

Case No. _____

In the Supreme Court of Nevada

JACUZZI, INC. doing business as JACUZZI
LUXURY BATH,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT of the
State of Nevada, in and for the County of Clark;
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,

Real Parties in Interest.

Electronically Filed
Oct 05 2021 04:12 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**PETITIONER'S APPENDIX
VOLUME 3
PAGES 501-750**

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67	Plaintiffs' Reply to: (1) Defendant Jacuzzi, Inc. dba Jacuzzi Luxury Bath's Brief Responding to Plaintiffs' Request for Inflammatory, Irrelevant, Unsubstantiated, or Otherwise Inappropriate Jury Instructions; and (2) Defendant FirstStreet For Boomers & Beyond, Inc., AITHR Dealer, Inc., and Hale Benton's Objections to Plaintiffs' Demand for Certain Jury Instructions and Rulings on Motions in Limine Based on Court Striking Jacuzzi's	11/10/20	28	6906–6923

	Answer Re: Liability			
63	Plaintiffs' Response to Defendant Jacuzzi Inc. d/b/a Jacuzzi Luxury Bath's Objections to Plaintiff's [sic] Proposed "Order Striking Defendant Jacuzzi Inc., d/b/a Jacuzzi Luxury Bath's Answer as to Liability Only" Submitted October 9, 2020	10/20/20	27	6713–6750
56	Plaintiffs' Response to Defendant Jacuzzi's Notice of Waiver of Phase 2 Hearing and Request to Have Phase 2 of Evidentiary Hearing Vacated	09/21/20	27	6562–6572
25	Plaintiffs' Supplement to Motion to Expand Scope of Evidentiary Hearing	08/20/19	9	2242–2244
30	Recorder's Transcript of Evidentiary Hearing – Day 1	09/16/19	17	4011–4193
58	Recorder's Transcript of Evidentiary Hearing – Day 1	09/22/20	27	6574–6635
31	Recorder's Transcript of Evidentiary Hearing – Day 2	09/17/19	17 18	4194–4250 4251–4436
32	Recorder's Transcript of Evidentiary Hearing – Day 3	09/18/19	18 19	4437–4500 4501–4584
36	Recorder's Transcript of Evidentiary Hearing – Day 4	10/01/19	19	4596–4736
21	Recorder's Transcript of Hearing Pursuant to Defendant Jacuzzi's Request Filed 6-13-19, Defendant Jacuzzi, Inc. d/b/a Jacuzzi Luxury Bath's Request for Status Check; Plaintiffs' Motion for Reconsideration Re: Plaintiffs' Renewed Motion to Strike Defendant Jacuzzi, Inc.'s Answer and Motion for Clarification Regarding the Scope of the Forensic Computer Search	07/01/19	8	1887–1973
52	Recorder's Transcript of Pending Motions	06/29/20	27	6509–6549

61	Recorder's Transcript of Pending Motions	10/05/20	27	6639–6671
94	Recorder's Transcript of Pending Motions	07/14/21	32 33	7893–8000 8001–8019
90	Reply in Support of “Countermotion to Clarify Issues that the Jury Must Determine, Applicable Burdens of Proof, and Phases of Trial”	06/30/21	32	7862–7888
50	Reply to Plaintiffs’ (1) response to Jacuzzi’s Objections to Proposed Order, and (2) Opposition to Jacuzzi’s Motion to Clarify the Parameters of Any Waiver of Attorney-Client Privilege	06/24/20	26 27	6495–6500 6501–6506
3	Second Amended Complaint	05/09/16	1	24–33
4	Third Amended Complaint	01/31/17	1	34–49
10	Transcript of All Pending Motions	02/04/19	5 6	1214–1250 1251–1315
20	Transcript of Proceedings – Defendant Jacuzzi, Inc.’s Request for Status Check; Plaintiffs’ Motion for Reconsideration Regarding Plaintiffs’ Renewed Motion to Strike Defendant Jacuzzi, Inc.’s Answer and Motion for Clarification Regarding the Scope of the Forensic Computer Search	07/01/19	8	1794–1886
74	Transcript of Proceedings: Jury Instructions	12/21/20	29	7119–7171
68	Transcript of Proceedings: Motion to Strike	11/19/20	28 29	6924–7000 7001–7010
71	Transcript of Proceedings: Motions in Limine: Jacuzzi’s Nos. 1, 4, 13, 16, and 21/First Street’s No. 4; Jury Instructions	12/07/20	29	7050–7115

CERTIFICATE OF SERVICE

I certify that on October 5, 2021, I submitted the foregoing
“Petitioner’s Appendix” for filing *via* the Court’s eFlex electronic filing
system. Electronic notification will be sent to the following:

Benjamin P. Cloward
RICHARD HARRIS LAW FIRM
801 South Fourth Street
Las Vegas, Nevada 89101

Attorneys for Real Parties in Interest

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

/s/ Jessie M. Helm
An Employee of Lewis Roca Rothgerber Christie LLP

Defendant objects to this Request as overbroad because it seeks documents that are unrelated and not relevant to the subject incident and claims. Accordingly, Defendant's response is limited to materials relevant to the design components it believes are at issue in this case. The Request seeks confidential and proprietary documents which will not be disclosed or produced without a protective order.

REQUEST FOR PRODUCTION NO. 13:

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

RESPONSE:

Defendant has no responsive documents in its possession.

Defendant objects to this Request as overbroad because it seeks documents that are unrelated and not relevant to the subject incident and claims.

REQUEST FOR PRODUCTION NO. 14:

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

RESPONSE:

Defendant directs Plaintiff to Commercial General Liability Declarations for Policy GL 509-47-59, produced in Defendant's Initial Disclosure Statement as JACUZZI 000028-31. Defendant has additional excess coverage that is not applicable to this case.

REQUEST FOR PRODUCTION NO. 15:

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

RESPONSE:

See Defendant's Response to Request No. 13.

REQUEST FOR PRODUCTION NO. 16:

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

///

RESPONSE:

Defendant directs Plaintiff to Defendant's Response to Plaintiff's Interrogatory No. 6.

Defendant objects to this Request as overbroad because it seeks documents that are unrelated and not relevant to the subject incident and claims. The Request seeks confidential and proprietary documents which will not be disclosed or produced without a protective order. Accordingly, Defendant's response is limited to materials relevant to the design components it believes are at issue in this case.

REQUEST FOR PRODUCTION NO. 17:

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

RESPONSE:

Defendant has no responsive documents that are not protected by the attorney work product doctrine or attorney client privilege. All documents prepared after Plaintiffs' notice of the claim were prepared at the direction of legal counsel and in anticipation of litigation. Thus, all such documents are protected by the attorney work product doctrine and attorney-client privilege.

REQUEST FOR PRODUCTION NO. 18:

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

RESPONSE:

Defendant has no responsive documents. This response is limited to "failures and malfunctions" related to Plaintiffs' claims in this case.

Defendant objects to this Request as overbroad and seeking documents outside the scope of Rule 26(e) to the extent it seeks documents unrelated and not relevant to the subject incident and Plaintiffs' claims. The Request seeks documents that if they existed would be protected by third parties' right of privacy.

///

REQUEST FOR PRODUCTION NO. 19:

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

RESPONSE:

Defendant objects to this Request as premature and seeking information that is outside the scope of Rule 26 and privileged. Discovery is in its early stages and Defendant does not yet know who it will retain or designate as an expert. Defendant will disclose its experts consistent with the discovery plan and scheduling order in place in this case and as required by NRCP 16.1 and 26.

REQUEST FOR PRODUCTION NO. 20:

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

RESPONSE:

Defendant objects to this Request as it seeks documents protected from disclosure by the attorney client and/or work product doctrines. Any communications with Jacuzzi's insurers was made at the direction of Jacuzzi's counsel and in anticipation of litigation.

REQUEST FOR PRODUCTION NO. 21:

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

RESPONSE:

Defendant directs Plaintiff to all depositions that have or will be taken, as well as the following previously produced documents:

Records Received from Medic West Ambulance	JACUZZI 000078-87
Records and photographs received from Clark County Coroner/Medical Examiner's Officer pursuant to Jacuzzi's Subpoena	JACUZZI000088-118

Defendant objects to the Request to the extent it seeks any communications with counsel, or at the direction of counsel, which are protected from disclosure by the attorney client privilege and/or work product doctrine.

REQUEST FOR PRODUCTION NO. 22:

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

RESPONSE:

Defendant has no responsive documents.

Defendant objects to this Request as it seeks documents protected from disclosure by the attorney client privilege and/or work product doctrines.

REQUEST FOR PRODUCTION NO. 23:

The name, home and business address, background and qualifications of any and all persons in the employ of Defendant(s), who in anticipation and/or preparation of litigation, is

1 expected to be called to trial.

2 **RESPONSE:**

3 Defendant directs Plaintiff to Defendant's Initial Disclosure Statement and all subsequent
4 supplemental disclosures.

5 Defendant objects to this Request as premature, as discovery is in its early stages and
6 Defendant does not yet know who will testify at trial. Defendant will disclose any witnesses
7 consistent with the discovery plan and scheduling order in place in this case and as required by
8 NRCp 16.1 and 26.

9 **REQUEST FOR PRODUCTION NO. 24:**

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

12 **RESPONSE:**

13 Defendant directs Plaintiff to Defendant's Initial Disclosure Statement and all subsequent
14 supplemental disclosures.

15 Defendant objects to this Request as premature, as discovery is in its early stages and
16 Defendant does not yet know who will testify at trial. Defendant will disclose any witnesses
17 consistent with the discovery plan and scheduling order in place in this case and as required by
18 NRCp 16.1 and 26.

19 **REQUEST FOR PRODUCTION NO. 25:**

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

22 **RESPONSE:**

23 Defendant directs Plaintiff to Defendant's Initial Disclosure Statement and all subsequent
24 supplemental disclosures. Additionally, Defendant directs Plaintiff to the depositions taken in
25 this action.

26 Defendant objects to the request to the extent that it seeks communications that are
27 protected by the attorney work product doctrine or the attorney-client privilege.

28 ///

REQUEST FOR PRODUCTION NO. 26:

Any all 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:

Defendant directs Plaintiff to Defendant's Response to Plaintiff's Interrogatory No. 8. Defendant objects to this Request as overly broad, unduly burdensome, and seeking irrelevant information because it is not limited to a reasonable or relevant time frame and is not limited to a particular component or the subject Walk-In Bathtub at issue in this case. Therefore, Defendant's response is limited to the design components at issue prior to the subject incident. The Request seeks confidential and proprietary documents which will not be disclosed or produced without a protective order.

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.

REQUEST FOR PRODUCTION NO. 28:

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

///

RESPONSE:

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 ease of use features of the Jacuzzi® Walk-In Bathtub.

REQUEST FOR PRODUCTION NO. 29:

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

RESPONSE:

Defendant is unaware of any specific sales materials provided to "overweight folks." Jacuzzi did not produce marketing materials related to this tub.

Defendant objects to the use of the phrase "sales material provided to overweight folks" because it implies that Jacuzzi knows the weight or identity of individual people or population groups that received specific materials. Therefore, Defendant limits its Response to sales material concerning the safety features of the Jacuzzi® Walk-In Bathtub.

REQUEST FOR PRODUCTION NO. 30:

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

RESPONSE:

Defendant is unaware of any specific sales materials provided to "overweight folks." Jacuzzi did not produce marketing materials related to this tub.

Defendant objects to the use of the phrase "sales material provided to overweight folks (over the age of 55)" because it implies that Jacuzzi knows the weight or identity of individual people or population groups that received specific materials. Therefore, Defendant limits its

Response to sales material concerning the ease of use features of the Jacuzzi® Walk-In Bathtub.

REQUEST FOR PRODUCTION NO. 31:

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

RESPONSE:

Defendant is unaware of any specific sales materials provided to "folks with mobility issues." Jacuzzi did not produce marketing materials related to this tub.

Defendant objects to the use of the phrase "sales material provided to folks with mobility issues" because it implies that Jacuzzi knows the specific mobility issues of individual people or population groups that received specific materials. Therefore, Defendant limits its Response to sales material concerning the safety features of the Jacuzzi® Walk-In Bathtub.

REQUEST FOR PRODUCTION NO. 32:

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

RESPONSE:

Defendant is unaware of any specific sales materials provided to "folks with mobility issues." Jacuzzi did not produce marketing materials related to this tub.

Defendant objects to the use of the phrase "sales material provided to folks with mobility issues" because it implies that Jacuzzi knows the specific mobility issues of individual people or population groups that received specific materials. Therefore, Defendant limits its response to sales material concerning the ease of use features of the Jacuzzi® Walk-In Bathtub.

REQUEST FOR PRODUCTION NO. 33:

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

RESPONSE:

Upon entry of an appropriate protective order, Defendant will produce the following:

///

Drawing LW19000_Shell FS5229 RH Walk In	JACUZZI001349
Drawing LW32827_Grab Bar Assembly	JACUZZI001350
Drawing LW47000RevD_SHL T&D FS 5229 RH SLN	JACUZZI001351-1352
Drawing LW48000RevB_SHL Bond FS 5229 RH	JACUZZI001353-1354
Drawing LX27000_Two Pt Quarter Turn Door Latch	JACUZZI001361-1368
Drawing LX62000_Door Assembly	JACUZZI001369
Drawing LX82000_Skirt Access Panel	JACUZZI001370
Drawing LX91827A_Handle_Sub	JACUZZI001371

Defendant objects to this Request as overbroad because it seeks documents that are unrelated and not relevant to the subject incident and claims. Accordingly, Defendant's response is limited to materials relevant to the design components it believes are at issue in this case. The Request seeks confidential and proprietary documents which will not be disclosed or produced without a protective order.

REQUEST FOR PRODUCTION NO. 34:

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

RESPONSE:

Defendant does not have any responsive documents.

Jacuzzi objects to the Request to the extent it is not limited in time or scope. Accordingly, it has limited its response to any responsive documents from prior to February 27, 2014. Defendant objects to this Request as overly broad, unduly burdensome, and seeking irrelevant information because it is not limited to a reasonable or relevant time frame and is not limited to the subject Walk-In Bathtub at issue in this case. Therefore, Defendant's response is limited to

the design components of the subject Jacuzzi® Walk-In Bathtub at issue prior to the subject incident. The Request seeks confidential and proprietary documents which will not be disclosed or produced without a protective order.

REQUEST FOR PRODUCTION NO. 35:

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

RESPONSE:

Defendant did not market the subject tub. However, the safety claim regarding the increased safety of the subject Jacuzzi® Walk-In Bathtub is that it is safer to step directly into a bathtub than to over a higher threshold and into a bathtub. Likewise, being able to sit on a seat in the tub is safer than having to sit on the floor of the tub. These claims are supported by common sense. Further, Defendant directs Plaintiff to the Response to Plaintiff's Interrogatory No. 8. Defendant will supplement this response consistent with its obligation under NRCP 26(e).

Jacuzzi objects to the Request to the extent it is not limited in time or scope. Defendant objects to this Request as overly broad, unduly burdensome, and seeking irrelevant information because it is not limited to a reasonable or relevant time frame and is not limited to claims related to the vague defect claims Plaintiffs have asserted in this case, which have changed over time. The Request seeks confidential and proprietary documents which will not be disclosed or produced without a protective order.

REQUEST FOR PRODUCTION NO. 36:

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

RESPONSE:

Defendant did not market the subject tub. However, the safety claim regarding the increased safety of the subject Jacuzzi® Walk-In Bathtub is that it is easier to step directly into a bathtub than to step over a higher threshold and into a bathtub. Similarly, it is easier to sit on a seat in the tub than on the floor of a tub. These claims are supported by common sense. Further, Defendant directs Plaintiff to the Response to Plaintiff's Interrogatory No. 8. Defendant will

1 supplement this response consistent with its obligation under NRCP 26(e).

2 Jacuzzi objects to the Request to the extent it is not limited in time or scope. Defendant
3 objects to this Request as overly broad, unduly burdensome, and seeking irrelevant information
4 because it is not limited to a reasonable or relevant time frame and is not limited to claims related
5 to the vague defect claims Plaintiffs have asserted in this case, which have changed over time.
6 The Request seeks confidential and proprietary documents which will not be disclosed or
7 produced without a protective order.

8 **REQUEST FOR PRODUCTION NO. 37:**

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

11 **RESPONSE:**

12 Defendant directs Plaintiff to Defendant's Response to Plaintiff's Request for Production
13 No. 33.

14 Jacuzzi objects to the Request to the extent it is not limited in time or scope. Accordingly
15 it has limited its response to any responsive documents from prior to February 27, 2014
16 Defendant objects to this Request as overly broad, unduly burdensome, and seeking irrelevant
17 information because it is not limited to a reasonable or relevant time frame and is not limited to
18 claims related to the vague defect claims Plaintiffs have asserted in this case, which have changed
19 over time. The Request seeks confidential and proprietary documents which will not be disclosed
20 or produced without a protective order.

21 **REQUEST FOR PRODUCTION NO. 38:**

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

24 **RESPONSE:**

25 Defendant has no responsive documents related to injury claims substantially similar to
26 the vague defect claims that have been presented by Plaintiffs in this action, which have changed
27 over time, involving the subject Jacuzzi® Walk-In Bathtub, other than those produced by
28 Plaintiffs and their attorney.

Defendant objects to this Interrogatory as overbroad and unduly burdensome, as it requests documents related to any claimant who claimed injury or death in all Jacuzzi tubs, and is not limited in scope to the subject Walk-In Bathtub or Plaintiff's allegations. The Request seeks documents that if they existed would be protected from disclosure by the right of privacy of third parties. Therefore, Defendant limits its response to claims that are substantially similar to the allegations in this case and involve the subject Jacuzzi® Walk-In Bathtub.

REQUEST FOR PRODUCTION NO. 39:

Please produce any and all documentation in support of the safety statistics pertaining to falls; that are used in any marketing materials (whether those materials be written, oral, video or otherwise) that are distributed by Jacuzzi.

RESPONSE:

Jacuzzi did not create or distribute marketing materials for this tub.

Jacuzzi objects to the Request to the extent it is not limited in time or scope. Defendant objects to this Request as overly broad, unduly burdensome, and seeking irrelevant information because it is not limited to a reasonable or relevant time frame and is not limited to claims related to the vague defect claims Plaintiffs have asserted in this case, which have changed over time. The Request seeks confidential and proprietary documents which will not be disclosed or produced without a protective order.

REQUEST FOR PRODUCTION NO. 40:

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

RESPONSE:

Defendant did not make the claim that "bathing, for seniors is one of the most common causes of injury." To the extent that the Request relates to the video referenced in Request Nos. 43 and 45, this video was not created by or for Defendant.

Jacuzzi objects to the Request to the extent it is not limited in time or scope. Defendant objects to this Request as overly broad, unduly burdensome, and seeking irrelevant information because it is not limited to a reasonable or relevant time frame and is not limited to claims related

1 to the vague defect claims Plaintiffs have asserted in this case, which have changed over time.
2 The Request seeks confidential and proprietary documents which will not be disclosed or
3 produced without a protective order.

4 **REQUEST FOR PRODUCTION NO. 41:**

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

7 **RESPONSE:**

8 Defendant did not make the claim that “for many, [bathing] can create anxiety rather than
9 be an enjoyable experience.” To the extent that the Request relates to the video referenced in
10 Request Nos. 43 and 45, this video was not created by or for Defendant.

11 Jacuzzi objects to the Request to the extent it is not limited in time or scope. Defendant
12 objects to this Request as overly broad, unduly burdensome, and seeking irrelevant information
13 because it is not limited to a reasonable or relevant time frame and is not limited to claims related
14 to the vague defect claims Plaintiffs have asserted in this case, which have changed over time.
15 The Request seeks confidential and proprietary documents which will not be disclosed or
16 produced without a protective order.

17 **REQUEST FOR PRODUCTION NO. 42:**

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

20 **RESPONSE:**

21 Defendant did not make the claim that “for many, [bathing] can create anxiety rather than
22 be an enjoyable experience.” To the extent that the Request relates to the video referenced in
23 Request Nos. 43 and 45, this video was not created by or for Defendant.

24 Jacuzzi objects to the Request to the extent it is not limited in time or scope. Defendant
25 objects to this Request as overly broad, unduly burdensome, and seeking irrelevant information
26 because it is not limited to a reasonable or relevant time frame and is not limited to claims related
27 to the vague defect claims Plaintiffs have asserted in this case, which have changed over time.
28 The Request seeks confidential and proprietary documents which will not be disclosed or

1 produced without a protective order.

2 **REQUEST FOR PRODUCTION NO. 43:**

3 For YouTube Marketing video: <https://www.youtube.com/watch?v=kTsrCTwOrAk>

4 Please produce the building codes, association criteria and product safety and performance
5 standards that Jacuzzi claims to exceed as mentioned in the video.

6 **RESPONSE:**

7 Defendant did not create nor endorse the referenced video.

8 The Request is vague, ambiguous and unintelligible as phrased, and fails to specify any
9 claim for which responsive documents are requested.

10 **REQUEST FOR PRODUCTION NO. 44:**

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

14 **RESPONSE:**

15 Defendant has no responsive non-privileged documents.

16 Defendant objects to the Request as it seeks documentation prepared in anticipation of or
17 during litigation and is subject to the attorney work product doctrine and attorney client privilege.
18 The Request also seeks documents that are not relevant to the claims in the subject action.

19 **REQUEST FOR PRODUCTION NO. 45:**

20 For YouTube Marketing video: <https://www.youtube.com/watch?v=kTsrCTwOrAk>

21 Please produce the documentation supporting Jacuzzi's claim that its tubs provide therapeutic
22 benefit and pain relief for ailments such as: muscle cramps, diabetes, circulatory disease,
23 arthritis, osteoarthritis, & back pain.

24 **RESPONSE:**

25 Defendant did not create the referenced video.

26 Jacuzzi objects to the Request to the extent it is not limited in time or scope. Defendant
27 objects to this Request as overly broad, unduly burdensome, and seeking irrelevant information
28 because it is not limited to a reasonable or relevant time frame and is not limited to claims related

to the vague defect claims Plaintiffs have asserted in this case, which have changed over time, or the injury claims that have been asserted.

REQUEST FOR PRODUCTION NO. 46:

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

RESPONSE:

Defendant has no responsive documents.

Jacuzzi objects to the Request to the extent it is not limited in time or scope. Defendant objects to this Request as overly broad, unduly burdensome, and seeking irrelevant information because it is not limited to a reasonable or relevant time frame and is not limited to claims related to the vague defect claims Plaintiffs have asserted in this case, which have changed over time, or the injury claims that have been asserted.

REQUEST FOR PRODUCTION NO. 47:

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

RESPONSE:

Defendant has no responsive documents.

Jacuzzi objects to the Request to the extent it is not limited in time or scope. Defendant objects to this Request as overly broad, unduly burdensome, and seeking irrelevant information because it is not limited to a reasonable or relevant time frame and is not limited to claims related to the vague defect claims Plaintiffs have asserted in this case, which have changed over time, or the injury claims that have been asserted.

REQUEST FOR PRODUCTION NO. 48:

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

RESPONSE:

Defendant has no responsive documents.

Jacuzzi objects to the Request to the extent it is not limited in time or scope. Defendant objects to this Request as overly broad, unduly burdensome, and seeking irrelevant information because it is not limited to a reasonable or relevant time frame and is not limited to claims related to the vague defect claims Plaintiffs have asserted in this case, which have changed over time, or

1 the injury claims that have been asserted.

2 **REQUEST FOR PRODUCTION NO. 49:**

3 Please produce all documentation regarding the dangers associated with bathing Jacuzzi
4 had in its possession on or prior to February 27, 2014.

5 **RESPONSE:**

6 The dangers associated with bathing are commonly known. Drowning and falling are
7 risks commonly associated with bathing. Plaintiff's Request is unclear as to what documentation
8 for these risks it is seeking.

9 Jacuzzi objects to the Request to the extent it is not limited in time or scope. Defendant
10 objects to this Request as overly broad, unduly burdensome, and seeking irrelevant information
11 because it is not limited to a reasonable or relevant time frame and is not limited to claims related
12 to the vague defect claims Plaintiffs have asserted in this case, which have changed over time.

13 DATED this 19th day of June, 2017.

14 SNELL & WILMER L.L.P.

15 By: Joshua D. Cools

16 Vaughn A. Crawford
17 Nevada Bar No. 7665
18 Joshua D. Cools
19 Nevada Bar No. 11941
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23 JACUZZI INC. doing business
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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 this date, I caused to be served a true and correct copy of the foregoing **DEFENDANT/CROSS-DEFENDANT JACUZZI INC.'S RESPONSE TO PLAINTIFF DEBORAH TAMANTINI'S FIRST SET OF REQUEST FOR PRODUCTION OF DOCUMENTS** by the method indicated below, addressed to the following:

XXXXX Odyssey E-File & Serve

Benjamin P. Cloward, NV Bar No. 11087
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801 S. Fourth Street
Las Vegas, NV 89101
Telephone: (702) 444-4444
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Attorneys for Third-Party Defendant
THE CHICAGO FAUCET COMPANY

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Attorneys for Defendants/Cross-
Defendants/Cross-Claimants
WILLIAM BUDD, individually and as
BUDDS PLUMBING

Michael E. Stoberski, NV Bar No. 4762
Daniela Labounty, NV Bar No. 13169
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ANGULO & STOBERSKI
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Third Party Plaintiff
HOMECLICK, LLC

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BESTWAY BUILDING
& REMODELING, INC.

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3883 Howard Hughes Parkway, Suite 1100
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702.784.5200

000517

1 Christopher J. Curtis, NV Bar No. 4098
 2 Meghan M. Goodwin, NV Bar No. 11974
 3 THORNDAL, ARMSTRONG, DELK
 4 BALKENBUSH & EISINGER
 5 1100 East Bridger Avenue
 6 Las Vegas, NV 89101-5315
 7 Mail to: P.O. Box 2070
 8 Las Vegas, NV 89125-2070
 9 Telephone: (702) 366-0622
 10 Facsimile: (702) 366-0327
 11 Email: cjc@thorndal.com
 12 Email: mmg@thorndal.com
 13 Attorneys for Defendants/Cross-Defendants
 14 FIRST STREET FOR BOOMERS &
 15 BEYOND, INC. AND AITHR DEALER,
 16 INC.

17 DATED this 19th day of June, 2017.

18 
 19 An Employee of Snell & Wilmer L.L.P.

20 4821-7665-4663.4

Snell & Wilmer

LLP
 LAW OFFICES
 3883 Howard Hughes Parkway, Suite 1100
 Las Vegas, Nevada 89169
 702.784.3100

000518

EXHIBIT 4

Vaughn A. Crawford, Nevada Bar No. 7665
 Joshua D. Cools, Nevada Bar No. 11941
 Alexandria L. Layton, Nevada Bar No. 14228
 SNELL & WILMER L.L.P.
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*Attorneys for Defendant/Cross-Defendant
 Jacuzzi Inc. doing business as Jacuzzi Luxury Bath*

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; HOMELICK,
 LLC; JACUZZI INC., doing business as
 JACUZZI LUXURY BATH; BESTWAY
 BUILDING & REMODELING, INC.;
 WILLIAM BUDD, individually and as
 BUDDS PLUMBING; DOES 1 through 20;
 ROE CORPORATIONS 1 through 20; DOE
 EMPLOYEES 1 through 20; DOE
 MANUFACTURERS 1 through 20; DOE
 INSTALLERS 1 through 20; DOE
 CONTRACTORS 1 through 20; and DOE 21
 SUBCONTRACTORS 1 through 20, inclusive,

Defendants.

AND ALL RELATED CLAIMS.

Case No.: A-16-731244-C

Dept. No.: II

DECLARATION OF JOSHUA COOLS IN SUPPORT OF OPPOSITION TO PLAINTIFFS' MOTION TO STRIKE

1 I, JOSHUA D. COOLS, declare and state as follows:

2 1. I am an attorney with the law firm of Snell & Wilmer, L.L.P., counsel of record for
3 Defendant Jacuzzi Inc. dba Jacuzzi Luxury Bath in the above-entitled action. I have personal
4 knowledge of the matters stated in this declaration.

5 2. I make this declaration in support of Jacuzzi's Opposition to Plaintiffs' Motion for
6 Sanctions.

7 3. Throughout the pendency of this litigation, Jacuzzi has repeatedly told Plaintiffs
8 that it is aware of no prior personal injury incidents involving the subject bathtub. This includes
9 conversations with Plaintiffs' counsel, as well as written discovery requests on June 19, 2017 and
10 December 8, 2017.

11 4. In response to additional discovery requests and deposition topics included in
12 Plaintiffs' 30(b)(6) deposition notice of Jacuzzi's corporate representatives, Jacuzzi agreed to
13 search its records for other prior claims and even expand the scope of its search to include other
14 dissimilar walk-in bathtubs.

15 5. Specifically, Jacuzzi agreed to search for documents using a list of 20 search terms
16 provided by Plaintiffs. The list of search terms was:

- 17 a. Fall
- 18 b. Slip
- 19 c. Elderly
- 20 d. Overweight
- 21 e. Entering
- 22 f. Exiting
- 23 g. Door
- 24 h. Stability
- 25 i. Stable body position
- 26 j. Water controls
- 27 k. Seat
- 28 l. Hand holds

- m. Hand grips
- n. Grab rails
- o. Grab bars
- p. Grip bar
- q. Design
- r. Incident
- s. Testing
- t. Audit

6. Jacuzzi used these terms to search its records, including documents electronically retained by our customer service and warranty departments.

7. Jacuzzi's information technology, customer service, warranty, and legal departments helped perform these searches.

8. Due to the many vague search terms, the search produced thousands of results, but none of which were relevant to this case.

9. Many of the documents and incidents reviewed involved warranty claims for a bathtub. For example, many of the complaints involved warranty claims for improper installation or leaks.

10. The documents were reviewed by Jacuzzi's in-house counsel with my assistance.

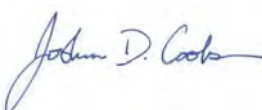
11. There were no similar incidents involving personal injury claims pertaining to a walk-in bathtub prior to Decedent, Sherry Lynn Cunnison's incident.

12. On April 23, 2018, I sent Plaintiffs' counsel, Ben Cloward, a letter informing him of Jacuzzi's search and its results.

13. These searches, analysis, and review were conducted in good faith and there was no attempt to wrongfully withhold any documents.

14. I declare under penalty of perjury that the foregoing is true and correct.

DATED: July 12, 2018.

By: 
Joshua D. Cools

4828-0936-1261

EXHIBIT 5

000523

000523

Snell & Wilmer

L.L.P.
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DENVER
LAS VEGAS
LOS ANGELES
LOS CABOS
ORANGE COUNTY
PHOENIX
RENO
SALT LAKE CITY
TUCSON

April 23, 2018

Via Email

Benjamin@RichardHarrisLaw.com

Benjamin P. Cloward, Esq.
RICHARD HARRIS LAW FIRM
801 S. Fourth Street
Las Vegas, NV 89101

Re: Cunnison, et al. v. Jacuzzi Luxury Bath, et al., Case No. A-16-731244-C

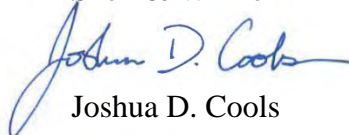
Dear Mr. Cloward:

This letter addresses Jacuzzi Luxury Bath's search for prior incidents related to the claims asserted in this case, in light of Plaintiffs' expanded design criticisms in this case. As agreed, Jacuzzi has performed a search for prior incidents, using the search terms you proposed. As part of this search, the company looked not only for incidents involving the Jacuzzi® 5229 Walk-In Bathtub, but also other Jacuzzi® walk-in bathtub models that have different designs, dimensions and characteristics. While Jacuzzi does not concede that other models of bathtubs with different design characteristics are similar to the subject bathtub, and objects to any claim of relevance or admissibility regarding other designs, these other models were part of the search to avoid any dispute on the issue at this time. The search is now complete and no responsive documents were discovered.

Please contact me with any questions.

Best regards,

Snell & Wilmer



Joshua D. Cools

JDC:tcs
4847-0944-8803.1

EXHIBIT 6

000525

000525

1 **NTC**
2 BENJAMIN P. CLOWARD, ESQ.
3 Nevada Bar No. 11087
4 **RICHARD HARRIS LAW FIRM**
5 801 South Fourth Street
6 Las Vegas, Nevada 89101
7 Phone: (702) 444-4444
8 Fax: (702) 444-4455
9 E-Mail: Benjamin@RichardHarrisLaw.com
10 *Attorneys for Plaintiffs*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 ROBERT ANSARA, as Special
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 LUXURY
27 BATH, doing business as JACUZZI INC;
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

Defendants.

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

**FIFTH AMENDED NOTICE TO
TAKE VIDEOTAPED
DEPOSITION(S) OF 30(b)(6) FOR
JACUZZI**

**Date of Deposition : 05/24/18
Time of Deposition: 10:00 a.m**



**FIFTH AMENDED NOTICE TO TAKE VIDEOTAPED DEPOSITION(S) OF
30(b)(6) FOR JACUZZI**

TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD:

PLEASE TAKE NOTICE that on May 24, 2018 at 10:00 a.m., Plaintiff will take the videotaped deposition of the Person Most Knowledgeable for Defendant, JACUZZI LUXURY BATH, doing business as JACUZZI INC (hereinafter known as Defendant or Jacuzzi) at the Snell & Wilmer, located at 600 Anton Boulevard #1400, Costa Mesa, California 92626, pursuant to Rules 26 and 30(b)(6) of the Rules of Civil Procedure, upon oral examination, before a Notary Public, or before some other officer authorized by law to administer oaths.

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

**ITEMS TO BE PRODUCED – AND SUBJECTS TO BE COVERED – See Exhibit
A, attached hereto.**

DATED this 20th day of April, 2018.

RICHARD HARRIS LAW FIRM

By: /s/ Benjamin P. Cloward
BENJAMIN P. CLOWARD, ESQ.
Nevada Bar No. 11087
801 South Fourth Street
Las Vegas, Nevada 89101
Attorney for Plaintiff(s)

CERTIFICATE OF SERVICE

Pursuant to Nevada Rule of Civil Procedure 5(b), I hereby certify that I am an employee of THE RICHARD HARRIS LAW FIRM and that on the 20th day of April, 2018, I caused the foregoing **THIRD AMENDED NOTICE TO TAKE VIDEOTAPED DEPOSITION(S) OF 30(b)(6) FOR JACUZZI** to be served as follows:

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

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& STOBERSKI
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Third-Party Plaintiff
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Cross-Claimant
BESTWAY BUILDING & REMODELING,
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Meghan M. Goodwin, Esq.
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Las Vegas, NV 89101
*Attorneys for Defendants/CrossDefendants
FIRSTSTREET FOR
BOOMERS & BEYOND, INC. and
AITHR DEALER, INC.*

/s/ Nicole M. Griffin

An employee of RICHARD HARRIS LAW FIRM

EXHIBIT A

1. Items on which examination is sought. PLEASE TAKE NOTICE that the video-taped oral deposition of Defendant(s) will be taken through the person or persons designated by Defendant(s) to testify concerning matters shown on the attached list of items on which examination is sought. You are notified that the party giving this notice wishes to examine the witness or witnesses so designated by Defendant(s) on the matters shown on the attached list of items on which examination is sought.
2. Items to be brought to the deposition. You are further notified that the person or persons designated by Defendant(s) are to bring with them the items in the attached list of items to be brought to the deposition.
3. Time and place. The deposition will be taken at the Snell & Wilmer, located at 600 Anton Boulevard #1400, Costa Mesa, California 92626 at the time and date listed in the notice.
4. Your designation of persons. Pursuant to NRCP 30(b)(6) Defendant(s) is/are hereby notified to designate the person or persons to testify on behalf of the deponent organization. Defendant(s) is/are further notified that the witness or witnesses so designated by them must be prepared to testify to matters known or reasonably available to Defendant(s). The designation should be served on the undersigned deposing attorney on a reasonable date before the date of the deposition. If Defendant'(s)' organization so desires, Defendant(s) may designate the separate matters on which each person designated by Defendant(s) will testify. To expedite the questioning of witnesses by their separate subject matters, the designation:
 - (A) should be by name and job title or other description and specify the separate matters on which each will testify; and
 - (B) should be served on the undersigned deposing attorney on a reasonable date before the date of the deposition.
5. Defendant(s), not individuals, being deposed. Pursuant to the provision of NRCP 30(b)(6) the rules of civil procedure, is/are on notice that it is Defendant(s) being deposed, not individual officers, employees or agents of Defendant(s). Therefore, Defendant(s) has/have a duty to prepare their designated witness or witnesses to testify on not only the information personally known by their designated witness, but also on all the information known by Defendant(s) through its officers, employees, and agents. The designated witness should be able to answer with reasonable particularity, everything Defendant(s) knows/know on the Matters on Which Examination is sought, unlimited by how little the designed witness or other individual officer, employees, and agents personally know.
6. Duty mandated by rules. Pursuant to NRCP 30(b)(6) Defendant(s) is/are on notice that Defendant(s) must search for, and inform itself, of all matters known or reasonably

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

LIST OF ITEMS THE ORGANIZATION IS TO BRING TO ITS DEPOSITION

The following list does not require attorney/client privileged matter to be produced, and each item should be understood to include the phrase "except for attorney/client privileged matter."

Defendant(s) IS/ARE REQUIRED TO BRING TO THE DEPOSITION:

1. Any written policies or Defendant'(s)' regulations or procedures, *that have not yet already been produced*, and *which were in place before the incident at issue*, that were intended to guard against or prevent the type of incident which is the subject matter of this lawsuit, i.e. *preventing* an individual *from falling inside of* a Jacuzzi walk in tub or *instructing how an individual should extricate themselves after falling inside of a Jacuzzi walk in tub*.
2. Any written policies or Defendant'(s)' regulations or procedures, *that have not yet already been produced*, and *which were in place after the incident at issue*, that were intended to guard against or prevent the type of incident which is the subject matter of this lawsuit, i.e. *preventing* an individual *from falling inside of* a Jacuzzi walk in tub or *instructing how an individual should extricate themselves after falling inside of a Jacuzzi walk in tub*.
3. Any documents, electronically stored information (ESI) or tangible items created by Defendant(s) as a result of the incident, and documents, electronically stored information (ESI), known to Defendant that were created by Defendant(s) or any of the witnesses (both those being offered for the deposition of Defendant(s), and also those being deposed as an individual witness on the date of this deposition of Defendant(s) in which any witness being deposed on this date describes any events the witness observed at the scene of the incident, *or describe accounts of the event involving Plaintiff that were created after Defendant became aware of either the personal injury or death of the Plaintiff in this case, that have not yet already been produced*. This includes, among other things, any incident reports, notes, or other memoranda made by the *persons knowledgeable of this incident* or by others, *that have not yet already been produced*. This shall include documents created after the incident as a result of the defect alleged in Plaintiff's Complaint, or Amendments thereto, *that have not yet already been produced*. *This request seeks internal reports, emails or correspondence among employees, agents or contractors of Defendant that were generated as a result of this incident*.
4. Any documents, electronically stored information (ESI) or tangible items created by, or in the possession of either Defendant(s) or any of the witnesses being offered for this deposition of Defendant(s), and also those being deposed as an individual witness on the

date of this noticed deposition of Defendant(s) --- which either the witness being deposed or Defendant(s) believes might refresh the memory of the Rule 30(b)(6) designee(s) being deposed on the date of this deposition, ***that have not yet already been produced.*** (Please note this is intended to obtain documents that the Rule 30(b)(6) designee(s) may reference in their deposition to aid in the testimony process.) This shall include documents related to the incident alleged in Plaintiff's Complaint or Amendments thereto, including but not limited to safety manuals, incident reports, witness statements and any other document that was create as a result of the incident, or had to do with safety in relation to prevention of the incident, and such documents that have been produced thus far by Defendant(s) that the Rule 30(b)(6) designee(s) may rely upon in providing their testimony, ***that have not yet already been produced.***

Note: because this is a deposition of the corporation, we expect the corporation to specifically inquire of personnel, ***employees, experts or agents who inspected the subject Jacuzzi tub prior to litigation commencing to ascertain*** whether they took photographs on their digital telephones or other personal digital devices, if the items have not yet already been produced.

5. All safety manuals of Defendant(s) with any warnings or instructions for the product used by Plaintiff, ***if the items have not yet already been produced.*** To include manuals dealing with safety related the use of the Jacuzzi tub.

6. All safety materials or instructions claimed by Defendant(s) to have been given or shown to the Plaintiff, if the items have not yet already been produced.

7. All daily logs and reports, ***or documents*** created as a result of ***becoming aware of the incident whether the information was supplied by Plaintiff's representatives or any other source of information.***

8. ***Withdrawn as duplicative of Number 7.***

9. All incident reports and investigation reports prepared before this lawsuit was started with respect to falls ***by anyone using any*** Jacuzzi walk-in tub ***model*** whether ***the model is*** similar to the model used by Plaintiff or not.

Note: This seeks any incident reports for falls occurring either while using or while entering or exiting any of the Jacuzzi products, whether they be the walk-in style or not.

10. All non-privileged e-mails, which contain references to the incident, premises, products, contractors, or actions of persons involved in the events which are the subject matter of the lawsuit and which are:

(A) to or from the witnesses being deposed on the date of this deposition, whether or not as designated witnesses for this deposition,

(B) to or from those of Jacuzzi's officers, employees, and agents who ***inspected the premises at any point after the incident,*** or the supervisor of such persons, and

(C) or to or from Defendant'(s)' safety personnel, premises maintenance personnel, or the insurers of Defendant(s), if the items have not yet already been produced.

LIST OF TOPICS ON WHICH EXAMINATION IS SOUGHT

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

EXAMINATION WILL BE SOUGHT ON THE FOLLOWING SUBJECTS

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

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

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

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

3. Incident reports of the incident.
4. On the date of the incident and to the date of the deposition: who was the person in charge of safety of persons purchasing Jacuzzi products, what he/she did and learned on the day of the injury, and facts that he/she has subsequently learned regarding the incident and injury of Plaintiff.
5. The incident ***as further defined as the Plaintiff slipping off of the seat and falling into the bottom of the Jacuzzi walk in tub and being unable to get out of the tub afterwards*** and its causes, including Defendant'(s)' position on what caused the incident, and the facts supporting that position.

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

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

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

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

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

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

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

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

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

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

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

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

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

GENERAL TESTIMONY

13. The authenticity, existence and completeness of all documents produced in response to Plaintiff's discovery requests in this case.
14. Any and all document/record retention policies ***regarding preservation of incidents involving the personal injury or death of an end user of any of Jacuzzi's products whether they be the walk in model or not.***
15. The name, address (home and work) and phone numbers (home and work) for all custodians of the documents produced in response to Plaintiff's discovery requests in this case.
16. Defendant's responses to Plaintiff's interrogatories in this case.
17. The factual basis for all denials to the allegations raised in Plaintiff's Complaint.
- 18. *Withdrawn as duplicative of Topic 12.***
19. All insurance agreements (including self-insurance fund or risk pool fund) that exist under the terms of which the person or company issuing the same may be called upon to satisfy all or part of any judgment against you which may be entered in favor of the Plaintiff in this action.
20. The nature of all responsive documents, communications, or things that have been withheld, in response to discovery in this case and this Notice, on the grounds of privilege or protection, including:
- (a) A description of any documents;
 - (b) The author of any documents and his or her address (home and work) and phone number (home and work);

- 1 (c) The identity of the custodian of any documents and things and his or her address
2 (home and work) and phone number (home and work);
- 3 (d) The date the document was created and the person(s) to whom the document or
4 copies were transmitted; and,
- 5 (e) A summary of the contents of each document, communication or thing.

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

9 **SALES AND MARKETING TESTIMONY GENERAL**

- 10 21. Testimony regarding the policies and procedures used by Jacuzzi to advertise and sell
11 Jacuzzi walk in tubs.
- 12 22. Jacuzzi, Inc.'s, sales department, generally, concerning the advertising, marketing, sale
13 and post-sale matters concerning the identification of the consumers that would likely
14 use Jacuzzi's walk in tubs.
- 15 23. Jacuzzi, Inc.'s, sales department, generally, concerning the advertising, marketing, sale
16 and post-sale matters concerning the subject Jacuzzi design of walk in tubs.
- 17 24. Identification of all persons known to Defendant who trained, directed or supervised to
18 advise end users of the safety of Jacuzzi tubs.
- 19 25. Identification of all persons known to Defendant who trained, directed or supervised
20 individuals to design *the walk in tubs models manufactured by Jacuzzi including any
21 discussion, training or planning regarding the potential that an end user could
22 become unable to remove themselves from a tub after falling inside the tub while
23 either entering, using or exiting the tub.*

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

26 **SALE AND MARKETING WITH END USER TESTIMONY**

- 27 26. Any and/or all conversations with Sherry Lynn Cunnison, concerning the purchase of
28 the subject Jacuzzi, any subsequent use and maintenance on the subject Jacuzzi.
- 27 27. Any and/or all Sales and Marketing materials concerning the purpose and use of Jacuzzi
28 walk in tubs.
- a. Any policies and procedures of Defendant with regard to training or
education of consumers as to the safe use walk in tubs.
- b. The existence and location of plaintiff's discovery request.

**COMMUNICATION BETWEEN JACUZZI AND DEALERS, SELLERS AND
INSTALLERS TESTIMONY**

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

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

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

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

31. All contracts, agreements and/or other documents entered into and/or exchanged between Jacuzzi, Inc. First Street for Boomers & Beyond, Inc.; Aithr Dealer, Inc.; Bestway Building and Remodeling; William Budd; and/ or Budds Plumbing.

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

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

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

DESIGN OF TUB

35. Defendant Jacuzzi's policies, procedures and practices, concerning designs, modifications, alterations, for the subject Jacuzzi design of walk in tubs.
36. Identification of all of Defendant's officers, directors, employees or other personnel who participated or had any role in the planning of designs, modifications, alterations, for the subject Jacuzzi design of walk in tubs.
37. Identification of all of Defendant's officers, directors, employees or other personnel who participated or had any role the planning of designs, modifications, alterations, for the subject Jacuzzi design of walk in tubs.
38. Identification of all files and documents relating to the facts and circumstances of the safety of Jacuzzi walk in tub users.
39. Identification of all persons known to Defendant who trained, directed or supervised individuals to design walk in tubs *with regard to the potential that an end user could become unable to remove themselves from a tub after falling inside the tub while either entering, using or exiting the tub.*
40. The engineering and design of the Jacuzzi walk-in tub and its elements.
41. All systems designs *and* technical specifications *Defendants had in effect* for the design testing and manufacturing *of* the walk-in Jacuzzi tub *at issue or similar models.*
42. The organizational structure of any and all departments and individuals involved in design testing and manufacture of the Jacuzzi walk-in tubs. Any design failure models *Defendant had in effect and any* analysis for the Jacuzzi walk-in tub and components manufactured and/or designed by Jacuzzi.
43. Any design work orders, billed work orders, test work orders, engineer change request, engineering change orders related to the design and manufacture of the Jacuzzi walk-in tub.
44. Any and all cost benefit and/or value analysis regarding the design of the Jacuzzi walk-in tub and components.
45. The identification, location and contact information of persons with the most knowledge concerning the design, manufacture and/or changes to the design and manufacturing of the components of the Jacuzzi walk-in tub.
46. The identification, location and contact information of persons with the most knowledge concerning the retrofit recall, service and/or otherwise fix regarding any alleged defect in the design of the Jacuzzi walk-in tub.

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

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

OTHER SIMILAR INCIDENTS TESTIMONY

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

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

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

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

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

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

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

52. Testimony and documents regarding any lawsuits filed against Jacuzzi, Inc during the use of a Jacuzzi Walk in tub allegedly causing injury or death, including the county and state in which the action was brought or is pending, including the names of each party, the name of each party's attorney with their address and telephone number, the

1 disposition of each lawsuit and the date and place of the occurrence complained of in
2 each lawsuit, as well as a copy of each such complaint.

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

5
6 53. Testimony regarding the procedures used by Jacuzzi to collect, receive, record, respond,
7 and store customer complaints, lawsuits, and incident reports.
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EXHIBIT 7

000540

000540

Snell & Wilmer

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*Attorneys for Defendant/Cross-Defendant
Jacuzzi Inc. doing business as Jacuzzi Luxury Bath*

**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; HOMECCLICK,
LLC; JACUZZI INC., doing business as
JACUZZI LUXURY BATH; BESTWAY
BUILDING & REMODELING, INC.;
WILLIAM BUDD, individually and as
BUDDS PLUMBING; DOES 1 through 20;
ROE CORPORATIONS 1 through 20; DOE
EMPLOYEES 1 through 20; DOE
MANUFACTURERS 1 through 20; DOE 20
INSTALLERS 1 through 20; DOE
CONTRACTORS 1 through 20; and DOE 21
SUBCONTRACTORS 1 through 20, inclusive,

Defendants.

AND ALL RELATED CLAIMS.

Case No.: A-16-731244-C
Dept. No.: II

**DEFENDANT/CROSS-DEFENDANT
JACUZZI INC.'S OBJECTIONS TO
PLAINTIFFS' FIFTH AMENDED
NOTICE TO TAKE VIDEOTAPED
DEPOSITION(S) OF 30(b)(6) FOR
JACUZZI**

**Date of Deposition: May 24, 2018
Time of Deposition: 10:00 a.m.**

000541

PLEASE TAKE NOTICE that Defendant/Cross-Defendant Jacuzzi Inc. ("Jacuzzi") hereby provides the following responses and objections to Plaintiffs' Fifth Amended Notice to Take Videotaped Deposition(s) of 30(b)(6) for Jacuzzi, Pursuant to Rules 26 and 30(b)(6) of the Rules of Civil Procedure, scheduled for May 24, 2018 at 10:00 a.m. at the offices of Snell & Wilmer L.L.P., 600 Anton Boulevard, Suite 1400, Costa Mesa, California 92626.

OBJECTIONS AND RESPONSES TO CATEGORIES OF TESTIMONY

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

RESPONSE:

Jacuzzi incorporates by reference its objections and responses to each individual deposition topic sought by Plaintiffs, as set forth below. Jacuzzi expressly reserves the right to assert these or other objections at the time of the examination.

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

RESPONSE:

Jacuzzi objects to this paragraph to the extent that the materials sought by Plaintiffs are equally available to Plaintiffs as they are to Jacuzzi. Jacuzzi has already produced materials responsive to Plaintiffs' request as part of its disclosures and responses to Plaintiffs' requests for production. Jacuzzi incorporates by reference its objections and response to each individual category of items to be brought to the deposition, as set forth below.

1 **3. Time and place.** The deposition will be taken at the Snell & Wilmer, located at
 2 600 Anton Boulevard, #1400, Costa Mesa, California 92626 at the time and date listed on the
 3 notice.

4 **RESPONSE:**

5 Jacuzzi objects to the date and time of the deposition, as it has been agreed among counsel
 6 that the deposition will be taken at a later date, to be agreed upon by the parties.

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

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

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

19 **RESPONSE:**

20 Jacuzzi will designate witnesses in compliance with NRCP 30(b)(6) and subject to the
 21 responses and objections contained herein. Jacuzzi objects to Plaintiffs' request to the extent it
 22 seeks to change or add to the obligations required by Nevada's rules of civil procedure and case
 23 law.

24 **5. Defendant(s), not individuals, being deposed.** Pursuant to the provision of
 25 NRCP 30(b)(6) the rules of civil procedure, is/are on notice that it is Defendant(s) being deposed,
 26 not individual officers, employees or agents of Defendant(s). Therefore, Defendant(s) has/have a
 27 duty to prepare their designated witness or witnesses to testify on not only the information
 28 personally known by their designated witness, but also on all the information known by

Defendant(s) through its officers, employees, and agents. The designated witness should be able to answer with reasonable particularity, everything Defendant(s) knows/know on the Matters on Which Examination is sought, unlimited by how little the designed witness or other individual officer, employees, and agents personally know.

RESPONSE:

Jacuzzi will designate witnesses in compliance with NRCP 30(b)(6). Jacuzzi objects to Plaintiffs' request to the extent it seeks to change or add to the obligations required by Nevada's rules of civil procedure and case law.

6. Duty mandated by rules. Pursuant to NRCP 30(b)(6) Defendant(s) is/are on notice that Defendant(s) must search for, and inform itself, of all matters known or reasonably available, and who in Defendant'(s)' organization has the information. If no one single person has the information requested, Defendant(s) must produce at the deposition the number of witnesses needed to testify on all the matters requested in the list of items on which examination is sought.

RESPONSE:

Jacuzzi will designate witnesses in compliance with NRCP 30(b)(6). Jacuzzi objects to Plaintiffs' request to the extent it seeks to change or add to the obligations required by Nevada's rules of civil procedure and case law.

LIST OF ITEMS THE ORGANIZATION IS TO BRING TO ITS DEPOSITION

Category 1

Any written policies or Defendant'(s)' regulations or procedures, *that have not yet already been produced, and which were in place before the incident at issue*, that were intended to guard against or prevent the type of incident which is the subject matter of this lawsuit, i.e. *preventing* an individual *from falling inside of* a Jacuzzi walk in tub or *instructing how an individual should extricate themselves after falling inside of a Jacuzzi walk in tub*.

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RESPONSE:

After performing a diligent search, Jacuzzi has no additional documents responsive to this request. Responsive documents have already been produced and Jacuzzi incorporates by reference its responses to Plaintiffs' Requests for Production Nos. 6, 9, 10, and 11. Defendant further objects to this Request as overbroad to the extent that it refers to documents not relevant to this case or Plaintiffs' defect claims, and which are outside the scope of Rule 26(b) and NRCPC 30(b)(6).

Category 2

Any written policies or Defendant'(s)' regulations or procedures, that *have not yet already been produced*, and *which were in place after the incident at issue*, that were intended to guard against or prevent the type of incident which is the subject matter of this lawsuit, i.e. *preventing* an individual *from falling inside of* a Jacuzzi walk in tub or *instructing how an individual should extricate themselves after falling inside of a Jacuzzi walk in tub*.

RESPONSE:

After performing a diligent search, Jacuzzi has no additional documents responsive to this request. Responsive documents have already been produced and Jacuzzi incorporates by reference its responses to Plaintiffs' Requests for Production Nos. 6, 9, 10, and 11. Defendant further objects to this Request as overbroad to the extent that it refers to documents not relevant to this case or Plaintiffs' defect claims, and which are outside the scope of Rule 26(b) and NRCPC 30(b)(6).

Category 3

Any documents, electronically stored information (ESI) or tangible items created by Defendant(s) as a result of the incident, and documents, electronically stored information (ESI), known to Defendant that were created by Defendant(s) or any of the witnesses (both those being offered for the deposition of Defendant(s), and also those being deposed as an individual witness on the date of this deposition of Defendant(s) in which any witness being deposed on this date describes any events the witness observed at the scene of the incident, *or describe accounts of the event involving Plaintiff that were created after Defendant became aware of either the personal*

1 *injury or death of the Plaintiff in this case, that have not yet already been produced.* This
 2 includes, among other things, any incident reports, notes, or other memoranda made by the
 3 *persons knowledgeable of this incident* or by others, *that have not yet already been produced.*
 4 This shall include documents created after the incident as a result of the defect alleged in
 5 Plaintiff's Complaint, or Amendments thereto, *that have not yet already been produced.* This
 6 *request seeks internal reports, emails or correspondence among employees, agents or*
 7 *contractors of Defendant that were generated as a result of this incident.*

8 **RESPONSE:**

9 After performing a diligent search, Jacuzzi has no documents responsive to this request
 10 that are not subject to the attorney-client privilege or work product doctrine. A privilege log is
 11 being prepared and will be produced for all privileged documents, covering the time span of when
 12 Jacuzzi was made aware of the incident up until Plaintiff filed suit. Jacuzzi further objects to the
 13 request as confusing, compound, and, in part, non-sensical.

14 **Category 4**

15 Any documents, electronically stored information (ESI) or tangible items created by, or in
 16 the possession of either Defendant(s) or any of the witnesses being offered for this deposition of
 17 Defendant(s), and also those being deposed as an individual witness on the date of this noticed
 18 deposition of Defendant(s) --- which either the witness being deposed or Defendant(s) believes
 19 might refresh the memory of the Rule 30(b)(6) designee(s) being deposed on the date of this
 20 deposition, *that have not yet already been produced.* (Please note this is intended to obtain
 21 documents that the Rule 30(b)(6) designee(s) may reference in their deposition to aid in the
 22 testimony process.) This shall include documents related to the incident alleged in Plaintiff's
 23 Complaint or Amendments thereto, including but not limited to safety manuals, incident reports,
 24 witness statements and any other document that was create as a result of the incident, or had to do
 25 with safety in relation to prevention of the incident, and such documents that have been produced
 26 thus far by Defendant(s) that the Rule 30(b)(6) designee(s) may rely upon in providing their
 27 testimony, *that have not yet already been produced.*
 28

Note: Because this is a deposition of the corporation, we expect the corporation to specifically inquire of personnel, employees, experts or agents who inspected the subject Jacuzzi tub prior to litigation commencing to ascertain whether they took photographs on their digital telephones or other personal digital devices, if the items have not yet already been produced.

RESPONSE:

Jacuzzi will perform a diligent search for any non-privileged responsive documents. Jacuzzi objects to this category, to the extent it is seeking materials that are subject to the attorney client privilege and/or attorney work product doctrine and refers Plaintiffs to Jacuzzi's privilege log, pending production.

Jacuzzi further objects to Plaintiffs' "Note" because it seeks documents that are subject to the work product doctrine and attorney client privilege. The inspection was done at the direction and under the supervisions of Jacuzzi's in-house and outside counsel. Further, the inspection was done for product identification in anticipation of litigation when Plaintiffs' indicated they were going to destroy evidence in this case and gave Jacuzzi 60 days to inspect the property.

Category 5

All safety manuals of Defendant(s) with any warnings or instructions for the product used by Plaintiff, *if the items have not yet already been produced*. To include manuals dealing with safety related the use of the Jacuzzi tub.

RESPONSE:

After performing a diligent search, Jacuzzi has no documents responsive to this request. Responsive documents have either already been produced or Jacuzzi has agreed to produce them upon entry of an appropriate protective order, and Jacuzzi incorporates by reference its responses to Plaintiffs' Requests for Production Nos. 6, 9, and 11.

Category 6

All safety materials or instructions claimed by Defendant(s) to have been given or shown to the Plaintiff, if the items have not yet already been produced.

RESPONSE:

After performing a diligent search, Jacuzzi has no documents responsive to this request. Responsive documents have either already been produced or Jacuzzi has agreed to produce them

upon entry of an appropriate protective order, and Jacuzzi incorporates by reference its responses to Plaintiffs' Requests for Production Nos. 6, 9, and 11.

Category 7

All daily logs and reports, *or documents* created as a result of *becoming aware of the* incident *whether the information was supplied by Plaintiff's representatives or any other source of information.*

RESPONSE:

After performing a diligent search, Jacuzzi has no non-privileged documents responsive to this Category and directs Plaintiffs to its privilege log, pending production. Jacuzzi further objects that the topic is vague and ambiguous.

Category 8

Withdrawn as duplicative of Number 7.

Category 9

All incident reports and investigation reports prepared before this lawsuit was started with respect to falls *by anyone using any* Jacuzzi walk-in tub *model* whether *the model is* similar to the model used by Plaintiff or not.

Note: This seeks any incident reports for falls occurring either while using or while entering or exiting any of the Jacuzzi products, whether they be the walk-in style or not.

RESPONSE:

Jacuzzi objects to this category because it is overbroad and vague because, in part, it is not limited in time or scope and seeks materials that are irrelevant to the claims and product in this case. Jacuzzi further objects because the category seeks personal identification information of individual claimants or employees which violates their privacy. Jacuzzi will produce information regarding the subject tub and substantially similar tubs, and incidents or complaints similar to those alleged by Plaintiffs, for a period of 5 years prior to the subject incident, if any.

Jacuzzi further objects because the request and the following "Note" are inherently contradictory, making the request confusing. Regardless, Jacuzzi will not be producing any documents in response to the note.

Category 10

All non-privileged e-mails, which contain references to the incident, premises, products, contractors, or actions of persons involved in the events which are the subject matter of the lawsuit and which are:

(A) to or from the witnesses being deposed on the date of this deposition, whether or not as designated witnesses for this deposition,

(B) to or from those of Jacuzzi's officers, employees, and agents who *inspected the premises at any point after the incident*, or the supervisor of such persons, and

(C) or to or from Defendant(s)' safety personnel, premises maintenance personnel, or the insurers of Defendant(s), if the items have not yet already been produced.

RESPONSE:

Jacuzzi has no responsive documents.

LIST OF TOPICS ON WHICH EXAMINATION IS SOUGHT

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

EXAMINATION WILL BE SOUGHT ON THE FOLLOWING SUBJECTS

Topic 1

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

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

RESPONSE:

Jacuzzi will produce a witness that is generally familiar the incident in this case. Jacuzzi nonetheless objects to the topic to the extent it seeks communications that are protected by the attorney client and/or work product privileges. Jacuzzi further objects to the request as abusive and an improper attempt to shift Plaintiffs' burden of proof to Jacuzzi—Jacuzzi did not know of

1 the subject incident until being notified by Plaintiffs' counsel and Plaintiffs' counsel is privy to all
2 the information about the incident in Jacuzzi's possession.

3 **Topic 2**

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

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

9 **RESPONSE:**

10 Jacuzzi will not be producing a witness to testify regarding this topic, as it has already
11 been provided to Plaintiffs in Jacuzzi's initial disclosures and supplements. Any information
12 available in the form of deposition testimony is equally available to Plaintiffs. Further, Jacuzzi
13 objects to the request as confusing.

14 **Topic 3**

15 Incident reports of the incident.

16 **RESPONSE:**

17 While Jacuzzi has no objection to the topic per se, Jacuzzi has no incident report so it
18 cannot produce anyone to testify regarding this topic.

19 **Topic 4**

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

24 **RESPONSE:**

25 Jacuzzi will produce someone generally familiar with Jacuzzi's safety standards and
26 customer care as they relate to the subject model tub. Jacuzzi objects to the topic as
27 argumentative and confusing. Specifically, Jacuzzi objects to the description of a "person in
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charge of safety of persons purchasing Jacuzzi projects.” Further, what Jacuzzi did subsequent to learning of the incident is irrelevant to Plaintiffs’ claims.

Topic 5

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

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

RESPONSE:

Jacuzzi will produce a witness that is generally familiar the incident in this case. Jacuzzi nonetheless objects to the topic to the extent it seeks communications that are protected by the attorney client and/or work product privileges. Jacuzzi further objects to the request as abusive and an improper attempt to shift Plaintiffs’ burden of proof to Jacuzzi—Jacuzzi did not know of the subject incident until being notified by Plaintiffs’ counsel and Plaintiffs’ counsel is privy to all the information about the incident in Jacuzzi’s possession. Jacuzzi further objects to this request as an attempt to prematurely obtain expert testimony. Finally, Jacuzzi objects to this request as vague and ambiguous.

Topic 6

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

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

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RESPONSE:

Jacuzzi will not produce a witness in response to this category. Jacuzzi did not know of the subject incident until being notified by Plaintiffs' counsel, and all information regarding the incident and injuries is through counsel, and those communications are protected by the attorney client and/or work product privileges. Further, Jacuzzi's Answer was prepared by counsel, and contains legal defenses of which a lay witness is not qualified to answer. The category also appears to seek the premature disclosure of expert opinions.

Topic 7

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

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

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

RESPONSE:

Jacuzzi will produce a witness that is generally familiar the facts related to Jacuzzi's position about what other persons did to cause or contribute to these injuries, to the extent they do not call for legal analysis. Jacuzzi nonetheless objects to the topic to the extent it seeks communications that are protected by the attorney client and/or work product privileges. Jacuzzi further objects to the request as abusive and an improper attempt to shift Plaintiffs' burden of proof to Jacuzzi—Jacuzzi did not know of the subject incident until being notified by Plaintiffs' counsel and Plaintiffs' counsel is privy to all the information about the incident in Jacuzzi's possession. Jacuzzi further objects to this request as an attempt to prematurely obtain expert testimony. Finally, Jacuzzi objects to this request as vague and ambiguous, including but not limited to Plaintiffs' insertion of the Note, which conflicts with what is requested by the topic.

Topic 8

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

RESPONSE:

Jacuzzi will produce a witness familiar with the instructions and warnings that accompany this tub.

Topic 9

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

RESPONSE:

Jacuzzi will produce a witness familiar with the written warnings and instructions that accompany this tub. Jacuzzi objects to the topic as confusing in its use of the terms “conversations and statement . . . given or supposed to be given.”

Topic 10

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

RESPONSE:

Jacuzzi will produce a witness familiar with the reporting of incidents and collection of data regarding incidents at the time of the subject incident and the identity of other incidents, if any, involving slip and falls while using the subject Jacuzzi® Walk-In Bathtub model prior to the subject incident. Jacuzzi objects to this topic as overbroad because it is not limited in time or scope and seeks information not relevant to this case or Plaintiffs' defect claims.

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1 **Topic 11**

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

6 *NOTE: This includes inspections conducted after suit was filed or before suit was filed of*
7 *either the information or of the Jacuzzi tub itself.*

8 **RESPONSE:**

9 Jacuzzi will produce a witness who can confirm that a product identification inspection of
10 the tub was conducted in June 2014 for the purposes of product identification. Additionally,
11 expert inspections were conducted after the tub was removed from the premises. Any other
12 information about the inspection is not responsive to this request because it is attorney work
13 product.

14 **Topic 12**

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

17 *NOTE: Plaintiff is not seeking to obtain scientific or medical opinions, rather is simply trying*
18 *to learn of Defendant'(s)' understanding of basic facts pursuant to: United States EEOC v.*
19 *Caesars Entm't, Inc, 237 F.R.D. 428 (D. Nev. 2006); Taylor v. Shaw, 2007 U.S. Dist. LEXIS*
20 *16305 (D. Nev. Mar. 5, 2007); Great Am. Ins. Co. of N.Y. v. Vegas Constr. Co., 251 F.R.D. 534*
21 *(D. Nev. 2008). The case authority cited above imposes an obligation upon the deponent to be*
22 *prepared to discuss the topics identified in the instant notice and discussion of facts, even if*
23 *conveyed by a party's legal counsel, is an appropriate topic of discussion.*

24 **RESPONSE:**

25 Jacuzzi will produce a witness that is generally familiar the factual basis for its affirmative
26 defenses and answer, to the extent that the testimony does not call for legal opinions or analysis.
27 Jacuzzi nonetheless objects to the topic to the extent it seeks communications that are protected
28 by the attorney client and/or work product privileges. Jacuzzi further objects to the request as
abusive and an improper attempt to shift Plaintiffs' burden of proof to Jacuzzi—Jacuzzi did not
know of the subject incident until being notified by Plaintiffs' counsel and Plaintiffs' counsel is

1 privy to all the information about the incident in Jacuzzi's possession. Jacuzzi further objects to
2 this request as an attempt to prematurely obtain expert testimony.

3 **GENERAL TESTIMONY**

4 **Topic 13**

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

7 **RESPONSE:**

8 Jacuzzi will produce a witness familiar with the documents produced in response to
9 Plaintiff's discovery requests in this case. In agreeing to produce a witness, Jacuzzi incorporates
10 by reference the objections contained in its responses to Plaintiffs' discovery requests in this case.
11 Jacuzzi further objects to the extent questioning seeks to invade the attorney client privilege and
12 work product doctrine.

13 **Topic 14**

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

17 **RESPONSE:**

18 Jacuzzi objects to this topic as overbroad because it is not limited in time or scope and
19 seeks information not relevant to this case or Plaintiffs' defect claims. Jacuzzi will produce a
20 witness generally familiar with retention of information pertaining to incidents involving injury or
21 death, such as the subject incident, involving walk-in bath tubs.

22 **Topic 15**

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

25 **RESPONSE:**

26 Jacuzzi will not produce a witness to testify regarding this topic. Jacuzzi objects to the
27 topic as it is irrelevant to Plaintiffs' claims and the authenticity of Jacuzzi's documents is not in
28

dispute. Jacuzzi further objects to the extent the topic seeks confidential and proprietary information, and information protected by privacy rights.

Topic 16

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

RESPONSE:

Jacuzzi will produce a witness generally familiar with Jacuzzi's responses to Plaintiffs' interrogatories in this case. In agreeing to produce a witness, Jacuzzi incorporates by reference the objections contained in its responses to Plaintiffs' interrogatories. Jacuzzi further objects to the Topic to the extent the questioning seeks to invade the attorney client privilege and work product doctrine.

Topic 17

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

RESPONSE:

Jacuzzi will produce a witness familiar with the facts supporting some denials to the allegations to Plaintiffs' complaint, to the extent that can be determined at this point in the litigation. However, Jacuzzi did not know of the subject incident until being notified by Plaintiffs' counsel, and all information regarding the incident and injuries is through counsel, and those communications are protected by the attorney client and/or work product privileges. Further, Jacuzzi's Answer was prepared by counsel, and contains legal defenses of which a lay witness is not qualified to answer. Discovery is ongoing and the facts supporting Jacuzzi's denials are still under investigation.

Topic 18

Withdrawn as duplicative of Topic 12.

Topic 19

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

RESPONSE:

Jacuzzi will produce a witness generally familiar with the insurance coverage that could be applicable to this case.

Topic 20

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

- (a) A description of any documents;
- (b) The author of any documents and his or her address (home and work) and phone number (home and work);
- (c) The identity of the custodian of any documents and things and his or her address (home and work) and phone number (home and work);
- (d) The date the document was created and the person(s) to whom the document or copies were transmitted; and,
- (e) A summary of the contents of each document, communication or thing.

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

RESPONSE:

Jacuzzi will not produce a witness as to this topic and directs Plaintiffs to Jacuzzi's privilege log, production pending. Jacuzzi further objects to the extent the questioning seeks to invade the attorney client privilege and work product doctrine.

SALES AND MARKETING TESTIMONY GENERAL**Topic 21**

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

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Topic 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.

Topic 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.

RESPONSE:

In response to Topics 21 through 23, Jacuzzi will produce a witness familiar with Jacuzzi's advertising and marketing policies and procedures relating to this subject bathtub, if any, at the time it was purchased by Ms. Cunnison. Jacuzzi objects to the topics as irrelevant because Jacuzzi has already represented to Plaintiff that it did not advertise, market, or sell the subject bathtub to Ms. Cunnison. Jacuzzi further objects to Topics 22 and 23 to the extent they seek "post-sale matters" that are irrelevant to the subject matter of the claims presented in this action.

Topic 24

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

RESPONSE:

Jacuzzi will produce a witness familiar with the warnings and instructions provided with the subject bathtub when shipped from Jacuzzi. Jacuzzi objects to the topic as confusing and ambiguous in that the sentence does not make sense. Furthermore, Plaintiffs' topic is not limited in time or scope and therefore covers information irrelevant to this litigation.

Topic 25

Identification of all persons known to Defendant who trained, directed or supervised individuals to design *the* walk in tubs *models manufactured by Jacuzzi including any discussion, training or planning regarding the potential that an end user could become unable*

1 *to remove themselves from a tub after falling inside the tub while either entering, using or*
 2 *exiting the tub.*

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

5 **RESPONSE:**

6 Jacuzzi will produce a witness familiar with who was involved in the design of the subject
 7 Jacuzzi® Walk-In Bathtub model.

8 **SALE AND MARKETING WITH END USER TESTIMONY**

9 **Topic 26**

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

12 **RESPONSE:**

13 Jacuzzi will not produce a witness in response to this topic. Jacuzzi knows of no
 14 “conversations with Sherry Lynn Cunnison” and any of its employees.

15 **Topic 27**

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

- 18 a. Any policies and procedures of Defendant with regard to training or education of
- 19 consumers as to the safe use walk in tubs.
- 20 b. The existence and location of plaintiff’s discovery request.

21 **RESPONSE:**

22 Jacuzzi will not produce a witness to testify regarding this topic because Jacuzzi did not
 23 create the sales or marketing materials related to the subject walk in tub prior to the subject
 24 incident. Jacuzzi objects that the subparts to the topic are vague, ambiguous and unintelligible.
 25 Jacuzzi further objects to this topic as overbroad because it is not limited in time or scope and
 26 seeks information not relevant to this case or Plaintiffs' defect claims.

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**COMMUNICATIONS BETWEEN JACUZZI AND DEALERS,
SELLERS AND INSTALLERS TESTIMONY**

Topic 28

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

RESPONSE:

Jacuzzi will produce a witness familiar with communications between defendants, if any, regarding the design, testing, and manufacturing of the subject model tub prior to the subject incident, to the extent they have any application to Plaintiffs' claims. Jacuzzi objects to the topic a confusing in use of the term "elements".

Topic 29

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

RESPONSE:

Jacuzzi will produce a witness generally familiar with the resources it is aware of, if any, that were available to Jacuzzi at the time the subject Jacuzzi® Walk-In Bathtub model was designed. Jacuzzi objects to this request as vague and ambiguous.

Topic 30

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

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

RESPONSE:

Jacuzzi will produce a witness generally familiar with communications, if any, between Jacuzzi and the other defendants regarding safety of the subject Jacuzzi® Walk-In Bathtub model prior to the subject incident. Jacuzzi objects to the topic because it is not limited in time or scope and therefore seeks information irrelevant to this litigation or Plaintiffs' defect claims.

Topic 31

All contracts, agreements and/or other documents entered into and/or exchanged between Jacuzzi, Inc. First Street for Boomers & Beyond, Inc.; Aithr Dealer, Inc.; Bestway Building and Remodeling; William Budd; and/ or Budds Plumbing.

RESPONSE:

Jacuzzi will produce a witness generally familiar with the agreements entered into or exchanged with other defendants that relate to the subject incident. Jacuzzi objects to the topic because it is not limited in time or scope and therefore seeks information irrelevant to this litigation or Plaintiffs' defect claims.

Topic 32

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

RESPONSE:

Jacuzzi will produce a witness familiar with the instructions and warnings that accompany the subject Jacuzzi® Walk-In Bathtub model. Jacuzzi objects to the topic as confusing and vague and ambiguous.

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Topic 33

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

RESPONSE:

Jacuzzi will produce a witness familiar with policies and procedures relating to installation of the subject Jacuzzi® Walk-In Bathtub model. Jacuzzi objects to the topic as vague in its use of the term “safe installation.” No one was injured in the installation of the subject tub and there is no indication that it was installed improperly. The topic is not relevant to any issue in this action.

Topic 34

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

RESPONSE:

Jacuzzi will not produce a witness to testify regarding this topic. Jacuzzi objects to the topic as it seeks communications with itself, which is incoherent. As indicated in response to other topics, Jacuzzi will produce a witness to address the design of the subject tub.

DESIGN OF TUB**Topic 35**

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

RESPONSE:

Jacuzzi will produce a witness to testify regarding the design of the subject model tub prior to the subject incident. Jacuzzi objects to the topic as overbroad and seeking irrelevant information because the request is not limited in time or scope.

Topic 36

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

Topic 37

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

RESPONSE:

In response to Topics 36 and 37, Jacuzzi will produce a witness to testify regarding the design of the subject model tub, insofar as it pertains to Plaintiffs' claims in this case. Jacuzzi objects to the topics as overbroad because they are not limited in time or scope, seeking testimony that is irrelevant to this litigation. Jacuzzi further objects to the topics as overbroad and unduly burdensome because the design and development of any product is an evolutionary process. Accordingly, Jacuzzi is unable to identify each and every person and department that may have been involved in the design. Since numerous individuals were involved in these activities, it is unduly burdensome for Jacuzzi to produce someone to testify as to the identity all such persons. If Plaintiffs identify specific components or aspects of design that are the subject of their inquiry in advance of the deposition, Jacuzzi will endeavor to produce someone that knows the names of key person(s) involved in the design and design verification of those specific components.

Topic 38

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

RESPONSE:

Jacuzzi will not produce a witness to testify regarding this topic. Jacuzzi objects to the topic as it is too vague and overbroad to determine what Plaintiffs are actually seeking. The topic seeks information irrelevant to the claims in this action. To the extent that Plaintiffs are seeking

1 testimony related to the design of the subject model bathtub, Jacuzzi has already agreed to
2 produce a witness to testify as to that topic.

3 **Topic 39**

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

8 **RESPONSE:**

9 Jacuzzi will produce a witness to testify regarding the design of the subject Jacuzzi®
10 Walk-In Bathtub model. Jacuzzi objects to the topic because it is not limited in time or scope and
11 therefore seeks information irrelevant to this litigation or Plaintiffs' defect claims.

12 **Topic 40**

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

14 **RESPONSE:**

15 Jacuzzi will produce a witness to testify regarding the engineering and design of the
16 subject model Jacuzzi tub.

17 **Topic 41**

18 All systems designs *and* technical specifications *Defendants had in effect* for the design
19 testing and manufacturing *of* the walk-in Jacuzzi tub *at issue or similar models.*

20 **RESPONSE:**

21 Jacuzzi will produce a witness to testify regarding the technical specifications, testing, and
22 manufacturing of the subject Jacuzzi® Walk-In Bathtub model and similar models, insofar as
23 they relate to Plaintiffs' claims.

24 **Topic 42**

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

RESPONSE:

Jacuzzi will produce a witness to testify regarding the general organizational structure related to the design, testing, and manufacture of the subject Jacuzzi® Walk-In Bathtub model.

Topic 43

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

RESPONSE:

Jacuzzi will produce a witness to testify regarding design work orders, billed work orders, test work orders, engineer change requests, and engineering changes, if any, related to the subject model tub and Jacuzzi's understanding of the claims in this action.

Topic 44

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

RESPONSE:

Jacuzzi will produce a witness to testify regarding the cost benefit or value analysis, if any, regarding the design of the subject model tub. This testimony will be limited to the design criticisms identified by Plaintiffs, i.e., the size of the tub, the design of the door, and the placement of grab bars.

Topic 45

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

RESPONSE:

Jacuzzi will produce a witness consistent with its response to topics 36 and 37.

Topic 46

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

Topic 47

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

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

RESPONSE:

In response to Topics 46 and 47, Jacuzzi will not produce a witness to testify regarding these topics as there have been no recall, service or fix regarding the vague and unsubstantiated defect allegations plaintiffs have alleged. The topic is overly broad without limitation in scope, time or issues relevant to the claims in this action.

OTHER SIMILAR INCIDENTS TESTIMONY**Topic 48**

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

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

RESPONSE:

Jacuzzi will produce a witness to testify generally regarding investigations by Jacuzzi into other similar incidents of injury or damage, if any, prior to the incident that is the subject of this action. This response is limited to injury claims made for a period of 5 years prior to the subject incident and involving the subject Jacuzzi® Walk-In Bathtub model or similar models and involving claims similar to Plaintiffs' claims in this action. Jacuzzi objects to the topic because it is not limited in time and therefore seeks testimony that is irrelevant to this litigation. Finally, Jacuzzi objects to this request because the "Note" is inconsistent with the topic, making the entire topic confusing.

Topic 49

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

RESPONSE:

Jacuzzi will not produce a witness to testify as to this topic. Jacuzzi objects to the topic as harassing and that the topic is seeking irrelevant testimony. Plaintiffs have demonstrated no facts supporting their claim for punitive damages and any testimony regarding Jacuzzi's financial status is irrelevant to their claims as it is unrelated to the adequacy of the bathtub design. Jacuzzi further objects to this topic of testimony as it seeks the disclosure of confidential and proprietary information, including commercially sensitive information that could cause harm to Jacuzzi if disclosed publicly, without any corresponding benefit to Plaintiffs.

Topic 50

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

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

RESPONSE:

Jacuzzi will produce a witness to testify generally regarding lawsuits, claims, dealer bulletins, complaints, or incident reports related to other substantially similar incidents of injury or damage as Ms. Cunnison's, if any, prior to the incident that is the subject of this action. This response is limited to injury claims made during the five years prior to the subject incident and to the subject Jacuzzi® Walk-In Bathtub and similar tubs. Jacuzzi objects to the topic because it is not limited in time and therefore seeks testimony that is irrelevant to this litigation. Finally, Jacuzzi objects to this request because the "Note" is inconsistent with the topic, making the entire topic confusing.

Topic 51

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

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

RESPONSE:

In response to Topic 51, Jacuzzi will produce a witness to testify generally regarding lawsuits, claims, dealer bulletins, complaints, or incident reports related to other substantially similar incidents of injury or damage as Ms. Cunnison's, if any, prior to the incident that is the subject of this action. This response is limited to injury claims made for five years prior to the subject incident and to the subject Jacuzzi® Walk-In Bathtub and similar tubs. Jacuzzi objects to the topic because it is not limited in time therefore seeks testimony that is irrelevant to this litigation. Finally, Jacuzzi objects to this request because the "Note" is inconsistent with the topic, making the entire topic confusing.

Topic 52

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

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

RESPONSE:

Jacuzzi will produce a witness to testify regarding lawsuits, if any, involving claims of injury similar to the claims that have been asserted in this action, alleging that the subject model tub "caus[ed] injury or death." This response is limited to a period of five years prior to the subject incident and to the subject Jacuzzi® Walk-In Bathtub and similar tubs. Jacuzzi objects to

the topic as overbroad because it is not limited in time or scope, thereby seeking information that is irrelevant to this litigation. Finally, Jacuzzi objects to this request because the “Note” is inconsistent with the topic, making the entire topic confusing.

Topic 53

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

RESPONSE:

Jacuzzi will produce a witness to testify regarding this topic that is familiar with Jacuzzi’s procedures for handling customer complaints, lawsuits, and incident reports.

DATED this 17th day of May, 2018.

SNELL & WILMER L.L.P.

By: /s/ Joshua D. Cools
 Vaughn A. Crawford
 Nevada Bar No. 7665
 Joshua D. Cools
 Nevada Bar No. 11941
 3883 Howard Hughes Parkway, Suite 1100
 Las Vegas, NV 89169

*Attorneys for Defendant/Cross-Defendant
 Jacuzzi Inc. doing business as Jacuzzi Luxury Bath*

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 this date, I caused to be served a true and correct copy of the foregoing **DEFENDANT/CROSS-DEFENDANT JACUZZI INC.'S OBJECTIONS TO PLAINTIFFS' THIRD AMENDED NOTICE TO TAKE VIDEOTAPED DEPOSITION(S) OF 30(b)(6) FOR JACUZZI** by the method indicated below, addressed to the following:

- ☐ **BY E-MAIL:** by transmitting via e-mail the document(s) listed above to the e-mail addresses set forth below and/or included on the Court's Service List for the above-referenced case.
- ☒ **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.
- ☐ **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:

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*Attorneys for Defendants/Cross-Defendants
First Street for Boomers & Beyond, Inc. and
Aithr Dealer, Inc.*

DATED this 17th day of May, 2018.

/s/ Julia M. Diaz
An Employee of Snell & Wilmer L.L.P.

4845-6654-8067

EXHIBIT 8

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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

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1 produced to your office.

2 MR. CLOWARD: Okay. That's what I wanted to
3 clarify, because it was somewhat confusing.

4 So I wanted to clarify that the privilege log
5 dated April 3rd, 2018, sent by your office to my office
6 is the privilege log, in fact, referred to in this
7 response.

8 MR. COOLS: That is correct.

9 MR. CLOWARD: Okay. And there's no other
10 privilege log?

11 MR. COOLS: That's right.

12 Q. BY MR. CLOWARD: Okay. Now, Category 4, sir,
13 this is asking for electronically stored information,
14 tangible items, and so forth.

15 The response is:

16 "Category" -- or excuse me --
17 "Jacuzzi will perform a diligent
18 search for any non-privileged
19 responsive documents."

20 Do you know when that search will be performed?

21 A. No, I don't.

22 Q. Are you prepared to discuss the efforts in
23 performing that diligent search?

24 A. I've had conversations with employees who did
25 searches on customer service records and so forth. So,

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1 I mean, I would be prepared to discuss that portion of
2 it.

3 Q. Okay. And is the search ongoing? Or is it
4 completed?

5 A. To my understanding it's completed.

6 Q. Were documents produced responsive to that
7 search?

8 A. I don't know.

9 Q. Okay. So as you sit here today, you're not
10 sure whether the search actually yielded documents that
11 would be produced in this case?

12 A. No.

13 Q. All right. You did, in fact, speak to
14 individuals who performed certain searches though?

15 A. Yes.

16 Q. Okay. What were you informed?

17 A. That the -- starting with the -- our I.T.
18 group, they did an analysis looking for customer service
19 records that would have included the 20 words or
20 whatever the number was of words that you guys sent us
21 asking for us to research those.

22 MR. COOLS: Let me just interject. What
23 documents are you talking about? What are you asking
24 him about?

25 MR. CLOWARD: The questions -- the category

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1 that I specifically referred to is Category 4, so it's:

2 "Documents, electronically stored
3 information (ESI), or tangible items" --

4 I don't want to read too fast for the court
5 reporter.

6 But essentially that category, category 4 I
7 requested certain things, and your response was "Jacuzzi
8 will perform a diligent search."

9 MR. COOLS: Well, he needs an opportunity to
10 actually read that so that he knows which documents
11 you're talking about, if you're not going to describe
12 what they are. Because it also says, you know, which
13 the witness being deposed or defendant believes might
14 refresh the memory of the designee.

15 MR. CLOWARD: Okay.

16 MR. COOLS: Right? That's the category that
17 you're talking about?

18 MR. CLOWARD: Yeah.

19 MR. COOLS: Okay.

20 Q. BY MR. CLOWARD: So, sir, you seem to
21 understand what I was asking about. You actually
22 referred to specific conversations that you actually had
23 with folks.

24 Was there any confusion in your mind as to what
25 I was asking?

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1 A. Well, what -- the response that I gave to you
2 was for a section of this question.

3 Q. Okay.

4 A. I mean, as far as safety manuals, I didn't
5 review any of those. I didn't speak to anyone about
6 those.

7 Q. Well, let's talk -- let's talk about the search
8 that you did perform --

9 A. Right.

10 Q. -- the folks that you did talk to.

11 A. Right.

12 Q. So let's go back over that.

13 A. Okay.

14 Q. Who was it that you spoke to? Let's have some
15 names.

16 A. The initial search done by I.T. was performed
17 by a gentleman by the name of Jess Castillo.

18 Q. Jess?

19 A. Jess, J-e-s-s.

20 Q. Castillo?

21 A. I don't know what his real name is. Jess is
22 it.

23 And then there were customer service personnel,
24 Regina Reyes, who was the customer service manager.

25 Q. Okay.

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1 A. And then our warranty manager, a gentleman by
2 the name of Curt Bachmeyer.

3 Q. Bachmeyer?

4 A. Bachmeyer.

5 Q. Okay.

6 A. And the question to them was: What did you
7 find? That information was forwarded on to our
8 corporate counsel.

9 MR. COOLS: Again, I think there's some
10 confusion here about what topic he's talking about.
11 He's addressing --

12 MR. CLOWARD: Let's -- if you're going to have
13 a specific objection, please make a specific objection.
14 Let's not have a speaking objection pursuant to In Re
15 Stratosphere. If you have a specific objection, please
16 make it for the record. Otherwise, I'd like to get the
17 information from the individual.

18 MR. COOLS: I'd like to go off the record for a
19 second.

20 MR. CLOWARD: I'm not interested in doing that.

21 MR. COOLS: Okay. He's providing you testimony
22 about something other than what this category is about.

23 MR. CLOWARD: Okay. So that would be a
24 speaking objection. I'm interested to know what this
25 individual has to say. If it's not responsive, then,

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1 you know, you can clarify that on your redirect or your
2 cross-examination. But I'd like to ask this individual
3 questions, and I'd like to talk to him about the
4 searches that were performed.

5 MR. COOLS: Okay. I would like him to have the
6 opportunity to read the entire category before answering
7 this question.

8 MR. CLOWARD: I believe that he did have that
9 opportunity. We'll give him another 30 seconds or
10 however long he'd like.

11 Q. Sir --

12 A. You're talking about 4?

13 Q. Sir, yes.

14 So that it's completely fair, I want to be
15 completely fair, you let me know when you're ready to
16 proceed.

17 A. Okay.

18 Q. We'll take as long as you need.

19 A. (The witness reviews a document.)

20 Okay.

21 Q. You've had a chance to read it?

22 A. Right.

23 Q. You feel comfortable?

24 A. Yeah.

25 Q. Any question in your mind before we proceed?

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1 A. No.

2 Q. You feel comfortable talking about that
3 category?

4 A. About what I have been involved in in that
5 category.

6 Q. Okay.

7 A. Yeah.

8 Q. Okay. Fair enough. Thank you.

9 So let's discuss some of the, I guess -- what
10 were the instructions that you gave Jess Castillo,
11 Regina Reyes, Curt Bachmeyer?

12 A. I didn't give them any instructions. The
13 instructions came through counsel.

14 Q. Okay. You just followed up with them?

15 A. Yes.

16 Q. Okay. Fair enough.

17 And when you followed up with Ms. Castillo --
18 or Mr. Castillo, let's just talk about him first and
19 then we'll do Ms. Reyes and then Mr. Bachmeyer.

20 Were there any other -- before we actually get
21 into Mr. Castillo, were there any other individuals that
22 you worked with to obtain or collect or gather
23 documents?

24 A. Just corporate counsel.

25 Q. Corporate counsel.

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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?

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1 A. X is good. Yeah. X number, but I don't know
2 what X is because it varied by the word.

3 Q. You just know that it was voluminous?

4 A. Right.

5 Q. Okay. And you don't have any sort of estimate,
6 like over a hundred?

7 A. No.

8 Q. Over 200?

9 A. No.

10 Q. Okay. And you believe those were turned
11 over -- or those were given from Mr. Castillo to
12 corporate counsel?

13 A. From Mr. Castillo, Ms. Reyes, and Mr. Bachmeyer
14 to corporate counsel.

15 Q. All three of them gave directly to corporate
16 counsel?

17 A. Correct.

18 Q. Okay. Now let's talk about Ms. Reyes.

19 Was it your understanding that she also
20 obtained voluminous -- a voluminous amount of documents?

21 A. I was talking the whole group. I can't break
22 down what each individual person would have determined.

23 Q. Okay. Can you just tell me, I guess, in a
24 little bit of detail what it was -- what the
25 conversations were like?

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1 Was it a one-on-one conversation? Or was it by
2 email? Or was it by --

3 A. It was a combination of both email and one on
4 one. It's very simple.

5 "Have you fulfilled -- completed your search?"

6 "Yes, I have." "No, I haven't."

7 "Have you submitted the documents to counsel?"

8 "Yes, I have." "No, I haven't." That was it.

9 Q. And your understanding is that all three of
10 those individuals had performed the search, had obtained
11 documents, and had turned those over to corporate
12 counsel?

13 A. Correct.

14 Q. Okay. And what happened to those documents
15 you're not aware?

16 A. My understanding is that corporate counsel then
17 reviewed them to find out whether any of those documents
18 fit the question that was asked by -- by your firm, and
19 that was it. I mean, the next step was the review of
20 the documents by counsel to determine whether or not
21 they fit the question that you guys were asking.

22 Q. Okay. And my question specifically was: As
23 far as what happened to those documents, you're not
24 aware?

25 A. I'm not aware.

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EXHIBIT 9

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Snell & Wilmer

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DENVER
LAS VEGAS
LOS ANGELES
LOS CABOS
ORANGE COUNTY
PHOENIX
RENO
SALT LAKE CITY
TUCSON

August 17, 2018

VIA EMAIL AND ESERVICE

Benjamin P. Cloward, Esq.
Richard Harris Law Firm
801 S. Fourth Street
Las Vegas, NV 89101
Benjamin@richardharrislaw.com

RE: **Cunnison v. Jacuzzi Brands Corp.**
Case No. A-16-731244-C

Dear Mr. Cloward:

In compliance with the Discovery Commissioner's direction at the July 20, 2018 hearing, Jacuzzi is producing with this letter information regarding other incidents of personal injury or death in walk-in tubs from 2008 to the present. This production should not be regarded as a waiver to the documents and information's relevance or admissibility. Jacuzzi expressly reserves its right to object to the admissibility of this information and the attached documents. Additionally, any personally identifying information has been redacted from the attached documents and a revised privilege log is attached. Below is a description of the information and documents being produced.

Jacuzzi's search included a search of its customer and warranty databases, and notifications to Jacuzzi's legal department and risk management department. Specifically, the search sought to identify any reports of being injured or hurt and reports of death associated with any of Jacuzzi's walk-in tubs. The search identified the following in response to the Commissioner's order:

- Case Number 00398408
- Case Number 00285359
- Case Number 00369880
- Case Number 00407773
- Case Number 00348722

Snell & Wilmer

L.L.P.

Benjamin P. Cloward, Esq.

August 17, 2018

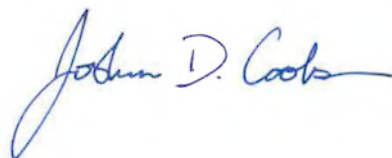
Page 2

- Case Number 00277125
- Case Number 00223498
- Case Number 00282714
- Complaint, Leonard Baize, et al. v. R.G. Galls, et al., A160190-C, 128th Judicial District, Orange County, Texas
- CPSC Report 20150202-72E1B-1466080
- CPSC Report 20160824-98A64-1589899
- May 22, 2015 Letter from Catherine Golden

Documents regarding these claims can be found in the FTP link in the email accompanying this letter. Jacuzzi is also aware of the Smith wrongful death claim. Information about this claim was provided by your office. Jacuzzi has no additional information at this time.

Again, Jacuzzi believes these are irrelevant and inadmissible and their production should not be construed as a waiver of any and all objections that Jacuzzi may have regarding these documents and information.

Best regards,



JOSHUA D. COOLS

JDC:jmd

Enclosures

cc: Meghan M. Goodwin, Esq. (via email mmg@thorndal.com)
Bonnie Bulla, Discovery Commissioner (via hand delivery)

Cunnison v Jacuzzi
Jacuzzi Privilege Log re Other Incident documents

BATES NUMBER	DATE	DESCRIPTION	BASIS FOR PRIVILEGE
JACUZZI002927-2937		Case no. 00277125.	Personally identifiable information redacted, including consumers, employees, and third parties, protected from disclosure by third party privacy rights; Irrelevant internal communications redacted
JACUZZI002938-2940		Case no. 00285359.	Personally identifiable information redacted, including consumers, employees, and third parties, protected from disclosure by third party privacy rights; Irrelevant internal communications redacted
JACUZZI002941-2944		Case no. 00369880.	Personally identifiable information redacted, including consumers, employees, and third parties, protected from disclosure by third party privacy rights; Irrelevant internal communications redacted
JACUZZI002945-2948		Case no. 00398408.	Personally identifiable information redacted, including consumers, employees, and third parties, protected from disclosure by third party privacy rights; Irrelevant internal communications redacted
JACUZZI002949-2963		Case no. 00407773.	Personally identifiable information redacted, including consumers, employees, and third parties, protected from disclosure by third party privacy rights; Irrelevant internal communications redacted
JACUZZI002964-2966		CPSC Notification Report no. 20160824-98A64-1589899.	Personally identifiable information redacted, protected from disclosure by third party privacy rights

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Cunnison v Jacuzzi
Jacuzzi Privilege Log re Other Incident documents

BATES NUMBER	DATE	DESCRIPTION	BASIS FOR PRIVILEGE
JACUZZI002970-2971		Case no. 00223498.	Personally identifiable information redacted, including consumers, employees, and third parties, protected from disclosure by third party privacy rights; Irrelevant internal communications redacted
JACUZZI002972-2988		Case no. 00282714.	Personally identifiable information redacted, including consumers, employees, and third parties, protected from disclosure by third party privacy rights; Irrelevant internal communications redacted
JACUZZI002989-2991		May 2, 2015 incident.	Personally Identifiable Information Redacted

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EXHIBIT 10

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A160190-C
CAUSE NO.:

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

06/20/16 13:16:38 Orange Cty DC Scanned by Denise

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.

VL 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

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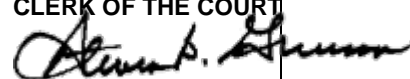
E-mail: wconley239@aol.com

Attorney for the Plaintiffs

EXHIBIT 11

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RTRAN

DISTRICT COURT
CLARK COUNTY, NEVADA

ROBERT ANSARA, ET AL.,

Plaintiffs,

vs.

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

Defendants.

CASE NO.: A-16-731244

DEPT. II

BEFORE THE HON. BONNIE A. BULLA, DISCOVERY COMMISSIONER
FRIDAY, JULY 20, 2018

**RECORDER'S TRANSCRIPT OF HEARING
ALL PENDING MOTIONS**

APPEARANCES:

For the Plaintiffs: BENJAMIN P. CLOWARD, ESQ.

For the Defendant Jacuzzi: JOSHUA D. COOLS, ESQ.

For the Defendant Aithr/First St: MICHAEL C. HETHEY, ESQ.

RECORDED BY: FRANCESCA HAAK, COURT RECORDER

1 Las Vegas, Nevada, Friday, July 20, 2018

2 * * *

3 [Case called at 10:45 a.m.]

4 DISCOVERY COMMISSIONER: Ansara.

5 MR. COOLS: Good morning, Your Honor. Josh Cools, on
6 behalf of Jacuzzi, Inc.

7 MR. HETHEY: Mike Hetey, on behalf of First Street Boomers
8 and Aithr.

9 MR. CLOWARD: Your Honor, Ben Cloward, on behalf of
10 plaintiffs.

11 THE CLERK: I'm sorry. Could I have your name again,
12 please?

13 MR. HETHEY: First name is Mike, last is Hetey, H-E-T-E-Y.

14 THE CLERK: Thank you.

15 DISCOVERY COMMISSIONER: And I would just ask --

16 MR. HETHEY: 5668.

17 THE CLERK: Thank you.

18 DISCOVERY COMMISSIONER: I would just ask counsel
19 please speak up because I'm, for whatever reason, having a difficult
20 time hearing.

21 So I have, I guess, three motions in front of me today. I would
22 like to take the one motion that I actually think is moot first, and that is --
23 I hope it is at least -- the motion to compel a knowledgeable 30(b)(6)
24 deposition or leave to take another 30(b)(6) deposition.

25 I thought -- at least it's my understanding -- that the defendant

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1 has agreed to that.

2 MR. COOLS: Your Honor, yes, in terms of providing Mr.
3 Dominguez to provide additional testimony, I think that -- you know, I
4 won't speak for Ben, but I'm sure that there's still questions about the
5 scope of that.

6 You know, as we indicated in our briefs, I did not advise Mr.
7 Dominguez to not answer any questions. I do think that much of the
8 questioning was outside of the scope of the deposition notice or
9 harassing.

10 DISCOVERY COMMISSIONER: Which you have to object to,
11 but there's a difference between an objection outside the scope of the
12 30(b)(6) notice and an instruction not to answer.

13 MR. COOLS: Right, and I did not instruct him not to answer.
14 On the record -- you can look at the record -- I ask what topic is this
15 relevant to, and there's a lengthy discussion on the record about that,
16 but I did not instruct him not to answer, and we're, you know, we'll
17 produce him for another time.

18 I think the other issue is that they want my client to pay for the
19 subsequent deposition, which I don't think is fair. I think that it's fairly
20 clear that part of the reason why the deposition was cancelled was it
21 was getting towards the end of the day, and --

22 DISCOVERY COMMISSIONER: Yeah, I'm not --

23 MR. COOLS: -- have a lot more material.

24 DISCOVERY COMMISSIONER: -- going to award fees --

25 MR. COOLS: Yeah.

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1 DISCOVERY COMMISSIONER: -- and costs on this issue.

2 I think that, unless the parties can absolutely agree, then a
3 motion has to be brought. In this case, it was a motion for protective
4 order. I didn't see anything that gave me great concern that the
5 deponent was instructed not to answer. I would like to limit this
6 deposition to four hours; I don't see any reason to go beyond that.

7 With respect to the scope, it needs to be in line with the topic
8 areas that are in the 30(b)(6) notice. I don't know if the plan is to send
9 out another 30(b)(6) notice. If that's the plan, then you obviously are
10 going to be limited to questions in those topic areas.

11 Now, the Ninth Circuit is one of the circuits that treats this
12 situation a little differently, so if Mr. Cloward asks questions outside
13 those topic areas, the witness still has to answer, but they won't bind the
14 corporation --

15 MR. COOLS: Understood, Your Honor.

16 DISCOVERY COMMISSIONER: -- if they're not within the
17 topic area and you have to make the proper objection, which it appears
18 to me that you did.

19 So I guess what I ought to do, and just instead of saying it's
20 moot, I can grant the motion but within the following parameters that the
21 deposition will be limited to four hours and will -- the scope will be
22 obviously appropriate as to the topic areas.

23 I am not a proponent of putting a prior restraint in place unless
24 it's a very specific motion for protective order on a very specific issue.
25 So I don't want to second guess what Mr. Cloward may ask or may not

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1 ask right now. But I'm going to go ahead and just grant the motion,
2 additional four hours, no fees or costs.

3 MR. CLOWARD: Your Honor, can I just address this?

4 DISCOVERY COMMISSIONER: Briefly.

5 MR. CLOWARD: I'm concerned that the Court doesn't see
6 the significance of what took place at the deposition.

7 DISCOVERY COMMISSIONER: I see that there were
8 objections made. I don't see instructions not to answer.

9 MR. CLOWARD: Your Honor, even in the moving papers in
10 the opposition of Mr. Cools, if you look at his affidavit, he has still
11 maintained and still today in the moving papers maintains that the
12 questions are not going to be asked or not going to be allowed to
13 discuss the expectations; that was the whole reason that we had this
14 side -- the conference; that's the whole reason that we suspended the
15 deposition, was because we wanted to talk about the expectations of the
16 parties.

17 This is a significant case and a very significant issue, as we've
18 set forth in the reply, and on -- in the moving papers Mr. Cools
19 specifically indicates that, pursuant to 2.34, when we had our
20 conference, their position, Jacuzzi's position, is still we're not going to
21 allow those questions, the document speaks --

22 DISCOVERY COMMISSIONER: So --

23 MR. CLOWARD: -- for itself.

24 DISCOVERY COMMISSIONER: -- let's put in the Report and
25 Recommendations specific to the motion that the plaintiff will be able to

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1 ask questions of the defendant regarding the expectations of the other
2 codefendant, or however you want to word it.

3 MR. CLOWARD: Well, I think that's fair, but the whole reason
4 that we felt like we needed to bring the motion we felt like the topic areas
5 we were well within the purview of the topic that we --

6 DISCOVERY COMMISSIONER: Mr. Cloward, they did not
7 instruct the witness not to answer the question, so they've offered him
8 up for a second deposition, which I am going to grant your motion. I am
9 limiting it to four hours because you've had quite a bit of time with this
10 witness, and I will specifically include or have you include in that Report
11 and Recommendations that it includes the expectations of the defendant
12 with respect to the other defendant.

13 I -- please put the names in so it's a little more articulate than
14 what I've just said. But I think that's fine. I didn't see anything that
15 would have raised a red flag to me that there was an instruction not to
16 answer a question. So I'm not sure if it's semantics or just not --

17 MR. CLOWARD: I guess --

18 DISCOVERY COMMISSIONER: -- being on the same page.
19 I'm not sure.

20 MR. CLOWARD: You know, it's frustrating because Mr. Cools
21 knows full well that that was the intention, and that's what took place at
22 the deposition. Whether that is an actual line that's in the transcript or
23 not, we were prevented from asking questions.

24 And even in his moving papers, in his affidavit, he confirms
25 what we set forth, which is Jacuzzi's not going to answer these

1 questions because it -- the document speaks for itself.

2 DISCOVERY COMMISSIONER: So if Jacuzzi doesn't answer
3 the questions -- the document speaks for itself is not a very exciting
4 objection. I'm not even sure how valid it is. It may be the case, that it's
5 the best evidence, but that's not really a very good objection.

6 So I expect your witness to answer the questions. Prepare
7 them.

8 MR. COOLS: Certainly, Your Honor.

9 MR. CLOWARD: Thank you.

10 DISCOVERY COMMISSIONER: All right. So, Mr. Cloward,
11 just be very specific.

12 I'm granting this particular motion to include the questions
13 regarding expectations regarding the -- I don't know -- is it fair to say it's
14 a contractual relationship?

15 MR. CLOWARD: Yes, between the two.

16 DISCOVERY COMMISSIONER: All right.

17 MR. CLOWARD: Thank you.

18 DISCOVERY COMMISSIONER: -- will be permitted and will
19 be answered.

20 Okay. So if you have to find somebody else to answer those
21 questions, you'll have to produce another witness.

22 MR. COOLS: He already answered questions. I mean, it's
23 just more of the same questions. He already said -- is it Jacuzzi's
24 expectation that --

25 DISCOVERY COMMISSIONER: But if --

1 MR. COOLS: -- they follow the contract --

2 DISCOVERY COMMISSIONER: -- your objection is the
3 record speaks for itself, that may unfairly have communicated to the
4 witness that the witness didn't have to answer the question.

5 MR. COOLS: Sure.

6 DISCOVERY COMMISSIONER: And that's what I'm
7 concerned about. So I want the witness to answer those questions:
8 what did you expect; did you expect to be told this; did you expect that
9 this type of event would be covered?

10 MR. COOLS: Certainly.

11 DISCOVERY COMMISSIONER: Why did you have that
12 expectation?

13 Okay. Mr. Cloward, which motion would you like to take next?

14 MR. CLOWARD: I would like to take the motion to strike the
15 answer.

16 DISCOVERY COMMISSIONER: Okay. It's your motion, so I'll
17 let you go ahead and begin.

18 MR. CLOWARD: Thank you. Your Honor, while it is true that
19 the discovery responses were significantly narrowed to prior incidents,
20 the position of Jacuzzi is, look, you know, this was some sort of a set up.

21 This is no different than in a automobile case where a plaintiff
22 limits their objection to prior medical and says I have no prior medical,
23 and then in the deposition -- or, you know, I have no prior medical for the
24 last three years, and then in the deposition the plaintiff says, yep, I don't
25 have any, not only for the last three years, but for the past twenty years I

1 don't have any.

2 Jacuzzi specifically broadened the scope during the
3 deposition. We wanted to test whether or not they were being truthful
4 because, quite frankly, I don't believe that they have been truthful, not
5 Mr. Cools. Mr. Cools has always had a professional, you know,
6 relationship. He's always been great. But I do not believe that his client
7 has been truthful in this case.

8 We are just concerned that somehow, coincidentally, we
9 represent the only two people in the nation that have had an injury and
10 that have died as a result of this. Just coincidentally my law firm, me,
11 Ben Cloward, I'm the only person that represents anyone that's been
12 hurt in a Jacuzzi tub. Yet, despite the assertion made by Jacuzzi -- I
13 conducted hours of research, and when I say hours of research, I'm
14 talking ten to fifteen hours of research.

15 DISCOVERY COMMISSIONER: So, Mr. Cloward, I have a
16 suggestion.

17 MR. CLOWARD: Okay.

18 DISCOVERY COMMISSIONER: Can I raise that?

19 MR. CLOWARD: Sure.

20 DISCOVERY COMMISSIONER: Okay. So here's my
21 suggestion -- I'm going to make them turn everything over to you first.
22 I'm going to continue the motion to strike the answer, but I'm going to
23 have the defendant not only turn over any similar incidents before, but
24 also after.

25 The argument that the after events are not relevant do not

1 apply in a strict liability case, and I looked, I double-checked the fourth
2 amended complaint. It's the second cause of action I believe, unless the
3 Court has dismissed the strict liability that I'm not aware of it.

4 MR. CLOWARD: Well, even if -- you're correct on point, but I
5 recently litigated this exact case law in another case where we went to
6 trial. Subsequent incidents are relevant in premises liability, slip, fall
7 type of cases to discuss the dangerousness of the condition, depending
8 on the type of condition. If it's a permanent condition --

9 DISCOVERY COMMISSIONER: Versus a transitory, right.

10 MR. CLOWARD: So, regardless of whether it's a strict liability
11 or --

12 DISCOVERY COMMISSIONER: Negligent.

13 MR. CLOWARD: -- negligent, it's -- Guinness v. Mapes and
14 Reingold v. Wet 'N Wild, it is relevant.

15 DISCOVERY COMMISSIONER: I agree with you that I think
16 your discovery for the most part talked about prior incidents, but there
17 were discovery requests that were not specific to just before, but all --
18 included all types of incidents or notice of, and there was no specific
19 timeframe.

20 Now, I don't know how many injuries in this tub we've had. I
21 recognize some of them could maybe be an injured finger in shutting a
22 door, or there might be other issues and other types of injuries. But this
23 is a very serious -- obviously a serious product defect, as alleged, and I
24 think it warrants an examination of the product itself.

25 Whether or not every incident is going to be admissible or not

1 will not be determined by myself, but I think in terms of looking at the
2 injuries overall, and even trying to place them -- I can't think of the word
3 I'm looking for -- a continuum, you know, from less serious to more
4 serious, I think understanding what kind of problems this Jacuzzi tub has
5 had over time is relevant.

6 And before a decision is made whether or not an answer
7 should be stricken -- and I will tell you I'm going to continue the motion
8 on my calendar. I want to see what is produced. If it appears that there
9 is a sufficient concern that evidence wasn't timely produced, or there's a
10 problem with the production, I may end up having to defer it to the
11 District Court Judge because it's a dispositive sanction under Rule 37,
12 one that I am not going to hear.

13 But before that decision is made, I'd like to provide some
14 alternative relief. I'm actually going to continue the motion to strike. I'll
15 need you to check your calendars. But I am going to provide the
16 alternative relief.

17 I don't know how long this particular Jacuzzi tub was in
18 existence. Do you know, Mr. Cools?

19 MR. COOLS: I believe 2013 was the first year that it was
20 manufactured.

21 DISCOVERY COMMISSIONER: Okay. So from 2013 --
22 because it has to be this tub.

23 MR. CLOWARD: Well --

24 DISCOVERY COMMISSIONER: I mean, there might be other
25 similar type tubs, but we'll talk about that in a minute. But I think this tub,

1 because the -- I don't know if the latching mechanism was the same as
2 other tubs, what changes were made, so maybe we need to figure that
3 out.

4 MR. CLOWARD: Your Honor, I can address that, if I may.

5 DISCOVERY COMMISSIONER: Okay.

6 MR. CLOWARD: Ultimately, there have been maybe, maybe,
7 at the very most, ten tubs that have been marketed under different
8 names, but the design has been substantially similar. The design
9 feature that makes this tub so dangerous is the inward opening door.

10 DISCOVERY COMMISSIONER: The inward --

11 MR. CLOWARD: The inward opening --

12 DISCOVERY COMMISSIONER: -- latch.

13 MR. CLOWARD: -- door. So that's really what we're
14 concerned about.

15 I know that they marketed this exact tub prior to this as the
16 Finestra tub. The manufacturing agreement talks about that. When they
17 have certified this tub, they've certified it under different names, but the
18 list is like I believe ten tubs at the most, but it's essentially it's the same,
19 the same tub, it's an inward opening door. That's the significance.

20 They have lengthened the width to the entrance, but other
21 than that change, there has not been a material change to the tub, so we
22 would ask that the --

23 DISCOVERY COMMISSIONER: And the failure in this case is
24 the inner door didn't open.

25 MR. CLOWARD: Correct. And so we're asking that it not be

1 tailored that narrowly. There's really not a lot of, you know, there's not a
2 lot of other products that they're going to have to drill down to find. It's
3 just this one type of a tub that's been marketed under different types of
4 names. So I'm afraid that if the Court says, hey, we're going to limit it to
5 the 5220 tub, well, that exact tub --

6 DISCOVERY COMMISSIONER: Then we won't get anything.

7 MR. CLOWARD: Yeah, that exact tub has been marketed
8 under a different name, but it's the exact same design.

9 I mean, I think that the -- ultimately the design of this tub has
10 only been in existence since maybe 2008, 2009, all together.

11 DISCOVERY COMMISSIONER: So what if we go back to the
12 time that the basic design or the basic model is similar to the tub in
13 which the plaintiff fell, and so maybe we only go back to 2008, maybe
14 we just go back ten years.

15 MR. COOLS: Can I address a couple things here first --

16 DISCOVERY COMMISSIONER: Yes.

17 MR. COOLS: -- Your Honor?

18 First of all, Mr. Cloward's representation that it's just changing
19 the badge or something, that it's the same tub with a different name on it
20 is incorrect. They're separately designed, they have different
21 dimensions. There may be some similarities --

22 DISCOVERY COMMISSIONER: Okay.

23 MR. COOLS: -- but --

24 DISCOVERY COMMISSIONER: I'm not -- I don't care about
25 the dimensions of the tub because I don't think that's what caused the

1 accident here. The problem was the inside door or the latch
2 mechanism.

3 Now, if you're telling me in 2013 that was a completely new
4 design and you had never used that design before, then we'll just go
5 back to 2013. But I don't think that's what I'm hearing, at least from
6 opposing counsel. I'm hearing that the design itself, the latch, was
7 somewhere in '08 or '09. You're in the best position to know the answer
8 to that question, so what is it?

9 MR. COOLS: So I don't know exactly when -- the issue
10 though is that dimensions do matter because it's not the door latch that's
11 the issue. The issue is that Ms. Cunnison blocked the door from
12 swinging open. I think that's fair to say. That's their claim, you know.
13 She was in front of the door, and since it didn't swing outward, it swung
14 inward, she could not open the door.

15 DISCOVERY COMMISSIONER: Okay. So did you change
16 that mechanism? When did the door change to swing inward versus
17 outward?

18 MR. COOLS: It's -- I mean --

19 DISCOVERY COMMISSIONER: It's --

20 MR. COOLS: -- as far as I know --

21 DISCOVERY COMMISSIONER: -- always swung --

22 MR. COOLS: -- they've --

23 DISCOVERY COMMISSIONER: -- inward.

24 MR. COOLS: -- all the --

25 MR. CLOWARD: Correct.

1 MR. COOLS: -- tubs that they made. But that doesn't mean
2 that those tubs are substantially similar. I mean, when you have a tub
3 that is significantly larger --

4 DISCOVERY COMMISSIONER: Okay. So you can make
5 that argument, but Mr. Cloward has his argument that it's the same type
6 of mechanism. And if the tub that she fell in was actually larger, I'm not
7 sure that's helpful to you because that means that there might have
8 been other events going on prior to the change of design in 2013 on the
9 dimensions that are relevant.

10 MR. COOLS: If I may though, Your Honor, while that all may
11 be true for plaintiff's notice case as to prior incidents, it's certainly not
12 true as to any subsequent claims.

13 DISCOVERY COMMISSIONER: It is on strict liability. You
14 get rid of --

15 MR. COOLS: Yes, Your Honor, but --

16 DISCOVERY COMMISSIONER: -- that strict liability --

17 MR. COOLS: -- only for the same product.

18 DISCOVERY COMMISSIONER: Yes.

19 MR. COOLS: It's --

20 MR. CLOWARD: It's --

21 MR. COOLS: You look at all --

22 MR. CLOWARD: -- substantially --

23 MR. COOLS: --of the cases.

24 MR. CLOWARD: -- similar.

25 DISCOVERY COMMISSIONER: Substantially similar.

1 MR. COOLS: Right, and where that is applied, Your Honor, is
2 when it's the same, same product, same location. That's what
3 substantially similar is in the context --

4 DISCOVERY COMMISSIONER: Okay.

5 MR. COOLS: -- of the cases that address this.

6 DISCOVERY COMMISSIONER: Yes, but we're talking about
7 a Jacuzzi tub with similar latching mechanism. If you can show me or
8 prove to me that the latching mechanism is so completely different in
9 2013 from 2012 or prior to that time, or it changed significantly in 2015,
10 you know, or 2016, or whatever, then I'll revisit the issue.

11 But I am unwilling at this juncture to narrow the scope so
12 significantly that we miss potentially relevant information. And I am not
13 an expert in this field, as are neither of you are, any of you. So I think
14 we need to be cautious, but I also think that it makes sense to go back --
15 I'm going to go back ten years, 2008 to the present.

16 And I don't know how you keep your incident events, or your
17 accident reports, or your -- I don't even know what you particularly call
18 them, but I want everything turned over to Mr. Cloward, before and after
19 his client's accident that involves significant injury or death in one of your
20 Jacuzzi tubs, whether it is the exact, identical tub that the plaintiff fell in,
21 the plaintiff's decedent fell in.

22 MR. COOLS: Is there any similar size limitation that you're
23 going to place on that?

24 DISCOVERY COMMISSIONER: I'm not because you can
25 make your argument. I think that goes to weight and not admissibility,

1 frankly, but, again, that's not for me to decide. That'll be for the Judge to
2 determine. So you can do a proper motion in limine at that time, if you
3 desire, but I think for discovery purposes, I want it all turned over
4 because it also might go to design issues.

5 All right. So what I'd like to do -- and everyone can check their
6 calendars so feel free to look at your phones or whatever you have with
7 you -- I'd like to actually continue the motion to strike to August 29th, '18,
8 at 9 a.m., if that works for you.

9 By August 17th of 2018 I want the alternative relief that I'm
10 going to provide today with respect to this motion, i.e. the information
11 from 2008 to the present time, of any type of accidents or incidents
12 involving the Jacuzzi tub leading to significant -- I know that's somewhat
13 of objective term, but personal injury or death.

14 MR. CLOWARD: Can we -- could we just call it injury or
15 death; would that be okay?

16 DISCOVERY COMMISSIONER: Yes, but personal injury, not
17 like injury to the tub.

18 MR. CLOWARD: Sure.

19 MR. COOLS: How 'bout a pinched finger?

20 DISCOVERY COMMISSIONER: Yes.

21 MR. COOLS: Okay.

22 DISCOVERY COMMISSIONER: Why not? Is it going to
23 come into evidence? Probably not. But if it demonstrates there were
24 latching problems, or I couldn't get the door open, I couldn't get the door
25 open, so I kept trying to open the door, and I pinched my finger before I

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1 got the door open, an issue in this case is the plaintiff couldn't get the
2 door open. Relevant? Yeah, probably. But the Judge would be the one
3 to make that determination. But for discovery purposes, relevant, yeah,
4 yes.

5 MR. CLOWARD: Thank you, Your Honor.

6 THE CLERK: Can I have the continuance date again, please?

7 DISCOVERY COMMISSIONER: August 29th at 9 a.m.

8 THE CLERK: Thank you.

9 DISCOVERY COMMISSIONER: Is that good for everyone's
10 calendar?

11 MR. CLOWARD: Yes, Your Honor.

12 MR. COOLS: Yeah, that should work, yeah.

13 DISCOVERY COMMISSIONER: Okay. Perfect.

14 Then the last motion I have -- and, Mr. Cloward, you're going
15 to need to prepare the Report and Recommendations today --

16 MR. CLOWARD: Okay.

17 DISCOVERY COMMISSIONER: -- please, and I just want
18 one Report and Recommendations with all three motions.

19 MR. CLOWARD: You got it, Judge.

20 DISCOVERY COMMISSIONER: The last motion I have is
21 plaintiff's motion for sanctions for failure to produce evidence. I thought I
22 was back in law school as I was preparing for this one.

23 I'm just going to tell you right up front I'm denying the motion.
24 The issue is work product. It's qualified privilege. Everybody was out
25 there inspecting. Everyone can take photographs. We don't need the

1 photographs of the consulting expert. But with this caveat -- defendants'
2 initial disclosure is due September 20th of 2018. If your expert intends to
3 rely on those photographs or the video that was taken, then you will
4 need to produce it.

5 MR. COOLS: Certainly, Your Honor, and they aren't. I can
6 say that unequivocally, that's not.

7 DISCOVERY COMMISSIONER: And there are other
8 photographs taken of the day -- of the item or the product on the day in
9 question, so I don't think at this point, unless I have more information --
10 and I'm happy to, you know, hear a motion to compel, Mr. Cloward --

11 MR. CLOWARD: Okay.

12 DISCOVERY COMMISSIONER: -- in the future, but I'm not
13 issuing sanctions for it because it's work product. It's a qualified
14 privilege.

15 MR. CLOWARD: I think that's fair. Our big concern was just,
16 hey, we're finding out in the middle of the deposition of potential photos
17 that have been taken, never been identified, that type of a thing.

18 DISCOVERY COMMISSIONER: I would have handled it
19 differently. Let me tell you what I would have done. I would have
20 disclosed them in 16.1 as being existing, and I would have said we,
21 however, we are not producing these, they are protected under Rule 26
22 work product in anticipation of litigation, and then I would have at least
23 identified them. Then it wouldn't have been a surprise in a deposition,
24 and then it doesn't sound unsavory, which it wasn't, but I would have
25 disclosed. That's what Commissioner Bulla would have done.

1 MR. COOLS: And I don't disagree, Your Honor.

2 Just going back to the last sanction, I just have to say -- or the
3 last motion -- it troubles me that plaintiffs are using a motion to strike in
4 place of doing a meet and confer over the subsequent incidents when
5 that has been clear from our discovery responses throughout this case.
6 They've had this --

7 DISCOVERY COMMISSIONER: Which is --

8 MR. COOLS: -- for eight months.

9 DISCOVERY COMMISSIONER: -- why I provided the
10 alternative relief that I did, and I'm not -- I'm probably not -- I want to see
11 what you turn over, what the extent of it is, and give the plaintiffs'
12 counsel a chance to look at it.

13 I may just end up denying the motion when you come back to
14 see me on the 29th. I can pretty much guarantee you I will not be
15 hearing it if I think that there's a sufficient reason to hear it. I would defer
16 it to the District Court Judge because it's case terminating sanction.

17 But I want to provide the alternative relief.

18 MR. CLOWARD: And then, Your Honor, we had one other
19 issue that we kind of agreed to bring up orally. We've sent out discovery
20 on the punitive damages type of discovery was the financial worth. Mr.
21 Cools and I had a productive conversation. Ms. Goodwin was on the
22 phone. We felt like it was productive.

23 I've never encountered any limitation on this discovery, and I
24 just wanted to seek the Court's guidance on -- we were entertaining a
25 phone call to the -- to Your Honor, but then we thought, well, let's just

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1 bring it up when we're here and whatever the Court's limitations on that.

2 I think Mr. Cools explained that, in his experience, Your Honor
3 has said, well, we -- you could defer that until 30 days before trial. What
4 I had asked for was potentially 60 days before trial in the event that
5 they're -- we feel that the discovery is insufficient. I don't want to be in
6 the middle of trial trying to compel --

7 DISCOVERY COMMISSIONER: Right.

8 MR. CLOWARD: -- the discovery. I wanted to have a little
9 more of a breathing room.

10 DISCOVERY COMMISSIONER: And that, frankly, is the
11 down side, and it really depends on how realistic the case is. There are
12 certain cases, like DUI accidents --

13 MR. CLOWARD: Sure.

14 DISCOVERY COMMISSIONER: -- civil cases, or some of the
15 third-party or the first-party insurance cases where you know that
16 punitives are probably going to go to the jury. I don't know if that will be
17 the case here, so I think there are a couple of options for you.

18 Generally speaking, my general rule is 30 days before trial,
19 three years of net worth plus supporting documentation. If you are going
20 to have to have a witness testify, then that witness needs to be
21 disclosed, and I'd work with the parties to try to get a deposition time, if
22 necessary. But typically speaking, in 90 percent of these cases three
23 years of net worth and supporting documentation, 30 days -- exchanged
24 30 days before trial does it. Why do I pick that timeframe? Because by
25 that point the District Court Judge has heard the motion for summary

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1 judgment on the punitives.

2 Now, if it's a situation where, Mr. Cloward, you really believe
3 I'm going to be able to present punitives, then what I will need from you
4 is a motion to compel. You'll have to follow the case law. I'm showing
5 that -- you know, you have to make a certain type of showing for punitive
6 damages discovery, and we'll have to make a record.

7 MR. CLOWARD: Okay.

8 DISCOVERY COMMISSIONER: And, again, that's something
9 that we can handle, but I'd have to do it by motion.

10 MR. COOLS: And in terms of the additional time that Mr.
11 Cloward requested, I'm not opposed to 60 days, but for the reason that
12 you stated, I'm not sure that a dispositive motion on the punitive
13 damages would be resolved by that time, so --

14 DISCOVERY COMMISSIONER: It's probably not going to be
15 resolved until after your discovery is closed.

16 MR. COOLS: Right.

17 DISCOVERY COMMISSIONER: Your trial date is 3/18 of '19.
18 I don't know if that's too aggressive of a date. I don't know where you
19 are on the stack. You are in Department II now, I think. You may have
20 always been there, and I apologize that we've done a number of case
21 changes, so I don't know what that means for you in terms of a realistic
22 trial date. If you're going to need more time and move the trial date,
23 you'll need to do that with the District Court Judge.

24 But, typically speaking, until discovery has been completed,
25 I'm not sure a dispositive motion is going to be heard by the Court

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1 unless you all agree we've done all our discovery, we're ready to hear
2 the motion --

3 MR. CLOWARD: Sure.

4 DISCOVERY COMMISSIONER: -- on the punitives.

5 You can also make the motion to compel to me, but I'd want
6 you to have your 2.34 and talk about it before you bring that motion, and
7 then there would have to be sufficient showing that the evidence would
8 support a claim of punitive damages. I forget the exact wording. I
9 haven't looked at the cases in a while, but you'll need to take a look at
10 them.

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

12 MR. COOLS: Okay.

13 DISCOVERY COMMISSIONER: But that's how I would
14 handle it.

15 MR. CLOWARD: Okay.

16 MR. COOLS: Okay.

17 MR. CLOWARD: We appreciate the help.

18 DISCOVERY COMMISSIONER: Okay. Very good. Mr.
19 Cloward --

20 MR. CLOWARD: Ten days.

21 DISCOVERY COMMISSIONER: -- will you prepare my
22 Report and Recommendations from today's hearing on all motions; run it
23 by your colleagues, please, to approve as to form and content.

24 And I will see you all back here on the one motion to strike on
25 August 29th.

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1 MR. CLOWARD: Thank you, Your Honor.

2 DISCOVERY COMMISSIONER: And, again, it's 8 -- August
3 17th to get all the information.

4 MR. COOLS: Okay.

5 MR. CLOWARD: Thank you.

6 DISCOVERY COMMISSIONER: Thank you. Have a nice
7 weekend.

8 MR. CLOWARD: You too.

9 MR. COOLS: You too.

10 DISCOVERY COMMISSIONER: Try to stay cool out there.

11 [Hearing concluded at 11:17 a.m.]

12 * * * * *

13
14 ATTEST: I do hereby certify that I have truly and correctly transcribed the
audio-video recording of this proceeding in the above-entitled case.

15
16 

17 FRANCESCA HAAK
Court Recorder/Transcriber

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EXHIBIT 12

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THIS IS YOUR COURTESY COPY
DO NOT FORWARD TO JUDGE
DO NOT ATTEMPT TO FILE

1 **DCRR**
2 BENJAMIN P. CLOWARD, ESQ.
3 Nevada Bar No. 11087
4 **RICHARD HARRIS LAW FIRM**
5 801 South Fourth Street
6 Las Vegas, Nevada 89101
7 Phone: (702) 444-4444
8 Fax: (702) 444-4455
9 E-Mail: Benjamin@RichardHarrisLaw.com
10 *Attorneys for 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.

AND ALL RELATED MATTERS

HEARING DATE: July 20, 2018

HEARING TIME: 10:00a.m.

ATTORNEYS FOR PLAINTIFF: Benjamin P. Cloward, Esq., Richard Harris Law Firm

ATTORNEY FOR DEFENDANTS: Joshua Cools, Esq., Snell & Wilmer, LLP

Also, present was Michael Hetey, Esq., Thorndal, Armstrong, Delk, Balkenbush, & Eisinger for Defendants First Street For Boomers & Beyond, Inc. & AITHR Dealer, Inc.

**I.
FINDINGS**

The following motions having come before the Discovery Commissioner on Friday, July 20, 2018 finds that as to:

1. 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 that a continued deposition will be allowed and four (4) additional hours will be permitted. The Discovery Commissioner finds that the Rule 30(b)(6) witness was never instructed to not answer any of Plaintiffs' counsel's questions and that Jacuzzi has already offered its corporate representative to continue the deposition. In particular, Jacuzzi's representative should be prepared to answer questions related to Jacuzzi's expectations regarding the manufacturing agreement between Jacuzzi and FirstStreet. The Discovery Commissioner finds that, sanctions are not warranted.

2. Plaintiffs' Motion to Strike Defendant Jacuzzi, Inc. d/b/a Jacuzzi Luxury Bath's Answer is continued until Wednesday, August 29, 2018 at 9:00a.m. The Discovery Commissioner finds that 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, to be produced no later than August 17, 2018. Based on the results of this alternative relief, the

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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 as the witness for that topic.

Ansara v. Jacuzzi, Inc., et al.

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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.

...

...

...

Ansara v. Jacuzzi, Inc., et al.

A-16-731244-C

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


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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.
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*Attorneys for Defendants/Cross-Defendants
Firststreet for Boomers and Beyond, Inc. and Aithr Dealer, Inc.*

Ansara v. Jacuzzi, Inc., et al.
A-16-731244-C

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

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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 13

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REQT

BENJAMIN P. CLOWARD, ESQ.

Nevada Bar No. 11087

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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,

Plaintiffs,

vs.

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

Defendants.

CASE NO.: A-16-731244-C

DEPT NO.: I

**PLAINTIFFS' SECOND REQUEST
FOR PRODUCTION OF
DOCUMENTS TO JACUZZI, INC.**

1 AND ALL RELATED MATTERS
2

3 **PLAINTIFFS' SECOND REQUEST FOR PRODUCTION OF DOCUMENTS TO**
4 **DEFENDANT JACUZZI, INC.**

5 Plaintiff Robert Ansara, as Special Administrator for the Estate of Sherry Lynn Cunnison,
6 Deceased, Michael Smith, individually, and heir to the Estate of Sherry Lynn Cunnison, Deceased;
7 and, Deborah Tamantini, individually, and heir to the Estate of Sherry Lynn Cunnison, Deceased,
8 Plaintiffs in the above-styled civil action (hereinafter, "Plaintiffs"), by and through their counsel
9 of record, and pursuant to Rule 34, Nevada Rules of Civil Procedure, request that Defendant
10 Jacuzzi, Inc., produce for inspection and copying, within thirty (30) days of service of this
11 Request for Production of Documents, at the RICHARD HARRIS LAW FIRM, 801 South
12 Fourth Street, Las Vegas, Nevada 89101, all documents in the possession, custody, or control of
13 Defendant or otherwise available to Defendant, which are responsive to the requests contained
14 in the numbered paragraphs below. Please specify which documents are produced in responses
15 to each one of the numbered paragraphs.
16

17 These requests shall be deemed continuing so as to require further and supplemental
18 production should the requested party obtain additional documents which are responsive to this
19 request subsequent to the time of initial production and inspection.

20 In responding to these requests, the responding Defendant must furnish all requested
21 materials not subject to a valid objection which is possessed by, in the custody of, or in the
22 control of it or any of its attorneys, consultants, representatives, or other agents. If the responding
23 Defendant is unable to fully respond to any of these requests, it must respond to them to the
24 fullest extent possible, specifying the reasons for inability to response to the remainder.

25 **PREAMBLE**

26 As used in these requests, the following terms are to be interpreted in accordance with
27 these definitions:
28

1. "Plaintiff" refers to, without limitation, the above-named Plaintiffs, as well as Plaintiffs' attorney, agent, or representative.
2. "Complaint" refers to the Complaint filed by Plaintiff in this action.
3. "Defendant," "you," or "your" refers to, without limitation, Jacuzzi, Inc., and all business entities with which it is or has been affiliated, together with any predecessor, successor, parent, or subsidiary entity as well as any officer, director, employee, attorney, agent, or representative of it or any such other business entity previously described herein, and others who are in possession of or may have obtained information for or on behalf of it with regard to the subject matter of this case.
4. "Person" means any natural person (whether living or deceased), company, corporation, partnership, proprietorship, firm, joint venture, association, governmental entity, agency, group, organization, other entity, or group of persons.
5. "Document" means every writing or record of every type and description that is or has been in your possession, custody, or control or of which you have knowledge, including but not limited to correspondence, memoranda, tapes, stenographic or handwritten notes, studies, publications, books, pamphlets, pictures, drawings and photographs, films, microfilms, voice recordings, maps, reports, surveys, minutes or statistical compilations, or any other reported or graphic material in whatever form, including copies, drafts, and reproductions. "Document" also refers to any other data compilations from which information can be obtained, and translated, if necessary, by you through computers or detection devices into reasonably usable form. The term "document(s)" also includes, but is not limited to, all duplicates, carbon copies or any other copies of original documents, including copies with handwritten notes, revisions or interlineations.

6. "Communication" means e-mail, SMS message, MMS message, fax, letter, social media post, instant message, recorded audio, or, recorded video.
7. Terms in the singular shall be deemed to include the plural and terms in the plural shall be deemed to include the singular.
8. Use of feminine pronouns shall be deemed to include the masculine and neuter; use of masculine pronouns shall be deemed to include the feminine and neuter; and use of neuter pronouns shall be deemed to include the masculine and feminine.
9. "Identify": With respect to a document means set forth the following information, regardless of whether such document is in your possession, if known: a general description thereof (e.g., letter, memorandum, report, etc.); a brief summary of its contents, or a description of the subject matter it concerns; the name and address of the persons, if any, who drafted, prepared, compiled or signed it; and any other descriptive information necessary in order to describe it adequately in a subpoena duces tecum or in a motion or request for production thereof. With regard to a person, the term "identify" means set forth the person's name, last known address and telephone number, occupation, last known address and telephone number of the person's place of employment, and a summary of the relevant knowledge possessed by such person.
10. "And" and "or," as used herein, shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories or requests any information that might otherwise be construed to be outside their scope.
11. "Evidencing" and or "relating to," as used herein, mean and include, in whole or in part, referring to, with respect to, concerning, connected with, commenting on, responding to, showing, describing, analyzing, reflecting and constituting.

1 12. If any document requested formerly was in your possession or subject to your
2 control but no longer is in your possession or subject to your control, state when
3 and what disposition was made of the document or documents.

5 13. If you assert the attorney-client privilege, work-product doctrine, or other
6 privilege or exclusion as to any document requested by any of the following
7 specific interrogatories or requests, please identify the document in sufficient
8 detail to permit the Court to reach a determination in the event of a Motion to
9 Compel.

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

12 **UNLESS OTHERWISE NOTED, THE DOCUMENTS, RECORDS, AND DATA**
13 **REQUESTED ARE THOSE THAT APPLY TO AND/OR COVER ANY PART OF THE**
14 **TIME PERIOD FROM JANUARY 1, 2012 TO THE PRESENT.**

15 **THE FOLLOWING TERMS ARE USED IN THESE REQUESTS AND ARE**
16 **DEFINED AS FOLLOWS:**

- 17 1. The “**subject incident**” is defined as the incident that occurred on February 19,
18 2014 involving the Jacuzzi, Inc. walk-in tub used by Plaintiff Sherry Lynn
19 Cunnison in which Plaintiff Cunnison became trapped in the walk-in tub.
- 20 2. “**Identified Persons**” is defined to include the following persons:
- 21 a. Jess Castillo
 - 22 b. Regina Reyes
 - 23 c. Curt Backmeyer
 - 24 d. Phil Weeks
 - 25 e. Brett Mueller
 - 26 f. Richard Romo
 - 27 g. William B. Demeritt
 - 28 h. Michael A. Dominguez

- i. Ron Templer
- j. Anthony Lovallo
- k. Nicole Simetz

**WITH REGARD TO ALL E-MAILS AND DOCUMENTS PRODUCED IN
RESPONSE TO THESE REQUESTS:**

1. The e-mails should be accumulated in separate PST files for each person and source for which they are being provided. In other words, each person whose e-mail data contains the above described items of interest will have their own PST file. In addition, they will have separate PST files for their e-mail on the e-mail server, their e-mail in their e-mail client server, their e-mail client software, as well as their archive backup and/or synchronization files (OST).
2. There should also be separate PST files for all e-mails recovered from off-line sources such as from back-up tapes.
3. The PST files should retain any folder structure used by the person for which the e-mail is being provided even if the folder is empty of any e-mails in the produced table.
4. All e-mails provided should remain in the corresponding folder in which it was stored.
5. If the e-mail system also includes information other than e-mails such as contact, calendar and schedule information that is responsive to this request then that information should also be produced.
6. All of the data should be provided on a read only media such as CD or DVD that is appropriately labeled. Each file on the media should have its digital fingerprint, such as MD-5 has or SHA-256 has, determined and that value recorded in a document that is contained in the media.
7. If the same media is used for producing different data sources then each source, such as individual workstations, servers, and backup tapes whether onboard any

ship or shore-based facility, should be provided in separate folders on the media and the source and period covered by the data identified.

8. When documents or information is requested in their native format, it should be provided in native electronic format if that is a common and widely used format. If the native format is unavailable or it is not common and widely used then the documentation should be provided in another electronic format such as PDF as well as its native format.

9. When producing electronic documents include all original and unaltered metadata, including file system metadata, file pointers like *.LNK files, restore point contents, registry hives, event logs, application logs, and all other artifacts referencing or containing references to produced files, events, people or issues relevant to this matter. If necessary, this information can be supplied in a separate document.

THE DOCUMENTS TO BE PRODUCED ARE SET FORTH BELOW

A. COMMUNICATIONS AND CORRESPONDENCE:

REQUEST NO. 11.

Any communications between William B. Demeritt and one or more of the Identified Persons regarding preserving, saving, reloading of any documents related to the Subject Incident.

REQUEST NO. 12.

Any communications between Michael A. Dominguez and one or more of the Identified Persons regarding preserving, saving, reloading of any documents related to the Subject Incident.

REQUEST NO. 13.

Any communications between Ron Templer and one or more of the Identified Persons regarding preserving, saving, reloading of any documents related to the Subject Incident.

...

...

REQUEST NO. 14.

Any communications between Anthony Lovallo and one or more of the Identified Persons regarding preserving, saving, reloading of any documents related to the Subject Incident.

REQUEST NO. 15.

Any communications between Nicole Simetz and one or more of the Identified Persons regarding preserving, saving, reloading of any documents related to the Subject Incident.

REQUEST NO. 16.

All communications exchanged by the Identified Persons in native format discussing and/or relating in any way to the subject incident that include one or more of the following terms identified below in sub-section i) to xxii). (Note: the “!” is used below as a root expander in order to retrieve words with variant endings. For instance, “fall!” would retrieve “fall,” “falls”, and, “falling.”).

- i) Fall!
- ii) Slip!
- iii) Elderly
- iv) Overweight
- v) Enter!
- vi) Exit!
- vii) Door
- viii) Stab!
- ix) Body
- x) Position
- xi) Water
- xii) Control
- xiii) Faucet
- xiv) Seat
- xv) Bathtub

- xvi) Walk-in
- xvii) Tub
- xviii) Handhold!
- xix) Grab
- xx) Rail!
- xxi) Grip
- xxii) Bar!
- xxiii) Cunnison
- xxiv) Smith
- xxv) Cullen
- xxvi) Baize

B. OTHER MATTERS:

REQUEST NO. 17.

Production of forensic duplicates (“mirror images”) of the computer hard drives used by the following individuals in the course of Defendant’s business from January 1, 2012 to the present:

- i) William B. Demeritt
- ii) Michael A. Dominguez

Plaintiff proposes that said forensic duplicates shall be produced to an independent forensic vendor (Evidence Solutions, Inc.) that will analyze the duplicates for discoverable information at Plaintiff’s cost using mutually agreeable search terms.

REQUEST NO. 18.

Documents that show whether or not Jess Castillo is presently your employee, associate, subcontractor, etc.; if he/she is no longer with your company, produce documents showing his/her most recent contact information including residence address, new work address and new employer name, phone number, and email address.

...

REQUEST NO. 19.

Documents that show whether or not Regina Reyes is presently your employee, associate, subcontractor, etc.; if he/she is no longer with your company, produce documents showing his/her most recent contact information including residence address, new work address and new employer name, phone number, and email address.

REQUEST NO. 20.

Documents that show whether or not Curt Backmeyer is presently your employee, associate, subcontractor, etc.; if he/she is no longer with your company, produce documents showing his/her most recent contact information including residence address, new work address and new employer name, phone number, and email address.

REQUEST NO. 21.

Documents that show whether or not Phil Weeks is presently your employee, associate, subcontractor, etc.; if he/she is no longer with your company, produce documents showing his/her most recent contact information including residence address, new work address and new employer name, phone number, and email address.

REQUEST NO. 22.

Documents that show whether or not Brett Mueller is presently your employee, associate, subcontractor, etc.; if he/she is no longer with your company, produce documents showing his/her most recent contact information including residence address, new work address and new employer name, phone number, and email address.

REQUEST NO. 23.

Documents that show whether or not Richard Romo is presently your employee, associate, subcontractor, etc.; if he/she is no longer with your company, produce documents showing his/her most recent contact information including residence address, new work address and new employer name, phone number, and email address.

...

...

1 **REQUEST NO. 24.**

2 All documents containing information pertaining to any other lawsuit to which you were
3 a named party regarding a consumer's use of one of your walk-In tubs.

5 **REQUEST NO. 25.**

6 All documents containing information pertaining to any other insurance claim to which
7 you were a named party regarding a consumer's use of one of your walk-In tubs.

8 **REQUEST NO. 26.**

9 All statements or reports by any person who investigated the subject incident.

10 **REQUEST NO. 27.**

11 Copies of any incident report prepared by you, or on your behalf, concerning the subject
12 incident or any claim or potential claim arising out of the subject incident.

13 **REQUEST NO. 28.**

14 All surveillance videos of any one of the Plaintiffs, other recordings of any one of the
15 Plaintiffs, or reports compiled regarding any one of the Plaintiffs as a result of any surveillance.

16 **REQUEST NO. 29.**

17 Any photographs, still or motion pictures, videos, plans, drawings, blueprints, sketches,
18 diagrams, computer simulations, or any other photographic or demonstrative evidence
19 concerning the subject incident or concerning any of the issues material to this lawsuit, to
20 include, but not be limited to, the issues of liability and damages.

21 **REQUEST NO. 30.**

22 Any and all evidence in your possession to include documents, medical condition,
23 photographs, sound or video recordings, or any documentation by any other name, that concern
24 Plaintiff's physical or medical condition, injuries, or damages that have not been supplied to you
25 by Plaintiff's counsel.

26 **REQUEST NO. 31.**

27 All documentation of any and all denials of coverage and/or reservations of rights
28 pertaining to the subject incident.

REQUEST NO. 32.

Any videotape, photograph, report, data, memoranda, handwritten notes or other document reviewed by or generated by any expert witness identified in your response to Plaintiff's Interrogatories.

REQUEST NO. 33.

Any and all correspondence to and from each expert witness identified in your response to Plaintiff's Interrogatories which describes or refers in any way to the facts of the case, the materials provided for his or her review, the review or analysis he or she was requested to perform, and/or the any fee or charge for services in relation to the expert's services.

REQUEST NO. 34.

All materials relied upon by expert witness(es) identified in your response to Plaintiff's Interrogatories in formulating any opinions or conclusions pertaining to the subject matter of this civil action inclusive of claimed injuries and/or damages.

REQUEST NO. 35.

All documents you and/or your attorneys, insurers, agents, and representatives obtained through a request for production of documents, subpoena, open records request, and/or Freedom of Information Act request, pertaining in any way to this civil action or its subject matter.

REQUEST NO. 36.

Your entire investigation file regarding the subject incident to include documents gathered by your insurer and/or insurance/claims/third-party administrator.

REQUEST NO. 37.

A current organization/hierarchy chart for your company to include the Safety and Risk Management department/group/division for your company.

REQUEST NO. 38.

An organization/hierarchy chart for your company for the date of the subject incident to include the Safety and Risk Management department/group/division for your company.

...

1 **REQUEST NO. 39.**

2 Documents showing your "post-incident protocols" in force on January 1, 2012 and any
3 revisions thereto up to the present time.

5 **REQUEST NO. 40.**

6 Documents from any post-incident root cause analysis or other analysis intended to
7 promote product safety conducted by you related to the subject incident.

8 **REQUEST NO. 41.**

9 All reports, logs, etc. memorializing any incident involving consumer use of any of your
10 Walk-in Tubs, for the period from January 1, 2012 to the present.

11 **REQUEST NO. 42.**

12 All reports that you received from the U.S. Consumer Product Safety Commission
13 regarding your Walk-in Tubs from January 1, 2012 to the present.

14 **REQUEST NO. 43.**

15 All documents relating to complaints made to you about your Walk-In Tubs from January
16 1, 2012 to the present.

17 **REQUEST NO. 44.**

18 The Answer you filed to any personal injury lawsuit regarding a Jacuzzi Walk-In Tub
19 from January 1, 2012 to the present. In lieu of the Answer(s), produce a complete listing of any
20 such lawsuits to include the first-listed plaintiff's name, the court where the action was filed or
21 is now pending, and the case number/civil action file number.

22 **REQUEST NO. 45.**

23 Record containing names of all of your personnel who assisted with document production
24 in this case.

25 **REQUEST NO. 46.**

26 All documents that show any efforts you made to preserve, protect, safeguard, sequester,
27 or store the photos you took of the subject tub following the subject incident.

28 . . .

1 **REQUEST NO. 47.**

2 A copy on disc of all documents responsive to any and all of Plaintiff's Requests for
3 Production and/or Notice(s) to Produce to Jacuzzi in this civil action. Said disc copy to include
4 photos you produced in discovery – in the same electronic format as they are in your possession
5 – with no reduction in quality or compression.

6 DATED this 27th day of August, 2018.

7 **RICHARD HARRIS LAW FIRM**

8 
9
10 BENJAMIN P. CLOWARD, ESQ.

11 Nevada Bar No. 11087

12 801 South Fourth Street

13 Las Vegas, Nevada 89101

14 *Attorneys for Plaintiff*

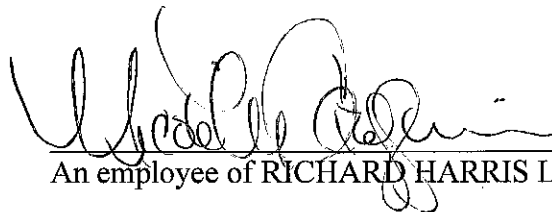
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of RICHARD HARRIS LAW FIRM and that on this 27th day of August, 2018, I served a copy of the foregoing, **PLAINTIFFS' SECOND REQUEST FOR PRODUCTION OF DOCUMENTS TO JACUZZI, INC. in Ansara, Robert, et al. v. First Street for Boomers & Beyond, Inc., et al., Clark County District Court Case No. A-16-731244-C**, as follows:

- ☐ 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*

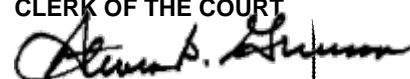


EXHIBIT 14

000652

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11/6/2018 5:45 PM
Steven D. Grierson
CLERK OF THE COURT



1 **DCRR**

2 BENJAMIN P. CLOWARD, ESQ.

3 Nevada Bar No. 11087

4 **RICHARD HARRIS LAW FIRM**

5 801 South Fourth Street

6 Las Vegas, Nevada 89101

7 Phone: (702) 444-4444

8 Fax: (702) 444-4455

9 E-Mail: Benjamin@RichardHarrisLaw.com

10 *Attorneys for 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; HOMECCLICK,
26 LLC; JACUZZI INC., doing business as
27 JACUZZI LUXURY BATH; BESTWAY
28 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

**DISCOVERY COMMISSIONER
REPORT & RECOMMENDATIONS**

DATE OF HEARING: September 19, 2018

TIME OF HEARING: 9:30a.m.

NOV 02 2018

1 AND ALL RELATED MATTERS

2
3 **HEARING DATE:** September 19, 2018

4 **HEARING TIME:** 9:30 a.m.

5 **ATTORNEYS FOR PLAINTIFF:** Benjamin P. Cloward, Esq., Richard Harris Law Firm

6 **ATTORNEY FOR DEFENDANTS:** Joshua Cools, Esq., Snell & Wilmer, LLP

7 Also, present was Megan M. Goodwin, Esq., of Thorndal, Armstrong, Delk, Balkenbush,
8 & Eisinger for Defendants First Street For Boomers & Beyond, Inc. & AITHR Dealer, Inc.

9
10 **I.**

11 **FINDINGS**

12 Defendant Jacuzzi, Inc. dba Jacuzzi Luxury Bath's Motion for Protective Order on Order
13 Shortening Time came on for hearing on September 19, 2018 before the Discovery
14 Commissioner. Having considered the papers and pleadings on file herein, the parties' briefs,
15 and oral argument of counsel, the Discovery Commissioner finds:

16 **RFPD 17:** The Discovery Commissioner finds that Jacuzzi is protected from responding
17 to RFPD 17. However, the Discovery Commissioner also finds that Plaintiffs do have a good
18 faith basis for requesting the information sought. Therefore, alternative relief shall be granted.
19 A third-party vendor may be permitted to perform a forensic analysis of the computer systems
20 that contain the data/information relating to initial customer complaints provided that the analysis
21 *is reasonable in the \$5000 to \$7500 range.* ~~does not exceed \$7,500.00.~~ Jacuzzi and Plaintiffs shall each obtain cost estimates from a third-
22 party vendor to perform such an analysis. Jacuzzi and Plaintiffs shall meet and confer to determine
23 mutually agreeable search parameters. The time frame for the search will be from 2008 to present.

24 Jacuzzi shall inform Plaintiffs of the logistical details necessary for Plaintiffs to obtain an
25 accurate cost-estimate. Jacuzzi shall inform Plaintiffs of the location of the computers, servers,
26 *1. Specifically, Customer's* or other similar devices where *in the calls of complaints where there was personal injury or death are* such data is stored as well as the technical specifications of the
27 relevant devices (e.g., number of computers/drives/servers; the types of hard drives, the number
28 of bytes of data to be searched). ~~Jacuzzi shall provide this information to Plaintiffs by October~~

*I think this was not discussed in great detail at the hearing
I expect Defendants to provide sufficient information so that
a meaningful estimate of performing a computer search
may be determined.*

15, 2018. Jacuzzi and Plaintiffs shall submit the cost-estimates to the Court through supplemental *provide the relevant* *at the status check*
~~briefing by October 20, 2018.~~ *heavy set for November 11, 2018; the parties may also file supplemental briefs should they desire to do so.* Jacuzzi shall also confirm there are no hard copy documents *will also* *unknown* relating to customer complaints from 2008 to the present that are not electronically stored.

RFPDs 24, 25, 41, 42, and 43: The Discovery Commissioner finds that the scope of these requests is overbroad. Therefore, Plaintiffs shall serve supplemental requests within the following parameters. The scope shall be limited in time from 2008 to present. The requests shall also be limited to walk-in tubs. The scope of the request shall include all bodily injury (as opposed to serious bodily injury) and wrongful death claims.

Additionally, the Discovery Commissioner finds that Jacuzzi's responses to these requests shall not redact the *all of it* identifying information of the customers who have made complaints or claims to Jacuzzi. Jacuzzi shall not redact the names, addresses, telephone numbers, or other contact information. Jacuzzi shall however redact social security numbers. The Discovery Commissioner also finds that Jacuzzi shall produce an unredacted version of the subsequent incident documents initially produced to Plaintiffs on August 17, 2018. Jacuzzi may only redact social security numbers.

The documents containing third party information shall be under Rule 26(c) protective order and shall remain confidential until subsequent order by the trial judge. *as being personal private information potentially embarrassing and/or annoying to the non-parties*

RFPDs 26, 27, and 36: The Discovery Commissioner finds that even if Jacuzzi may have previously answered similar requests, Jacuzzi must still respond to RFPDs 26, 27, and 36.

RFPDs 39 and 40: The Discovery Commissioner finds that these requests shall be protected, as written. Plaintiffs may revise RFPDs 39 and 40 to requests documents relating to a 911 call system and any other subsequent remedial measures. Such subsequent remedial measures are not limited to subsequent design changes. Subsequent remedial measures shall include *may include* any procedural changes, policy changes, or any other similar change *type of s. 11* in response to similar incidents. *The Discovery Commissioner is not ruling on whether future discovery regarding subsequent remedial measures is appropriate at this time.*

RFPD 46: The Discovery Commissioner finds that, as written, RFPD 36 seeks information which can be obtained via Rule 30(b)(6) deposition. However, Plaintiffs may rewrite

Please see discussion on pp 14-16 of the hearing transcript.

1 RFPD 46 to request documents relating to policies and procedures for investigations and
2 document retention.

3 **RFPDs 11, 12, 13, 14, 15, and 16:** The Discovery Commissioner finds that Jacuzzi shall
4 be protected from having to respond to these requests, as written. Plaintiffs may serve requests
5 which seek documents relating to Jacuzzi's policies and procedures on record retention,
6 investigation. Plaintiffs may take a second deposition of Jacuzzi's Rule 30(b)(6) designee on the
7 topic of Jacuzzi's policies and procedures on investigating claims. ²

8 **Depositions of Jess Castillo, Curt Bachmeyer, and Regina Reyes:** The Discovery
9 Commissioner finds that, given the alternative relief being granted, the depositions of Jess
10 Castillo, Curt Bachmeyer, and Regina Reyes shall be protected without prejudice to Plaintiffs
11 ability to renew the deposition requests. Whether Plaintiffs are entitled to take these depositions
12 shall be determined after the results of the independent forensic search discussed above are
13 obtained.
14

15 Additionally, the Discovery Commissioner finds that Jacuzzi created a spreadsheet
16 documenting the results of Jacuzzi's search for similar incidents. Jacuzzi shall produce the
17 spreadsheet to the Court for in camera inspection by October 15, 2018. ^{The Commissioner} However, the spreadsheet
18 ~~shall not be produced to Plaintiff until ten days after entry of a final order on this report and~~
19 ~~recommendation.~~ ^{but then determine what, if any information, will then be produced. It}

20 II.

21 RECOMMENDATIONS

22 IT IS THEREFORE RECOMMENDED that Defendant Jacuzzi, Inc. dba Jacuzzi Luxury
23 Bath's Motion for Protective Order is GRANTED, in part, and DENIED, in part.

24 IT IS FURTHER RECOMMENDED that Jacuzzi shall be protected from responding to
25 RFPD 17.

26 IT IS ORDERED that a third-party vendor may be permitted to perform a forensic analysis
27 of the computer systems that contain the data/information relating to initial customer complaints
28 provided that the cost ^{is within a reasonable range. It} does not exceed \$7,500.00. Jacuzzi and Plaintiffs shall meet and confer to

29 ^{4848-4081-7781.1} *2. Defendants raise an objection that a second 30(b)(6) deposition should not be permitted, but this was the alternative relief I provided at the hearing 4 so to the extent Defendants believe this is improper, Defendants should object. It is the Commissioner's understanding that topic areas concerning policies and procedures and record retention have not been previously addressed.*

1 determine mutually agreeable search parameters. The time frame for the search will be from 2008
 2 to present. Jacuzzi and Plaintiffs shall each obtain cost estimates from a third-party vendor to
 3 perform such an analysis to submit to the Court. *for discussion at the next hearing set for 11-2-18 at 9:00 a.m.*

5 IT IS FURTHER ORDERED that Jacuzzi shall inform Plaintiffs of the logistical details
 6 necessary for Plaintiffs to obtain an accurate cost-estimate. *The parties are to share*
 7 *information regarding the* location of the computers, servers, or other similar devices where such data is stored as well as
 8 *"complaint intake" m* the technical specifications of the relevant devices (e.g., number of computers/drives/servers; the
 9 types of hard drives, the number of bytes of data to be searched). Jacuzzi shall provide this
 10 information to Plaintiffs by October 15, 2018. *The Discovery Commission will*
 11 *decide whether the search will take place and the parameters of*
 12 *the search at the upcoming hearing date of 11-2-18.* However, the analysis will not take place until at
 least ten days after entry of a final order on this report and recommendation. Jacuzzi and Plaintiffs
 shall submit the cost estimates to the Court through supplemental briefing by October 20, 2018.

13 IT IS FURTHER ORDERED that the search *will* include all hard documents from 2008
 14 to present, not just electronically stored information, *but again that determination*
 15 *will be made at the 11-2-18 hearing.* IT IS FURTHER RECOMMENDED that Plaintiffs shall rewrite RFPDs 24, 25, 41, 42,
 16 and 43 and serve supplemental RFPDs. *Unless otherwise indicated by date restructuring,* The supplemental requests shall be limited in time from
 17 2008 to present; shall be limited to the same or similar models of walk-in tubs, and shall include
 18 bodily injury or wrongful death claims.

19 IT IS FURTHER RECOMMENDED that Jacuzzi's responses to the supplemental RFPDs
 20 24, 25, 41, 42, and 43 shall not redact *all of* the identifying information of the customers who have
 21 made complaints or claims to Jacuzzi. Jacuzzi shall not redact the names, addresses, telephone
 22 numbers, or other contact information. *Specifically,* Jacuzzi shall redact social security numbers. The
 23 documents containing third party information shall be under Rule 26(c) protective order and shall
 24 remain confidential until subsequent order by the trial judge. *Homenu, m* *as personal private information that*
is potentially
embarrassing or annoying

25 IT IS FURTHER RECOMMENDED that Jacuzzi shall produce an unredacted version of
 26 the subsequent incident documents initially produced to Plaintiffs on August 17, 2018. Jacuzzi
 27 may only redact social security numbers. The unredacted version shall be under Rule 26(c)
 28 protective order and shall remain confidential until subsequent order by the trial judge, *for*
the same reasons set forth in the paragraph above.

IT IS FURTHER RECOMMENDED that Jacuzzi ^{must provide} ~~is not protected from providing~~ responses to RFPDs 26, 27 and 36.

IT IS FURTHER RECOMMENDED that Jacuzzi is protected from responding to RFPDs 39 and 40, as written. Plaintiffs may revise RFPDs 39 and 40 to requests documents relating to a 911 call system and any other subsequent remedial measures.

IT IS FURTHER RECOMMENDED that Plaintiffs may rewrite RFPD 46 to request documents relating to policies and procedures for investigations and document retention.

IT IS FURTHER RECOMMENDED that Jacuzzi is protected from having to respond to RFPDs 11, 12, 13, 14, 15, and 16. However, Plaintiffs may serve requests which seek documents relating to Jacuzzi's policies and procedures on record retention, ^{and} investigation. ~~policies.~~

~~IT IS FURTHER RECOMMENDED~~ that Plaintiffs may take a second deposition of Jacuzzi's Rule 30(b)(6) designee on the topic of Jacuzzi's policies and procedures on investigating claims, ^{in lieu of serving another RFPD, as the Commission understood that the Trial 30(b)(6) deponent did not address these issues.}

IT IS FURTHER RECOMMENDED that the depositions of Jess Castillo, Curt Bachmeyer, and Regina Reyes shall be protected without prejudice to Plaintiffs ability to renew the deposition requests. ³ ~~Whether Plaintiffs will be entitled to these depositions will be determined after the results of the alternative relief (i.e., the independent forensic computer search) are obtained.~~

///

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→ Again, these topic areas are perfect for a second 30(b)(6) deposition as discussed at the hearing (see Hearing Transcript pp 16-17). ^{NR}


3 Although we discussed at the hearing reasons for potentially taking these depositions in the future, including what additional search results might show, the Commission has not yet made this determination as to whether future computer searches will be made and the scope of these searches is yet to be determined and will be addressed at the 11-218 hearing. ^{NR}

Ansara v. Jacuzzi, Inc., et al.

A-16-731244-C

IT IS FURTHER ORDERED that Jacuzzi shall produce the spreadsheet relating to the results of its search for similar incidents to the Discovery Commissioner for in camera inspection. *OK*
by ~~October 15, 2018~~ ⁴

DATED this 16 day of October, 2018.

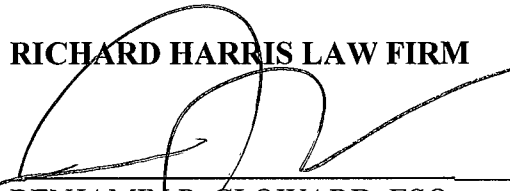

DISCOVERY COMMISSIONER

Prepared and Submitted by:

Approved as to Form and Content by:

RICHARD HARRIS LAW FIRM

SNELL & WILMER LLP


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Nevada Bar No. 11087
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Attorneys for Plaintiff

would not sign
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Nevada Bar No.
JOSHUA D. COOLS, ESQ.
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*Attorneys for Defendant/Cross-Defendant
Jacuzzi Brands, LLC*

Approved as to Form and Content by:

**THORNDAL ARMSTRONG DELK
BALKENBUSH & EISINGER**

Michael Hetey, Esq.
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Meghan M. Goodwin, Esq.
Nevada Bar No. 11974
1100 East Bridger Avenue
Las Vegas, Nevada 89101-5315
*Attorneys for Defendants/Cross-Defendants
Firststreet for Boomers and Beyond, Inc. and Aithr Dealer, Inc.*

*4. The Commission did not
set forth a specific date at the
time of the hearing, but there was
every expectation that the
in camera would be provided
within a reasonable period
of time. M*

Ansara v. Jacuzzi, Inc., et al.

A-16-731244-C

IT IS FURTHER ORDERED that Jacuzzi shall produce the spreadsheet relating to the results of its search for similar incidents to the Discovery Commissioner for in camera inspection by October 15, 2018.

DATED this ____ day of September, 2018.

DISCOVERY COMMISSIONER

Prepared and Submitted by:

Approved as to Form and Content by:

RICHARD HARRIS LAW FIRM

SNELL & WILMER LLP

BENJAMIN P. CLOWARD, ESQ.
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Las Vegas, Nevada 89101
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Nevada Bar No.
JOSHUA D. COOLS, ESQ.
Nevada Bar No.
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Las Vegas, NV 89159
*Attorneys for Defendant/Cross-Defendant
Jacuzzi Brands, LLC*

Approved as to Form and Content by:

**THORNDAL ARMSTRONG DELK
BALKENBUSH & EISINGER**

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Nevada Bar No. 5668
Meghan M. Goodwin, Esq.
Nevada Bar No. 11974
1100 East Bridger Avenue
Las Vegas, Nevada 89101-5315
*Attorneys for Defendants/Cross-Defendants
Firststreet for Boomers and Beyond, Inc. and Aithr Dealer, Inc.*

NOTICE

Pursuant to NRC 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 17 day of Oct, 2018, pursuant to N.E.F.C.R. Rule 9.

By: 
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),

✓_{NP} — Having received the objections thereto and the written arguments in support of said objections, and good cause appearing,

* * *

✓_{AND} 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 _____, 20____, at ____:____a.m.

Dated this 5th day of November, 2018.


DISTRICT COURT JUDGE

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EXHIBIT 15

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BENJAMIN P. CLOWARD, ESQ.

Nevada Bar No. 11087

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Las Vegas, Nevada 89101

Phone: (702) 444-4444

Fax: (702) 444-4455

E-Mail: Benjamin@RichardHarrisLaw.com*Attorneys for Plaintiffs***DISTRICT COURT****CLARK COUNTY, NEVADA**

ROBERT ANSARA, as Special Administrator
of the Estate of SHERRY LYNN CUNNISON,
Deceased; 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, HOMECCLICK, LLC;
JACUZZI INC., doing business as JACUZZI
LUXURY BATH; BESTWAY BUILDING &
REMODELING, INC.; WILLIAM BUDD,
Individually and as BUDDS PLUMBING;
DOES 1 through 20; ROE CORPORATIONS 1
through 20; DOE EMPLOYEES 1 through 20;
DOE MANUFACTURERS 1 through 20; DOE
20 INSTALLERS 1 through 20; DOE
CONTRACTORS 1 through 20; and DOE 21
SUBCONTRACTORS 1 through 20, inclusive,

Defendants.

CASE NO.: A-16-731244-C

DEPT NO.: II

DISCOVERY
COMMISSIONER'S REPORT
AND RECOMMENDATIONS

1 AND ALL RELATED MATTERS

3 **HEARING DATE:** November 2, 2018

4 **HEARING TIME:** 9:00 a.m.

5 **ATTORNEYS FOR PLAINTIFF:** Benjamin Cloward, Richard Harris Law Firm

6 **ATTORNEYS FOR DEFENDANTS:** Joshua D. Cools, Snell & Wilmer L.L.P. for Defendant
 7 Jacuzzi Inc. d/b/a Jacuzzi Luxury Bath ("Jacuzzi"); Philip Goodhart, Armstrong, Delk,
 8 Balkenbush & Eisinger, for Defendants FirstStreet for Boomers & Beyond, Inc. and AITHR
 9 Dealer, Inc.

10 The Discovery Commissioner heard oral argument on the following matters:

- 11 1. The status of *in camera* review of Jacuzzi's work product performed in searching
- 12 for prior incidents pursuant to Plaintiffs' discovery requests;
- 13 2. Jacuzzi's Motion for Protective Order on Order Shortening Time regarding
- 14 Plaintiffs' subpoena of third-party Salesforce;
- 15 3. Plaintiffs' requested forensic review of Jacuzzi's other personal injury or death
- 16 incident records; and
- 17 4. Discovery deadlines.

18 **I. FINDINGS**

19 These matters having come before the Discovery Commissioner on November 2, 2018,
 20 the Discovery Commissioner finds:

- 21 1. The materials submitted by Jacuzzi for *in camera* review were reviewed by the
- 22 Discovery Commissioner and are privileged attorney work product and will not be subject to
- 23 production. The Discovery Commissioner will protect the materials and put them in the vault.
- 24 2. Jacuzzi's counsel reported on the records about which the Discovery
- 25 Commissioner had requested additional information. Jacuzzi reported that only one of the
- 26 records involved a walk-in tub and did not involve a personal injury or death, and are therefore
- 27
- 28

1 not relevant to Plaintiffs' claims. Jacuzzi also submitted the additional record information to
 2 the Discovery Commissioner, who will review. After the Discovery Commissioner reviews the
 3 additional documents which were submitted to the Court at the hearing, the Discovery
 4 Commissioner will decide whether the same documents must be produced to Plaintiffs. The
 5 Discovery Commissioner will inform the parties as to whether the documents must be produced
 6 via a clerk's note. *On 11-21-18 the Discovery Commissioner directed that*

7 *a Clerk's note be entered protecting the additional documents she reviewed, which*
 8 3. The Discovery Commissioner finds that Jacuzzi's Motion for Protective Order
 9 regarding the Salesforce subpoena should be granted, in light of the alternative relief granted to
 10 Plaintiff to have a third party forensic analysis of Jacuzzi's customer relation databases.

11 4. Plaintiffs' counsel provided an update on the cost for having a third party
 12 forensic analysis performed on Jacuzzi's customer relation databases. The Discovery
 13 Commissioner found that Plaintiffs are authorized to move forward with the forensic review,
 14 but that the parties must coordinate in order to create search parameters that are useful and
 15 related to the claims in this case.

16 5. The Discovery Commissioner further found that the third party forensic analyst
 17 will be permitted to conduct the search, pursuant to a stipulated protocol agreed to by the
 18 parties, with plaintiffs' counsel agreeing to pay the third party forensic analyst cost. A report
 19 shall be provided to the Discovery Commissioner regarding the results of the forensic analysis
 20 before any contested records are disclosed to plaintiff. The Discovery Commissioner also found
 21 that any such production would be subject to a protective order pursuant to NRCP 26(c).

22 6. The Discovery Commissioner also heard the parties' representations regarding
 23 the status of discovery deadlines, including the District Court's hearing on Plaintiffs' Motion to
 24 Continue Trial and Discovery Deadlines. The Discovery Commissioner found that good cause
 25 existed to extend the close of discovery to January 25, 2019.

26 7. The Discovery Commissioner also instructed the parties that if an extension to the
 27 dispositive deadline was needed, they would need to make this request to the District Court, but
 28 that she would support such an extension

Ansara/Cunnison v. Jacuzzi, et al.

A-16-731244-C

II. RECOMMENDATIONS

IT IS THEREFORE RECOMMENDED that Jacuzzi Inc.'s Motion for Protective Order regarding the Salesforce subpoena is GRANTED, without prejudice, and the subpoena is quashed.

IT IS FURTHER RECOMMENDED that Jacuzzi Inc.'s *in camera* production of work product produced while searching for other prior incidents is privileged work product and will be put in the vault. After the Discovery Commissioner reviews the additional documents which were submitted to the Court at the hearing, the Discovery Commissioner will decide whether the same documents must be produced to Plaintiffs. The Discovery Commissioner will inform the parties as to whether the documents must be produced via a clerk's note. *The additional documents were reviewed and a clerk's note entered on 11-21-18 protecting said documents from disclosure.*


IT IS FURTHER RECOMMENDED that Plaintiffs may proceed with a third party forensic review of Jacuzzi's customer relation databases for information related to other personal injury or death incidents involving walk-in tubs. The parties must meet and confer to determine a stipulated protocol for the search.

IT IS FURTHER RECOMMENDED that the close of discovery be extended to January 25, 2019, with all other discovery deadlines remaining the same.

DATED this 3 day of January, 2019.


DISCOVERY COMMISSIONER

Prepared and Submitted by:
RICHARD HARRIS LAW FIRM


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

Ansara/Cunnison v. Jacuzzi, et al.

A-16-731244-C

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 January, 2019.
- ☐ Placed in the folder of counsel in the Clerk's office on the ___ day of January, 2019.
- ☒ Electronically served counsel on the Jan 4, 2019 pursuant to NEFCR Rule 9.


COMMISSIONER DESIGNEE

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,

IT IS HEREBY ORDERED the Discovery Commissioner's Report and 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 is set for _____, 2019 at _____m.

DATED: _____, 2019

DISTRICT COURT JUDGE

EXHIBIT 16

699000

000669

Snell & Wilmer

LAW OFFICES
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, Nevada 89169
702.784.5200

Vaughn A. Crawford, Nevada Bar No. 7665
Joshua D. Cools, Nevada Bar No. 11941
Alexandria L. Layton, Nevada Bar No. 14228
SNELL & WILMER L.L.P.
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, NV 89169
Telephone: (702) 784-5200
Facsimile: (702) 784-5252
vcrawford@swlaw.com
jcools@swlaw.com
alayton@swlaw.com

*Attorneys for Defendant/Cross-Defendant
Jacuzzi Inc. doing business as Jacuzzi Luxury Bath*

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

Defendants.

AND ALL RELATED CLAIMS.

Case No.: A-16-731244-C
Dept. No.: II

**DEFENDANT/CROSS-DEFENDANT
JACUZZI INC.'S TWELFTH
SUPPLEMENTAL DISCLOSURE
STATEMENT**

000670

1 Defendant/Cross-Defendant Jacuzzi Inc. dba Jacuzzi Luxury Bath ("Jacuzzi"), by and
 2 through its attorneys, the law firm of Snell & Wilmer L.L.P., hereby submits its Twelfth
 3 Supplemental Disclosure Statement. Any supplemental or modified information appears in **bold**
 4 **font**.

5 PRELIMINARY STATEMENT

6 This Disclosure Statement and its contents represent the product of Jacuzzi's investigation
 7 to date. Because of the limited information available to Jacuzzi, Jacuzzi cannot yet provide a
 8 significant level of detail regarding the facts of the incident. Further investigation and discovery
 9 may bring to light additional information that may have a bearing on Jacuzzi's theories of
 10 defense. Jacuzzi may identify additional documents, if any, after Plaintiffs have specified the
 11 defect allegations, through additional pleadings, if any, through any disclosure made, and through
 12 discovery (particularly expert discovery) in accordance with Rule 16.1 of the Nevada Rules of
 13 Civil Procedure. Jacuzzi is prepared to meet with Plaintiffs and, as necessary or appropriate, to
 14 cooperate in the scheduling of a conference for purpose of refining and clarifying Jacuzzi's
 15 disclosures and Plaintiffs' contentions.

16 Accordingly, this disclosure is not intended to represent Jacuzzi's complete defense of the
 17 case, but is merely a preliminary disclosure statement until further information is obtained
 18 regarding Plaintiffs' specific claims and the specific claims against Jacuzzi and is subject to
 19 supplementation. If any part of this statement is ever read to the jury, fairness would require that
 20 this preliminary statement also be read indicating that at the time it was filed only limited
 21 information had been acquired. In addition, because Plaintiffs may assert, clarify, modify, or
 22 otherwise develop defect theories in this lawsuit, Jacuzzi reserves the right, at any time in this
 23 litigation, to identify additional witnesses or documents, if any, which pertain to any such
 24 theories.

25 Jacuzzi's disclosures are made without waiving, in any respect, the (1) right to object on
 26 the grounds of competency, privilege, relevancy and materiality, hearsay, or any other proper
 27 ground, to the use of any such information, for any purpose, in whole or in part, in any
 28 subsequent stage or proceeding in this action or any other action, and (2) the right to object on

any and all grounds, at any time, to any other discovery proceeding involving or relating to the subject matter of these disclosures.

Jacuzzi reserves the right to supplement or amend its disclosures before trial based on continuing investigation, if appropriate. All of the disclosures set forth below are made subject to the above comments and qualifications.

The following disclosures are made based on the information reasonably available to Jacuzzi as of the date of this disclosure, and represent Jacuzzi's good faith effort to identify information pertaining to the allegations of Plaintiffs' Second Amended Complaint. If Plaintiffs further define the scope of their defect investigation, research and analysis will supply additional facts and documents, add meaning to known facts, all of which may in turn lead to substantial additions or changes to this disclosure.

A. THE NAME, AND IF KNOWN, THE ADDRESS AND TELEPHONE NUMBER OF EACH INDIVIDUAL LIKELY TO HAVE INFORMATION DISCOVERABLE UNDER RULE 26(b), INCLUDING FOR IMPEACHMENT OR REBUTTAL, IDENTIFYING THE SUBJECTS OF THE INFORMATION

In accordance with Rule 16.1(a)(1)(A), Jacuzzi is presently aware of the following individuals who may possess responsive information concerning the circumstances surrounding the incident, and the nature of Plaintiff's injuries:

CASE SPECIFIC WITNESSES

- 1, Robert Ansara, as Special Administrator of the
Estate of Sherry Lynn Cunnison
c/o Benjamin P. Cloward, Esq.
RICHARD HARRIS LAW FIRM
801 S. Fourth Street
Las Vegas, NV 89101

Mr. Ansara is a Plaintiff in this matter and is believed to have information as to the allegations set forth in the Second Amended Complaint, claimed damages and the circumstances of the subject incident.

2. Michael Smith, individually, and heir to the
Estate of Sherry Lynn Cunnison
c/o Benjamin P. Cloward, Esq.
RICHARD HARRIS LAW FIRM
801 S. Fourth Street
Las Vegas, NV 89101

1 Mr. Smith is a Plaintiff in this matter and is believed to have information as to the
2 allegations set forth in the Second Amended Complaint, claimed damages and the circumstances
of the subject incident.

- 3 3. Deborah Tamantini, individually, and heir to the
4 Estate of Sherry Lynn Cunnison
5 c/o Benjamin P. Cloward, Esq.
6 RICHARD HARRIS LAW FIRM
801 S. Fourth Street
Las Vegas, NV 89101

7 Mr. Tamantini is a Plaintiff in this matter and is believed to have information as to the
8 allegations set forth in the Second Amended Complaint, claimed damages and the circumstances
of the subject incident.

- 9 4. Corporate Representative(s)
10 First Street for Boomers & Beyond, Inc.
11 c/o Christopher J. Curtis, Esq.
12 Meghan M. Goodwin, Esq.
THORNDAL, ARMSTRONG, DELK
BALKENBUSH & EISINGER
1100 East Bridger Avenue
Las Vegas, NV 89101

13 First Street for Boomers and Beyond, Inc. is a Defendant/Cross-Defendant in this matter.
14 The Corporate Representative(s) for First Street for Boomers and Beyond, Inc. is expected to
15 testify as to the facts and circumstances surrounding the circumstances of the subject incident.

- 16 5. Corporate Representative(s)
17 Aithr Dealer, Inc.
18 c/o Christopher J. Curtis, Esq.
19 Meghan M. Goodwin, Esq.
THORNDAL, ARMSTRONG, DELK
BALKENBUSH & EISINGER
1100 East Bridger Avenue
Las Vegas, NV 89101

20 Aithr Dealer, Inc. is a Defendant/Cross-Defendant in this matter. The Corporate
21 Representative(s) for Aithr Dealer, Inc. is expected to testify as to the facts and circumstances
surrounding the circumstances of the subject incident.

- 22 6. Corporate Representative(s)
23 Homeclick, LLC
24 c/o Michael E. Stoberski, Esq.
25 Daniela Labounty, Esq.
26 OLSON, CANNON, GORMLEY,
ANGULO & STOBERSKI
9950 West Cheyenne Avenue
Las Vegas, NV 89129

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28 ///

Homeclick, LLC is a Defendant/Cross-Claimant/Third Party Plaintiff/Cross-Defendant in this matter. The Corporate Representative(s) for Homeclick, LLC. is expected to testify as to the facts and circumstances surrounding the circumstances of the subject incident.

7. Corporate Representative(s)
Budds Plumbing
c/o Joseph P. Garin, Esq.
LIPSON, NEILSON, COLE,
SELTZER & GARIN, P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, NV 89144

Budds Plumbing is a Defendant/Cross-Claimant/Cross-Defendant in this matter. The Corporate Representative(s) for Budds Plumbing is expected to testify as to the facts and circumstances surrounding the circumstances of the subject incident.

8. William Budd
Budds' Plumbing
c/o Joseph P. Garin, Esq.
LIPSON, NEILSON, COLE,
SELTZER & GARIN, P.C.
9900 Covington Cross Drive, Suite 120
Las Vegas, NV 89144

William Budd is a Defendant/Cross-Claimant/Cross-Defendant in this matter. Mr. Budd is expected to testify as to the facts and circumstances surrounding the circumstances of the subject incident.

9. Corporate Representative(s)
The Chicago Faucet Company
c/o Scott R. Cook, Esq.
Jennifer L. Micheli, Esq.
KOLESAR & LEATHAM
400 South Rampart Boulevard, Suite 400
Las Vegas, NV 89145

The Chicago Faucet Company is a Third-Party Defendant in this matter. The Corporate Representative(s) for The Chicago Faucet Company is expected to testify as to the facts and circumstances surrounding the circumstances of the subject incident.

10. Corporate Representative(s)
Bestway Building & Remodeling, Inc.
c/o Elizabeth Skane, Esq.
Dione C. Wrenn, Esq.
SKANE & WILCOX LLP
1120 Town Center Drive, Suite 200
Las Vegas, NV 89144

Bestway Building & Remodeling, Inc. is a Defendant/Cross-Defendant/Cross-Claimant in this matter. The Corporate Representative(s) for Bestway Building & Remodeling, Inc. is expected to testify as to the facts and circumstances surrounding the circumstances of the subject incident.

///

- 1 11. Corporate Representative(s)
 Jacuzzi Inc.
 c/o Joshua D. Cools, Esq.
 SNELL & WILMER L.L.P.
 3883 Howard Hughes Pkwy, Suite 1100
 Las Vegas, NV 89169

5 Jacuzzi Inc. is a Defendant/Cross-Defendant in this matter. The Corporate
 6 Representative(s) for Jacuzzi Inc. is expected to testify regarding the Walk-In Bathtub at issues in
 this litigation.

- 7 12. Hale Benton
 26479 W. Potter Dr.
 Buckeye, AZ 85396
 (702) 498-9012

10 Hale Benton is a Defendant in this matter. He is expected to testify as to the facts and
 11 circumstances surrounding the circumstances of the subject incident.

- 12 13. Designated Representative and/or
 Custodian of Records for
 Clark County Coroner
 1704 Pinto Lane
 Las Vegas, NV 89106

15 The Designated Representative and/or Custodian of Records for Clark County Coroner is
 16 expected to testify regarding its investigation into Plaintiff's injuries and the circumstances
 surrounding the incident.

- 17 14. Timothy Dutra, M.D., Coroner
 Kristen Peters, Coroner Investigator
 Daniel S. Isenschmid, Ph.D., D-ABFT, Forensic Toxicologist
 Clark County Coroner
 1704 Pinto Lane
 Las Vegas, NV 89106

21 Dr. Dutra, Kristen Peters, and Dr. Isenschmid are expected to testify regarding Plaintiff's
 22 injuries and the circumstances surrounding the incident.

- 23 15. Designated Representative and/or
 Custodian of Records
 Decedent's Treating Medical Providers

25 The Designated Representative and/or Custodian of Records from Decedent's Treating
 26 Medical Providers are expected to testify as to Decedent's condition, care, treatment provided to
 Decedent.

27 ///

28 ///

- 1 16. Designated Representative and/or
2 Custodian of Records for
3 Palm Eastern Cemetery
4 7600 S. Eastern Avenue
5 Las Vegas, NV 89123
6 (702) 464-8500

7 The Designated Representative and/or Custodian of Records for Palm Eastern Cemetery is
8 expected to testify regarding the services provided, including associates costs, and other issues.

- 9 17. Designated Representative and/or
10 Custodian of Records for
11 Medic West Ambulance
12 9 W. Delhi Avenue
13 North Las Vegas, NV 89032
14 (702) 650-9900

15 The Designated Representative and/or Custodian of Records for Medic West Ambulance
16 is expected to testify as to Decedent's condition, care and treatment provided to Decedent.

- 17 18. Carlos Fonseca, Paramedic
18 Brennan Demille, EMT Intermediate
19 Jimmy Chavez, Paramedic
20 Luke Crawford, EMT Intermediate
21 Jenna Lamperti, EMT Intermediate
22 Jacob Stamer, EMT
23 Jesse Blanchard, Paramedic
24 Victor Montecerin, Paramedic
25 Medic West Ambulance
26 9 W. Delhi Avenue
27 North Las Vegas, NV 89032
28 (702) 650-9900

Paramedics and EMTs of Medic West Ambulance are expected to testify as to Decedent's condition, care and treatment provided to Decedent.

- 19 19. Designated Representative and/or
20 Custodian of Records for
21 Sunrise Hospital & Medical Center
22 3186 S. Maryland Parkway
23 Las Vegas, NV 89109
24 (702) 731-8000

25 The Designated Representative and/or Custodian of Records for Sunrise Hospital &
26 Medical Center is expected to testify as to Decedent's condition, care and treatment provided to
27 Decedent.

20. Muhammad A. Syed, M.D.
James Walker, M.D.
Kitty Ho Cain, M.D.
Lindsey C. Blake, M.D.
Holman Chan, M.D.
Hany F. Ghali, M.D.
Sayed Z. Qazi, M.D.
Muhammad Bhatti, M.D.
Wayne Jacobs, M.D.
Yekaterina Khronusova, M.D.
Mark Vandenbosch, M.D.
Chris J. Fischer, M.D.
Shirin Rahman, M.D.
Sean D. Beaty, M.D.
Joshua Owen, M.D.
Rafael Valencia, M.D.
David P. Gorczyca, M.D.
Dean P. Berthoty, M.D.
Robert N. Berkley, M.D.
Daniel D. Lee, M.D.
Shameyel Roshan, D.O.
Richard A. Schwartz, M.D.
Ronald F. Sauer, Jr., D.O.
Arjun V. Gururaj, M.D.
Nicolao Tsiouris, M.D.
Warren Wheeler, M.D.
Gyorgy Varsanyi, M.D.
David Silverberg, M.D.
Douglas M. Sides, M.D.
Sunrise Hospital & Medical Center
3186 S. Maryland Parkway
Las Vegas, NV 89109
(702) 731-8000

The above-referenced Decedent's Treating Medical Providers at Sunrise Hospital & Medical Center are expected to testify as to Decedent's condition, care and treatment provided to Decedent.

21. Designated Representative and/or
Custodian of Records for
Clark County Fire Department
575 East Flamingo Rd.
Las Vegas, NV 89119

The Designated Representative and/or Custodian of Records for Clark County Fire Department is expected to testify as to Decedent's condition, care and treatment provided to Decedent.

22. Paramedic Nicholas Stahlberger
Paramedic Raymond LeClair
Clark County Fire Department
575 East Flamingo Rd.
Las Vegas, NV 89119

Paramedics Nicholas Stahlberger and Raymond LeClair of Clark County Fire Department are expected to testify as to Decedent's condition, care and treatment provided to Decedent.

23. Officer Matthew Scanlon
Officer Kevin Lemire
Officer Matthew Shake
Officer Keith Bryant
Officer Shakeel Abdal-Karim
Officer B. Venpamel
Sergeant Dana Pickerel
Sergeant Allen Larsen
Las Vegas Metro Police Department
400 S. Martin Luther King Blvd.
Las Vegas, NV 89106

Police Officers from Las Vegas Metro Police Department are expected to testify as to Decedent's condition and as to the facts and circumstances surrounding the circumstances of the subject incident.

24. William Lewis
5354 Camden Avenue
Las Vegas, NV 89122

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

25. Michael Zuvar
746655 Willow Drive
Doyle, CA 96109
775-560-7791

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

26. Michael Showalter
5500 Celestial Way
Citrus Heights, CA 95610
831-595-1015 (cell)
916-903-7186 (home)

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

27. Frederick J. Tanenggee, M.D.
HealthCare Partners
129 West Lake Mead, Suite 10
Henderson, NV 89015
(702) 565-1007

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

- 1 28. Benjamin Muir, M.D.
 Michael Carducci, M.D.
 HealthCare Partners Nevada
 700 E. Warm Springs Road, Suite 110
 Las Vegas, NV 89119
 (702) 318-2400

2
 3
 4 The above-referenced Decedent's Treating Medical Providers are expected to testify as to
 5 Decedent's condition, care and treatment provided to Decedent.

- 6 29. Designated Representative and/or
 Custodian of Record for
 HealthCare Partners Nevada
 700 E. Warm Springs Road, Suite 110
 Las Vegas, NV 89119
 (702) 318-2400

7
 8
 9 The Designated Representative and/or Custodian of Records for HealthCare Partners
 10 Nevada is expected to testify as to Decedent's condition, care and treatment provided to
 11 Decedent.

- 12 30. Designated Representative and/or
 Custodian of Records for
 Kindred Hospital Las Vegas-Flamingo
 2250 E. Flamingo Road
 Las Vegas, NV 89119
 (702) 784-4300

13
 14
 15 The Designated Representative and/or Custodian of Records for Kindred Hospital Las
 16 Vegas-Flamingo is expected to testify as to Decedent's condition, care and treatment provided to
 17 Decedent.

- 18 31. Sachit Das, M.D.
 Robert M. Yeh, M.D.
 Kindred Hospital Las Vegas-Flamingo
 2250 E. Flamingo Road
 Las Vegas, NV 89119
 (702) 784-4300

19
 20
 21 The above-referenced Decedent's Treating Medical Providers at Kindred Hospital Las
 22 Vegas-Flamingo are expected to testify as to Decedent's condition, care and treatment provided
 23 to Decedent.

- 24 32. Designated Representative and/or
 Custodian of Records for
 Premier Health & Rehab Center
 f/k/a Southern Nevada Medical & Rehab Center
 2945 Casa Vegas Street
 Las Vegas, NV 89109
 (702) 735-7179

1 The Designated Representative and/or Custodian of Records for Premier Health & Rehab
2 Center f/k/a Southern Nevada Medical & Rehab Center is expected to testify as to Decedent's
condition, care and treatment provided to Decedent.

- 3 33. Designated Representative and/or
4 Custodian of Records for
5 Davis Funeral Homes & Memorial Park
6 6200 S. Eastern Avenue
7 Las Vegas, NV 89119
8 (702) 736-6200

9 The Designated Representative and/or Custodian of Records for Davis Funeral Homes &
10 Memorial Park is expected to testify regarding the services provided, including associates costs,
11 and other issues.

- 12 34. Personnel and/or
13 Custodian of Records for
14 Walgreens Pharmacy
15 4895 Boulder Highway
16 Las Vegas, NV 89121
17 (702) 898-5264

18 Personnel of Walgreens Pharmacy provided medications to Decedent and are expected to
19 testify regarding medications and medical care provided, and any other relevant knowledge.

- 20 35. Designated Representative and/or
21 Custodian of Records for
22 Mountain View Hospital
23 3100 N. Tenaya Way
24 Las Vegas, NV 89128
25 (702) 962-5000

26 The Designated Representative and/or Custodian of Records for Mountain View Hospital
27 is expected to testify as to Decedent's condition, care and treatment provided to Decedent.

- 28 36. Designated Representative and/or
Custodian of Records for
Desert Springs Hospital
2075 E. Flamingo Road
Las Vegas, NV 89119
(702) 733-8800

The Designated Representative and/or Custodian of Records for Desert Springs Hospital
is expected to testify as to Decedent's condition, care and treatment provided to Decedent.

37. Prashant Bharucha, M.D.
Nakeisha Curry, M.D.
Randal Shelin, M.D.
Armen Hovanessian, M.D.
Desert Springs Hospital
2075 E. Flamingo Road
Las Vegas, NV 89119
(702) 733-8800

1 The above-referenced Decedent's Treating Medical Providers at Desert Springs Hospital
2 are expected to testify as to Decedent's condition, care and treatment provided to Decedent.

3 38. Designated Representative and/or
4 Custodian of Records for
5 HealthCare Partners
6 9280 W. Sunset Road
7 Las Vegas, NV 89148
8 (702) 534-5464

9 The Designated Representative and/or Custodian of Records for HealthCare Partners is
10 expected to testify as to Decedent's condition, care and treatment provided to Decedent.

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

16 Dr. Jurani-Suarez at HealthCare Partners is expected to testify as to Decedent's condition,
17 care and treatment provided to Decedent.

18 40. Designated Representative and/or
19 Custodian of Records for
20 Comprehensive & Interventional Pain Management
21 10561 Jeffreys Street, Suite 211
22 Henderson, NV 89052
23 (702) 990-4530

24 The Designated Representative and/or Custodian of Records for Comprehensive &
25 Interventional Pain Management is expected to testify as to Decedent's condition, care and
26 treatment provided to Decedent.

27 41. Daniel Fabito, M.D.
28 Comprehensive & Interventional Pain Management
10561 Jeffreys Street, Suite 211
Henderson, NV 89052
(702) 990-4530

Dr. Fabito at Comprehensive & Interventional Pain Management is expected to testify as
to Decedent's condition, care and treatment provided to Decedent.

42. Michael Her, M.D.
1236 N. Magnolia Avenue
Anaheim, CA 92801
(714) 995-1000

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

///

- 1 43. Designated Representative and/or
2 Custodian of Records for
3 Social Security Administration
4 4340 Simmons Street
5 North Las Vegas, NV 89032

6 The Designated Representative and/or Custodian of Records for the Social Security
7 Administration is expected to testify as to the disability and retirement benefits provided to
8 Decedent.

- 9 44. Designated Representative and/or
10 Custodian of Records for
11 Nevada Orthopedic
12 1505 Wigwam Parkway, #330
13 Henderson, NV 89074

14 The Designated Representative and/or Custodian of Records for Nevada Orthopedic is
15 expected to testify as to Decedent's condition, care and treatment provided to Decedent.

- 16 45. Designated Representative and/or
17 Custodian of Records for
18 Torrey Pines Rehabilitation
19 1701 South Torrey Pines Dr.
20 Las Vegas, NV 89146

21 The Designated Representative and/or Custodian of Records for Torrey Pines
22 Rehabilitation is expected to testify as to Decedent's condition, care and treatment provided to
23 Decedent.

- 24 46. Designated Representative and/or
25 Custodian of Records for
26 Orthopedic Institute of Henderson
27 10561 Jeffrey's Street, Suite 230
28 Henderson, NV 89052

 The Designated Representative and/or Custodian of Records for Orthopedic Institute of
Henderson is expected to testify as to Decedent's condition, care and treatment provided to
Decedent.

**B. 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)**

 Per rule 16.1(a)(1)(B), Jacuzzi hereby discloses the following documents, electronically
stored information, and tangible things:

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	DOCUMENT DESCRIPTION	BATES NO.
1		
2	1. Installation and Operation Instructions Manual, Jacuzzi 5229 Walk-In Bathtub Series, 2013	JACUZZI 000001-20
3		
4	2. DWO Geberit Installation Manual, 2012.	JACUZZI 000021-22
5	3. DWO Geberit Pin Drawing for Fitting No. 241.789.21.1. Subject to Protective Order. Will be produced upon entry of appropriate Protective Order. Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI 000023
6		
7		
8	4. MT31 Geberit Installation Instructions	JACUZZI 000024-27
9		
10	5. Commercial General Liability Declarations for Policy GL 509-47-59 (redacted)	JACUZZI 000028-31
11	6. No Records Declaration received from Las Vegas Fire and Rescue pursuant to Jacuzzi's Subpoena	JACUZZI000032-33
12	7. Records received from Palm Eastern Cemetery pursuant to Jacuzzi's Subpoena	JACUZZI000034-77
13		
14	8. Records received from Medic West Ambulance pursuant to Jacuzzi's Subpoena. (According to ChartSwap, pages bates numbered JACUZZI000083-87 are part of the PCR and contain the patient's name, and were intentionally left blank).	JACUZZI000078-87
15		
16		
17	9. Records and photographs received from Clark County Coroner / Medical Examiner's Office pursuant to Jacuzzi's Subpoena	JACUZZI000088-118
18		
19	10. Medical records received from Sunrise Hospital & Medical Center pursuant to Jacuzzi's Subpoena	JACUZZI000119-1311
20		
21	11. Photographs produced by Las Vegas Metropolitan Police Department in response to Jacuzzi's subpoena	JACUZZI001312-1319
22	12. Officer's Report from Las Vegas Metropolitan Police Department in response to Jacuzzi's subpoena	JACUZZI001320-1321
23		
24	13. 911 Logs and audio file from Las Vegas Metropolitan Police Department in response to Jacuzzi's subpoena	JACUZZI001322-1325
25		
26	14. Sunrise Hospital and Medical Center radiology records in response to Jacuzzi's subpoena	JACUZZI001326-1327
27	15. Las Vegas Metro Police Department 911 records in response to Jacuzzi's 2 nd subpoena	JACUZZI001328-1332
28		

	DOCUMENT DESCRIPTION	BATES NO.
16.	Sunrise Hospital and Medical Center billing records in response to Jacuzzi's subpoena	JACUZZI001333-1348
17.	Drawing LW19000_Shell FS5229 RH Walk In (Will be produced upon entry of a Protective Order) Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI001349
18.	Drawing LW32827_Grab Bar Assembly (Will be produced upon entry of a Protective Order) Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI001350
19.	Drawing LW47000RevD_SHL T&D FS 5229 RH SLN (Will be produced upon entry of a Protective Order) Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI001351-1352
20.	Drawing LW48000RevB_SHL Bond FS 5229 RH (Will be produced upon entry of a Protective Order) Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI001353-1354
21.	Drawing LX22000_Piping Suction (Will be produced upon entry of a Protective Order) Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI001355
22.	Drawing LX24000B_Piping Discharge (Will be produced upon entry of a Protective Order) Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI001356-1357
23.	Drawing LX25000_Piping Airline (Will be produced upon entry of a Protective Order) Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI001358
24.	Drawing LX26000A_Piping Blower (Will be produced upon entry of a Protective Order) Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI001359-1360
25.	Drawing LX27000_Two Pt Quarter Turn Door Latch (Will be produced upon entry of a Protective Order) Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI001361-1368
26.	Drawing LX62000_Door Assembly (Will be produced upon entry of a Protective Order) Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI001369
27.	Drawing LX82000_Skirt Access Panel (Will be produced upon entry of a Protective Order) Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI001370

	DOCUMENT DESCRIPTION	BATES NO.
28.	Drawing LX91827A_Handle_Sub (Will be produced upon entry of a Protective Order) Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI001371
29.	Door Life Cycle (Will be produced upon entry of a Protective Order) Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI001372-1375
30.	ETL Certification Listing (Will be produced upon entry of a Protective Order) Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI001376-1441
31.	IAPMO Certification Listing (Will be produced upon entry of a Protective Order) Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI001442-1446
32.	IAMPO Lab Test Report ASTM F 462-79 (Will be produced upon entry of a Protective Order) Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI001447-1449
33.	WIT Tub Standards Certificate of Listing	JACUZZI001450-1454
34.	2011 National Electrical Code	JACUZZI001455-1471
35.	2012 Uniform Mechanical Code	JACUZZI001472-1479
36.	2012 Uniform Plumbing Code	JACUZZI001480-1493
37.	Clark County Building Code	JACUZZI001494-1587
38.	Jacuzzi's Manufacturing Agreement with First Street For Boomers & Beyond, Inc., which is related to the subject Jacuzzi® Walk-In Bathtub (Will be produced upon entry of a Protective Order) Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI001588-1606
39.	Drawing 4486000B_Label Bath Safety (Will be produced upon entry of a Protective Order) Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI001607
40.	Drawing BA35000A_Label Lift Here (Will be produced upon entry of a Protective Order) Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI001608
41.	Drawing N261000B_Label No Wrench (Will be produced upon entry of a Protective Order) Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI001609

	DOCUMENT DESCRIPTION	BATES NO.
42.	Drawing R958000F_Label Caution Union (Will be produced upon entry of a Protective Order) Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI001610
43.	270244 Order Acknowledgement (Will be produced upon entry of a Protective Order) Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI001611-1612
44.	Jacuzzi 270244 Invoice 68325423 (Will be produced upon entry of a Protective Order) Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI001613
45.	SEFL Southeastern Freight Lines Invoice 180106252 (Will be produced upon entry of a Protective Order) Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI001614-1617
46.	Social Security Administration records in response to Jacuzzi's request for Release of Information	JACUZZI001618-1620
47.	Certificate of Custodian of Records of No Records for Torrey Pines Rehabilitation in response to Jacuzzi's Subpoena	JACUZZI001621
48.	Comprehensive & Interventional Pain Management records in response to Jacuzzi's Subpoena	JACUZZI001622-1811
49.	Orthopedic Institute of Henderson records in response to Jacuzzi's Subpoena	JACUZZI001812-2036
50.	Certificate of Custodian of Records of No Records for Davis Funeral Homes & Memorial Park in response to Jacuzzi's Subpoena	JACUZZI002037
51.	Certificate of Custodian of Records of No Records for Premier Health & Rehab Center f/k/a Southern Nevada Medical & Rehab Center	JACUZZI002038
52.	Nevada Ortho and Spine records in response to Jacuzzi's Subpoena	JACUZZI002854-2911
53.	Documents regarding other incidents of personal injury or death in walk-in tubs from 2008 to present produced in compliance with Discovery Commissioner's direction at July 20, 2018 hearing produced to Plaintiff on August 17, 2018. The production should not be regarded as a waiver to the documents and information's relevance or admissibility.	JACUZZI002912-002991

1	54. Email correspondence with FirstStreet regarding	JACUZZI002992-004521
2	walk-in tub development and marketing from	
3	January 1, 2008-February 21, 2014. The	
	production includes some native files.	

4 As Discovery is continuing, Jacuzzi reserves the right to supplement the disclosures as
5 necessary.

6 C. A COMPUTATION OF ANY CATEGORY OF DAMAGES CLAIMED BY THE
7 DISCLOSING PARTY, MAKING AVAILABLE FOR INSPECTION AND
8 COPYING AS UNDER RULE 34 OF THE DOCUMENTS OR OTHER
9 EVIDENTIARY MATTER, NOT PRIVILEGED OR PROTECTED FROM
10 DISCLOSURE, ON WHICH SUCH COMPUTATION IS BASED, INCLUDING
11 MATERIALS BEARING ON THE NATURE AND EXTENT OF INJURIES
12 SUFFERED

13 Jacuzzi does not allege any damages as required by Rule 16.1(a)(1)(C). Plaintiffs have the
14 burden of proving damages. Jacuzzi disputes liability and, to the extent it is necessary and
15 appropriate, Jacuzzi contests Plaintiffs' damages. Jacuzzi will seek its costs and attorneys' fees to
16 the extent permitted by law.

17 D. FOR INSPECTION AND COPYING AS UNDER RULE 34 ANY INSURANCE
18 AGREEMENT UNDER WHICH ANY PERSON CARRYING ON AN
19 INSURANCE BUSINESS MAY BE LIABLE TO SATISFY PART OR ALL OF A
20 JUDGMENT WHICH MAY BE ENTERED IN THE ACTION OR TO
21 INDEMNIFY OR REIMBURSE FOR PAYMENTS MADE TO SATISFY THE
22 JUDGMENT AND ANY DISCLAIMER OR LIMITATION OF COVERAGE OR
23 RESERVATION OF RIGHTS UNDER ANY SUCH INSURANCE AGREEMENT

24 Pursuant to Rule 16.1(a)(1)(D), Jacuzzi produces the attached declaration page for its
25 insurance agreement applicable to this claim, which will be adequate to satisfy any possible
26 judgment in this case.

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1 DATED this 27th day of November, 2018.

2 SNEEL & WILMER L.L.P.

3
4 By: 

5 Vaughn A. Crawford
6 Nevada Bar No. 7665
7 Joshua D. Cools
8 Nevada Bar No. 11941
9 Alexandria L. Layton
10 Nevada Bar No. 14228
11 3883 Howard Hughes Parkway, Suite 1100
12 Las Vegas, NV 89169

13 *Attorneys for Defendant/Cross-Defendant*
14 *Jacuzzi Inc. doing business as Jacuzzi Luxury Bath*

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Sneel & Wilmer

LAW OFFICES
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, Nevada 89169
702.784.2200

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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 this date, I caused to be served a true and correct copy of the foregoing **DEFENDANT/CROSS-DEFENDANT JACUZZI INC.'S TWELFTH SUPPLEMENTAL DISCLOSURE STATEMENT** by the method indicated below, addressed to the following:

- ☒ **BY E-MAIL:** by transmitting via e-mail the document(s) listed above to the e-mail addresses set forth below and/or included on the Court's Service List for the above-referenced case.
- ☒ **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.
- ☐ **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:


Benjamin P. Cloward, NV Bar No. 11087
Richard Harris Law Firm
 801 S. Fourth Street
 Las Vegas, NV 89101
 (702) 444-4444; (702) 444-4455 fax
Benjamin@RichardHarrisLaw.com
catherine@richardharrislaw.com
Attorneys for Plaintiffs

Charles H. Allen (*pro hac vice*)
Charles Allen Law Firm, P.C.
 3575 Piedmont Road, NE
 Building 15, Suite L-130
 Atlanta, GA 30305
 (404) 419-6674; (866) 639-0287 fax
callen@charlesallenlawfirm.com
Attorneys for Plaintiffs

Meghan M. Goodwin, NV Bar No. 11974
Thorndal, Armstrong, Delk, Balkenbush & Eisinger
 1100 East Bridger Avenue
 Las Vegas, NV 89101-5315
 Mail to: P.O. Box 2070
 Las Vegas, NV 89125-2070
 (702) 366-0622; (702) 366-0327 fax
mmg@thorndal.com
*Attorneys for Defendants/Cross-Defendants
 First Street for Boomers & Beyond, Inc. and
 AITHR Dealer, Inc.*

VIA EMAIL
 Hale Benton
 26479 West Potter Drive
 Buckeye, AZ 85396
halebenton@gmail.com
Defendant Pro Per

DATED this 27th day of November, 2018.


 An Employee of Snell & Wilmer L.L.P.

4826-4868-0321.1

EXHIBIT 17

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DISTRICT COURT
CLARK COUNTY, NEVADA

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

Plaintiffs,

-vs-

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

Defendants.

CASE NO.
A-16-731244-C

DEPT NO. II

Taken at 139
Bitterroot Plaza Dr.
Hamilton, Montana
Thursday,
December 20, 2018
12:00 P.M.

VIDEOTAPED DEPOSITION

OF

JERRE CHOPPER

Reported by: Terra Rohlf, RPR
Freelance Court Reporter and
Notary Public for the State of Montana

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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

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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

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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.

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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

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EXHIBIT 18

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

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

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

9 Plaintiffs,

10 v.

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

20 Defendants.

21 PURSUANT TO NOTICE, the deposition of
22 LILA F. LAUX, PH.D., was taken on behalf of the
23 Defendant Jacuzzi Inc. doing business as Jacuzzi
24 Luxury Bath at 1200 17th Street, Suite 1900, Denver,
25 Colorado 80202, on October 30, 2018, at 9:53 a.m.,
before Darcy Curtis, Registered Professional Reporter
and Notary Public within Colorado.

THOMAS G. OAKES, A VERITEXT COMPANY
MID-ATLANTIC REGION
535 Route 38 East, Suite 330
Cherry Hill, NJ 08002

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

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

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

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

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

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

19 A. Right.

20 Q. What's the significance of that document?

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

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

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

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

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

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

13 Q. In total it sounds like you spent about
14 17 hours on this case; is that right?

15 A. Yes, probably.

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

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

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

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EXHIBIT 19

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From: Cools, Joshua
Sent: Tuesday, January 30, 2018 11:47 AM
To: Benjamin Cloward
Cc: Nicole Griffin; Charles Allen PC (callen@charlesallenlawfirm.com); Courtney Milburn; graham@charlesallenlawfirm.com; Layton, Alexandria; Moreno, Jorge
Subject: RE: Protected Documents

Ben – Below is a FTP link that will allow you to download the protected documents. I'll give you a call to discuss the potential move of the deposition and some other discovery-related issues. Thanks. – Josh

<https://swlaw.sharefile.com/d-sf56a0fb99b84dc58>. Link expires in 30 days.

From: Benjamin Cloward [mailto:Benjamin@richardharrislaw.com]
Sent: Friday, January 26, 2018 4:56 PM
To: Cools, Joshua
Cc: Nicole Griffin; Charles Allen PC (callen@charlesallenlawfirm.com); Courtney Milburn; graham@charlesallenlawfirm.com; Layton, Alexandria
Subject: RE: Protected Documents

Josh,

I agree to treat the documents as if the PO was signed and filed.

I am not however willing to informally agree to moving the deadlines, not because of anything with you, but because I recently got burned (along with all other 4 firms in the case) by a judge who essentially stated that nothing in the rules allows for informal stipulations.

So if you're asking that we move the deposition date, I ask that we formalize an extension. Otherwise, we ask to proceed as previously scheduled as it's been difficult to accomplish the corporate depositions.

Best,

Ben

From: Cools, Joshua [mailto:jcools@swlaw.com]
Sent: Friday, January 26, 2018 4:02 PM
To: Benjamin Cloward <Benjamin@richardharrislaw.com>
Cc: Nicole Griffin <ngriffin@richardharrislaw.com>; Charles Allen PC (callen@charlesallenlawfirm.com) <callen@charlesallenlawfirm.com>; Courtney Milburn <courtney@charlesallenlawfirm.com>; graham@charlesallenlawfirm.com; Layton, Alexandria <alayton@swlaw.com>
Subject: RE: Protected Documents

Ben – I am fine with producing them with the agreement that they are subject to the pending protective order. Please confirm that the document production will be treated as such, even though the PO is not yet signed by the judge. Once you do that, I should be able to get them to you today or Monday.

That being said, scheduling a second 30(b)(6) deposition simply on the basis of not having the documents does not work for me. In light of that position, as well as the expanded scope of the your deposition notice and our likely need to meet and confer again, let's consider moving the dates by a couple weeks. If we need to, I am okay with informally stipulating to moving the expert disclosure deadlines by a couple weeks too. Let me know if that is workable for you and we can talk possible dates.

I should have our responses and objections to your amended 30(b)(6) deposition notice by sometime next week.

Thanks. – Josh

From: Benjamin Cloward [<mailto:Benjamin@richardharrislaw.com>]
Sent: Friday, January 26, 2018 8:21 AM
To: Cools, Joshua
Cc: Nicole Griffin; Charles Allen PC (callen@charlesallenlawfirm.com); Courtney Milburn; graham@charlesallenlawfirm.com
Subject: Protected Documents

Hi Josh,

As you are aware, we have been trying to get these documents for quite some time. The deposition of the Rule 30(b)(6) is coming up in a couple weeks and certainly the documents will be needed for preparation purposes.

I do not dare move the deposition because you've fought us on discovery extensions.

Please be aware that we will likely need a second deposition with the Rule 30(b)(6) because I'm not sure if we'll have enough time to prepare and get those documents to our experts even if you provide them today.

Please consider producing them right away.

Thanks,

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
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Snell & Wilmer

LAW OFFICES
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, Nevada 89169
702.784.5200

SDIS

Vaughn A. Crawford, Nevada Bar No. 7665
Joshua D. Cools, Nevada Bar No. 11941
SNELL & WILMER L.L.P.
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, NV 89169
Telephone: (702) 784-5200
Facsimile: (702) 784-5252
Email: vcrawford@swlaw.com
Email: jcools@swlaw.com

Attorneys for Defendant/Cross-Defendant
JACUZZI INC. doing business
as JACUZZI LUXURY BATH

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

AND ALL RELATED CLAIMS.

///

Case No.: A-16-731244-C
Dept. No.: XVIII

**DEFENDANT/CROSS-DEFENDANT
JACUZZI INC.'S SEVENTH
SUPPLEMENTAL DISCLOSURE
STATEMENT**

000703

**DEFENDANT/CROSS-DEFENDANT JACUZZI INC.'S
SEVENTH SUPPLEMENTAL DISCLOSURE STATEMENT**

Defendant/Cross-Defendant Jacuzzi Inc. doing business as Jacuzzi Luxury Bath ("Jacuzzi"), by and through its attorneys, the law firm of Snell & Wilmer L.L.P., hereby submits its Seventh Supplemental Disclosure Statement. Any supplemental or modified information appears in **bold font**.

PRELIMINARY STATEMENT

This Disclosure Statement and its contents represent the product of Jacuzzi's investigation to date. Because of the limited information available to Jacuzzi, Jacuzzi cannot yet provide a significant level of detail regarding the facts of the incident. Further investigation and discovery may bring to light additional information that may have a bearing on Jacuzzi's theories of defense. Jacuzzi may identify additional documents, if any, after Plaintiffs have specified the defect allegations, through additional pleadings, if any, through any disclosure made, and through discovery (particularly expert discovery) in accordance with Rule 16.1 of the Nevada Rules of Civil Procedure. Jacuzzi is prepared to meet with Plaintiffs and, as necessary or appropriate, to cooperate in the scheduling of a conference for purpose of refining and clarifying Jacuzzi's disclosures and Plaintiffs' contentions.

Accordingly, this disclosure is not intended to represent Jacuzzi's complete defense of the case, but is merely a preliminary disclosure statement until further information is obtained regarding Plaintiffs' specific claims and the specific claims against Jacuzzi and is subject to supplementation. If any part of this statement is ever read to the jury, fairness would require that this preliminary statement also be read indicating that at the time it was filed only limited information had been acquired. In addition, because Plaintiffs may assert, clarify, modify, or otherwise develop defect theories in this lawsuit, Jacuzzi reserves the right, at any time in this litigation, to identify additional witnesses or documents, if any, which pertain to any such theories.

Jacuzzi's disclosures are made without waiving, in any respect, the (1) right to object on the grounds of competency, privilege, relevancy and materiality, hearsay, or any other proper

ground, to the use of any such information, for any purpose, in whole or in part, in any subsequent stage or proceeding in this action or any other action, and (2) the right to object on any and all grounds, at any time, to any other discovery proceeding involving or relating to the subject matter of these disclosures.

Jacuzzi reserves the right to supplement or amend its disclosures before trial based on continuing investigation, if appropriate. All of the disclosures set forth below are made subject to the above comments and qualifications.

The following disclosures are made based on the information reasonably available to Jacuzzi as of the date of this disclosure, and represent Jacuzzi's good faith effort to identify information pertaining to the allegations of Plaintiffs' Second Amended Complaint. If Plaintiffs further define the scope of their defect investigation, research and analysis will supply additional facts and documents, add meaning to known facts, all of which may in turn lead to substantial additions or changes to this disclosure.

A. THE NAME, AND IF KNOWN, THE ADDRESS AND TELEPHONE NUMBER OF EACH INDIVIDUAL LIKELY TO HAVE INFORMATION DISCOVERABLE UNDER RULE 26(b), INCLUDING FOR IMPEACHMENT OR REBUTTAL, IDENTIFYING THE SUBJECTS OF THE INFORMATION

In accordance with Rule 16.1(a)(1)(A), Jacuzzi is presently aware of the following individuals who may possess responsive information concerning the circumstances surrounding the incident, and the nature of Plaintiff's injuries:

CASE SPECIFIC WITNESSES

1. Robert Ansara, as Special Administrator of the Estate of Sherry Lynn Cunnison
c/o Benjamin P. Cloward, Esq.
RICHARD HARRIS LAW FIRM
801 S. Fourth Street
Las Vegas, NV 89101

Mr. Ansara is a Plaintiff in this matter and is believed to have information as to the allegations set forth in the Second Amended Complaint, claimed damages and the circumstances of the subject incident.

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- 1 2. Michael Smith, individually, and heir to the
2 Estate of Sherry Lynn Cunnison
3 c/o Benjamin P. Cloward, Esq.
4 RICHARD HARRIS LAW FIRM
5 801 S. Fourth Street
6 Las Vegas, NV 89101

7 Mr. Smith is a Plaintiff in this matter and is believed to have information as to the
8 allegations set forth in the Second Amended Complaint, claimed damages and the circumstances
9 of the subject incident.

- 10 3. Deborah Tamantini, individually, and heir to the
11 Estate of Sherry Lynn Cunnison
12 c/o Benjamin P. Cloward, Esq.
13 RICHARD HARRIS LAW FIRM
14 801 S. Fourth Street
15 Las Vegas, NV 89101

16 Mr. Tamantini is a Plaintiff in this matter and is believed to have information as to the
17 allegations set forth in the Second Amended Complaint, claimed damages and the circumstances
18 of the subject incident.

- 19 4. Corporate Representative(s)
20 First Street for Boomers & Beyond, Inc.
21 c/o Christopher J. Curtis, Esq.
22 Meghan M. Goodwin, Esq.
23 THORNDAL, ARMSTRONG, DELK
24 BALKENBUSH & EISINGER
25 1100 East Bridger Avenue
26 Las Vegas, NV 89101

27 First Street for Boomers and Beyond, Inc. is a Defendant/Cross-Defendant in this matter.
28 The Corporate Representative(s) for First Street for Boomers and Beyond, Inc. is expected to
29 testify as to the facts and circumstances surrounding the circumstances of the subject incident.

- 30 5. Corporate Representative(s)
31 Aithr Dealer, Inc.
32 c/o Christopher J. Curtis, Esq.
33 Meghan M. Goodwin, Esq.
34 THORNDAL, ARMSTRONG, DELK
35 BALKENBUSH & EISINGER
36 1100 East Bridger Avenue
37 Las Vegas, NV 89101

38 Aithr Dealer, Inc. is a Defendant/Cross-Defendant in this matter. The Corporate
39 Representative(s) for Aithr Dealer, Inc. is expected to testify as to the facts and circumstances
40 surrounding the circumstances of the subject incident.

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- 1 6. Corporate Representative(s)
2 Homeclick, LLC
3 c/o Michael E. Stoberski, Esq.
4 Daniela Labounty, Esq.
5 OLSON, CANNON, GORMLEY,
6 ANGULO & STOBERSKI
7 9950 West Cheyenne Avenue
8 Las Vegas, NV 89129

9 Homeclick, LLC is a Defendant/Cross-Claimant/Third Party Plaintiff/Cross-Defendant in
10 this matter. The Corporate Representative(s) for Homeclick, LLC. is expected to testify as to the
11 facts and circumstances surrounding the circumstances of the subject incident.

- 12 7. Corporate Representative(s)
13 Budds Plumbing
14 c/o Joseph P. Garin, Esq.
15 LIPSON, NEILSON, COLE,
16 SELTZER & GARIN, P.C.
17 9900 Covington Cross Drive, Suite 120
18 Las Vegas, NV 89144

19 Budds Plumbing is a Defendant/Cross-Claimant/Cross-Defendant in this matter. The
20 Corporate Representative(s) for Budds Plumbing is expected to testify as to the facts and
21 circumstances surrounding the circumstances of the subject incident.

- 22 8. William Budd
23 Budds' Plumbing
24 c/o Joseph P. Garin, Esq.
25 LIPSON, NEILSON, COLE,
26 SELTZER & GARIN, P.C.
27 9900 Covington Cross Drive, Suite 120
28 Las Vegas, NV 89144

 William Budd is a Defendant/Cross-Claimant/Cross-Defendant in this matter. Mr. Budd
is expected to testify as to the facts and circumstances surrounding the circumstances of the
subject incident.

9. Corporate Representative(s)
 The Chicago Faucet Company
 c/o Scott R. Cook, Esq.
 Jennifer L. Micheli, Esq.
 KOLESAR & LEATHAM
 400 South Rampart Boulevard, Suite 400
 Las Vegas, NV 89145

 The Chicago Faucet Company is a Third-Party Defendant in this matter. The Corporate
Representative(s) for The Chicago Faucet Company is expected to testify as to the facts and
circumstances surrounding the circumstances of the subject incident.

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10. Corporate Representative(s)
Bestway Building & Remodeling, Inc.
c/o Elizabeth Skane, Esq.
Dione C. Wrenn, Esq.
SKANE & WILCOX LLP
1120 Town Center Drive, Suite 200
Las Vegas, NV 89144

Bestway Building & Remodeling, Inc. is a Defendant/Cross-Defendant/Cross-Claimant in this matter. The Corporate Representative(s) for Bestway Building & Remodeling, Inc. is expected to testify as to the facts and circumstances surrounding the circumstances of the subject incident.

11. Corporate Representative(s)
Jacuzzi Inc.
c/o Joshua D. Cools, Esq.
SNELL & WILMER L.L.P.
3883 Howard Hughes Pkwy, Suite 1100
Las Vegas, NV 89169

Jacuzzi Inc. is a Defendant/Cross-Defendant in this matter. The Corporate Representative(s) for Jacuzzi Inc. is expected to testify regarding the Walk-In Bathtub at issues in this litigation.

12. Hale Benton
1176 Ponce de Leon Avenue
Las Vegas, NV 89123-1458
(702) 498-9012

Hale Benton is a Defendant in this matter. He is expected to testify as to the facts and circumstances surrounding the circumstances of the subject incident.

13. Designated Representative and/or
Custodian of Records for
Clark County Coroner
1704 Pinto Lane
Las Vegas, NV 89106

The Designated Representative and/or Custodian of Records for Clark County Coroner is expected to testify regarding its investigation into Plaintiff's injuries and the circumstances surrounding the incident.

14. Timothy Dutra, M.D., Coroner
Kristen Peters, Coroner Investigator
Daniel S. Isenschmid, Ph.D., D-ABFT, Forensic Toxicologist
Clark County Coroner
1704 Pinto Lane
Las Vegas, NV 89106

Dr. Dutra, Kristen Peters, and Dr. Isenschmid are expected to testify regarding Plaintiff's injuries and the circumstances surrounding the incident.

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15. Designated Representative and/or
Custodian of Records
Decedent's Treating Medical Providers

The Designated Representative and/or Custodian of Records from Decedent's Treating Medical Providers are expected to testify as to Decedent's condition, care, treatment provided to Decedent.

16. Designated Representative and/or
Custodian of Records for
Palm Eastern Cemetery
7600 S. Eastern Avenue
Las Vegas, NV 89123
(702) 464-8500

The Designated Representative and/or Custodian of Records for Palm Eastern Cemetery is expected to testify regarding the services provided, including associates costs, and other issues.

17. Designated Representative and/or
Custodian of Records for
Medic West Ambulance
9 W. Delhi Avenue
North Las Vegas, NV 89032
(702) 650-9900

The Designated Representative and/or Custodian of Records for Medic West Ambulance is expected to testify as to Decedent's condition, care and treatment provided to Decedent.

18. Carlos Fonseca, Paramedic
Brennan Demille, EMT Intermediate
Jimmy Chavez, Paramedic
Luke Crawford, EMT Intermediate
Jenna Lamperti, EMT Intermediate
Jacob Stamer, EMT
Jesse Blanchard, Paramedic
Victor Montecerin, Paramedic
Medic West Ambulance
9 W. Delhi Avenue
North Las Vegas, NV 89032
(702) 650-9900

Paramedics and EMTs of Medic West Ambulance are expected to testify as to Decedent's condition, care and treatment provided to Decedent.

19. Designated Representative and/or
Custodian of Records for
Sunrise Hospital & Medical Center
3186 S. Maryland Parkway
Las Vegas, NV 89109
(702) 731-8000

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1 The Designated Representative and/or Custodian of Records for Sunrise Hospital &
2 Medical Center is expected to testify as to Decedent's condition, care and treatment provided to
Decedent.

3 20. Muhammad A. Syed, M.D.
4 James Walker, M.D.
5 Kitty Ho Cain, M.D.
6 Lindsey C. Blake, M.D.
7 Holman Chan, M.D.
8 Hany F. Ghali, M.D.
9 Sayed Z. Qazi, M.D.
10 Muhammad Bhatti, M.D.
11 Wayne Jacobs, M.D.
12 Yekaterina Khronusova, M.D.
13 Mark Vandembosch, M.D.
14 Chris J. Fischer, M.D.
15 Shirin Rahman, M.D.
16 Sean D. Beaty, M.D.
17 Joshua Owen, M.D.
18 Rafael Valencia, M.D.
19 David P. Gorczyca, M.D.
20 Dean P. Berthoty, M.D.
21 Robert N. Berkley, M.D.
22 Daniel D. Lee, M.D.
23 Shameyel Roshan, D.O.
24 Richard A. Schwartz, M.D.
25 Ronald F. Sauer, Jr., D.O.
26 Arjun V. Gururaj, M.D.
27 Nicolaos Tsiouris, M.D.
28 Warren Wheeler, M.D.
Gyorgy Varsanyi, M.D.
David Silverberg, M.D.
Douglas M. Sides, M.D.
Sunrise Hospital & Medical Center
3186 S. Maryland Parkway
Las Vegas, NV 89109
(702) 731-8000

20 The above-referenced Decedent's Treating Medical Providers at Sunrise Hospital &
21 Medical Center are expected to testify as to Decedent's condition, care and treatment provided to
Decedent.

22 21. Designated Representative and/or
23 Custodian of Records for
24 Clark County Fire Department
25 575 East Flamingo Rd.
26 Las Vegas, NV 89119

25 The Designated Representative and/or Custodian of Records for Clark County Fire
26 Department is expected to testify as to Decedent's condition, care and treatment provided to
Decedent.

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1 22. Paramedic Nicholas Stahlberger
2 Paramedic Raymond LeClair
3 Clark County Fire Department
 575 East Flamingo Rd.
 Las Vegas, NV 89119

4 Paramedics Nicholas Stahlberger and Raymond LeClair of Clark County Fire Department
5 are expected to testify as to Decedent's condition, care and treatment provided to Decedent.

6 23. Officer Matthew Scanlon
7 Officer Kevin Lemire
8 Officer Matthew Shake
9 Officer Keith Bryant
 Officer Shakeel Abdal-Karim
 Officer B. Venpamel
 Sergeant Dana Pickerel
 Sergeant Allen Larsen
10 Las Vegas Metro Police Department
 400 S. Martin Luther King Blvd.
 Las Vegas, NV 89106

11 Police Officers from Las Vegas Metro Police Department are expected to testify as to
12 Decedent's condition and as to the facts and circumstances surrounding the circumstances of the
13 subject incident.

14 24. William Lewis
 5354 Camden Avenue
 Las Vegas, NV 89122

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

18 25. Michael Zuvar
 746655 Willow Drive
 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 26. Michael Showalter
 5500 Celestial Way
 Citrus Heights, CA 95610
23 831-595-1015 (cell)
 916-903-7186 (home)

24 Michael Showalter is expected to testify as to the facts and circumstances surrounding the
25 subject incident.

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1 27. **Frederick J. Tanenggee, M.D.**
2 **HealthCare Partners**
3 **129 West Lake Mead, Suite 10**
 Henderson, NV 89015
 (702) 565-1007

4 **Dr. Tanenggee is expected to testify as to Decedent's condition, care and treatment**
5 **provided to Decedent.**

6 28. **Benjamin Muir, M.D.**
7 **Michael Carducci, M.D.**
8 **HealthCare Partners Nevada**
9 **700 E. Warm Springs Road, Suite 110**
 Las Vegas, NV 89119
 (702) 318-2400

10 **The above-referenced Decedent's Treating Medical Providers are expected to testify**
11 **as to Decedent's condition, care and treatment provided to Decedent.**

12 29. Designated Representative and/or
13 Custodian of Record for
14 HealthCare Partners Nevada
 700 E. Warm Springs Road, Suite 110
 Las Vegas, NV 89119
 (702) 318-2400

15 The Designated Representative and/or Custodian of Records for HealthCare Partners
16 Nevada is expected to testify as to Decedent's condition, care and treatment provided to
17 Decedent.

18 30. Designated Representative and/or
19 Custodian of Records for
20 Kindred Hospital Las Vegas-Flamingo
 2250 E. Flamingo Road
 Las Vegas, NV 89119
 (702) 784-4300

21 The Designated Representative and/or Custodian of Records for Kindred Hospital Las
22 Vegas-Flamingo is expected to testify as to Decedent's condition, care and treatment provided to
23 Decedent.

24 31. **Sachit Das, M.D.**
25 **Robert M. Yeh, M.D.**
26 **Kindred Hospital Las Vegas-Flamingo**
 2250 E. Flamingo Road
 Las Vegas, NV 89119
 (702) 784-4300

27 The above-referenced Decedent's Treating Medical Providers at Kindred Hospital Las
28 Vegas-Flamingo are expected to testify as to Decedent's condition, care and treatment provided
to Decedent.

32. Designated Representative and/or
Custodian of Records for
Southern Nevada Medical & Rehab Center
2945 Casa Vegas Street
Las Vegas, NV 89109
(702) 735-7179

The Designated Representative and/or Custodian of Records for Southern Nevada Medical & Rehab Center is expected to testify as to Decedent's condition, care and treatment provided to Decedent.

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

The Designated Representative and/or Custodian of Records for Davis Funeral Homes & Memorial Park is expected to testify regarding the services provided, including associates costs, and other issues.

34. Personnel and/or
Custodian of Records for
Walgreens Pharmacy
4895 Boulder Highway
Las Vegas, NV 89121
(702) 898-5264

Personnel of Walgreens Pharmacy provided medications to Decedent and are expected to testify regarding medications and medical care provided, and any other relevant knowledge.

35. Designated Representative and/or
Custodian of Records for
Mountain View Hospital
3100 N. Tenaya Way
Las Vegas, NV 89128
(702) 962-5000

The Designated Representative and/or Custodian of Records for Mountain View Hospital is expected to testify as to Decedent's condition, care and treatment provided to Decedent.

36. Designated Representative and/or
Custodian of Records for
Desert Springs Hospital
2075 E. Flamingo Road
Las Vegas, NV 89119
(702) 733-8800

The Designated Representative and/or Custodian of Records for Desert Springs Hospital is expected to testify as to Decedent's condition, care and treatment provided to Decedent.

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37. Prashant Bharucha, M.D.
Nakeisha Curry, M.D.
Randal Shelin, M.D.
Armen Hovanesian, M.D.
Desert Springs Hospital
2075 E. Flamingo Road
Las Vegas, NV 89119
(702) 733-8800

The above-referenced Decedent's Treating Medical Providers at Desert Springs Hospital are expected to testify as to Decedent's condition, care and treatment provided to Decedent.

38. **Designated Representative and/or
HealthCare Partners**
9280 W. Sunset Road
Las Vegas, NV 89148
(702) 534-5464

The Designated Representative and/or Custodian of Records for HealthCare Partners is expected to testify as to Decedent's condition, care and treatment provided to Decedent.

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

Dr. Jurani-Suarez at HealthCare Partners is expected to testify as to Decedent's condition, care and treatment provided to Decedent.

40. **Designated Representative and/or
Comprehensive & Interventional Pain Management**
10561 Jeffreys Street, Suite 211
Henderson, NV 89052
(702) 990-4530

The Designated Representative and/or Custodian of Records for Comprehensive & Interventional Pain Management is expected to testify as to Decedent's condition, care and treatment provided to Decedent.

41. Daniel Fabito, M.D.
Comprehensive & Interventional Pain Management
10561 Jeffreys Street, Suite 211
Henderson, NV 89052
(702) 990-4530

Dr. Fabito at Comprehensive & Interventional Pain Management is expected to testify as to Decedent's condition, care and treatment provided to Decedent.

42. **Michael Her, M.D.**
1236 N. Magnolia Avenue
Anaheim, CA 92801
(714) 995-1000

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

B. 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)

Per rule 16.1(a)(1)(B), Jacuzzi hereby discloses the following documents, electronically stored information, and tangible things:

	DOCUMENT DESCRIPTION	BATES No.
1.	Installation and Operation Instructions Manual, Jacuzzi 5229 Walk-In Bathtub Series, 2013	JACUZZI 000001-20
2.	DWO Geberit Installation Manual, 2012.	JACUZZI 000021-22
3.	DWO Geberit Pin Drawing for Fitting No. 241.789.21.1. Subject to Protective Order. Will be produced upon entry of appropriate Protective Order.	JACUZZI 000023
4.	MT31 Geberit Installation Instructions	JACUZZI 000024-27
5.	Commercial General Liability Declarations for Policy GL 509-47-59 (redacted)	JACUZZI 000028-31
6.	No Records Declaration received from Las Vegas Fire and Rescue pursuant to Jacuzzi's Subpoena	JACUZZI000032-33
7.	Records received from Palm Eastern Cemetery pursuant to Jacuzzi's Subpoena	JACUZZI000034-77
8.	Records received from Medic West Ambulance pursuant to Jacuzzi's Subpoena. (According to ChartSwap, pages bates numbered JACUZZI000083-87 are part of the PCR and contain the patient's name, and were intentionally left blank).	JACUZZI000078-87
9.	Records and photographs received from Clark County Coroner / Medical Examiner's Office pursuant to Jacuzzi's Subpoena	JACUZZI000088-118

	DOCUMENT DESCRIPTION	BATES No.
10.	Medical records received from Sunrise Hospital & Medical Center pursuant to Jacuzzi's Subpoena	JACUZZI000119-1311
11.	Photographs produced by Las Vegas Metropolitan Police Department in response to Jacuzzi's subpoena	JACUZZI001312-1319
12.	Officer's Report from Las Vegas Metropolitan Police Department in response to Jacuzzi's subpoena	JACUZZI001320-1321
13.	911 Logs and audio file from Las Vegas Metropolitan Police Department in response to Jacuzzi's subpoena	JACUZZI001322-1325
14.	Sunrise Hospital and Medical Center radiology records in response to Jacuzzi's subpoena	JACUZZI001326-1327
15.	Las Vegas Metro Police Department 911 records in response to Jacuzzi's 2 nd subpoena	JACUZZI001328-1332
16.	Sunrise Hospital and Medical Center billing records in response to Jacuzzi's subpoena	JACUZZI001333-1348
17.	Drawing LW19000_Shell FS5229 RH Walk In (Will be produced upon entry of a Protective Order)	JACUZZI001349
18.	Drawing LW32827_Grab Bar Assembly (Will be produced upon entry of a Protective Order)	JACUZZI001350
19.	Drawing LW47000RevD_SHL T&D FS 5229 RH SLN (Will be produced upon entry of a Protective Order)	JACUZZI001351-1352
20.	Drawing LW48000RevB_SHL Bond FS 5229 RH (Will be produced upon entry of a Protective Order)	JACUZZI001353-1354
21.	Drawing LX22000_Piping Suction (Will be produced upon entry of a Protective Order)	JACUZZI001355
22.	Drawing LX24000B_Piping Discharge (Will be produced upon entry of a Protective Order)	JACUZZI001356-1357
23.	Drawing LX25000_Piping Airline (Will be produced upon entry of a Protective Order)	JACUZZI001358
24.	Drawing LX26000A_Piping Blower (Will be produced upon entry of a Protective Order)	JACUZZI001359-1360
25.	Drawing LX27000_Two Pt Quarter Turn Door Latch (Will be produced upon entry of a Protective Order)	JACUZZI001361-1368

	DOCUMENT DESCRIPTION	BATES No.
26.	Drawing LX62000_Door Assembly <i>(Will be produced upon entry of a Protective Order)</i>	JACUZZI001369
27.	Drawing LX82000_Skirt Access Panel <i>(Will be produced upon entry of a Protective Order)</i>	JACUZZI001370
28.	Drawing LX91827A_Handle_Sub <i>(Will be produced upon entry of a Protective Order)</i>	JACUZZI001371
29.	Door Life Cycle <i>(Will be produced upon entry of a Protective Order)</i>	JACUZZI001372-1375
30.	ETL Certification Listing <i>(Will be produced upon entry of a Protective Order)</i>	JACUZZI001376-1441
31.	IAPMO Certification Listing <i>(Will be produced upon entry of a Protective Order)</i>	JACUZZI001442-1446
32.	IAMPO Lab Test Report ASTM F 462-79 <i>(Will be produced upon entry of a Protective Order)</i>	JACUZZI001447-1449
33.	WIT Tub Standards Certificate of Listing <i>(Will be produced upon entry of a Protective Order)</i>	JACUZZI001450-1454
34.	2011 National Electrical Code	JACUZZI001455-1471
35.	2012 Uniform Mechanical Code	JACUZZI001472-1479
36.	2012 Uniform Plumbing Code	JACUZZI001480-1493
37.	Clark County Building Code	JACUZZI001494-1587
38.	Jacuzzi's Manufacturing Agreement with First Street For Boomers & Beyond, Inc., which is related to the subject Jacuzzi® Walk-In Bathtub <i>(Will be produced upon entry of a Protective Order)</i>	JACUZZI001588-1606
39.	Drawing 4486000B_Label Bath Safety <i>(Will be produced upon entry of a Protective Order)</i>	JACUZZI001607
40.	Drawing BA35000A_Label Lift Here <i>(Will be produced upon entry of a Protective Order)</i>	JACUZZI001608
41.	Drawing N261000B_Label No Wrench <i>(Will be produced upon entry of a Protective Order)</i>	JACUZZI001609
42.	Drawing R958000F_Label Caution Union <i>(Will be produced upon entry of a Protective Order)</i>	JACUZZI001610

	DOCUMENT DESCRIPTION	BATES No.
43.	270244 Order Acknowledgement (<i>Will be produced upon entry of a Protective Order</i>)	JACUZZI001611-1612
44.	Jacuzzi 270244 Invoice 68325423 (<i>Will be produced upon entry of a Protective Order</i>)	JACUZZI001613
45.	SEFL Southeastern Freight Lines Invoice 180106252 (<i>Will be produced upon entry of a Protective Order</i>)	JACUZZI001614-1617

As Discovery is continuing, Jacuzzi reserves the right to supplement the disclosures as necessary.

C. A COMPUTATION OF ANY CATEGORY OF DAMAGES CLAIMED BY THE DISCLOSING PARTY, MAKING AVAILABLE FOR INSPECTION AND COPYING AS UNDER RULE 34 OF THE DOCUMENTS OR OTHER EVIDENTIARY MATTER, NOT PRIVILEGED OR PROTECTED FROM DISCLOSURE, ON WHICH SUCH COMPUTATION IS BASED, INCLUDING MATERIALS BEARING ON THE NATURE AND EXTENT OF INJURIES SUFFERED

Jacuzzi does not allege any damages as required by Rule 16.1(a)(1)(C). Plaintiffs have the burden of proving damages. Jacuzzi disputes liability and, to the extent it is necessary and appropriate, Jacuzzi contests Plaintiffs' damages. Jacuzzi will seek its costs and attorneys' fees to the extent permitted by law.

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1 **D. FOR INSPECTION AND COPYING AS UNDER RULE 34 ANY INSURANCE**
 2 **AGREEMENT UNDER WHICH ANY PERSON CARRYING ON AN**
 3 **INSURANCE BUSINESS MAY BE LIABLE TO SATISFY PART OR ALL OF A**
 4 **JUDGMENT WHICH MAY BE ENTERED IN THE ACTION OR TO**
 5 **INDEMNIFY OR REIMBURSE FOR PAYMENTS MADE TO SATISFY THE**
 6 **JUDGMENT AND ANY DISCLAIMER OR LIMITATION OF COVERAGE OR**
 7 **RESERVATION OF RIGHTS UNDER ANY SUCH INSURANCE AGREEMENT**

8 Pursuant to Rule 16.1(a)(1)(D), Jacuzzi produces the attached declaration page for its
 9 insurance agreement applicable to this claim, which will be adequate to satisfy any possible
 10 judgment in this case.

11 DATED this 20th day of June, 2017.

12 SNELL & WILMER L.L.P.

13 By: Joshua D. Cools
 14 Vaughn A. Crawford
 15 Nevada Bar No. 7665
 16 Joshua D. Cools
 17 Nevada Bar No. 11941
 18 3883 Howard Hughes Parkway, Suite 1100
 19 Las Vegas, NV 89169

20 Attorneys for Defendant/Cross-Defendant
 21 JACUZZI INC. doing business
 22 as JACUZZI LUXURY BATH
 23
 24
 25
 26
 27
 28

Snell & Wilmer

L.L.P.
 LAW OFFICES
 3883 Howard Hughes Parkway, Suite 1100
 Las Vegas, Nevada 89169
 702.784.5200

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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 this date, I caused to be served a true and correct copy of the foregoing **DEFENDANT/CROSS-DEFENDANT JACUZZI INC.'S SEVENTH SUPPLEMENTAL DISCLOSURE STATEMENT** by the method indicated below, addressed to the following:

XXXXXX Odyssey E-File & Serve

XXXXXX U.S. Mail

Benjamin P. Cloward, NV Bar No. 11087
RICHARD HARRIS LAW FIRM
801 S. Fourth Street
Las Vegas, NV 89101
Telephone: (702) 444-4444
Facsimile: (702) 444-4455
Email: Benjamin@RichardHarrisLaw.com
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Daniela Labounty, NV Bar No. 13169
OLSON, CANNON, GORMLEY
ANGULO & STOBERSKI
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Facsimile: (702) 383-0701
Email: mstoberski@ocgas.com
Email: dlabounty@ocgas.com
Attorneys for Defendant/Cross-Claimant
Third Party Plaintiff
HOMECLICK, LLC

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Jennifer L. Micheli, NV Bar No. 11210
KOLESAR & LEATHAM
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Attorneys for Third-Party Defendant
THE CHICAGO FAUCET COMPANY

Stephen J. Erigero, NV Bar No. 11562
Timothy J. Lepore, NV Bar No. 13908
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Telephone: (702) 954-8300
Facsimile: (213) 312-2001
Email: stephen.erigero@rmkb.com
Email: timothy.lepore@rmkb.com
Attorneys for Defendant/Cross-
Defendant/Cross-Claimant
BESTWAY BUILDING
& REMODELING, INC.

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Defendants/Cross-Claimants
WILLIAM BUDD, individually and as
BUDDS PLUMBING

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THORNDAL, ARMSTRONG, DELK
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Las Vegas, NV 89125-2070
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Email: cjc@thorndal.com
Email: mmg@thorndal.com
Attorneys for Defendants/Cross-Defendants
FIRST STREET FOR BOOMERS &
BEYOND, INC. AND AITHR DEALER,
INC.

DATED this 20th day of June, 2017.


An Employee of Snell & Wilmer L.L.P.

4812-0883-7962.1

Snell & Wilmer
— L.L.P. —
LAW OFFICES

Robert Ansara, et al. v. First Street for Boomers &
Beyond, Inc., et al.

Case No.: A-16-731244-C

Jacuzzi Inc.'s 7th SDS Produced Docs
JACUZZI001455-JACUZZI001587

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EXHIBIT 20

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From: Cools, Joshua
Sent: Wednesday, October 17, 2018 1:56 PM
To: Benjamin Cloward <Benjamin@richardharrislaw.com>
Cc: Nicole Griffin <ngriffin@richardharrislaw.com>; Moreno, Jorge <jmoreno@swlaw.com>; 'MMG@thorndal.com' <MMG@thorndal.com>; Philip Goodhart <png@thorndal.com>
Subject: Cunnison - Forensic estimate

Ben – Sorry for the delay on getting you the information for obtaining a forensic estimate. Jacuzzi's warranty system is on IBM Power System I (AS/400), located in its Chino Data Center, and consists of 128 MBs. The Salesforce database is 3.1 GB and located in NA63 which has data centers in Dallas, USA / Phoenix, USA. I will try to get more information regarding the database formats. Let me know what specific details your forensic specialist needs. – Josh

Joshua D. Cools
Snell & Wilmer L.L.P.
3883 Howard Hughes Pkwy
Suite 1100
Las Vegas, Nevada 89169
Office: 702.784.5267
Cell: 734.657.8409
jcools@swlaw.com www.swlaw.com

Snell & Wilmer

Denver, **Las Vegas**, Los Angeles, Los Cabos, Orange County, Phoenix, Reno, Salt Lake City, Tucson

EXHIBIT 21

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Email: vcrawford@swlaw.com
Email: mpetrelli@swlaw.com

D. Lee Roberts, Jr., Nevada Bar No. 8877
Brittany M. Llewellyn, Esq., Nevada Bar No. 13527
WEINBERG, WHEELER, HUDGINS, GUNN
& DIAL, LLC
6385 South Rainbow Blvd., Suite 400
Las Vegas, NV 89118
Telephone: (702) 938-3838
Facsimile: (702) 938-3864
Email: lroberts@wwghd.com
Email: bllewellyn@wwhgd.com

*Attorneys for Defendant Jacuzzi Inc.
doing business as Jacuzzi Luxury Bath*

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; HOMECCLICK,
LLC; JACUZZI INC., doing business as
JACUZZI LUXURY BATH; BESTWAY
BUILDING & REMODELING, INC.;
WILLIAM BUDD, individually and as BUDDS
PLUMBING; DOES 1 through 20; ROE
CORPORATIONS 1 through 20; DOE
EMPLOYEES 1 through 20; DOE
MANUFACTURERS 1 through 20; DOE 20
INSTALLERS 1 through 20; DOE
CONTRACTORS 1 through 20; and DOE 21

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

DECLARATION OF MARK ALLEN

1 SUBCONTRACTORS 1 through 20, inclusive,
 2 Defendants.

3
 4 AND ALL RELATED CLAIMS.

5
 6 **DECLARATION OF MARK ALLEN**

7 I, Mark Allen, declares as follows:

8 1. I am the Vice Present of Information Technology for a shared services company that
 9 provides services to among others, Defendant Jacuzzi Inc. dba Jacuzzi Luxury Bath ("Jacuzzi"). I
 10 have personal knowledge of all matters stated herein and would competently be able to testify to
 11 them and make this declaration under the penalty of perjury.

12 2. I make this declaration in support of Jacuzzi Inc.'s Opposition to Plaintiffs'
 13 Renewed Motion to Strike Jacuzzi Inc.'s Answer.

14 3. On December 7, 2018, I attended a telephone conference with Plaintiffs'
 15 consultants, Ira Victor, Bill Wilder and Yuval Brash. No attorneys were present during the
 16 conference.

17 4. This conference was recorded by both parties. An audio recording and transcript of
 18 this conference is provided herewith as Exhibit A, which will be submitted to this Court in-camera.

19 5. The purpose of the conference was to provide basic information to Plaintiffs'
 20 consultants to facilitate a search of Jacuzzi's customer relation and warranty databases for claims
 21 related to personal injury or death incidents involving walk-in tubs.

22 6. I provided Plaintiffs' consultants with the relevant information they would need to
 23 conduct searches of both the relevant databases that contain warranty *and* customer service data
 24 related to walk-in tubs.

25 7. Specifically, I explained that Jacuzzi's customer service and warranty information
 26 is stored in two databases. Jacuzzi's "warranty database" is on IBM Power System I ("AS/400" or
 27 "iSeries"). While I refer to the AS/400 generically as Jacuzzi's "warranty database," this database
 28 stores not only warranty claims, but also customer service data including calls and complaints.

1 8. The AS/400 is a partitioned system that is partitioned by business unit—bath
2 business vs. hot tub business—and I discussed the partition that contains all relevant information
3 related to bath products, including but not limited to customer interactions.

4 9. I further explained that Jacuzzi also stores warranty and customer complaints
5 information on its Salesforce database.

6 10. Salesforce is a CRM cloud company that provides customer care management
7 services (among other services) for its clients. Jacuzzi is one of those customers, using Salesforce's
8 customer service platform, including a database hosted by Salesforce. Jacuzzi shares Salesforce's
9 services with other companies unrelated to this action. These other companies are not parties to
10 this action, and do not manufacture or distribute bath products, let alone walk-in tubs. The
11 Salesforce database contains information regarding the products and the thousands of customer
12 interactions between Jacuzzi and its customers, including warranty registrations.

13 11. I further explained to Plaintiffs' consultants the interaction between the two
14 databases, and that Salesforce contained some duplicative data of the AS/400.

15 12. When Plaintiffs' consultants asked questions irrelevant to conducting searches for
16 claims of personal injury or death involving walk-in tubs on the databases—for example questions
17 about the Jacuzzi's overall system infrastructure, how Jacuzzi backs up its data, details of previous
18 searches and what other databases Jacuzzi has—I declined to answer those questions, and
19 specifically told Plaintiffs consultants, "if you want to discuss the technical part of the AS/400, or
20 the technical part of Salesforce, or how we can actually execute these searches, I'm okay with that."
21 *See Exhibit A.*


22 13. Contrary to Plaintiffs' false accusations in Plaintiffs' Renewed Motion to Strike at
23 30:17-31:5, I discussed both AS/400 "warranty database" **and** the Salesforce database. I never
24 stated that I was "instructed only to determine a list of desired search queries."

25 14. At the end of the conference, Plaintiffs' consultants gave no indication that they did
26 not have the information necessary to conduct a search for personal injury or death cases of **both**
27 of Jacuzzi's relevant databases. Rather, Ira Victor stated, "I think we've got most of what we need,"
28 and Bill Wilder confirmed. *See Exhibit A.*

1 15. I have reviewed the transcript of the conference provided with Plaintiffs' Renewed
2 Motion to Strike as Exhibit 30, which contains several inaccuracies. My corrections to that version
3 of the transcript are provided herewith as Exhibit B, which will be submitted to the Court in-camera.

4 I declare under penalty of perjury under the law of the State of Nevada that the foregoing is
5 true and correct.

6 Executed on this 21st day of January, 2019, at Chino Hills, California.
7
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9



Mark Allen

Snell & Wimmer

LLP
LAW OFFICES
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, Nevada 89169
702.784.5200

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EXHIBIT A

**Audio Recording and Transcript of
12/7/18 conference is being submitted
to the court for in-camera review**

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CONFIDENTIAL
December 7, 2018 Telephonic Conference
Case No. A-16-731244-C

Snell & Wilmer

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EXHIBIT B

**Transcript of 12/7/18 conference is
being submitted to the court for in-
camera review**

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EXHIBIT 22

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Service of Process Transmittal

10/08/2018

CT Log Number 534185232

TO: ANGELICA LEE
Salesforce.com Inc.
THE LANDMARK ONE MARKET STREET, #300
SAN FRANCISCO, CA 94105

RE: Process Served in Delaware

FOR: Salesforce.com, Inc. (Domestic State: DE)

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

TITLE OF ACTION: Robert Ansara, as Special Administrator of the Estate of Sherry Lynn Cunnison, Deceased, et al., Pltfs. vs. First Street For Boomers & Beyond, Inc., et al., Dfts. // To: Salesforce.com, Inc.

DOCUMENT(S) SERVED: Subpoena, Exhibit(s)

COURT/AGENCY: SUPERIOR COURT OF THE STATE OF DELAWARE, DE
Case # A16731244C

NATURE OF ACTION: Subpoena - Business records - Pertaining to Jacuzzi Consumers Master Account

ON WHOM PROCESS WAS SERVED: The Corporation Trust Company, Wilmington, DE

DATE AND HOUR OF SERVICE: By Process Server on 10/08/2018 at 14:42

JURISDICTION SERVED : Delaware

APPEARANCE OR ANSWER DUE: 10/18/2018 at 12:00 p.m. (Document(s) may contain additional answer dates)

ATTORNEY(S) / SENDER(S): Delaware Attorney Services, LLC
3516 Silverside Road, Suite 16
Wilmington, DE 19810
302-429-0657

ACTION ITEMS: SOP Papers with Transmittal, via UPS Next Day Air , 1ZX212780121537992
Image SOP
Email Notification, Dan Reed daniel.reed@salesforce.com
Email Notification, Aseem Gupta aseem.gupta@salesforce.com
Email Notification, ANGELICA LEE angelica.lee@salesforce.com
Email Notification, Michelle Ma michelle.ma@salesforce.com

SIGNED: The Corporation Trust Company
ADDRESS: 1209 N Orange St
Wilmington, DE 19801-1120
TELEPHONE: 302-658-7581

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SUPERIOR COURT OF THE STATE OF DELAWARE

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

Plaintiffs,

vs.

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

Defendants.

AND ALL RELATED MATTERS

**OUT OF STATE SUBPOENA IN A
CIVIL CASE**

Civil Action No: A-16-731244-C

N18M-10-019

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TO: THE CUSTODIAN OF RECORDS OR OTHER QUALIFIED PERSON AT:

Business/Organization Name: SALESFORCE.COM, INC.
Registered Agent: The Corporation Trust Company
Address: Corporation Trust Center, 1209 Orange Street
Wilmington, Delaware 19801

YOU ARE COMMANDED to produce and permit inspection and copying of the following documents or objects at the place, date, and time specified below:


*Date Served 10/21/18
Time Served 2:32
SZ 268 7957*

Delivering a true, legible, and durable copy of the business records described in the attached **EXHIBIT A** to the requesting attorney or party appearing in proper person, by United States mail or similar delivery service, no later than:

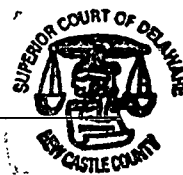
Place:	Date and Time:
Delaware Attorney Services, LLC 3516 Silverside Road, Suite 16 Wilmington, Delaware 19810 Phone: 302.429.0657	October 18, 2018 12:00p.m.

Requesting Party:

RICHARD HARRIS LAW FIRM


BENJAMIN P. CLOWARD, ESQ.
Nevada Bar No. 11087
801 South Fourth Street
Las Vegas, Nevada 89101
T: (702) 444-4444
F: (702) 444-4455
Attorneys for Plaintiffs

DATE: 10/3/18




Signature, CLERK OF COURT

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EXHIBIT A

PREAMBLE

1. "Plaintiff" refers to, without limitation, the above-named Plaintiffs, as well as Plaintiffs' attorney, agent, or representative.
2. "Defendant(s)" refers to, without limitation, the above-named Defendants.
2. "Complaint" refers to the Complaint filed by Plaintiff in this action.
3. "You," or "your" refers to, without limitation, **SALESFORCE.COM, INC.**, and all business entities with which it is or has been affiliated, together with any predecessor, successor, parent, or subsidiary entity as well as any officer, director, employee, attorney, agent, or representative of it or any such other business entity previously described herein, and others who are in possession of or may have obtained information for or on behalf of it with regard to the subject matter of this case.
4. "Person" means any natural person (whether living or deceased), company, corporation, partnership, proprietorship, firm, joint venture, association, governmental entity, agency, group, organization, other entity, or group of persons.
5. "Document" means every writing or record of every type and description that is or has been in your possession, custody, or control or of which you have knowledge, including but not limited to correspondence, memoranda, tapes, stenographic or handwritten notes, studies, publications, books, pamphlets, pictures, drawings and photographs, films, microfilms, voice recordings, maps, reports, surveys, minutes or statistical compilations, or any other reported or graphic material in whatever form, including copies, drafts, and reproductions. "Document" also refers to any other data compilations from which information can be obtained, and translated, if necessary, by you through computers or detection devices into

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reasonably usable form. The term "document(s)" also includes, but is not limited to, all duplicates, carbon copies or any other copies of original documents, including copies with handwritten notes, revisions or interlineations.

6. "Communication" means e-mail, SMS message, MMS message, fax, letter, social media post, instant message, recorded audio, or, recorded video.
7. Terms in the singular shall be deemed to include the plural and terms in the plural shall be deemed to include the singular.
8. Use of feminine pronouns shall be deemed to include the masculine and neuter; use of masculine pronouns shall be deemed to include the feminine and neuter; and use of neuter pronouns shall be deemed to include the masculine and feminine.
9. "Identify": With respect to a document means set forth the following information, regardless of whether such document is in your possession, if known: a general description thereof (e.g., letter, memorandum, report, etc.); a brief summary of its contents, or a description of the subject matter it concerns; the name and address of the persons, if any, who drafted, prepared, compiled or signed it; and any other descriptive information necessary in order to describe it adequately in a subpoena duces tecum or in a motion or request for production thereof. With regard to a person, the term "identify" means set forth the person's name, last known address and telephone number, occupation, last known address and telephone number of the person's place of employment, and a summary of the relevant knowledge possessed by such person.
10. "And" and "or," as used herein, shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories or requests any information that might otherwise be construed to be outside their scope.

11. "Regarding" and or "pertaining to," as used herein, mean and include, in whole or in part, referring to, with respect to, concerning, connected with, commenting on, responding to, showing, describing, analyzing, reflecting and constituting.
12. If any document requested formerly was in your possession or subject to your control but no longer is in your possession or subject to your control, state when and what disposition was made of the document or documents.
13. If you assert the attorney-client privilege, work-product doctrine, or other privilege or exclusion as to any document requested by any of the following specific interrogatories or requests, please identify the document in sufficient detail to permit the Court to reach a determination in the event of a Motion to Compel.

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

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

DOCUMENT REQUESTS

- 1) All documents containing information pertaining to account name: JACUZZI CONSUMERS MASTER ACCOUNT
- 2) All documents containing information pertaining to any case submitted to Salesforce.com regarding a Jacuzzi, Inc. walk-in bathtubs.
- 3) All documents containing information pertaining to account(s) for: AITHR Dealer, Inc. or FirstStreet for Boomers & Beyond, Inc.

- 4) All statements or reports by any person that has investigated any incident(s) in which a consumer alleged that he or she was injured while using a Jacuzzi, Inc. walk-in bathtubs.
- 5) Documents identifying all information obtained by Salesforce.com regarding to any complaint submitted to them regarding a Jacuzzi, Inc. walk-in bathtub:
 - a. For instance, if a case was opened regarding a Jacuzzi, Inc. walk-in bathtub, please produce:
 - i. Case Number
 - ii. Case Owner
 - iii. Contact Name, e-mail, phone number
 - iv. Date/Time Opened
 - v. Account Name
 - vi. Model Description
 - vii. Brand
 - viii. Type
 - ix. Case Summary – case title, priority, status, case reason, subject, description
 - x. Quality Metrics – UFC category, component, sub-component, behavior, feedback, warnings, warranty
 - xi. Service – date service center contacted, current servicing dealer/customer name, agent number, claim date, claim number, order date, order number, service date, tech onsite, training required, service liability, shipping carrier, tracking number, track order, replacement serial number, charge back
 - xii. Concierge Services – date customer contacts
 - xiii. System Information – created by, date/time closed, last modified by,

escalated

- xiv. Contact Information – account information, address information, historical information, SmartTub information
- xv. Activity History – outbound consumer information, inbound consumer information, outbound AITH, Email communication, follow up notes, open activities, case history, chatter/text posts

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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*Attorneys for Defendants/Cross-Defendants
Firststreet for Boomers and Beyond, Inc. and
Aithr Dealer, Inc.*

Vaughn A. Crawford, Esq.
Joshua D. Cools, Esq.
SNELL & WILMER LLP
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Las Vegas, NV 89159
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Facsimile: 702-784-5252
*Attorneys for Defendant/Cross-Defendant
Jacuzzi Brands, LLC*

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BENJAMIN P. CLOWARD, ESQ.
Nevada Bar No. 11087
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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,

Plaintiffs,

vs.

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

Defendants.

AND ALL RELATED MATTERS

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

SUBPOENA DUCES TECUM FOR
BUSINESS RECORDS
(No Appearance Required)

1 **THE STATE OF NEVADA TO:**

2 The Custodian of Records or Other Qualified Person at:

3 Business/Organization Name: SALESFORCE.COM, INC.
 4 Registered Agent: The Corporation Trust Company
 5 Address: Corporation Trust Center, 1209 Orange Street
 6 Wilmington, Delaware 19801

7
 8 **YOU ARE ORDERED**, pursuant to NRCP 45, to produce and permit inspection and
 9 copying of the books, documents, or tangible things set forth below that are in your possession,
 10 custody, or control, by:

11 Delivering a true, legible, and durable copy of the business records described below to
 12 the requesting attorney or party appearing in proper person, by United States mail or similar
 13 delivery service, no later than October 18, 2018 at the following address: Richard Harris Law
 14 Firm 801 South Fourth Street Las Vegas, Nevada 89101. All documents shall be produced as
 15 they are kept in the usual course of business or shall be organized and labeled to correspond to
 16 the categories listed. NRCP 45(d)(1).

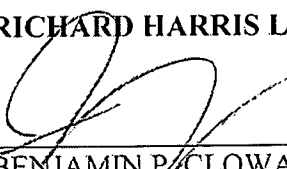
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 18 **YOU ARE FURTHER ORDERED** to authenticate the business records produced,
 19 pursuant to NRS 52.260, and to provide with your production a completed Certificate of
 20 Custodian in substantially the form as Exhibit "B".

21
 22 **CONTEMPT:** Failure by any person without adequate excuse to obey a subpoena served
 23 upon that person may be deemed a contempt of the court, NRCP 45(e), punishable by a fine not
 24 exceeding \$500 and imprisonment not exceeding 25 days, NRS 22.100. Additionally, a witness
 25 disobeying a subpoena shall forfeit to the aggrieved party \$100 and all damages sustained as a
 26 result of the failure to attend, and a warrant may issue for the witness' arrest. NRS 50.195,
 27 50.205, and 22.100(3).
 28

1 Please see the attached Exhibit "A" for information regarding your rights and
2 responsibilities relating to this Subpoena.

3 DATED this 26 day of September, 2018.

4
5
6 RICHARD HARRIS LAW FIRM

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8 
9 BENJAMIN P. CLOWARD, ESQ.

10 Nevada Bar No. 11087

11 801 South Fourth Street

12 Las Vegas, Nevada 89101

13 Attorneys for Plaintiff
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RICHARD HARRIS
LAW FIRM

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EXHIBIT A

PREAMBLE

1. **"Plaintiff"** refers to, without limitation, the above-named Plaintiffs, as well as Plaintiffs' attorney, agent, or representative.
2. **"Defendant(s)"** refers to, without limitation, the above-named Defendants.
2. **"Complaint"** refers to the Complaint filed by Plaintiff in this action.
3. **"You," or "your"** refers to, without limitation, **SALESFORCE.COM, INC.**, and all business entities with which it is or has been affiliated, together with any predecessor, successor, parent, or subsidiary entity as well as any officer, director, employee, attorney, agent, or representative of it or any such other business entity previously described herein, and others who are in possession of or may have obtained information for or on behalf of it with regard to the subject matter of this case.
4. **"Person"** means any natural person (whether living or deceased), company, corporation, partnership, proprietorship, firm, joint venture, association, governmental entity, agency, group, organization, other entity, or group of persons.
5. **"Document"** means every writing or record of every type and description that is or has been in your possession, custody, or control or of which you have knowledge, including but not limited to correspondence, memoranda, tapes, stenographic or handwritten notes, studies, publications, books, pamphlets, pictures, drawings and photographs, films, microfilms, voice recordings, maps, reports, surveys, minutes or statistical compilations, or any other reported or graphic material in whatever form, including copies, drafts, and reproductions. **"Document"** also refers to any other data compilations from which

1 information can be obtained, and translated, if necessary, by you through computers or
2 detection devices into reasonably usable form. The term "document(s)" also includes,
3 but is not limited to, all duplicates, carbon copies or any other copies of original
4 documents, including copies with handwritten notes, revisions or interlineations.

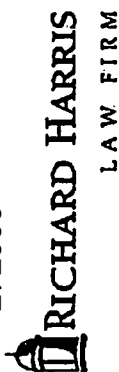
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6 6. "Communication" means e-mail, SMS message, MMS message, fax, letter, social media
7 post, instant message, recorded audio, or, recorded video.

8
9 7. Terms in the singular shall be deemed to include the plural and terms in the plural shall
10 be deemed to include the singular.

11 8. Use of feminine pronouns shall be deemed to include the masculine and neuter; use of
12 masculine pronouns shall be deemed to include the feminine and neuter; and use of neuter
13 pronouns shall be deemed to include the masculine and feminine.

14
15 9. "Identify": With respect to a document means set forth the following information,
16 regardless of whether such document is in your possession, if known: a general
17 description thereof (e.g., letter, memorandum, report, etc.); a brief summary of its
18 contents, or a description of the subject matter it concerns; the name and address of the
19 persons, if any, who drafted, prepared, compiled or signed it; and any other descriptive
20 information necessary in order to describe it adequately in a subpoena duces tecum or in
21 a motion or request for production thereof. With regard to a person, the term "identify"
22 means set forth the person's name, last known address and telephone number, occupation,
23 last known address and telephone number of the person's place of employment, and a
24 summary of the relevant knowledge possessed by such person.
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10. "And" and "or," as used herein, shall be construed disjunctively or conjunctively as necessary to bring within the scope of these interrogatories or requests any information that might otherwise be construed to be outside their scope.

11. "Regarding" and or "pertaining to," as used herein, mean and include, in whole or in part, referring to, with respect to, concerning, connected with, commenting on, responding to, showing, describing, analyzing, reflecting and constituting.

12. If any document requested formerly was in your possession or subject to your control but no longer is in your possession or subject to your control, state when and what disposition was made of the document or documents.

13. If you assert the attorney-client privilege, work-product doctrine, or other privilege or exclusion as to any document requested by any of the following specific interrogatories or requests, please identify the document in sufficient detail to permit the Court to reach a determination in the event of a Motion to Compel.

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

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

DOCUMENT REQUESTS

- 1) All documents containing information pertaining to account name: JACUZZI CONSUMERS MASTER ACCOUNT
- 2) All documents containing information pertaining to account(s) for: AITHR Dealer, Inc. or FirstStreet for Boomers & Beyond, Inc.

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- 1 3) All documents containing information pertaining to any case submitted to
2 Salesforce.com regarding a Jacuzzi, Inc. walk-in bathtub.
- 3 4) All statements or reports by any person that has investigated any incident(s) in which a
5 consumer alleged that he or she was injured while using a Jacuzzi, Inc. walk-in bathtubs.
- 6 5) Documents identifying all information obtained by Salesforce.com regarding to any
7 complaint submitted to them regarding a Jacuzzi, Inc. walk-in bathtub:
- 8
- 9 a. For instance, if a case was opened regarding a Jacuzzi, Inc. walk-in bathtub,
10 please produce:
- 11 i. Case Number
- 12 ii. Case Owner
- 13 iii. Contact Name, e-mail, phone number
- 14 iv. Date/Time Opened
- 15 v. Account Name
- 16 vi. Model Description
- 17 vii. Brand
- 18
- 19 viii. Type
- 20
- 21 ix. Case Summary – case title, priority, status, case reason, subject,
22 description
- 23 x. Quality Metrics – UFC category, component, sub-component, behavior,
24 feedback, warnings, warranty
- 25
- 26 xi. Service – date service center contacted, current servicing dealer/customer
27 name, agent number, claim date, claim number, order date, order number,
28 service date, tech onsite, training required, service liability, shipping

1 carrier, tracking number, track order, replacement serial number, charge
2 back

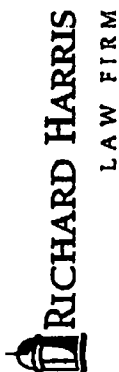
3 xii. Concierge Services – date customer contacts

5 xiii. System Information – created by, date/time closed, last modified by,
6 escalated

7
8 xiv. Contact Information – account information, address information,
9 historical information, SmartTub information

10 xv. Activity History – outbound consumer information, inbound consumer
11 information, outbound AITH, Email communication, follow up notes,
12 open activities, case history, chatter/text posts
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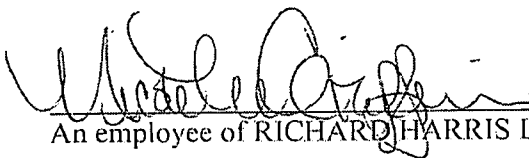
CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of RICHARD HARRIS LAW FIRM and that on this 26th day of September, 2018, I served a copy of the foregoing, **Subpoena Duces Tecum for Business Records**, 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