
14 **of schedule, but anyway, he was ahead of schedule.**
15 **And I said, come on out any time you're ready. If**
16 **you want to take time to have lunch, have lunch and**
17 **then come out, I'm not going anywhere.**

18 Q. (BY MR. COOLS) But it's fair to say
19 he -- I think you said he spent a few hours with
20 you; is that correct?

21 **A. Yeah, I would say -- I would say probably**
22 **a couple, three maybe.**

23 Q. And did he tell you about the case
24 pending in Las Vegas?

25 **A. He told me about somebody that drowned,**

1 **is that Las Vegas?**

2 Q. No.

3 **A. Well, he told me about somebody else that**
4 **had a medical emergency of some kind, and somebody**
5 **called the medics and there were four paramedics**
6 **that came out, and the four of them couldn't get**
7 **this person out of the tub. They broke her arm in**
8 **the process of getting her out of the tub. And**
9 **eventually had to end up by sawing the door off to**
10 **get her out of the tub. And then they took her to**
11 **the hospital, where she died a few days later. But**
12 **I guess he said she laid in that tub for three days**
13 **before she was found.**

14 Q. Did you know before you purchased the tub
15 that you had to shut the door before you filled it
16 up?

17 **A. Huh-uh.**

18 MR. CLOWARD: Is that a no?

19 **A. Well, that's true, I had to shut the door**
20 **before I filled it up. I didn't know that the door**
21 **went inward. Of course you have to shut the door**
22 **before you fill it up.**

23 Q. (BY MR. COOLS) Let me just ask my
24 question again.

25 Did you know, before you purchased the

1 tub, that you had to close the door before you
2 could fill it?

3 **A. I don't know that the subject ever came**
4 **up. I knew that it was getting dangerous for me**
5 **getting in and out of a bathtub, but I hadn't done**
6 **any research as far as what I was gonna do.**

7 Q. Considering the research that you did and
8 that you'd already consulted with an attorney all
9 before your tub was even installed, it's fair to
10 say that you were already unhappy with your
11 purchase, is that correct, even before the tub was
12 installed?

13 **A. I told Mr. Bachmeyer, in my first letter**
14 **to him, that I had buyer's remorse.**

15 Q. Right. But my point is, you had buyer's
16 remorse before they even brought the tub out and
17 installed the tub; right?

18 **A. I'm not sure about that. I know that I**
19 **consulted with Royce McCarty, he looked at the**
20 **contract and that's when he said, well, they're**
21 **probably legitimate, they're just inept.**

22 Q. You went and spoke with an attorney
23 because you were unhappy with something about the
24 process; right?

25 **A. Like I told you, Nick Fawkes sent up a**

1 red flag right away. He -- he's just the kind of
2 guy that makes you suspicious. Like I said, his
3 attitude was a smartass. And that's why I started
4 doing research because I had a feeling that he was
5 not legitimate.

6 Q. And when you started doing that research,
7 you were unhappy with how the -- with your purchase
8 so far; is that fair to say?

9 A. Yes, his first initial response to me
10 was, you know, that -- let's see, how did that go?
11 It was a thank you for the tub, but then -- and
12 then I got -- I called and I got this Tracy
13 Dierkson, or whatever her name is, who told me that
14 the tub would be coming from Bigfork.

15 And I wrote an email to Nick Fawkes and I
16 said, for Heaven's sakes, Bigfork is hundreds of
17 miles from here, surely you can find somebody in
18 Missoula, which is 50 -- 50 miles away and is the
19 nearest metro. And the response was, everybody
20 that's a skilled tradesman is down working in the
21 oil fields in Bakken.

22 And so -- but then when Mike came, I
23 found out he had already installed one tub up in
24 his neighborhood. And there was a problem with the
25 tub because the door was leaking, and he said that

1 a Jacuzzi technician had been out to look at the
2 tub. So they already had his name, you know, and I
3 guess that's why he was recruited by Facility
4 whatever -- Facility Management, whatever.

5 Q. But assuming that, as you've testified
6 that this -- you know, this page with your notes,
7 this was all created prior to the tub even being
8 installed, you went to a considerable amount of
9 research to create these notes; isn't that right?

10 A. What -- I forget what day the tub was
11 installed.

12 Q. The tub was installed August 20th in
13 2012.

14 A. So, yes, I did do a lot of research
15 before the tub was installed.

16 Q. Even going so far as to, you know, track
17 down the information for the attorney general of
18 Montana, the secretary of state, the -- calling the
19 City of Littleton, Colorado, all of that, you
20 compiled all of that information before you even
21 received the tub; right?

22 A. Yes, yes, that's just my standard
23 practice.

24 Q. And it's fair to say, isn't it, that you
25 wouldn't have done this if you were happy with the

1 purchase; right?

2 A. Like I said before, I was suspicious of
3 Nick Fawkes, and that's the reason I did my
4 research. And I found out in Littleton that nobody
5 was using that address in Littleton. They were
6 using it as a warehouse, I guess, because nobody
7 was there and everything was done by cell phone.
8 So, you know, where they were when they made their
9 calls and letters and stuff, I have no idea, and
10 that made me suspicious, too.

11 MR. COOLS: Those are all my questions.
12 Thank you.

13 MS. LLEWELLYN: I just have a few
14 questions for you.

15 MR. COOLS: He's probably not going to
16 let you.

17 MR. CLOWARD: Sorry.

18 MR. COOLS: This is a previous --

19 MR. CLOWARD: I don't have a problem with
20 it, but they've given me a hard time about it, so I
21 think what's good for the goose is good for the
22 gander, but --

23 MR. GOODHART: Whoa, whoa, you said
24 "they," I don't remember giving you a hard time
25 about it.

1 MR. CLOWARD: You're the one that did.
2 (Laughter.)

3 MR. GOODHART: I don't --

4 MR. CLOWARD: Go ahead and ask your
5 question.

6 MS. LLEWELLYN: No, it's fine.

7 MR. CLOWARD: I really -- go ahead. If
8 you have a question, go ahead.

9 MS. LLEWELLYN: I'm fine.

10 MR. CLOWARD: Okay.

11 EXAMINATION

12 BY MR. CLOWARD:

13 Q. Ms. Chopper, earlier Mr. Goodhart asked
14 you about a regular tub compared to the walk-in
15 tub, which one do you feel is safer?

16 A. Well, I had a regular tub prior to this
17 one and it was getting harder for me to get in and
18 out of the tub because of my disability --

19 Q. Uh-huh.

20 A. -- and so I knew I was gonna have to do
21 something. And so when they -- when I saw this
22 thing for Jacuzzi, I bit, because like I said,
23 people of my generation knew what the Jacuzzi
24 brothers had done as far as patenting the
25 propeller, which revolutionized everything, so we

1 **held that name in awe.**

2 Q. Did you trust Jacuzzi to provide a safe
3 product?

4 **A. Yes.**

5 MR. COOLS: Objection, leading.

6 Q. (BY MR. CLOWARD) Did Jacuzzi violate
7 that trust?

8 **A. Yes.**

9 MR. COOLS: Objection, leading, lacks
10 foundation.

11 MR. GOODHART: Join.

12 Q. (BY MR. CLOWARD) How did they violate
13 your trust?

14 MR. COOLS: Same objections.

15 MR. GOODHART: Join.

16 **A. How did they violate my trust? They
17 didn't produce what I was expecting.**

18 Q. (BY MR. CLOWARD) And what were you
19 expecting?

20 **A. Comfort, convenience, safety.**

21 Q. Okay. Were you glad that you had the
22 Jacuzzi tub removed from your home?

23 **A. Oh, yeah, yeah. I couldn't wait to get
24 it removed after I used the tub twice.**

25 Q. And it's my understanding you actually

1 **comfortable, it was not convenient, it was not
2 safe. And I didn't want any -- I didn't -- I
3 didn't want people to be sucked in like I was.**

4 MR. CLOWARD: Okay. No further
5 questions. Thank you very much.

6 THE WITNESS: You're welcome.

7 MR. GOODHART: I have no questions.

8 Thank you.

9 MR. COOLS: I have no further. Thank you
10 for your time.

11 MR. CLOWARD: So you --

12 COURT REPORTER: Do you want to go off?

13 MR. CLOWARD: I'll just do the
14 admonishment on the record.

15 The nice reporter will type up the
16 deposition today in a booklet format, where you can
17 read the questions and answers, and you can sign
18 off on that or you can just waive that, that's up
19 to you. If you want to do that, then you would be
20 required to work with the court reporter to have
21 the transcript either sent to you or you'd go to
22 their location and you'd read through the
23 transcript and then sign off, or you can waive,
24 it's your right.

25 THE WITNESS: I have one question for

1 paid an additional \$700 to have it removed?

2 **A. I did, I paid --**

3 MR. COOLS: Objection, leading.

4 MR. GOODHART: Join.

5 **A. -- Mike Kirchner \$700 to remove the tub.
6 And what he did with it after that, I don't know,
7 but I remember reading somewhere that that guy back
8 at Facilities Management asked if the tub could be
9 refurbished and installed somewhere else, and I
10 don't know -- I don't know where I read that.
11 Maybe Mike -- maybe Mike in one of his emails, or
12 something. But anyway, that question was asked of
13 him.**

14 Q. Okay. I believe it was Mr. Cools that
15 was asking -- maybe it was Mr. Goodhart, about
16 whether or not the tub was appropriate for other
17 seniors. Why do you feel that the tub -- the
18 walk-in tub is not appropriate for seniors --

19 MR. GOODHART: Objection --

20 Q. (BY MR. CLOWARD) -- plural?

21 MR. GOODHART: Objection, form,
22 foundation, leading.

23 MR. COOLS: And misstates prior
24 testimony.

25 **A. Because of my experience, it was not**

1 you.

2 MR. CLOWARD: Okay.

3 THE WITNESS: Am I going to have to be
4 a witness at a trial?

5 MR. CLOWARD: I'm hoping not. You can't
6 be compelled to come to Nevada. Would you be
7 interested to come to Nevada to testify and talk to
8 jurors?

9 THE WITNESS: Well, I have no reason to
10 go to Nevada anymore.

11 How old is Dakota? What year was she
12 born? (Speaking to Ms. Williamson.)

13 MS. WILLIAMSON: Dakota?

14 THE WITNESS: Dakota. We made the
15 trip -- we made the trip to Las Vegas the year
16 Dakota -- when she was born.

17 MS. WILLIAMSON: Oh, that was '06.

18 MR. CLOWARD: We can go off now.

19 THE WITNESS: I lived there in the '50s
20 and I've been back several times since.

21 MR. GOODHART: Too late, we're on the
22 record.

23 MR. CLOWARD: Okay. Well, you cannot be
24 compelled to come to Nevada, but certainly I think
25 it would be helpful if you came and talked to the

<p style="text-align: right;">Page 149</p> <p>1 jurors about your experience, so that's up to you.</p> <p>2 THE WITNESS: Are you gonna pay for my</p> <p>3 way? (Laughter --</p> <p>4 MR. CLOWARD: I would imagine we would</p> <p>5 arrange for your travel, yes.</p> <p>6 And thank you -- So do you want to</p> <p>7 exercise your right to review and read and sign the</p> <p>8 transcript? You don't have to do that, you can</p> <p>9 waive that. Most folks waive that, but some folks</p> <p>10 do like to review the transcript to make sure that</p> <p>11 it was transcribed correctly.</p> <p>12 THE WITNESS: You know, I don't give a</p> <p>13 dang anymore.</p> <p>14 MR. CLOWARD: Okay. We'll just say that</p> <p>15 she waives, then.</p> <p>16 MR. GOODHART: That's fine.</p> <p>17 THE WITNESS: I'll chalk --</p> <p>18 COURT REPORTER: Let's let --</p> <p>19 THE WITNESS: -- chalk everything up to</p> <p>20 experience.</p> <p>21 COURT REPORTER: Okay. Let's let her get</p> <p>22 us off the record.</p> <p>23 VIDEOGRAPHER SIMONICH: This concludes</p> <p>24 the deposition of Jerre Chopper. The time is 3:20</p> <p>25 p.m., and we are now going off the record.</p>	<p style="text-align: right;">Page 151</p> <p>1 CERTIFICATE</p> <p>2</p> <p>3 STATE OF MONTANA)</p> <p>4 : ss.</p> <p>5 County of Ravalli)</p> <p>6 I, Terra Rohlfs, RPR, Freelance Court</p> <p>7 Reporter and Notary Public for the State of</p> <p>8 Montana, residing in Hamilton, Montana, do hereby</p> <p>9 certify:</p> <p>10</p> <p>11 That I was duly authorized to swear in</p> <p>12 the witness and did report the deposition of JERRE</p> <p>13 CHOPPER in this cause;</p> <p>14</p> <p>15 That the reading and signing of the</p> <p>16 deposition by the witness have been expressly</p> <p>17 waived;</p> <p>18</p> <p>19 That the foregoing pages of this</p> <p>20 deposition constitute a true and accurate</p> <p>21 transcription of my stenotype notes of the</p> <p>22 testimony of said witness.</p> <p>23 I further certify that I am not an</p> <p>24 attorney nor counsel of any of the parties; nor a</p> <p>25 relative or employee of any attorney or counsel</p> <p>connected with the action, nor financially</p> <p>interested in the action.</p> <p>IN WITNESS WHEREOF, I have hereunto set</p> <p>my hand and seal on this the 26th day of December, 2018.</p> <p>_____ Terra Rohlfs, RPR, Freelance Court Reporter Notary Public, State of Montana Residing in Hamilton, Montana My Commission expires: 11/4/19</p>
<p style="text-align: right;">Page 150</p> <p>1 (Deposition concluded at 3:20 p.m.</p> <p>2 Witness excused, signature waived.)</p> <p>3 * * *</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	

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EXHIBIT “18”

December 4, 2012

Ms. Stacy L Hackney
First Street for Boomers and Beyond
1998 Ruffin Mill Road
Colonial Heights, VA 23834

Dear Ms. Hackney:

SUBJECT: THE JACUZZI DESIGNED FOR SENIORS WALK-IN TUB
Model No: NQ80, Mfg. No: 128683 or 1206-03

Your letter of November 29 regarding the above is received. You claim to have no knowledge of any defect in the tub. This is hard to fathom since there have been several communications to Jacuzzi and in all instances Nick Fawkes and his co-horts have identified themselves as Jacuzzi.

However, I will attempt to enlighten you. I signed a contract with AIHR on June 28 and gave the salesman, John Brown, a check for \$5000. I was told the tub would be installed in 3-4 weeks. After some weeks I inquired and was told the installer would be Mike Kirchner in Big Fork. I e-mailed Nick Fawkes and pointed out that Big Fork was hundreds of miles from Hamilton and that Missoula was the nearest Metro—50 miles. The manner of Fawkes's reply sent up a red flag and I decided to do some investigation.

Inquiry with the Secretary of State disclosed AIHR was not registered or licensed to do business in Montana. Neither was Nick Fawkes dba AIHR, nor firstSTREET. The Colorado Secretary of State gave the same response. The City of Littleton reported them unknown. Someone was sent to the address. It was reported that they rented so were legitimate tenants; however there was no sign of activity and they had not registered with the city or paid any business tax.

I took the contract to my attorney, Royce McCarty, and he assured me that no court in Montana would honor a petition by an unlicensed company doing business here. He further told me that there was no law against price gouging.

Installation was arranged for August 13-14. On the 14th Mike said he did not have the material needed to complete installation. He would be back on the 20th. On the 15th a check for half the balance owing was sent to AIHR and told that the remainder would be forthcoming when tradesmen had been paid and that the tub delivered what was promised.

On the 16th Nick Fawkes called. He ranted and raved and demanded money. Clearly he was a man out of control and behaving like a jerk. Since I was already suspicious of him I went to the bank the check was drawn on and put a stop payment on any paperless transactions he might try

to slip through. The bank reported that to be the case and it was returned unpaid. I also notified the bank that the \$5000 check was drawn on with the same message.

When installation was complete I attempted to use the tub and found that it in no way delivered what your advertisement led one to believe. After getting in the tub and turning on the water one waited until it filled—75 gallons was required to run the jets. When ready to get out one had to sit and wait for the tub to drain before opening the door. It was neither comfortable, convenient nor safe. For anyone suffering a medical emergency (I have a balance problem and periodic blackouts) there was no way to get out. The door opens inward and the pressure of the water would negate its opening.

There were several communications to Jacuzzi about design flaws and the risks associated, and I assumed (incorrectly it seems) those were being passed on to the proper people.

Meanwhile Nick Fawkes and his crowd kept up a relentless barrage of “gimme the money” and I stopped answering the phone. Boatwright Law was directed to let AIHR know that all further communication, in writing, from them was to go through that office.

Notice was posted with both the Montana and US Attorney Generals Office of Elder Fraud.

Finally on October 10 I filed a claim with the U.S. Consumer Product Safety Commission in Bethesda, MD and subsequently gave permission to have it entered into their database.

On October 18 the tub was removed from my premises by Mike Kirchner, for which I paid him \$700. On that date Mike said that he had never been paid for the original install. Apparently there was litigation pending between AIHR and New England Facilities Management—the company that had originally recruited him.

I believe that the \$5000 you have already collected from me should cover any expenses you have incurred. Further I believe that if a company of integrity believes in the product they peddle it offers a money back guarantee if not completely satisfied.

I have had to restore the bathroom and deal with all the distress this byzantine drama has caused.

Sincerely,

Jerre R. Chopper

Copy – Royce McCarty
Jennifer Lint
Kurt Bachmeyer

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

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' first STREET FOR BOOMERS & BEYOND, INC.'s &
AITHR DEALER, INC.'s PETITION FOR WRIT OF MANDAMUS**

**VOLUME 3
PAGES 501-750**

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

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

/s/ Catherine Barnhill
An Employee of Richard Harris Law Firm

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EXHIBIT “19”

BOATWRIGHT LAW OFFICE, P.C.

JENNIFER B. LINT

TRANSMITTAL MEMORANDUM

TO: Jerre Chopper
225 Hillcrest Drive
Hamilton, MT 59840

DATE: September 28, 2012

RE: Jacuzzi tub

Attached please find the following:

- Letter to Aging in the Home Remodelers dated September 28, 2012

Please take the following action:

☒ For your information / records.

If you have any questions, please call our office at (406) 375-1385.

Sincerely,

JENNIFER B. LINT



Lynne Claassen
Legal Assistant

BOATWRIGHT LAW OFFICE, P.C.

JENNIFER B. LINT

September 28, 2012

Monique Trujillo
Aging in the Home Remodelers
1460 W. Canal Ct, Suite 102
Littleton, CO 80120

Re: *Jerre Chopper, 225 Hillcrest Drive, Hamilton, Montana*

Dear Ms. Trujillo:

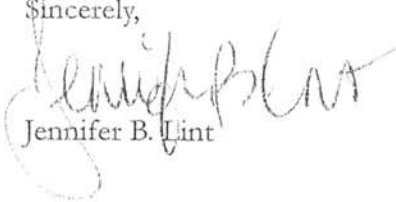
I have met with Ms. Jerre Chopper regarding her recent purchase of a product from your company. Ms. Chopper is extremely unsatisfied with the product, with the timeliness of the installation, and with the customer service of your organization.

I reviewed the documentation regarding this transaction for Ms. Chopper. While your company does provide a three (3) day right of rescission, the right is meaningless when the buyer does not have the opportunity to inspect the product during the rescission period. Ms. Chopper relied on your marketing information which represented this tub was an excellent, affordable choice for seniors. After viewing the tub, it is apparent to Ms. Chopper that the tub is anything but utilitarian, and certainly not affordable.

Moreover, when Ms. Chopper was visited by your salesman, she was pressured into signing the contract. The salesman gave her the "hard sell" telling her that she had to sign that day in order to save \$3,000.00. The salesman visited her at 5:30 pm, a time of day where Ms. Chopper was, as are many other seniors, winding down for the day and they might not be at their sharpest. She feels taken advantage of and given time to review the product in person, would not have made this purchase.

Therefore, Ms. Chopper will permit the original installer to come remove the tub, and return it to you in exchange for a full refund of her \$5,000.00. Please make arrangements through my office, and please direct all future communication and correspondence through my office. Thank you.

Sincerely,


Jennifer B. Lint

JBL/lac
cc: client

BOATWRIGHT LAW OFFICE, P.C.

JENNIFER B. LINT

October 5, 2012

Jerre Chopper
225 Hillcrest Drive
Hamilton, MT 59840

Re: *Jacuzzi tub*

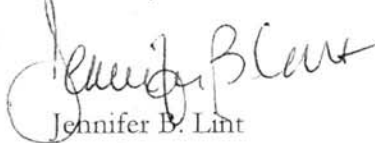
Dear Jerre:

We received a telephone call from AIHR in response to our letter. They stated as follows: They installed the tub correctly, there is nothing wrong with the installation and they expect you to pay the balance.

If you wish to pursue this matter, you will either need to file suit against them, or wait until they sue you and respond with your claims. I am not sufficiently experienced to handle a product liability case – I am happy to help you with an elder exploitation case – but if your main argument is the product is unsafe, I can refer you to attorneys which handle those types of claims.

Please give us a call and let us know how you would like to proceed.

Sincerely,



Jennifer B. Lint

November 29, 2012

Ms. Jerre R. Chopper
225 Hillcrest Drive
Hamilton, Montana 59840

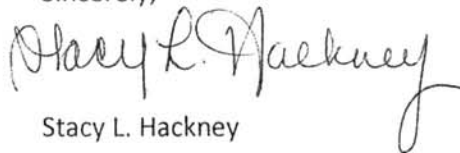
Dear Ms. Chopper:

I serve as corporate counsel for AITHR Dealer, Inc. ("AITHR"), a wholly owned subsidiary of firstSTREET for Boomers and Beyond, Inc. AITHR installed a walk-in tub in your home. You signed a contract in which you agreed to pay \$14,700.00 for the walk-in tub. AITHR has fulfilled its obligation under the contract and expended significant time and money to install the product in your home but as of this date, you have only paid \$5000.00 and owe an additional \$9700.00 to AITHR.

You have indicated that you are dissatisfied with the walk-in tub. To my knowledge, your complaint does not stem from any defect with the product itself. In fact, my understanding is that your walk-in tub functions properly at this time. If that is not the case, please let me know immediately. Otherwise, you signed a contract in which you agreed to purchase the product. You had a three day rescission period in which you could have cancelled your order and instead, you allowed AITHR's installer to come into your home and install the walk-in tub. Accordingly, AITHR needs prompt payment from you for the outstanding \$9700.00 that you contractually agreed to pay or it will be forced to take additional action to collect this sum.

You may call Nick Fawkes, General Manager of AITHR, directly to discuss payment. He can be reached at 303-953-7080. I look forward to a prompt resolution of this matter.

Sincerely,


Stacy L. Hackney

firstSTREET
for Boomers and Beyond®

1998 Ruffin Mill Road
Colonial Heights, VA 23834

ADDRESS SERVICE
REQUESTED

FIRST CLASS



02 1A
0004344122
MAILED FROM ZIP CODE 23834

\$ 00.45⁰

Ms. Jerre R. Chopper
225 Hillcrest Drive
Hamilton, Montana 59840

59840324425



December 4, 2012

Ms. Stacy L Hackney
First Street for Boomers and Beyond
1998 Ruffin Mill Road
Colonial Heights, VA 23834

Dear Ms. Hackney:

SUBJECT: THE JACUZZI DESIGNED FOR SENIORS WALK-IN TUB
Model No: NQ80, Mfg. No: 128683 or 1206-03

Your letter of November 29 regarding the above is received. You claim to have no knowledge of any defect in the tub. This is hard to fathom since there have been several communications to Jacuzzi and in all instances Nick Fawkes and his co-horts have identified themselves as Jacuzzi.

However, I will attempt to enlighten you. I signed a contract with AIHR on June 28 and gave the salesman, John Brown, a check for \$5000. I was told the tub would be installed in 3-4 weeks. After some weeks I inquired and was told the installer would be Mike Kirchner in Big Fork. I e-mailed Nick Fawkes and pointed out that Big Fork was hundreds of miles from Hamilton and that Missoula was the nearest Metro—50 miles. The manner of Fawkes's reply sent up a red flag and I decided to do some investigation.

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Finally on October 10 I filed a claim with the U.S. Consumer Product Safety Commission in Bethesda, MD and subsequently gave permission to have it entered into their database.

On October 18 the tub was removed from my premises by Mike Kirchner, for which I paid him \$700. On that date Mike said that he had never been paid for the original install. Apparently there was litigation pending between AIHR and New England Facilities Management—the company that had originally recruited him.

I believe that the \$5000 you have already collected from me should cover any expenses you have incurred. Further I believe that if a company of integrity believes in the product they peddle it offers a money back guarantee if not completely satisfied.

I have had to restore the bathroom and deal with all the distress this byzantine drama has caused.

Sincerely,

Jerre R. Chopper

Copy – Royce McCarty
Jennifer Lint
Kurt Bachmeyer

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EXHIBIT “20”

From: "Bachmeyer, Kurt" <Kurt.Bachmeyer@jacuzzi.com>
Subject: **Walk in Tub**
Date: November 5, 2012 1:26:35 PM MST
To: "3tippy47@bresnan.net" <3tippy47@bresnan.net>
1 Attachment, 3.3 KB

Dear Jerre R. Chopper –

I apologize that you have not received a response from the First Street representatives; they have been notified of your dissatisfaction with regards to the sale; installation and ultimately the use of the unit. I have confirmed with our President of Jacuzzi that they will be responding to your concerns and issues as outlined in your letters. If you have not received a response from a First Street representative please let me know immediately.

Regards,

Kurt Bachmeyer
Director of Customer Service



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

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From: "Bachmeyer, Kurt" <Kurt.Bachmeyer@jacuzzi.com>
Subject: **RE: Walk in Tub**
Date: November 6, 2012 3:10:16 PM MST
To: Jerre Chopper <3tippy47@bresnan.net>
1 Attachment, 3.3 KB

Do you know if they have contacted your attorney to discuss this situation?

Kurt Bachmeyer
Director of Customer Service



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14525 Monte Vista Avenue / Chino, CA 91710
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From: Jerre Chopper [mailto:3tippy47@bresnan.net]
Sent: Monday, November 05, 2012 3:11 PM
To: Bachmeyer, Kurt
Subject: Re: Walk in Tub

I have never received any communication from First Street. The only thing directed my way was unceasing calls from that Shyster Nick Fawkes dba AIHR, to "gimme the money" The calls didn't stop until I hired another attorney who directed all communication go through that office.

The tub was removed from my premises on October 18 by the original installer from Big Fork, MT. for which I paid him \$700.

In case you are not as yet aware, I have filed a complaint with the U.S. Consumer Product Protection Commission in Bethesda, MD. My complaint will be posted on line. This tub is neither comfortable, convenient, safe or affordable. How you ever got mixed up with an outfit like First Street who caters to the oldster crowd is hard to comprehend. Needless to say the name Jacuzzi has lost its luster in my sphere of influence. This fiasco has been a costly error in judgement on my part and never again will I respond to a mass merchandising campaign.

Jerre Chopper

On Nov 5, 2012, at 1:26 PM, Bachmeyer, Kurt wrote:

Dear Jerre R. Chopper –

From: Jerre Chopper <3tippy47@bresnan.net>
Subject: **Re: Walk in Tub**
Date: November 6, 2012 3:42:36 PM MST
To: "Bachmeyer, Kurt" <Kurt.Bachmeyer@jacuzzi.com>



They have not. A letter went to AIHR on October 5; some days later they had a call from Nick Fawkes who stated "the tub was installed correctly and we expect payment in full".

He was told a written response was needed. Fawkes stated that he would have his attorney draw up something. End of dialogue; nothing further.

Personally I want no further dealings with these people. It is clear to me that they are charlatans. I believe that reimbursement of the \$700 for removal of the tub and the return of my \$5000 down payment would be the ethical thing for them to do. If they choose not to do that, so be it. I will eat the costs and chock it up to one more life experience. I will not get in a pissing contest that mounts up costs and achieves nothing.

To clue you in on one more thing.....I have been in contact with an Associated Press reporter. Once the Silly Season is over they may evaluate the situation and take action-or not. Only time will tell.

On Nov 6, 2012, at 3:10 PM, Bachmeyer, Kurt wrote:

Do you know if they have contacted your attorney to discuss this situation?

Kurt Bachmeyer

Director of Customer Service

<image001.jpg>

www.jacuzzi.com

14525 Monte Vista Avenue / Chino, CA 91710

909.247.2187 (o) 909.606.4270 (f)

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From: Jerre Chopper [mailto:3tippy47@bresnan.net]

Sent: Monday, November 05, 2012 3:11 PM

To: Bachmeyer, Kurt

Subject: Re: Walk in Tub

I have never received any communication from First Street. The only thing directed my way was unceasing calls from that Shyster Nick Fawkes dba AIHR, to "gimme the money" The calls didn't stop until I hired another attorney who directed all communication go through that office.

The tub was removed from my premises on October 18 by the original installer from Big Fork, MT. for

which I paid him \$700.

In case you are not as yet aware, I have filed a complaint with the U.S. Consumer Product Protection Commission in Bethesda, MD. My complaint will be posted on line. This tub is neither comfortable, convenient, safe or affordable. How you ever got mixed up with an outfit like First Street who caters to the oldster crowd is hard to comprehend. Needless to say the name Jacuzzi has lost its luster in my sphere of influence. This fiasco has been a costly error in judgement on my part and never again will I respond to a mass merchandising campaign.

Jerre Chopper

On Nov 5, 2012, at 1:26 PM, Bachmeyer, Kurt wrote:

Dear Jerre R. Chopper –

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Regards,

Kurt Bachmeyer

Director of Customer Service

<image001.jpg>

www.jacuzzi.com

14525 Monte Vista Avenue / Chino, CA 91710

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From: Jerre Chopper <3tippy47@bresnan.net>
Subject: **Re: Walk in Tub**
Date: November 5, 2012 4:10:33 PM MST
To: "Bachmeyer, Kurt" <Kurt.Bachmeyer@jacuzzi.com>



I have never received any communication from First Street. The only thing directed my way was unceasing calls from that Shyster Nick Fawkes dba AIHR, to "gimme the money" The calls didn't stop until I hired another attorney who directed all communication go through that office.

The tub was removed from my premises on October 18 by the original installer from Big Fork, MT. for which I paid him \$700.

In case you are not as yet aware, I have filed a complaint with the U.S. Consumer Product Protection Commission in Bethesda, MD. My complaint will be posted on line. This tub is neither comfortable, convenient, safe or affordable. How you ever got mixed up with an outfit like First Street who caters to the oldster crowd is hard to comprehend. Needless to say the name Jacuzzi has lost its luster in my sphere of influence. This fiasco has been a costly error in judgement on my part and never again will I respond to a mass merchandising campaign.

Jerre Chopper

On Nov 5, 2012, at 1:26 PM, Bachmeyer, Kurt wrote:

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Regards,

Kurt Bachmeyer
Director of Customer Service

<image001.jpg>

www.jacuzzi.com

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

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I apologize that you have not received a response from the First Street representatives; they have been notified of your dissatisfaction with regards to the sale, installation and ultimately the use of the unit. I have confirmed with our President of Jacuzzi that they will be responding to your concerns and issues as outlined in your letters. If you have not received a response from a First Street representative please let me know immediately.

Regards,

Kurt Bachmeyer

Director of Customer Service

<image001.jpg>

www.jacuzzi.com

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EXHIBIT “21”

225 Hillcrest Drive
Hamilton, MT 59840
September 1, 2012

Mr. Kurt Bachmeyer
Director of Customer Service
Jacuzzi
14525 Monte Vista Ave.
Chino, CA 91710

Dear Mr. Bachmeyer:

SUBJECT: THE JACUZZI DESIGNED FOR SENIORS WALK IN TUB

The name Jacuzzi is an old and respected name; a legend in its own time. It would be a shame to have that reputation tarnished. Besides the outrageous behavior and pricing of AIHR, I have now had time to use the tub. It is in no way satisfactory. I can't imagine what testing was done before production began.

There is no such thing as getting into and out of a hot bath. You walk in, close the drain, close and lock the door and turn on the water. You sit there and wait for 20+ minutes depending on pressure and however long the hot water holds out, while the tub fills enough to cover the jets. I don't know how many gallons it takes but it's a lot. If you don't have enough hot water to cover, you can't use them.

When you decide the bath is over you open the drain and wait while the tub drains so you can open the door and walk out. The only thing is you cannot safely walk out; the tub is wet, your feet are wet and the threshold is too high and slick. The only way to make a safe exit is by doing what commercial truck drivers are trained to do when exiting the cab of a big rig. You back out so you can use the grab bar for stability. You stand there chilled.

I do not like the tub and I resent the money I have already forked over (\$9,850) to these hawkers. A call to your factory discloses their price on this tub is \$6,501. My price was quoted as \$11,700. That is a high markup all things considered. What I want is my bath restored to a practical condition.

Yours truly,

Jerre R. Chopper

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EXHIBIT “22”

225 Hillcrest Drive
Hamilton, MT 59840
September 12, 2012

Mr. Kurt Bachmeyer
Director of Customer Service
Jacuzzi
14525 Monte Vista Ave.
Chino, CA 91710

Dear Mr. Bachmeyer:

SUBJECT: THE JACUZZI DESIGNED FOR SENIORS WALK IN TUB

With time one discovers all kinds of things.

Your tub has no overflow as near as I can see. What happens when a senior experiences a medical emergency while in the tub and is unable to turn off the water?

If this senior lives alone, it seems to me that it could be hours or even days before the victim is discovered. Running water over a period of time could literally demolish a house.

Not a very smart design.

In addition to my previous communications detailing sales and design, I believe all things considered, you are leaving yourselves quite vulnerable to litigation.

This tub sold to me by firstSTREET through their so-called dealer AIHR is a rip-off. I want the tub removed immediately at their expense and a refund of the money I have paid: \$9,850.

Yours truly,

Jerre R. Chopper

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EXHIBIT “23”

225 Hillcrest Drive
Hamilton, MT 59840
October 15, 2012

Mr. Kurt Bachmeyer
Director of Customer Service
Jacuzzi
14525 Monte Vista Ave.
Chino, CA 91710

Dear Mr. Kurt Bachmeyer:

SUBJECT: THE JACUZZI DESIGNED FOR SENIORS WALK IN TUB
Model No. NQ80; Mfg. No. 128683 or 1206-03

This is my fourth communication to you. To date I have received no response. I deduce that you have no authority to speak for the company

Please provide the name of someone who does have that authority, mailing address, plus phone number, plus e-mail address.

Your tub in no way delivers what seniors are expecting from reading the advertisements put out by firstSTREET—it is misleading to say the least and false in many respects. Furthermore, this tub is a death trap for any senior experiencing a medical emergency while bathing. It should be recalled.

I have contacted the U.S. Consumer Product Safety Commission and I am having the tub removed at my own expense.

Sincerely,

3tippy47@bresnan.net
Jerre R. Chopper

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EXHIBIT “24”

From: Rowan, Bob </O=JACUZZI ORGANIZATION/OU=CHINO/CN=RECIPIENTS/CN=BROWAN>
To: DAVE MODENA
CC: Martinez, Audrey
Sent: 9/7/2012 9:09:54 AM
Subject: FW: FirstSTREET Letters
Attachments: [REDACTED]

Dave, attached 2 letters from the same customer came to our customer service. I'm sure that for every instance like this there are several happy ones, but thought you should see these. Interesting they sent 2 separate letters to complain about 2 distinctly different issues – 1) they don't like WIT's due to waiting for the water to fill and drain; 2) lots of complaints over the sales and install process.

Anyway, some learnings to file away. Not sure what we do in response to this for this customer, open to doing something.

Bob Rowan
President



13925 City Center Drive, Suite 200 / Chino Hills, CA 91709
909.247.2506 (o) 410.371.4524 (c)

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From: Kurt Bachmeyer <Kurt.Bachmeyer@jacuzzi.com>
Date: Thu, 6 Sep 2012 20:11:19 -0700
To: "Rowan, Bob" <bob.rowan@jacuzzi.com>
Subject: FW: FirstSTREET Letters

Bob –

I just received these.....little behind on all the mail received while away last week. I was thinking of contacting her but wondered whether I should just send this to Norm (call him) and have him deal directly with all her concerns. Let me know.....I don't like passing the buck but the majority of these issues are not ours. I understand her disappointment of waiting for the water to rise in the tub and then drain afterward but that's how this unit is designed and the only way to improve that would be to increase the pressure of water to fill the unit and then a drain that empties it in a quicker fashion. Not sure where she got the information regarding the price all our people know never to quote pricing. Look forward to your insight.

Regards,

Kurt Bachmeyer
Director of Customer Service



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

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From: Lopez, Mayra
Sent: Thursday, September 06, 2012 12:04 PM
To: Bachmeyer, Kurt
Subject: FirstSTREET Letters

Kurt,

Here are the two letters received from [REDACTED] regarding her tub and FirstSTREET. Let me know if you need anything else.

Thank you,

Mayra Lopez
Assistant to Director, Customer Service



www.jacuzzi.com
14525 Monte Vista Avenue / Chino, CA 91710
909.247.2163 (o) 909.606.4270 (f)

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225 Hillcrest Drive
Hamilton, MT 59840
August 24, 2012

Mr. Kurt Bachmeyer
Director of Customer Service
Jacuzzi
14525 Monte Vista Ave.
Chino, CA 91710

Dear Mr. Bachmeyer:

Your e-mail survey arrived this morning. It in no way describes my unpleasant experience with the people representing your product. Mine is buyer's remorse; I wish I had never heard of them.

This all began in late June when firstSTREET ran a full-page ad in Parade magazine that is inserted in the Sunday paper of almost all publishers. It gave an 800 number which I called and got a recording to leave a message. I didn't. However early Monday morning I received a call from Troy Brown in Denver that I later learned was a call center. He made an appointment with me to be called on by Larry Cinquemani who he said was the dealer rep for Montana and Idaho, for 11:30 a.m. on Thursday, June 28th. On that day he called to tell the rep that would be arriving would be John Brown and that he would be delayed beyond the appointed time as he was coming from quite a distance.

At 5:30 p.m. John Brown arrived. He was a likeable fellow who told me all about his family and showed me pictures of them. He said his normal territory was five states in the upper mid-west but that Cinquemani had quit the company and he had agreed to cover his territory. He gave me the pitch and I told him I would have to sleep on it. Then came the hard-sell. He said if I didn't sign his contract on that day, the tub would cost \$3,000 more. I was pretty sure I wanted the tub because I have osteoarthritis and a middle ear disturbance that causes balance problems/vertigo.

Mr. Brown whipped out a contract that read AIHR at 1460 W. Canal Court, Suite 202 in Littleton, Colorado. He said they were a dealer of firstSTREET. I signed the contract and gave him a check for \$5,000 dated July 10, drawn on State Farm Bank. I explained to him that this was a money-market slush fund and at the moment there were not sufficient funds in the account but that an automatic deposit would be made on the 7th or 8th. He agreed to hold the check until that date. He said installation would be in three to four weeks and that it must be done by a Jacuzzi trained tech for the warranty to be valid. He left my house at 7:30 p.m.

I got a call that DJ Electric would be here on July 9 to do the electrical and that DJ himself would do it. Two fellows showed up and I asked if they were Jacuzzi trained; they were not so I would not let them in the house. I talked to D. J. Lengyel and he assured me that they were well trained but he would come to the house to supervise if I would let them come in and get started. I did.

After 2 weeks I called AIHR to inquire. I talked to Tracey Dierkens in Production. She said Mike Kirchner in Big Fork would be the installer. I e-mailed Nick Fawkes, General Manager at AIHR and told him that Big Fork was hundreds of miles from Hamilton and that surely they must have a trained Jacuzzi installer in Missoula that is the closest metro to Hamilton—50 miles. His reply was “don’t worry, we will take good care of you. His manner of reply sent up a red flag and I decided to do some investigation.

I called the Secretary of State and asked if AIHR was licensed to do business in Montana. They were not—I asked if Nick Fawkes dba was, not so. I asked if FirstSTREET was, not so. I called the Attorney General’s office and they had never heard about any of them. I called the Secretary of State in Colorado and they had never heard of them either. I called the City of Littleton (Joanne Ricca) and they knew nothing about that company at that address so they would send somebody out to check with the building owner. Later she reported that they did in fact rent so they were a legitimate tenant but there was no sign of activity around the place. She further reported that they were not registered with the city and had paid no business tax.

One Saturday morning I got a call from Mike Kirchner (employed by New England Facilities Management in Massachusetts) who asked if I was waiting for a tub. I said yes. He said he had received a tub with only the name Chopper/Hamilton. There was no work order and the surrounds had not been shipped. I told Mike what my investigation had turned up. He called the City of Littleton. So we really stirred up a hornet’s nest. Calls started coming in that I let go to the answering machine. I told Mike that I was going to run this past my attorney before I would take possession of the tub.

My attorney told me that if AIHR was not licensed to do business in Montana no court would take the case if they decided to sue me. He looked at the contract and said they were probably legit—just inept. I told Mike I would take the tub and we made a date for August 13 to do a two-day install. On the 14th Mike ran out of materials to finish the job and said he would be back on the 20th.

On July 15 I mailed a check for \$4,850, half the balance owing, to AIHR along with a letter that the balance would be forthcoming when installation was complete provided the equipment functioned as represented to me, and provided DJ Electric and Mike Kirchner had been paid for services performed at this address.

On July 16 I got a call from Nick Fawkes who ranted and raved that I owed them money and they didn’t take payments, to go to the bank and get a loan and pay up. I told him installation was not complete and to talk to Mike. Then I went to Ravalli Bank and put a stop payment on any paperless transactions that came in for \$4,850 in case they got sneaky and tried to slip one through. The bank called yesterday to say that they had and the bank was returning it unpaid. (I have been getting calls yesterday and today with no identity and the caller hangs up.)

Just for your additional information I am adding some post scripts.

I have had occasion to talk to John Brown twice since he was here. The first time he was in Texas, the second time he was in Mississippi. It seems to me that for a guy whose territory is the upper mid-west he certainly gets around.

In the course of our conversations Mike told me that AIHR had hired eight more salesmen and what they should be doing was hiring more installers. They want him to go to North Dakota to do installs on tubs they have sold (and have collected down-payments on) but have no one to do the installs.

It is obvious to me that in this combinations of partnerships the left hand doesn't know what the right hand is doing and that they never got their ducks lined up before they began mass marketing.

Before Mike Kirchner ever started the install I showed him the two checks I had made out to AIHR and why I did it. I told him AIHR couldn't sue me but I didn't want any mechanics liens put on my property.

In conclusion, I think your product is greatly over-priced.

It also occurs to me that perhaps the U.S. Attorney General's offices of Consumer Protection and Elder Fraud might be interested in knowing what I have described to you.

Yours truly,

A handwritten signature in cursive script that reads "Jerre R. Chopper". The signature is written in dark ink and is positioned above the printed name.

Jerre R. Chopper

225 Hillcrest Drive
Hamilton, MT 59840
September 1, 2012

Mr. Kurt Bachmeyer
Director of Customer Service
Jacuzzi
14525 Monte Vista Ave.
Chino, CA 91710

Dear Mr. Bachmeyer:

SUBJECT: THE JACUZZI DESIGNED FOR SENIORS WALK IN TUB

The name Jacuzzi is an old and respected name; a legend in its own time. It would be a shame to have that reputation tarnished. Besides the outrageous behavior and pricing of AIHR, I have now had time to use the tub. It is in no way satisfactory. I can't imagine what testing was done before production began.

There is no such thing as getting into and out of a hot bath. You walk in, close the drain, close and lock the door and turn on the water. You sit there and wait for 20+ minutes depending on pressure and however long the hot water holds out, while the tub fills enough to cover the jets. I don't know how many gallons it takes but it's a lot. If you don't have enough hot water to cover, you can't use them.

When you decide the bath is over you open the drain and wait while the tub drains so you can open the door and walk out. The only thing is you cannot safely walk out; the tub is wet, your feet are wet and the threshold is too high and slick. The only way to make a safe exit is by doing what commercial truck drivers are trained to do when exiting the cab of a big rig. You back out so you can use the grab bar for stability. You stand there chilled.

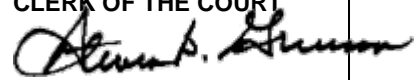
I do not like the tub and I resent the money I have already forked over (\$9,850) to these hawkers. A call to your factory discloses their price on this tub is \$6,501. My price was quoted as \$11,700. That is a high markup all things considered. What I want is my bath restored to a practical condition.

Yours truly,



Jerre R. Chopper

PETITIONERS' APPENDIX
TAB "3"



OPPM

PHILIP GOODHART, ESQ.
Nevada Bar No. 5332
MICHAEL C. HETHEY, ESQ.
Nevada Bar No. 5668
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
mch@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; HOMECCLICK, LLC;
JACUZZI INC., doing business as JACUZZI
LUXURY BATH; BESTWAY BUILDING &
REMODELING, INC.; WILLIAM BUDD,
Individually and as BUDDS PLUMBING; DOES
1 through 20; ROE CORPORATIONS 1

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

**DEFENDANTS FIRSTSTREET AND
AITHR'S 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

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

5 Cross-Defendants.

6 WILLIAM BUDD, individually and as BUDDS
7 PLUMBING,

8 Cross-Claimants,

9 vs.

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

22 Cross-Defendants.

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

25 Cross-Claimants,

26 v.

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

Cross-Defendants.

1 **DEFENDANTS FIRSTSTREET AND AITHR'S OPPOSITION TO PLAINTIFFS'**
2 **MOTION TO STRIKE DEFENDANTS FIRSTSTREET AND AITHR'S ANSWERS**
3 **FOR DISCOVERY ABUSES, ON ORDER SHORTENING TIME**

4 Defendants firstSTREET and AITHR (collectively referred to as "firstSTREET") hereby
5 file their Opposition to Plaintiffs' Motion to Strike Defendants' firstSTREET and AITHR's
6 Answers for Discovery Abuses, On Order Shortening Time. This Opposition is based on the
7 following Memorandum of Points and Authorities, the exhibits attached hereto, the pleadings and
8 papers on file herein, and any oral argument this Court may consider.

9 **MEMORANDUM OF POINTS AND AUTHORITIES**

10 **I.**

11 **INTRODUCTION**

12 Plaintiffs' Motion is nothing more than a clever attempt by counsel to manufacture a
13 situation that does not exist to avoid litigating a complicated case by seeking terminating sanctions
14 for which there is no basis. Plaintiffs' actions go beyond egregious conduct as counsel has
15 submitted a false and misleading Affidavit in order to convince this Court, without any legitimate or
16 supporting reason, to hear the underlying Motion on an Order Shortening Time, thereby depriving
17 this Court from being fully briefed and informed of the issues that form the basis of the underlying
18 Motion.¹ Despite the false and misleading Affidavit, riddled with self-serving arguments, there is
19 absolutely no evidence that Defendants firstSTREET and AITHR concealed relevant and material
20 evidence. The reality is that Defendants have acted in good faith, and have appropriately responded
21 to all of Plaintiffs' written discovery, as evidenced by the undisputed fact that Plaintiffs have not
22 filed a single Motion to Compel or any other Discovery Motion with the Discovery Commissioner
23 against Defendants firstSTREET and AITHR.

24 _____
25 ¹ See firstSTREET and AITHR's Motion for Reconsideration of Court's Order Granting Plaintiffs' Request for Order
26 Shortening Time for Hearing on Plaintiffs' Motion to Strike Defendants' firstSTREET and AITHR's Answers for
27 Discovery Abuses, on Order Shortening Time, attached hereto as **Exhibit 1**. This pleading has been served on all
28 parties, but the Order Shortening Time has not yet been returned by the Court. Furthermore, Plaintiffs counsel's
 Affidavit in Support of the Motion (Exhibit 1 to Plaintiffs' Motion) is nothing more than self-serving arguments with
 many misleading and false "facts". For example, the "fact" stated by counsel in paragraph 8 is disputed by other first
 responders that were on the scene. In paragraph 11, counsel claims Ms. Cunnison was trapped for three days, yet there
 is absolutely no evidence or testimony supporting this hypothesis. Just like counsel's Affidavit in Support of Order
 Shortening Time, there are many more misleading statements contained in Exhibit 1 of Plaintiffs' Motion.

1 In their opening paragraph Plaintiffs argue that firstSTREET and AITHR have deliberately
2 withheld evidence of prior and subsequent complaints by customers without a single piece of
3 evidence that this was in fact done. The inescapable reality is firstSTREET has, throughout this
4 litigation, advised Plaintiffs that it will only produce documents and information that occurred
5 **prior to Plaintiffs' date of loss** – February 27, 2014. In fact, none of Plaintiffs' original discovery
6 requests sought out documentation or information that post-dated Plaintiffs date of loss. *See*
7 **Exhibit 2**, firstSTREET's Answers to Plaintiff Ansara's First Set of Interrogatories and **Exhibit 3**,
8 firstSTREET's Responses to Plaintiff Ansara's First Request for Production of Documents.
9 Moreover, in response to Plaintiffs' written discovery, and as part of a Privilege Log generated by
10 firstSTREET, Plaintiffs have been clearly and unequivocally apprised of firstSTREET's legal
11 position. *See* Exhibit 4. In spite of this, not once, has Plaintiff filed a Motion to Compel or any
12 other discovery motion against firstSTREET or AITHR before the Discovery Commissioner.

13 Finally, Plaintiffs in their Introductory paragraph have admitted that their theory is that Ms.
14 Cunnison **slipped off the seat** of her tub while reaching for the controls. *See* Plaintiffs' Motion, at
15 1:13-16. The fact that Plaintiffs now believe that Ms. Cunnison slipped off the seat of the tub is
16 significant inasmuch as none of Plaintiffs discovery requests propounded upon firstSTREET and
17 AITHR have dealt with this new theory. This begs the question, if Plaintiffs have never asked for
18 this information, or advanced this theory of liability before now, how could firstSTREET or
19 AITHR have deliberately withheld documents and evidence?

20 II.

21 **BACKGROUND FACTS**²

22 This is a product liability action involving vague claims (***which have materially changed***
23 ***throughout the litigation as evidenced by Plaintiffs currently operating under their 4th***
24 ***Amended Complaint***) that a Jacuzzi® model no. 5229 Walk-In Tub (the "Tub") was defectively
25 designed or that the warnings related to the Tub were insufficient. In October 2013, Decedent
26

27 ² Jacuzzi, in its Opposition to Plaintiffs' Motion to Strike Jacuzzi's Answer, set forth a detailed and accurate account of
28 the relevant Background Facts. Rather than re-state the same facts in different words, firstSTREET and AITHR have
taken those facts and included them in their Opposition to Plaintiffs' Motion to Strike.

1 Sherry Cunnison (“Decedent”) purchased the Tub from Defendant AITHR Dealer, Inc.
2 (“AITHR”) and was warned that she would be a “very tight fit” in the Tub. In fact, the salesperson,
3 Hale Benton, has testified that after he advised Ms. Cunnison that she might be a tight fit, she
4 indicated that she was aware of this, but that she was going to be losing weight and that the walk-in
5 tub was part of her weight loss plans.³

6 Even after Mr. Benton’s comments, as well as Ms. Cunnison’s son’s alleged concerns about
7 the price, Ms. Cunnison selected the Tub and it was installed in her home on January 27, 2014.
8 Plaintiffs allege that about a month after installation, Decedent was using the Tub and somehow
9 became stuck and unable to exit.⁴ On February 21, 2014, a well-being check was performed and
10 Decedent was found in the Tub.⁵ She died at the hospital on February 27, 2014.⁶

11 Since the original Complaint was filed on February 3, 2016, Plaintiffs’ claims and allegations
12 have materially changed. First, Plaintiffs claimed the incident was due to the Tub not draining,
13 trapping Decedent in the Tub. Specifically, the original Complaint alleged that the incident
14 occurred when Decedent “attempted [sic] exit the Jacuzzi walk-in tub by pulling the plug to let the
15 water drain, allowing her to open the Jacuzzi walk in tub's door and exit. The drain would not
16 release trapping SHERRY in the tub for 48 hours.”⁷ Plaintiffs maintained that theory of liability in
17 the First and Second Amended Complaints. When testing unequivocally proved that claim
18 meritless, Plaintiffs changed their theory of liability to vague references regarding the grab bars and
19 inward opening door.

20 It was not until recently that Plaintiffs now apparently are pursuing the theory that the Tub
21 is too slippery.⁸ In spite of this new theory, nowhere in any of Plaintiffs’ four amended complaints

22 ³ See **Exhibit 5**, deposition of Hale Benton, at 41:16-21.

23 ⁴ See Plaintiffs’ Fourth Amended Complaint, ¶ 27-29, attached as Exhibit 6.

24 ⁵ Plaintiffs’ Fourth Amended Complaint, ¶ 31.

25 ⁶ *Id.* at ¶ 35.

26 ⁷ See Plaintiffs’ Initial Complaint, ¶ 24, attached as **Exhibit 7**.

27 ⁸ Even now it appears as though Plaintiffs are struggling with whether or not the foot well of the Jacuzzi walk-in tub
28 was too slippery or if the seat of the Jacuzzi walk-in tub was too slippery.

1 are there any allegations that the Tub is defective in that it is too slippery, despite Plaintiffs now
2 claiming for the first time that slipperiness is “critical” to their allegations.⁹ Plaintiffs allege causes
3 of action against all defendants for negligence and strict product liability for defective design,
4 manufacture, or failure to warn, claiming that defendants’ actions were the cause of Decedent’s
5 death. They also seek punitive damages.¹⁰

6 III.

7 DISCOVERY HISTORY

8 This case has been pending since 2016, and Plaintiffs’ very first written discovery requests
9 to firstSTREET are dated June 22, 2018. Plaintiffs’ second “wave” of written discovery to
10 firstSTREET/AITHR are dated September 20, 2018. firstSTREET and AITHR have responded to
11 all of Plaintiffs discovery, with appropriate objections. ***Significantly, Plaintiffs have not filed a***
12 ***single Motion to Compel or any other discovery motion with the Discovery Commissioner***
13 ***related to any of firstSTREET’s responses.***

14 In addition to the written discovery, the parties have taken numerous depositions, including
15 NRCP 30(b)(6) witnesses. However, Plaintiffs did not begin the deposition of the NRCP 30(b)(6)
16 witnesses of firstSTREET and AITHR until December 11, 2018. Plaintiffs submitted a list of fifty-
17 three (53) topic areas for the NRCP 30(b)(6) witnesses to be ready to discuss.¹¹ In addition to
18 responding to Plaintiffs’ written discovery, Defendants firstSTREET and AITHR have produced
19 over 4,700 pages of documents that pre-date Plaintiffs’ date of loss. As noted previously, as
20 between Plaintiffs and Defendants firstSTREET and AITHR discovery ***has not*** been contentious,
21 nor has a single Motion to Compel been filed against Defendants firstSTREET and AITHR with
22 the Discovery Commissioner.

23 Plaintiffs and Defendants firstSTREET and AITHR have engaged in, at best, two (2)
24 EDCR 2.34 Conferences to discuss (1) a Privilege Log for Defendants’ Second Supplemental Early

25 ⁹ Contrary to Plaintiffs’ statement in FN 15 suggesting Decedent told multiple police officers and paramedics that she
26 “slipped when she was reaching for controls,” only one police officer testified to this.

27 ¹⁰ Since the filing of the Fourth Amended Complaint, Plaintiffs have dismissed, without prejudice, Defendants Bestway
28 Building Building & Remodeling; Homeclick; William Budd and Budds Plumbing; and Chicago Faucet Company.

¹¹ See Exhibit 8.

1 Case Conference Production; and (2) Plaintiffs demand for documents that post-date Plaintiffs date
2 of loss. During each of these discussions, firstSTREET and AITHR unequivocally advised
3 Plaintiffs that they would not be producing any documents that post-dated Plaintiffs' incident. Yet,
4 in spite of the position taken by firstSTREET and AITHR, Plaintiffs have not filed a single motion
5 with the Discovery Commissioner seeking clarification on this position.

6 **A. Discovery Regarding "Other Incidents"**

7 To date, Defendants firstSTREET and AITHR have identified all known prior and
8 subsequent claims for alleged bodily injury or death related to the Tub in question. In Plaintiffs'
9 First Set of Interrogatories to firstSTREET, they asked about firstSTREET's knowledge of any
10 injury claims arising from the use of the Jacuzzi walk-in tub:

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

16 If so, please state:

- 17 (a) The date of each such notice
- 18 (b) The name and last known address of each person giving such notice; and
- 19 (c) The substance of the allegations of such notice.

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

- 23 1. Leonard Baize, served June 28, 2016. Mr. Baize alleged he was sold a tub
24 too small for him after being advised by the sales representative that he would fit.
- 25 2. Mack Smith, received notice of claim January 2017. The claimants allege
26 Mr. Smith drowned in the tub. This Answering Defendant is not aware of any
27 further facts or the current status of this claim.

28 Notably, the remainder of the Interrogatories and Requests for Production of Documents
focused on the design, development, manufacture and production of the Jacuzzi walk-in tub.¹² As
was made clear in firstSTREET's responses, as well as in the Manufacturing Agreement between
firstSTREET and Jacuzzi, it was Jacuzzi that designed, developed, manufactured and produced the
tub in question. Therefore, firstSTREET and AITHR were not able to respond to the

¹² See Exhibits 2 and 3.

1 interrogatories and requests for production of documents directed at the design and manufacture of
2 the Jacuzzi walk-in tub.

3 As indicated in firstSTREET's response, above, the Leonard Baize incident was identified
4 by firstSTREET. However, no specific documents were produced relative to this incident because
5 Mr. Baize's incident occurred months after Decedent's incident.¹³ Mr. Baize's complaint was filed
6 on June 17, 2016, and is based on alleged misrepresentations made during the sales process.
7 Specifically, the complaint alleges that Baize weighed approximately 500 pounds and was concerned
8 about fitting into the tub.¹⁴ The salesperson allegedly measured Mr. Baize due to the concerns, and
9 Mr. Baize was thereafter persuaded to purchase the tub based on the sales presentation by the
10 salesperson. After installation, due to the seat being too narrow for Mr. Baize, he allegedly got stuck
11 in the tub causing "bruising to his stomach area and scrapes." Significantly, Mr. Baize did not slip in
12 the tub, or off the seat, nor did he have any complaints at all that the tub was slippery or dangerous.
13 He simply got stuck.

14 The *Baize* action is based on ***misrepresentations made during the sale process*** by the
15 salesperson, and is neither a complaint for personal injury, nor a complaint alleging the tub was in
16 any way slippery or defective. The complaint alleged three causes of action: (1) breach of the Texas
17 Deceptive Trade Practices-Consumer Protection Act; (2) breach of contract; and (3) common law
18 fraud.¹⁵ Baize's actual claim for damages in the complaint is limited strictly to economic damages
19 and "mental anguish and suffering," not personal injury.¹⁶ In spite of this, Defendant firstSTREET
20 nevertheless identified the Baize Complaint in its Answers to Interrogatories.

21 firstSTREET has maintained all along that the only documents it was producing were
22 related to documents generated prior to Plaintiffs' date of loss. Therefore, only emails between
23 Jacuzzi and firstSTREET that pre-dated February 27, 2014 were produced. This fact was not
24

25 ¹³ Baize Petition at 7-8, attached as **Exhibit 9**.

26 ¹⁴ *Id.*

27 ¹⁵ *Id.*

28 ¹⁶ *Id.* at 11-12.

1 hidden by firstSTREET as it was discussed in an EDCR 2.34 Conference with Plaintiffs' counsel
2 shortly before firstSTREET's Privilege Log was produced in early December 2018. Then, this
3 position was confirmed in the Privilege Log.¹⁷ Finally, during a second EDCR 2.34 Conference
4 during the deposition of firstSTREET and AITHR's NRCP 30(b)(6) witness, David Modena,
5 firstSTREET's position was explained for a third time.¹⁸ To this day, Plaintiffs have not filed a
6 single discovery dispute motion with the Discovery Commissioner.

7 **B. Plaintiffs Never Sent firstSTREET Any Discovery Requests About Dealers**
8 **That Would Have Had Absolutely No Contact With Ms. Cunnison**

9 None of Plaintiffs' discovery requests sought information from firstSTREET about dealers
10 that would have had absolutely nothing to do with Ms. Cunnison's sale. In fact, Plaintiffs' NRCP
11 30(b)(6) deposition notices to firstSTREET and AITHR, which each contain 53 topics on which
12 examination is sought, does not include a single topic addressing any other dealers that
13 firstSTREET may have had contracts with.¹⁹ If this question, or issue had never been brought up
14 by Plaintiffs, how could firstSTREET or AITHR have known about the issue, let alone produce
15 documents or information related to other dealers. This case involves firstSTREET and AITHR's
16 sale of the Jacuzzi walk-in tub to Ms. Cunnison. It does not involve any other dealer that may have
17 sold a similar tub to another customer in another part of the country.

18 In spite of dealers *not* being included in the list of topics, firstSTREET/AITHR's NRCP
19 30(b)(6) witness did his best to respond to Plaintiffs' inquiries. Now, Plaintiffs try and spin this
20 response as firstSTREET/AITHR is somehow withholding information that Plaintiffs had *never*
21 *even asked for*. Yet Plaintiffs cannot cite to a single case or statute that would require
22 firstSTREET/AITHR to volunteer this type of information. Plaintiffs are essentially arguing that it
23 is firstSTREET/AITHR's responsibility to develop Plaintiffs theories of liability and then to
24 volunteer information – *i.e.*, do Plaintiffs' discovery for them. Plaintiffs have cited no authority for

25
26 ¹⁷ See Exhibit 4.

27 ¹⁸ See Exhibit 10, deposition of David Modena, at 44:16 to 47:23.

28 ¹⁹ See Exhibit 8.

1 this outlandish proposition because none exists. Yet now Plaintiffs are seeking case terminating
2 sanction against firstSTREET and AITHR without a scintilla of case law to support their
3 proposition.

4 Plaintiffs attempt to cite the very first Interrogatory pertaining to the dispute that is the
5 basis for this motion as evidence of firstSTREET's alleged evasiveness on this issue. First, that
6 interrogatory was not propounded until September 20, 2018.²⁰ firstSTREET timely responded to
7 this discovery request by advising Plaintiffs that AITHR was the only dealer within firstSTREET.
8 Significantly, the other dealers that Plaintiffs are referring to are dealers that ***are not*** within
9 firstSTREET's umbrella. That is, unlike AITHR, the other dealers are not subsidiaries of
10 firstSTREET and have their own independent operations.

11 firstSTREET responded to Plaintiffs' interrogatory honestly and accurately. However,
12 during the NRCP 30(b)(6) deposition, Plaintiffs' counsel asked a different question – much broader
13 than the Interrogatory, which elicited the response concerning the identities of other dealers that
14 sold the Jacuzzi walk-in tubs in other parts of the country. If Plaintiffs had believed that
15 firstSTREET's interrogatory response was deficient following the NRCP 30(b)(6) deposition on
16 December 11, 2018, then the appropriate course would have been to hold an EDCR 2.34 discovery
17 conference. Then, if there was no resolution to the dispute, Plaintiffs should have filed an
18 appropriate motion with the Discovery Commissioner. ***None of this ever took place.***

19 **C. There Was No Evasive Deposition Testimony**

20 Prior to the NRCP 30(b)(6) deposition of firstSTREET and AITHR, Plaintiffs counsel
21 submitted a list of topics on which examination is sought.²¹ There Plaintiffs listed 53 different topic
22 areas. One of the topic "areas" is entitled "**OTHER SIMILAR INCIDENTS TESTIMONY**",²²
23 and covers topic numbers 48, 50, 51 and 52. Under each of these topic areas Plaintiffs limited the
24 area of inquiry to ***"prior incidents involving slips and falls while using or while exiting or***
25

26 ²⁰ See Exhibit 11.

27 ²¹ See Exhibit 8.

28 ²² See Exhibit 8, at 11:14 to 12:11.

1 *entering any Jacuzzi products including not only the fall itself, but also the inability of an*
2 *end user to remove themselves after having had fallen inside the tub.”*

3 When Plaintiffs’ counsel first asked Mr. Modena questions about slips and falls causing
4 injury, Mr. Modena limited his response to incidents that pre-dated Plaintiffs loss ***because that is***
5 ***exactly what Plaintiffs limited him to in the deposition notice.*** For example, when responding
6 to a question concerning whether a significant complaint would reach his attention, Mr. Modena
7 responded:

8 A: ... it could be the situation like with the Cunnisons that was extremely
9 serious and very rare. ***I don’t – I can’t – I’m not sure if we – I can remember***
10 ***one even prior to that like that...***²³

11 * * *

12 Q: So they didn’t stand out when you –

13 A: Well, I just – I honestly just can’t think of particular ones in general
14 because it just did not happen that – I mean, you would have people raising
15 concerns about certain things, but an actual injury? I just don’t – I’m just not – I
16 can’t recall. ***I don’t remember incidents, anything like this that come up to***
17 ***that point.*** (emphasis added).²⁴

18 When asked about other potential incidents, Mr. Modena again qualified his answer to
19 those that took place prior to Ms. Cunnison’s loss.

20 A: ...but an actual injury? I don’t – I – I feel like there must have been one or
21 two. I just – I couldn’t tell you who they were and when they were, if it was before
22 that point in time.²⁵

23 It was at this point in time where it became evident that Plaintiffs’ counsel was seeking to
24 question Mr. Modena beyond the topic areas that were designated in the NRCP 30(b)(6) deposition
25 notice. In light of this fact, fistSTREET’s counsel took a break to “re-educate” Mr. Modena on
26 ***post-loss*** incidents on which firstSTREET had been advised. This is evident by the discussion, on

27 ²³ See Exhibit 10, at 22:10-16.

28 ²⁴ *Id.*, at 26:17-23.

²⁵ *Id.*, at. 27:5-8.

1 the record, as to what information Plaintiffs' counsel was seeking.²⁶

2 After the break, Mr. Modena again cleared up the apparent confusion by advising counsel
3 he had been focused on similar incidents that had taken place prior to the Cunnison date of loss.

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

10 The – probably the more significant one is Max Smith.²⁷

11 Mr. Modena's response to a question that **was not** one of the 53 topic areas in Plaintiffs'
12 deposition notice, was 100% consistent with firstSTREET's written discovery responses, wherein
13 the Baize and Smith incidents were disclosed.²⁸ There simply was absolutely nothing evasive about
14 Mr. Modena's answers to Plaintiffs' questions. Even if there were, the appropriate course of
15 conduct would have been to (1) conduct an EDCR 2.34 discovery conference followed by (2) an
16 appropriate motion with the Discovery Commissioner. On this issue, Plaintiffs did nothing.

17 firstSTREET's position and argument on this issue is further underscored by Mr. Modena's
18 deposition testimony when he was asked point blank by Plaintiffs' counsel why he had not
19 remembered the Baize and Smith incidents:

20 A: Well, again, I was thinking about up to that point. I thought that's how I
21 answered it. I thought we were just trying to – up to that point, what we were
22 aware of.²⁹

23 As noted, in the NRCP 30(b)(6) deposition notice, Plaintiffs limited the scope of inquiry on
24 this issue to **prior incidents**, not subsequent incidents.

25 / / /

26 *Id.* at 28:18-25.

27 *Id.* at 30:1-10.

28 *See Exhibit 2*, at 15:13 to 16:5.

29 *See Exhibit 10*, at 32:14-19.

1 **D. Jerre Chopper's Communications Do Not Relate to Any Injury**

2 Contrary to Plaintiffs' inflammatory and baseless assertion, firstSTREET produced all
3 documents and communications relative to any injury that occurred in a Jacuzzi walk-in tub. With
4 respect to Jerre Chopper's claims, neither her documents nor her unsupported allegations indicate
5 that she sustained any injury whatsoever in the Jacuzzi walk-in tub that she purchased. Jerre
6 Chopper is nothing more than an unhappy customer who took issue with the sales tactics used by
7 firstSTREET, and the length of time that it took her tub to fill up. As noted by her sworn
8 deposition testimony, she was **never injured and never made a claim for personal injury or**
9 **death**.³⁰ To argue, as Plaintiffs have, that the Ms. Chopper letter is the "smoking gun" only
10 highlights the weakness of Plaintiffs' case.

11 Plaintiffs argument also points to letters and emails between Ms. Chopper and Jacuzzi – not
12 to letters or emails between Ms. Chopper and firstSTREET or AITHR, save three (3) letters that
13 Plaintiffs attached as Exhibit 19 to their Motion. The first letter, which is signed by Ms. Chopper's
14 attorney, does not relate any dangerous or slippery condition of the tub to AITHR. Rather, the
15 September 28, 2012 letter is simply an attempt by Ms. Chopper, through her attorney, to get out of
16 the contract that she voluntarily signed for the purchase of the Jacuzzi walk-in tub. The second
17 letter, also from Ms. Chopper's attorney, advises Ms. Chopper that AITHR has taken the position
18 that the tub was installed correctly and Ms. Chopper needed to pay the balance. The third letter,
19 dated November 29, 2012 from Stacy Hackney of firstSTREET to Ms. Chopper again demands
20 that Ms. Chopper live up to her contractual obligation that she voluntarily entered into and pay the
21 balance owing on the tub that had been delivered and installed. As evidenced by this last letter,
22 there is no indication that Ms. Chopper had made firstSTREET aware of any defects or dangerous
23 conditions with the Jacuzzi walk-in tub. To the contrary, these letters merely show a customer that
24 is suffering from "buyers remorse".

25 The final letter, dated December 4, 2012, is not signed by Ms. Chopper. In fact, unlike all
26 the other letters in Plaintiffs Exhibit 19, the signature block is blank. Assuming that this letter was
27

28 _____
³⁰ See Deposition Transcript of Jerre Chopper at 132:1-12; 91:23-93:23, excerpts attached as **Exhibit 12**.

1 in fact sent, Ms. Chopper primarily complains about how long it took to get the tub installed, the
2 issues she had with the installation, the conversations she had with her attorney, and her outright
3 refusal to live up to her contractual obligations. On page 2 of her letter, she also complains about
4 how long it takes for the tub to fill up and as an aside notes that if she had a medical emergency
5 while in the tub she would not be able to get out because the door opens inward. The December 4,
6 2012 correspondence to firstSTREET is completely void of any reference to Ms. Chopper actually
7 sustaining an injury in the Jacuzzi walk-in tub or even slipping in the Jacuzzi walk-in tub. In other
8 words, there is absolutely nothing in Ms. Chopper's letter that would have required firstSTREET or
9 AITHR to produce this letter or identify Ms. Chopper as she is simply a dissatisfied purchaser that
10 wants her money back.

11 Plaintiffs, however, blatantly mislead this Court by claiming that Ms. Chopper informed
12 firstSTREET and AITHR that the Tub was a "death trap"; is not "safe because the tub is wet, your
13 feet are wet and the threshold is too high and slick"; and that if a senior lives alone it could be
14 hours before they are discovered. *See* Plaintiffs' Motion at 9:9-20. Plaintiffs fail to advise this Court
15 that ***Ms. Chopper never conveyed any of these concerns directly to firstSTREET or***
16 ***AITHR***. Rather, the primary concern Ms. Chopper conveyed was that she wanted out of her
17 contractual obligation to purchase the Tub.

18 Finally, as noted previously, Plaintiffs served an NRCP 30(b)(6) deposition notices to
19 firstSTREET and AITHR. In these notices, Plaintiffs identified 53 topic areas, several of which
20 sought information relative to incidents "involving slips and falls while using or while exiting or
21 entering any Jacuzzi products." *See for example*, Topic 10 in **Exhibit 8**. Ms. Chopper's letters and
22 deposition testimony do not reveal any actual incidents "involving slips and falls while using or
23 while exiting or entering any Jacuzzi products." Therefore, not only was Ms. Chopper's
24 correspondence not relevant nor discoverable, they were not items for which firstSTREET and
25 AITHR's NRCP 30(b)(6) designees were advised to be aware of.

26 **E. Claims Related to Slipperiness of the Tub**

27 As detailed above, Plaintiffs' theory has materially changed throughout the litigation. First,
28 Plaintiffs claimed the incident was due to the Tub not draining, trapping Decedent in the tub. After

1 pursuing that claim for about 18 months, testing proved the claim had no merit. Then, Plaintiffs
2 changed the theory of defect to vague references related to the placement of grab bars and an
3 inward opening door. Plaintiffs now apparently assert that a “critical part of Plaintiffs’ allegations”
4 deal with slipperiness of the Tub, citing to Paragraphs 75-91 of the Fourth Amended Complaint.
5 *See* Plaintiffs’ Motion at 6:1 to 7:9. It is impossible to reconcile this bold statement by Plaintiffs’ in
6 the motion with the simple fact that the allegations in the Fourth Amended Complaint do not
7 contain a single reference to “slipperiness” or “slip”.³¹ In fact, Plaintiffs’ own expert Lila Laux,
8 testified during her deposition on October 30, 2018, that she was not critical of the Tub’s
9 slipperiness:

10 Q What’s the significance of that document?

11 A Well, that was something that plaintiffs’ counsel sent me and it’s a study of
12 the slipperiness of a tub, two kinds of surfaces. It’s actually quite an excellent study –
13 it’s old but it’s good – about what makes a tub slippery. **We all know people slip in**
14 **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.

15 Q Are you critical of the slip resistance 5 in the Jacuzzi 5229 Walk-In
16 Bathtub?

17 A **I’m not going to have any criticism of that.**

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

19 A To my report, it was just evidence that the business about slipperiness of
20 tubs has been recognized for a long, long time.³²

21 For Plaintiffs to now represent to the Court that “critical” “allegations” of the Complaint deal with
22 slipperiness is an intentionally misleading claim.

23 Similarly, Plaintiffs’ statement that Plaintiffs learned that firstSTREET has acted in bad
24 faith after Mr. Modena provided testimony relative to communications between firstSTREET and
25 Jacuzzi on this issue is misplaced and demonstrably false. First, not once did Plaintiffs propound
26

27 ³¹ *See* Plaintiffs’ Fourth Amended Complaint, attached as **Exhibit 6**.

28 ³² *See* Deposition of Lila Laux (October 30, 2018) at 25:20-26:12, excerpts attached as **Exhibit 13**.

1 written discovery seeking information on the slipperiness of the Jacuzzi walk-in tub. Second, the
2 testimony provided by Mr. Modena dealt with communications that took place *after* Plaintiffs date
3 of loss. As discussed in other sections of this Opposition, firstSTREET and AITHR have made it
4 abundantly clear to Plaintiffs that they have not, and will not without a court order, produce
5 documents that post-date Plaintiffs' date of loss. Instead of addressing this issue with the Discovery
6 Commissioner, Plaintiffs have elected to file a case terminating sanction motion with absolutely no
7 support and only false and misleading arguments.

8 First, when Mr. Modena was asked about "slippery floors" he testified that it was a "relative
9 question" as it would be relevant if there were injuries, but may not be relevant if it was only a
10 concern of a customer.³³ Mr. Modena then went on to state that the issue had been "discussed...a
11 couple of times with Jacuzzi".³⁴ However, Mr. Modena made it clear that he did not know when
12 those discussions took place or how many discussions there were. Mr. Modena just generally noted
13 that the discussions were probably in the 2014 time frame.³⁵ Plaintiffs, without any evidence
14 whatsoever, have simply assumed that these discussions pre-dated Plaintiffs date of loss. In fact,
15 when asked to provide a time frame, Plaintiffs' counsel simply said "ever".³⁶

16 Moreover, Mr. Modena advised Plaintiffs that the issue only came up when a customer had
17 made a comment about it. Significantly, the issue had never come up when it concerned an incident
18 – an actual slip and/or fall in the tub that caused an injury. Mr. Modena further testified that the
19 discussions would have been in emails between firstSTREET and AITHR. Therefore, if the
20 discussion had come up prior to Plaintiffs' date of loss, those emails would have been produced.
21 However, if the discussions post-dated Plaintiffs' date of loss, the emails would not have been
22 disclosed – a fact that had been conveyed to Plaintiffs' counsel numerous times.³⁷ Finally, Mr.

24 ³³ See **Exhibit 10**, at 38:19-25.

25 ³⁴ *Id.*, at 39:13-24.

26 ³⁵ *Id.*, at 40:18-25.

27 ³⁶ *Id.*, at 43:3-6

28 ³⁷ *Id.*, at 44:16-45:8.

1 Modena's deposition has not concluded. Therefore, there has been no opportunity for
2 firstSTREET or AITHR to ask Mr. Modena questions which would clear up the confusion that has
3 been created by Plaintiffs' counsel's open-ended questions.

4 Plaintiffs have not pointed to a single discovery request seeking information relative to the
5 slipperiness of the Jacuzzi walk-in tub, and firstSTREET and AITHR have not been ordered to
6 produce any discovery on slipperiness. More importantly, Plaintiffs' current liability theories appear
7 to have nothing to do with the slipperiness of the tub's floor, but rather with the slipperiness of the
8 tub's seat.

9 Plaintiffs' instant Motion improperly suggests that Defendants firstSTREET and AITHR
10 are somehow obligated to produce every document wherein a customer claims to have slipped—
11 regardless of whether such a claim involved injury, or if it was simply a statement from a customer.
12 Mandating such a disclosure requirement where there is no reference to slipping in the Fourth
13 Amended Complaint would be nonsensical as it would be without regard to relevancy.³⁸ It is
14 axiomatic that a bathtub, water, gels, shampoos and soap can combine for slips in all bathtubs, or
15 make the surface "slippery" without anyone actually experiencing a slip and fall. In fact, as noted
16 above, Plaintiffs' own expert testified that "slipperiness of tubs has been recognized for a long, long
17 time."

18 Nevertheless, Plaintiffs argue that they are entitled to case terminating sanctions because
19 "Defendants have entirely failed to produce: [a]ny internal e-mails regarding the slipperiness issues;
20 [a]ny e-mails among Defendants regarding the slipperiness issues; [a]ny e-mails regarding the
21 Kahuna Grip product; [a]ny internal e-mails about customer complaints about the slipperiness of
22 the Tub; [a]ny e-mails among Defendants regarding customer complaints about the slipperiness of
23 the Tub; [and] [a]ny customer complaints on this issue." Plaintiffs' Motion at 2:22 to 3:5 and 30:15
24 to 31:5. Putting aside the ridiculousness of Plaintiffs' assertion, Plaintiffs have never brought a
25 Motion to Compel against firstSTREET or AITHR before the Discovery Commissioner on claims

26 ³⁸ See *Schlatter v. Eighth Judicial Dist. Court*, 93 Nev. 189, 192, 561 P.2d 1342, 1343–44 (1977) ("... respondent's order went
27 beyond this and permitted carte blanche discovery of all information contained in these materials without regard to
28 relevancy. Our discovery rules provide no basis for such an invasion into a litigant's private affairs merely because
redress is sought for personal injury. Respondent court therefore exceeded its jurisdiction by ordering disclosure of
information neither relevant to the tendered issues nor leading to discovery of admissible evidence").

1 related to slipperiness, let alone attempted to meet and confer with firstSTREET or AITHR over
2 these issues—which would be the appropriate course of action. Instead of allowing the Discovery
3 Commissioner an opportunity to hear all parties’ arguments and render a ruling on this new
4 “slipperiness issue,” Plaintiffs instead improperly chose to bypass the rules and file a motion for
5 terminating sanctions. The Court should not entertain or encourage this behavior.

6 Moreover, the Kahuna Grip product that Plaintiffs reference in their motion was a product
7 that could have been applied to the *floor of the Jacuzzi walk-in tub*. However, Plaintiffs’ theory
8 of liability is no longer focused on the floor of the Jacuzzi walk-in tub, rather it is focused on the
9 slipperiness of the *seat of the Jacuzzi walk-in tub*. As Plaintiffs argued on the very first page of
10 this motion, “[d]ue to the defective design of the Tub, Sherry slipped off the seat while reaching
11 for the Tub controls and became wedged in such a way that she was unable to stand back up.”
12 Plaintiffs’ Motion at 1:13-16.³⁹ By Plaintiffs’ counsel’s own admission, as well as that of their expert,
13 Dr. Laux, the Kahuna Grip product is wholly irrelevant to this litigation as it would never have
14 been applied to the seat of the Jacuzzi walk-in tub.

15 IV.

16 LEGAL STANDARD

17 A. Plaintiffs’ Motion is Improperly Before the Court

18 Discovery motions are required to be presented to the Discovery Commissioner – in fact
19 that is the sole purpose of the Discovery Commissioner. Plaintiffs ignored this requirement of the
20 Nevada Rules of Civil Procedure and rules of the Eighth Judicial District Court by filing the current
21 Motion directly with this Court. In fact, entertaining and/or granting this Motion would essentially
22 eliminate the need for a Discovery Commissioner.

23 NRCP 16.1(d) provides that “all discovery disputes (except those presented at the pretrial
24 conference or trial) must first be heard by the discovery commissioner.” Despite these provisions,
25 Plaintiffs filed what is essentially a Motion to Compel and a Motion for Discovery Sanctions for
26

27 ³⁹ See also **Exhibit 8**, wherein Plaintiffs describes the incident as “Plaintiff slipping off the seat and falling into the
28 bottom of the Jacuzzi walk-in tub and being unable to get out of the tub afterwards” (Topic 5). The topic area makes
no reference to the slipperiness of the floor of the Jacuzzi walk-in tub, which is where the Kahuna Grips were to be
placed.

1 this Court's consideration, not the Discovery Commissioner's consideration. This improper
2 attempt to side-step the requirements of the Rules of Civil Procedure should not be allowed where
3 it is the Discovery Commissioner's duty to resolve exactly these types of dispute—whether certain
4 discovery is proper and unobjectionable and what documents, if any, should be produced.
5 Accordingly, the Commissioner is in the best position to determine if Plaintiffs are even entitled to
6 the discovery they now claim firstSTREET and AITHR wrongful withheld, or if the discovery
7 Plaintiffs now seek is overly broad, irrelevant and merely another attempt to harass and place an
8 undue burden on firstSTREET and AITHR.

9 Plaintiffs have not filed a single Motion to Compel against firstSTREET or AITHR. There
10 are no Discovery Commissioner Orders that have been violated by firstSTREET or AITHR. The
11 newest allegations concerning Jerre Chopper's documents and the "slipperiness issues," have not
12 even been the subject of an EDCR 2.34 meet and confer conference which is predicated before any
13 discovery motion is filed, let alone a case terminating sanction motion.

14 **B. Case Terminating Sanctions are Improper⁴⁰**

15 firstSTREET and AITHR have properly responded to discovery throughout this action,
16 raising objections when deemed proper, otherwise Plaintiffs would have surely filed the necessary
17 Motion to Compel with the Discovery Commissioner.⁴¹ There are no Discovery Orders issued
18 against firstSTREET or AITHR. In fact, the sole basis for Plaintiffs' Motion is that Plaintiffs claim
19 firstSTREET and AITHR should have produced certain documents as part of their NRCP 16.1
20 Early Case Conference disclosures, even though firstSTREET and AITHR have advised counsel
21 why documents that post-date Plaintiffs loss have not been produced.⁴²

22 While NRCP 37(d) does allow for the imposition of sanctions, the Nevada Supreme Court
23 has stated, "[g]enerally, NRCP 37 authorizes discovery sanctions only if there has been *willful*
24 *noncompliance with a discovery order of the court.*" Importantly, case-ending sanctions require

25 ⁴⁰ Again, many of the arguments and cites presented in Jacuzzi's Opposition are equally applicable to firstSTREET and
26 AITHR's Opposition, and are being set forth herein.

27 ⁴¹ This is perhaps best evidenced by the numerous Motions to Compel and the discovery disputes between Plaintiffs and
28 Defendant Jacuzzi that have taken place over the last year and a half.

⁴² See **Exhibit 10**, at 44:18 to 47:23 and **Exhibit 5**.

1 a heightened standard of review. *Foster v. Dingwall*, 126 Nev. 56, 65, 227 P.3d 1042 (2010).
2 Fundamental notions of fairness and due process require that discovery sanctions be just and that
3 sanctions relate to the specific conduct at issue. *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92
4 (1990). Additionally, any case-terminating order requires “an express, careful and preferably written
5 explanation of the court’s analysis of the pertinent factors.” *Id.*, at 93. The *Young* factors the Court
6 must consider include:

7 The degree of willfulness of the offending party, the extent to which the non-
8 offending party would be prejudiced by a lesser sanction, the severity of the sanction
9 of dismissal relative to the severity of the discovery abuse, whether any evidence has
10 been irreparably lost, the feasibility and fairness of alternative, less severe sanctions,
11 such as an order deeming facts relating to improperly withheld or destroyed evidence
12 to be admitted by the offending party, the policy favoring adjudication on the merits,
whether sanctions unfairly operate to penalize a party for the misconduct of his or
her attorney, and the need to deter both the parties and future litigants from similar
abuses.

13 *Id.*

14 While dismissal need not be preceded by other less severe sanctions, it should only be
15 imposed after thoughtful consideration of all the factors involved in a particular case. *Id.*, at 92. The
16 dismissal of a case, based upon a discovery abuse such as the destruction or loss of evidence
17 “should be used only in extreme situations; if less drastic sanctions are available, they should be
18 utilized. *Nevada Power v. Fluor Illinois*, 108 Nev. 638, 645 (1992).

19 In *Young*, plaintiff Bill Young willfully fabricated evidence during discovery. 106 Nev. At 90,
20 787 P.2d at 778. He added two sets of notations to his business diaries just before turning the
21 diaries over but claimed that he added the entries over a year prior to production. *Id.* The district
22 court offered Young the opportunity to clarify his position, but Young never did. *Id.* The district
23 court issued terminating sanctions only after a finding that Young had willfully fabricated evidence
24 and refused to clarify his position. *Id.* at 91, 787 P.2d at 778. But the Supreme Court of Nevada
25 recognized the importance of resolving cases based on their merits and cautioned that district
26 courts must be hesitant when contemplating terminating sanctions: “[w]here the sanction is one of
27 dismissal with prejudice . . . we believe that a somewhat heightened standard of review should
28 apply.” *Id.* at 92, 787 P.2d at 779. The reason for this is two-fold. First, fundamental notions of due

1 process require that “discovery sanctions for discovery abuses be just and that the sanctions relate
2 to the claims which were at issue in the ***discovery order which is violated.***” *Id.* at 92, 787 P.2d at
3 780 (emphasis added). Second, dismissal should be imposed “only after thoughtful consideration of
4 all the factors involved in the particular case.” *Id.*

5 More critically, before this Court can enter case terminating sanctions, the Nevada Supreme
6 Court requires the District Court hold an evidentiary hearing on the issue of sanctions. *McDonald v.*
7 *Shamrock Investments, LLC*, 127 Nev. 1158, 373 P.3d 941 (2011) (“the district court abused its
8 discretion in striking [defendant’s] answer without holding an evidentiary hearing to consider the
9 pertinent Young factors.”) (citing *Nevada Power v. Fluor Illinois*, 108 Nev. 638, 645, 837 P.2d 1354,
10 1359 (1992) (“If the party against whom dismissal may be imposed raises a question of fact as to
11 any of [the Young] factors, the court must allow the parties to address the relevant factors in an
12 evidentiary hearing.”); *Young*, 106 Nev. at 93, 787 P.2d at 780 (noting that the case concluding
13 sanction imposed was fair because “a full evidentiary hearing” relating to the discovery abuses was
14 conducted)). Despite these procedural protections, Plaintiffs’ have attempted to sandbag
15 firstSTREET and AITHR with the instant Motion for case terminating sanctions on an
16 unnecessary order shortening time⁴³—requiring firstSTREET and AITHR to oppose Plaintiffs’
17 360-page meritless motion with over 350 pages of exhibits on an expedited briefing schedule.

18 V.

19 ARGUMENT

20 A. Striking firstSTREET’s and AITHR’s Answers Are Not Supported by 21 Nevada Law

22 Nevada law does not support striking firstSTREET or AITHR’s answers because
23 firstSTREET and AITHR have not engaged in any discovery abuse. Rather, striking firstSTREET
24 or AITHR’s answers is particularly disproportionate to any of their alleged conduct in this case,
25 particularly because Plaintiffs have filed no motions with the Discovery Commissioner seeking
26

27 ⁴³ firstSTREET and AITHR incorporate its Motion for Reconsideration filed with the Court on January 23, 2109 and
28 the discussions and reasoning set forth therein, as though fully set forth in this Opposition. Significantly, firstSTREET
points this Court to the blatantly false Affidavit that Plaintiffs counsel utilized to obtain an Order Shortening Time for
this motion for a case terminating sanction. *See Exhibit 1.*

1 redress from any of the alleged misconduct. Moreover, firstSTREET and AITHR have clearly
2 disclosed to Plaintiffs' counsel the basis for not producing any documents that post-date Plaintiffs'
3 date of loss. Simply put, the parties have agreed to disagree. "Fundamental notions of fairness and
4 due process require that discovery sanctions be just and that sanctions relate to specific conduct at
5 issue." *GNLV Corp. v. Service Control Corp.*, 900 P.2d 323, 111 Nev. 866 (1995). There is no basis
6 under NRCP 16.1 or NRCP 37 for sanctions.

7 *i. Sanctions are not warranted under the Young factors.*

8 firstSTREET and AITHR have responded to all discovery requests propounded by
9 Plaintiffs. Plaintiffs have not disputed any of these discovery responses, nor the basis for any
10 objections or limited disclosures, with the Discovery Commissioner, or with this Court, prior to the
11 filing of the instant motion. firstSTREET and AITHR have engaged in good faith meet and confer
12 conferences with Plaintiffs' counsel and clearly explained their position on the disputed discovery.
13 Certainly, firstSTREET and AITHR's conduct cannot be compared to the conduct that occurred in
14 *Young*. Plaintiffs' cursory analysis of the *Young* factors further confirms this.

15 **1. Degree of Willfulness**

16 Plaintiffs' analysis of the first *Young* factor is nothing more than supposition, without any
17 cite to actual fact in this case. The allegations in this case against firstSTREET and AITHR only
18 deal with how the Jacuzzi walk-in tub was sold to Ms. Cunnison. As Plaintiffs are aware,
19 firstSTREET marketed the Jacuzzi walk-in tub and AITHR was the dealer that ultimately sold the
20 tub to Ms. Cunnison. Not once have Plaintiffs sent written discovery to firstSTREET or AITHR
21 concerning dealers that may have sold the Jacuzzi walk-in tub to other customers in other states,
22 who would have had absolutely no contact with Ms. Cunnison. Without receiving such written
23 discovery, it is impossible for firstSTREET or AITHR to have wrongfully withheld the names of
24 these dealers.

25 In fact, when Plaintiffs' counsel asked this question for the very first time during the
26 deposition of firstSTREET and AITHR's NRCP 30(b)(6) witness, this information was freely
27
28

disclosed.⁴⁴ However, Plaintiffs' own NRCP 30(b)(6) deposition notices for firstSTREET and AITHR do not contain a single topic area that could be interpreted as Plaintiffs seeking information concerning dealers other than AITHR. There is simply no way that firstSTREET or AITHR could have been put on notice that this information was being sought by Plaintiffs at any point in time prior to the December 11, 2018 deposition. If they were not aware of Plaintiffs' strategy, then it is impossible for them to have deliberately withheld any documents or information on this subject

Plaintiffs' argument appears to focus on the discovery disputes they have had with Jacuzzi, yet they provide absolutely no authority or insight as to why those disputes would have applied to firstSTREET or AITHR. As firstSTREET and AITHR have noted in all discovery responses, they played no part in the design or manufacture of the Jacuzzi walk-in tub. Therefore, discovery disputes between Plaintiffs and the manufacturer Jacuzzi would have no bearing on the allegations and claims against firstSTREET and AITHR.

As for the timing of firstSTREET's disclosure of email communications, this is simply a matter of counsel being able to complete a review and analysis of over 110,000 emails. When firstSTREET was asked to produce documents that pre-dated the Plaintiffs' date of loss for the first time in discovery that was sent out in September 2018, firstSTREET did not have the capacity to isolate out the relevant emails. As such, firstSTREET provided counsel with over 110,000 emails that covered the relevant time period. Counsel then had to review each email individually to determine if it was responsive to Plaintiffs' discovery requests. As this Court can imagine, reviewing and examining for relevance over 110,000 emails can take much longer than anticipated, especially when efforts to apply simple search terms to narrow the task proved unsuccessful.

As a result of the enormity of this task, counsel for firstSTREET and AITHR advised Plaintiffs' counsel that it would be unable to produce the communications between firstSTREET

⁴⁴ During Mr. Modena's deposition, Plaintiffs' counsel indicated that he would send an email with a list of the items that the parties had agreed to produce informally without a formal Request for Production of Documents. To date, Plaintiffs' counsel has not sent such a list. However, after reviewing Mr. Modena's deposition, firstSTREET and AITHR's counsel voluntarily supplemented their Early Case Conference disclosures with this information. *See* firstSTREET and AITHR's Fourth Supplemental Early Case Conference Production, attached as **Exhibit 14**.

and AITHR that pre-dated the Plaintiffs' loss prior to the re-set deposition of Jacuzzi's NRCP 30(b)(6) witness. In spite of this notification, and request to delay the deposition, Plaintiffs elected to proceed with the second of Jacuzzi's NRCP 30(b)(6) witness deposition.

2. Plaintiff Has Not Been Prejudiced

Plaintiffs' arguments regarding the prejudice of a lesser sanction are predicated on falsities. Plaintiffs elected to wait until December 11, 2018 to take the deposition of firstSTREET and AITHR's NRCP 30(b)(6) witness. There was nothing stopping Plaintiffs from completing this deposition months and months prior to the discovery cut off. Their decision/strategy to delay this deposition is why we are now months away from trial and they are now just learning of other dealers. Their decision/strategy to not ask a single interrogatory about firstSTREET or AITHR's roles, or about any other dealers (choosing instead to ask questions about firstSTREET and AITHR designing and manufacturing the product) is why they first learned of other dealers during the NRCP 30(b)(6) deposition. firstSTREET and AITHR responded to all discovery requests and played no part in Plaintiffs strategy/decision to delay the NRCP 30(b)(6) deposition, other than standard scheduling issues coordinating travel with three parties. firstSTREET and AITHR have no "prevented" Plaintiffs from seeking information from other dealers. Plaintiffs have no one to blame, but themselves.

Plaintiffs infer that their ability to litigate has been irreparably damaged. This is false. firstSTREET and AITHR have responded to Plaintiffs' discovery requests and have produced a witness responsive to the topic areas in their NRCP 30(b)(6) deposition notice. It is Plaintiffs that have materially changed their theories of liability throughout this litigation, settling now on the slipperiness aspect of a tub – and in particular focusing in on the *seat* of the tub. Plaintiffs' have created this situation, not firstSTREET or AITHR, especially when no motions were filed with the Discovery Commissioner when counsel explained why no post loss documents were being produced.

Plaintiffs also argue that Mr. Modena testified that there were numerous discussions with Jacuzzi about the slipperiness of the tub prior to Ms. Cunnison's death. This is simply ***not true***. As argued in this Opposition at pages 15 to 18, there is no evidence that these discussions took place

1 before Plaintiffs' date of loss. Mr. Modena simply testified that they *may have* taken place in late
2 2013 or sometime during 2014.

3 **3. Striking firstSTREET and AITHR's Answers Are Grossly**
4 **Disproportionate to firstSTREET and AITHR's Alleged**
5 **Actions**

6 firstSTREET and AITHR's alleged actions—which were not discovery abuses—do not
7 warrant this heavy sanction under the *Young* factors, as demonstrated by Plaintiffs' own cursory
8 analysis. As outlined above, Nevada courts have struck a party's answer when the party has willfully
9 violated a court order—not when a party did not disclose irrelevant documents and consistently
10 informed the opposing party exactly what they were disclosing and what they were not disclosing.
11 Plaintiffs have not filed a single discovery motion against firstSTREET or AITHR. There are no
12 discovery orders that could have been violated.

13 **4. Nevada's Policy Favors Adjudication on the Merits**

14 Plaintiffs entirely ignore *Young*'s acknowledgment of Nevada's policy favoring adjudication
15 on the merits. Striking firstSTREET and AITHR's Answers would controvert that policy. Striking
16 their Answers without a single motion being filed with the Discovery Commissioner or any
17 evidence that firstSTREET or AITHR violated a court order or a mandated discovery disclosure
18 would be an egregious error by this Court. This is not a case like *Young* where a party tampered with
19 evidence or entirely destroyed it, which the courts found may warrant total dismissal. Plaintiffs give
20 no reason why this case—which the parties have been dutifully litigating since March 2016—should
21 not be given the opportunity to be adjudicated on its merits.

22 **5. Punishment of a Party for Counsel's Conduct**

23 Punishment of a party for its counsel's conduct, is inapplicable here. There have been no
24 such abuses. firstSTREET and AITHR's attorneys and in-house outside counsel oversaw the
25 searches and analysis of documents being sought in Plaintiffs' discovery requests. firstSTREET and
26 AITHR have maintained from the beginning that there were no prior similar incidents involving
27 personal injury or death. No one has withheld any evidence.

28 / / /

1 **6. Sanctioning the Parties Will Not Deter Other Litigants**
2 **Because firstSTREET and AITHR Have Done Nothing**
3 **Wrong**

4 There is no need (or reason) to sanction firstSTREET or AITHR to deter other litigants.
5 Discovery abuses should be sanctioned, but there is no discovery abuse here. No Motions to
6 compel were filed, let alone ruled upon by the Discovery Commissioner. firstSTREET and AITHR
7 have not violated any court order. firstSTREET and AITHR have not manufactured any evidence
8 or altered any evidence. In fact, if the Court were to grant Plaintiffs' motion it would encourage
9 Plaintiffs to forego EDCR 2.34 discovery dispute conferences and filing motions to compel with
10 the Discovery Commissioner, putting all of their eggs in one basket – a Motion to Strike a
11 Defendant's Answer and obtain case terminating sanctions.

12 **VI.**

13 **CONCLUSION**

14 As explained above, Plaintiffs base their motion for the most severe sanctions imaginable
15 on contrived arguments which never rose to the level of filing a motion before the Discovery
16 Commissioner. The facts are undisputed that firstSTREET and AITHR responded to all written
17 discovery requests **and** explained to Plaintiffs' counsel why post date of loss documents were not
18 being disclosed. As evidenced by the fact that Plaintiffs, not once, have disputed firstSTREET and
19 AITHR's discovery responses with the Discovery Commissioner, it is apparent that Plaintiffs'
20 Motion is meritless and a waste of the parties' and the Court's resources.

21 / / /

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1 Furthermore, as noted in firstSTREET and AITHR's Motion for Reconsideration of
2 Court's Order Granting Plaintiffs' Request for Order Shortening Time, Plaintiffs false and
3 misleading statements to this Court concerning firstSTREET and AITHR's discovery cannot justify
4 this Court hearing this type of terminating sanction motion on an order shortening time. This is yet
5 just another example of the desperate tactics engaged in by Plaintiffs and their efforts to overcome
6 what they know is a "losing" case. firstSTREET and AITHR respectfully request this Honorable
7 Court DENY Plaintiffs' Motion in its entirety.

8 DATED this 28th day of January, 2019.

9 THORNDAL ARMSTRONG DELK
10 BALKENBUSH & EISINGER

11 */s/ Philip Goodhart*

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21 FIRSTSTREET FOR BOOMERS AND BEYOND,
22 INC., and AITHR DEALER, INC.
23
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25
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27
28

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 28th day of January, 2019, service of the above and foregoing DEFENDANTS' FIRSTSTREET AND AITHR'S OPPOSITION TO 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.

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