

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

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

5                   Petitioners,

6                   v.

7  
8 THE EIGHTH JUDICIAL DISTRICT  
9 COURT, IN AND FOR THE COUNTY  
10 OF CLARK, STATE OF NEVADA,  
11 AND THE HONORABLE CRYSTAL  
ELLER, DISTRICT JUDGE,

12                  Respondents,

13                  And  
14

15 ROBERT ANSARA, as Special  
16 Administrator of the Estate of SHERRY  
LYNN CUNNISON, Deceased;  
17 ROBERT ANSARA, as Special  
18 Administrator of the Estate of  
MICHAEL SMITH, Deceased heir  
19 to the Estate of SHERRY LYNN  
20 CUNNISON, Deceased; and DEBORAH  
TAMANTINI individually, and heir to  
21 the Estate of SHERRY LYNN  
22 CUNNISON, Deceased; HALE  
23 BENTON, Individually; HOMECLICK,  
LLC; JACUZZI INC., doing business as  
24 JACUZZI LUXURY BATH;  
25 BESTWAY BUILDING &  
REMODELING, INC.; WILLIAM  
26 BUDD, Individually and as BUDDS  
27 PLUMBING; DOES 1 through 20; ROE  
CORPORATIONS 1 through 20; DOE  
28 EMPLOYEES 1 through 20; DOE

CASE NO. 83379

District Court No. A-16-731244-C  
Dept. No. XIX

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Elizabeth A. Brown  
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1 MANUFACTURERS 1 through 20;  
2 DOE 20 INSTALLERS 1 through 20;  
3 DOE CONTRACTORS 1 through 20;  
4 and DOE 21 SUBCONTRACTORS 1  
5 through 20, inclusive,

6  
7 Real Parties in Interest.

8  
9  
10 **From the Eighth Judicial District Court**  
11 **The Honorable Crystal Eller District Judge**  
12

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14  
15 **PETITIONERS' REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT**  
16 **OF MANDAMUS**  
17

18  
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*Attorneys for Petitioners, firstSTREET For Boomers & Beyond, Inc.; AITHR  
Dealer, Inc.;*

1 **VERIFICATION**

2 STATE OF NEVADA )

3 )

4 COUNTY OF CLARK )

5 Under penalty of perjury, I declare that I am an attorney with the THORNDAL  
6 ARMSTRONG DELK BALKENBUSH & EISINGER, attorneys for Petitioners,  
7 FIRST STREET FOR BOOMERS 7 BEYOND, INC. and AITHR DEALER,  
8 INC., in the above-entitled case. I have reviewed the relevant district court papers  
9 on file in this action; I am familiar with the facts and circumstances set forth in the  
10 Petition; and I know the contents thereof to be true, except those matters stated on  
11 information and belief, and as to those matters, I believe them to be true.  
12  
13  
14

15 This verification is made pursuant to NRS 15.010.

16 Executed this 16<sup>th</sup> day of December, 2021.

17  
18 */s/ Philip Goodhart, Esq.*

19 \_\_\_\_\_  
20 PHILIP GOODHART, ESQ.  
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1           Petitioners firstSTREET for Boomers & Beyond, Inc. (“firstSTREET”), and  
2  
3   AITHR Dealer, Inc. (“AITHR”, collectively “Petitioners”), by and through their  
4   attorneys of record, Thorndal Armstrong Delk Balkenbush & Eisinger, hereby files  
5   their Reply in Support of their Petition for Writ of Mandamus.  
6

7   **I. INTRODUCTION**

8           Real Parties in Interest, Robert Ansara individually and as Special  
9   Administrator of the Estate of Sherry Lynn Cunnison, Michael Smith, and Deborah  
10   Tamantini, individually and heir to the Estate of Sherry Lynn Cunnison’s (“Real  
11   Parties in Interest”) Answer to Petitioner’s Writ of Mandamus (the “Answer”)  
12   should be afforded no weight.  
13  
14

15           Real Parties in Interest submit that a party need not violate a discovery order  
16   to have their answer stricken, yet cite to virtually no authority from anywhere in the  
17   country for this proposition, and cannot reconcile this argument with the express  
18   language of NRCP 16.1(e)(3) and NRCP 37. They further submit that the district  
19   court’s discovery sanctions were supported by “independent authority”, despite the  
20   express language in the district court’s order to the contrary.  
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24           Finally, they submit that the district court’s failure to conduct an evidentiary  
25   hearing was not mandatory nor necessary in this instance, despite the actual facts  
26   that, in this case, an evidentiary hearing should have been held to assist the district  
27   court in weeding through what was fact/evidence and what was merely argument of  
28

1 counsel. In so doing, the district court abused its discretion by not conducting an  
2 evidentiary hearing.

3         The district court ignored the plain language of NRCP 16. 1(e)(3) and, though  
4 it was not necessarily mandatory, nonetheless abused its discretion in failing to  
5 conduct an evidentiary hearing prior to striking Petitioners' Answer. Nothing in  
6 Real Parties in Interest's Answering Brief dictates a contrary conclusion and this  
7 Honorable Court should GRANT Petitioner's Writ Petition.  
8

9  
10 **II. RESPONSE TO REAL PARTIES IN INTERESTS' RELEVANT**  
11 **ARGUMENTS**

12         Real Parties in Interests' Answering Brief contains numerous factual  
13 inaccuracies that are unsupported by the record. These incorrect and misleading  
14 assertions are a thinly veiled attempt to distract from the actual issues in this case  
15 and fail to present any relevant considerations necessary to determine the issues  
16 presented in the Petition for Writ of Mandamus.  
17

18         It is undisputed that Real Parties in Interest never filed a motion to compel  
19 against Petitioners. It is undisputed that Real Parties in Interest never obtained an  
20 order from either the discovery commissioner or the court compelling Petitioners to  
21 act. It is undisputed that Petitioners never violated a single discovery order.<sup>1</sup> Under  
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28 <sup>1</sup> Contrast these undisputed facts with the conduct of Defendant Jacuzzi (who was the manufacturer and designer of the tub), wherein Plaintiffs filed several motions

1 these undisputed facts, the key issue for this Court is whether or not the district  
2 court abused its discretion by striking Petitioners' Answer in the absence of a  
3 discovery order.  
4

5 **A. The District Court's Order Denying Real Parties in Interests' First**  
6 **Motion to Strike Petitioner's Answer Was Not a Discovery Order.**

7 Real Parties in Interest's primary argument, and "way around" the undisputed  
8 fact that there was never a discovery order against Petitioners, is that the district  
9 court's March 4, 2019 Minute Order denying Real Parties in Interest's original  
10 motion to strike Petitioners' Answer is allegedly a discovery order. Real Parties in  
11 Interest point to this order because there were no actual discovery orders issued  
12 against Petitioner. Moreover, even liberally construed, the March 4, 2019 Minute  
13 Order Real Parties in Interest refer to is not a discovery order. It reads, in relevant  
14 part:  
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18 The parties should proceed with any further discovery until  
19 and unless the Court Orders otherwise. In the upcoming  
20 sanctions order the Court is inclined to impose some  
21 monetary sanctions, at the very least, and re-allocate the fees  
22 and costs related to discovery. A tentative new Discovery  
23 Deadline is March 21. The Court shortens Notice for any  
24 further Depositions that either side needs to take to one  
25 week. Protective orders, if really necessary, may be sought  
26 on one day notice and heard by telephone conference.  
27 Plaintiff is permitted to take a further deposition of the  
28 corporate representatives of Jacuzzi and First Street,

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to compel and obtained several court orders compelling Jacuzzi to act, resulting in  
the striking of Jacuzzi's Answer.



1 regarding Chopper, marketing and advertising, and the First  
2 Street dealers that existed between 2008 and the date of the  
3 incident. Plaintiff is entitled to locate and depose Chopper  
4 if that has not been done already. Plaintiff is entitled to take  
5 the depositions of the First Streets Dealers. The parties are  
6 directed to again cooperate in good faith to conduct the  
7 forensic review previously ordered by the Discovery  
8 Commissioner-if it still has not been complete-and, of  
9 course, the scope shall be all incidents involving a Jacuzzi  
10 walk-in tub with inward opening doors, for the time period  
11 of January 1, 2008, through the date of filing of the  
12 complaint, where a person slipped and fell, whether or not  
13 there was an injury, whether or not there was any warranty  
14 claim, and whether or not there was a lawsuit.

15 PA0387.

16 Real Parties in Interest argue this is a discovery order, the violation of which  
17 can warrant discovery sanctions under NRCP 16.1(e)(3), but more specifically  
18 argue that this was the actual order upon which the district court based its order  
19 striking Petitioners' Answer. However, while the district court briefly references  
20 this Minute Order in the Order Striking Petitioners' Answer, the district court  
21 repeatedly states that it was striking Petitioners' Answer based on alleged violations  
22 of obligations under NRCP 16.1.

23 The district court issued a follow-up Minute Order on March 12, 2019  
24 wherein the court concluded that "neither Jacuzzi nor First Street engaged in any  
25 egregious bad faith conduct, or intentional violation of any discovery Order, or  
26 conduct intended to harm Plaintiff." PA0389. This follow-up Minute Order is  
27  
28

1 devoid of any orders by the district court to produce any documents or other  
2 evidence and cannot be construed as a discovery order either.

3 The district court specifically rejected the argument now made by Real  
4 Parties in Interest that the sanction was based on violation of a court order:  
5

6 Throughout its opposition to the Plaintiff's Motion to Strike,  
7 First Street advances the arguments that it did not violate  
8 any Court Order, that it did not violate any Discovery  
9 Commissioner Order, and that it timely responded to  
10 Plaintiff Cunnison's written discovery requests. These  
11 things have all been considered by this Court in the analysis  
12 of the degree of willfulness of First Street's actions. ***But***  
13 ***First Street substantially ignores and overlooks its***  
14 ***obligations under NRCP 16.1***, which triggered the duty to  
15 disclose all relevant evidence when the relevance should  
16 have been known no later than February 2018. First Street  
17 repeatedly violated this duty.

18 PA1006 (emphasis added).

19 This excerpt echoes the district court's explicit ruling at the beginning of the  
20 December 28, 2020 Minute Order that "pursuant to NRCP 16.1(e)(3), the Court  
21 strikes First Street's Answer..." PA1005. Thus, the district court explicitly  
22 recognized that Petitioners had not violated any discovery order and based the  
23 sanction exclusively on a perceived violation of obligations under NRCP 16.1.  
24 Therefore, even if the March 4, 2019 Minute Order can be construed as a discovery  
25 order, which it cannot, by the plain terms of the district court's December 28, 2020  
26 Minute Order, the district court's Order striking Petitioners' Answer was not based  
27 on any violation of that order.  
28

1 Real Parties in Interest fail to identify any discovery order that Petitioners  
2 could have violated, much less did violate, and the district court abused its  
3 discretion when it sanctioned Petitioners under NRCP 16.1.<sup>2</sup> Moreover, Real Parties  
4 in Interest have not cited to a single case from anywhere in the country that allows  
5 the court to strike an Answer where there has been no discovery order issued against  
6 that party.  
7

8  
9 Contrary to Real Parties in Interest's assertions, the cases cited by Petitioners  
10 support this Writ. *See*, Answering Brief at 33. In *Young v. Johnny Ribeiro Bldg.,*  
11 *Inc.*, 106 Nev. 88, 787 P.2d 777 (1990) the pleadings were struck after there was a  
12 finding that *Young willfully fabricated evidence* during discovery, and that it was  
13 the fabricated evidence that formed the basis of Young's Complaint. In *Foster v.*  
14 *Dingwall*, 126 Nev. 56, 227 P.3d 1042 (2010) the discovery abuses by the appellants  
15 included *violation of several district court orders* and the failure of a party to appear  
16 for a properly noticed deposition. In *Clark County School District v. Richardson*  
17 *Construction*, 123 Nev. 382, 168 P.3d 87 (2007) sanctions were imposed because a  
18 party *failed to comply with a discovery order*. In *Fire Insurance Exchange v. Zenith*  
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25  
26 <sup>2</sup> It is axiomatic that a formal order is required before severe sanctions for violating  
27 an order can be entered against a party. NRCP 37 allows any party to file a Motion  
28 to Compel if that party believes that another party has failed to make disclosures or  
to cooperate in discovery. Real Parties in Interest filed several such motions against  
Defendant Jacuzzi, but did not file a single motion against Petitioners.

1 *Radio Corp.*, 103 Nev. 648, 747 P.2d 911 (1987) involved the intentional  
2 destruction of evidence, and this Court held that discovery sanctions will only be  
3 imposed if there has been a willful noncompliance with a discovery order of the  
4 court. In *Nevada Power Co. v. Flour Illinois*, 108 Nev. 638, 837 P.2d 1354 (1992)  
5 the district court imposed sanctions only because Nevada Power *failed to obey a*  
6 *discovery order*, but this Court reversed that ruling because the district court failed  
7  
8 to hold an evidentiary hearing.<sup>3</sup>

10  
11 **B. The District Court Did Not Find Any Attorney Misconduct To**  
12 **Warrant Discovery Sanctions Without a Violation of a Court**  
13 **Order.**

14 Real Parties in Interest argues, without basis, that the district court's  
15 sanctions were based on attorney and party misconduct. *See*, Real Parties in  
16 Interest's Answering Brief, at p. 19. Real Parties in Interest, however, fail to cite to  
17 any order of the district court where the court found any attorney misconduct.  
18 Instead, Real Parties in Interest argue that since the district court did not expressly  
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22  
23 <sup>3</sup> The cases cited in footnote 53 of the Answering Brief (page 34) are  
24 distinguishable from the facts of this case. For example, in *Skeen v. Valley Bank of*  
25 *Nevada*, 89 Nev. 301, 511 P.2d 1053 (1973) the defendant failed to appear for his  
26 deposition in clear violation of NRCp 37(b)(2); in *ETT, Inc. v. Delegado*, 126 Nev.  
27 709, 367 P.3d 767 (2010)(unpublished) the sanctions were not outcome  
28 determinative or an ultimate sanction – the Defendant was simply not allowed to  
use a late disclosed audio recording; in *Freemon v. Fischer*, 281 P.3d 1173 (Nev.  
2009)(unpublished) the offending party failed to timely disclose an expert witness,  
and the witness was precluded from testifying.

1 find that there was no attorney misconduct, the district court could have actually  
2 based the sanctions on counsel's argument that there might have been attorney  
3 misconduct. Significantly, however, the district court never stated as much in any  
4 order. Real Parties in Interest argument is ridiculous, and seeks to require  
5 Petitioners to prove a negative. The facts, however inconvenient to the Real Parties  
6 in Interest, demonstrate that the district court's sanction order was based expressly  
7 on party conduct, and explicitly stated:

10 First Street defendants did not attempt to excuse its  
11 discovery abuses based on advice of counsel. Nor did the  
12 First Street Defendants identify any discovery conduct that  
13 was done at the direction of its counsel.

14 PA1008.

15 The court continued by clarifying "[t]he sanction imposed here is necessary  
16 to deter First Street, as well as litigants in future cases, from abusive litigation  
17 tactics and discovery abuses." *Id.* Had the district court's ruling been based, even  
18 in part, on conduct of counsel, the district court would have at least suggested as  
19 much. ***Instead, the district court emphasized repeatedly that the sanction was***  
20 ***based exclusively on party conduct and wholly omits any reference to misconduct***  
21 ***by counsel.***

22 Real Parties in Interest attempt to manufacture additional grounds for the  
23 district court's sanctions in order to avoid the express language of NRCP 16.1(e)(3),  
24 but the actual basis for the district court's order is unavoidable. In other words, the  
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1 district court struck Petitioners' Answer based on the party's discovery conduct  
2 even though there was no court order compelling the party to act.

3  
4 **C. The District Court Did Not Impose Sanctions Pursuant to NRCP**  
5 **37 As a Separate Authority in Addition to NRCP 16.1.**

6 Real Parties in Interest also argue that NRCP 37 provides a separate,  
7 independent basis for sanctioning Petitioners, and that the district court imposed  
8 sanctions based on NRCP 37 and the court's "inherent equitable powers to control  
9 abusive litigation practices." *See*, Real Parties in Interest's Answering Brief, p. 27.  
10 However, nowhere in the December 28, 2020 Minute Order does the district court  
11 even cite to NRCP 37 or the equitable powers of the court. PA1005 to PA1009. By  
12 the express language of the Minute Order, the district court's ruling was based  
13 exclusively on NRCP 16.1(e)(3).  
14  
15  
16

17 NRCP 16.1(e)(3) provides that where a party violates a court order, the court  
18 may impose "any of the sanctions available under Rules 37(b) and 37(f)..." NRCP  
19 16.1(e)(3)(A).  
20

21 NRCP 37(b) provides "Sanctions for Failure to Comply With a Court Order."  
22 The Rule goes on to specify "If a party or a party's officer, director, or managing  
23 agent ... fails to obey an order to provide or permit discovery ... the court may issue  
24 further just orders that may include ... striking pleadings in whole or in part..."  
25 NRCP 37(b)(1)(C).  
26  
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1 NRCP 37(f) provides sanctions against a party or its attorney for failure to  
2 participate in good faith in “developing and submitting a proposed discovery  
3 order...” NRCP 37(f).  
4

5 Accordingly, the district court imposed sanctions based exclusively on  
6 NRCP 16.1(e)(3) which provides for sanctions under NRCP 37(b) where a *party*  
7 violates a court order. As the heading to NRCP 37(b) unambiguously states  
8 “*Sanctions for Failure to Comply With a Court Order*”, there must first be a court  
9 order that was violated in order for any of the listed sanctions to be imposed. The  
10 district court does not cite to, or rely on, any other basis for the sanctions handed  
11 down in the December 28, 2020 Minute Order, and by the plain, unambiguous  
12 language of NRCP 16.1(e)(3), the district court consequently committed an error of  
13 law and abused its discretion by striking Petitioners’ Answer where there was no  
14 discovery order to violate.  
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19 **D. The District Court Abused Its Discretion By Failing to Conduct an**  
20 **Evidentiary Hearing.**

21 The purpose of an evidentiary hearing is “for the district court to see and hear  
22 from witnesses in order to gauge their respective credibility in order to resolve the  
23 truth of any facts on which the witnesses disagree.” *Stinziano v. Valley*, 133 Nev.  
24 1079 (2017). Here, the evidentiary hearing would have been held to interpret the  
25 discovery order that was supposedly violated and determine whether, through the  
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1 presentation of witnesses, the party violated it.<sup>4</sup> In the case of Petitioners, there was  
2 no discovery order entered against it and therefore nothing to interpret, however the  
3 circumstances of this very complex case warranted an evidentiary hearing and it  
4 was an abuse of discretion to not conduct one.  
5

6 Real Parties in Interest argue the district court did not abuse its discretion in  
7 failing to conduct an evidentiary hearing because such a hearing is not required  
8 absent case ending sanctions. Petitioners acknowledged, in the Petition, that  
9 evidentiary hearings are “not mandated in every case where the imposed sanctions  
10 are less than dismissal or default with prejudice.” *See*, Petition, p. 17:5-8. Petitioners  
11 then reiterated the admonition of this Court in *Bahena II*, that “district courts should  
12 be encouraged to exercise their discretion to hold evidentiary hearings regarding  
13 non-case concluding sanctions when requested and when there are disputed issues  
14 of material fact regarding the discovery dispute identified by the parties.” *Bahena*  
15 *II*, 126 Nev. at 611, 245 P.3d at 1185. Petitioners assert the district court abused its  
16 discretion, given the circumstances of this very complex case, by failing to adhere  
17 to this Court’s admonition and conduct a hearing on the evidence.  
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26 <sup>4</sup> In fact, this is precisely what was done during the four (4) day evidentiary hearing  
27 on Plaintiffs’ Motion to Strike Jacuzzi’s Answer, as well as the opportunity the  
28 district court afforded Jacuzzi for a second evidentiary hearing on a possible advice  
of counsel defense.



1 The district court's December 28, 2020 Minute Order lays out six separate  
2 categories of documents that supposedly should have been produced. As support  
3 for these categories, the district court heard argument of counsel and accepted  
4 inadmissible affidavit evidence presented by counsel for Real Parties in Interest.  
5 However, the district court failed to allow witnesses to testify or undergo cross-  
6 examination, and failed to entertain the actual evidence that would have informed  
7 the district court that several of the categories of contested discovery were either  
8 not available to Petitioners because they were in the custody of third parties, were  
9 not relevant to similar incidents or complaints of slipperiness of the tub (the Alert  
10 911 system), had already been disclosed by Jacuzzi, who had more complete access  
11 to the documents, or were in the custody of a former, disgruntled employee who  
12 failed to turn it over to Petitioners when he left the company without ever informing  
13 petitioners of the existence of such evidence (voicemail recording).  
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19 It should be noted that the district court denied Real Parties in Interest's first  
20 motion to strike on March 12, 2019. By April 3, 2019, Petitioners had produced  
21 almost 5,200 pages of documents that included customer complaints of the  
22 slipperiness of the tub.<sup>5</sup> By August 21, 2019 – over one year before Plaintiffs filed  
23  
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26 <sup>5</sup> Moreover, as argued in Petitioners' Opposition to the Second Motion to Strike,  
27 as of September 2018 the discovery commissioner had ordered that **Jacuzzi** only  
28 produce complaints about wrongful death or bodily injury. PA406, line 18 to  
PA407, line 2.

1 their Second Motion to Strike firstSTREET's Answers, Petitioners had produced an  
2 additional 1,600 pages of documents, including the Guild Surveys that were in the  
3 possession of a third party, GuildQuality.  
4

5 By way of a few examples, as regards the Guild Surveys mentioned in the  
6 district court's sanction order, Guild Surveys are customer surveys completed by  
7 an independent third-party vendor, and are retained by that vendor. Real Parties in  
8 Interest requested these surveys in their Fifth and Sixth Requests for Production of  
9 Documents, served in July 2019. *See generally* PA0405 to PA0406. Petitioners  
10 requested and received these surveys from the third-party vendor and produced  
11 same to Real Parties in Interest on August 21, 2019. PA0424, line 25 to PA0424,  
12 line 2; PA0635. Testimony and evidence regarding Petitioners' access to these  
13 documents and the efforts taken to collect and produce them would have been  
14 exceptionally relevant to the district court's decision to enter discovery sanctions,  
15 and would have been explained at an evidentiary hearing.  
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20 Regarding the Alert 911 system, as explained in the Petition (Petitions Writ  
21 at 5:19-29), this system, or pendant, was given as a gift to some purchasers of the  
22 Jacuzzi tub, as were gift cards and other gifts. It was not a component part of, or  
23 directly related the tub. *See* PA0407; PA0424, ¶ 12. There was no evidence before  
24 the district court, other than unsupported argument of counsel, that this was an  
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1 alleged safety system.<sup>6</sup> Moreover, the Alert 911 was discussed at a hearing before  
2 the discovery commissioner on one of Real Parties in Interest's *motions to compel*  
3 *Jacuzzi* and the discovery commissioner recommended Real Parties in Interest  
4 serve requests for production regarding Alert 911 documents. PA0407 and PA0659.  
5 In other words, even the discovery commissioner believed that this information had  
6 to be specifically requested by Real Parties in Interest.<sup>7</sup>  
7  
8

9         Petitioners timely responded to Real Parties in Interest's requests for  
10 production and produced all the information in Petitioners' possession regarding  
11 the Alert 911 pendant. Despite this, the district court deprived itself and Petitioners  
12 the benefit of an evidentiary hearing to demonstrate that these documents had  
13 actually been produced in their entirety. These examples show that while the district  
14 court was not mandated to conduct an evidentiary hearing, this Court has  
15 admonished district courts to hold such hearings in the face of such complex  
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21 <sup>6</sup> Real Parties in Interest goes so far as to rely upon text messages between counsel  
22 (neither of whom could testify in this matter) as support for their argument. *See*  
23 *Answering Brief* at 16 to 17. These arguments completely ignore the sworn affidavit  
of Petitioners' NRCP 30(b)(6) concerning the Alert 911 pendant.

24 <sup>7</sup> Based on the discovery commissioner's comment, on November 29, 2018, Real  
25 Parties in Interest served discovery on Jacuzzi seeking information on the 911 Alert  
26 System. PETITIONER-SA001 (Petitioners' Supplemental Appendix). Jacuzzi  
27 responded to this request on January 9, 2019. PA0176. Real Parties in Interest did  
28 not serve any discovery on Petitioners concerning this system until July 3, 2019.  
PETITIONER-SA010. Petitioners timely responded to this discovery request on  
August 23, 2019. PETITIONER-SA022.

1 evidentiary disputes as those presented in this case. The district court afforded co-  
2 defendant Jacuzzi such a hearing yet denied that opportunity to Petitioners, which  
3 was an abuse of discretion.  
4

5 The district court abused its discretion in failing to hold an evidentiary  
6 hearing where Petitioners could introduce evidence and live testimony to address  
7 the six categories the district court was concerned with.  
8

### 9 **III. CONCLUSION**

10 Accordingly, Petitioner respectfully requests that this Honorable Court issue  
11 the requested Writ of Mandamus.  
12

13 DATED this 16<sup>th</sup> day of December, 2021.  
14

15 THORNDAL ARMSTRONG DELK  
16 BALKENBUSH & EISINGER

17 */s/ Philip Goodhart*

18 \_\_\_\_\_  
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## CERTIFICATE OF COMPLIANCE

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2 1. I hereby certify that this brief complies with the formatting  
3 requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and  
4 the type style requirements of NRAP 32(a)(6) because this brief has been prepared  
5 in a proportionally spaced typeface using Microsoft Word 2010 in 14-point Times  
6 New Roman Font.  
7  
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9 2. I further certify that this brief complies with the page and type volume  
10 limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted  
11 from NRAP 32(a)(7)(C), it is proportionately spaced, has a type face of 14 points  
12 or more and contains 4,040 words.  
13  
14

15 3. Finally, I hereby certify that I have read this brief, and to the best of  
16 my knowledge, information, and belief, it is not frivolous or interposed for any  
17 improper purpose. I further certify that this brief complies with all applicable  
18 Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which  
19 requires every assertion in the brief regarding matters in the record to be  
20 supported by a reference to the page and volume number, if any, of the transcript  
21  
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1 or appendix where the matter relied on is to be found. I understand that I may be  
2 subject to sanctions in the event that the accompanying brief is not in conformity  
3 with the requirements of the Nevada rules of Appellate Procedure.  
4

5 DATED this 16<sup>th</sup> day of December, 2021.

6 THORNDAL ARMSTRONG DELK  
7 BALKENBUSH & EISINGER

8 */s/ Philip Goodhart*

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## CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On December 16, 2021, I caused to be served a true and correct copy of the foregoing PETITIONERS' REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF MANDAMUS upon the following by the method indicated:

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

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

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

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

15 */s/ Stefanie Mitchell*

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17 An Employee of Thorndal Armstrong Delk  
18 Balkenbush & Eisinger  
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