

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.

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**PETITIONER'S APPENDIX
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9	Plaintiffs' Reply in Support of Plaintiffs' Renewed Motion to Strike Defendant Jacuzzi, Inc. d/b/a Jacuzzi Luxury Bath's Answer for Repeated, Continuous and Blatant Discovery Abuses on Order Shortening Time	01/29/19	4 5	922–1000 1001–1213
17	Plaintiffs' Reply in Support of Their 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	06/14/19	8	1779–1790
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

FIFTH CAUSE OF ACTION

Breach of Implied Warranty of Merchantability as to as to Jacuzzi Inc., doing business as Jacuzzi Luxury Bath, First Street for Boomers & Beyond, Inc., AITHR Dealer, Inc., and Homeclick, LLC

70. That Plaintiffs incorporate by reference each and every allegation previously made in this Complaint, as if fully set forth herein.

71. Defendants JACUZZI INC., doing business as JACUZZI LUXURY BATH, FIRST STREET FOR BOOMERS & BEYOND, INC., AITHR DEALER, INC., and HOMECLICK, LLC, and/or ROE/DOE Defendants, breached the implied warranty of merchantability, and their breach of warranty was the proximate and legal cause of the failure of the walk-in bathtub.

72. Plaintiffs sustained injuries and damages as a result of Defendants' breach.

PUNITIVE DAMAGES

As to Jacuzzi Inc., doing business as Jacuzzi Luxury Bath, First Street for Boomers & Beyond, Inc., AITHR Dealer, Inc., and Homeclick, LLC

73. That Plaintiffs incorporate by reference each and every allegation previously made in this Complaint, as if fully set forth herein.

74. The Defendants JACUZZI INC., doing business as JACUZZI LUXURY BATH, FIRST STREET FOR BOOMERS & BEYOND, INC., AITHR DEALER, INC., and HOMECLICK, LLC, and/or ROE/DOE Defendants, knew or should have known of the subject product's defect which rendered it unreasonably dangerous at the time of placing the subject product into the stream of commerce and failed to undertake measures to prohibit it from entering into the stream of commerce and into the hands of users in the State of Nevada, including warnings of the risks for product failure, proper use and maintenance of the product and proper inspection of the product for potential hazards and/or defects.

1 75. Defendants conduct was wrongful because Defendants engaged in oppression, malice
2 and with a conscious disregard toward individuals like SHERRY who purchased and used the walk-in
3 bathtub and said conduct was despicable.

4 76. Specifically, Defendants market the walk-in tub to elderly individuals like SHERRY
5 who are weak, feeble and at a significant risk for falling down.

6 77. Defendants advertise that millions of Americans with mobility concerns know that
7 simply taking a bath can be a hazardous experience.

8 78. Defendants advertise that the solution to having a hazardous experience while taking a
9 bath is the Jacuzzi Walk-in Tub.

10 79. Defendants advertise that those who purchase a walk-in tub can feel safe and feel better
11 with every bath.

12 80. Defendants advertise that the Jacuzzi bathtub is an industry leader with regard to safety
13 of those who use the walk-in tub.

14 81. Defendants advertise that the unique bathtubs can make the user's experience a pain
15 and stress reducing pleasure.

16 82. Defendants advertise that the tall tub walls allow neck-deep immersion and the same
17 full body soak as in a natural hot spring or regular hot tub.

18 83. Defendants advertise that getting out of the tub is easy like getting out of a chair and
19 that it is nothing like climbing up from the bottom of the user's old tub.

20 84. Despite knowing that the users of the Jacuzzi walk-in bathtub are weak, feeble and at a
21 significant risk for falling down, Defendants did nothing to plan for the foreseeable event of having a
22 user like SHERRY fall down inside the walk-in bathtub.

23 85. Defendants did not use reasonable care in the design of the bathtub by providing a safe
24 way for users who fell while using the Jacuzzi walk-in bathtub to safely exit the bathtub.

1 86. Defendants knew of the heightened risk of having users like SHERRY fall down inside
2 the Jacuzzi walk-in bathtub, and have difficulties getting back up or out of the bathtub, but did nothing
3 to alleviate that risk.

4
5 87. Defendants knew of the heightened risk of having users like SHERRY fall down inside
6 the Jacuzzi walk-in bathtub, and have difficulties getting back up or out of the bathtub, but did nothing
7 to mitigate that risk.

8
9 88. Defendants knew of the heightened risk of having users like SHERRY fall down inside
10 the Jacuzzi walk-in bathtub, and have difficulties getting back up or out of the bathtub, but did nothing
11 to reduce that risk.

12 89. In fact, Defendants knew of alternative designs for a walk-in bathtub that were much
13 safer to users like SHERRY who were at a substantial risk of falling down inside the Jacuzzi walk-in
14 bathtub and were unable to get back up or out of the bathtub but chose against implementing
15 alternative designs for increased profitability.

16
17 90. Because of Defendants conscious choices to put profits before safety, the Jacuzzi walk-
18 in bathtub is a deathtrap for nearly any elderly person who happens to fall down inside the bathtub
19 because there are no grab bars positioned in a way that someone can get back up if they fall down and
20 because the door opens inward and traps the elderly person inside the bathtub.

21
22 WHEREFORE, Plaintiffs respectfully pray that Judgment be entered as set forth below

23 1. General damages for Plaintiffs pain, suffering, disfigurement, emotional distress, shock
24 and agony in an amount in excess of \$10,000.00;

25 2. Compensatory damages in an amount in excess of \$10,000.00;

26 3. Special damages for Plaintiffs medical expenses in an amount to be proven at trial;

27 4. For punitive damages in excess of \$10,000.00;
28

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CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of CLOWARD HICKS & BRASIER PLLC and that on the 31st day of January, 2017, I caused the foregoing **THIRD AMENDED COMPLAINT** to be served as follows:

- ☒ pursuant to N.E.F.C.R. 9 by serving it via electronic service
- ☐ by placing a true and correct copy of the same to be deposited for mailing in the U.S. Mail at Las Vegas, Nevada, enclosed in a sealed envelope upon which first class postage was fully prepaid; and/or

to the attorneys listed below:

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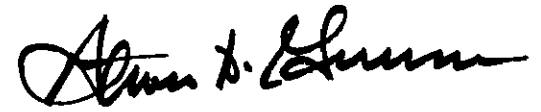
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/s/ Olivia F. Bivens
An employee of CLOWARD HICKS & BRASIER, PLLC

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EXHIBIT “5”



CLERK OF THE COURT

1 **MDSM**
 2 Vaughn A. Crawford
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 4 Joshua D. Cools
 5 Nevada Bar No. 11941
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 7 3883 Howard Hughes Parkway, Suite 1100
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 12 Email: jcools@swlaw.com

13 Attorneys for Defendant
 14 JACUZZI INC. doing business
 15 as JACUZZI LUXURY BATH

DISTRICT COURT**CLARK COUNTY, NEVADA**

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

24 Plaintiffs,

25 vs.

26 FIRST STREET FOR BOOMERS &
 27 BEYOND, INC.; AITHR DEALER, INC.;
 28 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

**DEFENDANT JACUZZI INC.'S
MOTION TO DISMISS PUNITIVE
DAMAGES**

Defendant Jacuzzi Inc., by and through its attorneys, Snell & Wilmer L.L.P., moves this
 Court for an order dismissing Plaintiffs' punitive damages claim against Jacuzzi Inc. in the above-

captioned dispute because Plaintiffs fail to adequately state why they are entitled to such relief.

This motion is based upon the memorandum of points and authorities attached hereto, the declaration submitted herewith, the papers and pleadings of record herein and any oral argument by counsel in this matter.

DATED this 9th day of June, 2016.

SNELL & WILMER L.L.P.

By: 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
JACUZZI INC. doing business
as JACUZZI LUXURY BATH

NOTICE OF MOTION

TO: ALL PARTIES AND THEIR RESPECTIVE COUNSEL

PLEASE TAKE NOTICE that the undersigned will bring the foregoing Motion on for hearing in Department 1 of the above-entitled Court on the 02 day of AUGUST, 2016 at 9:00A a.m./p.m., or as soon thereafter as counsel may be heard.

DATED this 9th day of June, 2016.

SNELL & WILMER L.L.P.

By: Joshua D. Cools

Vaughn A. Crawford
Nevada Bar No. 7665
Joshua D. Cools
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Snell & Wilmer

L.L.P.
LAW OFFICES
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, Nevada 89169
702.784.5200

MEMORANDUM OF POINTS AND AUTHORITIES

I.

Introduction

This product liability case arises out of injuries that Sherry Lynn Cunnison allegedly suffered while using a walk-in bathtub installed in her home in Las Vegas, Nevada. Plaintiffs allege that Jacuzzi Inc. manufactured, designed, or distributed the allegedly defective walk-in bathtub. Plaintiffs also sued First Street for Boomers & Beyond, Inc., Aithr Dealer, Inc., Hale Benton, Homeclick, LLC, Bestway Building & Remodeling, Inc., William Budd, and Budd's Plumbing, alleging that each was the retailer, manufacturer, supplier, or installer of the subject bathtub. Plaintiffs' Second Amended Complaint contains allegations for several causes of action as well as a conclusory claim for punitive damages against all defendants. Significantly, nothing in Plaintiffs' Second Amended Complaint states what possible basis there could be for such a request for relief. While Nevada is a notice pleading jurisdiction, plaintiffs must still state the basis for a claim for relief, including prayers for punitive damages. Plaintiffs' Second Amended Complaint fails to do this and instead merely demands punitive damages, without explaining how Jacuzzi Inc. allegedly acted in malice, oppression, or fraud. This is insufficient as a matter of law, as Jacuzzi Inc. cannot be on notice as to what conduct could possibly support such a request. Accordingly, Jacuzzi Inc. also seeks an order dismissing Plaintiffs' punitive damages request.

II.

Statements of Facts

Plaintiffs allege that on February 19, 2014, Sherry Lynn Cunnison was using a walk-in bathtub installed in her home at 3881 Sedgewick Court, Las Vegas, Nevada.¹ Cunnison attempted to drain the bathtub, but the drain would not release the water.² Without first draining the water from the bathtub, the bathtub's door would not open and Cunnison was unable to exit the bathtub.³ On February 21, 2014, a well-being check was performed and Cunnison was found

¹ See Pls.' Second Amended Compl. ¶¶ 13-19, 24.

² See *id.* at ¶ 24.

³ See *id.*

1 in the bathtub.⁴ Cunnison later died at the hospital.⁵ Plaintiffs are the surviving heirs of
2 Cunnison and allege causes of action against all defendants for negligence and strict product
3 liability for defective design, manufacture, or failure to warn, claiming that the defendants'
4 actions were the cause of Cunnison's death.⁶ Plaintiffs also make cursory demand for punitive
5 damages.⁷

6 III.

7 Argument

8 A. The pleading standard for punitive damages requires Plaintiffs to allege the basis for 9 their request for punitive damages.

10 A defendant is entitled to dismissal of a claim when a plaintiff fails to state a claim upon
11 which relief can be granted.⁸ Thus, "[d]ismissal is proper where the allegations are insufficient to
12 establish the elements of a claim for relief."⁹ This Court should dismiss Plaintiffs' claim for
13 punitive damages because Plaintiffs have not alleged sufficient facts to sustain a punitive
14 damages claim against a corporate defendant.

15 The concept of punitive damages rests upon a presumed public policy to punish a
16 wrongdoer for his act and to deter others from acting in a similar fashion.¹⁰ Punitive damages are
17 designed not to reward the victim, but to punish the wrongdoer and deter fraudulent, malicious, or
18 oppressive conduct.¹¹ A plaintiff is never entitled to punitive damages as a matter of right; their
19 allowance or denial rests entirely in the discretion of the trier of fact.¹²

20 Consistent with that public policy, Nevada courts have historically disfavored punitive
21 damages claims and, for that reason, impose rigorous pleading and proof requirements. Indeed,
22

23 ⁴ See *id.* at ¶ 25.

24 ⁵ See *id.* at ¶ 30.

25 ⁶ See *id.* at ¶¶ 1, 3-5, 28-47.

26 ⁷ See *id.* at 10:1.

27 ⁸ NRCP 12(b)(5).

28 ⁹ *Stockmeier v. State, Dep't of Corrections*, 122 Nev. 385, 389, 135 P.3d 220, 223 (2006), *abrogated on other grounds by Buzz Stew, LLC v. City of North Las Vegas*, 181 P. 3d 670, 672 (Nev. 2008).

¹⁰ *Nevada Cement Co. v. Lemler*, 89 Nev. 447, 452, 514 P.2d 1180, 1183 (1973); *Ace Truck & Equip. Rentals, Inc. v. Kahn*, 103 Nev. 503, 506, 746 P.2d 132, 134 (1987).

¹¹ *Turnbow v. State Dep't of Human Resources*, 109 Nev. 493, 496, 853 P.2d 97, 99 (1993).

¹² *Evans v. Dean Witter Reynolds, Inc.*, 116 Nev. 598, 612, 5 P.3d 1043, 1052 (2000).

1 in 1995, the Nevada Legislature concurred by setting rigorous proof and pleading requirements.¹³
 2 Under NRS 42.005, punitive damages may be awarded “where it is proven by clear and
 3 convincing evidence that the defendant has been guilty of oppression, fraud or malice, express or
 4 implied.” Section 42.001 narrowly defines the oppression, fraud and malice required to support a
 5 punitive damages claim as follows:

- 6 2. ‘Fraud’ means an intentional misrepresentation, deception
 7 or concealment of a material fact known to the person with
 8 the intent to deprive another person of his rights or property
 9 or to otherwise injure another person.
- 10 3. ‘Malice, express or implied’ means conduct which is
 11 intended to injure a person or despicable conduct which is
 12 engaged in with a conscious disregard of the rights or
 13 safety of others.
- 14 4. ‘Oppression’ means despicable conduct that subjects a
 15 person to cruel and unjust hardship with conscious
 16 disregard of the rights of the person.

17 In order to plead a claim, a plaintiff must set out in their pleading “allegations sufficient to
 18 make out the elements of a right to relief.”¹⁴ Thus, to sustain any claim for punitive damages,
 19 Plaintiffs are required to allege facts in their pleading that indicate Jacuzzi Inc. acted with fraud,
 20 oppression, or malice.¹⁵ For claims based in fraud, plaintiff must meet the heightened standard of
 21 NRCP 9(b).¹⁶ Moreover, in order to sustain a punitive damages claim against a corporation, a
 22 plaintiff must demonstrate that an “officer, director or managing agent of the corporation” had
 23 “knowledge, authorize[ed], or ratif[ied]” the conduct warranting punitive damages.¹⁷ But as the
 24 Court can see from Plaintiffs’ Second Amended Complaint, Plaintiffs have pled nothing at all
 25 supporting their demand for punitive damages.

26 ///

27 ¹³ See NRS § 42.001 *et seq.*

28 ¹⁴ *Edgar v. Wagner*, 101 Nev. 226, 227, 699 P.2d 110, 111 (1985); NRCP 8(a)(1).

¹⁵ NRS § 42.005. See also *Edgar*, 101 Nev. at 227, 699 P.2d at 111; NRCP 8(a)(1).

¹⁶ *Brown v. Kellar*, 636 P.2d 874 (Nev. 1981) (quoting 5 Wright and Miller, *Federal Practice and Procedure* § 1297 at p. 403 (1969)) (“[t]he circumstances that must be detailed include averments to the time, the place, the identity of the parties involved, and the nature of the fraud or mistake.”); see also *Vess v. Ciba-Geigy Corp.*, 317 F.3d 1097, 1103-04 (9th Cir. 2003) (“In that event, the claim is said to be ‘grounded in fraud’ or to ‘sound in fraud,’ and the pleading of that claim as a whole must satisfy the particularity requirement of Rule 9(b).”).

¹⁷ *Grieves*, 157 Cal.App.3d 159, 167 (Cal. App. 1984); see also *Frantz v. Johnson*, 999 P.2d 351, 360 n.8 (Nev. 2000) (“a corporation is liable for damages committed by an agent employed in a managerial capacity acting within the scope of employment as a matter of law”).

1 In consideration of such pleading requirements, NRCP 12(b)(5), provides grounds for
 2 dismissal of a claim if the claimant fails to state a claim upon which relief can be granted. Simply
 3 stated, if the claimant can prove no set of facts that, if accepted by the trier of fact, would entitle it
 4 to relief, then dismissal of its claim is appropriate.

5 **B. Plaintiffs' Second Amended Complaint fails to plead facts sufficient to sustain a**
 6 **punitive damages claim against a corporate defendant such as Jacuzzi Inc.**

7 Plaintiffs' Second Amended Complaint does not set forth sufficient allegations to make
 8 out the elements of a punitive damages claim. Plaintiffs fail to set forth any facts regarding what
 9 Jacuzzi Inc. supposedly knew about the alleged dangers of the subject bathtub, how Jacuzzi Inc.
 10 knew of those alleged dangers, or what Jacuzzi Inc. did or did not do despite that knowledge.
 11 Rather, Plaintiffs' claim for punitive damages is nothing but a naked demand. Plaintiffs' Second
 12 Amended Complaint contains no particularized allegations to support their request.

13 Even construing Plaintiffs' allegations in the light most favorable to them, it is impossible
 14 to construct a set of facts that could provide them with punitive damages based on Jacuzzi Inc.'s
 15 supposed malice, oppression, or fraudulent conduct. Plaintiffs do not even include a conclusory
 16 allegation (which would itself be insufficient) that Jacuzzi Inc. acted in malice, oppression, or
 17 fraud. Moreover, Plaintiffs fail to identify a single officer, director, or managing agent of Jacuzzi
 18 Inc., who allegedly authorized or ratified any wrongful conduct. As the Second Amended
 19 Complaint now stands, there are no facts pled that would put Jacuzzi Inc.—or any other
 20 defendant—on notice of the specific nature of the acts it allegedly committed that warrant it being
 21 punished with an award of punitive damages. Accordingly, Plaintiffs' punitive damages claim
 22 should be dismissed for failure to state a claim.

23 ///

24 ///

25 ///

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1 IV.

2 Conclusion

3 In sum, Plaintiffs' request for punitive damages fails to comply with NRCP 8. Plaintiffs
 4 have no substantive or factual allegations backing up why they would be entitled to such damages
 5 or how Jacuzzi Inc. acted with malice, oppression, or fraud. Accordingly, Jacuzzi Inc.
 6 respectfully requests that the Court grant its motion and dismiss Plaintiffs' punitive damages
 7 claims.

8 DATED this 9th day of June, 2016.

9 SNELL & WILMER L.L.P.

10 By: John D. Cools

11 Vaughn A. Crawford

12 Nevada Bar No. 7665

13 Joshua D. Cools

14 Nevada Bar No. 11941

15 3883 Howard Hughes Parkway, Suite 1100

16 Las Vegas, NV 89169

17 Attorneys for Defendant

18 JACUZZI INC. doing business

19 as JACUZZI LUXURY BATH

Snell & Wilmer

L.L.P.

LAW OFFICES
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 Las Vegas, Nevada 89169
 702.784.5200

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 JACUZZI INC.'S MOTION TO DISMISS PUNITIVE DAMAGES** by the method indicated below:

XXXXX Electronic Service (Wiznet)

and addressed to the following:

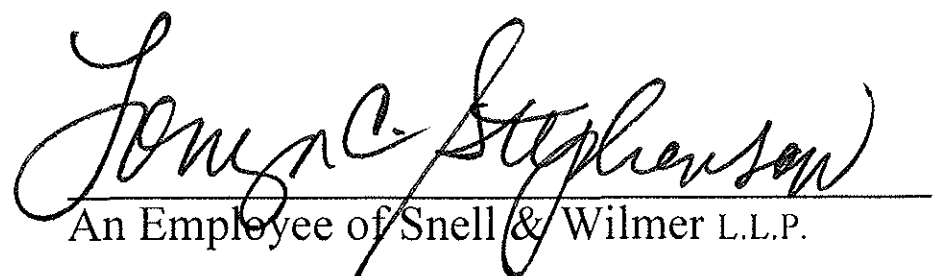
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BESTWAY BUILDING &
REMODELING, INC.

DATED this 9th day of June, 2016.


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

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EXHIBIT “6”



1 **NTC**
2 BENJAMIN P. CLOWARD, ESQ.
3 Nevada Bar No. 11087
4 Utah Bar No. 12336
5 **RICHARD HARRIS LAW FIRM**
6 801 South Fourth Street
7 Las Vegas, Nevada 89101
8 Phone: (702) 444-4444
9 Fax: (702) 444-4455
10 E-Mail: Benjamin@RichardHarrisLaw.com
11 *Attorneys for Plaintiffs*

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

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

22 Plaintiffs,

23 vs.

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

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

Date of Deposition : 11/13/2017
Time of Deposition: 10:00 a.m

001016

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

TO: ALL INTERESTED PARTIES AND THEIR COUNSEL OF RECORD

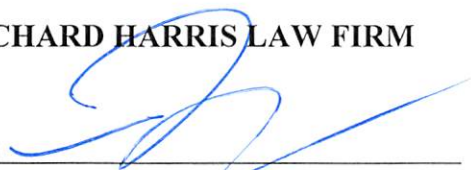
PLEASE TAKE NOTICE that on November 13, 2017 at 10:00 a.m., Plaintiff will take the videotaped deposition of the Person Most Knowledgeable for Defendant, JACUZZI LUXURY BATH, doing business as JACUZZI INC (hereinafter known as Defendant or Jacuzzi) at the Richard Harris Law Firm, located at 801 South Fourth Street, Las Vegas, Nevada 89101, 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 11th day of October, 2017

RICHARD HARRIS LAW FIRM

By: 
 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 11th day of Oct. 2017, I caused the foregoing **NOTICE TO TAKE VIDEOTAPED DEPOSITION(S) OF 30(b)(6) FOR JACUZZI** to be served as follows:

☒ pursuant to N.E.F.C.R. 9 by serving it via electronic service

Michael E. Stoberski, Esq.
Daniel Labounty, Esq.
OLSON, CANNON, GORMLEY ANGULO
& STOBERSKI
9950 West Cheyenne Ave.
Las Vegas, NV 89129
*Attorneys for Defendant/CrossClaimant
Third-Party Plaintiff
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Joshua D. Cools, Esq.
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*Attorneys for Defendant/Cross-Defendant
JACUZZI BRANDS LLC*

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BESTWAY BUILDING & REMODELING,
INC.*

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*Attorneys for Third-Party Defendant
THE CHICAGO FAUCET COMPANY*

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*Attorneys for Defendants/CrossDefendants
FIRSTSTREET FOR
BOOMERS & BEYOND, INC. and
AITHR DEALER, INC.*


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 Richard Harris Law Firm at the time and date of November 13, 2017 at 10:00 a.m. The deposition will continue thereafter, until completed.
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 NRC 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. that of an individual in 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. that of an individual in 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 in the 24 hours before or in the 24 hours after the incident), *that have not yet already been produced*. This includes, among other things, any incident reports, notes, or other memoranda made by the witness or by others, *that have not yet already been produced*. This shall include documents created in the 24 hour period before the incident and after the incident as a result of the defect alleged in Plaintiff's Complaint, or Amendments thereto, *that have not yet already been produced*.
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 at the scene 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 created as a result of the incident by personnel of Defendant(s) on the site or physically conducting operations on the premises for the 48 hours before, the day of the incident, and the 48 hours after the incident, which were created as a result of the incident, if the items have not yet already been produced.
8. All daily logs and reports created as a result of the incident created by any employee or agent of Defendant(s), in response to the incident at issue, or anything dealing with the incident at issue or any issues related to the incident at issue, if the items have not yet already been produced.
9. All incident reports and investigation reports prepared before this lawsuit was started with respect to falls on any Jacuzzi walk-in tub whether similar to the model used by Plaintiff 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 were on the premises at the time of 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).

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 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).

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

4 NOTE: Plaintiff is not seeking to obtain scientific or medical opinions, rather is simply trying to
 5 learn of Defendant'(s)' understanding of basic facts pursuant to: United States EEOC v. Caesars
 6 Entm't, Inc, 237 F.R.D. 428 (D. Nev. 2006); Taylor v. Shaw, 2007 U.S. Dist. LEXIS 16305 (D.
 7 Nev. Mar. 5, 2007); Great Am. Ins. Co. of N.Y. v. Vegas Constr. Co., 251 F.R.D. 534 (D. Nev.
 8 2008).

- 8 8. Instructions and warnings given to Plaintiff at any time regarding Plaintiff's activities on
 9 the premises

- 10 9. Conversations and statements by, or to, Plaintiff regarding Plaintiff's activities, the
 11 incident, or Plaintiff's injuries

- 12 10. Defendant(s) system, rules and regulations for the reporting of incidents or collection of
 13 data regarding incidents involving, and the identity of all other incidents on the premises
 14 in the period from February 27, 2014, to the present date.

- 15 11. All inspections, not invoking attorney work-product, in the area at issue and reasonable
 16 proximity thereto (defined as any area within 100 feet of where the incident took place)
 17 after the incident and to the date of this deposition, of the premises, equipment, or
 18 processes involved in the incident.

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

22 NOTE: Plaintiff is not seeking to obtain scientific or medical opinions, rather is simply trying
 23 to learn of Defendant'(s)' understanding of basic facts pursuant to: United States EEOC v.
 24 Caesars Entm't, Inc, 237 F.R.D. 428 (D. Nev. 2006); Taylor v. Shaw, 2007 U.S. Dist. LEXIS
 25 16305 (D. Nev. Mar. 5, 2007); Great Am. Ins. Co. of N.Y. v. Vegas Constr. Co., 251 F.R.D.
 26 534 (D. Nev. 2008).
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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.
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. The factual basis for all affirmative defenses asserted in Defendants' Answer in this case.
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);
 - (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.

SALES AND MARKETING TESTIMONY GENERAL

21. Testimony regarding the policies and procedures used by Jacuzzi to advertise and sell Jacuzzi walk in tubs.
22. Jacuzzi, Inc.'s, sales department, generally, concerning the advertising, marketing, sale and post-sale matters concerning the identification of the consumers that would likely use Jacuzzi's walk in tubs.
23. Jacuzzi, Inc.'s, sales department, generally, concerning the advertising, marketing, sale and post-sale matters concerning the subject Jacuzzi design of walk in tubs.
24. Identification of all persons known to Defendant who trained, directed or supervised to advise end users of the safety of Jacuzzi tubs.
25. Identification of all persons known to Defendant who trained, directed or supervised individuals to design walk in tubs that could cause or contribute to user being trapped in tub resulting in injury or death.

SALE AND MARKETING WITH END USER TESTIMONY

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

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

- 3 28. Communications between defendants concerning the elements and/or components
5 manufactured or designed by Jacuzzi, included but not limited to, the design, changes,
6 testing, manufacturing of said elements and components of the Jacuzzi walk-in tub.
- 7 29. What, if any, resources were available to Jacuzzi, Inc., to notify, research, or otherwise
8 learn and/or disclose information to/from First Street for Boomers & Beyond, Inc.; Aithr
9 Dealer, Inc.; Bestway Building and Remodeling; William Budd; and/ or Budds
10 Plumbing; regarding the subject Jacuzzi design that could cause or contribute to user
11 being trapped in tub.
- 12 30. Identification of all of Defendant's officers, directors, employees or other personnel who
13 at any time prior to the purchase of Plaintiff Cunnison's tub had any communication
14 with First Street for Boomers & Beyond, Inc.; Aithr Dealer, Inc.; Bestway Building and
15 Remodeling; William Budd; and/ or Budds Plumbing, regarding the safety of the user of
16 Jacuzzi walk in tubs.
- 17 31. All contracts, agreements and/or other documents entered into and/or exchanged
18 between Jacuzzi, Inc. First Street for Boomers & Beyond, Inc.; Aithr Dealer, Inc.;
19 Bestway Building and Remodeling; William Budd; and/ or Budds Plumbing.
- 20 32. Any policies and procedures of Defendant with regard to training or supervising
21 temporary employees or contractor as to the safety of the tub.
- 22 33. Any policies and procedures of Defendant with regard to training or supervising
23 temporary employees or contractor as to the safe installation of Jacuzzi walk in tubs.
- 24 34. Communications with Jacuzzi, Inc, or any other entity relating to and/or concerning the
25 subject Jacuzzi design of walk in tubs that could cause or contribute to user being
26 trapped in tub resulting in injury or death.
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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 that could cause or contribute to user being trapped in tub resulting in injury or death.
40. The engineering and design of the Jacuzzi walk-in tub and its elements.
41. The all systems design technical specification and effect for the design testing and manufacturing the walk-in Jacuzzi tub.
42. The organizational structure of any and all departments and individuals involved in design testing and manufacture of the Jacuzzi walk-in tubs. Any design failure mode effects and analysis or any such similar 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.

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

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

6 **OTHER SIMILAR INCIDENTS TESTIMONY**

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

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

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

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

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

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

Cunnison, Ms. Sherry Lyn
Case #: 317177 ()

Case Type: PRODUCTS
Class: 5

DOI 2/27/2014
Assigned: BEN

LIM Date: 2/26/2016
Date Opened: 4/2/2014

1/29/2019 11:25 AM

Page 2 of 3

Case Note - Page 611 of 1610

<Benjamin@richardharrislaw.com <mailto:Benjamin@richardharrislaw.com> >

Subject: RE: Jacuzzi Deposition

Tina – Ben and I texted about this case this morning. I know he is getting ready to start trial. I suggested that you at least provide some possible dates the weeks of December 11th or 18th, so that we could at least have a date reserved for Jacuzzi's deposition, which can take place at Snell & Wilmer's Costa Mesa office. Of course, confirm with Ben. But once you have done so, please provide us with a date or two so that I can communicate that to our witnesses. Thanks. – Josh.

Joshua D. Cools
Office: 702.784.5267
Cell: 734.657.8409

From: Cools, Joshua
Sent: Wednesday, November 01, 2017 11:08 AM
To: 'Benjamin Cloward'
Cc: 'Tina Jarchow'; 'Charles Allen'; Moreno, Jorge
Subject: RE: Jacuzzi Deposition
Importance: High

Ben – I have not received any response from you regarding the emails I sent last week. You should have received our response to and objections to your deposition notice. Please let me know if you feel we need to meet and confer regarding the notice or the proposed stipulated protective order. As I previously told you, Jacuzzi will likely be designated two witnesses to address these topics and we can make them available them weeks of December 11th or 18th at our office in Costa Mesa, California. Please let me know what day you want to take the deposition so I can make sure that the witnesses hold the date. Thanks. – Josh

Joshua D. Cools
Office: 702.784.5267
Cell: 734.657.8409

From: Cools, Joshua
Sent: Monday, October 23, 2017 10:54 AM
To: 'Benjamin Cloward'
Cc: 'Tina Jarchow'; Charles Allen; Moreno, Jorge
Subject: Jacuzzi Deposition

Hi Ben – I left a voicemail for you, so feel free to call if you want to discuss this further. I'll be serving some formal objections to the 30(b)(6) deposition notice you served, but in the meantime I wanted to let you know that we will be objecting to the location of the deposition (Jacuzzi and its witnesses are located in southern California) and time. It looks like Jacuzzi will be designating two witnesses to address the topics you noticed (subject to our forthcoming objections and responses) and they are not going to be available on November 13th. The weeks of December 11th or 18th should work for us. Let me know if you have any specific dates in there that you would like to aim for and I'll confirm with our witnesses. Thanks. – Josh

Joshua D. Cools
Snell & Wilmer L.L.P.
2002 Howard Hughes Blvd

001030

Cunnison, Ms. Sherry Lyn
Case #: 317177 ()

Case Type: PRODUCTS
Class: 5

DOI 2/27/2014
Assigned: BEN

LIM Date: 2/26/2016
Date Opened: 4/2/2014

1/29/2019 11:25 AM

Page 3 of 3

Case Note - Page 611 of 1610

3003 Howard Hughes Pkwy

Suite 1100

Las Vegas, Nevada 89169

Office: 702.784.5267

Cell: 734.657.8409

jcools@swlaw.com <mailto:jcools@swlaw.com> www.swlaw.com <http://www.swlaw.com/>

<image001.png>

Denver, Las Vegas, Los Angeles, Los Cabos, Orange County, Phoenix, Reno, Salt Lake City, Tucson

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EXHIBIT “8”

Snell & Wilmer

LAW OFFICES
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, Nevada 89169
702.784.5200

RSPN

Vaughn A. Crawford, Nevada Bar No. 7665
Joshua D. Cools, Nevada Bar No. 11941
SNELL & WILMER L.L.P.
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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; 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.

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

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

**Date of Deposition: 11/13/2017
Time of Deposition: 10:00 a.m.**

001033

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

PLEASE TAKE NOTICE that Defendant/Cross-Defendant Jacuzzi Inc. ("Jacuzzi") hereby provides the following responses and objections to Plaintiffs' 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, unilaterally scheduled for November 13, 2017 at 10:00 a.m. at the offices of Richard Harris Law Firm, 801 South Fourth Street, Las Vegas, NV 89101.

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 the 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.

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1 **3. Time and place.** The deposition will be taken at the Richard Harris Law Firm at the time
2 and date of November 13, 2017 at 10:00 a.m. The deposition will continue thereafter, until
3 completed.

4 **RESPONSE:**

5 Jacuzzi objects to Plaintiffs noticing the deposition for Las Vegas on November 13, 2017.
6 As Plaintiffs are aware, Jacuzzi is a citizen of California, not Nevada. The Nevada Supreme
7 Court has stated that the general rule is that defendants are to be deposed at its primary place of
8 business. *See Okada v. Eighth Judicial District Court*, 131 Nev. Adv. Op. 83 (2015). There are
9 no factors that would support taking the deposition in Las Vegas. Upon identification of who
10 Jacuzzi intends to designate as its representative for this deposition, Jacuzzi will provide
11 Plaintiffs' counsel with dates that the witness is available for deposition in southern California.

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

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

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

24 **RESPONSE:**

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

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5. **Defendant(s), not individuals, being deposed.** Pursuant to the provision of NRCPC 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.

RESPONSE:

Jacuzzi will designate witnesses in compliance with NRCPC 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 NRCPC 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 NRCPC 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. that of an individual in a Jacuzzi walk in 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, 10, and 11. Further, Jacuzzi objects to this category as confusing. The category states, in part, that it is seeking materials "intended to guard against or prevent the type of incident which is the subject matter of this lawsuit, i.e., that of an individual in a Jacuzzi walk in tub." It is unclear to Jacuzzi what is meant by guarding against an individual in a Jacuzzi® walk-in tub. Accordingly, Jacuzzi's response is based off its interpretation of this category as pertaining to documents related to individuals who became stuck in the Jacuzzi® 5229 Walk-In Bathtub in the manner it understands the decedent's incident occurred. Defendant objects to this Request as overbroad to the extent that it refers to documents not relevant to this case or Plaintiffs' vague claims of defect, which are outside the scope of Rule 26(b) and NRCP 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. that of an individual in a Jacuzzi walk in 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, 10, and 11. Further, Jacuzzi objects to this category as confusing. The category states, in part, that it is seeking materials "intended to guard against or prevent the type of incident which is the subject matter of this lawsuit, i.e., that of an individual in a Jacuzzi walk in tub." It is unclear to Jacuzzi what is meant by guarding against an individual in a Jacuzzi® walk-in tub. Accordingly, Jacuzzi's response is based off its

1 interpretation of this category as pertaining to documents related to individuals who became stuck
2 in the Jacuzzi® 5229 Walk-In Bathtub in the manner it understands the decedent's incident
3 occurred. Defendant objects to this Request as overbroad to the extent that it refers to documents
4 not relevant to this case or Plaintiffs' vague claims of defect, as well as documents created after
5 the subject incident, which are outside the scope of Rule 26(b) and NRCP 30(b)(6).

6 **Category 3**

7 Any documents, electronically stored information (ESI) or tangible items created by
8 Defendant(s) as a result of the incident, and documents, electronically stored information (ESI),
9 known to Defendant that were created by Defendant(s) or any of the witnesses (both those being
10 offered for the deposition of Defendant(s), and also those being deposed as an individual witness
11 on the date of this deposition of Defendant(s) in which any witness being deposed on this date
12 describes any events the witness observed at the scene of the incident in the 24 hours before or in
13 the 24 hours after the incident), *that have not yet already been produced*. This includes, among
14 other things, any incident reports, notes, or other memoranda made by the witness or by others,
15 *that have not yet already been produced*. This shall include documents created in the 24 hour
16 period before the incident and after the incident as a result of the defect alleged in Plaintiff's
17 Complaint, or Amendments thereto, *that have not yet already been produced*.

18 **RESPONSE:**

19 After performing a diligent search, Jacuzzi has no documents responsive to this request.
20 Jacuzzi objects to the category as confusing because it appears to be unrelated to this litigation.
21 The request refers to descriptions of "any events the witness observed at the scene of the incident
22 in the 24 hours before or in the 24 hours after the incident." Plaintiffs are aware that no employee
23 of Jacuzzi was present when Ms. Cunnison was in the tub, was removed from the tub, or when
24 she died. This category appears to be related to premises liability issues which are not relevant to
25 Plaintiffs' product liability claims in this case. The category appears to seek documents protected
26 from disclosure by the attorney work-product privilege.

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Category 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 at the scene 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 the note following this category, to the extent it is seeking materials that are subject to the attorney work product doctrine.

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

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

3 **Category 6**

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

6 **RESPONSE:**

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

11 **Category 7**

12 All daily logs and reports created as a result of the incident by personnel of Defendant(s)
13 on the site or physically conducting operations on the premises for the 48 hours before, the day of
14 the incident, and the 48 hours after the incident, which were created as a result of the incident, if
15 the items have not yet already been produced.

16 **RESPONSE:**

17 After performing a diligent search, Jacuzzi has no documents responsive to this Category.
18 This category of materials does not appear to be related to this litigation.

19 **Category 8**

20 All daily logs and reports created as a result of the incident created by any employee or
21 agent of Defendant(s), in response to the incident at issue, or anything dealing with the incident at
22 issue or any issues related to the incident at issue, if the items have not yet already been produced.

23 **RESPONSE:**

24 After performing a diligent search, Jacuzzi has no non-privileged documents responsive to
25 this Category. The category appears to seek documents protected from disclosure by the attorney
26 work-product privilege. Jacuzzi did not know of the subject incident until being notified by
27 Plaintiffs' counsel, and all documents created in response were prepared by or at the direction of
28 counsel.

Category 9

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

RESPONSE:

Jacuzzi objects to this category because it seeks confidential and proprietary materials that are irrelevant to the claims in this case.

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 were on the premises at the time of 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:

After performing a diligent search, Jacuzzi has no documents responsive to this request. Jacuzzi also objects to the category as confusing because it appears to be, in part, unrelated to this litigation. For instance, subsection (B) refers to employees who were "on the premises at the time of the incident." Plaintiffs are aware that no employee of Jacuzzi was present when Ms. Cunnison was in the tub, was removed from the tub, or when she died. Parts of this category appear to be specifically related to premises liability issues which are not relevant to Plaintiffs' product liability claims in this case.

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LIST OF TOPICS ON WHICH EXAMINATION IS SOUGHT

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 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 is through counsel and those communications are protected by the attorney client and/or work product privileges. Jacuzzi further objects to the request as an improper attempt to shift Plaintiffs' burden of proof to Jacuzzi.

Topic 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).

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. Jacuzzi objects to the request as an improper attempt to shift Plaintiffs' burden of proof to Jacuzzi. Jacuzzi further objects to the request to the extent it is duplicative of what has already been disclosed in its initial disclosures and supplements.

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Topic 3

Incident reports of the incident.

RESPONSE:

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

Topic 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.

RESPONSE:

Jacuzzi will produce someone generally familiar with Jacuzzi's safety standards and customer care as they relate to the subject model tub. Jacuzzi objects to the topic as argumentative and confusing. Specifically, Jacuzzi objects to the description of a "person in 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 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 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 is through counsel, and those communications are protected by the attorney client and/or

work product privileges. Jacuzzi objects to the request as an improper attempt to shift Plaintiffs' burden of proof to Jacuzzi.

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).

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 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. Discovery is ongoing, and the extent to which other persons or entities' may have contributed to the subject incident is still under investigation. The category also appears to seek the premature disclosure of expert opinions.

Topic 8

Instructions and warnings given to Plaintiff at any time regarding Plaintiff's activities on the premises

RESPONSE:

Jacuzzi will produce a witness familiar with the warnings that accompany this tub. Jacuzzi objects to the topic as inapplicable and confusing because it suggests that Jacuzzi had someone present in Ms. Cunnison's house or had any direct contact with plaintiffs, providing instructions or warnings to plaintiffs. It did not.

Topic 9

Conversations and statements by, or to, Plaintiff regarding Plaintiff's activities, the incident, or Plaintiff's injuries.

Topic 10

Defendant(s) system, rules and regulations for the reporting of incidents or collection of data regarding incidents involving, and the identity of all other incidents on the premises in the period from February 27, 2014, to the present date.

RESPONSE:

Jacuzzi will not produce a witness in response to topics 9 and 10 as they appear to be unrelated to this litigation. For example, Topic 9 refers to conversations with Ms. Cunnison, which there were none, and Topic 10 refers to other "incidents on the premises." Jacuzzi does not

1 have “rules and regulations” regarding plaintiff incidents on Plaintiffs' premises, and has had no
2 communications with plaintiffs.

3 **Topic 11**

4 All inspections, not invoking attorney work-product, in the area at issue and reasonable
5 proximity thereto (defined as any area within 100 feet of where the incident took place) after the
6 incident and to the date of this deposition, of the premises, equipment, or processes involved in
7 the incident.

8 **RESPONSE:**

9 Jacuzzi will not produce a witness in response to this topic. All inspections have been
10 made at the direction of counsel and with Plaintiffs' counsel and defense counsel present. The
11 category seeks testimony protected by the attorney client privilege and work product doctrine.

12 **Topic 12**

13 Factual information and sources of such facts, and information supporting Defendant'(s)' 001046
14 affirmative defenses as set forth and reflected in Defendant'(s)' Answer and amendments thereto.

15 NOTE: Plaintiff is not seeking to obtain scientific or medical opinions, rather is simply trying to
16 learn of Defendant'(s)' understanding of basic facts pursuant to: United States EEOC v. Caesars
17 Entm't, Inc, 237 F.R.D. 428 (D. Nev. 2006); Taylor v. Shaw, 2007 U.S. Dist. LEXIS 16305 (D.
18 Nev. Mar. 5, 2007); Great Am. Ins. Co. of N.Y. v. Vegas Constr. Co., 251 F.R.D. 534 (D. Nev.
19 2008).

20 **RESPONSE:**

21 Jacuzzi will not produce a witness in response to this category. Jacuzzi did not know of
22 the subject incident until being notified by Plaintiffs' counsel, and all information regarding the
23 incident and injuries is through counsel, and those communications are protected by the attorney
24 client and/or work product privileges. Further, Jacuzzi's Answer was prepared by counsel, and
25 contains legal defenses of which a lay witness is not qualified to answer. Discovery is ongoing,
26 and the extent to which other persons or entities' may have contributed to the subject incident is
27 still under investigation.

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Topic 13

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

RESPONSE:

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

Topic 14

Any and all document/record retention policies.

RESPONSE:

Jacuzzi will not produce a witness to testify regarding this topic. Jacuzzi objects to the topic as it is irrelevant to this litigation and there is no indication of any failure on the part of Jacuzzi to retain documents pertinent to Plaintiffs' claims. Jacuzzi further objects to the extent the topic seeks confidential and proprietary information.

Topic 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.

RESPONSE:

Jacuzzi will not produce a witness to testify regarding this topic. Jacuzzi objects to the topic as it is irrelevant to Plaintiffs' claims and the authenticity of Jacuzzi's documents is not in dispute. Jacuzzi further objects to the extent the topic seeks confidential and proprietary information, and information protected by privacy rights.

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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.

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

The factual basis for all affirmative defenses asserted in Defendants' Answer in this case.

RESPONSE:

Jacuzzi objects to this topic as duplicative of Topic 12 and incorporates its response set forth therein.

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.

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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.

RESPONSE:

Jacuzzi will not produce a witness on this topic. The withholding of documents, if any, was done based on legal objections. Jacuzzi objects to the information requested by Plaintiffs as it invades the attorney client privilege and work product doctrine.

Topic 21

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

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.

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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 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 Topic 23 to the extent it seeks "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 walk in tubs that could cause or contribute to user being trapped in tub resulting in injury or death.

RESPONSE:

Jacuzzi will not produce a witness in response to this topic. Jacuzzi knows of no persons who "trained, directed, or supervised individuals to design walk in tubs that could cause or contribute to user being trapped in tub resulting in injury or death."

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Topic 26

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

RESPONSE:

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

Topic 27

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

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

RESPONSE:

Jacuzzi will not produce a witness to testify regarding this topic because Jacuzzi did not create the sales or marketing materials related to the subject walk in tub prior to the subject incident. Jacuzzi objects that the subparts to the topic are vague, ambiguous and unintelligible.

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,

1 Inc.; Bestway Building and Remodeling; William Budd; and/ or Budds Plumbing; regarding the
2 subject Jacuzzi design that could cause or contribute to user being trapped in tub.

3 **RESPONSE:**

4 Jacuzzi will not produce a witness to testify regarding this topic. Jacuzzi is not aware of
5 any design that “could cause or contribute to user being trapped in tub.” Jacuzzi objects that the
6 Topic is vague, ambiguous and unintelligible what is being requested.

7 **Topic 30**

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

12 **RESPONSE:**

13 Jacuzzi will produce a witness familiar with communications, if any, between Jacuzzi and
14 the other defendants regarding safety of the subject bath tub prior to the subject incident. Jacuzzi
15 objects to the topic because it is not limited in time or scope and therefore seeks information
16 irrelevant to this litigation.

17 **Topic 31**

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

21 **RESPONSE:**

22 Jacuzzi will produce a witness familiar with Jacuzzi’s agreement with First Street for
23 Boomers & Beyond, Inc., as it relates to the subject bathtub. Jacuzzi objects to the topic as the
24 written agreement speaks for itself and has already been produced to Plaintiffs. Further, Jacuzzi
25 had no agreement or contract with any other parties.

26 **Topic 32**

27 Any policies and procedures of Defendant with regard to training or supervising
28 temporary employees or contractor as to the safety of the tub.

RESPONSE:

Jacuzzi will not produce a witness to testify on this topic, as it is vague, ambiguous and unintelligible. Jacuzzi objects to the topic as vague in its use of the term “safety of the tub.” However, as noted in response to other topics, Jacuzzi will produce someone familiar with the design of the subject model tub.

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.

RESPONSE:

Jacuzzi will produce a witness familiar with policies and procedures relating to installation of the subject tub. 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 that could cause or contribute to user being trapped in tub resulting in injury or death.

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. Jacuzzi is also unaware of any design “that could cause or contribute to user being trapped in tub resulting in injury or death.”

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 topic 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 that could cause or contribute to user being trapped in tub
6 resulting in injury or death.

7 **RESPONSE:**

8 Jacuzzi will not produce a witness to testify regarding this topic. Jacuzzi is not aware of
9 any design that “could cause or contribute to user being trapped in tub.”

10 **Topic 40**

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

12 **RESPONSE:**

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

15 **Topic 41**

16 The all systems design technical specification and effect for the design testing and
17 manufacturing the walk-in Jacuzzi tub.

18 **RESPONSE:**

19 Jacuzzi will produce a witness to testify regarding the technical specifications, testing, and
20 manufacturing of the subject model tub, insofar as they relate to Plaintiffs' claims. Jacuzzi
21 objects to the topic as vague and confusing in use of “all systems design technical specification
22 and effect for the design testing and manufacturing” which is incoherent.

23 **Topic 42**

24 The organizational structure of any and all departments and individuals involved in design
25 testing and manufacture of the Jacuzzi walk-in tubs. Any design failure mode effects and
26 analysis or any such similar analysis for the Jacuzzi walk-in tub and components manufactured
27 and/or designed by Jacuzzi.

28 ///

RESPONSE:

Jacuzzi will produce a witness to testify regarding the general organizational structure related to the design, testing, and manufacture of the subject model tub. Jacuzzi objects to request because it is not limited in time or scope and is therefore seeking information irrelevant to this litigation. Jacuzzi further objects to the second sentence of the topic as vague because it is incoherent.

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.

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.

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.

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 prior to the subject incident involving the subject Jacuzzi® Walk-In Bathtub model that are similar to the vague claims that have been asserted in this action. Jacuzzi objects to the topic because it is not limited in time or scope and therefore seeks testimony that is irrelevant to this litigation.

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 the 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.

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.

RESPONSE:

In response to Topics 50 and 51, Jacuzzi will produce a witness to testify generally regarding lawsuits, claims, dealer bulletins, complaints, or incident reports related to 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 prior to the subject incident and to the subject Jacuzzi® Walk-In Bathtub model that are similar to the vague claims that have been asserted in this action. Jacuzzi objects to the topic because it is not limited in time or scope and therefore seeks testimony that is irrelevant to this litigation.

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.

///

RESPONSE:

Jacuzzi will not produce a witness to testify regarding this topic because Jacuzzi is unaware of any lawsuits (other than those filed by Plaintiffs' attorney) involving claims of injury similar to the vague claims that have been asserted in this action, alleging that the subject model tub "caus[ed] injury or death." 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.

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 31st day of October, 2017.

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' NOTICE TO TAKE VIDEOTAPED DEPOSITION(S) OF 30(b)(6) FOR JACUZZI** 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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Las Vegas, NV 89101
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Attorneys for Plaintiffs

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Attorneys for Third-Party Defendant
THE CHICAGO FAUCET COMPANY

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Defendants/Cross-Claimants
WILLIAM BUDD, individually and as

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BESTWAY BUILDING
& REMODELING, INC.

1 BUDDS PLUMBING

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

11 DATED this 31st day of October, 2017.

13 /s/ Tonya C. Stephenson
 14 An Employee of Snell & Wilmer L.L.P.

14 4814-0633-0705.3

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EXHIBIT “9”

1 **NTC**
2 **BENJAMIN P. CLOWARD, ESQ.**
3 Nevada Bar No. 11087
4 Utah Bar No. 12336
5 **RICHARD HARRIS LAW FIRM**
6 801 South Fourth Street
7 Las Vegas, Nevada 89101
8 Phone: (702) 444-4444
9 Fax: (702) 444-4455
10 E-Mail: Benjamin@RichardHarrisLaw.com
11 *Attorneys for Plaintiffs*

12 **DISTRICT COURT**

13 **CLARK COUNTY, NEVADA**

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

22 Plaintiffs,

23 vs.

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

Defendants.

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

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

**Date of Deposition : 12/19/2017
Time of Deposition: 10:00 a.m**



**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 December 19, 2017 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 14th day of November, 2017.

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 14th day of November, 2017, I caused the foregoing **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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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 Richard Harris Law Firm at the time and date of December 19, 2017 at 10:00 a.m. The deposition will continue thereafter, until completed.
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

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

5 LIST OF ITEMS THE ORGANIZATION IS TO BRING TO ITS DEPOSITION

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

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

- 9 1. Any written policies or Defendant'(s)' regulations or procedures, *that have not yet*
 10 *already been produced*, and *which were in place before the incident at issue*, that were
 11 intended to guard against or prevent the type of incident which is the subject matter of
 12 this lawsuit, i.e. that of an individual in a Jacuzzi walk in tub.
- 13 2. Any written policies or Defendant'(s)' regulations or procedures, *that have not yet*
 14 *already been produced*, and *which were in place after the incident at issue*, that were
 15 intended to guard against or prevent the type of incident which is the subject matter of
 16 this lawsuit, i.e. that of an individual in a Jacuzzi walk in tub.
- 17 3. Any documents, electronically stored information (ESI) or tangible items created by
 18 Defendant(s) as a result of the incident, and documents, electronically stored
 19 information (ESI), known to Defendant that were created by Defendant(s) or any of the
 20 witnesses (both those being offered for the deposition of Defendant(s), and also those
 21 being deposed as an individual witness on the date of this deposition of Defendant(s) in
 22 which any witness being deposed on this date describes any events the witness observed
 at the scene of the incident in the 24 hours before or in the 24 hours after the incident),
that have not yet already been produced. This includes, among other things, any
 incident reports, notes, or other memoranda made by the witness or by others, *that have*
 23 *not yet already been produced*. This shall include documents created in the 24 hour
 24 period before the incident and after the incident as a result of the defect alleged in
 25 Plaintiff's Complaint, or Amendments thereto, *that have not yet already been produced*.
- 26 4. Any documents, electronically stored information (ESI) or tangible items created by, or
 27 in the possession of either Defendant(s) or any of the witnesses being offered for this
 28 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

1 had to do with safety in relation to prevention of the incident, and such documents that
 2 have been produced thus far by Defendant(s) that the Rule 30(b)(6) designee(s) may rely
 3 upon in providing their testimony, *that have not yet already been produced.*

4 Note: because this is a deposition of the corporation, we expect the corporation to specifically
 5 inquire of personnel at the scene whether they took photographs on their digital telephones or
 6 other personal digital devices, if the items have not yet already been produced.

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

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

12 7. All daily logs and reports created as a result of the incident by personnel of Defendant(s)
 13 on the site or physically conducting operations on the premises for the 48 hours before,
 14 the day of the incident, and the 48 hours after the incident, which were created as a result
 15 of the incident, if the items have not yet already been produced.

16 8. All daily logs and reports created as a result of the incident created by any employee or
 17 agent of Defendant(s), in response to the incident at issue, or anything dealing with the
 18 incident at issue or any issues related to the incident at issue, if the items have not yet
 19 already been produced.

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

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

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

28 (B) to or from those of Jacuzzi's officers, employees, and agents who were on
 the premises at the time of 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.

29 LIST OF TOPICS ON WHICH EXAMINATION IS SOUGHT

30 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).

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 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 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*

1 *Entm't, Inc*, 237 F.R.D. 428 (D. Nev. 2006); *Taylor v. Shaw*, 2007 U.S. Dist. LEXIS 16305 (D.
2 Nev. Mar. 5, 2007); *Great Am. Ins. Co. of N.Y. v. Vegas Constr. Co.*, 251 F.R.D. 534 (D. Nev.
3 2008).

4 8. Instructions and warnings given to Plaintiff at any time regarding Plaintiff's activities on
5 the premises

6 9. Conversations and statements by, or to, Plaintiff regarding Plaintiff's activities, the
7 incident, or Plaintiff's injuries

8 10. Defendant(s) system, rules and regulations for the reporting of incidents or collection of
9 data regarding incidents involving, and the identity of all other incidents on the premises
10 in the period from February 27, 2014, to the present date.

11 11. All inspections, not invoking attorney work-product, in the area at issue and reasonable
12 proximity thereto (defined as any area within 100 feet of where the incident took place)
13 after the incident and to the date of this deposition, of the premises, equipment, or
14 processes involved in the incident.

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

18 NOTE: Plaintiff is not seeking to obtain scientific or medical opinions, rather is simply trying to
19 learn of Defendant'(s)' understanding of basic facts pursuant to: *United States EEOC v. Caesars*
20 *Entm't, Inc*, 237 F.R.D. 428 (D. Nev. 2006); *Taylor v. Shaw*, 2007 U.S. Dist. LEXIS 16305 (D.
21 Nev. Mar. 5, 2007); *Great Am. Ins. Co. of N.Y. v. Vegas Constr. Co.*, 251 F.R.D. 534 (D. Nev.
22 2008).

23 **GENERAL TESTIMONY**

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

26 14. Any and all document/record retention policies.

27 15. The name, address (home and work) and phone numbers (home and work) for all
28 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. The factual basis for all affirmative defenses asserted in Defendants' Answer in this
case.

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);
 - (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.

SALES AND MARKETING TESTIMONY GENERAL

21. Testimony regarding the policies and procedures used by Jacuzzi to advertise and sell Jacuzzi walk in tubs.
22. Jacuzzi, Inc.'s, sales department, generally, concerning the advertising, marketing, sale and post-sale matters concerning the identification of the consumers that would likely use Jacuzzi's walk in tubs.
23. Jacuzzi, Inc.'s, sales department, generally, concerning the advertising, marketing, sale and post-sale matters concerning the subject Jacuzzi design of walk in tubs.
24. Identification of all persons known to Defendant who trained, directed or supervised to advise end users of the safety of Jacuzzi tubs.
25. Identification of all persons known to Defendant who trained, directed or supervised individuals to design walk in tubs that could cause or contribute to user being trapped in tub resulting in injury or death.

SALE AND MARKETING WITH END USER TESTIMONY

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

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

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

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

COMMUNICATION BETWEEN 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 design that could cause or contribute to user being trapped in 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.

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 the safety 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.

34. Communications with Jacuzzi, Inc, or any other entity relating to and/or concerning the subject Jacuzzi design of walk in tubs that could cause or contribute to user being trapped in tub resulting in injury or death.

DESIGN OF TUB

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

- 1 36. Identification of all of Defendant's officers, directors, employees or other personnel who
2 participated or had any role in the planning of designs, modifications, alterations, for the
3 subject Jacuzzi design of walk in tubs.
- 5 37. Identification of all of Defendant's officers, directors, employees or other personnel who
6 participated or had any role the planning of designs, modifications, alterations, for the
7 subject Jacuzzi design of walk in tubs.
- 8 38. Identification of all files and documents relating to the facts and circumstances of the
9 safety of Jacuzzi walk in tub users.
- 10 39. Identification of all persons known to Defendant who trained, directed or supervised
11 individuals to design walk in tubs that could cause or contribute to user being trapped in
12 tub resulting in injury or death.
- 13 40. The engineering and design of the Jacuzzi walk-in tub and its elements.
- 14 41. The all systems design technical specification and effect for the design testing and
15 manufacturing the walk-in Jacuzzi tub.
- 16 42. The organizational structure of any and all departments and individuals involved in
17 design testing and manufacture of the Jacuzzi walk-in tubs. Any design failure mode
18 effects and analysis or any such similar analysis for the Jacuzzi walk-in tub and
19 components manufactured and/or designed by Jacuzzi.
- 20 43. Any design work orders, billed work orders, test work orders, engineer change request,
21 engineering change orders related to the design and manufacture of the Jacuzzi walk-in
22 tub.
- 23 44. Any and all cost benefit and/or value analysis regarding the design of the Jacuzzi walk-
24 in tub and components.
- 25 45. The identification, location and contact information of persons with the most knowledge
26 concerning the design, manufacture and/or changes to the design and manufacturing of
27 the components of the Jacuzzi walk-in tub.
- 28 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.

OTHER SIMILAR INCIDENTS TESTIMONY

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

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EXHIBIT “10”

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; 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.

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

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

**Date of Deposition: 12/19/2017
Time of Deposition: 10:00 a.m.**

001076

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

PLEASE TAKE NOTICE that Defendant/Cross-Defendant Jacuzzi Inc. ("Jacuzzi") hereby provides the following responses and objections to Plaintiffs' 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 December 19, 2017 at 10:00 a.m. at the offices of Snell & Wilmer L.L.P., 600 Anton Boulevard, Ste. 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 the 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 Richard Harris Law Firm at the time
2 and date of December 19, 2017 at 10:00 a.m. The deposition will continue thereafter, until
3 completed.

4 **RESPONSE:**

5 This appears to be a typographical error, as the location of the deposition listed in this
6 section is inconsistent with the actual deposition notice. The parties have agreed for the
7 deposition to take place for December 19, 2017 at 10:00 a.m. at the offices of Snell & Wilmer
8 L.L.P., 600 Anton Boulevard, Ste. 1400, Costa Mesa, California 92626.

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

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

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

21 **RESPONSE:**

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

26 **5. Defendant(s), not individuals, being deposed.** Pursuant to the provision of
27 NRCP 30(b)(6) the rules of civil procedure, is/are on notice that it is Defendant(s) being deposed,
28 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.

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. that of an individual in a Jacuzzi walk in 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, 10, and 11. Further, Jacuzzi objects to this category as confusing. The category states, in part, that it is seeking materials "intended to guard against or prevent the type of incident which is the subject matter of this lawsuit, i.e., that of an individual in a Jacuzzi walk in tub." It is unclear to Jacuzzi what is meant by guarding against an individual in a Jacuzzi® walk-in tub. Accordingly, Jacuzzi's response is based off its interpretation of this category as pertaining to documents related to individuals who became stuck in the Jacuzzi® 5229 Walk-In Bathtub in the manner it understands the decedent's incident occurred. Defendant objects to this Request as overbroad to the extent that it refers to documents not relevant to this case or Plaintiffs' vague claims of defect, which are outside the scope of Rule 26(b) and NRCP 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. that of an individual in a Jacuzzi walk in 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, 10, and 11. Further, Jacuzzi objects to this category as confusing. The category states, in part, that it is seeking materials "intended to guard against or prevent the type of incident which is the subject matter of this lawsuit, i.e., that of an individual in a Jacuzzi walk in tub." It is unclear to Jacuzzi what is meant by guarding against an individual in a Jacuzzi® walk-in tub. Accordingly, Jacuzzi's response is based off its interpretation of this category as pertaining to documents related to individuals who became stuck in the Jacuzzi® 5229 Walk-In Bathtub in the manner it understands the decedent's incident occurred. Defendant objects to this Request as overbroad to the extent that it refers to documents

not relevant to this case or Plaintiffs' vague claims of defect, as well as documents created after the subject incident, which are outside the scope of Rule 26(b) and NRCP 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 in the 24 hours before or in the 24 hours after the incident), *that have not yet already been produced*. This includes, among other things, any incident reports, notes, or other memoranda made by the witness or by others, *that have not yet already been produced*. This shall include documents created in the 24 hour period before the incident and after the incident as a result of the defect alleged in Plaintiff's Complaint, or Amendments thereto, *that have not yet already been produced*.

RESPONSE:

After performing a diligent search, Jacuzzi has no documents responsive to this request. Jacuzzi objects to the category as confusing because it appears to be unrelated to this litigation. The request refers to descriptions of "any events the witness observed at the scene of the incident in the 24 hours before or in the 24 hours after the incident." Plaintiffs are aware that no employee of Jacuzzi was present when Ms. Cunnison was in the tub, was removed from the tub, or when she died. This category appears to be related to premises liability issues which are not relevant to Plaintiffs' product liability claims in this case. The category appears to seek documents protected from disclosure by the attorney work-product privilege.

Category 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 at the scene 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 the note following this category, to the extent it is seeking materials that are subject to the attorney work product doctrine.

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 created as a result of the incident by personnel of Defendant(s) on the site or physically conducting operations on the premises for the 48 hours before, the day of the incident, and the 48 hours after the incident, which were created as a result of the incident, if the items have not yet already been produced.

RESPONSE:

After performing a diligent search, Jacuzzi has no documents responsive to this Category. This category of materials does not appear to be related to this litigation.

Category 8

All daily logs and reports created as a result of the incident created by any employee or agent of Defendant(s), in response to the incident at issue, or anything dealing with the incident at issue or any issues related to the incident at issue, if the items have not yet already been produced.

RESPONSE:

After performing a diligent search, Jacuzzi has no non-privileged documents responsive to this Category. The category appears to seek documents protected from disclosure by the attorney work-product privilege. Jacuzzi did not know of the subject incident until being notified by Plaintiffs' counsel, and all documents created in response were prepared by or at the direction of counsel.

Category 9

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

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RESPONSE:

Jacuzzi objects to this category because it seeks confidential and proprietary materials that are irrelevant to the claims in this case.

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 were on the premises at the time of 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:

After performing a diligent search, Jacuzzi has no documents responsive to this request. Jacuzzi also objects to the category as confusing because it appears to be, in part, unrelated to this litigation. For instance, subsection (B) refers to employees who were "on the premises at the time of the incident." Plaintiffs are aware that no employee of Jacuzzi was present when Ms. Cunnison was in the tub, was removed from the tub, or when she died. Parts of this category appear to be specifically related to premises liability issues which are not relevant to Plaintiffs' product liability claims in this case.

LIST OF TOPICS ON WHICH EXAMINATION IS SOUGHT**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 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 is through counsel and those communications are protected by the attorney client and/or work product privileges. Jacuzzi further objects to the request as an improper attempt to shift Plaintiffs' burden of proof to Jacuzzi.

Topic 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).

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. Jacuzzi objects to the request as an improper attempt to shift Plaintiffs' burden of proof to Jacuzzi. Jacuzzi further objects to the request to the extent it is duplicative of what has already been disclosed in its initial disclosures and supplements.

Topic 3

Incident reports of the incident.

RESPONSE:

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

Topic 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.

RESPONSE:

Jacuzzi will produce someone generally familiar with Jacuzzi's safety standards and customer care as they relate to the subject model tub. Jacuzzi objects to the topic as argumentative and confusing. Specifically, Jacuzzi objects to the description of a "person in 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 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 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 is through counsel, and those communications are protected by the attorney client and/or work product privileges. Jacuzzi objects to the request as an improper attempt to shift Plaintiffs' burden of proof to Jacuzzi.

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).

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 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 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. Discovery is ongoing, and the extent to which other persons or entities' may have contributed to the subject incident is still under investigation. The category also appears to seek the premature disclosure of expert opinions.

Topic 8

Instructions and warnings given to Plaintiff at any time regarding Plaintiff's activities on the premises

RESPONSE:

Jacuzzi will produce a witness familiar with the warnings that accompany this tub. Jacuzzi objects to the topic as inapplicable and confusing because it suggests that Jacuzzi had someone present in Ms. Cunnison's house or had any direct contact with plaintiffs, providing instructions or warnings to plaintiffs. It did not.

Topic 9

Conversations and statements by, or to, Plaintiff regarding Plaintiff's activities, the incident, or Plaintiff's injuries.

Topic 10

Defendant(s) system, rules and regulations for the reporting of incidents or collection of data regarding incidents involving, and the identity of all other incidents on the premises in the period from February 27, 2014, to the present date.

RESPONSE:

Jacuzzi will not produce a witness in response to topics 9 and 10 as they appear to be unrelated to this litigation. For example, Topic 9 refers to conversations with Ms. Cunnison, which there were none, and Topic 10 refers to other "incidents on the premises." Jacuzzi does not have "rules and regulations" regarding plaintiff incidents on Plaintiffs' premises, and has had no communications with plaintiffs.

Topic 11

All inspections, not invoking attorney work-product, in the area at issue and reasonable proximity thereto (defined as any area within 100 feet of where the incident took place) after the incident and to the date of this deposition, of the premises, equipment, or processes involved in the incident.

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RESPONSE:

Jacuzzi will not produce a witness in response to this topic. All inspections have been made at the direction of counsel and with Plaintiffs' counsel and defense counsel present. The category seeks testimony protected by the attorney client privilege and work product doctrine.

Topic 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).

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. Discovery is ongoing, and the extent to which other persons or entities' may have contributed to the subject incident is still under investigation.

Topic 13

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

RESPONSE:

Jacuzzi will produce a witness familiar with the documents produced in response to Plaintiff's discovery requests in this case. In agreeing to produce a witness, Jacuzzi incorporates by reference the objections contained in its responses to Plaintiffs' discovery requests in this case.

Jacuzzi further objects to the extent questioning seeks to invade the attorney client privilege and work product doctrine.

Topic 14

Any and all document/record retention policies.

RESPONSE:

Jacuzzi will not produce a witness to testify regarding this topic. Jacuzzi objects to the topic as it is irrelevant to this litigation and there is no indication of any failure on the part of Jacuzzi to retain documents pertinent to Plaintiffs' claims. Jacuzzi further objects to the extent the topic seeks confidential and proprietary information.

Topic 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.

RESPONSE:

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

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

The factual basis for all affirmative defenses asserted in Defendants' Answer in this case.

RESPONSE:

Jacuzzi objects to this topic as duplicative of Topic 12 and incorporates its response set forth therein.

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);

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- (d) The date the document was created and the person(s) to whom the document or copies were transmitted; and,
- (e) A summary of the contents of each document, communication or thing.

RESPONSE:

Jacuzzi will not produce a witness on this topic. The withholding of documents, if any, was done based on legal objections. Jacuzzi objects to the information requested by Plaintiffs as it invades the attorney client privilege and work product doctrine.

Topic 21

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

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 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 Topic 23 to the extent it seeks "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.

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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 walk in tubs that could cause or contribute to user being trapped in tub resulting in injury or death.

RESPONSE:

Jacuzzi will not produce a witness in response to this topic. Jacuzzi knows of no persons who "trained, directed, or supervised individuals to design walk in tubs that could cause or contribute to user being trapped in tub resulting in injury or death."

Topic 26

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

RESPONSE:

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

Topic 27

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

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

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RESPONSE:

Jacuzzi will not produce a witness to testify regarding this topic because Jacuzzi did not create the sales or marketing materials related to the subject walk in tub prior to the subject incident. Jacuzzi objects that the subparts to the topic are vague, ambiguous and unintelligible.

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 design that could cause or contribute to user being trapped in tub.

RESPONSE:

Jacuzzi will not produce a witness to testify regarding this topic. Jacuzzi is not aware of any design that "could cause or contribute to user being trapped in tub." Jacuzzi objects that the Topic is vague, ambiguous and unintelligible what is being requested.

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.

///

RESPONSE:

Jacuzzi will produce a witness familiar with communications, if any, between Jacuzzi and the other defendants regarding safety of the subject bath tub 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.

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 familiar with Jacuzzi's agreement with First Street for Boomers & Beyond, Inc., as it relates to the subject bathtub. Jacuzzi objects to the topic as the written agreement speaks for itself and has already been produced to Plaintiffs. Further, Jacuzzi had no agreement or contract with any other parties.

Topic 32

Any policies and procedures of Defendant with regard to training or supervising temporary employees or contractor as to the safety of the tub.

RESPONSE:

Jacuzzi will not produce a witness to testify on this topic, as it is vague, ambiguous and unintelligible. Jacuzzi objects to the topic as vague in its use of the term "safety of the tub." However, as noted in response to other topics, Jacuzzi will produce someone familiar with the design of the subject model tub.

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.

RESPONSE:

Jacuzzi will produce a witness familiar with policies and procedures relating to installation of the subject tub. Jacuzzi objects to the topic as vague in its use of the term "safe

1 installation.” No one was injured in the installation of the subject tub and there is no indication
2 that it was installed improperly. The topic is not relevant to any issue in this action.

3 **Topic 34**

4 Communications with Jacuzzi, Inc, or any other entity relating to and/or concerning the
5 subject Jacuzzi design of walk in tubs that could cause or contribute to user being trapped in tub
6 resulting in injury or death.

7 **RESPONSE:**

8 Jacuzzi will not produce a witness to testify regarding this topic. Jacuzzi objects to the
9 topic as it seeks communications with itself, which is incoherent. Jacuzzi is also unaware of any
10 design “that could cause or contribute to user being trapped in tub resulting in injury or death.”

11 **Topic 35**

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

14 **RESPONSE:**

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

18 **Topic 36**

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

22 **Topic 37**

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

26 **RESPONSE:**

27 In response to Topics 36 and 37, Jacuzzi will produce a witness to testify regarding the
28 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 topic 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 testimony related to the design of the subject model bathtub, Jacuzzi has already agreed to produce a witness to testify as to that topic.

Topic 39

Identification of all persons known to Defendant who trained, directed or supervised individuals to design walk in tubs that could cause or contribute to user being trapped in tub resulting in injury or death.

RESPONSE:

Jacuzzi will not produce a witness to testify regarding this topic. Jacuzzi is not aware of any design that “could cause or contribute to user being trapped in tub.”

Topic 40

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

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RESPONSE:

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

Topic 41

The all systems design technical specification and effect for the design testing and manufacturing the walk-in Jacuzzi tub.

RESPONSE:

Jacuzzi will produce a witness to testify regarding the technical specifications, testing, and manufacturing of the subject model tub, insofar as they relate to Plaintiffs' claims. Jacuzzi objects to the topic as vague and confusing in use of "all systems design technical specification and effect for the design testing and manufacturing" which is incoherent.

Topic 42

The organizational structure of any and all departments and individuals involved in design testing and manufacture of the Jacuzzi walk-in tubs. Any design failure mode effects and analysis or any such similar analysis for the Jacuzzi walk-in tub and components manufactured and/or 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 model tub. Jacuzzi objects to request because it is not limited in time or scope and is therefore seeking information irrelevant to this litigation. Jacuzzi further objects to the second sentence of the topic as vague because it is incoherent.

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.

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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.

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.

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.

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 prior to the subject incident involving the subject Jacuzzi® Walk-In Bathtub model that are similar to the vague claims that have been asserted in this action. Jacuzzi objects to the topic because it is not limited in time or scope and therefore seeks testimony that is irrelevant to this litigation.

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 the 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.

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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.

RESPONSE:

In response to Topics 50 and 51, Jacuzzi will produce a witness to testify generally regarding lawsuits, claims, dealer bulletins, complaints, or incident reports related to 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 prior to the subject incident and to the subject Jacuzzi® Walk-In Bathtub model that are similar to the vague claims that have been asserted in this action. Jacuzzi objects to the topic because it is not limited in time or scope and therefore seeks testimony that is irrelevant to this litigation.

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.

RESPONSE:

Jacuzzi will not produce a witness to testify regarding this topic because Jacuzzi is unaware of any lawsuits (other than those filed by Plaintiffs' attorney) involving claims of injury similar to the vague claims that have been asserted in this action, alleging that the subject model tub "caus[ed] injury or death." 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.

Topic 53

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

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1 **RESPONSE:**

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

4 DATED this 7th day of December, 2017.

5 SNELL & WILMER L.L.P.

6
7 By: /s/ Joshua D. Cools
8 Vaughn A. Crawford
9 Nevada Bar No. 7665
10 Joshua D. Cools
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16 as JACUZZI LUXURY BATH
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Snell & Wilmer
2017

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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 OBJECTIONS TO PLAINTIFFS' AMENDED NOTICE TO TAKE VIDEOTAPED DEPOSITION(S) OF 30(b)(6) FOR JACUZZI** by the method indicated below, addressed to the following:

XXXXX Odyssey E-File & Serve

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Attorneys for Defendants/Cross-Defendants
FIRST STREET FOR BOOMERS &
BEYOND, INC. AND AITHR DEALER,
INC.

DATED this 7th day of December, 2017.

/s/ Tonya C. Stephenson
An Employee of Snell & Wilmer L.L.P.

4833-4689-2887.1

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EXHIBIT “11”

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

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

**Date of Deposition : 1/11/2018
Time of Deposition: 10:00 a.m**



**SECOND 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 January 11, 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 18th day of December, 2017.

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 18th day of December, 2017, I caused the foregoing **SECOND 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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*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. that of an individual in 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. that of an individual in 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 in the 24 hours before or in the 24 hours after the incident), *that have not yet already been produced*. This includes, among other things, any incident reports, notes, or other memoranda made by the witness or by others, *that have not yet already been produced*. This shall include documents created in the 24 hour period before the incident and after the incident as a result of the defect alleged in Plaintiff's Complaint, or Amendments thereto, *that have not yet already been produced*.
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

1 had to do with safety in relation to prevention of the incident, and such documents that
 2 have been produced thus far by Defendant(s) that the Rule 30(b)(6) designee(s) may rely
 3 upon in providing their testimony, *that have not yet already been produced.*

4 Note: because this is a deposition of the corporation, we expect the corporation to specifically
 5 inquire of personnel at the scene whether they took photographs on their digital telephones or
 6 other personal digital devices, if the items have not yet already been produced.

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

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

12 7. All daily logs and reports created as a result of the incident by personnel of Defendant(s)
 13 on the site or physically conducting operations on the premises for the 48 hours before,
 14 the day of the incident, and the 48 hours after the incident, which were created as a result
 15 of the incident, if the items have not yet already been produced.

16 8. All daily logs and reports created as a result of the incident created by any employee or
 17 agent of Defendant(s), in response to the incident at issue, or anything dealing with the
 18 incident at issue or any issues related to the incident at issue, if the items have not yet
 19 already been produced.

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

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

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

28 (B) to or from those of Jacuzzi's officers, employees, and agents who were on
 the premises at the time of 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.

27 LIST OF TOPICS ON WHICH EXAMINATION IS SOUGHT

28 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).

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 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 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*

1 *Entm't, Inc*, 237 F.R.D. 428 (D. Nev. 2006); *Taylor v. Shaw*, 2007 U.S. Dist. LEXIS 16305 (D.
2 Nev. Mar. 5, 2007); *Great Am. Ins. Co. of N.Y. v. Vegas Constr. Co.*, 251 F.R.D. 534 (D. Nev.
3 2008).

4 8. Instructions and warnings given to Plaintiff at any time regarding Plaintiff's activities on
5 the premises

6 9. Conversations and statements by, or to, Plaintiff regarding Plaintiff's activities, the
7 incident, or Plaintiff's injuries

8 10. Defendant(s) system, rules and regulations for the reporting of incidents or collection of
9 data regarding incidents involving, and the identity of all other incidents on the premises
10 in the period from February 27, 2014, to the present date.

11 11. All inspections, not invoking attorney work-product, in the area at issue and reasonable
12 proximity thereto (defined as any area within 100 feet of where the incident took place)
13 after the incident and to the date of this deposition, of the premises, equipment, or
14 processes involved in the incident.

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

18 NOTE: Plaintiff is not seeking to obtain scientific or medical opinions, rather is simply trying to
19 learn of Defendant'(s)' understanding of basic facts pursuant to: *United States EEOC v. Caesars
20 Entm't, Inc*, 237 F.R.D. 428 (D. Nev. 2006); *Taylor v. Shaw*, 2007 U.S. Dist. LEXIS 16305 (D.
21 Nev. Mar. 5, 2007); *Great Am. Ins. Co. of N.Y. v. Vegas Constr. Co.*, 251 F.R.D. 534 (D. Nev.
22 2008).

23 GENERAL TESTIMONY

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

26 14. Any and all document/record retention policies.

27 15. The name, address (home and work) and phone numbers (home and work) for all
28 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. The factual basis for all affirmative defenses asserted in Defendants' Answer in this
case.

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);
 - (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.

SALES AND MARKETING TESTIMONY GENERAL

21. Testimony regarding the policies and procedures used by Jacuzzi to advertise and sell Jacuzzi walk in tubs.
22. Jacuzzi, Inc.'s, sales department, generally, concerning the advertising, marketing, sale and post-sale matters concerning the identification of the consumers that would likely use Jacuzzi's walk in tubs.
23. Jacuzzi, Inc.'s, sales department, generally, concerning the advertising, marketing, sale and post-sale matters concerning the subject Jacuzzi design of walk in tubs.
24. Identification of all persons known to Defendant who trained, directed or supervised to advise end users of the safety of Jacuzzi tubs.
25. Identification of all persons known to Defendant who trained, directed or supervised individuals to design walk in tubs that could cause or contribute to user being trapped in tub resulting in injury or death.

SALE AND MARKETING WITH END USER TESTIMONY

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

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

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

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

COMMUNICATION BETWEEN 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 design that could cause or contribute to user being trapped in 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.

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 the safety 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.

34. Communications with Jacuzzi, Inc, or any other entity relating to and/or concerning the subject Jacuzzi design of walk in tubs that could cause or contribute to user being trapped in tub resulting in injury or death.

DESIGN OF TUB

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

- 1 36. Identification of all of Defendant's officers, directors, employees or other personnel who
2 participated or had any role in the planning of designs, modifications, alterations, for the
3 subject Jacuzzi design of walk in tubs.
- 5 37. Identification of all of Defendant's officers, directors, employees or other personnel who
6 participated or had any role the planning of designs, modifications, alterations, for the
7 subject Jacuzzi design of walk in tubs.
- 8 38. Identification of all files and documents relating to the facts and circumstances of the
9 safety of Jacuzzi walk in tub users.
- 10 39. Identification of all persons known to Defendant who trained, directed or supervised
11 individuals to design walk in tubs that could cause or contribute to user being trapped in
12 tub resulting in injury or death.
- 13 40. The engineering and design of the Jacuzzi walk-in tub and its elements.
- 14 41. The all systems design technical specification and effect for the design testing and
15 manufacturing the walk-in Jacuzzi tub.
- 16 42. The organizational structure of any and all departments and individuals involved in
17 design testing and manufacture of the Jacuzzi walk-in tubs. Any design failure mode
18 effects and analysis or any such similar analysis for the Jacuzzi walk-in tub and
19 components manufactured and/or designed by Jacuzzi.
- 20 43. Any design work orders, billed work orders, test work orders, engineer change request,
21 engineering change orders related to the design and manufacture of the Jacuzzi walk-in
22 tub.
- 23 44. Any and all cost benefit and/or value analysis regarding the design of the Jacuzzi walk-
24 in tub and components.
- 25 45. The identification, location and contact information of persons with the most knowledge
26 concerning the design, manufacture and/or changes to the design and manufacturing of
27 the components of the Jacuzzi walk-in tub.
- 28 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.

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

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EXHIBIT “12”

1 **NTC**
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3 Nevada Bar No. 11087
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6 Las Vegas, Nevada 89101
7 Phone: (702) 444-4444
8 Fax: (702) 444-4455
9 E-Mail: Benjamin@RichardHarrisLaw.com
10 *Attorneys for 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

23 Defendants.

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

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

Date of Deposition : 02/15/2018
Time of Deposition: 10:00 a.m



**SECOND 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 February 15, 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 19th day of January, 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 19th day of January, 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

Michael E. Stoberski, Esq.
Daniel Labounty, Esq.
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& STOBERSKI
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*Attorneys for Defendant/CrossClaimant
Third-Party Plaintiff
HOMECLICK, LLC*

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Cross-Claimant
BESTWAY BUILDING & REMODELING,
INC.*

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THE CHICAGO FAUCET COMPANY*

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*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 “13”

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

23 Defendants.

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

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

Date of Deposition : 03/22/2018
Time of Deposition: 10:00 a.m



**FOURTH 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 March 22, 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 22nd day of February, 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 22nd day of February, 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

Michael E. Stoberski, Esq.
Daniel Labounty, Esq.
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& STOBERSKI
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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 “14”

Nicole Griffin

From: Cools, Joshua <jcools@swlaw.com>
Sent: Friday, March 16, 2018 4:13 PM
To: Benjamin Cloward
Cc: Charles Allen PC (callen@charlesallenlawfirm.com); Nicole Griffin; Moreno, Jorge
Subject: RE: Cunnison

Ben – We need to postpone Jacuzzi's 30b6 deposition. We have searched the current customer care system based on the expanded scope of your claims and your proposed search terms and have not identified any relevant claims. However, Jacuzzi does have a legacy system that we are going to search as well before we can definitively say that there are no relevant claims based on the new search terms. It is unlikely that this is going to be completed before next week. Additionally, while I initially anticipated getting you the privilege log this week, we will get that to you next week as well. In light of needing to move the deposition, I realize that this will likely involve extending discovery deadlines, including our current trial setting. We can take the lead on putting together a stipulation to that effect. Please let me know what your availability is for the depositions in early April and I'll confirm the dates with the Jacuzzi witnesses. Give me a call if you would like to discuss this. Thanks. – Josh

From: Benjamin Cloward [mailto:Benjamin@richardharrislaw.com]
Sent: Wednesday, March 14, 2018 9:08 AM
To: Cools, Joshua
Cc: Charles Allen PC (callen@charlesallenlawfirm.com); Nicole Griffin
Subject: RE: Cunnison

Thanks Josh. As you know the depo is next week. Hoping to get them sooner than later.

Best,

Ben

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

From: Cools, Joshua [mailto:jcools@swlaw.com]
Sent: Wednesday, March 14, 2018 8:53 AM
To: Benjamin Cloward <Benjamin@richardharrislaw.com>
Subject: Re: Cunnison

Ben - You should have all the PO documents. We will be producing the privilege log for the internal communications this week. I will get the status of "other incident" documents and get back to you. - Josh

Sent from my iPad

On Mar 14, 2018, at 8:26 AM, Benjamin Cloward
 <Benjamin@richardharrislaw.com<mailto:Benjamin@richardharrislaw.com>> wrote:

Hi Josh,

We are still waiting to get all of the documents. We will need everything with adequate time to prepare for the depositions.

Can you please let us know the status of obtaining the documents?

Thank you,

Ben

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

<image009.jpg><<http://www.richardharrislaw.com/>>

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

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Tigers]<<https://www.lawtigers.com/nevada/>>

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EXHIBIT “15”

Snell & Wilmer

LAW OFFICES
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702.784.5200

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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.**

001152

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

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.

Topic 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.

RESPONSE:

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

Topic 3

Incident reports of the incident.

RESPONSE:

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

Topic 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.

RESPONSE:

Jacuzzi will produce someone generally familiar with Jacuzzi's safety standards and customer care as they relate to the subject model tub. Jacuzzi objects to the topic as argumentative and confusing. Specifically, Jacuzzi objects to the description of a "person in

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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Topic 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 information or of the Jacuzzi tub itself.*

RESPONSE:

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

Topic 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.*

RESPONSE:

Jacuzzi will produce a witness that is generally familiar the factual basis for its affirmative defenses and answer, to the extent that the testimony does not call for legal opinions or 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

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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28 ///

**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.

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

4 **RESPONSE:**

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

9 **Topic 31**

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

13 **RESPONSE:**

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

18 **Topic 32**

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

22 **RESPONSE:**

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

26 ///

27 ///

28 ///

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

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

Topic 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.*

RESPONSE:

Jacuzzi will produce a witness to testify regarding the design of the subject Jacuzzi® Walk-In Bathtub model. 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 40

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

RESPONSE:

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

Topic 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.*

RESPONSE:

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

Topic 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.

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:

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
Attorneys for Plaintiffs

Charles H. Allen (*pro hac vice*)
Charles Allen Law Firm
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William Budd, Individually and as Budds
Plumbing*

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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

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EXHIBIT “16”

View Report

[\(Printable PDF\)](#)

Attachments

No Images to
display

Report Details

Report No. 20160824-98A64-1589899

Report Date 8/24/2016

Sent to Manufacturer
/ Importer
/ Private
Labeler

Report Publication Date 9/30/2016

Category Consumer
of
Submitter

Product Details

Product Description Jacuzzi Walk-In Tub

Product Category Home Maintenance and Structures

Product Type Plumbing & Bath

Product Code Hot Tubs or Home Spas (698)

Manufacturer Jacuzzi Luxury Bath
/ Importer /



Private Labeler
Name

Brand Name

Model Name LW45
or Number

Serial Number BDPK7

UPC Code

Date
Manufactured

Manufacturer
Date Code

Retailer

Retailer State

Purchase Date 4/3/2016 This date is an estimate

Incident Details

Incident
Description

Dear Gentlemen,
Ser # BDPK7, model: LW45, Job: 16198
Subj: DeathTrap – Jacuzzi Walk-In Tub.

On April 3, 2016, I signed a contract for installation of a Walk-In Tub. The agent was [REDACTED]. The Fairbanks construction Co. of Ocala Fl., installed the unit 4-1-2016. I was advised never to use the tub without the 911 alert system in reach. On July 18, 2016, after finally receiving the 911 alert, I decided to try the Walk-In Tub.

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

The tape demonstration and brochures given by the agent [REDACTED] do not compare to the tub installed. The Tub is an old model. The new models (copies encl.) require 30 gal of water and are half the size which was actually installed. It takes 30 min. to fill the tub with 50 gallons. The shower head is barely in trickle mode and does not work properly. Numerous calls to the agent, the Fairbanks Construction Co., and [REDACTED], installation supervisor, [REDACTED]; were not returned. [REDACTED] of the Fairbanks Co, was rude, who returned the phone call stated "you got what you ordered, you do not get another tub!"

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

I am a senior citizen, 85 yrs. + and a victim of exploitation of the elderly. I live on

fixed income and invested \$15,500.- of my savings for health reasons, because my net worth does not qualify me for a senior establishment.

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

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

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

Please contact me at your earliest at above address or by phone at [REDACTED].

Please, please help!

Sincerely,
[REDACTED]

Incident Date 7/18/2016

Incident Unspecified
Location

Victims Involved

Injury Injury→Injury, Level of care not known
Information

My Unspecified
Relationship
to the Victim

Gender Unknown

Victim's Age Unspecified
When Incident
Occurred

Additional Details

Submitter has N/A
product?

Product was N/A
damaged
before
incident?

Product was N/A
modified
before
incident?

If yes to any,
explanation

Have you N/A
contacted the

001187

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EXHIBIT “17”

001187

CLARK COUNTY, NEVADA

Plaintiffs,

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

Defendants.

LEONARD BAIZE

DECEMBER 18, 2018

1 ORAL DEPOSITION OF LEONARD BAIZE, produced as a witness
2 duly sworn by me at the instance of the Plaintiffs, taken in
3 the above-styled and numbered cause on December 18, 2018,
4 from 9:58 a.m. to 11:03 a.m., before STACY AMY BAKLIK, CSR,
5 Certified Shorthand Reporter No. 2680 in and for the State of
6 Texas, at the La Quinta Inn & Suites, 2220 Highway 62 South,
7 Orange, Texas, pursuant to the Nevada Rules of Civil
8 Procedure and the provisions stated on the record or attached
9 therein.

10 * * * * *

APPEARANCES

FOR THE PLAINTIFF:

MR. CHARLES H. ALLEN
Charles Allen Law Firm
3575 Piedmont Road, NE
Building 15, Suite L-130
Atlanta, GA 30305

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

MR. PHILIP GOODHART
Thorndal Armstrong Delk Balkenbush & Eisinger
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Las Vegas, NV 89125

FOR THE DEFENDANT, JACUZZI, INC.:

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MS. BRITTANY M. LLEWELLYN
Weinberg Wheeler Hudgins Gunn & Dial
6385 South Rainbow Blvd.
Suite 400
Las Vegas, NV 89118

ALSO PRESENT:

Alice Baize

I N D E X

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Stipulations 5

LEONARD BAIZE

Examination by Mr. Allen 5

Examination by Mr. Goodhart 23

Examination by Mr. Cools 43

EXHIBITS

<u>NUMBER</u>	<u>DESCRIPTION</u>	<u>PAGE MARKED</u>
1	Complaint	6
2	Advertisement	9
3	Photograph	12
4	Release	40

1 VIDEOGRAPHER: It's 9:58. We are on the record.

2 MR. ALLEN: I'm Charles Allen. I represent
3 Ms. Cunnison's family, plaintiffs.

4 MR. GOODHART: Phil Goodhart on behalf of First
5 Street and AITHR Dealer.

6 MR. COOLS: Josh Cools on behalf of Jacuzzi, Inc.

7 MS. LLEWELLYN: Brittany Llewellyn on behalf of
8 Jacuzzi, Inc.

9 THE COURT REPORTER: Stipulations?

10 MR. ALLEN: This is going to be for evidentiary use.
11 So, put our objections on the table, right, and try to get it
12 fixed. If you've got a specific objection, lay it out. I'll
13 try to fix it. Will that work?

14 MR. GOODHART: Okay.

15 MR. COOLS: Yes.

16 LEONARD BAIZE,
17 having been first duly sworn to testify the truth, the whole
18 truth, and nothing but the truth, testified as follows:

19 EXAMINATION

20 BY MR. ALLEN:

21 Q. Would you introduce yourself, please.

22 A. I'm Leonard Baize, lifetime resident of Jefferson
23 and Orange Counties. After I got out of the Navy, I worked
24 here all my life and retired approximately 15 years ago and
25 still retired. I'm waiting for a day off, though.

1 in your tub?

2 A. Near as I remember, that's exactly the seat.

3 Q. Okay. All right. Now, why don't you tell the jury
4 about what happened the first time you used the tub.

5 A. I had to place some catalogues that I had and some
6 other things on the floor in order to step up. I stepped up
7 on my right leg and put my left leg into the tub with the
8 door all the way open. Then I grabbed ahold of the window,
9 the windowsill, which was right on the other side in my
10 bathroom and kind of pulled myself, was able to stabilize
11 myself when I stepped up with my right foot to get it in.
12 Now, I couldn't close the door, but I'm tall enough that I
13 could kind of wiggle my left foot around the door and then
14 kind of swing my leg behind it. And then holding the door as
15 shut as I could get it I kept going until I could sit down.
16 Once I could sit down, I got the door closed.

17 We filled the tub. We turned it on. And the
18 Jacuzzi felt okay, but every time I tried to sit back, my
19 body sealed to the back of the tub. And the jets that were
20 coming in on my back would overflow the tub copious amounts
21 of water in my bathroom and my bedroom.

22 So, the wife and I decided this wasn't going to get
23 it and I was going to get out; and getting out was just as
24 much trouble as getting in, if not more. Somehow that door
25 managed to scratch me on my lower abdomen all the way across.

1 Q. So, you don't have any reason to think that that
2 date is wrong?

3 A. No, I don't have any reason to think it's wrong.

4 Q. And that's about -- so, when you used the tub was
5 about two and a half weeks after the tub was installed,
6 right?

7 A. No. There was two months for the thing to get
8 fixed. Now, if we get hold of the guy that did it and he
9 remembers it better, which I doubt, he's about as old as I
10 am -- I don't remember exact dates. If you have a point,
11 sir, I'll be able to respond to it if you explain it.

12 Q. After the incident, did you have any contact with
13 Jacuzzi?

14 A. I never had contact with Jacuzzi.

15 MR. COOLS: Those are all my questions. Thank you.

16 MR. ALLEN: Thank you for your time, sir.

17 VIDEOGRAPHER: It's 11:03. We are off the record.

18

19 (CONCLUSION OF DEPOSITION)

20

21 * * * * *

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CLARK COUNTY, NEVADA

Plaintiffs,

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

Defendants.

DEPOSITION OF LEONARD BAIZE

DECEMBER 18, 2018

I, STACY AMY BAKLIK, Certified Shorthand Reporter

1 in and for the State of Texas, hereby certify to the
2 following:

3 That the witness, LEONARD BAIZE, was duly sworn by
4 the officer and that the transcript of the oral deposition is
5 a true record of the testimony given by the witness;

6 That the examination and signature of the witness
7 to the deposition transcript was waived by the witness and
8 agreement of the parties at the time of the deposition;

9 That the original deposition was delivered to Mr.
10 Benjamin P. Cloward;

11 That the amount of time used by each party at the
12 deposition is as follows:

13 Mr. Allen - 30 minutes

14 Mr. Goodhart - 27 minutes

15 Mr. Cools - 8 minutes

16 That \$274.00 is the deposition officer's charges to
17 Plaintiffs for preparing the original deposition transcript
18 and any copies of exhibits;

19 That pursuant to information given to the
20 deposition officer at the time said testimony was taken, the
21 following includes counsel for all parties of record:

22 MR. CHARLES H. ALLEN, Attorney for Plaintiff;

23 MR. PHILIP GOODHART, Attorney for Defendant;

24 MR. JOSHUA COOLS, Attorney for Defendant.

25 I further certify that I am neither counsel for,

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1 related to, nor employed by any of the parties or attorneys
2 in the action in which this proceeding was taken, and further
3 that I am not financially or otherwise interested in the
4 outcome of the action.

5 Certified to by me this 21st day of December, 2018.

6
7
8 /s/ STACY AMY BAKLIK, CSR

9
10 _____
STACY AMY BAKLIK, CSR
Texas CSR No. 2680
Firm Registration No. 30
Expiration Date: 08/31/2021
P. O. Box 566
Nederland, Texas 77627
(409)729-3838
amybaklik@gmail.com

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EXHIBIT “18”

DISTRICT COURT
CLARK COUNTY, NEVADA

ROBERT ANSARA, as Special) Case No: A-16-731244-C
Administrator of the) Dept. No: II
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;)

Caption Continued on Page 2.

ORAL DEPOSITION OF
ROBERT SWINT
OCTOBER 25, 2018

THOMAS G. OAKES, A VERITEXT COMPANY
MID-ATLANTIC REGION
535 Route 38 East, Suite 330
Cherry Hill, NJ 08002

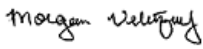
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<p style="text-align: right;">Page 2</p> <p>1 DOE EMPLOYEES 1 through) 20; DOE MANUFACTURERS 1) 2 through 20; DOE 20) INSTALLERS 1 through 20;) 3 DOE CONTRACTORS 1 through) 20; and DOE 21) 4 SUBCONTRACTORS 1 through) 20, inclusive,) 5 Defendants) 6 _____)) 7 AND ALL RELATED CLAIMS.) 8 9 ORAL DEPOSITION OF ROBERT SWINT, produced as a 10 witness at the instance of the DEFENDANT, and duly 11 sworn, was taken in the above-styled and numbered cause 12 on the 25th day of October, 2018, from 9:40 a.m. to 13 2:49 p.m., before Morgan Veletzuy, CSR in and for the 14 State of Texas, recorded by machine shorthand, at the 15 offices of ATA Associates, 1301 Gemini Street, Houston, 16 Texas 77058, pursuant to the Nevada Rules of Civil 17 Procedure and the provisions stated on the record or 18 attached hereto; that the deposition shall be read and 19 signed before any notary public. 20 21 22 23 24 25</p>	<p style="text-align: right;">Page 4</p> <p>1 EXAMINATION INDEX 2 WITNESS: ROBERT SWINT 3 EXAMINATION PAGE 4 BY MR. COOLS 8 5 6 SIGNATURE REQUESTED 175 7 REPORTER'S CERTIFICATION 177 8 9 EXHIBIT INDEX 10 11 (All exhibits were marked prior to the start of the 12 deposition. Below lists the exhibits that were 13 discussed on the record.) 14 15 Exhibit Description Page 16 EXHIBIT 4 Invoices 19 17 EXHIBIT 5 CV 15 18 EXHIBIT 6 Deposition and trial 11 19 Testimony list 20 EXHIBIT 7 April Yergin CV 20 21 EXHIBIT 8 Trial and deposition list 20 22 For April Yergin 23 EXHIBIT 9 Allen Vaughan CV 20 24 EXHIBIT 11 News coverage 21 25 EXHIBIT 12 Photo log 21 EXHIBIT 13 Video log 21 EXHIBIT 14 Digital data log 22 EXHIBIT 15 Product information 22 EXHIBIT 16 Installation manuals 24 Walk-in tubs</p>
<p style="text-align: right;">Page 3</p> <p>1 APPEARANCES 2 FOR THE PLAINTIFFS: 3 Mr. Charles H. Allen CHARLES ALLEN LAW FIRM, P.C. 4 3575 Piedmont Road, NE Atlanta, Georgia 30305 5 Callen@charlesallenlawfirm.com 6 7 FOR THE DEFENDANT, 8 JACUZZI INC, d/b/a JACUZZI LUXURY BATH: 9 Mr. Joshua D. Cools SNELL & WILMER L.L.P. 10 3883 Howard Hughes Parkway, Suite 1100 Las Vegas, Nevada 89169 11 Jcools@swlaw.com 12 13 FOR THE DEFENDANTS/CROSS-DEFENDANTS, 14 FIRST STREET FOR BOOMERS & BEYOND, INC., AND AITHR DEALER, INC.: 15 16 Mr. Philip Goodhart 17 THORNDAL, ARMSTRONG, DELK, BALKENBUSH & EISINGER 18 1100 East Bridger Avenue 19 Las Vegas, Nevada 89125 20 Png@thorndal.com 21 22 23 24 25</p>	<p style="text-align: right;">Page 5</p> <p>1 EXHIBITS (continued) 2 Exhibit Description Page 3 EXHIBIT 17 Installation manual 26 4 EXHIBIT 18 Personal History 28 5 EXHIBIT 19 Jacuzzi purchase records 28 And materials 6 7 EXHIBIT 20 User manuals for tub 29 Testing equipment 8 EXHIBIT 21 Ella tub paperwork 29 9 EXHIBIT 22 Report 33 10 EXHIBIT 23 Lila Laux's report 33 11 EXHIBIT 24 Rhonda Bonecutter's report 34 12 EXHIBIT 25 Craig Lichtblau's report 34 13 EXHIBIT 26 Nathan Dorris's report 34 14 EXHIBIT 27 Elizabeth Raphael's report 34 15 EXHIBIT 28 Thomas Bennett's report 34 16 EXHIBIT 29 NIOSH hazard review 36 17 EXHIBIT 30 Bathtub injury 39 18 EXHIBIT 31 Pros and cons of walk-in 41 Tubs 19 20 EXHIBIT 32 Examples walk-in tubs 49 21 EXHIBIT 33 Home Ability 50 22 EXHIBIT 34 Grab bar examples 50 23 EXHIBIT 35 ADA requirements 50 24 EXHIBIT 36 Grab bar safety 52 25 EXHIBIT 37 Tub safety approach 53 Design</p>

<p style="text-align: right;">Page 6</p> <p>1 E X H I B I T S (continued)</p> <p>2 Exhibit Description Page</p> <p>3 EXHIBITS 38-40 Green folders with FARO 55</p> <p> Scans</p> <p>4</p> <p>5 EXHIBITS 41-63 Photos and video red and 55</p> <p> Blue folders</p> <p>6 EXHIBIT 64 Technical 56</p> <p>7 EXHIBIT 65 Size and weight 59</p> <p> Smith/Cunnison</p> <p>8</p> <p>9 EXHIBIT 66 Tub photographs reach 59</p> <p>10 EXHIBIT 67 Inspection photographs 59</p> <p> Rimkus</p> <p>11 EXHIBIT 68 Human factor measurements 60</p> <p>12 EXHIBIT 69 Measurements Stacy 62</p> <p> Crawford 9/17/17</p> <p>13</p> <p>14 EXHIBIT 70 Excerpts of photographs 67</p> <p>15 EXHIBIT 71 Test subject evaluation 68</p> <p>16 EXHIBIT 72 Measurements Atlanta 70</p> <p> Five subjects 10/19/17</p> <p>17 EXHIBIT 74 Test protocols 70</p> <p>18 EXHIBIT 75 Test data sheets Houston 75</p> <p>19 EXHIBIT 76 Houston tub test protocols 76</p> <p> Data sheet subjects</p> <p>20</p> <p>21 EXHIBIT 77 Collection of photographs 77</p> <p>22 EXHIBIT 78 Houston tub test summary 77</p> <p> Evaluations</p> <p>23 EXHIBIT 79 Houston testing 78</p> <p> June 18-20, 2018</p> <p>24</p> <p>25 EXHIBIT 80 Measurements Houston 14 78</p> <p> Subjects 6/18/18</p>	<p style="text-align: right;">Page 8</p> <p>1 (All exhibits were marked prior to the deposition.)</p> <p>2 ROBERT SWINT,</p> <p>3 having been first duly sworn, testified as follows:</p> <p>4 EXAMINATION</p> <p>5 BY MR. COOLS:</p> <p>6 Q. Sir, could you please state your name for the</p> <p>7 record?</p> <p>8 A. My name is Robert James Swint, S-W-I-N-T.</p> <p>9 Q. Thank you. And you're aware you've been</p> <p>10 identified as an expert in the Ansara v. Jacuzzi matter?</p> <p>11 A. Yes.</p> <p>12 Q. When were you retained in this case?</p> <p>13 A. We were initially contacted in 8/7/17. We</p> <p>14 started our case file in 8/24/2017.</p> <p>15 Q. And what were you told about the case at the</p> <p>16 time?</p> <p>17 A. Initially we were told that -- Charles Allen</p> <p>18 contacted us regarding the use of an analysis, hazard</p> <p>19 analysis on this tub relative to the problem that he had</p> <p>20 with his client. And also he mentioned the Las Vegas</p> <p>21 case as well.</p> <p>22 Q. And so when you say "his client," are you</p> <p>23 referring to the Smith family?</p> <p>24 A. The Smith family.</p> <p>25 Q. Okay. And so you were asked to take a look at</p>
<p style="text-align: right;">Page 7</p> <p>1 E X H I B I T S (continued)</p> <p>2 Exhibit Description Page</p> <p>3 EXHIBIT 81 Smith and Cunnison tub 79</p> <p> Measurements vs. Houston tub</p> <p>4</p> <p>5 EXHIBIT 82 Tub seat angle 80</p> <p>6 EXHIBIT 83 New tub evaluation 80</p> <p> Spreadsheet</p> <p>7 EXHIBIT 84 Surface friction 80</p> <p> Measurements</p> <p>8</p> <p>9 EXHIBIT 85 FARO scan images 81</p> <p>10 EXHIBIT 86 Tub labels 81</p> <p>11 EXHIBIT 87 Notes 82</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 9</p> <p>1 both of those cases?</p> <p>2 A. He wanted us to do an evaluation, a hazard</p> <p>3 safety evaluation of the tub using what background he</p> <p>4 knew I had in human factors and analysis.</p> <p>5 Q. Okay. And have you finished your work in this</p> <p>6 case?</p> <p>7 A. I think that -- the answer, we have produced</p> <p>8 and created quite a lot of information. As we see the</p> <p>9 experts, your human factors people and others, take our</p> <p>10 data and dissect it or do things with it, I would expect</p> <p>11 that we will relate to what they have to say and deal</p> <p>12 with that occasion. But I don't have -- I think we've</p> <p>13 done 90 percent of what I expected to do.</p> <p>14 MR. ALLEN: And I'll let you know.</p> <p>15 A. There may be -- there may be other things.</p> <p>16 Q. (BY MR. COOLS) Okay. And it sounds like, you</p> <p>17 know, except for rebutting -- potential rebuttal</p> <p>18 opinions as to the defendants' experts, you're</p> <p>19 representing that you believe that you're finished with</p> <p>20 your work in the case; is that correct?</p> <p>21 A. Well, we have an attorney that will have to</p> <p>22 tell me that, but right now I think that's pretty close.</p> <p>23 MR. ALLEN: Yeah. If new information comes</p> <p>24 out, if there's new stuff, then we'll provide it to him</p> <p>25 and let you know.</p>

<p style="text-align: right;">Page 110</p> <p>1 So we had a range that doesn't surprise me, 2 but is really not a representation of a person in a tub 3 with the kind of materials, water and oils and soaps. I 4 think your test is by far the better test. And we 5 didn't try to do additional testing here in Houston 6 because we had your test data which seemed to be very 7 well done.</p> <p>8 Q. So you're not critical of Jacuzzi's coefficient 9 of friction test? At least in terms of how it was 10 performed or the data itself?</p> <p>11 A. No. It appears that it was done 12 professionally.</p> <p>13 Q. Okay. But you will -- will you be -- well, let 14 me strike that.</p> <p>15 Will you be offering an opinion as to a 16 defect in the slipperiness or the coefficient of 17 friction of the tub surface?</p> <p>18 A. It is a factor that needs to be understood and 19 recognized in the usage and design of this tub. When 20 you have -- like you're sitting on ice, you don't want 21 to be moving forward on an ice cube to fall off the end 22 of the ice cube. What we're talking about is a surface. 23 Your numbers are less than .1, which means coefficient 24 of friction on ice is about .1 to .2 kind of numbers. 25 We are very slippery.</p>	<p style="text-align: right;">Page 112</p> <p>1 Therefore, if you want people to operate and be in that, 2 you have to recognize that feature and make sure it's 3 safe to be able to use the other components of the tub 4 in its operations.</p> <p>5 Q. Let me ask this a different way.</p> <p>6 Are you going to testify that the tub is 7 too slippery?</p> <p>8 A. No. I'm going to say that you have to 9 compensate that slipperiness with a proper design so 10 that you have proper handholds so that you can stand up 11 safely, move around safely, as well as not have to have 12 extended stressful reach to get to the tub controls. 13 That's just opening yourself up to disaster.</p> <p>14 Q. Okay.</p> <p>15 THE WITNESS: Our lunch is here it looks 16 like. You guys want --</p> <p>17 MR. COOLS: Okay. Let's take a break. 18 (Break taken from 12:50 p.m. to 1:17 p.m.)</p> <p>19 MR. COOLS: We are back on the record.</p> <p>20 Q. (BY MR. COOLS) And we just spoke about the 21 surface friction measurements and then the technical 22 research. And you indicated that the materials you 23 reviewed for that technical research is the stuff that 24 we discussed when we were going through your file 25 materials?</p>
<p style="text-align: right;">Page 111</p> <p>1 So therefore when you start talking about 2 movements in the tub to get you out of a controlled 3 balanced sitting position with your back and your legs 4 and everything sort of locked in place, you're risking 5 falling. You're risking slipping. That needs to be 6 looked at and designed into such things as to reach for 7 the controls. When you have as many inches as there 8 shows to be necessary to get to the controls requiring 9 you to move your body forward, repositioning your body, 10 taking it out of a stabilized position, that creates a 11 significant hazard, especially on a slippery surface.</p> <p>12 Q. So my question though is: Are you going to 13 offer an opinion that the coefficient of friction 14 should have been something other than what it is in this 15 tub?</p> <p>16 A. It is what it is. And because of what it is, 17 it should be compensated for by the correct design so 18 that you don't have a person unable to control their 19 stable position.</p> <p>20 Q. So you'll offer design criticisms as to other 21 aspects of the tub, you're not critical of the 22 coefficient of friction itself?</p> <p>23 A. It is a number. With that number it is part of 24 what human factors design says, hey, we know what the 25 feature and the characteristic of the tub is.</p>	<p style="text-align: right;">Page 113</p> <p>1 A. That is correct.</p> <p>2 Q. And I'm just going to repeat the question that 3 Phil asked off the record.</p> <p>4 Right now your file for the Smith and 5 Cunnison cases is the same; is that correct?</p> <p>6 A. Correct.</p> <p>7 MR. GOODHART: Is that a "yes"? Sorry.</p> <p>8 THE WITNESS: I'm sorry?</p> <p>9 MR. GOODHART: Yes?</p> <p>10 THE WITNESS: Yes, sir. Yes.</p> <p>11 Q. (BY MR. COOLS) Okay. So let's move into the 12 summary of opinions. And your first opinion there is 13 that the Jacuzzi walk-in tub involved in this lawsuit 14 should have been designed to be safely used by 15 individuals that would foreseeably use the unit?</p> <p>16 A. That is correct.</p> <p>17 Q. And I believe earlier you also said that in 18 terms of your defect theories that they're defective as 19 to certain parties or certain users. Is that a fair 20 summary?</p> <p>21 A. That is correct.</p> <p>22 Q. Okay. So what specific foreseeable users are 23 you talking about in terms of this particular opinion?</p> <p>24 A. We talk about -- let's talk about age first. I 25 think you read earlier into the record from the human</p>

<p style="text-align: right;">Page 174</p> <p>1 Q. And just to be clear for the record, you're</p> <p>2 referring to your notes as to these individual reports</p> <p>3 that are contained in the --</p> <p>4 A. In my notes.</p> <p>5 Q. -- what we've marked as 87?</p> <p>6 A. Yeah. Under Item 20.</p> <p>7 Q. Okay.</p> <p>8 MR. COOLS: Let's go ahead and break here.</p> <p>9 THE WITNESS: Okay.</p> <p>10 MR. COOLS: It's 10 to 3:00. And we'll</p> <p>11 pick this up sometime in the future.</p> <p>12 (Deposition suspended at 2:49 p.m.)</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 176</p> <p>1 20____;</p> <p>2 That the amount of time used by each party at the</p> <p>3 deposition is as follows:</p> <p>4 Mr. Charles Allen - (0h0m)</p> <p>5 Mr. Joshua Cools - (4h16m)</p> <p>6 Mr. Philip Goodhart - (0h0m)</p> <p>7 I further certify that I am neither counsel for,</p> <p>8 related to, nor employed by any of the parties or</p> <p>9 attorneys in the action in which this proceeding was</p> <p>10 taken, and further that I am not financially or</p> <p>11 otherwise interested in the outcome of the action.</p> <p>12 GIVEN UNDER MY HAND AND SEAL OF OFFICE, on this the</p> <p>13 12th day of November, 2018.</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18 </p> <p>19</p> <p>20 MORGAN VELETZUY, CSR No. 9271</p> <p>21 Expiration Date: 12-31-19</p> <p>22 Veritext Legal Solutions</p> <p>23 Firm Registration No. 571</p> <p>24 300 Throckmorton, Suite 1600</p> <p>25 Fort Worth, Texas 76102</p> <p>800-336-4000</p>
<p style="text-align: right;">Page 175</p> <p>1 DISTRICT COURT</p> <p>2 CLARK COUNTY, NEVADA</p> <p>3 ROBERT ANSARA, as Special) Case No: A-16-731244-C</p> <p>4 Administrator of the) Dept. No: II</p> <p>5 Estate of SHERRY LYNN)</p> <p>6 CUNNISON, Deceased; et al)</p> <p>7)</p> <p>8 Plaintiffs)</p> <p>9)</p> <p>10 vs.)</p> <p>11)</p> <p>12 FIRST STREET FOR BOOMERS &)</p> <p>13 BEYOND, INC.; et al)</p> <p>14)</p> <p>15 Defendants)</p> <p>16)</p> <p>17 *****</p> <p>18 REPORTER'S CERTIFICATION</p> <p>19</p> <p>20 THE STATE OF TEXAS:</p> <p>21 COUNTY OF HARRIS:</p> <p>22</p> <p>23</p> <p>24 I, Morgan Veletzuy, a Certified Shorthand Reporter</p> <p>25 in and for the State of Texas, hereby certify to the</p> <p>following:</p> <p>That the witness, ROBERT SWINT, was duly sworn by</p> <p>the officer and that the transcript of the oral</p> <p>deposition is a true record of the testimony given by</p> <p>the witness;</p> <p>That the deposition transcript was submitted on</p> <p>_____, 20____, to the witness, or to the</p> <p>attorney for the witness, for examination, signature,</p> <p>and return to Veritext Legal Solutions, by _____.</p>	<p style="text-align: right;">Page 177</p> <p>1 Ansara v. First Street For Boomers & Beyond</p> <p>2 Robert Swint</p> <p>3 INSTRUCTIONS TO THE WITNESS</p> <p>4 Please read your deposition over</p> <p>5 carefully and make any necessary corrections.</p> <p>6 You should state the reason in the</p> <p>7 appropriate space on the errata sheet for any</p> <p>8 corrections that are made.</p> <p>9 After doing so, please sign the errata</p> <p>10 sheet and date it.</p> <p>11 You are signing same subject to the</p> <p>12 changes you have noted on the errata sheet,</p> <p>13 which will be attached to your deposition.</p> <p>14 It is imperative that you return the</p> <p>15 original errata sheet to the deposing</p> <p>16 attorney within thirty (30) days of receipt</p> <p>17 of the deposition transcript by you. If you</p> <p>18 fail to do so, the deposition transcript may</p> <p>19 be deemed to be accurate and may be used in</p> <p>20 court.</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25 2998967</p>

<p style="text-align: right;">Page 178</p> <p>1 Ansara v. First Street For Boomers & Beyond</p> <p>2 Robert Swint</p> <p>3 E R R A T A</p> <p>4 - - - - -</p> <p>5 PAGE LINE CHANGE</p> <p>6 - - - - -</p> <p>7 Reason: _____</p> <p>8 - - - - -</p> <p>9 Reason: _____</p> <p>10 - - - - -</p> <p>11 Reason: _____</p> <p>12 - - - - -</p> <p>13 Reason: _____</p> <p>14 - - - - -</p> <p>15 Reason: _____</p> <p>16 - - - - -</p> <p>17 Reason: _____</p> <p>18 - - - - -</p> <p>19 Reason: _____</p> <p>20 - - - - -</p> <p>21 Reason: _____</p> <p>22 - - - - -</p> <p>23 Reason: _____</p> <p>24 - - - - -</p> <p>25 2998967</p>	
<p style="text-align: right;">Page 179</p> <p>1 Ansara v. First Street For Boomers & Beyond</p> <p>2 Robert Swint</p> <p>3 ACKNOWLEDGMENT OF DEPONENT</p> <p>4 I, _____, do</p> <p>5 hereby certify that I have read the foregoing</p> <p>6 pages and that the same is a correct</p> <p>7 transcription of the answers given by</p> <p>8 me to the questions therein propounded,</p> <p>9 except for the corrections or changes in form</p> <p>10 or substance, if any, noted in the attached</p> <p>11 Errata Sheet.</p> <p>12 _____</p> <p>13 _____</p> <p>14 DATE SIGNATURE</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 _____</p> <p>22 _____</p> <p>23 _____</p> <p>24 _____</p> <p>25 2998967</p>	

Nevada Rules of Civil Procedure
Part V. Depositions and Discovery

Rule 30

(e) Review by Witness; Changes; Signing. If requested by the deponent or a party before completion of the deposition, the deponent shall have 30 days after being notified by the officer that the transcript or recording is available in which to review the transcript or recording and, if there are changes in form or substance, to sign a statement reciting such changes and the reasons given by the deponent for making them. The officer shall indicate in the certificate prescribed by subdivision (f)(1) whether any review was requested and, if so, shall append any changes made by the deponent during the period allowed.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF SEPTEMBER 1, 2016. PLEASE REFER TO THE APPLICABLE STATE RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

Veritext Legal Solutions complies with all federal and State regulations with respect to the provision of court reporting services, and maintains its neutrality and independence regardless of relationship or the financial outcome of any litigation. Veritext requires adherence to the foregoing professional and ethical standards from all of its subcontractors in their independent contractor agreements.

Inquiries about Veritext Legal Solutions' confidentiality and security policies and practices should be directed to Veritext's Client Services Associates indicated on the cover of this document or at www.veritext.com.

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EXHIBIT “19”

1 DISTRICT COURT
2 CLARK COUNTY, NEVADA

3 ROBERT ANSARA, as Special
4 Administrator of the Estate of
5 SHERRY LYNN CUNNISON, Deceased;
6 MICHAEL SMITH individually, and heir
7 to the Estate of SHERRY LYNN CUNNISON,
8 Deceased; and DEBORAH TAMANTINI
9 individually, and heir to the
10 Estate of SHERRY LYNN CUNNISON,
11 Deceased,

12 Plaintiffs,

13 vs.

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

14 FIRST STREET FOR BOOMERS &
15 BEYOND, INC.; AITHR DEALER, INC.;
16 HALE BENTON, Individually, HOMECLICK,
17 LLC.; JACUZZI LUXURY BATH, d/b/a
18 JACUZZI, INC.; BESTWAY BUILDING &
19 REMODELING, INC.; WILLIAM BUDD,
20 Individually and as BUDDS PLUMBING;
21 DOES 1 through 20; ROE CORPORATIONS
22 1 through 20; DOE EMPLOYEES 1 through
23 20; DOE MANUFACTURERS 1 through 20; DOE
24 20 INSTALLERS 1 through 20; DOE
25 CONTRACTORS 1 through 20; and DOE 21
SUBCONTRACTORS 1 through 20, inclusive,

Defendants.

* * * * *

VIDEOTAPED DEPOSITION OF DAVID MODENA

* * * * *

December 11, 2018

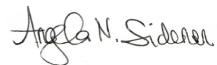
Richmond, Virginia

Job No. 508962

Reported By: Angela N. Sidener, CCR, RPR

<p>Page 2</p> <p>1 Videotaped deposition of DAVID MODENA, Rule 2 30(b)(6) Designee for Defendants FIRST STREET FOR BOOMERS 3 AND BEYOND, INC. and AITHR DEALER, INC., taken by and before 4 Angela N. Sidener, CCR, RPR, and Notary Public in and for 5 the Commonwealth of Virginia at large, pursuant to Rules 26 6 and 30(b)(6) of the Rules of Civil Procedure, and by Notice 7 to Take Deposition; commencing at 10:31 a.m., December 11, 8 2018, at Regus, 919 East Main Street, Suite 1000, Richmond, 9 Virginia 23219.</p> <p>10</p> <p>11 Appearances:</p> <p>12 RICHARD HARRIS LAW FIRM By: BENJAMIN P. CLOWARD, ESQ. 13 801 South Fourth Street Las Vegas, Nevada 89101 14 Counsel for Plaintiffs 15 THORNDAL ARMSTRONG By: PHILIP GOODHART, ESQ. 16 1100 East Bridger Avenue Las Vegas, Nevada 89101-5315 17 Counsel for Defendants First Street for Boomers and Beyond, Inc. 18 and AITHR Dealer, Inc. 19 STACY LANDIS HACKNEY, ESQ. In-House Counsel for First Street for Boomers 20 and Beyond, Inc. and AITHR Dealer, Inc. 21 SNELL & WILMER, LLP By: JOSHUA D. COOLS, ESQ. 22 3883 Howard Hughes Parkway, Suite 1100 Las Vegas, Nevada 89159 23 Attorney for Defendant Jacuzzi Brands, LLC</p> <p>24 Also Present: 25 Laura Cooney, Videographer</p>	<p>Page 3</p> <p>1</p> <p>2 I N D E X</p> <p>3</p> <p>4 DEPONENT</p> <p>5 DAVID MODENA</p> <p>6 Examination By: Page</p> <p>7 Direct Mr. Cloward 4</p> <p>8</p> <p>9</p> <p>10 EXHIBITS RETAINED BY PLAINTIFFS' COUNSEL</p> <p>11 No. Description Page</p> <p>12 1 Binder of Documents Produced by 65 First Street for Boomers and Beyond</p> <p>13</p> <p>14 2 Electronic PDF File of Original 113 Contents in Leave-Behind Folder</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p>Page 4</p> <p>1 THE VIDEOGRAPHER: This is the beginning of 2 disc number 1 in the videotaped deposition of David Modena. 3 We are on the record on December 11, 2018, at 10:31 a.m. 4 Counsel have agreed to waive the usual videographer's 5 introduction.</p> <p>6 Would you please introduce yourselves, 7 starting with Plaintiff's Counsel, and the court reporter 8 will please swear in the witness.</p> <p>9 MR. CLOWARD: My name is Ben Cloward, and I 10 represent the plaintiff.</p> <p>11 MR. GOODHART: This is Philip Goodhart, and I 12 represent First Street and AITHR Dealers.</p> <p>13 MS. HACKNEY: Stacy Hackney, counsel for 14 AITHR Dealer and First Street.</p> <p>15 MR. COOLS: Joshua Cools, counsel for 16 Jacuzzi, Inc.</p> <p>17 DAVID MODENA, 18 having been duly sworn, testified as follows: 19 DIRECT EXAMINATION</p> <p>20 BY MR. CLOWARD:</p> <p>21 Q Good to go. How are you today, sir?</p> <p>22 A Very good. Thanks.</p> <p>23 Q What -- what do you prefer to be called?</p> <p>24 A Just call me Dave.</p> <p>25 Q Okay.</p>	<p>Page 5</p> <p>1 A Dave's good.</p> <p>2 Q Dave, I appreciate that. My name is Ben, and I 3 represent the plaintiffs. As I'm sure you're aware, this is 4 what's called a Rule 30(b)(6) deposition. And what that 5 means is you've been designated as kind of the corporate 6 spokesperson to speak on behalf of the companies designated 7 in the notice. Are you aware of that?</p> <p>8 A Yes.</p> <p>9 Q Okay. And so I always like to just give a couple 10 admonitions. I'm sure you've been deposed before.</p> <p>11 A Not -- not -- no, I don't think so.</p> <p>12 Q First time?</p> <p>13 A Probably so. I don't -- I can't recall to this 14 level, yes -- so, no.</p> <p>15 Q Hopefully it will be a decent experience for you.</p> <p>16 A It's going to be.</p> <p>17 Q Try not to make it too rough on you. But as the 18 designee, the corporate designee, because you're speaking on 19 behalf of the company, at times I may ask a question and 20 maybe you have a personal opinion about a specific topic, 21 but you know that the company does it a different way, I 22 mean no disrespect by this at all, I'm not interested to 23 know your personal opinion, because your testimony is 24 binding on the company. You know, that's what I'm 25 interested in.</p>

<p style="text-align: right;">Page 102</p> <p>1 going anywhere.</p> <p>2 Q So is it fair to say that Home -- Home Living</p> <p>3 Solutions was kind of like the First Street before First</p> <p>4 Street?</p> <p>5 A In fact, they came to us to see if we could help</p> <p>6 them with their marketing because they're not a marketing</p> <p>7 company.</p> <p>8 Q Okay. So American Home Design is a dealer,</p> <p>9 though?</p> <p>10 A Yes. They were at the time.</p> <p>11 Q All right. You said there were --</p> <p>12 A I think there were 13 when we started this program</p> <p>13 with Jacuzzi, in setting up our own dealer network and</p> <p>14 working with Jacuzzi exclusively, and then we covered the</p> <p>15 country, with the exception of the -- ourself being a dealer</p> <p>16 for those states in the middle of the country, and we can</p> <p>17 define that for you at a later date if you'd like to know</p> <p>18 who those were at the time.</p> <p>19 Q Yeah. Your testimony today is, is that there are</p> <p>20 still, I think you said, 10 to 12?</p> <p>21 A Not now. Not now. There are no dealers now. We</p> <p>22 are the only -- AITHR Dealer is the only company that's</p> <p>23 doing Jacuzzi tubs for us, that's still doing our tub</p> <p>24 program.</p> <p>25 At that time -- at the time there were probably at</p>	<p style="text-align: right;">Page 103</p> <p>1 least 10 during this time of this event we're talking about,</p> <p>2 the Cunnison situation. There were -- I would have to go</p> <p>3 back and look and see exactly how many we still had. But we</p> <p>4 had most of them in place at the time. As time went on, if</p> <p>5 the dealer was not doing a good job, we would -- we would</p> <p>6 stop that relationship and take that territory ourself.</p> <p>7 Q Okay. Let me just see if I nail this part down,</p> <p>8 see if I understand it. So just let's use this 4- -- 423.</p> <p>9 The top you had Jacuzzi. Bottom left is First Street.</p> <p>10 Bottom right would be one of the dealers, which, at the time</p> <p>11 the agreement started in, approximately, September of 2011,</p> <p>12 there were 13 dealers. At the time this incident took</p> <p>13 place, at the first of 2014, there were at least still 10</p> <p>14 dealers.</p> <p>15 A Give or take one or two. It may have been 14. I</p> <p>16 don't know -- I want to -- we can -- we can be very precise,</p> <p>17 if you'd like exactly how many there were, but most of them</p> <p>18 were still in place at this time. They were still part of</p> <p>19 the program. We probably had not, you know, stopped but</p> <p>20 maybe one or two at the time, by that time.</p> <p>21 Q Okay. Fair enough. Now, the two that you recall</p> <p>22 as you sit here today are American Home Design, based out of</p> <p>23 the Nashville, Home Safety Bath, based out of California,</p> <p>24 and that's Ken Jenkins.</p> <p>25 A Uh-huh.</p>
<p style="text-align: right;">Page 104</p> <p>1 Q As you sit here today, are there any others that</p> <p>2 you can recall?</p> <p>3 A Absolutely. The two that I told you I recalled</p> <p>4 was those that were already doing business with Jacuzzi</p> <p>5 prior to our relationship.</p> <p>6 Q Okay.</p> <p>7 A That's the two that were mentioned to you.</p> <p>8 They -- they were already doing business with them, so</p> <p>9 that's how we got access to them, their information, their</p> <p>10 knowledge of them being pretty good partners, competent</p> <p>11 enough to be a part of our dealer network. But, no, we</p> <p>12 had -- we had -- I can name a bunch of them for you, if</p> <p>13 you'd like. There's -- I mean, do you want me to name --</p> <p>14 Q Hold on a second. Yeah, I do. Just one moment.</p> <p>15 Thank you very much.</p> <p>16 A This may not be a hundred percent complete, but I</p> <p>17 can give you most of them, many of them. I'm getting older.</p> <p>18 Q Okay. Yeah, if you have those names, that would</p> <p>19 be great.</p> <p>20 A Fairbanks. Fairbanks Construction.</p> <p>21 Q Okay.</p> <p>22 A Beldon, B-e-l-d-o-n. Hausner, H-a-u-s-n-e-r. OBR.</p> <p>23 Q OD?</p> <p>24 A O-B, as in boy.</p> <p>25 Q Okay.</p>	<p style="text-align: right;">Page 105</p> <p>1 A OBR.</p> <p>2 Q And are these construction companies?</p> <p>3 A These are home improvement companies. These are</p> <p>4 companies that know how to sell and install home</p> <p>5 improvement. They do siding, windows, typically the type of</p> <p>6 dealers we dealt with go into homes and sell and close and</p> <p>7 install.</p> <p>8 Q Gotcha. Okay.</p> <p>9 A Airtite, one word, A-i-r-t-i-t-e. OBR.</p> <p>10 Fairbanks. Home Safety. American Home Design. Beldon.</p> <p>11 I'm trying to think of the one up in New York that we</p> <p>12 just -- didn't last very long. I'm forgetting. Did I say</p> <p>13 Atlas? Did I say Atlas?</p> <p>14 Q Huh-uh.</p> <p>15 A Atlas. I'm trying to think of the one in New</p> <p>16 York. Can't think of their name. They didn't last long.</p> <p>17 Shoot.</p> <p>18 Beldon was one of our largest ones. They had,</p> <p>19 like, 27 percent of the country. They were their first</p> <p>20 dealer. Hausner. American Home Design. Atlas. OBR.</p> <p>21 Airtite. Fairbanks. There was a guy in Georgia. He may</p> <p>22 have been gone by then. Tub Doctor, Tub Doctor was one.</p> <p>23 They were in Georgia. They didn't last long. He may not</p> <p>24 have been around at this point in time. There's one up in</p> <p>25 New York. I just can't think of their name.</p>

<p style="text-align: right;">Page 114</p> <p>1 And further this deponent saith not.</p> <p>2 (Whereupon this deposition was suspended at 1:18 p.m.)</p> <p>3</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 115</p> <p>1 COMMONWEALTH OF VIRGINIA AT LARGE, to wit:</p> <p>2 I, Angela N. Sidener, CCR, RPR, and Notary</p> <p>3 Public in and for the Commonwealth of Virginia at large, and</p> <p>4 whose commission expires November 30, 2022, do certify that</p> <p>5 the aforementioned appeared before me, was sworn by me, and</p> <p>6 was thereupon examined by counsel; and that the foregoing is</p> <p>7 a true, correct, and full transcript of the testimony</p> <p>8 adduced.</p> <p>9 I further certify that I am neither related</p> <p>10 to nor associated with any counsel or party to this</p> <p>11 proceeding, nor otherwise interested in the event thereof.</p> <p>12 Given under my hand and notary seal at</p> <p>13 Richmond, Virginia, this 14th day of December, 2018.</p> <p>14</p> <p>15 </p> <p>16</p> <p>17 Angela N. Sidener, CCR, RPR</p> <p>18 Notary Registration No. 7378859</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>																																																																																																																																																								
<p style="text-align: right;">Page 116</p> <p>1 ERRATA SHEET</p> <p>2</p> <p>3</p> <p>4</p> <p>5 I declare under penalty of perjury that I have read the</p> <p>6 foregoing _____ pages of my testimony, taken</p> <p>7 on _____ (date) at</p> <p>8 _____ (city), _____ (state),</p> <p>9</p> <p>10 and that the same is a true record of the testimony given</p> <p>11 by me at the time and place herein</p> <p>12 above set forth, with the following exceptions:</p> <p>13</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;">Page</th> <th style="width: 10%;">Line</th> <th style="width: 40%;">Should read:</th> <th style="width: 40%;">Reason for Change:</th> </tr> </thead> <tbody> <tr><td>14</td><td></td><td></td><td></td></tr> <tr><td>15</td><td></td><td></td><td></td></tr> <tr><td>16</td><td></td><td></td><td></td></tr> <tr><td>17</td><td></td><td></td><td></td></tr> <tr><td>18</td><td></td><td></td><td></td></tr> <tr><td>19</td><td></td><td></td><td></td></tr> <tr><td>20</td><td></td><td></td><td></td></tr> <tr><td>21</td><td></td><td></td><td></td></tr> <tr><td>22</td><td></td><td></td><td></td></tr> <tr><td>23</td><td></td><td></td><td></td></tr> <tr><td>24</td><td></td><td></td><td></td></tr> <tr><td>25</td><td></td><td></td><td></td></tr> </tbody> </table>	Page	Line	Should read:	Reason for Change:	14				15				16				17				18				19				20				21				22				23				24				25				<p style="text-align: right;">Page 117</p> <p>1 ERRATA SHEET</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="width: 10%;">Page</th> <th style="width: 10%;">Line</th> <th style="width: 40%;">Should read:</th> <th style="width: 40%;">Reason for Change:</th> </tr> </thead> <tbody> <tr><td>2</td><td></td><td></td><td></td></tr> <tr><td>3</td><td></td><td></td><td></td></tr> <tr><td>4</td><td></td><td></td><td></td></tr> <tr><td>5</td><td></td><td></td><td></td></tr> <tr><td>6</td><td></td><td></td><td></td></tr> <tr><td>7</td><td></td><td></td><td></td></tr> <tr><td>8</td><td></td><td></td><td></td></tr> <tr><td>9</td><td></td><td></td><td></td></tr> <tr><td>10</td><td></td><td></td><td></td></tr> <tr><td>11</td><td></td><td></td><td></td></tr> <tr><td>12</td><td></td><td></td><td></td></tr> <tr><td>13</td><td></td><td></td><td></td></tr> <tr><td>14</td><td></td><td></td><td></td></tr> <tr><td>15</td><td></td><td></td><td></td></tr> <tr><td>16</td><td></td><td></td><td></td></tr> <tr><td>17</td><td></td><td></td><td></td></tr> <tr><td>18</td><td></td><td></td><td></td></tr> <tr><td>19</td><td></td><td></td><td></td></tr> <tr><td>20</td><td></td><td></td><td></td></tr> <tr><td>21</td><td></td><td></td><td></td></tr> <tr><td>22</td><td></td><td></td><td></td></tr> <tr><td>23</td><td></td><td></td><td></td></tr> <tr><td>24</td><td></td><td></td><td></td></tr> <tr><td>25</td><td></td><td></td><td></td></tr> </tbody> </table> <p>23 Date: _____</p> <p>24 Signature of Witness _____</p> <p>25 Name Typed or Printed _____</p>	Page	Line	Should read:	Reason for Change:	2				3				4				5				6				7				8				9				10				11				12				13				14				15				16				17				18				19				20				21				22				23				24				25			
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EXHIBIT “20”

1-9-19

TO: Richard Hamis

THIS DOCUMENT IS BEING RETURNED BY THE DISCOVERY COMMISSIONER'S OFFICE FOR THE FOLLOWING REASON(S) :

THIS MOTION MUST CONTAIN AN AFFIDAVIT OF MOVING COUNSEL PURSUANT TO E.D.C.R. 2.34(d). THIS RULE SPECIFICALLY REQUIRES YOUR AFFIDAVIT TO CONTAIN REFERENCE TO EITHER A PERSONAL OR TELEPHONE CONFERENCE BETWEEN COUNSEL (OR WITH A PROPER PERSON) WITH AN ATTEMPT TO RESOLVE THE MATTER. LETTERS/FAXES/E-MAILS TO THE OTHER SIDE ARE NOT SUFFICIENT. (Who did counsel speak to? When? What was discussed amongst counsel? Why was counsel unable to resolve?)

NOTICE OF MOTION PURSUANT TO E.D.C.R. 2.20(a).

MOTION MUST CONTAIN AN ORIGINAL AFFIDAVIT.

DECLARATION MUST COMPLY WITH NRS 53.045/AFFIDAVIT MUST BE NOTARIZED.

USE PROPER ORDER SHORTENING TIME LANGUAGE (See Attached).

THIS MOTION DOES NOT COMPLY WITH E.D.C.R. 7.23. COUNSEL MUST SIGN THE ORDER SHORTENING TIME.

AFFIDAVIT IN SUPPORT OF OST (When do you need this heard by and why?)

MOTION MUST COMPLY WITH E.D.C.R. 2.35 (See Attached).

RESUBMIT MOTION WITH A COURTESY COPY.

THIS CASE IS IN ARBITRATION AND PURSUANT TO N.A.R. 4(E), THIS MOTION MUST BE HEARD BY THE ARBITRATOR ASSIGNED TO THIS CASE.

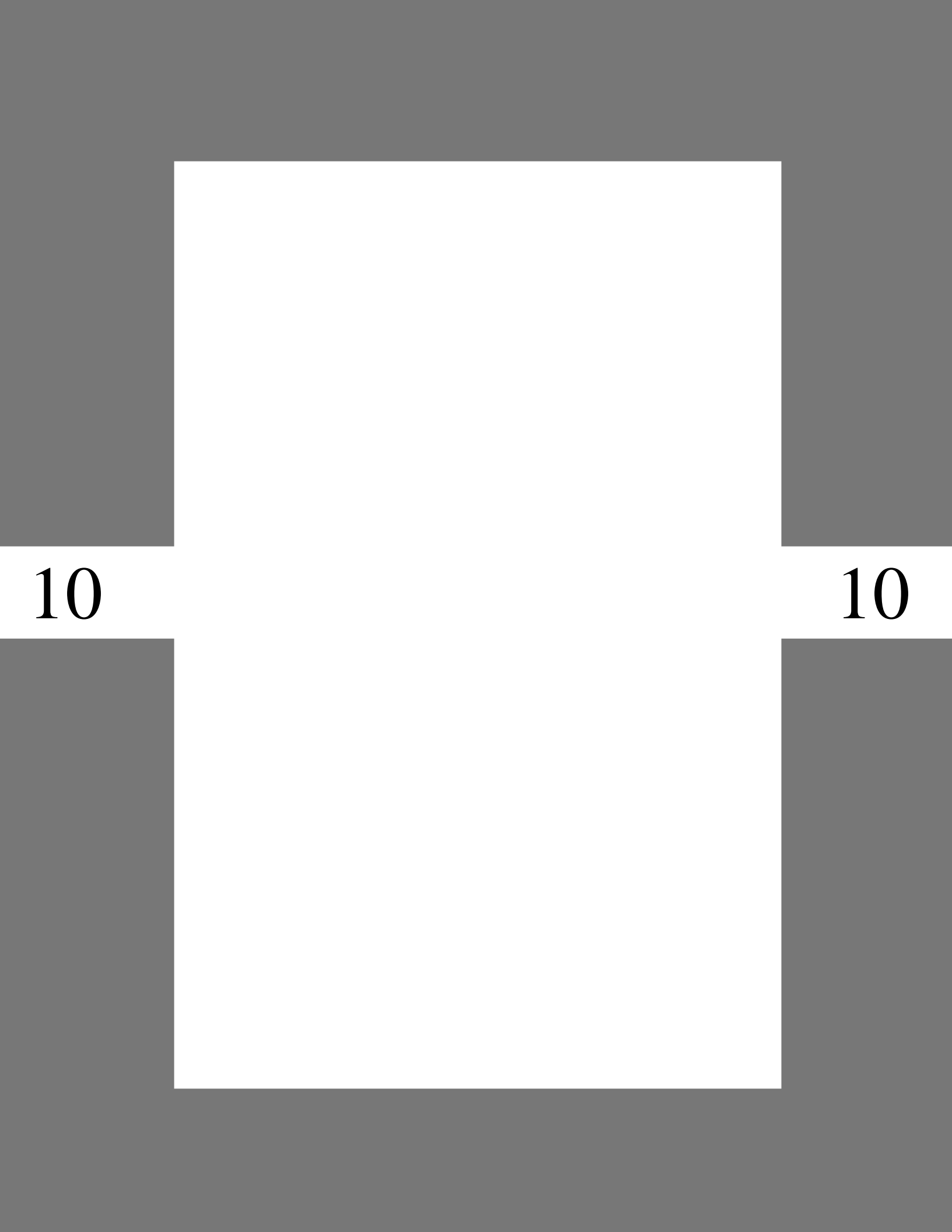
THIS DOCUMENT MUST BE E-FILED. PLEASE BRING US BACK A FILE-STAMPED COURTESY COPY.

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✓ OTHER:

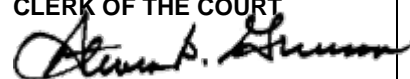
Please forward motion to Dept

IF YOU HAVE ANY QUESTIONS, PLEASE CALL THE DISCOVERY COMMISSIONER'S OFFICE AT 671-4486 OR YOU CAN REFER TO OUR WEBSITE AT www.clarkcountycourts.us (Departments - Discovery)



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10



TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

* * * * *

ROBERT ANSARA, ET AL.,)

CASE NO. A-16-731244

Plaintiffs,)

vs.)

DEPT. NO. II

FIRST STREET FOR BOOMERS &)

BEYOND, INC., ET AL.,)

Transcript of Proceedings

Defendants.)

BEFORE THE HONORABLE RICHARD F. SCOTTI, DISTRICT COURT JUDGE

ALL PENDING MOTIONS

MONDAY, FEBRUARY 4, 2019

APPEARANCES:

For the Plaintiffs: IAN C. ESTRADA, ESQ.

BENJAMIN P. CLOWARD, ESQ.

For the Defendants: PHILIP GOODHART, ESQ.

MEGHAN M. GOODWIN, ESQ.

MORGAN PETRELLI, ESQ.

JOSHUA D. COOLS, ESQ.

BRITTANY M. LLEWELLYN, ESQ.

D. LEE ROBERTS, JR., ESQ.

RECORDED BY: DALYNE EASLEY, DISTRICT COURT

TRANSCRIBED BY: KRISTEN LUNKWITZ

Proceedings recorded by audio-visual recording, transcript
produced by transcription service.

1 MONDAY, FEBRUARY 4, 2019 AT 11:18 A.M.

2
3 THE COURT: All right. *Ansara versus First Street*
4 *for Boomers*, 731244.

5 MR. CLOWARD: Good morning, Your Honor. Ben
6 Cloward for the Cunnison family. May we have a moment to
7 set up?

8 THE COURT: Yes. You may.

9 MR. CLOWARD: Thank you.

10 [Pause in proceedings]

11 MR. GOODHART: Your Honor, do you plan to hear the
12 motion involving Jacuzzi first or First Street? So we can
13 -- so counsel can set up on the defense side.

14 THE COURT: You know what? I want to do First
15 Street first. I think that's the easier one.

16 MR. GOODHART: Okay.

17 THE COURT: Or the less complicated one, I think.
18 Let's put it that way.

19 MR. GOODHART: Thank you, Your Honor.

20 THE COURT: None of these were easy.

21 [Pause in proceedings]

22 THE COURT: Mr. Cloward, you're first. This is
23 your Motion to Strike.

24 MR. CLOWARD: Yes, Your Honor.

25 THE COURT: Let's go ahead and deal with Motion to

1 Strike First Street.

2 MR. CLOWARD: Sounds good. Your Honor, I've
3 always been impressed with the Court's preparation. I'm
4 sure that the Court has read everything. I would just like
5 to start --

6 THE COURT: Well, most everything.

7 MR. CLOWARD: -- and ask if the Court has anything
8 in particular that it would like addressed?

9 THE COURT: There are several things that come to
10 mind --

11 MR. CLOWARD: Okay.

12 THE COURT: -- but I'd like to hear argument
13 first.

14 MR. CLOWARD: Certainly.

15 THE COURT: These are my notes. So --

16 MR. CLOWARD: Well, Your Honor, I think this kind
17 of boils down to an NRCP 37(a)(3) evasive and incomplete
18 disclosure. The rule specifically states that evasive or
19 incomplete disclosure is essentially treated as a failure
20 to disclose, Answer, or respond. And, in this case, we
21 have requested vital information from both parties. And
22 I'm going to limit my discussion to First Street because
23 that's how the Court's indicated it wanted to do that.

24 But one of the important issues has been other
25 dealers and has been marketing and has been other

1 incidents. At the very first of the litigation, there was
2 a document that was produced, it was called the
3 Manufacturing Agreement. Now, that document was a document
4 entered into between Frist Street and Jacuzzi and it set
5 forth the duties and responsibilities of each party. And,
6 in that document, it specifically identified that First
7 Street had a, quote: Network of other dealers.

8 So, based on the language of the document that
9 they had provided to us, we sent discovery and said: Hey,
10 identify the dealers that you've identified in this case.
11 And the response was: AITHR is the only one. We burn off
12 at a year of discovery, or half a year, whatever it is,
13 months, and months, and months of discovery where we could
14 have been investigating this. We could have been seeking
15 out these dealers. And the purpose that we wanted to find
16 the dealers was to identify other potential claimants.

17 As the Court understands, this is a product
18 liability case. And, so, subsequent or prior similar
19 incidents are relevant in the analysis, both for different
20 reasons. So, we needed that information to find other
21 dealers that may have relevant information in this case.
22 That is one issue.

23 Another very important issue is -- and I would
24 like to direct the Court to the following Bate stamped
25 documents and it's document JACUZZI002945 through

1 JACUZZI2969. These documents are essentially the 10 --
2 nine or 10 additional documents or 11 documents that -- or
3 additional incidents that the Commissioner compelled
4 production of that came from Jacuzzi.

5 Now, we have criticized First Street in our moving
6 papers, saying: Hey, look, they haven't even produced
7 information about these other documents that the
8 Commissioner compelled Jacuzzi to turn over. Well, the
9 response is: We don't have any. Well, Judge Scotti, look
10 no further than these documents where, on at least two of
11 them, First Street is copied in the form of one of the e-
12 mails. Excuse me. First Street on one and, then, Aging in
13 the Home on the other. And the specific pages for those is
14 JACUZZI2930, where Ashley.Davidson@Aihrrremodlers.com is
15 included. And, then, on another page, this is
16 JACUZZI002949, an e-mail from Rebecca McCall [phonetic], A-
17 I -- and her position is Aging in the Home remodeler so
18 she's a, you know, employee there, is on that document.
19 And, then, further, on page JACUZZI002985, there is --
20 looks like Simone.Robertson@FirstStreetOnline.com
21 [phonetic] and Kathy.Yates@FirstStreetOnline.com
22 [phonetic].

23 So, on at least three occasions in these other
24 documents, they are included on this -- on these incident
25 reporting.

1 And, so, you know, that's kind of a problem.
2 First Street says: We don't have any notice of that, we
3 don't have any knowledge of those things, we only know of
4 the three that we turned over. They did turn over three
5 lawsuits that have been filed. Two of them, I represent
6 the plaintiffs on. I mean -- you know? And, the other
7 one, I looked it up, I had a friend in that state pull it
8 up and it is true, it's a -- it's like a flood-type of a
9 property damage type of a claim so it's not an injury claim
10 but they still identified that. And that goes against
11 their argument that -- on one hand they're saying: Well,
12 Judge, we didn't turn these things over because they
13 weren't incident reports. Well, then, why did you turn
14 over the lawsuit that had to do with property damage? You
15 know? On one hand you're saying we didn't turn it over
16 but, then, on the other hand you did.

17 And during -- and, additionally, on one hand
18 they're saying: Well, we didn't turn over these --
19 anything prior because only -- you know, the information
20 you requested was subsequent. But when we ask for the
21 dealers, which were prior, they say: Well, we're only
22 turning over things that are subsequent.

23 I mean, you know, the purpose of discovery is to
24 ascertain the truth. I can affirmatively represent to the
25 Court that I have spent more case -- more time on this case

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1 than any other case in my career. And I feel like about 70
2 percent of that is chasing my tail based on things that
3 they indicate. They'll tell me one thing, I'll go and
4 track it down and it turns out to be something completely
5 different.

6 Now, both Jacuzzi and First Street have, in their
7 Oppositions, essentially accused us of changing the
8 allegations of our Complaint. Well, that's very
9 interesting. And, in my Reply, I think I did a very
10 exhaustive job pointing out the changes in the Complaints,
11 the amendments, that didn't have anything to do with
12 changing allegations.

13 THE COURT: Well, plus, that was back in June of
14 2017. There was a lot of time for discovery after that.

15 MR. CLOWARD: Yeah. And we've attempted -- you
16 know, we put that in our deposition notices on the
17 slipperiness. We've put -- and the other thing is, Your
18 Honor, when you look at the subsequent incidents that
19 Commissioner Bulla turned over -- asked them -- compelled
20 them to turn over -- again, this is 2945 through 2969, all
21 of these, with the exception of two of them, deal with the
22 slipperiness issues.

23 Specifically, on page 2927, the Complaint: It is
24 a complaint of slippery floor. That's -- and I won't
25 provide the name of the individual but that's the page

1 JACUZZI2938. Per daughter's homeowner, her dad has slipped
2 twice on this tub. Page 2949: She slipped and hurt her
3 back. Page 2970, Ms. Blank -- and I won't provide the --
4 say that in open court out of privacy considerations, said
5 that we were -- she said, quote: He slipped from the seat
6 and broke his toe. On page JACUZZI2972: The seat was
7 slippery.

8 THE COURT: You know, I got all these. The cases
9 involving slipperiness: The *Smith* litigation; Charles
10 Wharf [phonetic]; May 7th, 2014 claim; May 2nd, 2015 claim;
11 March 6th, 2015 claim; May 25th, 2015 claim; this Sprout
12 claim. Those are all the claims. I know which claims
13 involve slippery --

14 MR. CLOWARD: Okay.

15 THE COURT: -- slipping.

16 MR. CLOWARD: I knew that you would be prepared so
17 I'll move on from that. I'll move on from that.

18 But the point of it is is that if this didn't
19 involve slipperiness issues, why are we agreeing on that
20 for the search terms and why are those documents being
21 produced? So, I think that that's a very disingenuous
22 argument made by both, criticizing us that our allegations
23 are moving.

24 And, then, the other thing with regard to First
25 Street was that Jerre Chopper's letters were e-mailed

1 directly to Dave Modena. So, not only did Ms. Chopper
2 specifically write a letter to Stacy Hackney, corporate
3 counsel for Aging in the Home and for First Street, but
4 Jacuzzi corporate representatives -- or corporate folks, e-
5 mailed two of the letters directly to Dave Modena. So,
6 Dave Modena had first-hand knowledge of these complaints.
7 So, you know, First Street, in their Opposition they say:
8 Well, we didn't have the chance to prepare him and we
9 addressed the topics that should have led to that
10 preparation. But he wouldn't have had to be prepared on
11 this issue because he had first-hand knowledge of it. And,
12 so, that's another concern is how can they say, well, you
13 know, this was a preparation issue when he's getting these
14 e-mails directly from Jacuzzi's corporate folks?

15 So, Your Honor, I know that you've done a nice job
16 preparing --

17 THE COURT: There's so much information here,
18 though.

19 MR. CLOWARD: I know. It's very fact-intensive.
20 It really is. And I tried to do a good job citing to every
21 record so that the Court didn't have to take my word for
22 anything. But, at the end of the day, I think that this
23 boils down, it's as simple as this. NRCP 37(a)(3)
24 indicates that an evasive or incomplete disclosure is a --
25 is --should be treated as a failure to disclose answer or

1 respond. And, in this case, both parties have very
2 carefully, and very deliberately, and very methodically, if
3 you just take the words that they've put in their
4 Oppositions, they've -- the reasons that we didn't produce
5 this, or this, or this, or this, was because of this, or
6 this, or this. How about you just turn over the
7 information and, then, we fight it out in Motions in Limine
8 whether it comes in or not? But, instead, the way that
9 this discovery has gone is they'll represent one thing and,
10 then, I find another.

11 And I will affirmatively represent to the Court, I
12 found out yesterday, yesterday, of another lawsuit. And I
13 am in the process of determining whether or not that is
14 relevant to the facts in this case. And that was
15 yesterday. And none of that has been disclosed by either
16 of these two parties. So, it's like every time I turn
17 around, I find something else and that's not fair. It's
18 not fair to my clients, it's not fair to me. We've spent a
19 tremendous amount of money providing supplemental
20 information to our experts.

21 And the fact that our experts -- here's the
22 prejudice. The fact that our experts have had to formulate
23 opinions in this case based on incomplete information and
24 now they're going to have to go back and determine whether
25 or not this additional information changes their opinions.

1 I mean, how is that fair that -- you know, we don't even
2 have the relevant information to provide to our experts to
3 give a full and accurate opinion.

4 So, unless there's anything else that the Court
5 would have me specifically address, I'll sit down.

6 THE COURT: Just two simple questions.

7 MR. CLOWARD: Yes, Your Honor.

8 THE COURT: You had mentioned approximately 3,000
9 e-mails that were produced, I think December 5th, 2018 --

10 MR. CLOWARD: Correct.

11 THE COURT: -- that were in a prior -- a notice a
12 few days earlier. I couldn't tell if those were produced
13 jointly by Jacuzzi and First Street or by one or the other
14 of the parties. Who actually produced those?

15 MR. CLOWARD: They were both -- they were separate
16 productions. But, as we set forth in our Motion and Reply,
17 we think that it's reasonable to conclude that that was a
18 coordinated disclosure --

19 THE COURT: All right.

20 MR. CLOWARD: -- of e-mails. And that was
21 predicated on the fact that in the deposition of Mr.
22 Dominguez. Mr. Dominguez initially said: We didn't have
23 anything to do with the marketing.

24 THE COURT: No. I know all that. One other thing
25 that I can't quite remember, the Chopper document. Was

1 that in that 3,000 or did that come earlier?

2 MR. CLOWARD: Well, that's an interesting
3 question, Judge. Because Jerry Chopper wrote six letters.
4 Okay?

5 THE COURT: Right. Wrote six letters.

6 MR. CLOWARD: Of the six, two of them were the
7 primary letters that were turned over. But those two
8 primary letters that were turned over were critical more of
9 the sales, quote/unquote: Process. She did indicate,
10 look, it's dangerous, you have to back out like a big rig
11 driver, you know, to get out of the thing. But when she
12 called it a, quote/unquote, death trap, those letters were
13 four letters -- that information was contained within one
14 of four letters that was written --

15 THE COURT: Which you didn't find out until the
16 depo?

17 MR. CLOWARD: Correct.

18 THE COURT: All right. So, let's just go back in
19 time. This is -- I want to deal with just shortly before
20 Jacuzzi filed their Petition for Writ with the Supreme
21 Court where they represented that they had provided
22 everything.

23 MR. CLOWARD: Okay.

24 THE COURT: You had some document produced by
25 Chopper -- or some -- either some piece of correspondence,

1 which tipped you off that there was another claim to
2 investigate.

3 MR. CLOWARD: Correct.

4 THE COURT: Was that within the 3,000?

5 MR. CLOWARD: Yes.

6 THE COURT: All right. And we don't know if that
7 was the Jacuzzi production or the --

8 MR. CLOWARD: No. It was within the Jacuzzi
9 production.

10 THE COURT: Okay. But it might have been part of
11 a coordinated effort with the two?

12 MR. CLOWARD: Yes.

13 THE COURT: Okay.

14 MR. CLOWARD: Yes. Any other questions I can
15 answer?

16 THE COURT: No. I just needed those little two
17 tidbits buttoned up. Thank you.

18 MR. CLOWARD: If anything comes up, I'm happy to
19 address it.

20 THE COURT: Thank you.

21 MR. CLOWARD: Thank you.

22 THE COURT: All right. Who is going to deal with
23 First Street?

24 MR. GOODHART: Good morning, Your Honor. Phil
25 Goodhart on behalf of First Street.

1 THE COURT: How are you doing today?

2 MR. GOODHART: I'm doing well. How are you?

3 THE COURT: Doing well. All right. Good way for
4 us to start off the day.

5 MR. GOODHART: Wonderful way to start off the day.

6 First off, Your Honor, I guess I got to clear up
7 several things here. Mr. Cloward has made numerous
8 articles -- or arguments. I would hazard to guess that 80
9 percent of those arguments dealt with Jacuzzi, not with
10 First Street. First Street is not Jacuzzi; Jacuzzi is not
11 First Street. First Street marketed the tubs. First
12 Street advertised the tubs. Jacuzzi manufactured the tubs
13 and they designed the tubs. There is a Marketing Agreement
14 in place between Jacuzzi and First Street. There are terms
15 of that Marketing Agreement that Mr. Cloward has addressed
16 in a comment that we're on. However, there is a dispute as
17 to exactly what those words mean, as most manufacturing
18 agreement contracts are.

19 I hypothesize that the most prudent thing would
20 have been to take a 30(b)(6) deposition of First Street on:
21 What does this mean? And that could have been done day two
22 of the litigation. But it wasn't done. The 30(b)(6)
23 deposition of the First Street representative, Mr. Modena,
24 did not take place until December the 11th, a little bit
25 over a month ago, Your Honor.

1 Now, Mr. Cloward seemed to confuse First Street
2 and Jacuzzi again by arguing that Frist Street has sent him
3 down these rabbit trails by our discovery responses for
4 over a year, I think is what he said. Well over a year, he
5 was going off on these different trails. Well, those
6 trails were created by Jacuzzi and is discovery Jacuzzi.
7 These trails -- and he made specific reference to the
8 dealers. Mr. Cloward did not ask any information in a
9 discovery question to First Street about dealers until
10 September 28th, 2018, a little bit more than three months
11 ago. That's not a year of going down rabbit trails. That
12 question could have been asked through discovery at any
13 point in time. Why Mr. Cloward waited until the end of
14 September 2018 to ask that question, I don't know.

15 First Street responded to that interrogatory.

16 THE COURT: So, if you don't mind?

17 MR. GOODHART: Sure.

18 THE COURT: What about NRCP 16.1? Once the Fourth
19 Amended Complaint was filed, would that have triggered any
20 responsibility by First Street to provide the dealer
21 information or dealer documents?

22 MR. GOODHART: We don't think it did, Your Honor,
23 because this is a case about Ms. Cunnison.

24 THE COURT: About what? I'm sorry.

25 MR. GOODHART: Ms. Cunnison. She's the plaintiff.

1 She was injured in this part. In this particular
2 situation, First Street marketed and advertised materials,
3 so they were named as a defendant. My other client, AITHR,
4 Aging in the Home Remodeling, was the dealer. They have a
5 relationship with Jacuzzi and the dealer was identified.
6 And the dealer is in fact a defendant in this litigation.
7 The dealer would have been the one that actually sold the
8 tub to Ms. Cunnison and the dealer would have also been the
9 one that arranged for another company to actually install
10 the tub. Those other companies that actually install the
11 tubs were defendants in this litigation, but they've been
12 since dismissed by the plaintiff when their initial
13 hypothesis that the tub didn't drain properly or there was
14 something wrong with the installation with the tub did not
15 bear out and they have been dismissed from this litigation.

16 So, Mr. Cloward spent a tremendous amount of time
17 early in this litigation chasing those rabbit holes,
18 nothing to do with First Street, noting to do with AITHR.

19 So, this case, from First Street and AITHR's
20 perspective, deals with the sale of this particular tub to
21 Ms. Cunnison in the state of Nevada. AITHR is the only
22 dealer of First Street that sells tubs, or has tubs, or has
23 a dealership relationship in the state of Nevada.

24 Interestingly enough, what Mr. -- again, the
25 question about dealers, when it was asked -- first off, it

1 was objected to as being broad in time. So, what time
2 limit are you talking about? And when it was responded, it
3 was responded in such a way as this case. This case deals
4 with Ms. Cunnison, the sale of a tub in Nevada. What
5 relevance, from First Street's perspective, because that's
6 who was propounded upon, First Street, what relevance would
7 the tale of a sub [sic] in Baton Rouge, Florida -- or Baton
8 Rouge, Louisiana have on the sale of a tub in Nevada? So,
9 it was objected to. We did, however, provide the
10 information that within Nevada and as to this case, it
11 would have been AITHR.

12 During Mr. Modena's deposition, Mr. Cloward asked
13 a completely different question. He asked for a wide-open
14 range of: Well, when this contract was entered into, the
15 Manufacturing Agreement, how many different dealers did you
16 end up creating over the years? And Mr. Modena gave him
17 that answer. We didn't try to hide anything from him. We
18 can only answer the discovery questions that are asked of
19 us. If we object to a discovery question, we object to a
20 discovery question. That's exactly what has been happening
21 here since the first discovery responses were provided to
22 Mr. Cloward in early September. And, then, there was
23 subsequent discovery requests by Mr. Cloward in September
24 and November and we responded to them, we objected to them.

25 We have had, by my count, two discovery dispute

1 conferences with Mr. Cloward. I know in his Reply, he says
2 there's been six or seven. I don't want to get into he
3 said/she said.

4 Nevertheless, we First Street, made it clear of
5 what we were objecting to. We made it clear that we would
6 be providing certain documentation. And we made it very
7 clear that we were not going to provide the documentation
8 that he was seeking without going to the Discovery
9 Commissioner. That's what should have been done here, Your
10 Honor. When he found out, when Mr. Cloward found out in
11 October of 2018, that we would only produce these, we
12 agreed to disagree -- and we agreed to disagree on the
13 record in Mr. Modena's deposition, the next step would have
14 been to brought -- bring a motion before the Discovery
15 Commissioner. Not one single motion has been brought
16 against First Street or AITHR in front of the Discovery
17 Commissioner.

18 Mr. Cloward knows exactly what to do with the
19 Discovery Commissioner because I think Jacuzzi's been in
20 front of him three, four, five different times, at least.
21 And the Discovery Commissioner has issued rulings and
22 Jacuzzi complies with those rulings. If plaintiffs had
23 brought a motion before the Discovery Commissioner and the
24 Discovery Commissioner had said, Mr. Goodhart, I think
25 you're wrong, I think you need to produce those documents,

1 then I could have either appealed it to Your Honor or I
2 would have produced those documents.

3 What plaintiff is doing right now to First Street
4 and AITHR is essentially telling this Court: You know
5 what, Your Honor, we don't need the Discovery Commissioner.
6 We don't need her to listen to these things because you and
7 I will talk, we will agree to disagree, and then you know
8 what, I'm going to wait until the last minute and a month
9 before trial and I'm going to ask for a case terminating
10 sanction and strike your Answer. We don't need the
11 Discovery Commissioner for anything.

12 Mr. Cloward and I, I believe, have a very good
13 relationship. In fact, he called me up, I think on
14 Thursday, asking for an extra day to extend his Reply. And
15 we had a very nice conversation. I was a little surprised
16 to see that conversation appear in the Reply but
17 nevertheless it did.

18 THE COURT: No one gave me the extra day. But
19 that's okay.

20 MR. GOODHART: Well, Your Honor, again, I believe
21 we do have a very professional relationship and I responded
22 to the phone call because of the voicemail message that Mr.
23 Cloward had left for me, asking to respond to his phone
24 call.

25 THE COURT: Okay.

1 MR. GOODHART: In any event, First Street has not
2 tried to hide the ball on anything. It's been above the
3 board with everything in this case that has been asked for
4 and everything we need to do under 16.1. Again, this is a
5 case about an injury that took place in a walk-in tub as a
6 result of possibly a slip and fall on the floor or possibly
7 a slip off of the seat. I'm still not sure of what they're
8 pursuing. But nevertheless, that's the information that we
9 have.

10 So, again, First Street and AITHR -- First Street
11 does the advertising, the marketing. Okay? AITHR would
12 have sold the tub to her. AITHR actually had the
13 individual [indiscernible] and go out to the house and do
14 the sales presentation. We don't manufacture the tub. So,
15 any issues dealing with an installation, we will learn
16 about. Any issues dealing with a manufacturing problem,
17 they go to the manufacturer, Jacuzzi. And that's what
18 we've been advising Mr. Cloward on throughout this
19 litigation.

20 Mr. Cloward brought up this Jerre Chopper. Very
21 interesting young lady. It was a very entertaining
22 deposition. But what's concerning to me about what Mr.
23 Cloward's represented to this Court is that the word death
24 trap was used in communications Ms. Chopper had. And that
25 concerns me because, yes, that terminology and concerns

1 about the safety of tub were used in e-mails to Jacuzzi,
2 they were used in letters directed to Jacuzzi, but they
3 were not used in any communication or e-mail directly by
4 Ms. Chopper or her lawyers to First Street. Exhibit 19 of
5 plaintiffs' moving papers reflect this. And I went through
6 this in a lot of detail in the brief.

7 The first letter from her lawyer essentially says:
8 We're not going to pay the \$9,700 we owe. The second
9 letter from the lawyer to Ms. Chopper says: Yeah, we
10 talked to First Street or AITHR and they want you to pay.
11 Then, First Street writes Ms. Chopper and says: It's time
12 to pay, you have a contract, please pay. Nothing at all
13 about any dangers, concerns, or anything with the tub.
14 Then, on December the 4th, 2012, Ms. Chopper produces a
15 letter that is unsigned to First Street. It's a two-page
16 letter. It has one, two, three, four, five, six, seven,
17 eight, nine, 10, 11, 12, 13, 14, 15 paragraphs to it. She
18 spends the entire first page talking about: I don't want
19 to pay. I don't like this tub. It wasn't installed right.
20 It wasn't installed timely. Why did it have to come up
21 from over here when there's -- somebody else you could buy
22 it from here? It's just not right for me. I used it once
23 and it just didn't live up to what I thought it would be.
24 Then, she finally gets to a paragraph where she
25 says: Well, it takes too long to fill and it takes too

1 long to drain. And, then, she comes up with a
2 hypothetical. Well, imagine I'm sitting in the tub and
3 it's full of water and I have to get out and it takes a
4 half an hour to drain. I can't get out for a half an hour.
5 That's not safe. Well, that's not the facts of this case.
6 This case has nothing to do with the tub not draining.
7 This tub -- case has nothing to do with the door not being
8 able to open because it's full of water. So, how in the
9 world would that single letter, where literally one
10 sentence in one out of the 15 paragraphs addresses a
11 concern she may have, not about slipping and falling but
12 about being able to get out of a tub with an inward opening
13 door because it's full of water. And the water is designed
14 to seal the door so of course you can't get out.

15 THE COURT: You -- you're making good points. But
16 I think we're straying more into liability --

17 MR. GOODHART: Okay.

18 THE COURT: -- rather than discovery.

19 MR. GOODHART: So, Mr. Cloward claims that that
20 letter should have been produced by us. How would we know
21 that that letter needs to be produced by us? It doesn't
22 deal with slipperiness. There's really nothing in there
23 about safety because nobody has been injured. It has to
24 deal with: I don't want to pay for my tub. So, are we now
25 obligated to produce every single letter that we have with

1 every single customer who doesn't want to pay because they
2 have buyer's remorse?

3 THE COURT: Yeah. I mean, I don't know if the
4 scope of the request might have been too broad at one
5 point. But I do recall a request for all customer
6 complaints pertaining to this particular Jacuzzi walk-in
7 tub.

8 MR. GOODHART: All customer complaints where an
9 incident had occurred pertaining to this tub. And we
10 produced every single notation report that we had that
11 predated Ms. Cunnison's death. Conversations I've had with
12 Mr. Cloward has said: I am not producing records that
13 postdated that. However, I will produce records where
14 there was an incident of somebody being injured that we
15 became aware of --

16 THE COURT: All right.

17 MR. GOODHART: -- that postdated her death and I
18 did that.

19 THE COURT: Thanks for emphasizing that
20 distinction.

21 MR. GOODHART: So, I did not produce records where
22 slipperiness was discussed and I let Mr. Cloward know that.
23 So, we agreed to disagree. He said I was wrong and I said
24 I'm sorry, I think I'm right, let's talk to the Discovery
25 Commissioner about that. We've never talked to the

1 Discovery Commissioner. We've never been before the
2 Discovery Commissioner. Mr. Cloward is going to say:
3 Well, we had a front row seat with Jacuzzi's disputes with
4 the Discovery Commissioner. Well, yeah, those are
5 Jacuzzi's disputes with the Discovery Commissioner. Do you
6 think I've done something wrong? Let's go talk to the
7 Discovery Commissioner and she can make that decision.
8 And, then, we can take the appropriate steps and maybe
9 bring it before Your Honor. But we haven't been there yet.
10 We haven't gotten there yet. We have had absolutely no
11 discovery disputes before the Discovery Commissioner, let
12 alone the year and a half of discovery disputes and motions
13 before the Discovery Commissioner that's been set forth in
14 their affidavits.

15 So, Your Honor, going back to -- again, the
16 information, and the e-mails, and the documentation that
17 First Street will receive will relate to installation
18 issues. You chipped my wall. It doesn't look right. It
19 doesn't look good. Yes, there are some complaints -- and
20 I'll represent to the Court, there are some complaints
21 saying: My tub seems slippery. All of this postdated this
22 incident. And I have not produced those and I've told Mr.
23 Cloward that. If Your Honor were to tell me, Mr. Goodhart,
24 you're wrong, you got to produce them within the next 30
25 days, then the next 30 days, I'm going to produce them.

1 But I haven't been ordered to do so yet by the Court or the
2 Discovery Commissioner.

3 THE COURT: Well, maybe indirectly. Because I
4 thought the Motion to Strike went to the Discovery
5 Commissioner initially and, then, it came to me.

6 MR. GOODHART: No. No.

7 THE COURT: Is that -- no?

8 MR. GOODHART: What happened was, my understanding
9 -- and I could be wrong. Mr. Cloward will correct me, of
10 course --

11 THE COURT: All right.

12 MR. GOODHART: -- is that initially, the Motion to
13 Strike on Order Shortening Time was filed with the
14 Discovery Commissioner. Motion to Strike the Answer. And
15 the Discovery Commissioner said: I don't do Motions to
16 Strike.

17 THE COURT: Yeah. No. That's what I meant. She
18 didn't hear it.

19 MR. GOODHART: Right. But Mr. Cloward knew that
20 the Discovery Commissioner wasn't going to hear a Motion to
21 Strike because of a discovery dispute conference between
22 Jacuzzi and Mr. Cloward many months ago where Mr. Cloward
23 did ask for terminating sanctions and a Motion to Strike
24 and she specifically told him: If it gets down to
25 terminating sanctions and a Motion to Strike, I'm not going

1 to hear that. That's up to the judge to decide. So, he
2 knew many, many, many months ago the Discovery Commissioner
3 would not hear a Motion to Strike an Answer.

4 THE COURT: Yeah. I know. She's done that two
5 times in the past where she's referred it to me and I
6 struck Answers --

7 MR. GOODHART: Right.

8 THE COURT: -- because she wasn't -- didn't think
9 that she should go that far.

10 MR. GOODHART: But, Your Honor, what I'm talking
11 about, the discovery dispute conferences with the Discovery
12 Commissioner, that's what she's there for. I object to
13 something. Plaintiffs think I haven't produced something
14 that I should be producing. We have a conversation and I
15 said -- told plaintiff my position, he tells me his
16 position. Sometimes we'll agree, sometimes I'll disagree.
17 We agreed to disagree. Next step, let's go to the
18 Discovery Commissioner and see who's right. Instead of:
19 You know what, I'm not even going to bother with the
20 Discovery Commissioner, I'm going to go straight for the
21 jugular and I'm going to get your Answer stricken. That's
22 what's happened here.

23 Now, again, Jacuzzi is in a little bit different
24 of a position. That's why I think it's very important for
25 this Court and plaintiff when they're arguing, not to

1 conflate the two, which is exactly what has happened here.
2 Throughout his Motion, throughout his argument, he is
3 throwing in Jacuzzi's issues and, then, lumping them on top
4 of First Street when we haven't had those issues.

5 And, Your Honor, in my brief and in plaintiffs'
6 brief as well, trying to find case law that's going to help
7 guide this Court on this issue, there is none. We found
8 *Young* that dealt with a willful creation of evidence.

9 THE COURT: Yeah. I'm pretty familiar with that
10 and -- yeah.

11 MR. GOODHART: And what I found was real
12 interesting is in the Reply, again, plaintiff -- in
13 Opposition I said there's no basis for this, there's no
14 grounds for it, there's no case law, there's no statutes.
15 Plaintiffs go out and find a case and they cite it, *Bahena*
16 *versus Goodyear*, in support for their position.

17 THE COURT: Well, that's a pretty well-known case,
18 I think.

19 MR. GOODHART: Right.

20 THE COURT: But yeah.

21 MR. GOODHART: But let's kind of -- the three
22 things in *Bahena* that plaintiffs cited in their Reply were:
23 Well, there were three separate motions and hearings before
24 the Discovery Commissioner in that case. I have had none.

25 THE COURT: Right.

1 MR. GOODHART: At one of the Discovery
2 Commissioner's hearings, the Discovery Commissioner ordered
3 Goodyear to specify which documents were responsive to
4 which requests for production of documents. I haven't been
5 ordered by the Discovery Commissioner to do anything.
6 Goodyear failed to comply with that order. The Discovery
7 Commissioner then ordered a PMK depo for the authenticity
8 of documents to be done by a certain date. That -- I
9 haven't been ordered to do that. Goodyear failed to comply
10 with that order. They were also ordered to verify their
11 answers in interrogatories. They failed to comply with
12 that order and their Answer was stricken. They had three
13 strikes, three orders they failed to comply with, and it
14 was stricken. How many orders has First Street failed to
15 comply with? Zero. How many orders has AITHR failed to
16 comply with? Zero. How many Motions to Compel have been
17 filed and served on counsel for First Street? Zero. How
18 many Motions to Compel have been filed and served on AITHR
19 by counsel? Zero. And here we are asking for terminating
20 sanctions.

21 I don't know if Your Honor has any other
22 questions?

23 THE COURT: Nope. You're good. Thank you.

24 MR. GOODHART: All right. Thank you.

25 THE COURT: All right. Looks like we'll have time

1 for a reply. Wait. Yes. Go ahead. Were you joining?

2 MS. GOODWIN: No. I'm with Phil's office.

3 THE COURT: Great. All right. We're probably
4 going to have to take a lunch break in here before we get
5 to the Jacuzzi motion, guys. Just letting you know if you
6 wanted to stay and it's fine or go take your break now.
7 But I got to give a staff lunch. So -- but let's finish up
8 the argument on this one.

9 MR. GOODHART: That's fine, Your Honor. No
10 problem at all.

11 THE COURT: All right.

12 MR. CLOWARD: Thank you, Your Honor. I'm kind of
13 addressing the issues that were raised by First Street in
14 reverse chronological order.

15 THE COURT: Right.

16 MR. CLOWARD: Regarding the discovery, you know,
17 no motions have been filed. You know, that's a
18 disingenuous argument. We submitted the Motion to Compel
19 the e-mails. The Discovery Commissioner returned it
20 because she wanted more specificity as to when we needed
21 the issue resolved. In the interim, I provided that to
22 counsel and said: Hey, we're going to resubmit this, sure
23 wish that you guys would comply. And, then, they turned
24 over the e-mails so we never refiled the motion. We
25 attempted to file the motion. They knew that we attempted

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1 to file the motion because I provided that to them.

2 And, then, regarding the -- this matter, we did
3 submit it to the Discovery Commissioner first and she
4 specifically referred both matters to Your Honorable Court.
5 And, so, we did attempt to go to the Commissioner first on
6 these issues.

7 Now, with regard to -- I don't want there to be
8 any acknowledgement or concession on my behalf that what
9 Mr. Goodhart has represented regarding e-mails and
10 incidents. He is, in my view, is merging two separate and
11 distinct issues. While it is true that Mr. Goodhart and I
12 had a good faith discussion about e-mails and the
13 production of e-mails with regard to advertising, that was
14 very limited to the production of e-mails and advertising
15 in his -- and the view -- that the opinion that we kind of
16 came to that was their position was: We're not going to
17 produce marketing e-mails after her death because how could
18 she possibly have relied on those issues? And I said:
19 Yeah. I mean, I could kind of see that. That makes sense.
20 If she's passed away, she's obviously not going to be
21 picking up Baby Boomers and Beyond advertisement and
22 relying on that. So, that makes sense. That was the
23 extent of the discussion.

24 To somehow now morph that into, hey, we agreed
25 universally that we were only going to provide incidents

1 before this, that is not true. And I want to take a firm
2 stand on that. That is not the case. I never agreed to
3 that. There was never any limitation to that. So, I want
4 to be very clear on that.

5 Now, with regard to the communications, that the
6 ultimate issue that we have with Jerre Chopper's complaints
7 is -- and I find this difficult to understand how First
8 Street can stand before the Court and say: Look, this was
9 all about the sales. The very first thing that she says in
10 her December 4, 2012 letter is:

11 Your letter of November 29 regarding the above is
12 received. You claim to have no knowledge of any defect
13 in the tub.

14 End quote.

15 So, after her first letter, Stacy Hackney then
16 sends her a letter. Stacy Hackney is corporate counsel,
17 sends her a letter and says: Hey, it looks like you're
18 only complaining about the contract here. We don't -- you
19 know, it doesn't have anything to do with the defect.
20 Well, she sets the record straight in the very next
21 correspondence that she sends. And that's the first thing
22 that she says. Sentence 1 is Stacy -- Ms. Hackney, you
23 claim to have no issue with -- no knowledge of any defect.
24 And, then, she sets forth what the defects were.

25 So, to suggest that that shouldn't have been

1 produced, that's -- I have a hard time with that.

2 And, then -- and I specifically ask for the Court
3 -- this is a big ask. This is a big ask. But I am asking
4 for Your Honor to obtain a transcript of today's
5 proceedings and review what was just represented to you in
6 open court. Because what was represented to you in open
7 court was that the reason that First Street did not turn
8 over the dealers was because it was -- they objected and
9 limited it to just Ms. Cunnison. Also, they objected and
10 limited it to just Nevada. Those were the reasons that
11 were given as to why all dealers were not provided. Well,
12 let me read into the record -- and, you know, so that the
13 Court doesn't have to rely on my representation of what
14 counsel for First Street said. That's why I'm asking for
15 the Court to review that so that you don't have to rely on
16 me, Judge. But this is what the interrogatory requested.
17 And I'm going to cite from the record. It's page 9 of my
18 Motion, of Plaintiffs' Motion, and it says, quote:

19 Interrogatory number 1: In the Manufacturing
20 Agreement between First Street and Jacuzzi, Bates
21 stamped as JACUZZI001588 through JACUZZI001606, the
22 document indicates that First Street desired Jacuzzi to
23 manufacture walk-in tubs and other bath products for
24 its first -- or for First Street and its network of
25 dealers and distributors. Dash. Please list all

1 dealers and distributors within the network of First
2 Street.

3 The Answer, quote: Objection. This interrogatory
4 is overbroad with respect to time frame. Without
5 waiving said objections, the only dealer or distributor
6 within the network of First Street is AITHR. As First
7 Street's discovery on this issue is ongoing, defendant
8 reserves the right to amend and/or supplement this
9 response as additional information becomes known.

10 Nowhere did First Street say: Hey, look, we're
11 only providing you Las Vegas. Hey, we're only providing
12 you Ms. Cunnison's. None of that.

13 And any objection regarding the time with regard
14 to the scope of the operative time, they can't make an
15 objection to say: We didn't know when you're talking
16 about. I specifically referenced the Manufacturing
17 Agreement that you cited to.

18 THE COURT: Yeah. Didn't they at least -- they
19 tried to limit it in their response. I mean, they used the
20 word is. Right? Is is present tense. They -- now, I'm
21 not saying, you know, that they were reasonable or
22 unreasonable in their limitation but they did say, you
23 know, the only dealer is, as present tense. So, it is
24 ambiguous. I don't know if it's intentionally evasive.

25 MR. CLOWARD: Well --

1 THE COURT: I don't know if I could even draw that
2 conclusion. But it seems to me there might be an argument
3 there that they were trying to say, we're not going to
4 focus on the dealers that were perhaps in the relevant time
5 period, which they should've focused on when the incident
6 took place, but we're just going to focus on now. Perhaps
7 that's what they were thinking or trying to do. I don't
8 know if that -- that probably wouldn't have been the right
9 thing to do under the circumstances. But it sounds like
10 you didn't challenge that after they gave us that response.

11 MR. CLOWARD: Well, I am challenging it now. And
12 --

13 THE COURT: Right. Right.

14 MR. CLOWARD: And, certainly, I sought the
15 questions at the deposition of Dave Modena. But, I guess,
16 what is the purpose of, you know, 37(a)(3) when it talks
17 about elusive discovery tactics?

18 THE COURT: Yeah.

19 MR. CLOWARD: I mean, is it our job as attorneys
20 to try and craft and artfully respond in ways that preclude
21 issues so that the other side doesn't have those? I mean,
22 is that our job --

23 THE COURT: Yeah.

24 MR. CLOWARD: -- or is it our job to turn
25 everything over?

1 THE COURT: It did smack us some swift dealing
2 there. But I'll -- I'm going to consider that further.
3 Let's move on from that argument.

4 MR. CLOWARD: Okay. And the only other thing,
5 Your Honor, is I believe that it was affirmatively stated
6 in open court that there -- the objection limited those for
7 very, more specific reasons than the discovery response
8 itself.

9 And, you know, other than that, Your Honor, if
10 there's anything else?

11 THE COURT: No. I got it. I appreciate that.
12 Thank you for responding to my questions.

13 MR. CLOWARD: Okay.

14 THE COURT: You have good argument. I wish I had
15 more time to give you before I need to take my break but we
16 do need to take a one hour recess --

17 MR. CLOWARD: No problem.

18 THE COURT: -- and we'll come back. What do I
19 have this afternoon?

20 THE CLERK: You have a matter on at 1.

21 THE COURT: At 1?

22 THE CLERK: It's an eviction.

23 THE COURT: Well, they're going to have to wait.
24 I think it was just -- it's just an eviction case.

25 THE CLERK: Yeah.

1 THE COURT: Which is important for the people
2 involved. But --

3 MR. CLOWARD: Sure.

4 THE COURT: But I think that'll only take a --
5 less -- like 10 minutes or less.

6 MR. CLOWARD: Okay.

7 THE COURT: All right?

8 MR. CLOWARD: Fair enough.

9 THE COURT: But let's come -- so, why don't you
10 come back at, let's say 1:15. Does that work for
11 everybody?

12 MR. CLOWARD: Fair enough. Yeah.

13 MR. GOODHART: Yes, Your Honor.

14 THE COURT: So, we're -- okay.

15 MR. CLOWARD: Thank you.

16 THE COURT: Thank you. All right. Court is in
17 recess.

18 MR. GOODHART: Your Honor, are we done with First
19 Street?

20 THE COURT: Thank you. I'm taking it under
21 advisement. I want to look at the transcript and study
22 this a little bit further.

23 MR. GOODHART: All right. Thank you, Your Honor.

24 THE COURT: All right. Under advisement. I'll
25 have a decision probably within a week.

1 MR. GOODHART: Thank you.

2 THE COURT: All right.

3 [Recess taken at 12:05 p.m.]

4 [Hearing resumed at 1:28 p.m.]

5 THE COURT: A731244.

6 MR. CLOWARD: Your Honor, may I obtain these
7 documents?

8 THE COURT: Yep. Go ahead.

9 MR. CLOWARD: Thanks.

10 [Pause in proceedings]

11 THE COURT: Let me know when you're all set up,
12 folks.

13 MR. CLOWARD: We're ready. I am.

14 THE COURT: All right. Then, Mr. Cloward, this is
15 your Motion to Strike Jacuzzi's Answer. So, we'll go ahead
16 and hear from you.

17 MR. CLOWARD: Thank you.

18 Your Honor, I think, you know, the Motion
19 exhaustively sets forth the issues and I can tell that the
20 Court is very prepared in the nature of the questions that
21 were asked, so I'm not going to go into the granular
22 details of the discovery dispute.

23 THE COURT: Okay.

24 MR. CLOWARD: I just wanted to point out one
25 thing. You know, Jacuzzi is essentially in violation --