

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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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
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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

1 the complaints, and that's precisely what we did. We did not go through
2 them, we did not redact any information. I don't believe we did, Mr.
3 Cloward.

4 MR. CLOWARD: Not that I could tell, Your Honor.

5 THE COURT: All right.

6 MR. GOODHART: We did not redact any information. We
7 did not redact any customer names or addresses that are contained on
8 those, and they were inclusive of any type of complaint, regardless of
9 what the complaint was.

10 THE COURT: So perhaps, it should only come in for
11 purposes of identifying for the Court what information was accessible to
12 Jacuzzi, and we don't know if Ms. Martinez actually accessed parts or
13 which parts. I think there was testimony that there was access, and
14 either her or someone else actually did obtain information.

15 MR. GOODHART: Right, but --

16 THE COURT: But it was all available, is the important point
17 here.

18 MR. GOODHART: The actual customer surveys were
19 available --

20 THE COURT: The customer surveys.

21 MR. GOODHART: -- but again, not in the spreadsheet form
22 that I produced to Mr. Cloward in this litigation. It would've just been the
23 individual surveys. I did provide Mr. Cloward with a sample Guild
24 survey last night.

25 MR. CLOWARD: Oh, I didn't see that.

1 MR. GOODHART: It was attached to the letter that I sent you,
2 where it is similar to the customer surveys that Mr. Cloward put up and
3 showed the witnesses.

4 THE COURT: Understood.

5 MR. GOODHART: Those were in-house surveys, but they're
6 very similar.

7 THE COURT: Okay. Very good. I understand.

8 MR. GOODHART: And because of that, we have -- I indicated
9 to Mr. Cloward that we would withdraw our objection to the introduction
10 of the Guild survey. The question still, though, becomes on the second
11 document Mr. Cloward wanted to introduce as evidence, which was --
12 and correct me if I'm wrong, Mr. Cloward, I believe this was his office
13 going through the Guild survey spreadsheet that we produced and
14 taking out only those that his office or Mr. Cloward deemed were
15 relevant --

16 THE COURT: Uh-huh.

17 MR. GOODHART: -- to this evidentiary hearing.

18 MR. CLOWARD: Yeah. So what we did is because the
19 document, as the Court recalls, when I showed it on my laptop --

20 THE COURT: I remember.

21 MR. CLOWARD: -- it's very voluminous.

22 THE COURT: Uh-huh.

23 MR. CLOWARD: I still have yet -- nobody from my office has
24 yet to go through the entirety of the document. So what I did is I just did
25 a control F, which allows you to search electronically for certain terms.

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1 So I did a control F for like fall, slip, injure, harm, hurt, things of that
2 nature. The same types of searches that may have been conducted in
3 the selected Guild survey, so that would be 192, are just a sampling of
4 those potential issues. Again, it's not in the entirety, but I wanted to at
5 least kind of throw some of those together to allow the Court to see the
6 types of information that were coming in because some of them were
7 fairly significant. I believe one was an individual who --

8 THE COURT: Uh-huh.

9 MR. CLOWARD: -- you know, indicated their loved one was
10 stuck in the tub, and they had to call the fire department to get them out.
11 And so the entirety of the survey would be 191, and then 192, and I
12 wanted to ensure that I didn't miss --

13 THE COURT: Hold on. Hold on. So the entirety is 191 and --
14 the entirety of the Guild surveys is 191, and 192 is your sampling and
15 your work product that you prepared then?

16 MR. CLOWARD: Correct. And for further clarification, what
17 we did was because the 191 is so lengthy as far as columns --

18 THE COURT: Uh-huh.

19 MR. CLOWARD: -- and there are a whole bunch of columns --

20 THE COURT: Uh-huh.

21 MR. CLOWARD: -- that don't have anything to do with
22 anything --

23 THE COURT: Uh-huh.

24 MR. CLOWARD: -- we deleted those and only kept the
25 columns that were relevant to the analysis that the Court is handling. So

1 we tried to just narrow that down so the Court could quickly see, okay,
2 here's this issue and so forth.

3 THE COURT: Mr. Roberts?

4 MR. ROBERTS: Your Honor, we would withdraw our
5 objection as long as they're admitted for the limited purpose that's
6 explained by the Court. We have confirmed that Jacuzzi, at least while
7 Ms. Martinez was there, had the ability to access the Guild surveys
8 directly through a link, and in fact, did access them. We've been able to
9 identify perhaps two to three times. There's no evidence that we ever
10 accessed them and saw these particular claims.

11 We've agreed to run some searches of the names to confirm
12 whether we did, but for the purposes of these hearings, we would
13 stipulate that we had the ability to go into the Guild survey database and
14 search for items. We would also stipulate that in association with
15 discovery in this case, we did not attempt to go in and determine
16 whether any responsive of information was in those Guild surveys. I
17 think you may have even seen one of the letters from Mr. Templer where
18 he instructed the people performing the searches that you don't have to
19 search in the First Street data, because First Street is also a Defendant
20 and will be -- you know, a request will be going directly to them.

21 THE COURT: Okay.

22 MR. ROBERTS: So, yeah.

23 THE COURT: So your representation then is it was
24 accessible, but it was not reviewed is your representation, and so one of
25 the responsibilities of the Court then in looking at all of the orders and

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1 the other evidence is to determine whether there was some requirement
2 to review it or whether they should have reviewed it, and if so, whether
3 that's faulty?

4 MR. ROBERTS: Yes.

5 THE COURT: Okay.

6 MR. ROBERTS: Yes, Your Honor.

7 THE COURT: All right. I understand. Mr. Cloward --

8 MR. CLOWARD: Yes.

9 THE COURT: -- so I'm inclined to admit 191 for the limited
10 purpose, as indicated. And as to 192, Mr. Roberts?

11 MR. ROBERTS: Your Honor, I understand the difficulty for
12 the Court in reviewing the entire database, so we would again, for the
13 limited purpose -- it's not the actual data that we had possession of, but
14 for the limited purposes of a demonstrative summary prepared by
15 counsel of a voluminous exhibit, for the limited purpose of showing
16 what might've been available, what we might have found had we
17 searched the database maintained by First Street's vendor, no objection.

18 MR. GOODHART: Your Honor, I just want to make sure we're
19 clear on this, and I've explained myself to Mr. Cloward, as well, is again,
20 during the time period, relevant time period where these Guild surveys
21 were coming in, I don't know if they were searchable. I think it may help
22 the Court if I provide, as I did with Mr. Cloward, a copy of a sample Guild
23 survey, of what somebody from First Street or somebody from Jacuzzi,
24 such as Ms. Martinez, would be able to view if they logged into the Guild
25 site.

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1 THE COURT: Now, that hasn't been presented as evidence to
2 the Court, and so I guess I would need a stipulation from the parties as to
3 that fact in order for me to consider it, so --

4 MR. GOODHART: I understand that.

5 THE COURT: So --

6 MR. GOODHART: It's just -- the only reason I'm bringing this
7 up is because Mr. Roberts made the comment that, you know, he doesn't
8 know whether -- you know, I think he indicated that Jacuzzi has not
9 searched the Guild website or the Guild surveys, and I just -- to be
10 honest with the Court and in all candor, I do not know whether anybody
11 has the ability to search the customer surveys as they are in their
12 original format. And it wasn't until this Excel spreadsheet was generated
13 by Guild, because they figured that that was the easiest way to do it as
14 opposed to, as Mr. Cloward had pointed out, producing 5,000 pages.

15 THE COURT: I understand what you're saying.

16 MR. GOODHART: And to get --

17 THE COURT: At least in the format now where they're an
18 Excel spreadsheet, they're searchable by search terms. You don't know
19 and can't represent to the Court whether, in the original format, the
20 customer surveys were searchable by terms?

21 MR. GOODHART: Correct.

22 THE COURT: Okay. Very good. I understand that. Mr.
23 Cloward, anything else you want to put on the record?

24 MR. CLOWARD: Just one thing. I wanted to -- I misspoke
25 when I indicated that I did not see the sample that Mr. Goodhart sent

1 over. I did see that last night. I just wasn't --

2 THE COURT: Okay.

3 MR. CLOWARD: That was confusing. I thought he sent
4 maybe a second email after that. So I did receive that.

5 THE COURT: Very good.

6 MR. CLOWARD: And I do appreciate him getting back to me.
7 So again, we would move for 191 and 192, Your Honor.

8 THE COURT: So 191 is admitted for the limited purpose of
9 establishing accessibility, and 192 is admitted as a demonstrative exhibit
10 for purposes of establishing accessibility --

11 MR. CLOWARD: Okay. Thank you.

12 THE COURT: -- with the understanding that this is just a
13 sampling based upon the time and resources that Mr. Cloward has had
14 to date. Okay.

15 [Plaintiffs' Exhibit 191 and Demonstrative Exhibit 192 admitted into
16 evidence]

17 MR. CLOWARD: Thank you, Your Honor. And then moving
18 along, I would like to just move into evidence Exhibits 193 through 197.
19 Those were documents that were referenced with Mr. Demeritt.

20 THE COURT: I understand what they are. Mr. Roberts?

21 MR. ROBERTS: It continues to be our position that those
22 documents constitute attorney/client work product and are privileged.
23 We don't want to waive that objection, but --

24 THE COURT: Understood.

25 MR. ROBERTS: -- that's the only objection we have to their

1 admissibility, Your Honor.

2 THE COURT: The Court is admitting Exhibits 193 through
3 197 without waiver of any attorney/client privilege that exists or may
4 exist on behalf of Jacuzzi. Okay.

5 [Plaintiffs' Exhibits 193 through 197 admitted into evidence]

6 MR. CLOWARD: Understood. And Your Honor, we have two
7 stipulations for the Court. One is the stipulation regarding the timetable
8 that my office indicated they would provide for the Court.

9 THE COURT: Yes.

10 MR. CLOWARD: The second stipulation is in regard to the
11 hearings, and just to formally, I guess, getting those moved. And then
12 finally --

13 THE COURT: Hold on. Can we do these one at a time?

14 MR. CLOWARD: Yes, sir. Thank you.

15 THE COURT: Okay. As to the timetable, what exhibit
16 number is that? Or proposed exhibit number?

17 MR. CLOWARD: It's technically not. We can make it an
18 exhibit.

19 THE COURT: Oh, I see. It was the beginning pages prior to
20 1. All right. So I mean, if I admit it, it would be 1A. Let me ask Mr.
21 Roberts. The timetable, it sounds like there was a stipulation; is that
22 correct?

23 MR. ROBERTS: Could I just --

24 THE COURT: Here, I'll let you have --

25 MR. ROBERTS: Thank you.

1 THE COURT: -- one if you want to take a look.

2 MR. ROBERTS: Thank you.

3 THE COURT: He had indicated at the beginning it was a
4 demonstrative

5 MR. ROBERTS: Yes.

6 THE COURT: -- and a summary of voluminous records to use
7 as a demonstrative, I think, or were you actually moving it in as
8 substantive evidence?

9 THE CLERK: I have this one admitted as Court's Exhibit A
10 already.

11 THE COURT: That's just for purposes -- it's Court Exhibit for
12 purposes of any post-judgment proceedings.

13 MR. CLOWARD: We also prepared an actual stipulation
14 containing the -- I guess, the timeline of events for Your Honor, if you'd
15 like to see it.

16 THE COURT: Yes, please.

17 MR. CLOWARD: Okay.

18 THE COURT: Very good.

19 MR. CLOWARD: I just wanted to make sure I have the right
20 exhibit. Thank you, Your Honor.

21 THE COURT: Of course. All right.

22 MR. ROBERTS: They --

23 THE COURT: Go ahead, Mr. Roberts.

24 MR. ROBERTS: So part of our objection before was this was
25 basically attorney argument as to what search terms would have been

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1 triggered by certain exhibits that had been introduced in this hearing.
2 And there was no foundation for that. Earlier this morning, Mr. Cloward
3 did give me an affidavit from a member of his staff explaining the
4 methodology used in order to fill out some of the fields which are not
5 drawn from the exhibits themselves, but are attorney argument and/or
6 inferences, or work product. I have not had a chance to have someone
7 review that methodology to give me an opinion as to whether that
8 would've accurately compiled the data in the spreadsheet.

9 My initial glance is that it probably would, that we probably
10 will consent to that admission, but I would just ask that we be able to
11 submit a stipulation to the Court within the next week, just stipulating to
12 that admission or making an objection, but I anticipate we're going to
13 stipulate to it, but in exercise of due diligence, I feel like I've got to have
14 someone look at that.

15 THE COURT: No, of course. I understand. Well, here's what
16 we're going to do, is two things.

17 MR. CLOWARD: I think there are two issues, though, Your
18 Honor.

19 THE COURT: Yes.

20 MR. CLOWARD: I think we're -- I'm sorry. I know the Court
21 has got another 2:30, so I'm trying to hurry up. I apologize. I do think
22 that --

23 THE COURT: No, no. I moved the 2:30 thing.

24 MR. CLOWARD: Okay.

25 THE COURT: You guys have got as much time as you need.

1 MR. CLOWARD: Understood. I think there are two issues
2 that got confused somehow. First was the timeline, the stipulation that
3 we've provided. The second was the affidavit of my paralegal with
4 regard to the final column on the Excel spreadsheet that triggered the
5 search terms, you know, slip, fall, you know, elderly --

6 THE COURT: Uh-huh.

7 MR. CLOWARD: -- and things of that nature, so --

8 MR. ROBERTS: And that's just what the Court showed me at
9 the bench.

10 MR. CLOWARD: Oh, understood.

11 MR. ROBERTS: Okay.

12 MR. CLOWARD: So the first is the stipulation regarding the
13 timeline. We prepared a stipulation regarding the timeline, Your Honor.

14 THE COURT: All right. Can the Court then admit the
15 stipulation and order as to the timeline as an exhibit in this case?

16 MR. ROBERTS: No, we did just receive that this morning. I
17 had Ms. Bonney checking that. I think she found a couple issues.
18 Plaintiffs' filed a motion for reconsideration or a motion to strike, is listed
19 as May 5th. I believe that's May 15th. And we're either -- okay. And on
20 March 7th, Jacuzzi filed supplemental brief on the Pullen matter. The
21 Plaintiffs also filed supplemental brief on that same day.

22 MR. CLOWARD: Should we just handwrite those two
23 changes in and provide it to the Court?

24 MR. ROBERTS: We can handwrite those two changes in, and
25 you can --

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1 THE COURT: Here, I have my copy. Why don't you both
2 handwrite it --

3 MR. ROBERTS: And we can agree.

4 THE COURT: -- and give it back to me? It shouldn't be in the
5 Court's handwriting.

6 MR. CLOWARD: You got it, Judge.

7 THE COURT: Thank you. Appreciate that.

8 MR. CLOWARD: And then Your Honor, there was the
9 affidavit of my --

10 THE COURT: Well, let's --

11 MR. CLOWARD: Oh, sorry.

12 THE COURT: If you don't mind --

13 MR. CLOWARD: Got it.

14 THE COURT: I'd like to do it in parts for --

15 MR. CLOWARD: Understood.

16 THE COURT: -- the benefit of my Court clerk.

17 MR. CLOWARD: Understood, understood.

18 THE COURT: Thank you.

19 [Pause]

20 MR. ROBERTS: We have a stipulation on the timeline, Your
21 Honor.

22 THE COURT: Great. As soon as I get it we're going to mark
23 it --

24 MR. ROBERTS: But I -- we've left someone out though.

25 THE COURT: Oh, of course.

1 MR. GOODHART: I'm being as quiet as I possibly can, Your
2 Honor.

3 MR. ROBERTS: Very good. That's everyone, Your Honor.

4 THE COURT: So I'm going to mark the stipulation and order
5 regarding the timeline as the next in order. And it's admitted as
6 substantive evidence --

7 MR. ROBERTS: May I approach?

8 THE COURT: -- and can be relied upon by the Court.

9 Madam Clerk, what exhibit number is that?

10 THE CLERK: It's 198.

11 THE COURT: All right. I'll go ahead and hand it to you; it's
12 the only copy. That's 198.

13 Then we had the issue of the summary that was in my binder
14 preceding tab one, and I'm not sure what you call this. What do you
15 want to call this for purposes of the exhibit log for the Court?

16 [Plaintiffs' Exhibit 198 admitted into evidence]

17 MR. CLOWARD: I think that that is just the summary of
18 voluminous documents pursuant to, I think it's 52.275, if I'm not
19 mistaken.

20 THE COURT: Actually -- okay. So that's what Mr. Roberts
21 has not yet agreed to. And I think he had a valid objection, at least at this
22 point in time. What I'm going to do as to the -- let's call it the attorney
23 summary of records, I am going to admit that as an exhibit next in order
24 as a demonstrative exhibit --

25 MR. CLOWARD: Okay.

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1 THE COURT: -- as opposed to substantive evidence. What
2 that means is the Court cannot rely directly upon the information in this
3 summary, that what the Court would have to rely upon is the underlying
4 data that was used to prepare this demonstrative and any closing
5 argument counsel can identify for me what is the evidence that would
6 support the statement in the demonstrative. And that's subject, of
7 course, to the attorneys stipulating to have it moved into evidence as a
8 substantive exhibit under the theory that it is a summary of voluminous
9 records. Is that clear?

10 MR. CLOWARD: Very good. Understood.

11 THE COURT: All right. So, Madam Clerk, this document,
12 which is preceding tab 1, which you probably have, I'm admitting it as
13 exhibit next in order as a demonstrative exhibit.

14 [Plaintiffs' Exhibit 199 admitted into evidence]

15 MR. CLOWARD: Okay. And then, Your Honor, the final --

16 THE COURT: One second.

17 Are you ready? Okay.

18 Then what was the next issue?

19 MR. CLOWARD: The final issue with this trio of stipulations
20 is the affidavit of my paralegal who provides the Court with very detailed
21 instructions on how she compiled that spreadsheet. It's very technical
22 the way that she did it to ensure that it was more of a mathematical
23 rather than human error type of an analysis. So I can bring that to the
24 Court.

25 THE COURT: I see. Thank you. You may.

1 And Mr. Roberts, have you seen this affidavit?

2 MR. ROBERTS: I have, Your Honor. And I --

3 THE COURT: Do you have any objection to the affidavit itself
4 coming into evidence?

5 MR. ROBERTS: No objection, Your Honor.

6 THE COURT: All right. The Court will admit the affidavit of
7 Catherine Barnhill as exhibit next in order.

8 THE CLERK: 200.

9 THE COURT: And that will be Exhibit Number 200. And --
10 [Plaintiffs' Exhibit 200 admitted into evidence]

11 MR. CLOWARD: What was 199?

12 THE CLERK: The demonstrative summary of records.

13 MR. CLOWARD: Oh perfect. Thank you.

14 THE COURT: All right. Very well. Thank you for providing
15 that.

16 MR. CLOWARD: Okay. And then one final thing, Your
17 Honor.

18 THE COURT: Of course.

19 MR. CLOWARD: The Court asked, I indicated, that during the
20 deposition there was some discussion about the deposition notice. That
21 conversation between myself and Mr. Cools begins on page 28 through
22 line 15, and it continues several pages. But that's where that discussion
23 took place.

24 THE COURT: Very good. So thank you very much. We're
25 not separately marking that, but the Court notes the excerpts of the

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1 deposition of Mr. Demeritt that you'll identify for the Court. Thank you.

2 MR. CLOWARD: Thank you, Your Honor.

3 THE COURT: Mr. Roberts, any additional procedural,
4 logistical, or substantive issues you'd like to raise with the Court?

5 MR. ROBERTS: Yes, Your Honor.

6 THE COURT: Very good.

7 MR. ROBERTS: In the examination of Mr. Demeritt today --

8 THE COURT: Yes, sir.

9 MR. ROBERTS: -- there were a number of discovery requests
10 that were put in the record and read to Mr. Demeritt. There was one in
11 particular, I believe, that I do recall, where the request and Jacuzzi's
12 response and objection weren't put in the record. But there were also a
13 few that were on Richard Harris' letterhead that were -- was only the
14 request and did not include any objection that Jacuzzi had made.

15 THE COURT: Right.

16 MR. ROBERTS: So I would just ask that we leave the record
17 open for seven days to allow Jacuzzi to verify that any objections made
18 to the request entered into the record today were -- are made part of the
19 record. I believe that Mr. Cloward is fairly thorough, and that they
20 probably are in his binders. But I would just like an opportunity to
21 supplement the record with any objections that were made to the
22 discovery requests that have been put in the record by Mr. Cloward in
23 these hearings.

24 MR. CLOWARD: I'm fine with that, Your Honor. Exhibit 195
25 is the objection to the amended notice. So that is --

1 THE COURT: I remember looking at that, and I have it right
2 here.

3 MR. CLOWARD: So that is contained. And then what I
4 actually tried to do was when I reviewed the discovery responses, I
5 actually started with Jacuzzi's response. So for instance, if the Court
6 looks at 172 and 173, technically, we're looking at Jacuzzi's response,
7 that way we didn't have to bounce between two documents, because I
8 felt like with Mr. Demeritt -- or Mr. Templer, jumping between
9 documents was a little cumbersome. So I tried to just go right to the
10 response so that we didn't have two competing documents.

11 THE COURT: Right. So I could figure this out on my own,
12 but we'll go ahead and allow Mr. Roberts to supplement.

13 So again, for purposes of the record we'll simplify this that
14 the Defendant Jacuzzi's objections that had previously been made to the
15 various document requests are preserved for purposes of this record,
16 and he may provide a supplementation if he so chooses to the Court to
17 make sure that the Court understands what those objections are.

18 MR. ROBERTS: Thank you, Your Honor.

19 MR. CLOWARD: Fair enough. Thank you.

20 THE COURT: Anything else?

21 MR. CLOWARD: Just thank you.

22 MR. ROBERTS: The only thing I think we need logistically is
23 a briefing schedule at this point. I know we had discussed hopefully at
24 least two weeks for that briefing schedule. But we probably would like
25 some guidance from the Court on that if the Court is --

1 THE COURT: So let's hear from Mr. Goodhart if he had any
2 remaining issues.

3 MR. GOODHART: Thank you, Your Honor. No, I have no
4 other issues.

5 THE COURT: All right. Very good.

6 I assume that the parties need a transcript --

7 MR. CLOWARD: Yes.

8 MR. ROBERTS: Yes.

9 THE COURT: -- which is going to take some time. I have to
10 give an appropriate amount of time for my court recorder. All right. So
11 we'll have the transcript typed up by my court recorder probably by the
12 end of the day Monday. Do the parties agree to split the cost of that?

13 MR. CLOWARD: Yes.

14 MR. ROBERTS: Yes, Your Honor.

15 THE COURT: All right. Very well. Thank you. I mean, I
16 have --

17 MR. ROBERTS: I believe we've already signed that
18 stipulation.

19 MR. CLOWARD: Yeah. No problem.

20 THE COURT: So three weeks from Monday seems like
21 appropriate, right?

22 MR. ROBERTS: That would be appreciated, Your Honor.

23 THE COURT: Mr. Cloward?

24 MR. CLOWARD: Your Honor, that sounds very fair. Thank
25 you.

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1 THE COURT: All right. So the deadline for briefs -- one more
2 point of concern. Did I indicate that it would be briefs submitted on the
3 same date, or did somebody -- was somebody going to go first? What
4 did I say in regards to that?

5 MR. ROBERTS: I don't believe you did say, Your Honor. It
6 would be Jacuzzi's position that because this is Plaintiffs' motion, it
7 would probably be Plaintiffs' brief, our opposition, their reply, would be
8 the most appropriate. That would also be the way closing argument
9 went. But we'll abide by the decision of the Court. I think we understand
10 their theories enough if the Court were to desire and order simultaneous
11 briefing --

12 THE COURT: Is there going --

13 MR. ROBERTS: -- we'll do our best to comply with it.

14 THE COURT: Is there going to be oral argument in addition --
15 closing argument orally in addition to the briefs? I'll do whatever the
16 parties agree upon.

17 MR. ROBERTS: The Court had previously indicated that the
18 briefing would be closing argument. And Jacuzzi is okay with written
19 closing argument with no additional oral argument.

20 THE COURT: Mr. Cloward?

21 MR. CLOWARD: Your Honor, we really want whatever the
22 Court wants. So we're happy to provide the Court with whatever
23 assistance it needs in making the decision. We understand that it's a
24 weighty decision, so whatever the Court prefers, we're happy to comply.

25 THE COURT: I find it easier to do research and consideration

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1 if I have the material in writing, so that would be the order of the Court.
2 No oral argument -- no oral closing argument. The briefs by the parties
3 will constitute the closing arguments of the parties, and also, the
4 proposed findings that the parties would like the Court to make. All
5 right.

6 Also, Mr. Cloward --

7 MR. CLOWARD: Yes, Your Honor.

8 THE COURT: -- are you amenable to the staggered briefing
9 schedule suggested by Mr. Roberts?

10 MR. CLOWARD: If that's what the Court feels would be
11 helpful, then yes.

12 THE COURT: I think that's the best way since you have the
13 burden of proof here.

14 MR. CLOWARD: Understood.

15 THE COURT: All right. Very well.

16 So Mr. Cloward, you would trigger the response date of Mr.
17 Roberts. He wanted three weeks. Actually, how much time -- and I think
18 he meant three weeks from today.

19 So I don't know if you need another three weeks once you
20 get Mr. Cloward's brief.

21 MR. ROBERTS: Two weeks after Mr. Cloward's brief would
22 be sufficient, Your Honor.

23 THE COURT: All right.

24 MR. ROBERTS: Meaning 14 days.

25 THE COURT: I understand.

1 So Mr. Cloward, given the initial burden's on you, and you
2 set the -- you trigger the rest of the briefing, and you probably want to
3 get this done as quickly as possible, how much time do you want for
4 your initial brief?

5 MR. CLOWARD: Your Honor, if we could have -- I
6 understood that it was going to be three weeks from Monday when the
7 transcript was available.

8 THE COURT: No, transcript is Monday.

9 MR. CLOWARD: And --

10 THE COURT: Transcript is available Monday.

11 MR. ROBERTS: And Audra has indicated that three weeks
12 from Monday would be November 4th.

13 MR. CLOWARD: So that's what we, I guess, request.

14 THE COURT: You want a full three weeks?

15 MR. CLOWARD: Yes.

16 THE COURT: All right. So let's do three -- how about three,
17 two, and one?

18 MR. CLOWARD: Perfect.

19 MR. ROBERTS: Perfect.

20 THE COURT: All right. So Mr. Cloward, three weeks from
21 today is November 4th. That's the deadline for -- right?

22 MR. ROBERTS: I thought we were doing three weeks from
23 Monday?

24 THE COURT: I'm sorry. Three weeks from Monday is
25 November 4th?

1 THE CLERK: I show October 28th.

2 THE COURT: I thought somebody over here said November
3 4th?

4 MR. CLOWARD: So yeah, we'll just do --

5 THE COURT: Three weeks is 15 days.

6 MR. ROBERTS: Yes. Audra has confirmed that error in her
7 calculation.

8 THE COURT: We'll leave that to my court clerk to give you
9 the deadline.

10 THE CLERK: Okay. That's October 28th.

11 THE COURT: October 28th is the deadline for Plaintiff's
12 briefing. And the opposition is due two weeks after that.

13 THE CLERK: That is November 4th.

14 THE COURT: November 4th, Mr. Roberts, Defendant
15 Jacuzzi's brief is due.

16 THE CLERK: I'm sorry, November 11th.

17 THE COURT: November 11th, Jacuzzi's --

18 MR. ROBERTS: That sounds better, Your Honor.

19 THE COURT: -- responsive briefing is due.

20 MR. ROBERTS: Thank you.

21 THE COURT: And one week after that would be November
22 18. That is when Plaintiff's reply brief is due.

23 Mr. Goodhart, does First Street feel the need to file any brief
24 in connection with these proceedings?

25 MR. GOODHART: I don't think so, Your Honor. I don't think

1 there's been really any testimony that implicates First Street in any way,
2 shape, or form. This hearing was all about Jacuzzi's alleged discovery
3 violations; not First Street's -- any violations there. Unless something
4 comes up in one of Mr. Cloward's opening brief, I don't anticipate doing
5 anything.

6 THE COURT: Do the parties need the Court to resolve the
7 admissibility of the in-camera documents before Plaintiff's brief comes
8 in? I can probably get it done by Monday, maybe Tuesday -- probably
9 Tuesday of next week. I'll try my best.

10 MR. ROBERTS: Jacuzzi is not asking for that, Your Honor. I
11 believe that would be up to Mr. Cloward.

12 MR. CLOWARD: Yeah, I mean, I think if the Court could get
13 to that any time next week, even by --

14 THE COURT: Okay.

15 MR. CLOWARD: -- Friday of next week, we can --

16 THE COURT: Okay.

17 MR. CLOWARD: -- obviously, there are a lot of -- there's a lot
18 of other issues that we can address prior to that.

19 THE COURT: All right. Very good. So the Court as best as it
20 can, as early as it can next week will identify for the parties any
21 documents that the Court believes are responsive and relevant from the
22 binders of in-camera material provided to the Court by Jacuzzi. And
23 before the Court will order Jacuzzi to produce those, the Court will by
24 minute order let the parties know what the Court's preliminary findings
25 are. And then I'll allow Jacuzzi two business days from that date to

1 assert any objections to the production of those. And then just to move
2 this along, one day for Plaintiff to respond to any objections. And then
3 the Court will make a formal order on what documents in the in-camera
4 binder should be produced.

5 MR. ROBERTS: Thank you, Your Honor.

6 THE COURT: Does that work?

7 MR. CLOWARD: Yes.

8 THE COURT: All right. All right. So just to reiterate for my
9 court clerk, the Court will next week complete its review of the in-camera
10 documents and issue a preliminary order as to relevance. Two days
11 after that, Jacuzzi will assert any objections that it feels are necessary.
12 One day after that, Plaintiff will respond.

13 And Mr. Roberts, to simplify some of this, let me state on the
14 record all objections as to attorney client privilege and attorney work
15 product are reserved and not waived regardless of what the Court rules
16 next week in its preliminary findings and ultimate order on what should
17 be produced. So you don't need to reassert those objections. Is that
18 understood?

19 MR. ROBERTS: Yes, Your Honor.

20 THE COURT: Okay.

21 MR. ROBERTS: And I appreciate that.

22 THE COURT: You may, but you don't have to. They're
23 reserved.

24 Yes?

25 MR. CLOWARD: I just needed some clarification, Your

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1 Honor. That's all.

2 THE COURT: Of course.

3 MR. ROBERTS: He was just making sure that the Court's
4 ruling -- that all of your rulings on admissibility, orders for production,
5 were only for the purpose of evidentiary hearing, and you were not
6 ruling on the admissibility for the purposes of trial.

7 THE COURT: Yes.

8 MR. ROBERTS: And I remember you explained that during
9 the last session.

10 THE COURT: Yes. And that remains the continued
11 understanding and order of this Court.

12 MR. ROBERTS: Thank you, Your Honor.

13 THE COURT: I don't mind clarifying that. One final question
14 that the Court needs answered for clarification. So I have now the flash
15 drives of the materials submitted in-camera to the discovery
16 commissioner. Can you state what exactly you want me to do with
17 those? Remind me, please. Other than to review them again for
18 relevance, which I don't -- there was some issue about whether that was
19 the same stuff that was produced to me in these in-camera binders.

20 MR. ROBERTS: And it was -- there may be some overlap,
21 Your Honor, but it was a different issue. I don't believe Jacuzzi is asking
22 for the Court to do anything with that. But because we have provided
23 redactions, and given the context all of this was in, we just wanted to
24 have -- make sure the Court had a complete unredacted set of everything
25 we had redacted in the event any issues came up as far as the -- whether

1 we had withheld anything wrongfully or in bad faith.

2 THE COURT: Mr. Cloward, anything else you want me to do
3 with those other than to study them to see if there's anything that the
4 Court believes should have been produced in this case?

5 MR. CLOWARD: Yeah. That would be our -- understanding
6 was is that there was going to be, kind of, a comparison of those.

7 THE COURT: All right. I'll use the discovery commissioner's
8 documents as a comparison with the other in-camera documents, and let
9 you know if there's any further orders I need on that.

10 MR. ROBERTS: Thank you, Your Honor.

11 MR. CLOWARD: Thank you, Your Honor.

12 THE COURT: Anything else, counsel?

13 MR. CLOWARD: Just thank you for the Court's indulgence.
14 We appreciate it.

15 THE COURT: Thank you. I appreciate that. Not a problem.
16 Madam Clerk?

17 THE CLERK: I just want to be clear. On 193, that one was
18 asked to be admitted today, right? That's what I wrote down.

19 MR. CLOWARD: Correct. 193 through 197. And then we had
20 discussed 198, 199, 200.

21 THE COURT: Right. And the Court admitted 193 through
22 whatever was provided at the beginning of the day.

23 THE CLERK: And was there objection to those?

24 THE COURT: Mr. Roberts, I don't think you objected to the
25 new documents that were provided to the Court this morning. That's the

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1 stuff that the Court ordered a few days ago for Jacuzzi to produce
2 without you waiving attorney client privilege.

3 MR. ROBERTS: Correct. We've reserved our objection to
4 attorney client work product --

5 THE COURT: Work product.

6 MR. ROBERTS: -- and attorney client privilege. But other
7 than that, we had no objection.

8 THE COURT: Okay. And you reserved your right to object on
9 any purposes at trial?

10 MR. ROBERTS: Correct.

11 THE COURT: Okay. Very good.

12 MR. ROBERTS: Absolutely, Your Honor.

13 THE COURT: Counsel, are we done?

14 MR. CLOWARD: Yes.

15 MR. ROBERTS: Yes.

16 THE COURT: Thank you very much.

17 MR. GOODHART: Well, I think there was one other issue that
18 we had with respect to the pretrial motions.

19 MR. CLOWARD: We signed a stipulation on that.

20 MR. GOODHART: Oh do you have that, or do you want to
21 email it, or --

22 MR. CLOWARD: Oh no, thank you very much. Yes, we did.
23 I'm sorry. I raised that, but I forgot to hand that to the Court. We
24 formally did stipulate on that.

25 THE COURT: Okay.

1 MR. CLOWARD: So there's a stipulation and order for the
2 Court regarding those.

3 Thank you, Phil.

4 THE COURT: Very good. So this will just be -- while I see it,
5 and I'm glad I have it, I don't need to mark it as a Court exhibit. I'll tell
6 you what, why don't -- we'll log it in and put it in Mr. Cloward's attorney
7 folder. And then you take the responsibility of getting it filed --

8 MR. CLOWARD: You've got it, Judge.

9 THE COURT: -- and properly served.

10 MR. CLOWARD: You've got it.

11 THE COURT: Very good.

12 MR. CLOWARD: Thank you again.

13 THE COURT: Thank you. All right. I appreciate your
14 professionalism and diligence. And court is now adjourned.

15 MR. ROBERTS: Thank you, Your Honor.

16 [Proceedings concluded at 2:41 p.m.]

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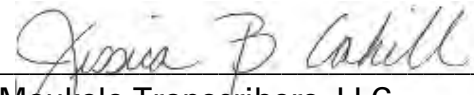
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21 ATTEST: I do hereby certify that I have truly and correctly transcribed the
22 audio-visual recording of the proceeding in the above entitled case to the
best of my ability.

23

24 
Maukele Transcribers, LLC
Jessica B. Cahill, Transcriber, CER/CET-708

25

EXHIBIT 205

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EXHIBIT 205

**SUMMARY OF AUGUST 17, 2018 DISCLOSURE (REDACTED); LATER DISCLOSED IN UNREDACTED FORM ON
NOVEMBER 27, 2018**

Ex.	End User Name	Bate Number	Description	Date of Incident or emails	Search Terms Triggered
48	Michael Kanarek (deceased)	Rev Jacuzzi005972- Rev Jacuzzi005973	"Advised that our units exceed the standard by 1.5 times. Said [Michael] <i>slipped from the seat and broke his toe</i> ... Said he was holding onto both handles on the right side with his right hand. <i>Mr. Kanarek said that our unit is unsafe and we need to do something about it</i> . He is asking for compensation for suffering and x-ray <i>swollen foot</i> ... [he's] <i>suffering</i> . He said he doesn't know if we want to sue him or not... [H]e is 80 years old and he wants compensation. <i>He is very upset and scared to use the bath</i> . She said <i>no one advised that the tub could be slippery</i> . Now they cover the seat and put strips on the floor. This happened 2.5 to 3 weeks ago. They want compensation for the suffering... Isabel called for us to note that the tub she purchased had a <i>very slippery seat and floor</i> . Her <i>husband slipped and fell and his big toe got caught in the drain and it broke the toe</i> . He is in extreme pain. She did not realize something like this could happen because we advertise a safe walk in tub."	May/2014	slip seat
52a	Barbara Morrison	Jacuzzi002927- Jacuzzi002937; Rev Jacuzzi005940- Rev Jacuzzi005947	"complaint of <i>slippery floor</i> - wants JLB to do something or tub be removed" ... " <i>slippery tub and seat</i> ... bruised his face from faucet impact." ... "She is in contact with her attorney. She is going to fill[e]... Date of Incident 1/21/15 -Alleges <i>slippery tub caused the fall</i> . She hit her face on the faucet and now has a black eye."	Feb./2015	slip seat fall incident

**SUMMARY OF AUGUST 17, 2018 DISCLOSURE (REDACTED); LATER DISCLOSED IN UNREDACTED FORM ON
NOVEMBER 27, 2018**

Ex.	End User Name	Bate Number	Description	Date of Incident or emails	Search Terms Triggered
53	Eucelta Herman (deceased)	Rev Jacuzzi005998- Rev Jacuzzi006016; First004901	"Patricia [Herman] called in. She bought tub for her mom. She bought this tub due to the flyer and what it offered. <i>Seat - Slippery</i> - Fairbanks came out and sprayed something on the seat not it ruff and due to her moms age the skin is thin and is leaving marks (scratches) on her. (FS recommend Solid Step Cote which you have to brush or rolled in on)... RE: Jacuzzi Walk In Tub ADA Contoured <i>Seat Design and Grab Bars</i> - Fairbanks Construction"	Feb./2015	slip seat grab bars design
57	Jerry Robinson (deceased)	Jacuzzi002938- Jacuzzi002940	"per daughter... her dad has <i>slipped twice on this tub</i> ... dad was trying to get up [from] the seat and exit the tub and he <i>slipped and hurt his elbows and back</i> End-up <i>calling the fire department to assist her with getting her husband out of the tub.... Do not feel safe using their walk-in tub.</i> "	Mar./2015	slip seat
60	Charles Wharff	Jacuzzi002989- Jacuzzi002990	"[T]he first time Mr. Wharff... used the tub, he <i>fell in front of the seat and became wedged between the open door and the seat</i> . He <i>suffered significant injury</i> as a result of this incident. Mr. Wharff... <i>would not have fallen if the tub had not been excessively slippery, and would have suffered much less if he had not become wedged in by the inward-opening door, which became a trap for him.</i> "	May/2015	fall slip door seat incident

SUMMARY OF AUGUST 17, 2018 DISCLOSURE (REDACTED); LATER DISCLOSED IN UNREDACTED FORM ON NOVEMBER 27, 2018

Ex.	End User Name	Bate Number	Description	Date of Incident or emails	Search Terms Triggered
87	Sandy Haywood	Jacuzzi002941- Jacuzzi002944	"air controls not working... Buttons hurt her fingers and she could not turn the tub off the other night and <i>had to crawl[] out of tub onto her toilet.</i> "	Apr./2016	
95	Leonard Baize	Jacuzzi002915- Jacuzzi002926	Got into the tub and then discovered that the <i>seat area was too narrow. Got stuck in the tub</i> causing bruising to his stomach area and scrapes. <i>Door</i> to tub <i>leaked.</i> "	June/2016	door seat
97	Ruth R. Curnutte	Jacuzzi002965- Jacuzzi002966	" <i>air jets thrus[t] her forward, causing her to land on knees with head underwater</i> – panicked and <i>tried frantically to get a hold of bar to pull herself up</i> – "The Walk-In Tub is a <i>death trap</i> " – " <i>could have drowned</i> " - Alert 911 useless... "I am a senior citizen, 85 yrs. + and a victim of exploitation of the elderly" Incident Date 7/18/2016, Incident Location Unspecified	Jul./2016	elderly incident
107	Noreen C. Rouillard	Jacuzzi002945- Jacuzzi002948	"Tub takes too long to drain" ... "wife Noreen got injured" ... "last time it took 47 min to drain, she could not wait, <i>felt stuck and tried to crawl out of the tub but fell and hurt herself</i> " ... "she wants a tub that is going to drain faster and feels there has been this defect since it was installed" ... "She <i>banged her head</i> directly on tile and has <i>bruises.</i> "	Sept./2016	

SUMMARY OF AUGUST 17, 2018 DISCLOSURE (REDACTED); LATER DISCLOSED IN UNREDACTED FORM ON NOVEMBER 27, 2018

Ex.	End User Name	Bate Number	Description	Date of Incident or emails	Search Terms Triggered
110	Nancy Marie Jones	Jacuzzi002949- Jacuzzi002963; Rev Jacuzzi006341- Rev Jacuzzi006349	"jets aren't working; she is very distressed... bathroom is flooded and she is now <i>sorry that she spent so much money on this tub</i> . Would not drain she had to sit in the tub for a long time... she <u><i>slipped and hurt her back</i></u> ."	Nov./2016	slip

SUMMARY OF AUGUST 17, 2018 DISCLOSURE (REDACTED); LATER DISCLOSED IN UNREDACTED FORM ON NOVEMBER 27, 2018

SUMMARY OF JACUZZI'S 15th NRCP 16.1 SUPPLEMENT (Served March 23, 2019)

Ex.	End User Name	Bate Number	Description	Date of Incident or emails	Search Terms Triggered
1	Mark W. Sutterluety	Jacuzzi004714	"when she went to get out <u>door would not open</u> and had to <u>crawl over the unit to get out</u> ... customer is 80 years old... Once she got out she realized there was water all over the floor in the bathroom and when sh went down stairs there was water running out of her kitchen ceiling." seal at bottom of door defective	May/2008	door
4	Wanda M. Salisbury (deceased)	Jacuzzi004715	"Won't operate properly. Jets too strong that were on in back area <u>bruising skin.</u> "	Oct./2012	
7	Fred Fuchs	Jacuzzi004716, Jacuzzi005465- Jacuzzi005466	"Bottom slippery... the customer has called in and is very upset because he says he has almost fallen 3 times since having his new walk-in tub installed. He says that the <u>floor of the tub is too slippery</u> ..no grip or no-slip feeling to the tub. This is a <u>very serious safety concern...</u> I really need someone to contact him ASAP to get a technician out to his home <u>before he falls</u> " "If the tub requires a resurface we will resurface it, however if it does not yet the customer's position is that it is slippery, we cannot make changes to the surface. We would instead recommend that the customer use <u>non skid bath mats</u> ."	Mar./2013	fall slip
44	Shirli M. Billings, PhD	Jacuzzi004712- Jacuzzi004713	"I had to climb out of the tub because I could not find a way to release the water."	Mar./2014	

SUMMARY OF JACUZZI'S 15th NRCP 16.1 SUPPLEMENT (Served March 23, 2019)

Ex.	End User Name	Bate Number	Description	Date of Incident or emails	Search Terms Triggered
56	Lois E. Gillespie	Jacuzzi004711	"Her first experience in this tub was absolutely a terrifying one that she will never forget... Then after her bath she attempted to drain the water only to find that the drain did not function at all. She was <u>stuck in her new bath tub with no way out!</u> The <u>drain would not open to get rid of the water</u> . After approximately two hours of crying she obtained the courage to climb over the side wall of the tub and thankfully did so without falling.... She was terrified as the <u>water level was well above her face</u> and she was <u>in her home alone</u> at 85 years old.... <u>Could not reach [the phone] to call for help</u> ... she was <u>forced to climb over the rather tall door and tub</u> , praying the entire time, hoping to reach the safety of her restroom floor."	Mar./2015	fall door
119	Susan Joyce Pullen (deceased)	Jacuzzi004696- Jacuzzi004710; Jacuzzi006775- Jacuzzi006800; Jacuzzi006906	"Non Slip Surface is Slippery... cs is complaining that <u>floor of tub is slippery</u> ... can not stick slip proof mat to tub due to non skid surface... says she has <u>slipped multiple times</u> ... cs's mother <u>fell in tub</u> ... feels <u>floor design is irresponsible</u> [sic]... cs's mother got <u>stuck in tub</u> , then shortly after <u>got blood clots and died</u> ... cs feels their mother may not have died if they had not fallen in tub" ... "complaining about floor grip. cajun grip mat for tub sent as a one time courtesy [sic]... <u>Tub slippery</u> / should not have texture... wants to speak to manager... tub is a <u>dangerous tub</u> ... should be smooth and not have texture ... <u>Mother slipped various times and [passed] away</u> ... doesn't know whether it was the tub or something else he slipped various times as well, said we sent a mat... he threw it away because it did not help... Customer wants to take legal action because he <u>thinks the tub killed his mom</u> . He was already given the Kahona mat, but feels the <u>bottom i[s] far to[fo] slippery</u> . Offered IMAPO listing, declined it... <u>Mat is</u>	Jan./2017	fall slip design

SUMMARY OF JACUZZI'S 15th NRCP 16.1 SUPPLEMENT (Served March 23, 2019)

Ex.	End User Name	Bate Number	Description	Date of Incident or emails	Search Terms Triggered
			<u>useless</u> ... <i>slipped on tub 3 times</i> . complaining about texture. [his] mother slipped as well, mention we sent a mat to him."		

SUMMARY OF JACUZZI'S 15th NRCP 16.1 SUPPLEMENT (Served March 23, 2019)

SUMMARY OF JACUZZI'S 18th NRCP 16.1 SUPPLEMENT (Served July 26, 2019)

Ex.	End User Name	Bate Number	Description	Date of Incident or emails	Search Terms Triggered
2	Unknown (Ref. No. 120705-000095, Serial #BDC7GD)	Jacuzzi005286 - Jacuzzi005287	Report states, " <i>broken hip</i> & says unit is <i>too slippery</i> . -Feels we should have more <i>grab bars</i> on both sides." "We will be using Megan's report to track the open incidents."	July/2012	slip grab bars incident
3	Irene Stoldt	Jacuzzi005621- Jacuzzi005623; Jacuzzi005719- Jacuzzi005720	"installed 9/18/12 installer Keith Cottett -- customer reported that unit would not drain; she <i>got stuck in the tub</i> and <i>had to crawl out of door</i> ... She was not happy at all. She is a 84 year old lady. She went to take a bath and when she was done she could not drain her tub. <i>She was stuck, she had to climb out</i> . Then she had to get a pail/bucker to drain the water out of her tub." "....the second is an old person who got stuck, no slip involved." ... "I'm guessing it's Anthony who is raising the slip issue." ... "one person got stuck to weak to keep himself out of the well, and one slipped"	Sept./2012	door slip
5	Customer C Lashinsky	Jacuzzi005621- Jacuzzi005623	"installed 12/29/12 installer Anthony Home Improvement -- customer called to request we replace her <i>door</i> under warranty. Partner slipped in tub, they had to remove the door to get her out. ... "one is a two issue not jacuzzi, the second is an old person who got stuck, no slip involved. I'm guessing it's Anthony who is raising the slip issue." "one person got stuck to weak to keep himself out of the well, and one slipped."	Dec./2012	door slip

SUMMARY OF JACUZZI'S 18th NRCP 16.1 SUPPLEMENT (Served July 26, 2019)

Ex.	End User Name	Bate Number	Description	Date of Incident or emails	Search Terms Triggered
6	Manuel & Patricia Arnouville	Jacuzzi005414- Jacuzzi005416; Rev Jacuzzi005958- Rev Jacuzzi005959	"regina this is Xbox wanted to let you know that we actually hear this complaint more and more often and the numbers increasing installations. <i>I would highly recommend that we consider putting something a little bit more abrasive Not only on the floor but also on the seats as we have had customers call concerned that they slip off the seat so wouldn't be a bad thing to consider adding to the new job just my thoughts.</i> " <i>Serial # BDFDK9 -- they are not using the tub because the wife keeps slipping off the seat and they are afraid of using the tub... wife slips on the seat and the floor.. they are afraid she will fall.</i> " "As far as I know the floor has a nonslip pattern design that prevents the user from slipping but the seat is plain, it has no slip pattern design." "per Ray, we do not have any plans on changing the surface." "The following incident has been forwarded to you... update you on this incident that I'm forwarding this over to Kurk Bachmayer... he <i>slipped and fell</i> causing him to <i>hurt his back</i> . He did not mentioned his injures to me... Is <i>willing to get a lawyer</i> if the tub is not taken out and he is refunded..." "The customer now says that the door has a huge leak out of the bottom of the <i>door</i> . He said it flooded the bathroom and adjoining room."	Dec./2012	fall seat slip design
8	Donald Raidt	Jacuzzi005367- Jacuzzi005370; Jacuzzi005715- Jacuzzi005716	"your stainless st[ee]l <u>controls</u> should have some indentation to provide for a better <u>grip</u> , when your hands are wet it is difficult to let the water out... Beldon has a policy that their crews can not finish out the door ways after the installation is complete... If your designers were required to use these tubs for a month or so I believe they would go for functional and not 'pretty'."	Apr./2013	door slip incident hurt
9	Edward Kleitches	Jacuzzi005336- Jacuzzi005337	"your stainless st[ee]l <u>controls</u> should have some indentation to provide for a better <u>grip</u> , when your hands are wet it is difficult to let the water out... Beldon has a policy that their crews can not finish out the door ways after the installation is complete... If your designers were required to use these tubs for a month or so I believe they would go for functional and not 'pretty'."	May/2013	door design

SUMMARY OF JACUZZI'S 18th NRCP 16.1 SUPPLEMENT (Served July 26, 2019)

Ex.	End User Name	Bate Number	Description	Date of Incident or emails	Search Terms Triggered
10	David Greenwell	Jacuzzi005372- Jacuzzi005376; Jacuzzi005621- Jacuzzi005623; Jacuzzi005717- Jacuzzi005718; Jacuzzi006854- Jacuzzi006855	"installer American Home Design... he slipped in the tub and <u>was trapped for two hours</u> trying to get out because he <u>slipped on the floor</u> . He said the <u>unit needs more grip</u> ." "he <u>slipped in tub</u> , got <u>stuck in the footwell had to call fire department to get out</u> ." "...the second is an old person who got stuck, no slip involved." ... "I'm guessing it's Anthony who is raising the slip issue." ... "one person got stuck to weak to keep himself out of the well, and one slipped" ... "As far as the <u>slipping inside the tub</u> we sale and install your product. Can you get you engineers to work on this." "Mr. Greenwell has not told you the truth... his demographic is prone to memory loss; maybe that is the issue." "Mr. Greenwell's tub is a RH <u>door</u> " ... "The on/off button was on the floor of tub when he opened the <u>door</u> for his first use. Also, does your company sell anything for shower floors to prevent slippage? He said the unit needs more grip."	June/2013	slip door design
11	Home Safety Bath Customers One & Two	Jacuzzi005317- Jacuzzi005320	"the <u>bottom of the tub is extremely slippery, he has slipped</u> , and also a friend has slipped in using it. we get this [slipperiness issue] complaint a lot, we have <u>two customers right now that injured themselves seriously and are threatening law suits</u> . We have sent out bath mats to put in the tub to three other customers because they slipped and were afraid to use the tub." "door hits the opposite side of the tub when you open it." "He thought he was getting the Cadillac of tubs, instead he got a <u>very poorly designed mess</u> ."	June/2013	door slip design injured

SUMMARY OF JACUZZI'S 18th NRCP 16.1 SUPPLEMENT (Served July 26, 2019)

Ex.	End User Name	Bate Number	Description	Date of Incident or emails	Search Terms Triggered
12	Home Safety Bath Customers Three, Four & Five	Jacuzzi005317-Jacuzzi005320	"we have sent out bath mats to put in the tub to <i>three other customers</i> because they slipped and were afraid to use the tub...."	June/2013	slip
13	Ron Flashberger [Flashburger]	Jacuzzi005317-Jacuzzi005720; Jacuzzi005707-Jacuzzi005714	"Mr. [I assume Flashberger] says the bottom of the tub is extremely slippery , he has slipped, and also a friend has slipped in using it." Incident number 130510-000108... "door did not match"	June/2013	slip incident door
14	Ron Flashberger's [Flashburger's] friend	Jacuzzi005317-Jacuzzi005320	" Mr. Flashberger's friend also slipped in the tub..."	June/2013	slip
15	Mrs. Howard	Jacuzzi005302-Jacuzzi005304; Jacuzzi006895-Jacuzzi006897	"Mrs. Howard called today and she said the tub is 'just not what she expected' it to be, <u>she called it 'dangerous' because she slips on the seat...</u> "	June/2013	slip seat

SUMMARY OF JACUZZI'S 18th NRCP 16.1 SUPPLEMENT (Served July 26, 2019)

Ex.	End User Name	Bate Number	Description	Date of Incident or emails	Search Terms Triggered
16	Patricia Brandon	Jacuzzi005305 - Jacuzzi005309	<p>She wrote detailed 3-page letter & complained to Jacuzzi that, "to my chagrin, that I could only enter the [t]ub sideways. I am 83 years old, and a very little overweight, but NOT that large. Anyone who is larger than I would hardly be able to enter the tub if at all. Then when I sat down, I realized <u>I would need to be extremely cautious, because the seat is so small</u>. Fortunately, I grabbed the hand bar to prevent a fall." Further she continued that she is extremely frustrated because she spent \$15,000 on a "Jacuzzi I'm afraid to use!"</p>	June/2013	fall overweight seat
17	Ruth Young	Jacuzzi005333; Jacuzzi005335	<p>"my comments are as follows; 1) the tub takes too much water and takes too long to fill. 2) after sitting down, the faucets and shower head cannot be reached; 3) <u>door should open out as there is barely room to squeeze by to get in</u>; 4) it is difficult to exit as there is nothing on the right hand side to hang onto ... p.s. one thing more, I do use a rubber bath mat, as I find the bottom of the tub slippery..."</p>	June/2013	door slip
18	Jerre Chopper	Jacuzzi005190- Jacuzzi005255	<p>Customer complained that Jacuzzi needed "hand rails on both sides. <u>Door hard to open or close with someone in the tub</u> -- needs more space." Customer stated, that the "drain was very hard to work with wet hands." That the "floor was very slippery." ... "The door opens inward and the pressure of the water would negate its opening." "The threshold is too high and slick."</p>	Jun./2013	slip door

SUMMARY OF JACUZZI'S 18th NRCP 16.1 SUPPLEMENT (Served July 26, 2019)

Ex.	End User Name	Bate Number	Description	Date of Incident or emails	Search Terms Triggered
19	Unknown	Jacuzzi005298-Jacuzzi005301	Customer survey 4 -- customer says the drain is hard to use and that he/she would not have bought it if I knew what I'd have to go through	June/2013	
20	Unknown	Jacuzzi005298-Jacuzzi005301	Customer survey 14 -- customer says surface is too slippery	June/2013	slip
21	Unknown	Jacuzzi005298-Jacuzzi005301	Customer survey 15 -- door not wide enough and is too short	June/2013	door
22	Unknown	Jacuzzi005298-Jacuzzi005301	Customer survey 18 -- customer says surface is too slippery and the seat in the tub is very slippery	June/2013	slip seat
23	Unknown	Jacuzzi005298-Jacuzzi005301	Customer survey 21 -- customer says "I would suggest a left and right extra hand grabber on the front of the tub to help pull/lift out "	June/2013	
24	Unknown	Jacuzzi005298-Jacuzzi005301	Customer survey 26 -- customer says the surface is too slippery and the floor is very slippery	June/2013	slip

SUMMARY OF JACUZZI'S 18th NRCP 16.1 SUPPLEMENT (Served July 26, 2019)

Ex.	End User Name	Bate Number	Description	Date of Incident or emails	Search Terms Triggered
25	Unknown	Jacuzzi005298-Jacuzzi005301	Customer survey 29 -- buttons are hard to use	June/2013	
26	Unknown	Jacuzzi005338	Customer survey 32 -- "tub too small, door not wide enough, <u>door swings in</u> not allowing access. "	June/2013	door
27	Unknown	Jacuzzi005338	Customer survey 34 -- "surface too slippery, <u>seat slippery.</u> "	June/2013	slip seat
28	Unknown	Jacuzzi005338	Customer survey 35 -- "faucet too hard to reach, door not wide enough, <u>hard to enter/exit,</u> " "after sitting faucet can't be reached. <u>Door should open out</u> as there is barely enough room to get in. Difficult to exit."	June/2013	door
29	Unknown	Jacuzzi005338	Customer survey 36 -- "drain hard to use."	June/2013	
30	Unknown	Jacuzzi005333-Jacuzzi005334	Would you recommend a Jacuzzi tub? "Not at this time. 1. Not as wide as out tub was 2. <u>Door swings to inside not allowing adequate access for disabled person.</u> . . ."	June/2013	door

SUMMARY OF JACUZZI'S 18th NRCP 16.1 SUPPLEMENT (Served July 26, 2019)

Ex.	End User Name	Bate Number	Description	Date of Incident or emails	Search Terms Triggered
31	Unknown	Jacuzzi005333- Jacuzzi005334	"seat slippery -- <u>you fall off onto tub floor -- door opens in so very hard to get up or be helped up...</u> "	June/2013	fall slip door seat
32	Cathryn Reynolds aka Catherine Reynolds	Jacuzzi005284- Jacuzzi005285; Jacuzzi005288- Jacuzzi005296; Jacuzzi005689- Jacuzzi005706; Rev Jacuzzi005962- Rev Jacuzzi005964; Rev Jacuzzi006027- Rev Jacuzzi006042; Rev Jacuzzi006228- Rev Jacuzzi006232	"customer feels tub is too slippery . Is suggesting that we offer a mat that fits the tub. What she bought doesn't fit. Will try to find a mat for her... she slipped twice but caught herself . She thinks the tub is too slippery and wants us to offer a mat for the floor... claims she continues to slip in the tub." "Ok, blind sided. I called the customer to explain how our product exceeds requirements set by American Society for Testing and Materials by 1.5 times. Her response to me was, So what you are telling me is that you are not going to do anything about my problem... The rep can stop by but not sure what they can tell her other than it's passed the national non slip testing which we can provide you... By the way, at one point it was true that we did not recommend the mats but Ray has confirmed that it is ok to add mats with caution that they need to remove after use so that the suction do not retail water."	Aug./2013	slip testing

SUMMARY OF JACUZZI'S 18th NRCP 16.1 SUPPLEMENT (Served July 26, 2019)

Ex.	End User Name	Bate Number	Description	Date of Incident or emails	Search Terms Triggered
35	Mrs. Borroz	Jacuzzi005314-Jacuzzi005316; Jacuzzi005435-Jacuzzi005438	"Mrs. Borroz called in and left a message for me. <u>She slipped in her tub and hit her arm on the grab bar</u> . She is requesting we send her a matt to put in the bottom of the tub, so it is not so slipperydo you have any suggestions? I had already suggested to her to go to Wal-Mart or Bath and Body and get one there, but she is saying they are all too big..."	Sept./2013	slip
36	Atlas Home Improvement Customers One, Two & Three	Jacuzzi005638-Jacuzzi005646	"we are having a <i>few</i> customers slipping on bottom of a Jacuzzi tub, I am wondering if you have any recommendations on a product and or a bath mat suitable for this issue."	Oct./2013	slip
37	Airtite Customers One, Two & Three (at a minimum)	Jacuzzi005666-Jacuzzi005667	" Hello: I have so many people stating the tub seat and floor are extremely slippery. Literally, unsafe. Is there any type of mat or something that we can do to help this issue? I tried to find online anything to help, but nothing the size we need."	Nov./2013	slip seat
41	Unknown Injuries	Jacuzzi005327	" we have a big issue and . . . Due to the circumstances involved with time line and <i>slip injuries this needs to be settled</i>" (injuries plural)	Dec./2013	Slip injuries
43	FirstStreet Customers One & Two	Jacuzzi005643	"FS has a couple of tubs in the field that people want removed because the customers claim they are too slippery to use. We proposed Liguiguard Solid Step Cote - an after- market anti [s]lip coating that Emmett Luder uses on tubs for the elderly. "	Mar./2014	slip elderly

SUMMARY OF JACUZZI'S 18th NRCP 16.1 SUPPLEMENT (Served July 26, 2019)

Ex.	End User Name	Bate Number	Description	Date of Incident or emails	Search Terms Triggered
46	Customer Carman	Jacuzzi005381	"customer Carman, the issue was documented as drain handle to hard too turn."	May/2014	
47	Customer Harris	Jacuzzi005380; Jacuzzi005721- Jacuzzi005722; Rev Jacuzzi005970- Rev Jacuzzi005971	"customer Harris was documented as slippery tub and buttons and drain handle hard to turn... " customer <i>slipped and fell in the tub</i> , she said the floor of the tub is very slippery... Slippery floor... She said she slipped off of the seat... I have attached a IAPMO that states the tub <i>meets required testing</i> ."	May/2014	slip seat testing
49b	Paul Kinzer	Jacuzzi005341- Jacuzzi005345; Jacuzzi005483- Jacuzzi005485	"He apparently has <i>fallen while exiting the tub</i> as his main complaint is that the <i>floor is too slippery</i> ... the floor, seats and walls of the tub are too slippery, Mr. Kinzer slips off the seat when in the tub and slips on floor when getting out; the grab bar is slippery; Mr. Kinzer's hands slip when grabbing the bar; the door knocks his knees when closing the door and it's hard for him to get into the tub. " <u>This is the man who has been injured in his tub.</u> " "we would like to have the agent also supply the slip resistant coating ... we will supply the product.... 20 minute application..."	July/2014	fall door slip seat exiting injured

SUMMARY OF JACUZZI'S 18th NRCP 16.1 SUPPLEMENT (Served July 26, 2019)

SUMMARY OF JACUZZI'S 19th NRCP 16.1 SUPPLEMENT (Served August 12, 2019)

Ex.	End User Name	Bate Number	Description	Date of Incident or emails	Search Terms Triggered
34	Robert Brannock	Rev Jacuzzi005960 – Rev Jacuzzi005961	“consumer called in stating that the floor is <u>very slippery</u> ... she is requesting that someone sends her a bath mat that is slip resistant. She has bought a few and has not worked.”	Aug./2013	slip
39	Carmen Perilloux	Rev Jacuzzi005965 – Rev Jacuzzi005967	“per Mrs. Perilloux, she is 80 years old and has slipped on her tub once and she is afraid to use it. She in complaining that her bathroom floor keeps getting wet, there is water leaking from underneath the tub onto the bathroom floor... Leaked on bathroom tile - causing customer to fall.”	Dec./2013	slip fall
42	Judy Lippincott	Rev Jacuzzi005968- Rev Jacuzzi005969; First004897	“Mrs. Lippincott called today to advise that <i>she is not happy with her unit. She slips on the seat</i> and has to hold onto the handle to take a bath. She also said that she almost slipped this morning getting out and said there was soap residue on the floor after she used the shower. Her final complaint was the door being too narrow and she has to move around after she is in the unit to be able to close the door.”	Jan./2014	slip door seat
49a	Charles Horn & Esther L.W. Horn	Rev Jacuzzi005974- Rev Jacuzzi005980; Rev Jacuzzi006233- Rev Jacuzzi006243	“customer called and said the floor is slippery and fell . He also wanted me to note that <i>he is not happy that he slipped in the tub and Jacuzzi will not do anything to correct the non-slip</i> .” “the customer is complaining that even with that on there, the surface becomes <u>hazardously very slippery</u> when he stands up to take a shower and uses soap.”	July/2014	slip

SUMMARY OF JACUZZI'S 19th NRCP 16.1 SUPPLEMENT (Served August 12, 2019)

Ex.	End User Name	Bate Number	Description	Date of Incident or emails	Search Terms Triggered
50	Clovis Ball	Rev Jacuzzi005993- Rev Jacuzzi005997; Rev Jacuzzi006248- Rev Jacuzzi006251	Needs to have extra grab installed “felt the floor was too slippery”	Sept./2014	slip
52b	CPSC Report #20150202- 72E1B- 1466080 (Serial #BDK86N)(71- year-old female in Missouri)	Jacuzzi005731- Jacuzzi005733	"Caller's wife was going to stand, used the bar to brace herself but her feet slid out causing her to fall. The bar should give her leverage and floor is supposed to be slip free. The bar held but the floor was not slip free. The caller's wife <i>sustained minor injuries including left foot and left knee bruising then back and tailbone bruising and pain</i> . The caller's wife treated herself the first week, just taking pain pills but the pain was too bad for self treatment... <u><i>The callers spoke with the manufacturer January 20th, 2015, spoke with [REDACTED] and on the 21st, caller doesn't remember name of representative. January 22nd, he spoke with [REDACTED] who was a manager but of no assistance.</i></u> He will try again but does plan to contact Consumer Protection. Submitter added [REDACTED] called him on 2/5/15 and said she ordered the part for his tub and as soon as it comes in she will call them to set a date to have it installed. Submitter noted today in 2/9/15 and they have not heard from her."	Feb./2015	fall slip

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Ex.	End User Name	Bate Number	Description	Date of Incident or emails	Search Terms Triggered
54	Joan Carrison	Rev Jacuzzi006017- Rev Jacuzzi006021; Rev Jacuzzi006312- Rev Jacuzzi006316	"Tub is <u>too slippery</u> and does not know how to adjust the jets"	Mar./2015	slip
55	Lois Gordee	Rev Jacuzzi006022- Rev Jacuzzi006026; Rev Jacuzzi006325- Rev Jacuzzi006328	Slippery tub	Mar./2015	slip
58	Suzanne P. Murphy	Rev Jacuzzi005981- Rev Jacuzzi005992; Rev Jacuzzi006048- Rev Jacuzzi006052; Rev Jacuzzi006372- Rev Jacuzzi006381	" floor in tub is very slippery. She hasn't used in a year." " floor is slippery and was not that way when she purchased the tub." "customer called in about her slippery floor on her tub and very upset that nobody that she has talked to in the past has ever gotten back to her."	Apr./2015	slip
59	Michael S. Fried & Barbara J. Fried	Rev Jacuzzi005744- Rev Jacuzzi005763	"the customer called and is very upset. He says they have to use the breakers in the garage to turn the tub on and off. He says that he is afraid that this will trap his wife in the tub because if she takes a bath, she	May/2015	fall door

SUMMARY OF JACUZZI'S 19th NRCP 16.1 SUPPLEMENT (Served August 12, 2019)

Ex.	End User Name	Bate Number	Description	Date of Incident or emails	Search Terms Triggered
			won't be able to stop the jets. <u>“Consumer got stuck in her tub”</u> because they had to turn it off at the breaker... finish on door is falling apart”		
62	Racheal Mayes	Rev Jacuzzi006043- Rev Jacuzzi006047; Rev Jacuzzi006359- Rev Jacuzzi006362	Dissatisfied with walk-in tub “is too small to reach the handles” “scared when if she slips the handle will be the first thing she hits”	Jun/2015	slip
63	Jean Tarbutton	Rev Jacuzzi006053- Rev Jacuzzi006057; Rev Jacuzzi006279- Rev Jacuzzi006282	AITH sent someone out when he reported the floor was slippery “reported the floor was slippery to put some product on the flooring of the tub – it has worked – but has left stain at bottom of tub”	July/2015	slip
65	Dale J. Kilburn, Jr.	Rev Jacuzzi006063- Rev Jacuzzi006067; Rev Jacuzzi006252- Rev Jacuzzi006258	Slippery on bottom “customer not happy with tub, wants to return if possible, him and his wife have trouble slipping , says unit is too <u>slippery even on seat area.</u> ”	Aug./2015	slip seat
66	Nancy A. Horstmeyer	Rev Jacuzzi006058- Rev Jacuzzi006062; Rev	Slipped and also cold air blows from under tub	Aug./2015	slip

SUMMARY OF JACUZZI'S 19th NRCP 16.1 SUPPLEMENT (Served August 12, 2019)

Ex.	End User Name	Bate Number	Description	Date of Incident or emails	Search Terms Triggered
		Jacuzzi006337- Rev Jacuzzi006340			
68	Mr. Bregman & Eleanor Anita Bregman	Rev Jacuzzi006068- Rev Jacuzzi006072; Rev Jacuzzi006333- Rev Jacuzzi006336	Walk in tub slippery on bottom	Sept./2015	slip
72	Doris Celentano	Rev Jacuzzi006082- Rev Jacuzzi006086; Rev Jacuzzi006271- Rev Jacuzzi006274	She cannot get into tub and close the door without sitting. Floor is far too slippery... Water cannot be turned on while sitting. She is 4" 120 lbs	Nov./2015	slip door
73	Patricia Cloud & Richard Sowards Cloud	Rev Jacuzzi006073- Rev Jacuzzi006081; Rev Jacuzzi006350- Rev Jacuzzi006354	"Her and her son slips and falls in the tub while us[ing]"	Nov./2015	fall slip
74	Bettie Crawford	Rev Jacuzzi005948- Rev Jacuzzi005952;	"drain stopper not closing – won't seal... bottom of floor is very slippery. "	Dec./2015	slip

SUMMARY OF JACUZZI'S 19th NRCP 16.1 SUPPLEMENT (Served August 12, 2019)

Ex.	End User Name	Bate Number	Description	Date of Incident or emails	Search Terms Triggered
		Jacuzzi006089- Rev Jacuzzi006093			
80	Karen Sommers	Rev Jacuzzi005764- Rev Jacuzzi005771; Rev Jacuzzi005799- Rev Jacuzzi005800	“the customer called and said she used a whole bottle of bubble bath and it caused her to fall and the tub is still slick , no matter what she does. <u>She slides off the seat.</u> ”	Feb./2016	fall seat
85	Delvina L. Posch & Norbert M. Posch	Rev Jacuzzi006094- Rev Jacuzzi006098; Rev Jacuzzi006264- Rev Jacuzzi006270	Wants extra grab bar and non-slip mat	Apr./2016	slip
89	Betty Cox	Rev Jacuzzi005953- Rev Jacuzzi005957; Rev Jacuzzi006099- Rev Jacuzzi006103; Rev Jacuzzi006139- Rev	“customer called and the floor is too slippery . Tub is slow to fill and drain.” LX07000 shipped to customer; invoiced at \$0	May/2016 Aug./2016	slip

SUMMARY OF JACUZZI'S 19th NRCP 16.1 SUPPLEMENT (Served August 12, 2019)

Ex.	End User Name	Bate Number	Description	Date of Incident or emails	Search Terms Triggered
		Jacuzzi006145; Jacuzzi006906			
93	Robert M. Bair, Sr.	Rev Jacuzzi006109- Rev Jacuzzi006121; Rev Jacuzzi006363- Rev Jacuzzi006366	Slipped in the tub and broke hand-held shower	June/2016	slip
94	Robert W. Thwaites, Jr.	Rev Jacuzzi006104- Rev Jacuzzi006108; Rev Jacuzzi006367- Rev Jacuzzi006371	"Tub is slippery – he falls ... drain is not staying open... He has been complaining about this for months and no results... Having a problem getting in and out walk-in tub"	June/2016	fall slip
100	Herminio Ballio	Rev Jacuzzi006123 - Rev Jacuzzi006127; Rev Jacuzzi006275 - Rev Jacuzzi006278	Wife is handicapped and slips easily, <u>tub is slippery at bottom, seat slippery too</u>	Aug./2016	slip seat
101	Karen W. Lugo	Rev Jacuzzi006128 - Rev Jacuzzi006138; Rev Jacuzzi006316 - Rev Jacuzzi006321	"Mom <i>slipped</i> and got her <i>foot and leg so lodged into the corner of the tub, that she couldn't pull herself out</i> ... had to call paramedics. It took two <i>paramedics/men</i> to dislodge my mom from this slip... She is <i>afraid to slip now</i> ." Requested <i>non-slip mats or texturing</i> made for walk-in tubs... "Do you have specially fitted	Aug./2016	slip door

SUMMARY OF JACUZZI'S 19th NRCP 16.1 SUPPLEMENT (Served August 12, 2019)

Ex.	End User Name	Bate Number	Description	Date of Incident or emails	Search Terms Triggered
			non-slip mats for the walk-in tubs? It appears as though her foot slipped and was lodged in the bottom of the doorway of the bathtub. Is there anything that you have to make the bottom of the doorway non-slip?		
102	Kathe W. Dolan	Rev Jacuzzi006146 - Rev Jacuzzi006156; Rev Jacuzzi006321 - Rev Jacuzzi006325; Jacuzzi006861- Jacuzzi006862	<u>Slipped and fell in bath</u> and it <i>took 45 minutes</i> for her <i>to get up and out of the bath</i> ... Wants <u>door</u> to open outwards, not inward.	Aug./2016	slip door
118	Maile Marie Good	Rev Jacuzzi006175- Rev Jacuzzi006186; Rev Jacuzzi006287; Rev Jacuzzi006294- Rev Jacuzzi006298	"tub is extremely slippery when she allows the water to drain completely, because the bottom is slipper[y] , she broke her tub on the drainer. Do you have any suggestions the customer can use to avoid the slippery feeling in the tub?"	Jan./2017	slip
122	Louise Diane Marbury	Jacuzzi005778- Jacuzzi005789	"consumer reporting that her drain release is not working. She said that it had stuck once before causing her to be trapped in the tub ... She was hysterical because this is the <i>2nd time she had been trapped in the tub</i> ... Elderly consumer got stuck in her WIT because the drain release would not work."	May/2017	elderly
123	Nellie R. McDiffett	Jacuzzi005775- Jacuzzi005777	"the customer called and said I already wrote what I do not like about the jacuzzi walk-in tub I bought in	July/2017	seat elderly

SUMMARY OF JACUZZI'S 19th NRCP 16.1 SUPPLEMENT (Served August 12, 2019)

Ex.	End User Name	Bate Number	Description	Date of Incident or emails	Search Terms Triggered
			<p>2014. I cannot reach the spigots to turn them on once... <u>I can't lie back in it or would slide down into the bottom</u>... too short to brace feet at other end... advertising is misleading... Takes a long time to fill and <u>there was no non-skid bottom</u> to it so they did come out and put one in and on the seat..." "You appeal to the elderly and folks with arthritis etc."</p> <p>"looking for slip resistant mat"</p>		
124	Paul Taubman	Rev Jacuzzi006187- Rev Jacuzzi006190; Rev Jacuzzi006355- Rev Jacuzzi006358		July/2017	slip
125	Lucille Marie Burgess & her husband	Rev Jacuzzi006192- Rev Jacuzzi006196	<p>"Consumer called because her husband noticed that the bottom of her walk-in tub was a little <i>slippery</i>. She wanted to know if we offered a bath mat for the tub....</p> <p>Told her that we do not offer mats with our tubs however; she could probably try and locate one through her local hardware store. She said that they do not have the correct size and that the suction covers do not stay attached."</p>	Aug./2017	slip
126	Alice Roehl	Rev Jacuzzi005935 - Rev Jacuzzi005939; Rev Jacuzzi006197 - Rev	<p>"Jacuzzi tub has slippery bottom even though it's supposed to be non-skid... <u>she slipped when trying to get out and almost drowned</u>... sent Kahuna mat as a courtesy"</p>	Nov./2017	slip

SUMMARY OF JACUZZI'S 19th NRCP 16.1 SUPPLEMENT (Served August 12, 2019)

Ex.	End User Name	Bate Number	Description	Date of Incident or emails	Search Terms Triggered
		Jacuzzi006217; Jacuzzi006906			
127	David L. Williams and Debbie Williams	Rev Jacuzzi006218- Rev Jacuzzi006222; Rev Jacuzzi006259- Rev Jacuzzi006263; Jacuzzi006906	“customer not happy with tub; wants to trade this in as this is too big; this is also <u>too slippery</u> ... Consumer called in stating that she wanted to purchase some <i>bath mats</i> for her mother's walk-in tub... Consumer's daughter called back and wants to know what we are doing about the bath mat. I explained <i>these are accessory</i> and not a warranty item. She thought we were sending it out for free. <i>sending mat out as a 1x courtesy</i> ... <u>wants to purchase more kahuna grip mats.</u> ”	Jan./2018	slip
132	Christen Manual	Rev Jacuzzi006223- Rev Jacuzzi006227; Rev Jacuzzi006244- Rev Jacuzzi006247	“walk in tub, slipping on bottom... lady is <u>slipping on floor</u> they have <u>tried everything I suggested.</u> ”	Jun./2018	slip

SUMMARY OF JACUZZI'S 19th NRCP 16.1 SUPPLEMENT (Served August 12, 2019)

SUMMARY OF JACUZZI'S 22nd NRCP 16.1 SUPPLEMENT (Served August 23, 2019)

Ex.	End User Name	Bate Number	Description	Date of Incident or emails	Search Terms Triggered
45	Customer 00220052	Jacuzzi006858	"tub was installed on 3/27. <u>Was getting out and slid</u> on the <u>bottom of the tub. got stuck on the floor of the tub.</u> Husband use the tub and he almost slip. They purchase the non slip to go on the bottom of the tub" "customer fell in the tub - slippe[d] got stuck and hurt her back. Did not go to the doctor[]"s."	Mar./2014	slip
109	Arreallia Harrison	Jacuzzi006852- Jacuzzi006853	"floor is too slippery"	Oct./2016	slip

SUMMARY OF JACUZZI'S 22nd NRCP 16.1 SUPPLEMENT (Served August 23, 2019)

SUMMARY OF JACUZZI'S 23rd NRCP 16.1 SUPPLEMENT (Served August 27, 2019)

Ex.	End User Name	Bate Number	Description	Date of Incident or emails	Search Terms Triggered
51	Lynda & Abe Luna	Jacuzzi006906	LX07000 shipped to customer; invoiced at \$0	___/2015	
61	Velma & Clark Rutledge	Jacuzzi006903	LX07000 shipped to customer	May/2015	
64	Margaret Scribner	Jacuzzi006903	LX07000 shipped to customer	July/2015	
67	Chris Riggins	Jacuzzi006903	LX07000 shipped to customer	Aug./2015	
69	Catherine Haddad	Jacuzzi006903	LX07000 shipped to customer	Sept./2015	
70	Martha Fluke	Jacuzzi006903	LX07000 shipped to customer	Oct./2015	
71	Sheila Thompson	Jacuzzi006903	LX07000 shipped to customer	Oct./2015	
75	Donald Tennant	Jacuzzi006903-Jacuzzi006904	LX07000 shipped to customer	Dec./2015	
76	Ruggiero	Jacuzzi006906	LX07000 shipped to customer; invoiced at \$0	___/2016	
77	Jesse Pino	Jacuzzi006906	LX07000 shipped to customer; invoiced at \$0	___/2016	
78	Louis & Mary Fondario	Jacuzzi006906	LX07000 shipped to customer; invoiced at \$0	___/2016	
79	Rita Raby	Jacuzzi006903	LX07000 shipped to customer	___/2016	
81	Harry Sawyer	Jacuzzi006903	LX07000 shipped to customer	Mar./2016	

SUMMARY OF JACUZZI'S 23rd NRCP 16.1 SUPPLEMENT (Served August 27, 2019)

Ex.	End User Name	Bate Number	Description	Date of Incident or emails	Search Terms Triggered
82	Ingrid Vogel	Jacuzzi006903	LX07000 shipped to customer	Mar./2016	
83	Janet Sanders	Jacuzzi006903	LX07000 shipped to customer	Mar./2016	
84	Pauline Bonaventura	Jacuzzi006903	LX07000 shipped to customer	Mar./2016	
86	Brenda & Greg Burris	Jacuzzi006903	LX07000 shipped to customer	Apr./2016	
88	Joshua Young	Jacuzzi006903	LX07000 shipped to customer	Apr./2016	
90	Patricia Shawver	Jacuzzi006903	LX07000 shipped to customer	May/2016	
91	Susan Cheune	Jacuzzi006903	LX07000 shipped to customer	May/2016	
92	Lorraine Mosca	Jacuzzi006903	LX07000 shipped to customer	May/2016	
96	Sonia Willis	Jacuzzi006903	LX07000 shipped to customer	June/2016	
98	Martha March	Jacuzzi006904	LX07000 shipped to customer	July/2016	
103	Joseph Smolko	Jacuzzi006904	LX07000 shipped to customer	Aug./2016	
104	Kay Morris	Jacuzzi006904	LX07000 shipped to customer	Aug./2016	
105	Jamie Roberts	Jacuzzi006904	LX07000 shipped to customer	Aug./2016	
106	Elizabeth Scribner-Conboy	Jacuzzi006904	LX07000 shipped to customer	Sept./2016	
108	Phil Spiva	Jacuzzi006904	LX07000 shipped to customer	Oct./2016	

SUMMARY OF JACUZZI'S 23rd NRCP 16.1 SUPPLEMENT (Served August 27, 2019)

Ex.	End User Name	Bate Number	Description	Date of Incident or emails	Search Terms Triggered
111	Vicky & Dave Hogg	Jacuzzi006906	LX07000 shipped to customer; invoiced at \$0	___/2017	
112	Marie Hughes	Jacuzzi006906	LX07000 shipped to customer; invoiced at \$0	___/2017	
113	Linda Smolko	Jacuzzi006906	LX07000 shipped to customer; invoiced at \$0	___/2017	
114	Dale Shelley	Jacuzzi006906	LX07000 shipped to customer; invoiced at \$0	___/2017	
115	Errol Chadderton	Jacuzzi006906	LX07000 shipped to customer; invoiced at \$0	___/2017	
116	Linda Gross	Jacuzzi006906	LX07000 shipped to customer; invoiced at \$0	___/2017	
117	Brian Albert	Jacuzzi006906	LX07000 shipped to customer; invoiced at \$0	___/2017	
120	Rick & Kay Miller	Jacuzzi006904	LX07000 shipped to customer	Feb./2017	
121	Gertrude Gorney	Jacuzzi006904	LX07000 shipped to customer	Mar./2017	
128	Mr. & Mrs. Zimmerman	Jacuzzi006906	LX07000 shipped to customer; invoiced at \$0	___/2018	
129	David & Sandra Plowden	Jacuzzi006906	LX07000 shipped to customer; invoiced at \$0	___/2018	
130	William V. Gruber	Jacuzzi006906	LX07000 shipped to customer; invoiced at \$0	___/2018	
131	Charmaine Peterson	Jacuzzi006906	LX07000 shipped to customer; invoiced at \$0	___/2018	

SUMMARY OF JACUZZI'S 23rd NRCP 16.1 SUPPLEMENT (Served August 27, 2019)

Ex.	End User Name	Bate Number	Description	Date of Incident or emails	Search Terms Triggered
133	Esther Feldberg	Jacuzzi006863- Jacuzzi006866	" <i>Tub Slippery</i> ... ref to dealer, Fairbanks Construction... <i>recommend Kahuna grip.</i> "	Oct./2018	slip
135	Pearl Levin	Jacuzzi006906	LX07000 shipped to customer; invoiced at \$0	___/2019	
136	Customers of Bathwraps by Liners Direct	Jacuzzi006867- Jacuzzi006871	" <i>Slippery Floor</i> ?? ... We have had a few customer[s] complaining that the <i>floor of the tub is slippery and they almost fell.</i> Please advise as to resolution... Jacuzzi does meet all the required standards on the anti-slip flooring on the tubs. There is a product that the customer can purchase, it is called a <i>Kahuna Grip bath mat.</i> It is <i>not needed</i> and is just <i>offered as an additional peace of mind</i> for those customers that feel they need that."	Unknown	slip
137	Anne Flack	Jacuzzi006882- Jacuzzi006885; Jacuzzi006906	" <i>tub basin</i> is becoming more <i>slippery</i> ... -informed him we do not recommend any products to treat it for anti-slip, but <i>ordered a Kahuna grip matt [sic] as a courtesy</i> "	May/2019	slip
138	Nicholas Kuchta	Jacuzzi006886- Jacuzzi006889; Jacuzzi006906	" <i>slips in tub</i> ... customer called and upset that he cannot use his tub at this time... he says <i>floor was very slippery</i> ... he had a <i>mat installed</i> a few years ago but now that is <i>slippery too... Sending Kahuna Grip Mat as a courtesy.</i> "	May/2019	slip
139	Myrna Klayven	Jacuzzi006891- Jacuzzi006894; Jacuzzi006906	" <i>Floor is Slippery</i> ... <i>floor on bathtub is slippery</i> -states she is <i>needing a new grip mat</i> ... sending one as courtesy"	July/2019	slip

SUMMARY OF JACUZZI'S 23rd NRCP 16.1 SUPPLEMENT (Served August 27, 2019)

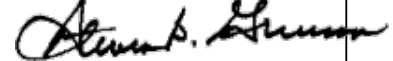
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Jacuzzi Inc. doing business as Jacuzzi Luxury Bath*

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

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

**DEFENDANT JACUZZI INC.'S
OPPOSITION TO 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**

005563

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005563

1 SUBCONTRACTORS 1 through 20, inclusive,
2 Defendants.

3 AND ALL RELATED CLAIMS.
4

5 Defendant Jacuzzi, Inc. dba Jacuzzi Luxury Bath (“Jacuzzi”) files its Opposition to
6 Plaintiffs’ Motion for Reconsideration RE: Plaintiffs’ Renewed Motion to Strike Defendant
7 Jacuzzi, Inc.’s Answer and Motion for Clarification Regarding the Scope of the Forensic
8 Computer Search. This Opposition is based on the following Memorandum of Points and
9 Authorities, the attached exhibits, the pleadings and papers on file, and any oral argument this
10 Court may consider.

11 **MEMORANDUM OF POINTS AND AUTHORITIES**

12 **I. INTRODUCTION**

13 Plaintiffs’ motion is fatally flawed and based on materially false representations.
14 Plaintiffs’ counsel has taken the curious position—through repeated motions to strike—that
15 Jacuzzi has not produced all information it should have, while simultaneously arguing every time
16 Jacuzzi produces information it is a basis for a motion to strike. The tactic is disingenuous and
17 abusive.

18 Instead of focusing on the merits of the case, Plaintiffs’ counsel has spent most of the past
19 year concocting the ruse that Jacuzzi and its counsel have conspired to conceal relevant evidence.
20 Since June of 2018, Plaintiffs have repeatedly filed frivolous and ill-founded motions seeking
21 case terminating sanctions. The newest iteration is Plaintiffs’ fourth attempt to strike Jacuzzi’s
22 answer for essentially the same baseless reasons raised in their earlier motions. Former Discovery
23 Commissioner Bulla refused to buy in to counsel’s conspiracy theory, acknowledging that Jacuzzi
24 and its counsel have been working in good faith to produce information according to ever-
25 changing theories and requests from Plaintiffs. This Court too has acknowledged that neither
26 Jacuzzi nor its counsel have engaged in any improper tactics.

27 Nevertheless, Plaintiffs’ motion asks the Court to re-evaluate—without any intervening
28 change in the facts, law or other valid basis for reconsideration—its well-reasoned March 12,

2019 order on Plaintiffs’ “Renewed” Motion to Strike Jacuzzi Inc.’s Answer. Plaintiffs’ instant motion is just another harassing effort to gin up a reason for the Court to reconsider a ruling that Plaintiffs don’t like. However, Plaintiffs’ motion does not meet the standard for reconsideration because—in addition to being premature—it does not contain any new, much less relevant, facts or law. Indeed, the “new evidence” that Plaintiffs’ entire motion is based on—Jacuzzi’s identification of an incident it was made aware of in October of 2018—was disclosed to both Plaintiffs and the Court *before* the Court issued the March 12, 2019 order that Plaintiffs’ say ought to be reconsidered. Plaintiffs’ abject failure to demonstrate any justification to reconsider that order renders Plaintiffs’ motion defective on its face. Thus, the motion is procedurally barred and should be denied on that basis alone.

Should the Court consider the merits of the motion, it should still be denied. Plaintiffs have not shown any new facts that came to light after this Court’s March 12, 2019 order. Plaintiffs have not cited any controlling law newly announced after the Court rendered its decision. Plaintiffs have entirely failed to make any showing of mistake, inadvertence, surprise, excusable neglect, newly discovered evidence, or fraud as required by the Nevada Rules of Civil Procedure. Plaintiffs simply don’t like the Court’s March 12, 2019 order but cannot even begin to show that it was wrong, because it was not. Plaintiffs’ motion is improper and a waste of the parties’ and the Court’s time and resources. The Court should deny Plaintiffs’ motion.

II. BACKGROUND

A. Timeline and History of Plaintiffs’ Frivolous Motions and Harassing Litigation Tactics.

On June 22, 2018—nearly a year ago—despite that Jacuzzi had produced all documents related to potentially similar personal injury claims arising before the date of the subject incident (and consistently represented this to Plaintiffs), Plaintiffs filed their first baseless Motion to Strike Jacuzzi’s Answer.¹ Concurrently, Plaintiffs also filed a Motion for Sanctions against Jacuzzi for “failure to produce evidence.”² The Discovery Commissioner denied both motions.³

¹ See Plaintiffs’ Motion to Strike Defendant Jacuzzi, Inc.’s Answer (June 22, 2018).

² See Plaintiffs’ Motion for Sanctions Against Defendant Jacuzzi, Inc. for Failure to Produce Evidence (June 22, 2018).

During the hearing on July 20, 2018, the Discovery Commissioner did order Jacuzzi—for the first time—to produce any personal injury or death claims involving a Jacuzzi walk in tub with an inward opening door from 2008 to present—August 17, 2018.⁴ This was the first time Jacuzzi was directed to search for other claims occurring *after* the subject incident. Adhering to the Court’s direction, Jacuzzi performed a subsequent incident search for any claims for injury or death. Jacuzzi promptly produced the database entry for each relevant hit on August 17, 2018—months before Jacuzzi was aware of the blood clot incident that Plaintiffs now complain of.⁵

After Jacuzzi produced the incident reports for the handful of responsive (but irrelevant) subsequent incidents it found in response to the Discovery Commissioner’s order, Plaintiffs served additional discovery requests on August 27, 2018. Unlike the earlier requests limited to claims of personal injury or death, the new batch asked about *any* other incident or complaint involving *any* walk-in tub, regardless of injury.⁶ Jacuzzi moved for a protective order to relieve it from having to answer these overbroad and far-reaching requests.⁷ At the hearing on September 19, 2018, the Discovery Commissioner ordered Plaintiffs’ to revise the scope of the requests from any complaint or incident imaginable to all “bodily injury and wrongful death claims”—even if dissimilar to the subject incident.⁸ The Discovery Commissioner also ordered Jacuzzi to produce for in-camera inspection the spreadsheet relating to its *prior* search for similar incidents.⁹ Though Jacuzzi objected to the broad discovery order and ultimately sought relief from the Nevada Supreme Court on this issue,¹⁰ it nonetheless complied. As ordered, on October 12, 2018, Jacuzzi also produced a spreadsheet of its *prior* search results from the Spring 2018, along with an explanation of Jacuzzi’s search to the Discovery Commissioner for in-camera inspection. On November 2, 2018, the Discovery Commissioner held a hearing on her in-camera review of those

³ See July 20, 2018 Hearing Transcript at 4:8-15, attached as **Exhibit 1**.

⁴ See *id.* at 9:10-3; 10:15-11-16.

⁵ August 17, 2018 Letter from J. Cools to B. Cloward, attached as **Exhibit 2**.

⁶ See Plaintiffs’ Second Request for Production of Documents to Jacuzzi, Inc. (August 27, 2018), attached as **Exhibit 3**.

⁷ See Jacuzzi’s Motion for Protective Order (September 13, 2018).

⁸ Discovery Commissioner Report and Recommendations (signed October 16, 2018)(“October 16, 2018 DCRR”), attached as **Exhibit 4**, (emphasis added).

⁹ See October 16, 2018 DCRR.

¹⁰ Petition for Writ of Prohibition (December 7, 2018), attached as **Exhibit 5**.

Jacuzzi's documents, where she ruled that the additional documents submitted to her were protected from disclosure.¹¹

B. This Court's Orders Regarding Plaintiffs' "Renewed" Motion to Strike.

Unhappy with Discovery Commissioner Bulla's treatment of their prior motion to strike, on January 10, 2019, Plaintiffs filed a "renewed" motion to strike Jacuzzi's answer on an unnecessary order shortening time—asserting largely the same allegations made in their first motion to strike, but adding the argument that Jerre Chopper should have been disclosed as a witness and that Jacuzzi should now be compelled to produce any documents related to "slipperiness issues."

Following the February 4, 2019 hearing on that motion, this Court issued a minute order on March 4, 2019 (the "March 4th Order"), setting an evidentiary hearing "to determine whether, and to the extent to which, sanctions might be assessed against Jacuzzi and/or First Street for failure to timely disclose the Chopper incident."¹² In the March 4th Order, the Court also limited the timeframe but expanded the scope of the forensic review to "all incidents involving a Jacuzzi walk-in tub with inward opening doors, for the time period of January 1, 2008, through the date of filing of the complaint, where a person slipped and fell, whether or not there was injury, whether or not there was a warranty claim, and whether or not there was a lawsuit."¹³ The Court further ordered the parties to file a brief identifying, among other information, "the names of any relevant customers of Jacuzzi/First Street that have died."¹⁴ In compliance with the Court's order to identify any "customers that have died," on March 7, 2019, Jacuzzi filed a status brief stating:

Jacuzzi is aware of two lawsuits involving customers who have allegedly died related to use of a Jacuzzi® walk-in tub: Sherry Lynn Cunnison (the decedent in this lawsuit) and Mack Smith (whom Plaintiffs' counsel has filed a wrongful death lawsuit on behalf of in California).

Jacuzzi has also been made aware, during the course of this litigation, that Charles Wharff, Sr. (who was allegedly injured in 2015 while using a Jacuzzi® walk-in Tub) has passed away. Jacuzzi has no further information as to the facts and

¹¹ See Discovery Commissioner's Report and Recommendation (signed January 3, 2019)("January 3, 2019 DCRR"), attached as **Exhibit 6**.

¹² See March 4, 2019 Minute Order (March 4th Minute Order), attached as **Exhibit 7**.

¹³ *Id.*

¹⁴ *Id.*

1 circumstances of Mr. Wharff's subsequent death, and no claim has been made
2 against Jacuzzi for personal injury or death.

3 Jacuzzi was also recently made aware in October 2018 by the family of an
4 individual who passed away that the decedent allegedly developed blood clots and
5 died shortly after "getting stuck" in a Jacuzzi® walk-in tub ["the blood clot
6 incident"]. The family stated they did not know whether the person's passing
7 away was related to the tub or something else, but felt it was related to the tub.
8 Jacuzzi has no further information as to the facts and circumstances of her death or
9 whether it was related in any way to the use of a Jacuzzi® tub, and no claim has
10 been made against Jacuzzi for personal injury or death.¹⁵

11 Jacuzzi interpreted the Court's March 4th Order to include any user of a Jacuzzi walk-in tub that
12 has passed away at any time, whether or not the death was related to or caused by the decedent's
13 use of the walk-in tub, whether or not there was a warranty claim related to the death, and
14 whether or not there was a lawsuit. Given that the March 4th Order was far broader than any of
15 the Discovery Commissioner's previous orders, and despite that the blood clot incident was
16 outside the timeframe directed by this Court for the forensic search, out of an abundance of
17 caution, Jacuzzi identified the blood clot incident that it learned of in October 2018. While
18 Plaintiffs are critical of the fact that Jacuzzi did not provide identifying information related to the
19 decedent, Jacuzzi itself does not know the name of the decedent. Rather, Jacuzzi was only made
20 aware in October 2018 by one of the decedent's family members that the decedent allegedly
21 developed blood clots and passed away at some unknown time after use of a walk-in tub.
22 Critically, no *claim* has been made against Jacuzzi for personal injury or death related to the
23 blood clot incident. Even the party that reported the incident gave vague statements about whether
24 the blood clots or the death were related to the tub.

25 On March 12, 2019—*after* Jacuzzi's disclosure of the blood clot incident—this Court
26 entered another Minute Order (the "March 12th Order") vacating the evidentiary hearing based on
27 the Court's thorough review of the briefing on Plaintiffs' "renewed" motion to strike.¹⁶ After
28 studying all of the exhibits, the Court reached the conclusion that Jacuzzi did not act in bad faith

¹⁵ See Jacuzzi's Brief Pursuant to the March 4, 2019 Minute Order, attached as **Exhibit 8**.

¹⁶ See March 12, 2019 Minute Order (March 12th Order), attached as **Exhibit 9**.

1 or intentionally violate any discovery order.¹⁷ The Court further changed its prior reference to
2 “Chopper Incident” to “Chopper Communication.”¹⁸

3 Spurred to a frenzy by the Court’s March 12th Order, the next day Plaintiffs submitted to
4 the Court (and served on defense counsel) their “Supplemental” Renewed Motion to Strike
5 Defendant Jacuzzi Inc.’s Answer, once again on an unnecessary order shortening time.¹⁹
6 Jacuzzi’s counsel has since learned from Plaintiffs’ counsel that this Court declined Plaintiffs’
7 order shortening time, and thus, Plaintiffs never ultimately filed that motion. Plaintiffs’ instant
8 motion is simply a rehash of Plaintiffs’ “Supplemental” Renewed Motion to Strike Defendant
9 Jacuzzi Inc.’s Answer submitted to the Court approximately two months ago. Critically, Plaintiffs
10 have now known about the blood clot incident for over two months yet have chosen not to pursue
11 any discovery into the facts or circumstances surrounding the incident that they claim is so
12 relevant to warrant an evidentiary hearing as to why it was not identified at an earlier time.
13 Indeed, Plaintiffs have not even tried to argue they have been prejudiced in any way by the timing
14 of the production. Plaintiffs instead opted to file another improper sanctions motion and continue
15 their harassing litigation tactics. Ironically, the entire basis for Plaintiffs’ fourth request to strike
16 is that Jacuzzi is not disclosing information, yet Plaintiffs’ sole support for the motion is
17 information Jacuzzi produced.

18 C. History of the Forensic Search.

19 The idea for a forensic review was first broached at a hearing of August 29, 2018, when
20 Plaintiffs’ counsel requested that the Discovery Commissioner allow Plaintiffs to have an
21 independent third party conduct a forensic search of Jacuzzi’s computer system.²⁰ The Discovery
22 Commissioner properly denied Plaintiffs’ initial request, and advised Plaintiffs to file an
23 appropriate motion if they believed they were entitled to such relief.²¹ They did not do so.

25 ¹⁷ *Id.*

26 ¹⁸ *Id.*

27 ¹⁹ See Plaintiffs’ Supplemental Renewed Motion to Strike Defendant, Jacuzzi Inc.’s Answer (dated March 13, 2019),
attached as **Exhibit 10**.

28 ²⁰ Discovery Commissioner Report and Recommendations (signed November 14, 2018)(“November 14, 2018
DCRR”), attached as **Exhibit 11**.

²¹ *Id.*

1 Thereafter, during the September 19, 2018 hearing on Jacuzzi's motion for protective
2 order, the Discovery Commissioner ordered that Jacuzzi was protected from having to respond
3 Plaintiffs' RFP No. 17, seeking "mirror images" of Jacuzzi's NRCP 30(b)(6) designees' computer
4 hard drives.²² In the alternative, the Discovery Commissioner recommended that a third-party
5 vendor *may be* permitted to perform a forensic review provided that the cost was reasonable.²³
6 Jacuzzi and Plaintiffs were to meet and confer to determine agreeable search parameters. The
7 timeframe for the search was from "2008 to present"—September 19, 2018.²⁴ The parties were
8 ordered to obtain cost estimates from a third-party vendor to submit to the Discovery
9 Commissioner for discussion at the hearing on November 2, 2018, where she would decide
10 whether the search would take place and, if so, the parameters of the search.²⁵ Jacuzzi was also
11 directed to provide Plaintiffs with the logistical details necessary for Plaintiffs to obtain an
12 accurate cost-estimate, which it did, and Plaintiffs also obtained a cost estimate.

13 In the midst of the parties attempting to comply with the recommendation for a forensic
14 review, Plaintiffs issued a subpoena *duces tecum* directly to Salesforce, for records to be
15 produced to Plaintiffs by October 18, 2018. Jacuzzi, in response, filed a Motion for Protective
16 Order to quash the subpoena because it broadly requested confidential, proprietary and irrelevant
17 information related to Jacuzzi and third parties. Further, Jacuzzi opposed the subpoena on the
18 basis that the only relevant information that Salesforce might have was documents already
19 produced by Jacuzzi.²⁶ The Discovery Commissioner granted Jacuzzi's Motion for Protective
20 Order regarding the Salesforce subpoena, and granted alternative relief in the form of a third-
21 party forensic review of Jacuzzi's customer relation databases.²⁷ Since that time, Jacuzzi has been
22 continually attempting to coordinate the forensic search with Plaintiffs, but to no avail.

23 Instead, Plaintiffs' counsel has sought to expand the scope of the forensic search well
24 beyond what the Discovery Commissioner recommended. Plaintiffs now seek every detail of
25

26 ²² See Jacuzzi Inc.'s Motion for Protective Order (September 13, 2018).

27 ²³ See October 16, 2018 DCRR.

²⁴ *Id.*

²⁵ *Id.*

²⁶ Jacuzzi Inc.'s Motion for Protective Order on Order Shortening Time (October 15, 2018).

²⁷ January 3, 2019 DCRR.

Jacuzzi's IT system, including the system as it relates to companies that are completely unrelated to bath products and without regard to relevance to customer complaints. Plaintiffs attempt to do away with Nevada law related to relevancy and the scope of discovery, taking the position they are entitled to limitless discovery including unfettered access to all of Jacuzzi's documents, IT systems and privileged communications.

As this Court is aware, on May 14, 2019, Jacuzzi requested a status check to elicit guidance from the Court pertaining to the forensic review. Although Jacuzzi, on several occasions, requested that Plaintiffs stipulate to a joint request for status check to get direction from the Court, Plaintiffs repeatedly refused to jointly request a conference. Instead, Plaintiffs have filed this Motion for Reconsideration Re: Plaintiffs' Renewed Motion to Strike Defendant Jacuzzi, Inc.'s Answer ("motion"), in an effort to transform the status conference from a productive opportunity to seek informal guidance from the Court into a renewed platform to attack Jacuzzi and re-hash old arguments. For Plaintiffs' to argue a hearing is needed to preserve the record—and invalidate all attorney client communication privilege—is a farce, given Plaintiffs' multiple filings on the subject, totaling hundreds of pages.

III. ARGUMENT

A. **Plaintiffs' Motion for Reconsideration is Procedurally Improper under Nevada Law.**

Plaintiffs' motion is procedurally improper under every applicable Nevada rule. Motions for reconsideration are generally brought under either NRCP 59(e) or NRCP 60(b). Rule 59 allows a party to alter or amend a judgment, but requires that the motion be filed within 10 days after the entry of judgment. NRCP 59(e). Courts may also reconsider prior rulings under NRCP 60(b), but only under the following circumstances:

(b) Mistakes; Inadvertence; Excusable Neglect; Newly Discovered Evidence; Fraud, Etc. On motion and upon such terms as are just, the court may relieve a party or a party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) *mistake, inadvertence, surprise, or excusable neglect*; (2) *newly discovered evidence* which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b); (3) *fraud* (whether heretofore denominated intrinsic or extrinsic), misrepresentation or other misconduct of an adverse party; (4) the judgment is void; or, (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based

has been reversed or otherwise vacated, or it is no longer equitable that an injunction should have prospective application.

NRCP 60(b) (emphasis added). Finally, EDCR 2.24 governs motions for reconsideration and provides that “no motions once heard and disposed of may be renewed . . . unless by leave of the court granted upon motion thereof.” EDCR 2.24(a). This rule also requires that a party seeking reconsideration must file a motion for such relief within 10 days after service of written notice of the order or judgment unless the time is shortened or enlarged by order. EDCR 2.24(b).

The Court emailed the parties a copy of the minute order on March 12, 2019. Since the March 12th Order was emailed to the parties, this Court has not served a final written and signed Order on Plaintiffs’ “Renewed” Motion to Strike Defendant Jacuzzi, Inc.’s Answer and accordingly, there has been no notice of entry of order. The district court’s minute order is not final, has not been filed or served, and there is no rule which would allow a party to seek reconsideration. *See Rust v. Clark Cty. Sch. Dist.*, 103 Nev. 686, 689, 747 P.2d 1380, 1382 (1987) (explaining that the district court’s oral pronouncement from the bench, the clerk’s minute order, and even an unfiled written order cannot be appealed); *Div. of Child & Family Servs. v. Eighth Judicial Dist. Court*, 120 Nev. 445, 451, 92 P.3d 1239, 1243 (2004) (holding that “dispositional court orders that are not administrative in nature, but deal with the procedural posture or merits of the underlying controversy, must be written, signed, and filed before they become effective”). Nevertheless, Plaintiffs have filed their procedurally improper motion in an effort to be afforded multiple oral arguments on the same motion before a written order is entered. This is improper, and the Court should deny Plaintiffs’ instant motion on that basis alone.

B. Should This Court Consider the Merits of Plaintiffs’ Motion, It Should Be Denied Because It Presents No New Relevant Facts.

A motion for reconsideration is proper only in very narrow circumstances. Reconsideration is appropriate only when “substantially different evidence is subsequently introduced or a decision is clearly erroneous.” *Masonry & Tile Contractors Ass’n of S. Nevada v. Jolley, Urga & Wirth, Ltd.*, 113 Nev. 737, 741, 941 P.2d 486, 489 (1997); *see also Moore v. Las Vegas*, 92 Nev. 402, 405, 551 P.2d 244, 246 (Nev. 1976) (noting that reconsideration should only

1 be entertained in those “very rare instances in which new issues of fact or law are raised
2 supporting a ruling contrary to the ruling already reached.”). Moreover, a motion for
3 reconsideration should not be granted, absent highly unusual circumstances. *Kona Enters., Inc. v.*
4 *Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000).

5 This is not a “rare instance,” nor have Plaintiffs presented any new facts that would
6 support a decision different than the one this Court reached on March 12, 2019. Plaintiffs have
7 simply regurgitated the same groundless allegations raised in their first and second motions to
8 strike. First, Plaintiffs claim that reconsideration of this Court’s decision to vacate the evidentiary
9 hearing is warranted because “an evidentiary hearing is necessary to determine why Jacuzzi did
10 not disclose Jerre Chopper or her letters...to determine why Jacuzzi clearly crafted its discovery
11 responses to requests for dealer information by only disclosing AITHR...to determine why
12 Jacuzzi failed to disclose any information regarding customer complains about the slipperiness of
13 their tubs.” Pltf. Motion at 3:22-6. Plaintiffs’ arguments are flawed for all the reasons outlined in
14 the underlying briefing. More to the immediate point, they were previously argued and rejected
15 by this Court.

16 Second, Plaintiffs claim that reconsideration of this Court’s decision to vacate the
17 evidentiary hearing is warranted because of Jacuzzi’s March 7, 2019 disclosure of the blood clot
18 incident. But this argument is the most baseless of all—the blood clot incident was disclosed to
19 Plaintiffs and the Court *before* the Court issued the March 12th Order. Beyond this, Plaintiffs’
20 disingenuous statement that Jacuzzi admitted the decedent died from use of a walk-in tub is
21 completely false; even the person that reported the incident stated he did not know if the death
22 was related to the decedent’s use of the tub. Therefore, these “new” allegations are no basis to
23 overturn this Court’s initial ruling. Plain and simple, the disclosure of the blood clot incident does
24 not justify reconsideration of the March 12th Order. The Court should deny Plaintiffs’ motion in
25 its entirety.

26 **C. The Court Correctly Determined That Jacuzzi Did Not Engage in Any Bad**
27 **Faith Conduct or Intentional Violation of Any Discovery Order.**

28 As discussed, Plaintiffs’ motion is based on the argument that the blood clot incident is

1 “new evidence” that somehow now establishes that Jacuzzi has engaged in egregious, bad faith
 2 conduct in the past. Pltf. Motion at 12:11-12. Contrary to Plaintiffs’ blatant misrepresentations,
 3 and as established by the case history detailed above, Jacuzzi has always disputed that dissimilar
 4 subsequent incidents are relevant.²⁸ Indeed, it filed a writ to the Nevada Supreme Court in part on
 5 that issue. Nevertheless, as detailed in Jacuzzi’s opposition to Plaintiffs’ “renewed” motion to
 6 strike, Jacuzzi has complied in good faith with every discovery order.²⁹ Aside from the fact that
 7 Jacuzzi was made aware of the blood clot incident in October 2018 incident *after* it produced
 8 information from its prior searches to the Discovery Commissioner, the documents related to the
 9 blood clot incident are *still* not responsive to the Discovery Commissioner’s order, and in no way
 10 support a claim that Jacuzzi has engaged in any intentional withholding of documents. The
 11 Discovery Commissioner ordered Jacuzzi to produce all “bodily injury and wrongful death
 12 claims.”³⁰ No claim or lawsuit has been filed against Jacuzzi related to the blood clot incident,
 13 and whether use of the tub and the death are related is sheer speculation. Thus, it did not fall
 14 within the scope of the Discovery Commissioner’s order—Jacuzzi complied with the directive to
 15 identify personal injury or death claims related to Jacuzzi’s walk-in tub products from 2008 to
 16 September 19, 2018 (“to present”).

17 Given that this Court’s March 4th Order was broader than any of the Discovery
 18 Commissioner’s previous orders, and despite that the blood clot incident was outside the time
 19 frame directed by this Court for the forensic search, Jacuzzi—in every effort to comply with this
 20 Court’s order—identified the individual who it was made aware in October 2018 had passed
 21 away after developing blood clots. Plaintiffs are now trying to get around the Discovery
 22 Commissioner’s ruling by alleging to this Court that Jacuzzi was somehow required to produce
 23 this blood clot incident prior to this Court’s March 4th Order. This argument fails.

24 ²⁸ In the products liability context, evidence of other incidents might be relevant if they involve “similar accidents
 25 involving the same condition” as the incident giving rise to the plaintiff’s claim. *See Reingold v. Wet ’N Wild Nev.,*
 26 *Inc.*, 113 Nev. 967, 969, 944 P.2d 800, 802 (1997), overruled on other grounds by *Bass-Davis v. Davis*, 122 Nev.
 27 442, 134 P.3d 103 (2006). Courts generally call this the “substantial similarity” requirement. *Cooper v. Firestone Tire*
 28 *and Rubber Co.*, 945 F.2d 1103, 1105 (9th Cir. 1991) (“A showing of substantial similarity is required when a
 plaintiff attempts to introduce evidence of other accidents as direct proof of negligence, a design defect, or notice of
 the defect.”).)

²⁹ *See* Jacuzzi’s Opposition to Plaintiffs’ Renewed Motion to Strike Jacuzzi Inc.’s Answer (January 24, 2019)

³⁰ October 16, 2018 DCRR.

D. An Evidentiary Hearing is Not Warranted and a Waste of the Court's and the Parties' Resources.

It is within this Court's sound discretion whether to grant or deny an evidentiary hearing. *Voggenthaler v. Maryland Square, LLC*, 2010 WL 4934036, at *2 (D. Nev. Nov. 30, 2010) (citing *United Commercial Ins. Service, Inc. v. Paymaster Corp.*, 962 F.2d 853, 858 (9th Cir.1992)); *United States v. Staula*, 80 F.3d 596, 603 (1st Cir. 1996) ("The district court has considerable discretion in determining the need for, and the utility of, evidentiary hearings."). District courts, with good reason, do not ordinarily conduct evidentiary hearings on discovery motions. *Id.* The discovery rules should be administered to secure the just, speedy, and inexpensive determination of every action—the discovery process should not be overburdened with unnecessary evidentiary hearings. *Id.*

Plaintiffs have already had their day(s) in Court on these issues, but persist in making flawed, irrelevant arguments contrary to fact and law. The Court clearly understood the underlying issues in Plaintiffs' "renewed" motion to strike. The Court "very arduously studied all of the Exhibits" when it reached the ultimate conclusion that "neither Jacuzzi nor First Street engaged in egregious bad faith conduct, or intentional violation of any discovery Order, or conduct intended to harm Plaintiff."³¹ As such, it was well within the Court's discretion to vacate the evidentiary hearing in light of this determination. An evidentiary hearing on these same issues would be an utter waste of the Court's and the parties' resources.

E. Plaintiffs are Not Entitled to Privileged Communications.

Should the Court determine an evidentiary hearing is warranted—which it is not—Plaintiffs' over-reaching attempt to unlawfully invade the attorney-client privilege and confidentiality must be denied. In furtherance of their quest to short circuit a trial of this matter on its merits, Plaintiffs' counsel now goes as far as misrepresenting to the Court that the events in this matter are like the *Anastasi v. PHW Las Vegas, LLC* case that was before Judge Israel. Counsel unequivocally misrepresents that in the *Anastasi* case, Judge Israel "ordered that the attorney-client privilege between defendant and defense counsel was waived as to

³¹ March 12, 2019 Order.

1 communications pertaining to the defendant's discovery efforts during litigation." On this false
2 basis, counsel invites this Court to permit Plaintiffs to invade the attorney-client privilege
3 between Jacuzzi and its counsel and embark upon an unwarranted discovery-on-discovery
4 odyssey.

5 In the *Anastasi* case, a local law firm represented the defendant in several cases involving
6 slip-and-fall claims that occurred in the same general area of the defendant's property. Plaintiffs
7 counsel's law firm in this case, Richard Harris Law Firm, represented one of these claimants. In
8 the Richard Harris Law Firm case, the defendant produced certain records indicating that a
9 sealant had not been reapplied to the area in question according to schedule. The defendant failed
10 to produce those same records in the *Anastasi* case. When Judge Israel ordered an evidentiary
11 hearing into the reasons why the defendant did not produce these records in the *Anastasi* case, the
12 defendant blamed its attorneys, invoking the "advice of counsel" defense to the discovery
13 violation and putting otherwise attorney-client privileged information "at-issue." Judge Israel
14 specifically advised defendant that if it invoked the "advice of counsel" defense, thereby putting
15 privileged communications "at-issue," the attorney-client privilege would be waived.³² Judge
16 Israel warned the defendant that it should seek independent counsel if the "advice of counsel"
17 defense was invoked. The defendant subsequently fired its attorneys and retained new counsel,
18 prompting Judge Israel to sign an Order outlining the defendant's waiver of the attorney-client
19 privilege as to communications between the defendant and its former counsel, limited to
20 communications regarding counsel's assisting the defendant with NRCP 16.1 disclosures and
21 discovery efforts.³³ The defendant went on to utilize an "advice of counsel" defense at the
22 evidentiary hearing.

23 In his Order following the evidentiary hearing in the *Anastasi* case, Judge Israel indicated
24 the following:

25 "The Court notes that after a preliminary hearing on this motion the
26 issue of 'advice of counsel' was raised by the Court and new
27 counsel was subsequently obtained. Once the new counsel

28 ³² See December 12, 2016 and January 18, 2017 Minute Orders, collectively attached as **Exhibit 12**.

³³ See February 22, 2017 Order, attached as **Exhibit 13**.

1 appeared, a phone conference was conducted where **the Court**
 2 **advised that if ‘advice of counsel’ was being raised then the**
 3 **attorney-client privilege would be waived as to this issue only.**
 4 The Court then held the above-mentioned evidentiary hearing.
 5 Although not specifically addressed because attorney-client
 6 privilege was not waived in its entirety, questions were raised at the
 7 hearing regarding what role corporate counsel played in the
 8 oversight of this case. The only comments were that there was little
 9 oversight. Since this was not fully addressed it is not an issue for
 10 the Court.”³⁴

11 The “at-issue waiver doctrine” applies where the client has placed at issue the substance
 12 or content of a privileged communication. *See Wardleigh v. Second Judicial Dist. Court In & For*
 13 *Cty. Of Washoe*, 111 Nev. 345, 354, 891 P.2d 1180, 1186 (1985)(discussing the doctrine in terms
 14 of whether the client has placed “at-issue the *subject matter* of privileged material” or “seeks an
 15 advantage in litigation by *revealing part of a privileged communication*” (emphasis added)
 16 (internal quotation marks omitted)); *see also Rockwell Int’l Corp. v. Superior Court*, 26
 17 Cal.App.4th 1255, 32 Cal.Rptr.2d 153, 161 (1994) (explaining that the doctrine
 18 applies “*only* when the client tenders an issue involving *the substance or content* of a protected
 19 communication” (second emphasis added)). Courts have held that “advice of counsel is placed
 20 [at-]issue where the client asserts a claim or defense, and attempts to prove that claim or defense
 21 by *disclosing or describing* an attorney client communication.” *Wynn Resorts, Ltd. v. Eighth*
 22 *Judicial Dist. Court in & for Cty. of Clark*, 399 P.3d 334, 345 (Nev. 2017). However, “[a] denial
 23 of bad faith or an assertion of good faith alone is not an implied waiver of the
 24 privilege.” *Bertelsen v. Allstate Ins. Co.*, 796 N.W.2d 685, 703 (S.D. 2011). “[A] client only
 25 waives the [attorney-client] privilege by expressly or impliedly injecting his attorney's advice into
 26 the case.” *Id.*

27 In sum, at-issue waiver occurs when the **holder** of the privilege pleads a claim or defense
 28 in such a way that eventually he or she will be forced to draw upon the privileged communication
 at trial in order to prevail, and such a waiver does not violate the policies underlying the privilege.
Id. (citing *Developments in the Law—Privileged Communications*, 98 Harv.L.Rev. 1450, 1637

³⁴ Order at 10:1-11 (emphasis added).

(1985)). Nevada has adopted this anticipatory waiver theory “because it reinforces the purpose of the privilege and ensures fairness in litigation.” *Wardleigh*, at 356, 1187.

As noted, the defendant in the *Anastasi* case raised the “at-issue” or “advice of counsel” defense to the plaintiffs’ discovery allegations. The defendant in that case fired its counsel, affirmatively waived attorney-client privilege in furtherance of its defense and retained new counsel to represent it thereafter. For Plaintiffs counsel in this matter to suggest to the Court that the *Anastasi* case is analogous to the instant case is simply untrue and demonstrates that counsel will go to great lengths to get what he quite obviously has wanted for the past year: unwarranted sanctions against Jacuzzi that will absolve Plaintiffs of their burden to prove their poorly conceived product defect claims.

F. The Scope of the March 4, 2019 Minute Order Regarding the Forensic Review Should Not Be Expanded.

At the outset, and contrary to Plaintiffs’ framing of this issue, it must be iterated that the forensic review was not ordered because the Discovery Commissioner believed Jacuzzi was acting in bad faith. In fact, the initial proposal for a forensic search was *not* made by the Discovery Commissioner but was a grant of Plaintiffs’ request in an attempt to alleviate concerns that there remained documents yet to be discovered by Jacuzzi. As the history of the proceedings demonstrate,³⁵ Plaintiffs’ request for a forensic search was never briefed in detail, and there were no certain parameters ordered by the Discovery Commissioner or this Court. Additionally, while Plaintiffs state that “Jacuzzi filed a Petition for Writ of Prohibition in the Nevada Supreme Court,” which “found that Plaintiffs are entitled to conduct the search within the scope originally ordered by former Discovery Commissioner Bulla and this Court,”³⁶ this is an egregious misrepresentation. Jacuzzi’s Writ of Prohibition was unrelated to the forensic search,³⁷ and Plaintiffs’ attempt to further cast Jacuzzi in a bad light here must be disregarded.

³⁵ A detailed history of the pending Forensic Review is summarized, *supra*, at II.C.

³⁶ Plaintiff’s Motion at 16:19–23.

³⁷ See generally Jacuzzi’s Petition for Writ of Prohibition, which was filed to protect the private information of Jacuzzi customers.

1 Since the date that the forensic review was recommended, Jacuzzi has been continually
2 attempting to coordinate the review upon the limited directive from the Discovery Commissioner.
3 Plaintiffs, in turn, have taken an exceptionally broad view of the forensic search, ignoring the
4 Discovery Commissioner's directive. For example, Plaintiffs requested that Jacuzzi produce an
5 inventory of *all* of the company's information assets,³⁸ no matter that the review was to be limited
6 to Jacuzzi's customer relation databases.³⁹ Nevertheless, Jacuzzi has thus far cooperated with
7 Plaintiffs' ridiculous and patently overbroad demands, in an effort to avoid intervention by the
8 Court.⁴⁰

9 The Court's March 4th Order should not be revised. As above, regardless of Plaintiffs'
10 accusatory allegations, the forensic review at issue was not ordered as a sanction for bad faith
11 conduct by Jacuzzi. In fact, this Court's March 12th Order found that that Jacuzzi has not
12 engaged in any egregious bad faith conduct, or intentional violation of any discovery order, or
13 any conduct intended to harm Plaintiffs.⁴¹ The forensic review must therefore be evaluated
14 consistent with NRCP 26, which commands that Plaintiffs are permitted to engage in discovery
15 that is "relevant to [Plaintiffs'] claims . . . and proportional to the needs of the case." Nev. R. Civ.
16 P. 26.

17 To be clear, "[c]ivil litigation should not be approached as if information systems were
18 crime scenes that justify forensic investigation at every opportunity to identify and preserve every
19 detail." *John B. v. Goetz*, 531 F.3d 448, 460 (6th Cir. 2008). Such an improper approach "is only
20 the first step of an expensive, complex, and difficult process of data analysis that can divert
21 litigation into side issues and satellite disputes involving the interpretation of potentially
22 ambiguous forensic evidence." *Id.* Such a course frustrates the "just, speedy, and inexpensive
23 determination of every action." NRCP 1.

24
25
26
27 ³⁸ See Affidavit of Ira Victor, attached as **Exhibit 14**.

³⁹ January 3, 2019 DCRR.

⁴⁰ See, e.g., March 13, 2019 letter to counsel regarding asset inventory review, attached as **Exhibit 15**.

⁴¹ *Id.*

1 Plaintiffs' attempt to expand the scope of this Court's March 4th Order⁴² is just another
2 effort to turn discovery into an invasion of Jacuzzi's information systems. This Court should
3 uphold its directive.

4 **G. Plaintiffs' Motion is Frivolous, Unnecessary, and Unwarranted and**
5 **Sanctions Against Plaintiffs are Appropriate**

6 Once again, Plaintiffs multiply these proceedings and vexatiously force Jacuzzi to incur
7 attorneys' fees to respond to their unsupported underlying position. Pursuant to EDCR 7.60, the
8 Court may "impose upon an attorney or a party any and all sanctions which may, under the facts
9 of the case, be reasonable, including the imposition of fines, costs or attorney's fees when an
10 attorney or party without just cause: (1) Presents to the court a motion or an opposition to a
11 motion which is obviously frivolous, unnecessary or unwarranted."

12 As explained above, Plaintiffs' motion is a last gasp effort to breathe life into this
13 otherwise dwindling case. The frivolity of the motion is unmistakable. As demonstrated above,
14 Plaintiffs' motion is procedurally improper under Nevada law and Nevada rules. But worse,
15 without any legal basis to do so, Plaintiffs' push to have this Court overrule its own well-reasoned
16 order. Jacuzzi should not have been required to expend the time and resources to oppose this
17 motion and therefore requests fees and costs associated with this opposition.

18 **IV. CONCLUSION**

19 Contrary to Plaintiffs' repeated misstatement of the history of this case, throughout
20 discovery Plaintiffs have engaged in harassing litigation tactics and sought discovery that is
21 overbroad, unrelated to the claims in the case, irrelevant, and protected by various privileges.
22 Plaintiffs are simply unhappy with the Discovery Commissioner's and this Court's treatment of
23 their prior motions and unsuccessful attempts to strike Jacuzzi's answer, so Plaintiffs continue to
24 harass Jacuzzi with the instant motion. Plaintiffs' abusive litigation practices must stop. Plaintiffs
25 have not provided any fact, law or even cogent argument to warrant reconsideration of this


26
27 ⁴² Per the March 4, 2019 minute order, "the scope shall be all incidents involving a Jacuzzi walk-in tub with inward
28 opening doors, for the time period of January 1, 2008, through the date of filing of the complaint, where a person
slipped and fell, whether or not there was an injury, whether or not there was any warranty claim, and whether or not
there was a lawsuit."

1 Court's March 12th Order. Plaintiffs' motion should be denied and this Court should award
 2 Jacuzzi costs and fees associated with having to oppose it.

3 DATED this 28th day of May, 2019.

4 SNELL & WILMER L.L.P.

5
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005581

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 OPPOSITION TO 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** by the method indicated below, addressed to the following:

- ☐ **BY E-MAIL:** by transmitting via e-mail the document(s) listed above to the e-mail addresses set forth below and/or included on the Court's Service List for the above-referenced case.
- ☒ **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.
- ☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below:

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 AITHR Dealer, Inc. and Hale Benton*

DATED this 28th day of May, 2019

/s/ D'Andrea Dunn
 An Employee of Snell & Wilmer L.L.P.

EXHIBIT 207

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EXHIBIT 207

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11
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
BUDD'S PLUMBING; DOES 1 through 20;
ROE CORPORATIONS 1 through 20; DOE
EMPLOYEES 1 through 20; DOE
MANUFACTURERS 1 through 20; DOE 20
INSTALLERS 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

PLAINTIFF DEBORAH TAMANTINI
FIRST SET OF INTERROGATORIES
TO DEFENDANT, JACUZZI INC.

PLAINTIFF DEBORAH TAMANTINI FIRST SET OF INTERROGATORIES TO
DEFENDANT, JACUZZI INC.

DEBORAH TAMANTINI individually, and heir to the Estate of SHERRY LYNN CUNNISON, Deceased; under the authority of Rule 33 of the Nevada Rules of Civil Procedure, by and through her attorney, BENJAMIN P. CLOWARD, ESQ. of the RICHARD HARRIS LAW FIRM and hereby requests that Defendant, JACUZZI LUXURY BATH, doing business as JACUZZI INC., answer, in writing and under oath, within thirty (30) days of receipt hereof, the Interrogatories, hereinafter, set forth.

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

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

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

PRELIMINARY STATEMENT AND DEFINITIONS

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

1. The singular number and the masculine gender, as used herein, also mean the plural, feminine or neuter, as may be appropriate.
2. These interrogatories call for all information (including information contained in writing) as is known or reasonably available to Defendant, Defendant's attorneys or any investigators or representatives or others acting on Defendant's behalf or under Defendant's direction or control, not merely such information as is known of Defendant's own personal knowledge.
3. If you cannot answer any of these Interrogatories in full after exercising due diligence to secure the information to do so, so state and answer the Interrogatory to the extent possible, specifying your inability to answer the remainder, the reasons therefor, the steps taken to secure the answers to the unanswered portions, and stating whatever information or knowledge you have concerning the unanswered portions, please also identify the persons you believe to have such knowledge, what you believe the correct answer to be and the facts upon which you base your answer.
4. If you consult any document or person in answering these Interrogatories, identify in regard to each such Interrogatory the person and/or document consulted.
5. The term "person" as used herein shall be deemed to mean any natural person, firm, association, partnership, corporation or any other form of legal entity or governmental body, unless the context otherwise dictates.
6. The term "document" as used in these Interrogatories means all written, recorded or graphic matters, however produced or reproduced and includes, but is not limited to, any record, report, paper, writing, book, letter, note, memorandum, correspondence, agreement, contract, journal, ledger, summary, minute of meeting, photograph, interoffice communication, telegram, schedule, diary, log, memorandum of telephone or in-person communication, meeting or conversation, Telex, cable, tape, transcript, recording, photograph, picture or film, computer printout, program or data of other graphic, symbolic, recorded or written materials of any nature whatsoever. Any document, as hereinabove defined, which contains any comment, notation, addition, insertion or marking of any kind which is part of another document, is to be considered a separate document.

1 7. The term "communication" as used in these Interrogatories shall mean any
2 dissemination of information of transmission or a statement from one person to
3 another or in the presence of another, whether by writing, orally or by action or
4 conduct.

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

8 9. The term "identify" or request to "state the identity" as used in these

9 Interrogatories shall call for the following information:

10 With respect to a person:

- 11 (1) His full name;
- 12 (2) His last known business and residence address.
- 13 (3) His last known business and residence telephone numbers;
- 14 (4) His last know job title and capacity;
- 15 (5) His relationship to you, by blood or marriage, including former marriages;
- 16 (6) Whether any statement pertaining to any matter involved in this litigation,
17 whether written or oral, or by recording device or by court reporter, or whether
18 signed or unsigned, has been taken from him, and if so, how many such
19 statements, and as to each statement, state the identity of thereof.

20 With respect to each document:

- 21 (1) Its nature (e.g., letter, memorandum, etc.);
- 22 (2) Its title;
- 23 (3) The date it bears;
- 24 (4) The date it was sent;
- 25 (5) The date it was received;
- 26 (6) The identity of all persons who prepared it or participated in anyway in its
27 preparation;
- 28 (7) The identity of the person sending it and who such person represented at that
29 time;
- 30 (8) The identity of the person to whom it was sent;
- 31 (9) The identity of the person who presently has custody of it and its present
32 location;
- 33 (10) Its subject matter and its substance;
- 34 (11) Whether the document is claimed to be privileged;

(12) If you exercise the option to produce business records pursuant to NRCP 34(c), please answer, nonetheless, subparts (1) through (9) hereof in regard to each pertinent Interrogatory.

With respect to "communication":

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

With respect to each "fact":

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

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

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

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

INTERROGATORIES

INTERROGATORY NO. 1:

Please identify the person or persons responding to these Interrogatories. Please identify in your answer each person who has provided information in connection with these interrogatory answers.

1 **INTERROGATORY NO. 2:**

2 Identify any and all persons who have knowledge of the events following the incident,
3 or have knowledge of the facts relevant to, or are related to the incident, or who have
5 investigated the incident, including their name, address and telephone number and, further,
6 describe in detail how this incident occurred.
7

8 **INTERROGATORY NO. 3:**

9 Identify when the subject Jacuzzi Walk-In-Tub was originally designed and developed,
10 specifying the dates of each modification thereto and the nature of the modifications.
11

12 **INTERROGATORY NO. 4:**

13 What are the names, present addresses, and company positions of each person involved
14 in the design and the design verification of the subject Walk-In-Tub, including but not limited
15 to, employees in engineering, quality assurance, quality control, reliability, general
16 management, sales, marketing, finance who specifically contributed to the subject design.
17

18 **INTERROGATORY NO. 5:**

19 Did any other company or individuals, who are not employees of Defendant design or
20 develop the subject Jacuzzi Walk-In-Tub or components thereof for the Defendant? If so,
21 please identify the name and address of each such company or individual.
22

23 **INTERROGATORY NO. 6:**

24 Please identify all documents concerning the design and development of the subject
25 Jacuzzi Walk-In-Tub.

26 **INTERROGATORY NO. 7:**

27 Identify the Defendant's employee who is the most knowledgeable about the design
28 and development of the subject Jacuzzi Walk-In-Tub.

1 **INTERROGATORY NO. 8:**

2 Please identify all tests or studies performed by the Defendant or by any independent
3 laboratory relating to the subject Jacuzzi Walk-In-Tub's safety and design. For each such test
5 or study, state:
6

7 (a) the date it was performed;

8 (b) the name, company position, and present address of the person responsible for the
9 test or study;

10 (c) the method used;

11 (d) the purpose of the test or study; and
12

13 (e) the results of the test or study
14

14 **INTERROGATORY NO. 9:**

15 If the tests or studies identified in your answer to the foregoing interrogatory resulted in
16 any change or modifications to the subject Jacuzzi Walk-In-Tub's, please state the nature of the
17 change or modification and the reason for such change or modification.
18

19 **INTERROGATORY NO. 10:**

20 State verbatim the content of any warnings or instructions on all written material that is
21 included in the packaging of a new Jacuzzi Walk-In-Tub which is the subject of this litigation.
22 Alternatively, provide a copy of such written material.
23

24 **INTERROGATORY NO. 11:**

25 Please state whether the Defendant has ever received notice, either verbal or written,
26 from or on behalf of any person claiming injury or damage from his use of a Jacuzzi Walk-In
27 Tub which is the subject of the litigation.
28

If so, please state:

1 (a) the date of each such notice;

2 (b) the name and last known address of each person giving such notice; and

3 (c) the substance of the allegations of such notice

5
6 **INTERROGATORY NO. 12:**

7 Has the Defendant ever been named as a defendant, respondent or other involuntary
8 participant in a lawsuit or other proceeding arising out of personal injuries or damage in
9 connection with a Jacuzzi Walk-In-Tub?

10 If so, please state as to each:

11 (a) the court or other forum in which it was filed;

12 (b) the names of all parties or named participants;

13 (c) the case number or other identifying number, letters or name assigned to the action
14 or other proceeding;

15 (d) the name and last known address of each person claiming injury or damage therein;

16 (e) the names and last known address of all known counsel of record participating in
17 such action or proceeding; and

18 (f) the date of the alleged injury or damage

19
20
21 **INTERROGATORY NO. 13:**

22 Please identify each and every law, rule, regulation, standard, statute, ordinance, or
23 other requirement or recommendation established by any Nevada state or federal governmental
24 body or officer that deals with, defines, limits or specifies the manufacture, design or use of the
25 subject Jacuzzi Walk-In-Tub or similar products, with specific reference to:

26 (a) the name or title of the governmental body or officer responsible for the
27 establishment, enactment, or promulgation;

1 (b) the title, including chapter, section, and paragraph numbers;

2 (c) the date of establishment, enactment, or promulgation; and

3 (d) the subject matter addressed

5
6 **INTERROGATORY NO. 14:**

7 If the subject Jacuzzi Walk-In-Tub was not designed and manufactured to meet
8 applicable federal standards or codes, state the reason(s) therefor.

9 **INTERROGATORY NO. 15:**

10 State whether or not the subject Jacuzzi Walk-In-Tub is or was listed by Underwriter's
11 Laboratories or a similar listing or approving organization. If so, please provide a copy of the
12 Underwriter's Laboratories procedures or other applicable documents or the status of such
13 listing attempts. If not, state the reasons for it not being listed.

14
15 **INTERROGATORY NO. 16:**

16 State whether any standard or code organization or body ever refused to approve or list
17 the subject Jacuzzi Walk-In-Tub. If so, provide the names of all such organizations and the
18 particulars regarding each refusal.

19
20 **INTERROGATORY NO. 17:**

21 State whether or not the Defendant has been engaged within the past 24 months, alone
22 or with other manufacturers or organizations, in developing or attempting to develop a standard
23 for the subject Jacuzzi walk in tub or similar Jacuzzi Walk-In-Tub. If so, provide the name of
24 the anticipated listing organization, all other manufacturers, organizations and bodies involved
25 in the process, the date such attempt originated and copies of all documents Defendant
26 generated received or reviewed in connection with developing such standards.
27
28

1 **INTERROGATORY NO. 18:**

2 State the year the Defendant first manufactured a Jacuzzi Walk-In-Tub intended for use
3 by the elderly, folks with mobility issues or folks with weight or other limiting medical
5 conditions.
6

7 **INTERROGATORY NO. 19:**

8 State if at any time any employee, agent, customer or end user complained of or
9 objected to the design of the subject Jacuzzi walk in tub or similar model with respect to the
10 means used to provide safety. If so, provide copies of all relevant documents in your
11 possession.
12

13 **INTERROGATORY NO. 20:**

14 What are the names, present addresses, and company positions of each person involved
15 in the design and the design verification of the Walk-In-Tub, including but not limited to
16 employees in engineering, quality assurance, quality control, reliability, general management,
17 sales, marketing, finance who specifically contributed to the subject design.
18

19 **INTERROGATORY NO. 21:**

20 Please identify each and every law, rule, regulation, standard, statute, ordinance, or other
21 requirement or recommendation established by any Nevada state or federal governmental body
22 or officer that deals with, defines, limits or specifies the manufacture or use of the Walk-In-
23 Tub or similar products, with specific reference to:
24

25 (a) the name or title of the governmental body or officer responsible for the
26 establishment, enactment, or promulgation;

27 (b) the title, including chapter, section, and paragraph numbers;

28 (c) the date of establishment, enactment, or promulgation; and (d) the subject matter

1 addressed.

2 **INTERROGATORY NO. 22:**

3 Do you contend that the Plaintiff misused or abused the subject Jacuzzi Walk-In-Tub
5 and/or applied a use that was neither intended nor reasonably foreseeable by you, or was
6 otherwise contributorily negligent? If so, please state the particulars therefor.
7

8 **INTERROGATORY NO. 23:**

9 Do you contend that the Plaintiffs subject Walk-In-Tub was altered, modified or
10 changed in any way that you neither recommended nor expected, other than ordinary wear and
11 tear, after it left your hands? If so, please state the particulars therefor.
12

13 **INTERROGATORY NO. 24:**

14 Do you contend that any person, partnership, corporation or other entity that is not a
15 named party in the within cause is, or may be, responsible in any way for all or part of the
16 damages alleged by the Plaintiff? If so, please identify:
17

18 (a) the name and last known address of each;

19 (b) a brief description of the facts known to the Defendant in support of such
20 contention as to each such party named in answer to this Interrogatory; and
21

22 (c) the name and last known address of each person known to you who has or claims
23 to have knowledge of any facts relating to this contention
24

25 **INTERROGATORY NO. 25:**

26 Do you contend that any intervening or superseding act or event occurred so as to
27 relieve you of liability or responsibility for the damage sustained by the Plaintiff? If so, please
28 state the particulars therefor.

1 **INTERROGATORY NO. 26:**

2 Please identify each pf your employees and/or agents who has conducted any analysis
3 or investigation of subject Jacuzzi Walk-In-Tub or conducted any interviews with other
5 persons who claim to have knowledge of facts in connection with the subject incident.
6

7 **INTERROGATORY NO. 27:**


8 Please identify each person known to you, and not otherwise previously named in
9 answers to these Interrogatories, who has, or claims to have, knowledge of any discoverable
10 matter relating to the within cause.
11

12 **INTERROGATORY NO. 28:**

13 Please identify each and every person or entity you believe should or could be a party to
14 this action.
15

16 DATED THIS 1 day of May, 2017
17

18 **RICHARD HARRIS LAW FIRM**

19 By:  SBN 13617
20 BENJAMIN P. CLOWARD ESQ.
21 Nevada Bar No. 11087
22 801 South Fourth Street
23 Las Vegas, Nevada 89101
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the RICHARD HARRIS LAW FIRM and that on the 5 day of May, 2017, I caused the foregoing PLAINTIFF DEBORAH TAMANTINI FIRST SET OF INTERROGATORIES TO DEFENDANT, JACUZZI INC.'S to be served as follows:

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

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Cross-Claimant

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Budds Plumbing*

An employee of the RICHARD HARRIS LAW FIRM

EXHIBIT 208

005597

005597

EXHIBIT 208

1 RFPD
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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
12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**
14

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

23 Plaintiffs,

24 vs.

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

PLAINTIFF DEBORAH TAMANTINI
FIRST SET OF REQUEST FOR
PRODUCTION OF DOCUMENTS
TO DEFENDANT, JACUZZI INC.'S

PLAINTIFF DEBORAH TAMANTINI
FIRST SET OF REQUEST FOR PRODUCTION OF DOCUMENTS
TO DEFENDANT, JACUZZI INC.'S

Plaintiff, DEBORAH TAMANTINI; by and through her Attorney, BENJAMIN P. CLOWARD, ESQ. of the RICHARD HARRIS LAW FIRM, pursuant to Rule 34, Nevada Rules of Civil Procedure, request that Defendant, JACUZZI LUXURY BATH, doing business as JACUZZI INC, produce for inspection and copying, within thirty (30) days of service of this Request for Production of Documents, at the RICHARD HARRIS LAW FIRM, 801 South Fourth Street, Las Vegas, Nevada 89101, all documents in the possession, custody, or control of Defendant or otherwise available to Defendant, which are responsive to the requests contained in the numbered paragraphs below. Please specify which documents are produced in response to each of the numbered paragraphs.

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

DEFINITIONS

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

- a) The term "person" includes any individual, joint stock company, unincorporated association or society, municipal or other corporation, state, which agencies or political subdivisions, and court, or any other governmental entity.
- b) The terms "you" or "your" include the persons to whom these requests are addressed, and all that person's agents, representatives or attorneys.
- c) In accordance, the terms, "document" or "documents" includes all writings, drawings, graphs, charts, photographs, recordings, and any other data computations from which information can be obtained, translated, if necessary by (you), through detection devices, into reasonably usable form.
- d) The term "occurrence" means the incident complained out in the Plaintiff's complaint.

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

5 **DOCUMENTS TO BE PRODUCED**

6 **REQUEST NO. 1:**

7 All documents identified in your answers to Interrogatories.

8 **REQUEST NO. 2:**

9 Any contracts between this Defendant and any other party regarding indemnification
10 agreement or contracts

12 **REQUEST NO. 3:**

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

16 **REQUEST NO. 4:**

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

21 **REQUEST NO. 5:**

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

24 **REQUEST NO. 6:**

25 Any and all documents, manuals, policies, memoranda letters or the like setting forth
26 proper standards, policies and/or procedures, concerning the use of the subject Jacuzzi Walk-In
27 Tub at issue. (These should be documents that were effective on the date of loss of February
28 27, 2014).

1 **REQUEST NO. 7:**

2 All written, recorded and/or signed statement of any person including Plaintiff, any
3 Defendant, witness, investigators or any agents, representative or employee of the parties,
5 concerning this matter of this action.
6

7 **REQUEST NO. 8:**

8 Any documents concerning the purchase, invoice, sales receipt or delivery of the
9 subject Jacuzzi Walk-In Tub at issue.
10

11 **REQUEST NO. 9:**

12 Any literature, service manual, written instructions, or operator's manual or handbook
13 regarding the subject Jacuzzi Walk-In Tub at issue.
14

15 **REQUEST NO. 10:**

16 Any engineering literature, drawings, diagrams, schematics or models of the subject
17 Jacuzzi Walk-In Tub at issue.
18

19 **REQUEST NO. 11:**

20 Any written warnings posted on the subject Jacuzzi Walk-In Tub at issue.
21

22 **REQUEST NO. 12:**

23 Any and all documents that relate to the design of the subject Jacuzzi Walk-In Tub
24 involved in the occurrence complained of in the Plaintiffs' Complaint.
25

26 **REQUEST NO. 13:**

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

1 **REQUEST NO. 14:**

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

4 **REQUEST NO. 15:**

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

7 **REQUEST NO. 16:**

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

10 **REQUEST NO. 17:**

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

13 **REQUEST NO. 18:**

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

18 **REQUEST NO. 19:**

19 Any and all documents and communications containing the name, home and business
20 address and qualifications of all persons who have been retained or specially employed by
21 Defendant(s) in *anticipation* of litigation or *preparation* for trial and who are *not* expected to be
22 called as witnesses at trial or as to whom no such decision has yet been made, and attach any
23 documents or communications received from said person(s). If there are no documents or
24

1 communications, then the name of said person(s) as well as their home and business addresses
2 should be provided.

3 **REQUEST NO. 20:**

5 The entire claims and investigation file or files including but not limited to daily activity
6 sheets, diary sheets, and status sheets of any insurance adjuster and/or risk employee/manager,
7 internal memoranda regarding this claim created, sent and/or received by any insurance adjuster
8 or other adjuster, risk employee/manager and/or by the Defendant(s) or an agent/employee of
9 the Defendant(s), communications to and from all insurance carriers, parties, Defendant(s), or
10 potential parties, request(s) for investigation, and/or reports/findings of investigators, both in-
11 house and/or independent and/or all insurance policies of the Defendant(s), excluding
12 references to mental impressions, conclusions, or opinions representing the value or merit of the
13 claim or defense or respecting strategy or tactics and privileged communications from counsel
14

15 **REQUEST NO. 21:**

16 All statements and communications of any and all witnesses including any and all
17 statements of Plaintiff(s) and Defendant(s), including taped recordings, whether transcribed or
18 not, as well as all written statements.
19

20 **REQUEST NO. 22:**

21 The name, home and business address of the insurance carrier investigators employed by
22 the Defendant(s) or its insurance carrier to investigate this claim, treatment of the Plaintiff(s),
23 witnesses, or any other aspect of the incidents that form the basis of Plaintiff(s) Complaint.
24 Also, attach any documents, records or communications of or prepared by the investigator
25 acquired as a result of their investigation(s), including but not limited to telephone calls,
26
27
28

1 correspondence, facsimiles, e-mail, billing, inspections or observations, interviews, statements
2 and/or findings.

3 **REQUEST NO. 23:**

5 The name, home and business address, background and qualifications of any and all
6 persons in the employ of Defendant(s), who in anticipation and/or preparation of litigation, is
7 expected to be called to trial.
8

9 **REQUEST NO. 24:**

10 Any and all documents and communications containing the name and home and
11 business addresses of all individuals contacted as *potential* witnesses.
12

13 **REQUEST NO. 25:**

14 Any and all documents and communication substantiating any defense to
15 Plaintiffs' Complaint.
16

17 **REQUEST NO. 26:**

18 Any all videotapes, photographs, notes, memorandums, technical data, and
19 internal documents of any and all testing conducted by this Defendant's research and
20 design experts on the same model as the subject Jacuzzi Walk In Tub.
21

22 **REQUEST NO. 27:**

23 Any sales material provided to elderly folks (over the age of 55) concerning the safety
24 features of the Jacuzzi Walk In Tub. (These should be documents that were used prior to the
25 date of loss of February 27, 2014).
26
27
28

1 **REQUEST NO. 28:**

2 Any sales material provided to elderly folks (over the age of 55) concerning the ease of
3 use features of the Jacuzzi Walk In Tub. (These should be documents that were used prior to
5 the date of loss of February 27, 2014).
6

7 **REQUEST NO. 29:**

8 Any sales material provided to overweight folks concerning the safety features of the
9 Jacuzzi Walk In Tub. (These should be documents that were used prior to the date of loss of
10 February 27, 2014).
11

12 **REQUEST NO. 30:**

13 Any sales material provided to overweight folks (over the age of 55) concerning the ease
14 of use features of the Jacuzzi Walk In Tub. (These should be documents that were used prior to
15 the date of loss of February 27, 2014).
16

17 **REQUEST NO. 31:**

18 Any sales material provided to folks with mobility issues regarding the safety features of
19 the Jacuzzi Walk In Tub. (These should be documents that were used prior to the date of loss of
20 February 27, 2014).
21

22 **REQUEST NO. 32:**

23 Any sales material provided to folks with mobility issues regarding the ease of use
24 features of the Jacuzzi Walk In Tub. (These should be documents that were used prior to the
25 date of loss of February 27, 2014).
26

27 **REQUEST NO. 33:**

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

1 **REQUEST NO. 34:**

2 Please produce all documentation, emails, memorandums, technical data, and internal
3 documents of any and all discussion, communication or otherwise pertaining to safety
5 considerations regarding the inward opening door versus an outward opening door.
6

7 **REQUEST NO. 35:**

8 Please produce all scientific research validating or supporting the safety claims made by
9 Jacuzzi regarding the increased safety of the tub at issue.
10

11 **REQUEST NO. 36:**

12 Please produce all scientific research validating or supporting the ease of use claims
13 made by Jacuzzi regarding the tub at issue.
14

15 **REQUEST NO. 37:**

16 Please produce all technical, architectural, and design documents pertaining to the
17 inward opening door of the tub at issue.
18

19 **REQUEST NO. 38:**

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

24 **REQUEST NO. 39:**

25 Please produce any and all documentation in support of the safety statistics pertaining to
26 falls; that are used in any marketing materials (whether those materials be written, oral, video or
27 otherwise) that are distributed by Jacuzzi.
28

REQUEST NO. 40:

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

3 **REQUEST NO. 41:**

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

8 **REQUEST NO. 42:**

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

12 **REQUEST NO. 43:**

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

17 **REQUEST NO. 44:**

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

21 **REQUEST NO. 45:**

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

27 **REQUEST NO. 46:**

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

1 **REQUEST NO. 47:**

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

3 **REQUEST NO. 48:**


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

6 **REQUEST NO. 49:**

8 Please produce all documentation regarding the dangers associated with bathing Jacuzzi
9 had in its possession on or prior to February 27, 2014.
10

11
12
13 DATED THIS 1 day of May, 2017
14

15 **RICHARD HARRIS LAW FIRM**

16 By:  SBN 13617
17 BENJAMIN P. CLOWARD ESQ.
18 Nevada Bar No. 11087
19 801 South Fourth Street
20 Las Vegas, Nevada 89101
21 *Attorneys for Plaintiffs*
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the RICHARD HARRIS LAW FIRM and that on the 1 day of May 2017, I caused the foregoing PLAINTIFF DEBORAH TAMANTINI FIRST SET OF REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANT, JACUZZI INC.'S to be served as follows:

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

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An employee of the RICHARD HARRIS LAW FIRM

EXHIBIT 209

005610

005610

EXHIBIT 209

Nicole Griffin

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

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

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

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

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

Hi Josh,

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

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

- 19. Testing
- 20. Audit

Please let me know if you have questions.

Thank you,

Benjamin P. Cloward, Esq.

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

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

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



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005612

005612

EXHIBIT 210

005613

005613

EXHIBIT 210

Snell & Wilmer

L.L.P.

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

April 23, 2018

Via Email

Benjamin@RichardHarrisLaw.com

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

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


Dear Mr. Cloward:

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

Please contact me with any questions.

Best regards,

Snell & Wilmer



Joshua D. Cools

JDC:tcs
4847-0944-8803.1

EXHIBIT 211

005615

005615

EXHIBIT 211

ELECTRONICALLY SERVED
9/11/2018 4:56 PM

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2 Joshua D. Cools, Nevada Bar No. 11941
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13 *Attorneys for Defendant/Cross-Defendant*
14 *Jacuzzi Inc. doing business as Jacuzzi Luxury Bath*
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DISTRICT COURT

CLARK COUNTY, NEVADA

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

16 Plaintiffs,

17 vs.

18 FIRST STREET FOR BOOMERS &
19 BEYOND, INC.; AITHR DEALER, INC.;
20 HALE BENTON, individually; HOMECLICK,
21 LLC; JACUZZI INC., doing business as
22 JACUZZI LUXURY BATH; BESTWAY
23 BUILDING & REMODELING, INC.;
24 WILLIAM BUDD, individually and as
25 BUDDS PLUMBING; DOES 1 through 20;
26 ROE CORPORATIONS 1 through 20; DOE
27 EMPLOYEES 1 through 20; DOE
28 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 JACUZZI INC. DBA
JACUZZI LUXURY BATH'S MOTION
FOR PROTECTIVE ORDER ON AN
ORDER SHORTENING TIME**

005616

Snell & Wilmer

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

005616

1 Defendant Jacuzzi Inc. doing business as Jacuzzi Luxury Bath submits the following
2 Motion for Protective Order, pursuant to NRCP 26(c)(1), on Order Shortening Time. This
3 Motion is made and based upon the attached points and authorities attached, along with all papers
4 and pleadings in file herein, and oral argument at time of hearing.

5
6 DATED this 11th day of September, 2018.

7 SNELL & WILMER L.L.P.

8
9 By: 

10 Vaughn A. Crawford
11 Nevada Bar No. 7665
12 Joshua D. Cools
13 Nevada Bar No. 11941
14 Alexandria L. Layton
15 Nevada Bar No. 14228
16 3883 Howard Hughes Parkway, Suite 1100
17 Las Vegas, NV 89169

18 *Attorneys for Defendant/Cross-Defendant*
19 *Jacuzzi Inc. doing business as Jacuzzi Luxury Bath*
20
21
22
23
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27
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005617

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ORDER SHORTENING TIME

Good cause appearing therefore, it is hereby ordered that the time for hearing of the foregoing Motion be, and the same will be heard on the ____ day of _____, 2018 at _____m., before the Discovery Commissioner.

DATED this ____ day of September, 2018.

Discovery Commissioner

Prepared and Submitted by:

SNELL & WILMER L.L.P.



Vaughlin A. Crawford

Nevada Bar No. 7665

Joshua D. Cools

Nevada Bar No. 11941

Alexandria L. Layton

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3883 Howard Hughes Parkway, Suite 1100

Las Vegas, NV 89169

Attorneys for Defendant/Cross-Defendant

Jacuzzi Inc. doing business as Jacuzzi Luxury Bath

005618

**DECLARATION OF JOSHUA D. COOLS, ESQ. IN SUPPORT OF
DEFENDANT JACUZZI INC. DBA JACUZZI LUXURY BATH'S MOTION FOR
PROTECTIVE ORDER ON AN ORDER SHORTENING TIME**

Joshua D. Cools, Esq., declares as follows:

1. I am an attorney with the law firm of Snell and Wilmer L.L.P., counsel of record for Jacuzzi Inc. in the above-entitled action. I have personal knowledge of all matters stated herein and would competently be able to testify to them and make this declaration under the penalty of perjury.

2. I make this declaration in support of Defendant's Motion for Protective Order on an Order Shortening Time.

3. As required by EDCR 7.30(c), and as provided by the Certificate of Service contained in this Motion, I have served a copy of this Motion on all of the parties involved.

4. Pursuant to EDCR 2.26, an Order Shortening Time is warranted for the following reasons.

5. Defendant's Motion seeks a protective order related to deposition notices and written discovery. The depositions are scheduled for September 20 and 21, 2018. The responses to the written discovery is due on October 1, 2018

6. An order shortening time is warranted to allow the Court to address these important issues before the written discovery is due and the depositions are scheduled.

7. On August 27, 2018, I received Plaintiffs' Second Request for Production of Documents to Jacuzzi Inc.

8. On August 29, 2018, I first contacted Mr. Cloward to meet and confer over these issues. We exchanged a couple of emails, but were unable to meet and confer over the phone at that time.

9. On September 6, 2018, I called Mr. Cloward to meet and confer over the issues raised in this motion. Despite the parties' discussion of each request for production and the depositions that have been noticed, the parties were unable to reach an acceptable compromise on any of the issues pertinent to this Motion. Mr. Cloward and I did agree to treating certain

1 requests for production as interrogatories and to produce experts' files at the time of their
2 depositions, but those parts of Plaintiffs' discovery requests are not at issue in this Motion.

3 10. Several of these issues were subject to earlier meet and confer conversations. In
4 particular, Mr. Cloward and I spoke on February 23, 2018, about the acceptable scope of
5 identified internal communications about this claim, whether produced or identified on a privilege
6 log. During that call, Mr. Cloward confirmed his agreement to specific search terms for Jacuzzi's
7 internal email communications. Additionally, Jacuzzi agreed to use Plaintiffs' search terms to
8 search its records for other incidents involving walk-in tubs prior to Cunnison's claim and to
9 produce similar claims, if any.

10 11. On April 3, 2018, I sent Mr. Cloward a letter regarding the scope for Jacuzzi's
11 review of internal communications related to this case and the results of that search. A true and
12 correct copy of that letter is attached as **Exhibit 1**.

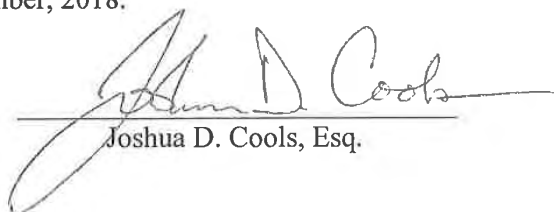
13 12. On April 23, 2018, I sent Mr. Cloward a letter regarding the scope for Jacuzzi's
14 search for prior other similar incidents involving walk-in tubs and the results of that search. A
15 true and correct copy of that letter is attached as **Exhibit 2**.

16 13. Pursuant to the foregoing, NRCP 26(c), and EDCR 2.34, I certify that, after good
17 faith effort to meet and confer with counsel for Plaintiffs, I have been unable to resolve this
18 matter without court action.

19 14. This Motion is made in good faith and will not result in prejudice to the parties.

20 I hereby certify and affirm under penalties of perjury that the information contained within
21 this Declaration is true, complete and accurate to the best of my knowledge.

22 EXECUTED this 11th day of September, 2018.

23
24 
Joshua D. Cools, Esq.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

A protective order is needed in this case because Plaintiffs are seeking discovery that is disproportionate to the case, harassing, irrelevant, and protected by various privileges. Plaintiffs are unhappy with this Court's recent treatment of their sanctions motions and are now trying to harass Jacuzzi with the discovery that is subject to this Motion. Importantly, Jacuzzi has complied with this Court's order and produced records showing all incidents from 2008 to the present involving personal injury or claims of death, regardless of similarity to Plaintiffs' claims. This is not good enough for Plaintiffs who continue to claim that Jacuzzi is "lying" and hiding documents. This is wrong and Plaintiffs harassing and disproportionate discovery should not be allowed. Ultimately, the claims against Jacuzzi are about whether a specific product—a Jacuzzi® model 5229 Walk-In Tub installed in 2013—was defective. Plaintiffs' discovery is not about this—it is about the litigation itself and Plaintiffs' frustration that they cannot find a smoking gun that does not exist. Accordingly, a protective order is necessary to limit Plaintiffs' improper use of discovery, which the court warned Plaintiffs' counsel about at the August 29, 2018, hearing.

II. FACTUAL BACKGROUND

A. The Incident.

This is a product liability action involving vague claims (which have materially changed since first asserted) that a Jacuzzi® Walk-In Tub was defectively designed or that the warnings related to the tub were insufficient. On January 27, 2014, Sherry Cunnison had a Jacuzzi® Walk-In Tub installed in her home in Las Vegas, Nevada. She selected the tub a couple months earlier. Plaintiffs allege that about a month after installation Cunnison was using the bathtub and somehow became stuck in the tub, and unable to exit. Plaintiffs' Fourth Am. Compl., ¶ 27-29. On February 21, 2014, a well-being check was performed and Cunnison was found in the bathtub. *Id.* at ¶ 31. Cunnison died at the hospital on February 27, 2014. *Id.* at ¶ 35. Plaintiffs are the surviving heirs of Cunnison and allege causes of action against all defendants for negligence and strict product liability for defective design, manufacture, or failure to warn, claiming that the defendants' actions were the cause of Cunnison's death. *See generally, id.*

1 **B. Relevant discovery to date.**

2 This case has been pending since 2016 and the parties have engaged in significant
 3 discovery. The parties have taken 16 depositions and served several sets of written discovery.
 4 Pursuant to Plaintiffs' written requests and its own discovery obligations, Jacuzzi has identified
 5 over 2,900 pages of documents. But discovery has been contentious. Two areas of dispute have
 6 been the scope of "other incident" discovery and Jacuzzi's communications about this claim
 7 (internally and with outside counsel).

8 *1. Prior discovery regarding Jacuzzi's communications related to Plaintiffs' claim.*

9 In early 2018, counsel for both parties conferred regarding the scope of what claim
 10 communications would be identified. Significantly, Jacuzzi had no notice of the claim until a
 11 letter of representation from Plaintiffs' counsel. On February 23, 2018, the parties agreed that it
 12 would be for communications from the date of the incident (February 21, 2014) up to the filing of
 13 suit (February 3, 2016) and Jacuzzi agreed to use the specific search terms (suggested by
 14 Plaintiffs' counsel).¹ On April 3, 2018, Jacuzzi's counsel sent Plaintiffs' counsel the privilege log
 15 identifying those communications.²

16 *2. Prior discovery regarding Jacuzzi's search for "other incidents."*

17 Also in early 2018, counsel for both parties conferred regarding the scope of other
 18 incident discovery. Jacuzzi agreed to search its records for prior incidents using search terms
 19 provide by Plaintiffs' counsel.³ Upon review of the results from those searches, all of which were
 20 "false positives"—they did not contain any prior incidents of personal injury even remotely
 21 related to the claims Plaintiffs have asserted—Jacuzzi's counsel sent Plaintiffs' counsel a letter
 22 confirming that there were no prior similar incidents involving walk-in tubs.⁴ This was consistent
 23 with Jacuzzi's discovery responses related to prior incidents.⁵

24
 25
 26 ¹ Cools Aff. ¶ 9.

27 ² See April 3, 2018 Letter; Cools Aff. ¶¶ 9-10.

28 ³ Cools Aff. ¶ 9.

⁴ Cools Aff. ¶¶ 9 & 11.

⁵ Jacuzzi's Responses to Plaintiffs' First Set of Interrogatories, 9:21-28; 10:1-9; Jacuzzi's Responses to Plaintiffs' First Set of Requests for Production, 13:1-12; 16:18-28; 17:1-3; 18:8-20 (excerpts collectively attached as Exhibit 3).

1 On May 24, 2018, Bill Demeritt testified as one of Jacuzzi's corporate representatives. He
 2 was designated to testify regarding prior incidents and Jacuzzi's search of its records regarding
 3 such incidents if any.⁶ He testified that there were no such incidents and identified the individuals
 4 that assisted him and counsel in searching Jacuzzi's records.⁷ Plaintiffs' counsel then expanded
 5 the scope of inquiry and asked Mr. Demeritt if there were any subsequent incidents and Mr.
 6 Demeritt denied that he was aware of any.⁸ Subsequently, Plaintiffs' filed a motion to strike
 7 Jacuzzi's answer. This Court ordered Jacuzzi to do another search of its records and produce any
 8 personal injury claims involving walk-in tubs from 2008 to the present. Jacuzzi complied with
 9 the Court's order and identified a few post-incident claims, producing the incident reports for
 10 each claims.⁹

11 On August 27, 2018, Jacuzzi received Plaintiffs' Second Request for Production of
 12 Documents to Jacuzzi Inc.¹⁰

13 III. ARGUMENT

14 A. **Discovery is limited in scope and should not be unreasonably duplicative, unduly** 15 **burdensome, or disproportional to the needs of the case.**

16 It is axiomatic that discovery is limited in scope and should not be used to harass.¹¹
 17 Nevada Rule of Civil Procedure 26 provides that the Court may "make any order which justice
 18 requires to protect a party or person from annoyance, embarrassment, oppression, or undue
 19 burden,"¹² upon a showing of "good cause."¹³ Additionally, discovery is limited by rule to "any
 20 matter, not privileged, which is relevant to the subject matter involved in the pending action."¹⁴
 21 Nevada's current version of the Rules of Civil Procedure further establishes that discovery "shall

22 ⁶ Jacuzzi's Objection to Plaintiffs' Fifth Amended Notice to Take Videotaped Depositions of 30(b)(6) for Jacuzzi at
 23 26:13-28; 27:13-27; 28:1-29:3, excerpts attached as **Exhibit 4**.

24 ⁷ Deposition of Bill Demeritt (May 24, 2018) at 16:1-25:25, excerpts attached as **Exhibit 5**.

25 ⁸ *Id.* at 76:1-77:2.

26 ⁹ August 17, 2018 Letter, attached as **Exhibit 6**.

27 ¹⁰ Plaintiffs' Second Request for Production of Documents to Jacuzzi Inc., attached as **Exhibit 7**.

28 ¹¹ See *Oppenheimer Fund v. Sanders*, 437 U.S. 340, 353 (1978) ("Discovery should be denied when a party's aim is
 to ... harass the person from whom he seeks discovery," *Heidelberg Americas, Inc. v. Tokyo Kikai Seisakusho*, 333
 F.3d 38, 42 (1st Cir. 2003) (upholding the quashing of a subpoena based on issues of scope.)).

¹² Nev. R. Civ. P. 26(c).

¹³ *Okada v. Eighth Jud. Dist. Ct.*, 131 Nev. Adv. Op. 83, 359 P.3d 1106, 1111 (2015) (citing *Cadent Ltd. v. 3M*
Unitek Corp., 232 F.R.D. 625, 629 (C.D.Cal.2005) (recognizing that FRCP 26(c), which is the analog to NRCP
 26(c), requires the party seeking the protective order to establish "good cause")).

¹⁴ Nev. R. Civ. P. 26(a)(1).

be limited by the court if it determines that: (i) the discovery sought is *unreasonably cumulative or duplicative*, . . . or (iii) the discovery is *unduly burdensome* or expensive, taking into account the *needs of the case*, the amount in controversy, limitations on the parties, resources, and the importance of the issues at stake in the litigation.”¹⁵ The latter part of this rule is often referred to as proportionality in discovery and is one of the focus points for the proposed revisions to the Nevada Rules of Civil Procedure. In the proposed rule changes, the Committee has recommended the adoption of proportionality language used in the Federal Rules of Civil Procedure. That proposed language states “Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claims or defenses and *proportional* to the needs of the case.”¹⁶ While more explicit in the proposed rules and the current Federal Rules of Civil Procedure, these limitations are consistent with Nevada’s Rules of Civil Procedure.¹⁷ Courts have regularly limited or prohibited discovery that are not proportional to the needs of the case and were outside the scope of discovery.¹⁸ As one court noted, “[i]f the requirement for proportionality in discovery means anything, however, it must mean that burdensome, tangential discovery should not be permitted based on the mere possibility that something may turn up to support what is otherwise only speculation.”¹⁹

¹⁵ Nev. R. Civ. P. 26(a)(2) (emphasis added).

¹⁶ Petition to Amend the Nevada Rules of Civil Procedure, the Nevada Rules of Appellate Procedure, and the Nevada Electronic Filing and Conversion Rules, ADKT 0522 (Aug. 17, 2018), https://nvcourts.gov/Supreme/Rules/Amendments/Proposed/ADKT_0522__In_re__Committee_Update_and_Revise_NRCP/.

¹⁷ See *Guerrero v. Wharton*, No. 216CV01667GMNNJK, 2017 WL 7314240, at *2 (D. Nev. Mar. 30, 2017) (“Proportionality focuses on the marginal utility of the discovery being sought. At bottom, proportionality is a “common-sense concept” that should be applied to establish reasonable limits on discovery.”) (citing *In re Methyl Tertiary Butyl Ether Prods. Liab. Litig.*, 180 F. Supp. 3d 273, 280 n.43 (S.D.N.Y. 2016); *Sprint Comm’s Co. v. Crow Creek Sioux Tribal Court*, 316 F.R.D. 254, 263 (D.S.D. 2016)).

¹⁸ *Wilson v. Wal-Mart Stores, Inc.*, No. 2:15-CV-1791-RCJ-VCF, 2016 WL 526225, at *8 (D. Nev. Feb. 9, 2016) (“Any benefit derived from information about subsequent, third-party investigations of the incident or third-party claims arising out of the incident is outweighed by the expense and burden imposed on Wal-Mart to collect responsive documents.”); *McCall v. State Farm Mut. Auto. Ins. Co.*, No. 216CV01058JADGWF, 2017 WL 3174914, at *9 (D. Nev. July 26, 2017) (“If the requirement for proportionality in discovery means anything, however, it must mean that burdensome, tangential discovery should not be permitted based on the mere possibility that something may turn up to support what is otherwise only speculation.”); *Eagle Air Med Corp. v. Sentinel Air Med. All.*, No. 218CV00680JCMPAL, 2018 WL 3370528, at *5 (D. Nev. July 10, 2018) (“The pretrial process must provide parties with efficient access to what is needed to prove a claim or defense, but eliminate unnecessary or wasteful discovery.”).

¹⁹ *McCall*, 2017 WL 3174914, at *9.

1 **B. Plaintiffs are seeking depositions that are duplicative of other testimony, irrelevant**
 2 **to this litigation, protected by attorney client and work product privileges,**
 3 **disproportional, and harassing to Jacuzzi.**

4 Despite Plaintiffs having already deposed a corporate representative regarding other prior
 5 incidents and what Jacuzzi did to search for those prior incidents, Plaintiffs are now seeking
 6 deposition testimony that is unreasonably duplicative and irrelevant to this litigation and
 7 harassing to Jacuzzi. Plaintiffs unilaterally noticed seven depositions for September 20 and 21,
 8 2018. Three of the depositions involve individuals that, at the direction of counsel, were involved
 9 in discovery: Kurt Bachmeyer, Regina Reyes, and Jess Castillo. Importantly, Plaintiffs are not
 10 seeking these depositions because the deponents have any information relevant to Plaintiffs'
 11 claims against Jacuzzi. Rather, the depositions are predicated on the supposition that Jacuzzi or
 12 Jacuzzi's counsel is hiding documents from Plaintiffs. Jacuzzi previously produced Bill Demeritt
 13 to testify regarding prior similar incidents.²⁰ Demeritt testified that Bachmeyer, Reyes, and
 14 Castillo participated in the search for prior similar incidents.²¹ As indicated in Jacuzzi's counsel's
 15 April 23, 2018 letter to Mr. Cloward, Jacuzzi performed a search of prior incidents using
 16 Plaintiffs' proposed search terms and did not identify any responsive incidents.²² Plaintiffs are
 17 now seeking to depose Bachmeyer, Reyes, and Castillo about the litigation assistance they
 18 provided to counsel.

19 Any information that Bachmeyer, Reyes, and Castillo have related to this search is subject
 20 to attorney client privilege and the attorney work product doctrine.²³ Their involvement was at
 21 the specific direction of counsel and in response to discovery dialogue with opposing counsel and
 22 this Court.²⁴ Furthermore, Plaintiffs have already deposed a corporate representative on these
 23 specific issues.²⁵ Plaintiffs' entire basis for noticing these depositions is an ill-conceived
 24 conspiracy theory that Jacuzzi is hiding documents—something this Court has explicitly warned
 25 against. Put differently, the focus is how Jacuzzi has litigated the case, not obtaining information

26 ²⁰ Jacuzzi's Objection to Plaintiffs' Fifth Amended Notice to Take Videotaped Depositions of 30(b)(6) for Jacuzzi at
 27 26:13-28; 27:1-27; 29:1-28; 30:1-3.

28 ²¹ Demeritt Dep. at 19:7-20:2.

²² April 23, 2018 letter.

²³ NRCP 26(b)(3); NRS 49.035 *et. seq.*

²⁴ Cools Affidavit at ¶ 9 & 11.

²⁵ Demeritt Dep. at 16:1-25:25.

1 relevant to Plaintiffs' claims. Moreover, in addition to being objectionable on the basis of
 2 privilege and thus a complete waste of the parties' time, the depositions would be
 3 disproportionate to the needs of the case as they are unreasonably duplicative of Mr. Demeritt's
 4 testimony and, considering the privilege issues, unduly burdensome and harassing to Jacuzzi.
 5 Despite all substantive testimony being privileged, Jacuzzi will have to undergo the unnecessary
 6 expense of preparing each of these witnesses for deposition, defending these depositions and
 7 likely instructing the witnesses not to answer most of the questioned posed based on the attorney
 8 client and/or work product privileges. For these reasons the depositions ought to be prohibited
 9 with a protective order. At a minimum, Plaintiffs' counsel should be ordered to make an offer of
 10 proof regarding the purpose of the depositions, questions and that will be asked of the witnesses,
 11 and why the witnesses' responses are not privileged.

12 **C. Plaintiffs' written discovery is harassing, disproportional, and unduly burdensome.**

13 Similar to Plaintiffs' deposition notices, Plaintiffs have served requests for production that
 14 are abusive and disproportional because they seek documents that are, at best, tangentially related
 15 to the subject matter of this case, patently privileged, and unduly burdensome to Jacuzzi. The
 16 discovery is harassing and should not be permitted.

17 *1. Plaintiffs' Requests for Production 11-15 improperly seek communications made*
 18 *during this litigation to or at the direction of counsel.*

19 Jacuzzi has already produced or listed on a privilege log all communications about the
 20 incident, up to the date that Plaintiffs' filed suit.²⁶ In fact, Jacuzzi's counsel conferred with
 21 Plaintiffs' counsel to confirm that the parameters of Jacuzzi's search for internal communications
 22 about the incident were acceptable to Plaintiffs.²⁷ Jacuzzi then performed a search of its
 23 communications for any correspondence about this incident, up to the date of Plaintiffs' filing
 24 suit.²⁸ This was due to the obvious fact that any communication about the incident following the
 25 suit would be subject to attorney client privilege and work product privileges. Despite this
 26

27 ²⁶ April 3, 2018 Letter.

28 ²⁷ See Cools Aff. at ¶ 9-10; April 3, 2018 Letter.

²⁸ Cools Aff. at ¶ 9-10; April 3, 2018 Letter.

1 production, and based on Plaintiffs' misguided conspiracy theory, Plaintiffs' now seek the
2 following discovery:

3 **REQUEST NO. 11.**

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

7 **REQUEST NO. 12.**

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

11 **REQUEST NO. 13.**

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

15 **REQUEST NO. 14.**

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

19 **REQUEST NO. 15.**

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

23 **REQUEST NO. 16.**

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

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

1 xiii) Faucet
 2 xiv) Seat
 3 xv) Bathtub
 4 xvi) Walk-in
 5 xvii) Tub
 6 xviii) Handhold!
 7 xix) Grab
 8 xx) Rail!
 9 xxi) Grip
 10 xxii) Bar!
 11 xxiii) Cunnison
 12 xxiv) Smith
 13 xxv) Cullen
 14 xxvi) Baize

15 It is important to note that three of these individuals identified in requests 11-13 are
 16 attorneys or part of Jacuzzi's legal department: General Counsel Anthony Lovallo, Corporate
 17 Counsel Ron Templer, and Nicole Simetz. Mike Dominguez is the Director of Engineering and
 18 one of the designated corporate representatives for testimony pursuant to NRCP 30(b)(6). Bill
 19 Demeritt is Vice President and Director of Risk Management (as well as an officer of several
 20 other companies that are unrelated to the subject bathtub or subject incident) and the other
 21 designated corporate representative for testimony pursuant to NRCP 30(b)(6). Further, the
 22 "Identified Persons" are these five individuals, three individuals involved in identifying any
 23 similar incidents, and four former employees who have nothing to do with this litigation.²⁹

24 Plaintiffs' requests suggests that Jacuzzi is obligated to search all litigation
 25 communication for the last two and a half years and produce or include on a privilege log any
 26 communications regarding "preserving, saving, or reloading any documents" related to the case
 27 or referencing Plaintiffs' list of terms. Notably, this includes a term like "tub." (Jacuzzi is in the
 28 business of making tubs and related products. In addition to the overbreadth, nearly all, if not all,
 such communication was made subject to attorney work product or attorney client privilege. The
 "Identified Persons" only communication about this claim would be at the direction of counsel or
 to counsel. Jacuzzi has already produced all pre-filing documents related to the Subject Incident

²⁹ Former employee Ray Torres did participate in some pre-litigation activity, but all communications he had about
 the claim have already been listed on Jacuzzi's privilege log.

1 or identified them on the privilege log. These new requests are disproportional and create a
 2 significant undue burden on Jacuzzi. They should be subject to a protective order.

3 2. *Plaintiffs' Request for Production 17 seeks copies of the hard drives of Mr.*
 4 *Dominguez and Mr. Demeritt without any justification for the same.*

5 Two of the most egregious discovery requests are the requests for hard drives of Jacuzzi's
 6 Director of Engineering and Vice President and Director of Risk Management:

7 **REQUEST NO. 17.**

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

10 i) William B. Demeritt

11 ii) Michael A. Dominguez

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

15 This is a brazen grab for materials that are obviously irrelevant and intended to create
 16 litigation costs for Jacuzzi. Plaintiffs have no articulable justification for such a request—Jacuzzi
 17 has already produced any relevant, non-privileged materials these hard drives would contain.
 18 Further, the offer to submit to an independent vendor at Plaintiffs' cost does not assuage the
 19 disproportionality of this request or the undue burden that it puts on Jacuzzi. Plaintiff has not
 20 even finished its 30(b)(6) deposition of Mr. Dominguez. And tellingly, Plaintiffs have proposed
 21 no "mutually agreeable search terms." This is more evidence that Plaintiffs are seeking to make
 22 this case about the litigation itself, not subject matter of their claims. As noted earlier, "[i]f the
 23 requirement for proportionality in discovery means anything, however, it must mean that
 24 burdensome, tangential discovery should not be permitted based on the mere possibility that
 25 something may turn up to support what is otherwise only speculation."³⁰ The Court should not
 26 permit such an abuse of discovery.

27
 28 ³⁰ *McCall*, 2017 WL 3174914, at *9.

1 3. *Requests 24-25 and 41-43 seek information that is intrusive and seeks to*
 2 *improperly expand discovery beyond what the Court has already ordered.*

3 Jacuzzi complied with the Court's directive to identify personal injury or death claims
 4 related to Jacuzzi's walk-in tub products from 2008 to the present. Plaintiffs are now trying to get
 5 around this ruling by expanding the scope of their discovery and for requesting more than what
 6 the Court deemed appropriate:

7 **REQUEST NO. 24.**

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

10 **REQUEST NO. 25.**

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

13 **REQUEST NO. 41.**

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

16 **REQUEST NO. 42.**

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

19 **REQUEST NO. 43.**

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

22 Besides conflicting with this Court's ruling, there are several other defects in these requests.
 23 First, they go beyond personal injury claims, thereby including every sort of warranty claim and
 24 other unrelated "claims" related to walk-in tubs. This is evident in Plaintiffs' use of "any incident
 25 involving consumer use"³¹ and "complaints."³² Plaintiffs requests are so overly broad that they
 26 arguably would include every call that Jacuzzi has received from a consumer regarding a walk-in-

27
 28 ³¹ RFP 24, 25, & 41.

³² RFP 43.

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tub, and every complaint relating to a warranty claim. For example, if a customer called in to complain that the tub was leaking, a pump was not working or the finish on the faucet was peeling would be included, despite the fact such complaints have no relevance to the claims asserted in this action. This is why the Court properly limited the search to claims of personal injury or death. Second, Requests 24 and 25 have no date range, despite the Court explicitly limiting the time frame that Jacuzzi needed to search for responsive documents. And third, even if limiting the scope to personal injury claims, Plaintiffs have not established that they are entitled to all of Jacuzzi's documents related to other incidents. As already represented to this Court, Jacuzzi searched its records for personal injury claims involving walk-in tubs from 2008 to the present and has produced an incident report or complaint for each incident. Notably, every single incident was after Cunnison's incident, so the only possible admissibility would be for substantially similar incidents and to prove a "dangerous condition." Plaintiffs have no basis for the intrusive and disproportional request for all documents related to these claims, which inevitably involves communications with counsel or its insurers. Such requests are unduly burdensome and unwarranted in this case.

4. *Request No. 26, 27, and 36 duplicative of RFP 7, 17, and 20.*

This litigation has now been pending for over two years and Plaintiffs have already served written discovery in this case. Despite Jacuzzi having already responded to similar discovery, Plaintiffs are now making duplicative requests. Requests 26, 27, and 36 are such requests:

REQUEST NO. 26.

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

REQUEST NO. 27.

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

REQUEST NO. 36.

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

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1 Jacuzzi employee concerning this action, “[a]ny documents prepared during the regular course
 2 o[f] business as a result of the incident complained of in Plaintiffs’ Complaint,” and “the entire
 3 claims and investigation file or files”³³ These discovery requests are entirely duplicative of
 4 what Plaintiffs have already sought through other Requests for Production. Moreover, Plaintiffs
 5 have been informed over and over again that Jacuzzi’s first notice of this claim was when
 6 Plaintiffs’ counsel sent Jacuzzi a letter of representation suggesting litigation was imminent.
 7 Such cumulative discovery is unnecessary and unduly burdensome.

8 5. *Plaintiffs’ discovery requests regarding Jacuzzi’s post-incident conduct is*
 9 *irrelevant and should not be subject to discovery.*

10 Plaintiffs also seek discovery regarding Jacuzzi’s protocols and conduct after Cunnison’s
 11 incident:

12 **REQUEST NO. 39.**

13 Documents showing your “post-incident protocols” in force on
 14 January 1, 2012 and any revisions thereto up to the present time.

15 **REQUEST NO. 40.**

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

19 The portion of the requests that seek information about Jacuzzi’s conduct or policies following
 20 Cunnison’s incident (February 21, 2014) are irrelevant and should not be subject to discovery.
 21 This does not involve subsequent remedial measure evidence—that would involve changes to the
 22 design of the product of warnings, etc. Rather, Plaintiffs’ requests seek irrelevant information
 23 about Jacuzzi’s internal policies or conduct following the incident, which has no bearing
 24 whatsoever on Plaintiffs’ negligence or product liability claims. There is no justification for such
 25 discovery. Further, responding to such irrelevant discovery merely increases litigation costs on
 26 Jacuzzi. It is an undue burden, disproportional to this litigation, and should not be permitted.
 27 Accordingly, Jacuzzi requests that Requests 39 and 40 be limited to pre-incident documents.

28 7. *Plaintiffs’ Request 46 seeking documents to show efforts made to preserve photos*
 is harassing because this Court already determined that the photos taken by

³³ Plaintiff D. Tamantini’s First Set of Requests for Production Nos. 7, 17, & 20, excerpts attached as **Exhibit 8**.

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1 Accordingly, Jacuzzi requests that Requests 39 and 40 be limited to pre-incident documents.

2 7. *Plaintiffs' Request 46 seeking documents to show efforts made to preserve photos*
3 *is harassing because this Court already determined that the photos taken by*
4 *counsel or at the direction of counsel were subject to attorney work product*
5 *privilege.*

6 Plaintiffs have already sought sanctions for a "failure to disclose" photos taken by counsel
7 and that motion was denied. Significantly, Jacuzzi provided a privilege log for the photos and the
8 Court determined that they were privileged and not subject to Plaintiffs' discovery. Also, it is
9 important to note that the Plaintiffs have had control and custody of the subject bath tub for the
10 entire pendency of this claim. Jacuzzi's only access to the tub was when permitted, arranged, *and*
11 *accompanied* by Plaintiffs' counsel or his representative. Despite these facts, Plaintiffs make the
12 following request:

13 **REQUEST NO. 46.**

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

17 This is not a case where the Defendant has surveillance videos of a slip and fall and has an
18 opportunity to destroy evidence. This is a product that was purchased and installed in Cunnison's
19 home and has not been in the custody or control of Jacuzzi since it was shipped from the
20 manufacturing facility. The only conceivable purpose of this frivolous request is to harass
21 Jacuzzi and increase litigation cost.

22 ///

23 ///

24 ///

25 ///

26 ///

27 ///

28 ///

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1 **IV. CONCLUSION**

2 A protective order is needed to prevent abusive discovery by Plaintiffs. Accordingly, and
 3 based on the reasons set forth in this Motion, Jacuzzi respectfully requests that the Court enter a
 4 protective order barring the depositions of Kurt Bachmeyer, Regina Reyes, and Jess Castillo and
 5 relieving Jacuzzi of any obligation to respond to Plaintiffs' Requests for Production Nos. 11-17,
 6 24-27, 36, 41-43, and 46, and limiting the responses to Requests for Production Nos. 39-40 to
 7 pre-incident documents.

8
 9 DATED this 11th day of September, 2018.

10 SNELL & WILMER L.L.P.

11
 12 By: 

Vaughn A. Crawford

Nevada Bar No. 7665

Joshua D. Cools

Nevada Bar No. 11941

Alexandria L. Layton

Nevada Bar No. 14228

3883 Howard Hughes Parkway, Suite 1100

Las Vegas, NV 89169

15 *Attorneys for Defendant/Cross-Defendant*

16 *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 JACUZZI, INC. DBA JACUZZI LUXURY BATH'S MOTION FOR PROTECTIVE ORDER ON AN ORDER SHORTENING TIME** 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
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mmg@thorndal.com
*Attorneys for Defendants/Cross-Defendants
 First Street for Boomers & Beyond, Inc. and
 Aithr Dealer, Inc.*

VIA U.S. MAIL, POSTAGE PREPAID
 Hale Benton
 26479 West Potter Drive
 Buckeye, AZ 85396
Defendant Pro Per

DATED this 11th day of September, 2018.

4827-6136-3012

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

Snell & Wilmer

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EXHIBIT 1

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April 3, 2018

Via Email

Benjamin@RichardHarrisLaw.com

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

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

Dear Mr. Cloward:

Pursuant to our agreement, please see the attached privilege log. This log identifies pre-internal communications related to Ms. Cunnison's claim between the date of the incident (February 21, 2014) and the date that Plaintiffs filed suit (February 3, 2016) and the basis for why the communication is privileged. This is in addition to any applicable objections asserted in Jacuzzi's responses to the applicable discovery requests. In addition to Jacuzzi's attorneys, several individuals are identified on the log:

Kurt Bachmeyer – Director of Warranty & Technical Services
William Demeritt – Vice President and Director of Risk Management
Ray Torres – Vice President of Operations & Engineering
Pamela Penksa – Gallagher Bassett Third Party Administrator
Bob Rowan – Chief Executive Officer
Joseph Davis – President, Jacuzzi Luxury Bath
Brandon Riseling – Data Center and Server Administration Manager
Elenita Jaramillo – Legal assistant
Mark Allen – Vice President of Information Technology

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— L.L.P. —

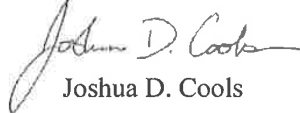
Benjamin P. Cloward, Esq.
April 3, 2018
Page 2

In addition, Jacuzzi identified one document that is not privileged. We will serve a supplemental production, but I have attached a copy of the non-privileged document as well.

Please contact me if you have any questions.

Very truly yours,

Snell & Wilmer

A handwritten signature in dark ink, appearing to read "Joshua D. Cools", is written over the typed name.

Joshua D. Cools

JDC:tcs
Attachments
4815-6507-2736.1

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ATTACHMENT

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Cunnison v Jacuzzi
Jacuzzi Privilege Log re Internal Communication File

BATES NUMBER	DATE	AUTHOR	RECIPIENT	DESCRIPTION	PRIVILEGE
JACUZZI002039-2449		Jacuzzi in-house counsel	Defense counsel	Electronic mail re communications between Jacuzzi and defense counsel.	Attorney Client Privilege / Work Product
JACUZZI002450-2452	5/13/14	Jacuzzi in-house counsel	Bachmeyer, Kurt cc: Jacuzzi in-house counsel Demeritt, William	Electronic Mail re claim and tub identification and installation.	Attorney Client Privilege / Work Product
JACUZZI002453-2456	5/29/14	Jacuzzi in-house counsel	Bachmeyer, Kurt cc: Demeritt, William Jacuzzi in-house counsel Jacuzzi in-house counsel	Electronic Mail re claim and tub identification and installation.	Attorney Client Privilege / Work Product
JACUZZI002457-2458	5/20/14	Jacuzzi in-house counsel	Jacuzzi in-house counsel Torres, Ray cc: Demeritt, William Jacuzzi in-house counsel	Electronic Mail re claim and tub inspection.	Attorney Client Privilege / Work Product
JACUZZI002459	5/1/14	Jacuzzi in-house counsel	Jacuzzi in-house counsel	Electronic Mail re claim and tub inspection.	Attorney Client Privilege / Work Product
JACUZZI002460-2463	5/13/14	Jacuzzi in-house counsel	Torres, Ray cc: Demeritt, William Jacuzzi in-house counsel	Electronic Mail re claim and tub information.	Attorney Client Privilege / Work Product
JACUZZI002464	11/20/14	Jacuzzi in-house counsel	Torres, Ray	Electronic Mail re tub inspection.	Attorney Client Privilege / Work Product
JACUZZI002465	11/25/14	Jacuzzi in-house counsel	Jacuzzi in-house counsel	Electronic Mail re tub inspection	Attorney Client Privilege / Work Product
JACUZZI002466	6/13/14	Jacuzzi in-house counsel	Jacuzzi in-house counsel Torres, Ray Demeritt, William	Electronic Mail re tub identification and installation.	Attorney Client Privilege / Work Product

Cunnison v Jacuzzi
Jacuzzi Privilege Log re Internal Communication File

BATES NUMBER	DATE	AUTHOR	RECIPIENT	DESCRIPTION	PRIVILEGE
JACUZZI002467-2473	5/8/14	Jacuzzi in-house counsel	Jacuzzi in-house counsel	Electronic Mail re communication from First Street re claim.	Attorney Client Privilege / Work Product
JACUZZI002474	5/8/14	Jacuzzi in-house counsel	Jacuzzi in-house counsel cc: Demeritt, William Jacuzzi in-house counsel	Electronic Mail re tub inspection.	Attorney Client Privilege / Work Product
JACUZZI002475	5/15/14	Jacuzzi in-house counsel	Torres, Ray	Electronic Mail re claimant information.	Attorney Client Privilege / Work Product
JACUZZI002476	5/6/14	Demeritt, William	Jacuzzi in-house counsel Jacuzzi in-house counsel	Electronic Mail re customer service / warranty files.	Attorney Client Privilege / Work Product
JACUZZI002478	6/13/14	Demeritt, William	Jacuzzi in-house counsel Jacuzzi in-house counsel	Electronic Mail re tub inspection.	Attorney Client Privilege / Work Product
JACUZZI002479	5/7/14	Jacuzzi in-house counsel	FirstStreet in-house counsel cc: Demeritt, William	Electronic Mail re tub identification and installation.	Attorney Work Product / Joint Defense
JACUZZI002480-2514	7/24/15	Jacuzzi in-house counsel	Jacuzzi in-house counsel cc: Jacuzzi in-house counsel	Electronic Mail re case pleadings and communication with Plaintiff's counsel.	Attorney Client Privilege / Work Product
JACUZZI002515	6/1/15	Jacuzzi in-house counsel	Penksa, Pamela cc: Jacuzzi in-house counsel Demeritt, William	Electronic Mail re attorney retention.	Attorney Client Privilege / Work Product
JACUZZI002516-2521	12/10/14	Jacuzzi in-house counsel	Jacuzzi in-house counsel	Electronic Mail re claim.	Attorney Client Privilege / Work Product

Cunison v Jacuzzi
Jacuzzi Privilege Log re Internal Communication File

BATES NUMBER	DATE	AUTHOR	RECIPIENT	DESCRIPTION	PRIVILEGE
JACUZZI002522	2/18/15	Jacuzzi in-house counsel	Jacuzzi in-house counsel	Electronic Mail re tub photographs.	Attorney Client Privilege
JACUZZI002523-2532	5/27/14	Jacuzzi in-house counsel	Jacuzzi in-house counsel cc: Demeritt, William Jacuzzi in-house counsel	Electronic Mail re walk-in tub warranty and installation information.	Attorney Client Privilege / Work Product
JACUZZI002533-2535	5/2/14	Jacuzzi in-house counsel	Jacuzzi in-house counsel	Electronic Mail re claim.	Attorney Client Privilege / Work Product
JACUZZI002536	5/14/14	Jacuzzi in-house counsel	Jacuzzi in-house counsel cc: Demeritt, William Jacuzzi in-house counsel	Electronic Mail re tub inspection update.	Attorney Client Privilege / Work Product
JACUZZI002537-2538	5/13/14	Jacuzzi in-house counsel	Torres, Ray cc: Jacuzzi in-house counsel Demeritt, William	Electronic Mail re tub and installation information.	Attorney Client Privilege / Work Product
JACUZZI002539-2545	5/12/14	Jacuzzi in-house counsel	Rowan, Bob Davis, Joseph cc: Jacuzzi in-house counsel	Electronic Mail re communication from First Street re claim.	Attorney Client Privilege / Work Product
JACUZZI002546-2547	5/13/14	Jacuzzi in-house counsel	Jacuzzi in-house counsel	Electronic Mail re First Street communication re claim.	Attorney Client Privilege / Work Product
JACUZZI002548-2565	11/21/14	Demeritt, William	Penksa, Pamela Jacuzzi in-house counsel	Electronic Mail re claim.	Attorney Client Privilege / Work Product

4/3/2018

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Cunnison v Jacuzzi
Jacuzzi Privilege Log re Internal Communication File

BATES NUMBER	DATE	AUTHOR	RECIPIENT	DESCRIPTION	PRIVILEGE
JACUZZI002566-2569	4/29/14	Jacuzzi in-house counsel	Rowan, Bob Davis, Joseph cc: Jacuzzi in-house counsel Jacuzzi in-house counsel Demeritt, William	Electronic Mail re Notice of Claim from claimant counsel and tub inspection.	Attorney Client Privilege / Work Product
JACUZZI002570-2574	4/30/14	Jacuzzi in-house counsel	Demeritt, William cc: Jacuzzi in-house counsel Jacuzzi in-house counsel	Electronic Mail re Notice of Claim and retention of counsel.	Attorney Client Privilege / Work Product
JACUZZI002575	12/10/14	Jacuzzi in-house counsel	Jacuzzi in-house counsel Jacuzzi in-house counsel cc: Jaramillo, Elenita Demeritt, William	Electronic Mail re litigation file.	Attorney Client Privilege / Work Product
JACUZZI002576	12/5/14	Riseling, Brandon	Jacuzzi in-house counsel cc: Allen, Mark	Electronic Mail re R. Torres file re claim.	Attorney Client Privilege / Work Product
JACUZZI002577	12/3/14	Jacuzzi in-house counsel	Allen, Mark cc: Jacuzzi in-house counsel	Electronic Mail re R. Torres file re claim.	Attorney Client Privilege / Work Product
JACUZZI002578-2584	5/29/14	Jacuzzi in-house counsel	Jacuzzi in-house counsel cc: Demeritt, William Jacuzzi in-house counsel	Electronic Mail re tub inspection.	Attorney Client Privilege / Work Product

Cunnison v Jacuzzi
Jacuzzi Privilege Log re Internal Communication File

BATES NUMBER	DATE	AUTHOR	RECIPIENT	DESCRIPTION	PRIVILEGE
JACUZZI002585-2606	5/29/14	Jacuzzi in-house counsel	Demeritt, William Jacuzzi in-house counsel Jacuzzi in-house counsel	Electronic Mail re claim and tub installation information.	Attorney Client Privilege / Work Product
JACUZZI002607-2641	5/28/14	Jacuzzi in-house counsel	Jacuzzi in-house counsel Jacuzzi in-house counsel cc: Demeritt, William	Electronic Mail re claim and tub installation information.	Attorney Client Privilege / Work Product
JACUZZI002642-2646	5/27/14	Reyes, Regina	Bachmeyer, Kurt	Electronic Mail re claim and warranty information.	Attorney Client Privilege / Work Product
JACUZZI002647-2658	5/27/14	Jacuzzi in-house counsel	Bachmeyer, Kurt	Electronic Mail re claim and tub installer information.	Attorney Client Privilege / Work Product
JACUZZI002659-2663	5/29/14	Bachmeyer, Kurt	Jacuzzi in-house counsel cc: Jacuzzi in-house counsel Demeritt, William Jacuzzi in-house counsel	Electronic Mail re claim and tub installer information.	Attorney Client Privilege / Work Product
JACUZZI002664-2665	5/21/14	Jacuzzi in-house counsel	Torres, Ray Jacuzzi in-house counsel cc: Demeritt, William Jacuzzi in-house counsel	Electronic Mail re claim and tub inspection.	Attorney Client Privilege / Work Product
JACUZZI002666-2667	5/20/14	Torres, Ray	Jacuzzi in-house counsel Jacuzzi in-house counsel cc: Demeritt, William Jacuzzi in-house counsel	Electronic Mail re claim and tub inspection.	Attorney Client Privilege / Work Product
JACUZZI002668-2669	5/20/14	Jacuzzi in-house counsel	Jacuzzi in-house counsel Torres, Ray cc: Demeritt, William Jacuzzi in-house counsel	Electronic Mail re claim and tub inspection.	Attorney Client Privilege / Work Product

Cunnison v Jacuzzi
Jacuzzi Privilege Log re Internal Communication File

BATES NUMBER	DATE	AUTHOR	RECIPIENT	DESCRIPTION	PRIVILEGE
JACUZZI002670-2672	5/21/14	Jacuzzi in-house counsel	Jacuzzi in-house counsel cc: Demeritt, William Jacuzzi in-house counsel Torres, Ray	Electronic Mail re claim and tub inspection.	Attorney Client Privilege / Work Product
JACUZZI002673-2675	5/5/14	Jacuzzi in-house counsel	Demeritt, William cc: Jacuzzi in-house counsel	Electronic Mail re claim and subject tub.	Attorney Client Privilege / Work Product
JACUZZI002676-2685	5/2/14	Jacuzzi in-house counsel	Demeritt, William cc: Jacuzzi in-house counsel	Electronic Mail re claim and subject tub.	Attorney Client Privilege / Work Product
JACUZZI002686-2690	5/2/14	Jacuzzi in-house counsel	Jacuzzi in-house counsel	Electronic Mail re call with counsel.	Attorney Client Privilege / Work Product
JACUZZI002691	6/13/14	Jacuzzi in-house counsel	Demeritt, William cc: Jacuzzi in-house counsel	Electronic Mail re tub inspection.	Attorney Client Privilege / Work Product
JACUZZI002692-2699	5/29/14	Jacuzzi in-house counsel	FirstStreet in-house counsel	Electronic Mail re walk-in tub and installation information.	Attorney Work Product / Joint Defense
JACUZZI002700-2701	5/13/14	Jacuzzi in-house counsel	Torres, Ray cc: Jacuzzi in-house counsel Demeritt, William	Electronic Mail re walk-in tub and installation information.	Attorney Client Privilege / Work Product
JACUZZI002702-2708	5/13/14	Torres, Ray	Jacuzzi in-house counsel cc: Jacuzzi in-house counsel Demeritt, William	Electronic Mail re walk-in tub information.	Attorney Client Privilege / Work Product
JACUZZI002709-2711	7/24/15	Jacuzzi in-house counsel	Jacuzzi in-house counsel cc: Jacuzzi in-house counsel Demeritt, William	Electronic Mail re case materials.	Attorney Client Privilege / Work Product

Cunnison v Jacuzzi
Jacuzzi Privilege Log re Internal Communication File

BATES NUMBER	DATE	AUTHOR	RECIPIENT	DESCRIPTION	PRIVILEGE
JACUZZI002712-2725	6/4/14	Jacuzzi in-house counsel	Jacuzzi in-house counsel Jacuzzi in-house counsel	Electronic Mail re inspection status.	Attorney Client Privilege / Work Product
JACUZZI002726-2727	6/1/15	Penksa, Pamela	Jacuzzi in-house counsel cc: Jacuzzi in-house counsel Demeritt, William	Electronic Mail re attorney retention.	Attorney Client Privilege / Work Product
JACUZZI002728-2744	5/13/14	Jacuzzi in-house counsel	Rowan, Bob Davis, Joseph cc: Jacuzzi in-house counsel	Electronic Mail re First Street's communication re claim.	Attorney Client Privilege / Work Product
JACUZZI002745-2755	5/13/14	Jacuzzi in-house counsel	Jacuzzi in-house counsel	Electronic Mail re response to First Street communication re claim.	Attorney Client Privilege / Work Product
JACUZZI002756	6/13/14	Torres, Ray	Jacuzzi in-house counsel cc: Jacuzzi in-house counsel Demeritt, William	Electronic Mail re tub installation.	Attorney Client Privilege / Work Product
JACUZZI002757-2779	6/18/14	Jacuzzi in-house counsel	Jacuzzi in-house counsel Torres, Ray	Electronic Mail re tub installation.	Attorney Client Privilege / Work Product
JACUZZI002780-2791	6/18/14	Jacuzzi in-house counsel	Jacuzzi in-house counsel Torres, Ray	Electronic Mail re tub installation.	Attorney Client Privilege / Work Product
JACUZZI002792-2795	12/11/14	Jacuzzi in-house counsel	Jacuzzi in-house counsel Jacuzzi in-house counsel cc: Jaramillo, Elenita Demeritt, William	Electronic Mail re litigation file.	Attorney Client Privilege / Work Product
JACUZZI002796-2797	12/11/14	Jacuzzi in-house counsel	Riseling, Brandon cc: Allen, Mark	Electronic Mail re R. Torres file re claim.	Attorney Client Privilege / Work Product

Cunison v Jacuzzi
Jacuzzi Privilege Log re Internal Communication File

BATES NUMBER	DATE	AUTHOR	RECIPIENT	DESCRIPTION	PRIVILEGE
JACUZZI002798-2799	12/3/14	Jacuzzi in-house counsel	Jacuzzi in-house counsel Allen, Mark	Electronic Mail re R. Torres file re claim.	Attorney Client Privilege / Work Product
JACUZZI002800-2848	4/30/14	Jacuzzi in-house counsel	Jacuzzi in-house counsel cc: Demeritt, William Jacuzzi in-house counsel	Electronic Mail re counsel retention.	Attorney Client Privilege / Work Product
JACUZZI002849-2853	4/30/14	Jacuzzi in-house counsel	Jacuzzi in-house counsel cc: Demeritt, William Jacuzzi in-house counsel	Electronic Mail re claim and tub information.	Attorney Client Privilege / Work Product

From: Simetz, Nicole </O=JACUZZI ORGANIZATION/OU=FIRST ADMINISTRATIVE GROUP/CN=RECIPIENTS/CN=NSIMETZ>
To: benjamin@richardharrislaw.com
Sent: 5/5/2014 1:42:25 PM
Subject: Cunnison Claim
Attachments: image003.jpg

Dear Mr. Cloward,

I just wanted to follow up with you regarding our telephone call last week. You mentioned that your office has requested medical reports as well as a fire report from the local fire department regarding this case. With that said, I just wanted to touch base with you and see if you have received any of this requested information to date, and if not, whether or not you have a status as to when we could expect to receive the same.

Thank you in advance and we look forward to your response.

Best regards,

Nicole

Nicole Simetz-Young J.D.
Legal Department

<<http://www.jacuzzi.com/>> www.jacuzzi.com

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

(o) 909.247.2106 (c) 909.217.4887 (f) 909.247.2588

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

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005648

JACUZZI002477

EXHIBIT 2

005649

005649

Snell & Wilmer

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Joshua D. Cools
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jcools@swlaw.com

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

April 23, 2018

Via Email

Benjamin@RichardHarrisLaw.com

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

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

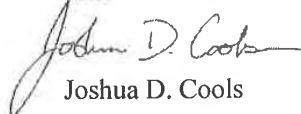
Dear Mr. Cloward:

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

Please contact me with any questions.

Best regards,

Snell & Wilmer



Joshua D. Cools

JDC:tcs
4847-0944-8803.1

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EXHIBIT 3

005651

ELECTRONICALLY SERVED
6/19/2017 4:58 PM

Vaughn A. Crawford, Nevada Bar No. 7665
Joshua D. Cools, Nevada Bar No. 11941
SNEILL & WILMER L.L.P.
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Las Vegas, NV 89169
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Email: vcrawford@swlaw.com
Email: jcools@swlaw.com

Attorneys for Defendant/Cross-Defendant
JACUZZI INC. doing business
as JACUZZI LUXURY BATH

DISTRICT COURT

CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

AND ALL RELATED CLAIMS.

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

**DEFENDANT/CROSS-DEFENDANT
JACUZZI INC.'S RESPONSE TO
PLAINTIFF DEBORAH TAMANTINI'S
FIRST SET OF INTERROGATORIES**

Defendant/Cross-Defendant JACUZZI INC. doing business as Jacuzzi Luxury Bath
("Defendant"), by and through its attorneys of record, Snell & Wilmer L.L.P., responds to Plaintiff

005652

Snell & Wilmer

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

005652

- 1 3. Test Standards
- 2 i. UL 1795 UL Standard for Safety Hydromassage Bathtubs
- 3 ii. CSA C22.2 No. 218.2:2015 Hydromassage Bathtub Appliances
- 4 (c) Co-efficiency of Friction Test: ASTM F 462-79 (R2007).pdf
- 5 a. June 2013
- 6 b. IAPMO R&T Lab, 5001 East Philadelphia Street, Ontario, California
- 7 91761
- 8 c. Test protocol ASTM F 462-79 (R2007)
- 9 d. Complied with test standard
- 10 (d) Door Mechanism Life Cycle Test: Door Life Cycle.pdf
- 11 1. December 2012
- 12 2. SCO Monte Vista Ave, Chino, CA 91710
- 13 3. Test Protocol: Force Failure Analysis/Life Cycle Testing
- 14 4. First Article Accepted

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

16 Door Life Cycle	JACUZZI001372-1375
17 ETL Certification Listing	JACUZZI001376-1441
18 IAPMO Certification Listing	JACUZZI001442-1446
19 IAMPO Lab Test Report_ASTM F 462-79	JACUZZI001447-1449

22 Defendant objects to this Interrogatory as overbroad because it is seeking information
 23 beyond the implication of the subject incident and claims outside the scope of NRCP 26(b).
 24 Defendant has limited its response to those tests it believes are relevant to Plaintiffs' claims. If
 25 Plaintiff seeks additional responses, they must clarify design elements or a scope of tests at issue,
 26 which are relevant to the subject incident and claims.

27 ///

28 ///

1 **INTERROGATORY NO. 9:**

2 If the tests or studies identified in your answer to the foregoing interrogatory resulted in
 3 any change or modifications to the subject Jacuzzi Walk-In-Tub's, please state the nature of the
 4 change or modification and the reason for such change or modification.

5 **RESPONSE:**

6 No changes or modifications were needed.

7 Defendant objects to this Interrogatory as overbroad because it is seeking information
 8 beyond the implication of the subject incident and claims and outside the scope of NRCP 26(b).
 9 Defendant has limited its response to those modifications it believes are relevant to Plaintiffs'
 10 claims. If Plaintiff seeks additional responses, they must clarify design elements or a scope of
 11 modifications at issue, which are relevant to the subject incident and claims.

12 **INTERROGATORY NO. 10:**

13 State verbatim the content of any warnings or instructions on all written material that is
 14 included in the packaging of a new Jacuzzi Walk-In-Tub which is the subject of this litigation.
 15 Alternatively, provide a copy of such written material.

16 **RESPONSE:**

17 Pursuant to NRCP 33(d), Defendant directs Plaintiff to Installation and Operation
 18 Instructions Manual, Jacuzzi 5229 Walk-In Bathtub Series, 2013, produced in Defendant's Initial
 19 Disclosure Statement as JACUZZI 000001-20. Additional warnings are posted on the bathtub,
 20 but are not related to the vague defect claims that have been asserted.

21 **INTERROGATORY NO. 11:**

22 Please state whether the Defendant has ever received notice, either verbal or written, from
 23 or on behalf of any person claiming injury or damage from his use of a Jacuzzi Walk-In Tub
 24 which is the subject of the litigation.

25 If so, please state:

- 26 (a) the date of each such notice;
- 27 (b) the name and last known address of each person giving such notice; and
- 28 (c) the substance of the allegations of such notice

1 **RESPONSE:**

2 Defendant is only aware of the claims of injury brought by Plaintiffs' attorney. This
 3 response is limited to injury claims made prior to the subject incident and to the subject Jacuzzi®
 4 Walk-In Bathtub model that are similar to the vague claims that have been asserted in this action.

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

10 **INTERROGATORY NO. 12:**

11 Has the Defendant ever been named as a defendant, respondent or other involuntary
 12 participant in a lawsuit or other proceeding arising out of personal injuries or damage in
 13 connection with a Jacuzzi Walk-In-Tub?

14 If so, please state as to each:

- 15 (a) the court or other forum in which it was filed;
- 16 (b) the names of all parties or named participants;
- 17 (c) the case number or other identifying number, letters or name assigned to the action
 18 or other proceeding;
- 19 (d) the name and last known address of each person claiming injury or damage
 20 therein;
- 21 (e) the names and last known address of all known counsel of record participating in
 22 such action or proceeding; and
- 23 (f) the date of the alleged injury or damage

24 **RESPONSE:**

25 Other than this suit, Defendant has never been named as a defendant, respondent or other
 26 involuntary participant in a lawsuit or other proceeding arising out of personal injury in
 27 connection with the subject Jacuzzi® Walk-In Bathtub involving claims similar to the claims
 28 presented in this action. This response is limited to information potentially relevant to the vague

1 defect claims asserted by plaintiffs.

2 Defendant objects to this interrogatory because it is overly broad without reasonable
 3 limitation in scope, unduly burdensome, and seeks information irrelevant to the subject matter of
 4 this action and is not likely to lead to the discovery of relevant or admissible evidence. The
 5 interrogatory is vague and ambiguous. Defendant objects to this request as overbroad to the
 6 extent it would include unrelated claims, such as property damage claims or claims unrelated to
 7 the vague defects claimed to have caused plaintiffs' injuries. Such claims are outside the scope of
 8 Rule 26(b) and not included in Defendant's response.

9 **INTERROGATORY NO. 13:**

10 Please identify each and every law, rule, regulation, standard, statute, ordinance, or other
 11 requirement or recommendation established by any Nevada state or federal governmental body or
 12 officer that deals with, defines, limits or specifies the manufacture, design or use of the subject
 13 Jacuzzi Walk-In-Tub or similar products, with specific reference to:

- 14 (a) the name or title of the governmental body or officer responsible for the
- 15 establishment, enactment, or promulgation;
- 16 (b) the title, including chapter, section, and paragraph numbers;
- 17 (c) the date of establishment, enactment, or promulgation; and
- 18 (d) the subject matter addressed

19 **RESPONSE:**

20 The subject Jacuzzi® Walk-In Tub is subject to:

- 21 1. Specification Use Jacuzzi® Walk-In-Tub: Clark County Building Code.pdf
- 22 a. Clarke County, Nevada
- 23 b. Administrative Code, Chapter 22.02
 - 24 i. 22.02.475 Required Electrical Inspections
 - 25 ii. 22.02.480 Required Plumbing Inspections
 - 26 iii. 22.02.485 Required Mechanical Inspections
- 27 c. 2014
- 28 d. Inspection Requirements

005657

Snell & Wilmer
LLPLAW OFFICES
3883 Howard Hughes Parkway, Suite 1100
Las Vegas, Nevada 89169
702.784.5200RESPONSE:

Defendant contends that Plaintiffs' claims are meritless and is unaware, at this time, of any person or entity that should be named as a party.

DATED this 19th day of June, 2017.

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/Cross-Defendant
JACUZZI INC. doing business
as JACUZZI LUXURY BATH

005657

CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **DEFENDANT/CROSS-DEFENDANT JACUZZI INC.'S RESPONSE TO PLAINTIFF DEBORAH TAMANTINI'S FIRST SET OF INTERROGATORIES** by the method indicated below, addressed to the following:

XXXXXX Odyssey E-File & Serve

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

Scott R. Cook, NV Bar No. 5265
 Jennifer L. Micheli, NV Bar No. 11210
 KOLESAR & LEATHAM
 400 South Rampart Blvd., Suite 400
 Las Vegas, NV 89145
 Telephone: (702) 362-7800
 Facsimile: (702) 362-9472
 Email: scook@klnevada.com
 Attorneys for Third-Party Defendant
 THE CHICAGO FAUCET COMPANY

Joseph P. Garin, NV Bar No. 6653
 LIPSON, NEILSON, COLE,
 SELTZER & GARIN, P.C.
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 Facsimile: (702) 382-1512
 Email: jgarin@lipsonneilson.com
 Attorneys for Defendants/Cross-Defendants/Cross-Claimants
 WILLIAM BUDD, individually and as
 BUDDS PLUMBING

Michael E. Stoberski, NV Bar No. 4762
 Daniela Labounty, NV Bar No. 13169
 OLSON, CANNON, GORMLEY
 ANGULO & STOBERSKI
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 Telephone: (702) 384-4012
 Facsimile: (702) 383-0701
 Email: mstoberski@ocgas.com
 Email: dlabounty@ocgas.com
 Attorneys for Defendant/Cross-Claimant
 Third Party Plaintiff
 HOMECCLICK, LLC

Stephen J. Erigero, NV Bar No. 11562
 Timothy J. Lepore, NV Bar No. 13908
 ROPERS, MAJESKI, KOHN & BENTLEY
 3753 Howard Hughes Pkwy., Suite 200
 Las Vegas, NV 89169
 Telephone: (702) 954-8300
 Facsimile: (213) 312-2001
 Email: stephen.erigero@rmkb.com
 Email: timothy.lepore@rmkb.com
 Attorneys for Defendant/Cross-Defendant/Cross-Claimant
 BESTWAY BUILDING
 & REMODELING, INC.

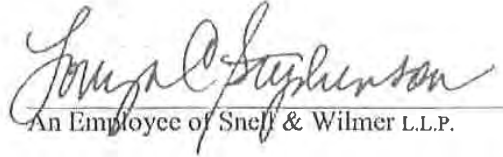
699500

Snell & Wilmer

L.L.P.
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Las Vegas, Nevada 89169
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1 Christopher J. Curtis, NV Bar No. 4098
2 Meghan M. Goodwin, NV Bar No. 11974
3 THORNDAL, ARMSTRONG, DELK
4 BALKENBUSH & EISINGER
5 1100 East Bridger Avenue
6 Las Vegas, NV 89101-5315
7 Mail to: P.O. Box 2070
8 Las Vegas, NV 89125-2070
9 Telephone: (702) 366-0622
10 Facsimile: (702) 366-0327
11 Email: cjc@thorndal.com
12 Email: mmg@thorndal.com
13 Attorneys for Defendants/Cross-Defendants
14 FIRST STREET FOR BOOMERS &
15 BEYOND, INC. AND AITHR DEALER,
16 INC.
17
18
19
20
21
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23
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27
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DATED this 19th day of June, 2017.


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

4817-5709-3191.5

005659

VERIFICATION

I, William Demeritt, declare as follows:

1. I am the Vice President and Director of Risk Management for Jacuzzi Inc.
2. I verify that I have read **DEFENDANT/CROSS-DEFENDANT JACUZZI INC.'S RESPONSE TO PLAINTIFF DEBORAH TAMANTINI'S FIRST SET OF INTERROGATORIES**, and know the contents thereof; that based on information and belief the responses contained therein are, just and true.

I declare under penalty of perjury under the law of the State of Nevada that the foregoing is true and correct.

DATED this 13 day of ~~June~~ June, 2017.


WILLIAM DEMERITT

4840-8233-7098

099500

005660

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6/19/2017 5:01 PM

Snell & Wilmer

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Vaughn A. Crawford, Nevada Bar No. 7665
Joshua D. Cools, Nevada Bar No. 11941
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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; MICHAEL SMITH individually,
and heir to the Estate of SHERRY LYNN
CUNNISON, Deceased; and DEBORAH
TAMANTINI individually, and heir to the
Estate of SHERRY LYNN CUNNISON,
Deceased,

Plaintiffs,

vs.

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

Defendants.

AND ALL RELATED CLAIMS.

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

**DEFENDANT/CROSS-DEFENDANT
JACUZZI INC.'S RESPONSE TO
PLAINTIFF DEBORAH TAMANTINI'S
FIRST SET OF REQUEST FOR
PRODUCTION OF DOCUMENTS**

Defendant/Cross-Defendant JACUZZI INC. doing business as Jacuzzi Luxury Bath
("Defendant"), by and through its attorneys of record, Snell & Wilmer L.L.P., responds to Plaintiff

2999500

Snell & Wilmer

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

1 expected to be called to trial.

2 **RESPONSE:**

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

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

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

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

12 **RESPONSE:**

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

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

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

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

22 **RESPONSE:**

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

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

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1 REQUEST FOR PRODUCTION NO. 26:

2 Any all videotapes, photographs, notes, memorandums, technical data, and internal
3 documents of any and all testing conducted by this Defendant's research and design experts on
4 the same model as the subject Jacuzzi Walk In Tub.

5 RESPONSE:

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

13 REQUEST FOR PRODUCTION NO. 27:

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

17 RESPONSE:

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

20 Defendant objects to the use of the phrase "sales material provided to elderly folks (over
21 the age of 55)" because it implies that Jacuzzi knows the age or identity of individual people or
22 population groups that received specific materials. Therefore, Defendant's Response is limited to
23 sales material concerning the safety features of the Jacuzzi® Walk-In Bathtub.

24 REQUEST FOR PRODUCTION NO. 28:

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

28 ///

1 **RESPONSE:**

2 Defendant is unaware of any specific sales materials provided to "elderly folks." Jacuzzi
 3 did not produce marketing materials related to this tub. Defendant objects to the use of the phrase
 4 "sales material provided to elderly folks (over the age of 55)" because it implies that Jacuzzi
 5 knows the age or identity of individual people or population groups that received specific
 6 materials. Therefore, Defendant's Response is limited to sales material concerning the ease of
 7 use features of the Jacuzzi® Walk-In Bathtub.

8 **REQUEST FOR PRODUCTION NO. 29:**

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

12 **RESPONSE:**

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

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

19 **REQUEST FOR PRODUCTION NO. 30:**

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

23 **RESPONSE:**

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

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

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

2 REQUEST FOR PRODUCTION NO. 31:

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

6 RESPONSE:

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

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

13 REQUEST FOR PRODUCTION NO. 32:

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

17 RESPONSE:

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

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

24 REQUEST FOR PRODUCTION NO. 33:

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

26 RESPONSE:

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

28 ///

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

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

REQUEST FOR PRODUCTION NO. 34:

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

RESPONSE:

Defendant does not have any responsive documents.

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

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

4 **REQUEST FOR PRODUCTION NO. 35:**

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

7 **RESPONSE:**

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

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

20 **REQUEST FOR PRODUCTION NO. 36:**

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

23 **RESPONSE:**

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

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

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

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

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

11 **RESPONSE:**

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

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

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

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

24 **RESPONSE:**

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

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

7 **REQUEST FOR PRODUCTION NO. 39:**

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

11 **RESPONSE:**

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

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

19 **REQUEST FOR PRODUCTION NO. 40:**

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

22 **RESPONSE:**

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

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

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1 the injury claims that have been asserted.

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

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

5 **RESPONSE:**

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

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

13 DATED this 19th day of June, 2017.

14 SNELL & WILMER L.L.P.

15 By: 

16 Vaughn A. Crawford
17 Nevada Bar No. 7665
18 Joshua D. Cools
19 Nevada Bar No. 11941
20 3883 Howard Hughes Parkway, Suite 1100
21 Las Vegas, NV 89169

22 Attorneys for Defendant/Cross-Defendant
23 JACUZZI INC. doing business
24 as JACUZZI LUXURY BATH
25
26
27
28

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CERTIFICATE OF SERVICE

I, the undersigned, declare under penalty of perjury, that I am over the age of eighteen (18) years, and I am not a party to, nor interested in, this action. On this date, I caused to be served a true and correct copy of the foregoing **DEFENDANT/CROSS-DEFENDANT JACUZZI INC.'S RESPONSE TO PLAINTIFF DEBORAH TAMANTINI'S FIRST SET OF REQUEST FOR PRODUCTION OF DOCUMENTS** by the method indicated below, addressed to the following:

XXXXX Odyssey E-File & Serve

Benjamin P. Cloward, NV Bar No. 11087
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 Las Vegas, NV 89101
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 Facsimile: (702) 444-4455
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 Attorneys for Plaintiffs

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 Jennifer L. Micheli, NV Bar No. 11210
 KOLESAR & LEATHAM
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 Telephone: (702) 362-7800
 Facsimile: (702) 362-9472
 Email: scook@klnevada.com
 Attorneys for Third-Party Defendant
 THE CHICAGO FAUCET COMPANY

Joseph P. Garin, NV Bar No. 6653
 LIPSON, NEILSON, COLE,
 SELTZER & GARIN, P.C.
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 Attorneys for Defendants/Cross-
 Defendants/Cross-Claimants
 WILLIAM BUDD, individually and as
 BUDDS PLUMBING

Michael E. Stoberski, NV Bar No. 4762
 Daniela Labounty, NV Bar No. 13169
 OLSON, CANNON, GORMLEY
 ANGULO & STOBERSKI
 9950 West Cheyenne Avenue
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 Attorneys for Defendant/Cross-Claimant
 Third Party Plaintiff
 HOMELICK, LLC

Stephen J. Erigero, NV Bar No. 11562
 Timothy J. Lepore, NV Bar No. 13908
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 Attorneys for Defendant/Cross-
 Defendant/Cross-Claimant
 BESTWAY BUILDING
 & REMODELING, INC.

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1 Christopher J. Curtis, NV Bar No. 4098
2 Meghan M. Goodwin, NV Bar No. 11974
3 THORNDAL, ARMSTRONG, DELK
4 BALKENBUSH & EISINGER
5 1100 East Bridger Avenue
6 Las Vegas, NV 89101-5315
7 Mail to: P.O. Box 2070
8 Las Vegas, NV 89125-2070
9 Telephone: (702) 366-0622
10 Facsimile: (702) 366-0327
11 Email: cjc@thorndal.com
12 Email: mmg@thorndal.com
13 Attorneys for Defendants/Cross-Defendants
14 FIRST STREET FOR BOOMERS &
15 BEYOND, INC. AND AITHR DEALER,
16 INC.
17
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DATED this 19th day of June, 2017.


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

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EXHIBIT 4

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ELECTRONICALLY SERVED
5/17/2018 3:04 PM

Vaughn A. Crawford, Nevada Bar No. 7665
Joshua D. Cools, Nevada Bar No. 11941
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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; 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.**

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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.

1 **Topic 49**

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

4 **RESPONSE:**

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

12 **Topic 50**

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

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

19 **RESPONSE:**

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

28

1 **Topic 51**

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

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

7 **RESPONSE:**

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

16 **Topic 52**

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

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

24 **RESPONSE:**

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

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

4 **Topic 53**

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

7 **RESPONSE:**

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

10

11 DATED this 17th day of May, 2018,

12

SNELL & WILMER L.L.P.

13

14

By: /s/ Joshua D. Cools

15

Vaughn A. Crawford

Nevada Bar No. 7665

Joshua D. Cools

16

Nevada Bar No. 11941

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Las Vegas, NV 89169

17

18

Attorneys for Defendant/Cross-Defendant

Jacuzzi Inc. doing business as Jacuzzi Luxury Bath

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

- ☐ **BY E-MAIL:** by transmitting via e-mail the document(s) listed above to the e-mail addresses set forth below and/or included on the Court's Service List for the above-referenced case.
- ☒ **BY ELECTRONIC SUBMISSION:** submitted to the above-entitled Court for electronic filing and service upon the Court's Service List for the above-referenced case.
- ☐ **BY U.S. MAIL:** by placing the document(s) listed above in a sealed envelope with postage thereon fully prepaid, in the United States mail at Las Vegas, Nevada addressed as set forth below:

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Richard Harris Law Firm
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*Attorneys for Defendants/Cross-
 Defendants/Cross-Claimants
 William Budd, Individually and as Budds
 Plumbing*

Christopher J. Curtis, NV Bar No. 4098
 Meghan M. Goodwin, NV Bar No. 11974
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 Telephone: (702) 366-0622
 Facsimile: (702) 366-0327
 Email: cjc@thorndal.com
 Email: mmg@thorndal.com
*Attorneys for Defendants/Cross-Defendants
 First Street for Boomers & Beyond, Inc. and
 Aithr Dealer, Inc.*

DATED this 17th day of May, 2018.

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

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EXHIBIT 5

005682

1

DISTRICT COURT

2

CLARK COUNTY, NEVADA

3

4

ROBERT ANSARA, as Special)

Administrator of the Estate of)

5

SHERRY LYNN CUNNISON, Deceased;)

et al.,)

6

Plaintiffs,)

7

vs.)

No. A-16-731244-C

8

FIRST STREET FOR BOOMERS & BEYOND,)

INC.; et al.,)

9

Defendants.)

(Pages 1 - 120)

10

AND RELATED CROSS-ACTIONS.)

11

12

(Complete Caption On Following Page)

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14

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V O L U M E I

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Videotaped deposition of WILLIAM B.

18

DEMERITT, Rule 30(b)(6) Corporate Designee

19

for Jacuzzi, taken on behalf of the Plaintiffs,

20

at 600 Anton Boulevard, Suite 1400, Costa Mesa,

21

California, commencing at 9:49 a.m., on Thursday,

22

May 24, 2018, before Kathleen Mary O'Neill,

23

CSR 5023, RPR.

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25

1 DISTRICT COURT
2 CLARK COUNTY, NEVADA
3

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

9 Plaintiffs,)

10 vs.)

No. A-16-731244-C)

11 FIRST STREET FOR BOOMERS & BEYOND,)
INC.; AITHR DEALER, INC.; HALE)
12 BENTON, Individually, HOMELICK,)
LLC.; JACUZZI LUXURY BATH, doing)
13 business as JACUZZI INC.; BESTWAY)
BUILDING & REMODELING, INC;)
14 WILLIAM BUDD, Individually and as)
BUDDS PLUMBING; DOES 1 through 20;)
15 ROE CORPORATIONS 1 through 20; DOE)
EMPLOYEES 1 through 20; DOE)
16 MANUFACTURERS 1 through 20; DOE 20)
INSTALLERS 1 through 20; DOE)
17 CONTRACTORS 1 through 20; and)
DOE 21 SUBCONTRACTORS 1 through)
18 20, inclusive,)

19 Defendants.)

20 AND RELATED CROSS-ACTIONS.)
21)
22)
23)
24)
25)

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25 jcools@swlaw.com

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9 702/366-0622

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12 Videographer:

13 DEAN JONES

14 OASIS REPORTING SERVICES

15 702/476-4500

16

17 Also present:

18 RON TEMPLER

19 (Corporate representative for Jacuzzi)

20

21

22

23

24

25

1	I N D E X		
2	DEPONENT	EXAMINED BY	PAGE
3	William B. Demeritt	Mr. Cloward	7
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5	Videotape No. 1	Page 6	
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8	EXHIBITS FOR IDENTIFICATION:		PAGE
9	1 Saferproducts.gov Incident Report,		92
10	3 pages		
11	2 6/17/16 Plaintiff's Original Petition,		96
12	13 pages		
13	3 "Chicago Woman Sues: Stuck in Bathtub		104
14	30 Hours," 2 pages		
15	4 Homeability.com "Walk-in Tubs:		105
16	Homeability Uncovers Scams & Shady		
17	Practices," 10 pages		
18	5 Ohio Department of Developmental		110
19	Disability, "Safety Is Not an		
20	Accident It's Everyone's Business,"		
21	2 pages		
22			
23			
24			
25			

1 personal injury or death of the plaintiff in the case.

2 The response -- and I'm not reading the whole
3 -- for the record, I'm not reading the entire request or
4 category, just to shorten things up.

5 The response is that:

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

19 Are you prepared to discuss the privilege log
20 that is being produced?

21 MR. COOLS: Just one objection in that the
22 privilege log was produced.

23 MR. CLOWARD: Okay. So it was a mistake where
24 it indicated "a privilege log is being prepared"?

25 MR. COOLS: Yeah. The privilege log has been

1 produced to your office.

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

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

8 MR. COOLS: That is correct.

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

11 MR. COOLS: That's right.

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

15 The response is:

16 "Category" -- or excuse me --

17 "Jacuzzi will perform a diligent
18 search for any non-privileged
19 responsive documents."

20 Do you know when that search will be performed?

21 A. No, I don't.

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

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

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

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

5 A. To my understanding it's complet ed.

6 Q. Were documents produced responsi ve to that
7 search?

8 A. I don't know.

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

12 A. No.

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

15 A. Yes.

16 Q. Okay. What were you informed?

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

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

25 MR. CLOWARD: The questions -- t he category

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

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

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

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

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

15 MR. CLOWARD: Okay.

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

18 MR. CLOWARD: Yeah.

19 MR. COOLS: Okay.

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

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

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

3 Q. Okay.

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

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

9 A. Right.

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

11 A. Right.

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

13 A. Okay.

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

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

18 Q. Jess?

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

20 Q. Castillo?

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

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

25 Q. Okay.

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

3 Q. Bachmeyer?

4 A. Bachmeyer.

5 Q. Okay.

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

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

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

18 MR. COOLS: I'd like to go off t he record for a
19 second.

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

21 MR. COOLS: Okay. He's providin g you testimony
22 about something other than what this cate gory is about.

23 MR. CLOWARD: Okay. So that wou ld be a
24 speaking objection. I'm interested to kn ow what this
25 individual has to say. If it's not respo nsive, then,

1 you know, you can clarify that on your re direct or your
2 cross-examination. But I'd like to ask t his individual
3 questions, and I'd like to talk to him ab out the
4 searches that were performed.

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

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

11 Q. Sir --

12 A. You're talking about 4?

13 Q. Sir, yes.

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

17 A. Okay.

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

19 A. (The witness reviews a document.)

20 Okay.

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

22 A. Right.

23 Q. You feel comfortable?

24 A. Yeah.

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

1 A. No.

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

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

6 Q. Okay.

7 A. Yeah.

8 Q. Okay. Fair enough. Thank you.

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

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

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

15 A. Yes.

16 Q. Okay. Fair enough.

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

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

24 A. Just corporate counsel.

25 Q. Corporate counsel.

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1 And that would be the gentleman sitting --

2 A. Yes.

3 Q. -- to your right?

4 A. My right.

5 Q. Okay. So what were you informed by

6 Mr. Castillo about what he found?

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

9 Q. What documents did he gather?

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

12 Q. How many incident reports?

13 A. I have no idea.

14 Q. Do you have an estimate?

15 A. No. I don't.

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

17 A. I don't know.

18 Q. -- five?

19 A. If I had an idea, I would have told you. No.

20 I don't have an idea. I know that it was a voluminous
21 amount, and each word that was searched had different
22 amounts.

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

24 A. X is a good --

25 Q. -- documents?

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

3 Q. You just know that it was voluminous?

4 A. Right.

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

7 A. No.

8 Q. Over 200?

9 A. No.

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

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

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

17 A. Correct.

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

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

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

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

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

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

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

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

7 "Have you submitted the documents to counsel?"

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

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

13 A. Correct.

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

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

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

25 A. I'm not aware.

1 Q. Okay. Thank you.

2 Now, let's go to Category No. 5. Category
3 No. 5, would you just read that and let me know when
4 you're --

5 A. The one that starts "All safety manuals"?

6 Q. Correct.

7 A. Yeah. I have not rev- -- I do not get
8 involved in that part of the business.

9 Q. Okay. First, very first question is: Were you
10 given a fair opportunity to review that category?

11 I mean, did you read it?

12 A. The question or the documents?

13 Q. Category 5.

14 A. Yeah. I just read it: "All safety manuals of
15 defendants with," yeah. I just read it.

16 Q. The reason I'm asking you is --

17 A. No. I understand. You don't want me to be
18 confused. I appreciate that.

19 Q. So I want to give you a fair opportunity. I
20 don't want anyone to ever say, "Hey, Mr. Cloward was" --

21 A. They're not going to say that anyway.

22 Q. Well, I'm trying to not have that happen.

23 A. Yeah. Yeah. No. I understand your question.

24 THE REPORTER: I have a question to ask you --
25 or a request. Would you please just wait for him to

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1 set is verified. Do you have --

2 MR. COOLS: We might have served the
3 verification separately.

4 Q. BY MR. CLOWARD: Okay. In any case, sir, have
5 you had an opportunity to review that?

6 A. Yes.

7 Q. Other than the documents identified as
8 JACUZZI-000001 through -20, are you aware of any other
9 warnings or instructions that would be given to an end
10 user regarding the usage of a Jacuzzi walk-in tub?

11 A. No, I'm not.

12 Q. Okay. And again, with regard to Interrogatory
13 No. 11, would you please just review that interrogatory
14 as well and the response, and then let me know when
15 you're ready to discuss that.

16 A. (The witness reviews a document.)

17 Okay.

18 Q. The response is:

19 "The defendant is only aware
20 of the claims of injury brought by
21 plaintiffs' attorney."

22 And are the claims of injury referred to in
23 that response the claim of Ms. Cunnison, as well as the
24 claim by Mr. Smith's family?

25 A. Yes.

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

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

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

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

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

1 period.

2 A. Correct.

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

5 A. Yes.

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

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

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

11 A. Yep.

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

15 A. (The witness reviews a document.)

16 Okay.

17 Q. Now, again, the response is:

18 "Other than this suit" --

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

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

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

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

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

1 THE WITNESS: I've never heard them ask that
2 question.

3 MR. CLOWARD: Okay. I'm good. No further
4 questions.

5 MS. GOODWIN: I don't have anything.

6 MR. COOLS: We can go off the record.

7 THE VIDEOGRAPHER: Videotaped deposition off
8 record at 12:53 p.m.

9 This will conclude the deposition of William
10 Demeritt.

11 This will also conclude video disk No. 2 of 2
12 used in today's deposition.

13 Thank you.

14 (Proceedings adjourned at 12:53 P.M.)

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DEPONENT'S DECLARATION

I, WILLIAM B. DEMERITT, declare under penalty of perjury that I have read the foregoing transcript, and I have made any corrections, additions, or deletions that I was desirous of making, and that the foregoing is a true and correct transcript of my testimony contained therein.

Executed this 4th day of June, 2018,
at Chico Hills, CA.
(City) (State)


WILLIAM B. DEMERITT
(Volume I)

REPORTER'S CERTIFICATE

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

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

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

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

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

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

Dated: May 29, 2018


KATHLEEN MARY O'NEILL
CSR 5023, RPR, CLR



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EXHIBIT 6

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ELECTRONICALLY SERVED
8/17/2018 3:23 PM

Snell & Wilmer

L L P

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DENVER
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LOS CABOS
ORANGE COUNTY
PHOENIX
RENO
SALT LAKE CITY
TUCSON

August 17, 2018

VIA EMAIL AND ESERVICE

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

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

Dear Mr. Cloward:

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

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

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

Snell & Wilmer is a member of LEX MUNDI, The Leading Association of Independent Law Firms.

4850-9264-3952.2

Case Number: A-16-731244-C

Snell & Wilmer

L.L.P.

Benjamin P. Cloward, Esq.

August 17, 2018

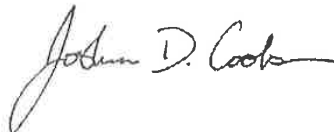
Page 2

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

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

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

Best regards,



JOSHUA D. COOLS

JDC:jmd

Enclosures

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

Cunnison v Jacuzzi
Jacuzzi Privilege Log re Other Incident documents

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

Cunnison v Jacuzzi
Jacuzzi Privilege Log re Other Incident documents

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

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EXHIBIT 7

005712

005712

005713



1 **REQT**
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 10 *Attorneys for Plaintiff*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

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

21 Plaintiffs,

22 vs.

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

Defendants.

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

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

005713

1 AND ALL RELATED MATTERS
2

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

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

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

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

25 **PREAMBLE**

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



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

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- 1 6. "Communication" means e-mail, SMS message, MMS message, fax, letter, social
2 media post, instant message, recorded audio, or, recorded video.
- 3 7. Terms in the singular shall be deemed to include the plural and terms in the plural
4 shall be deemed to include the singular.
- 5 8. Use of feminine pronouns shall be deemed to include the masculine and neuter;
6 use of masculine pronouns shall be deemed to include the feminine and neuter;
7 and use of neuter pronouns shall be deemed to include the masculine and
8 feminine.
- 9 9. "Identify": With respect to a document means set forth the following information,
10 regardless of whether such document is in your possession, if known: a general
11 description thereof (e.g., letter, memorandum, report, etc.); a brief summary of
12 its contents, or a description of the subject matter it concerns; the name and
13 address of the persons, if any, who drafted, prepared, compiled or signed it; and
14 any other descriptive information necessary in order to describe it adequately in
15 a subpoena duces tecum or in a motion or request for production thereof. With
16 regard to a person, the term "identify" means set forth the person's name, last
17 known address and telephone number, occupation, last known address and
18 telephone number of the person's place of employment, and a summary of the
19 relevant knowledge possessed by such person.
- 20 10. "And" and "or," as used herein, shall be construed disjunctively or conjunctively
21 as necessary to bring within the scope of these interrogatories or requests any
22 information that might otherwise be construed to be outside their scope.
- 23 11. "Evidencing" and or "relating to," as used herein, mean and include, in whole or
24 in part, referring to, with respect to, concerning, connected with, commenting on,
25 responding to, showing, describing, analyzing, reflecting and constituting.
26
27
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1 12. If any document requested formerly was in your possession or subject to your
 2 control but no longer is in your possession or subject to your control, state when
 3 and what disposition was made of the document or documents.

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

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

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

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

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



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

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

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



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

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

8 9. When producing electronic documents include all original and unaltered
9 metadata, including file system metadata, file pointers like *.LNK files, restore
10 point contents, registry hives, event logs, application logs, and all other artifacts
11 referencing or containing references to produced files, events, people or issues
12 relevant to this matter. If necessary, this information can be supplied in a separate
13 document.
14

15 **THE DOCUMENTS TO BE PRODUCED ARE SET FORTH BELOW**

16 **A. COMMUNICATIONS AND CORRESPONDENCE:**

17 **REQUEST NO. 11.**

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

21 **REQUEST NO. 12.**

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

24 **REQUEST NO. 13.**

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

27 . . .

28 . . .



1 REQUEST NO. 14.

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

5 REQUEST NO. 15.

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

8 REQUEST NO. 16.

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

14 i) Fall!

15 ii) Slip!

16 iii) Elderly

17 iv) Overweight

18 v) Enter!

19 vi) Exit!

20 vii) Door

21 viii) Stab!

22 ix) Body

23 x) Position

24 xi) Water

25 xii) Control

26 xiii) Faucet

27 xiv) Seat

28 xv) Bathtub



- 1 xvi) Walk-in
- 2 xvii) Tub
- 3 xviii) Handhold!
- 5 xix) Grab
- 6 xx) Rail!
- 7 xxi) Grip
- 8 xxii) Bar!
- 9 xxiii) Cunnison
- 10 xxiv) Smith
- 11 xxv) Cullen
- 12 xxvi) Baize

13 **B. OTHER MATTERS:**

14 **REQUEST NO. 17.**

15 Production of forensic duplicates ("mirror images") of the computer hard drives used by
 16 the following individuals in the course of Defendant's business from January 1, 2012 to the
 17 present:

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

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

23 **REQUEST NO. 18.**

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

28 ...

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1 **REQUEST NO. 19.**

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

6 **REQUEST NO. 20.**

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

11 **REQUEST NO. 21.**

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

16 **REQUEST NO. 22.**

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

21 **REQUEST NO. 23.**

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

26 ...

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1 **REQUEST NO. 24.**

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

5 **REQUEST NO. 25.**

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

8 **REQUEST NO. 26.**

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

10 **REQUEST NO. 27.**

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

13 **REQUEST NO. 28.**

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

16 **REQUEST NO. 29.**

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

21 **REQUEST NO. 30.**

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

26 **REQUEST NO. 31.**

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



1 **REQUEST NO. 32.**

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

5 **REQUEST NO. 33.**

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

10 **REQUEST NO. 34.**

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

14 **REQUEST NO. 35.**

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

18 **REQUEST NO. 36.**

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

21 **REQUEST NO. 37.**

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

24 **REQUEST NO. 38.**

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

27 ...
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1 **REQUEST NO. 39.**

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

5 **REQUEST NO. 40.**

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

8 **REQUEST NO. 41.**

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

11 **REQUEST NO. 42.**

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

14 **REQUEST NO. 43.**

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

17 **REQUEST NO. 44.**

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

22 **REQUEST NO. 45.**

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

25 **REQUEST NO. 46.**

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

28 . . .

1 **REQUEST NO. 47.**

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

7 DATED this 27th day of August, 2018.

8 **RICHARD HARRIS LAW FIRM**

9
10
11 **BENJAMIN P. CLOWARD, ESQ.**

12 Nevada Bar No. 11087

13 801 South Fourth Street

14 Las Vegas, Nevada 89101

15 *Attorneys for Plaintiff*



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CERTIFICATE OF SERVICE

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

- ☐ Electronic Service – in accordance with Administrative Order 14-2 and Rule 9 of the Nevada Electronic Filing and Conversion Rules (N.E.F.C.R.).
- ☐ U.S. Mail—By depositing a true copy thereof in the U.S. mail, first class postage prepaid and addressed as listed below; and/or
- ☐ Facsimile—By facsimile transmission pursuant to EDCR 7.26 to the facsimile number(s) shown below and in the confirmation sheet filed herewith. Consent to service under NRCP 5(b)(2)(D) shall be assumed unless an objection to service by facsimile transmission is made in writing and sent to the sender via facsimile within 24 hours of receipt of this Certificate of Service; and/or
- ☐ Hand Delivery—By hand-delivery to the addresses listed below.

SEE ATTACHED SERVICE LIST

**



An employee of RICHARD HARRIS LAW FIRM

RICHARD HARRIS
LAW FIRM

005727

005727

SERVICE LIST

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

Meghan M. Goodwin, Esq.
THORNDAL ARMSTRONG DELK
BALKENBUSH & EISINGER
1100 East Bridger Avenue
Las Vegas, NV 89101-5315
Telephone: 702-366-0622
Facsimile: 702-366-0327

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Las Vegas, NV 89125-2070
Attorneys for Defendants/Cross-Defendants
Firststreet for Boomers and Beyond, Inc. and
Aithr Dealer, Inc.

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Las Vegas, NV 89159
Telephone: 702-784-5200
Facsimile: 702-784-5252
Attorneys for Defendant/Cross-Defendant
Jacuzzi Brands, LLC



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EXHIBIT 8

005729

ELECTRONICALLY SERVED
5/1/2017 2:29 PM

1 RFPD
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
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 HOMECCLICK, 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

PLAINTIFF DEBORAH TAMANTINI
FIRST SET OF REQUEST FOR
PRODUCTION OF DOCUMENTS
TO DEFENDANT, JACUZZI INC.'S

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

5 **DOCUMENTS TO BE PRODUCED**

6 **REQUEST NO. 1:**

7 All documents identified in your answers to Interrogatories.

8 **REQUEST NO. 2:**

9 Any contracts between this Defendant and any other party regarding indemnification
10 agreement or contracts

11 **REQUEST NO. 3:**

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

14 **REQUEST NO. 4:**

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

18 **REQUEST NO. 5:**

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

21 **REQUEST NO. 6:**

22 Any and all documents, manuals, policies, memoranda letters or the like setting forth
23 proper standards, policies and/or procedures, concerning the use of the subject Jacuzzi Walk-In
24 Tub at issue. (These should be documents that were effective on the date of loss of February
25 27, 2014).

1 **REQUEST NO. 7:**

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

5 **REQUEST NO. 8:**

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

8 **REQUEST NO. 9:**

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

11 **REQUEST NO. 10:**

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

14 **REQUEST NO. 11:**

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

16 **REQUEST NO. 12:**

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

19 **REQUEST NO. 13:**

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

1 **REQUEST NO. 14:**

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

5 **REQUEST NO. 15:**

6
7 Any and all documents that relate to the production of the subject Jacuzzi Walk-In Tub
8 involved in the occurrence complained of in Plaintiffs' Complaint.

9 **REQUEST NO. 16:**

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

12 **REQUEST NO. 17:**

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

15 **REQUEST NO. 18:**

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

20 **REQUEST NO. 19:**

21 Any and all documents and communications containing the name, home and business
22 address and qualifications of all persons who have been retained or specially employed by
23 Defendant(s) in *anticipation* of litigation or *preparation* for trial and who are *not* expected to be
24 called as witnesses at trial or as to whom no such decision has yet been made, and attach any
25 documents or communications received from said person(s). If there are no documents or
26

1 communications, then the name of said person(s) as well as their home and business addresses
2 should be provided.

3 **REQUEST NO. 20:**

4
5 The entire claims and investigation file or files including but not limited to daily activity
6 sheets, diary sheets, and status sheets of any insurance adjuster and/or risk employee/manager,
7 internal memoranda regarding this claim created, sent and/or received by any insurance adjuster
8 or other adjuster, risk employee/manager and/or by the Defendant(s) or an agent/employee of
9 the Defendant(s), communications to and from all insurance carriers, parties, Defendant(s), or
10 potential parties, request(s) for investigation, and/or reports/findings of investigators, both in-
11 house and/or independent and/or all insurance policies of the Defendant(s), excluding
12 references to mental impressions, conclusions, or opinions representing the value or merit of the
13 claim or defense or respecting strategy or tactics and privileged communications from counsel
14

15 **REQUEST NO. 21:**

16 All statements and communications of any and all witnesses including any and all
17 statements of Plaintiff(s) and Defendant(s), including taped recordings, whether transcribed or
18 not, as well as all written statements.
19

20 **REQUEST NO. 22:**

21 The name, home and business address of the insurance carrier investigators employed by
22 the Defendant(s) or its insurance carrier to investigate this claim, treatment of the Plaintiff(s),
23 witnesses, or any other aspect of the incidents that form the basis of Plaintiff(s) Complaint.
24 Also, attach any documents, records or communications of or prepared by the investigator
25 acquired as a result of their investigation(s), including but not limited to telephone calls,
26
27
28

1 correspondence, facsimiles, e-mail, billing, inspections or observations, interviews, statements
2 and/or findings.

3 **REQUEST NO. 23:**

5 The name, home and business address, background and qualifications of any and all
6 persons in the employ of Defendant(s), who in anticipation and/or preparation of litigation, is
7 expected to be called to trial.
8

9 **REQUEST NO. 24:**

10 Any and all documents and communications containing the name and home and
11 business addresses of all individuals contacted as *potential* witnesses.
12

13 **REQUEST NO. 25:**

14 Any and all documents and communication substantiating any defense to
15 Plaintiffs' Complaint.
16

17 **REQUEST NO. 26:**

18 Any all videotapes, photographs, notes, memorandums, technical data, and
19 internal documents of any and all testing conducted by this Defendant's research and
20 design experts on the same model as the subject Jacuzzi Walk In Tub.
21

22 **REQUEST NO. 27:**

23 Any sales material provided to elderly folks (over the age of 55) concerning the safety
24 features of the Jacuzzi Walk In Tub. (These should be documents that were used prior to the
25 date of loss of February 27, 2014).
26
27
28

1 REQUEST NO. 47:

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

3 REQUEST NO. 48:


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

5 REQUEST NO. 49:

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

8
9
10
11
12
13 DATED THIS 1 day of May, 2017

14 **RICHARD HARRIS LAW FIRM**

15 By:  *SBM 13617*
16 BENJAMIN P. CLOWARD ESQ.
17 Nevada Bar No. 11087
18 801 South Fourth Street
19 Las Vegas, Nevada 89101
20 *Attorneys for Plaintiffs*

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the RICHARD HARRIS LAW FIRM and that on the 1 day of May 2017, I caused the foregoing PLAINTIFF DEBORAH TAMANTINI FIRST SET OF REQUEST FOR PRODUCTION OF DOCUMENTS TO DEFENDANT, JACUZZI INC.'S to be served as follows:

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

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An employee of the RICHARD HARRIS LAW FIRM

EXHIBIT 212

MEMORANDUM TO DISCOVERY
COMMISSIONER BULLA
SUBJECT TO PROTECTIVE ORDER - WILL BE
SUBMITTED TO JUDGE'S CHAMBERS
PURSUANT TO ORDER

EXHIBIT 212

EXHIBIT 212

005739

005739

EXHIBIT 212

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

TO:	Discovery Commissioner
MEMO FROM:	Joshua D. Cools
CASE NO:	A-16-731244-C
RE:	<i>In Camera</i> review of documents produced in Jacuzzi's search for other incidents
DATE:	October 12, 2018

CONFIDENTIAL
ATTORNEY-WORK PRODUCT
FOR IN CAMERA REVIEW

Pursuant to the court's order, this memo provides an explanation of Jacuzzi Inc.'s ("Jacuzzi") search for other incidents. The spreadsheets created as part of this search are attached hereto. As a prefatory matter, Jacuzzi Inc.'s customer service/warranty database is shared with other companies in Jacuzzi's corporate family. These other companies are not parties to this action, and do not manufacture or distribute bath products, let alone walk-in tubs. This is significant, particularly as to the search of pre-2014 records because the searches could not adequately discriminate between walk-in tubs and other unrelated products.

A. Search of 2008-2014 records

Jacuzzi's pre-2014 customer service/warranty records are stored in a historical warranty database. The entries include data either directly input into the database or that was recorded on manual notes and then input in the database. After being input into the database, any manual notes were contemporaneously destroyed.

Jacuzzi's IT support ran each search term separately. A spreadsheet was created for each term containing three fields: CORE, SER, and INFO. CORE is a field related to product identification. SER is a field for serial numbers, but as the serial number of some products is not provided when a customer contacts the company, the field is at times populated with other types of product identification information. INFO is a field that captures the database information that includes the applicable search term. After the searches were performed, each line entry on the spreadsheets was reviewed to determine if there was any indication of relevance to Plaintiffs' claims. An initial review of the line item entries was performed to rule out entries that clearly were not related to walk-in-tubs and/or were clearly not related to the Plaintiffs' claims. Although time consuming, it was easy to rule out the majority of the entries, as many predate Jacuzzi's first

Confidential Memo to Discovery Commissioner

Re: Cunnison v. Jacuzzi

Page 2

manufacture of a walk-in-tub, clearly involved a product other than a walk-in-tub, or the description clearly indicated that entry was not related to Plaintiffs' claims. Thereafter, additional information was pulled from the database for the remaining line entries to determine if they were related to walk-in-tubs and if they were related to the Plaintiffs' claims. None were identified. For example, the term "fall" had 1366 hits. Nearly all of these hits involved "waterfalls" on spa products or a part "falling off" or "falling apart". Additionally, nearly all of these hits were for products that are not even manufactured or distributed by Jacuzzi Inc. (i.e., they were not related to a bath tub). Similarly, the term "door" had 5,891 hits, relating to many non-walk-in tub products or warranty claims for things like a leaking door.

The primary spreadsheet that required some additional follow-up on individual entries was regarding the term "slip." Jacuzzi reviewed the list of entries and acquired further information for all that were possible hits. For each, they either did not involve a walk-in tub or did not involve injury or claims like those alleged by Plaintiffs:

CORE	SER	DESCRIPTION	REASON NOT PRODUCED
████	████	CURVATURE AND NON-SLIP AREA/CUST IS AN ATTORNEY WHO HAS MADE	Pre-2008; not a walk-in tub
████	████	P, OTHER ON FLOOR, IN THE MIDDLE OF THE SLIP RESISTANT SURFE	Pre-2008; not a walk-in tub
████	████	3. BOTTOM VERY SLIPPERY - COULD BE FROM SOMETHING THEY CL	Pre-2008; not a walk-in tub.
████	████	EAN	
████	████	LVE THE SLIPPERY BASE ISSUE. MIKE FROM NU-WARE SAYS HE CAN	Pre-2008; not a walk-in tub
████	████	UMP IS SLIPPERY AND SHE FEELS AS IF SHE MIGHT FALL...GMU	Pre-2008; not a walk-in tub
████	████	9/7/99 BASE IS SLIPPERY WHEN WET. PER EJ IN CR SET UP INSPEC	Pre-2008; not a walk-in tub
████	████	IS SLIPPERY AND THAT SURFACE SPCLTS REMOVED HER NON SKID	Pre-2008; not a walk-in tub
████	████	ABOUT SLIPPING NOT TO USE THAT LT TO USE HER OTHER TUB OR	Pre-2008; not a walk-in tub
████	████	SLIPPERY. CB GOT A CALL FROM THE AGENT AT SURF SPCLTS AND	Pre-2008; not a walk-in tub
████	████	BOTTOM OF THE UNIT IN THE ANTI-SLIP PROTION OF THE FLOOR.	Pre-2008; not a walk-in tub
████	████	N SLIP BOTTOM, NOT ECENOMICAL TO FIX/DOCS TO PD FOR PROCESSI	Pre-2008; not a walk-in tub
████	████	T SURGERY, APPARENTLY SLIPPED AND INJURED HERSELF TO THE EXTE	Pre-2008; not a walk-in tub
████	████	SHE HAD 2 PEOPLE INJURED HER 58 YEAR OLD MOTHER SLIPPED AND	Pre-2008; not a walk-in tub
████	████	G A BATH AND HE SLIPPED WHILE SITTING AND HIT HIS HEAD.....	Pre-2008; not a walk-in tub
████	████	VERY SLIPPERY ENTERING TEXTURED TUB. CUSTOMER SAYS THAT HE H	Pre-2008; not a walk-in tub
████	████	& BASE IS VERY SLIPPERY. ADVISED CUST WILL SET UP INSPECTION	Pre-2008; not a walk-in tub

Confidential Memo to Discovery Commissioner

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■■■■	■■■■	ANTI SLIP, RECOMMENDS REPLACEMENT...CR RECOMMENDS REPLACEME	Pre-2008; not a walk-in tub
■■■■	■■■■	\$235 DUE TO THE CRACK BEING ON THE NONSLIP BOTTOM OF THE BAT	Pre-2008; not a walk-in tub
■■■■	■■■■	ALTHOUGH IT WAS REPAIRABLE SHE WOULD LOSE HER NON-SLIP	Pre-2008; not a walk-in tub
■■■■	■■■■	08/17/04 CUST REPORTS BASE IS SLIPPERY, WIFE HAS SLIPPED. TO	Pre-2008; not a walk-in tub
■■■■	■■■■	EFFECT. CUST NOT HAPPY-SAID BOTTOM VERY SLIPPERY.....MEE	Pre-2008; not a walk-in tub
■■■■	■■■■	IN THE TUB AND SLIPPED AND FELL. WHEN SHE FELL HER ELBOW	Pre-2008; not a walk-in tub
■■■■	■■■■	IT'S ON BOTTOM IN NON SLIP AREA, LOOKS INSTALLED RIGHT.....	Pre-2008; not a walk-in tub
■■■■	■■■■	UST HAVE SLIPPED THRU THE CRACKS..WL MK SURE IT GOES OUT TDA	Pre-2008; not a walk-in tub
■■■■	■■■■	K ON FLOOR OF TUB IN SLIP RESISTANT TEXTURE, CANNOT MATCH TE	Pre-2008; not a walk-in tub
■■■■	■■■■	S VERY SLIPPERY. EVEN WITH 2 GRAB BARS, CUST FEET SLIP. LEF	Pre-2008; not a walk-in tub
■■■■	■■■■	CT AND WET SAND FLOOR OF BATH SO IT'S NOT SO SLIPPERY.....	Pre-2008; not a walk-in tub
■■■■	■■■■	SLIPPERY FOR HER. SHE CURRENTLY HAS A MAT ON THE FLOOR AND	2008; no injury claim; electrical not functioning properly; but also complained that tub is slippery
■■■■	■■■■	SEAT AND SHE CONTINUES TO BE SLIPPERY. ER	Continuation of entry above, that again includes the term "slip"
■■■■	■■■■	ON HER BATHROOM FLOOR SO WHEN SHE WALKS IN SHE SLIPPS. SENT	2008; not a tub issue; slippery bathroom floor
■■■■	■■■■	ON THE SLIP RESISTANT BOTTOM OF TUB. AGENT USED CLAIM #36056	2008; no injury claim; not a walk-in tub
■■■■	■■■■	9.17.09 AGENT STATED CONSUMER UPSET THAT THE NON-SLIP BOTTOM	2009; not a walk-in tub
■■■■	■■■■	SLIPPERY FLOOR - INQUIRED OF BATH ADDITIVES USED IN UNIT - P	2014, post-incident; not a walk-in tub.
■■■■	■■■■	SLIPPERY, ADVISED TO USE DAWN DISWASHING DETERGENT TO CLEAN	2014, post-incident; not a walk-in tub

Attached as **Exhibit A** is the spreadsheet generated searching the pre-2013 database for Plaintiffs' terms, each with their own sheet.

B. Search of 2013-2014 records

In 2014, Jacuzzi transitioned to using a new customer service/warranty database management program, Salesforce. Jacuzzi was able to import some of the historical data into Salesforce, and a separate search was done for records in that database. This newer database allowed for much more precise searching and Jacuzzi searched these records as well. There were 1,633 hits based off Plaintiffs' terms. Jacuzzi only looked at the pre-February 2014 claims because of the parties' agreement to limit the search accordingly. There were no pre-incident relevant

Confidential Memo to Discovery Commissioner

Re: Cunnison v. Jacuzzi

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claims—most of the hits involved installation or plumbing issues. Attached as **Exhibit B** is the spreadsheet generated searching the 2013-2014 records.

C. Search of post-incident claims of personal injury or death.

Following the Court's direction at the July 20, 2018 hearing, Jacuzzi performed a subsequent incident search for any claims involving injury or death. Rather than using Plaintiffs' prior search terms, which were inconsistent with the Court's order and not particularly helpful in identifying claims, Jacuzzi searched using the terms: death, pain, hurt, injure, injuries, injury. We produced the database entry for each relevant hit

This memo is provided *ex parte* for *in camera* review, along with the attached documents, pursuant to the Court's order and without waiving any protections afforded by the attorney-client privilege, work product doctrine, or any other rights afforded under the Nevada rules and applicable law.

[REDACTED]

JDC:jmd

Attachment

005743

005743

EXHIBIT 213

E-MAIL FROM BACHMEYER
SUBJECT TO PROTECTIVE ORDER -
WILL BE SUBMITTED TO JUDGE'S
CHAMBERS PURSUANT TO ORDER

EXHIBIT 213

EXHIBIT 213

005745

005745

EXHIBIT 213

Bonney, Audra R.

From: Reyes, Regina
Sent: Friday, May 2, 2014 12:54 PM
To: Bachmeyer, Kurt
Subject: RE: Service issues on 5230/5229
Attachments: Incident - 130620-000016 - Melanie Borgia talk to Irene and everything taken care of_cust says drain is not opening and will n.htm

Here you go, possibly more to come.

Regina Reyes
 Customer Service Manager



www.jacuzzi.com
 14525 Monte Vista Avenue / Chino, CA 91710
 909.247.2170 (o) Office Hours 8 a.m. to 5:00 p.m. PT
 909.247.2551 (f)

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From: Bachmeyer, Kurt
Sent: Friday, May 02, 2014 12:49 PM
To: Reyes, Regina
Subject: FW: Service issues on 5230/5229

Kurt Bachmeyer
 Director of Customer Service



www.jacuzzi.com
 14525 Monte Vista Avenue / Chino, CA 91710
 909.247.2187 (o) 909.606.4270 (f)

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From: Demeritt, William
Sent: Thursday, May 01, 2014 4:34 PM
To: Bachmeyer, Kurt
Cc: Templer, Ron
Subject: RE: Service issues on 5230/5229

Kurt,

Do we have any further information in the system on the claim listed below? I bolded and underlined the type of the one I am interested in. did we ever get an answer as to why it did not drain?

William Demeritt
V.P. Jacuzzi Inc.
Director of Risk Management
Jacuzzi Brands Corp.



www.jacuzzi.com

13925 City Center Drive, Suite 200 / Chino Hills, CA 91709
 909.247.2033(o) 909.509.0229(c)

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From: Bachmeyer, Kurt
Sent: Sunday, June 23, 2013 7:44 PM
To: Demeritt, William; Lovallo, Anthony
Subject: FW: Service issues on 5230/5229

Please review –

We have not been contacted by anyone at this point; just want you to be aware in case we are contacted by any of them.

Bill – I'd like to discuss when you have a moment.

Regards,

Kurt Bachmeyer
 Director of Customer Service



www.jacuzzi.com

14525 Monte Vista Avenue / Chino, CA 91710
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From: Reyes, Regina
Sent: Friday, June 21, 2013 2:21 PM
To: Bachmeyer, Kurt
Subject: Service issues on 5230/5229

Kurt, here are the tubs we talked about:

BDD3W3 5230 mfg 10/15/12; customer I Stoldt; installed 9/18/12 installer Keith Cottett – customer reported that unit would not drain; she got stuck in tub and had to crawl out of door; installer addressing to find out why tub would not drain.

BDF78X 5229 mfg 4/17/13; customer D Greenwell; instlled 4/17/13 installer American Home Design – customer reported tub didn't work during conversation he mentioned he slipped in tub, got stuck in footwell had to call fire dept to get out. Field tech later found no mfg defect, customer wasn't operating the tub properly.

BDD537 mfg 10/29/12; customer C Lashinsky; installed 12/29/12 installer Anthony Home improvement – customer called to request we replace her door under warranty. Partner slipped in tub, they had to remove the door to get her out.

Regina Reyes
Customer Service Manager



www.jacuzzi.com

14525 Monte Vista Avenue / Chino, CA 91710

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005748

005748

EXHIBIT 214

005749

005749

EXHIBIT 214

3/12/2019

<https://www.clarkcountycourts.us/Anonymous/CaseDetail.aspx?CaseID=11658121&HearingID=198562118&SingleViewMode=Minutes>

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REGISTER OF ACTIONS

CASE NO. A-16-731244-C

Robert Ansara, Plaintiff(s) vs. First Street for Boomers & Beyond Inc,
Defendant(s)

§
§
§
§
§
§

Case Type: **Product Liability**Date Filed: **02/03/2016**Location: **Department 2**Cross-Reference Case Number: **A731244**

P. TY INFORMATION

Lead Attorneys

Defendant Aithr Dealter Inc

Christopher John Curtis
Retained
 7023660622(W)

Defendant Benton, Hale

Philip Goodhart
Retained
 7023660622(W)

Defendant First Street for Boomers & Beyond Inc

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