

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  
VOLUME 24  
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86	Plaintiffs' Reply in Support of Plaintiffs' Motion to Reconsider the Court's Order Granting in Part, and Denying in Part, Defendant Jacuzzi's Motion to Reconsider the Court's Order Denying Defendant's Motions in Limine Nos. 1, 4, 13, and 21 and Opposition to Jacuzzi's Countermotion to Clarify Issues that the Jury Must Determine, Applicable Burdens of Proof, and Phases of Trial and FirstStreet for Boomers and Beyond, Inc. and AITHR Dealer, Inc.'s Joinder Thereto	06/01/21	32	7803–7858
9	Plaintiffs' Reply in Support of Plaintiffs' Renewed Motion to Strike Defendant Jacuzzi, Inc. d/b/a Jacuzzi Luxury Bath's Answer for Repeated, Continuous and Blatant Discovery Abuses on Order Shortening Time	01/29/19	4 5	922–1000 1001–1213
17	Plaintiffs' Reply in Support of Their Motion for Reconsideration Re: Plaintiffs' Renewed Motion to Strike Defendant Jacuzzi, Inc.'s Answer and Motion for Clarification Regarding the Scope of the Forensic Computer Search	06/14/19	8	1779–1790
67	Plaintiffs' Reply to: (1) Defendant Jacuzzi, Inc. dba Jacuzzi Luxury Bath's Brief Responding to Plaintiffs' Request for Inflammatory, Irrelevant, Unsubstantiated, or Otherwise Inappropriate Jury Instructions; and (2) Defendant FirstStreet For Boomers & Beyond, Inc., AITHR Dealer, Inc., and Hale Benton's Objections to Plaintiffs' Demand for Certain Jury Instructions and Rulings on Motions in Limine Based on Court Striking Jacuzzi's	11/10/20	28	6906–6923

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

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

**CERTIFICATE OF SERVICE**

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

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

*Attorneys for Real Parties in Interest*

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

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

*Respondent*

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



3/12/2019

<https://www.clarkcountycourts.us/Anonymous/CaseDetail.aspx?CaseID=11658121&HearingID=198562118&SingleViewMode=Minutes>

<b>Defendant</b>	<b>Homeclick LLC</b>	<b>Michael E Stoberski</b> <i>Retained</i> 7023844012(W)
<b>Defendant</b>	<b>Jacuzzi Inc <i>Doing Business As</i> Jacuzzi Luxury Bath</b>	<b>Vaughn A. Crawford</b> <i>Retained</i> 7027845200(W)
<b>Plaintiff</b>	<b>Ansara, Robert <i>Now Known As</i> Robert Ansara Personal Rep of the Estate of Michael Smith</b>	<b>Benjamin P. Cloward</b> <i>Retained</i> 702-385-1400(W)
<b>Plaintiff</b>	<b>Estate of Sherry Lynn Cunnison</b>	<b>Benjamin P. Cloward</b> <i>Retained</i> 702-385-1400(W)
<b>Plaintiff</b>	<b>Tamantini, Deborah</b>	<b>Benjamin P. Cloward</b> <i>Retained</i> 702-385-1400(W)
<b>Trust</b>	<b>Estate of Sherry Lynn Cunnison</b>	<b>Benjamin P. Cloward</b> <i>Retained</i> 702-385-1400(W)

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**EVENTS & ORDERS OF THE COURT.**

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03/04/2019 **Minute Order** (10:00 AM) (Judicial Officer Scotti, Richard F.)**Minutes**

03/04/2019 10:00 AM

- Order RE: Pending Motions The Court sets down an Evidentiary Hearing on the issue of sanctions for March 28, 2019, 10:30 AM (3 hours). The Court hereby lifts any Stay that existed in this case. The parties should proceed with any further discovery until and unless the Court Orders otherwise. In the upcoming sanctions order the Court is inclined to impose some monetary sanctions, at the very least, and re-allocate the fees and costs related to discovery. A tentative new Discovery Deadline is March 21. The Court shortens Notice for any further Depositions that either side needs to take to one week. Protective orders, if really necessary, may be sought on one day notice and heard by telephone conference. Plaintiff is permitted to take a further deposition of the corporate representatives of Jacuzzi and First Street, regarding Chopper, marketing and advertising, and the First Street dealers that existed between 2008 and the date of the incident. Plaintiff is entitled to locate and depose Chopper if that has not been done already. Plaintiff is entitled to take the depositions of the First Streets Dealers. The parties are directed to again cooperate in good faith to conduct the forensic review previously ordered by the Discovery Commissioner-if it still has not been complete-and, of course, the scope shall be all incidents involving a Jacuzzi walk-in tub with inward opening doors, for the time period of January 1, 2008, through the date of filing of the complaint, where a person slipped and fell, whether or not there was an injury, whether or not there was any warranty claim, and whether or not there was a lawsuit. This case is still set to be tried on the Court's April 22 five-week stack. The Court will entertain a Stipulation to continue if the parties collectively want a continuance. The Court requests the parties to identify, by filed brief (no more than two (2) pages); (1) What discovery has been conducted in this case since February 4, 2019; (2) The names of any relevant customers of Jacuzzi/First Street that have died; (3) What additional discovery Plaintiff would need to conduct if the Court were not to strike Defendants Answers; and (4) any new developments that the Court should know about. Please provide this by Thursday March 8, 2019. At this time the Court believes that an Evidentiary Hearing is necessary to determine whether, and the extent to which, sanctions might be assessed against Jacuzzi and/or First Street for failure to timely

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3/12/2019

<https://www.clarkcountycourts.us/Anonymous/CaseDetail.aspx?CaseID=11658121&HearingID=198562118&SingleViewMode=Minutes>

disclose the Chopper incident. The Court will elaborate on this more in the upcoming sanctions Order. CLERK'S NOTE: This Minute Order has been electronically served to all registered parties for Odyssey File & Serve. /lg

[Return to Register of Actions](#)

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# EXHIBIT 215

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# EXHIBIT 215

# Snell & Wilmer

L.L.P.

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DENVER  
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ORANGE COUNTY  
PHOENIX  
RENO  
SALT LAKE CITY  
TUCSON

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

Snell & Wilmer  
L.L.P.

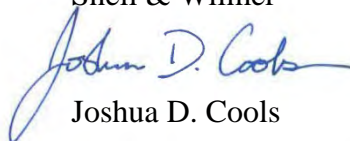
Benjamin P. Cloward, Esq.  
April 3, 2018  
Page 2

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



Joshua D. Cools

JDC:tcs  
Attachments  
4815-6507-2736.1

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# ATTACHMENT

005756

*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



*Cunnison 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

*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 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

*Cunnison 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

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**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](http://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

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# EXHIBIT 216

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# EXHIBIT 216



## DAVID MODENA - 12/11/2018

Page 1

1 DISTRICT COURT  
2 CLARK COUNTY, NEVADA

3 ROBERT ANSARA, as Special  
4 Administrator of the Estate of  
5 SHERRY LYNN CUNNISON, Deceased;  
6 MICHAEL SMITH individually, and heir  
7 to the Estate of SHERRY LYNN CUNNISON,  
8 Deceased; and DEBORAH TAMANTINI  
9 individually, and heir to the  
10 Estate of SHERRY LYNN CUNNISON,  
11 Deceased,  
12 Plaintiffs,  
13 vs.  
14 CASE NO. A-16-731244-C  
15 DEPT. NO.

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

24 \*\*\*\*\*  
25 VIDEOTAPED DEPOSITION OF DAVID MODENA  
\*\*\*\*\*

December 11, 2018  
Richmond, Virginia  
Job No. 508962  
Reported By: Angela N. Sidener, CCR, RPR

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1 Videotaped deposition of DAVID MODENA, Rule  
2 30(b)(6) Designee for Defendants FIRST STREET FOR BOOMERS  
3 AND BEYOND, INC. and AITHR DEALER, INC., taken by and before  
4 Angela N. Sidener, CCR, RPR, and Notary Public in and for  
5 the Commonwealth of Virginia at large, pursuant to Rules 26  
6 and 30(b)(6) of the Rules of Civil Procedure, and by Notice  
7 to Take Deposition; commencing at 10:31 a.m., December 11,  
8 2018, at Regus, 919 East Main Street, Suite 1000, Richmond,  
9 Virginia 23219.

10  
11 Appearances:  
12 RICHARD HARRIS LAW FIRM  
13 By: BENJAMIN P. CLOWARD, ESQ.  
14 801 South Fourth Street  
15 Las Vegas, Nevada 89101  
16 Counsel for Plaintiffs  
17 THORNDAL ARMSTRONG  
18 By: PHILIP GOODHART, ESQ.  
19 1100 East Bridger Avenue  
20 Las Vegas, Nevada 89101-5315  
21 Counsel for Defendants  
22 First Street for Boomers and Beyond, Inc.  
23 and AITHR Dealer, Inc.  
24 STACY LANDIS HACKNEY, ESQ.  
25 In-House Counsel for First Street for Boomers  
and Beyond, Inc. and AITHR Dealer, Inc.  
SNELL & WILMER, LLP  
By: JOSHUA D. COOLS, ESQ.  
3883 Howard Hughes Parkway, Suite 1100  
Las Vegas, Nevada 89159  
Attorney for Defendant Jacuzzi Brands, LLC

Also Present:  
Laura Cooney, Videographer

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5 DAVID MODENA

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1 THE VIDEOGRAPHER: This is the beginning of  
2 disc number 1 in the videotaped deposition of David Modena.  
3 We are on the record on December 11, 2018, at 10:31 a.m.  
4 Counsel have agreed to waive the usual videographer's  
5 introduction.  
6 Would you please introduce yourselves,  
7 starting with Plaintiff's Counsel, and the court reporter  
8 will please swear in the witness.  
9 MR. CLOWARD: My name is Ben Cloward, and I  
10 represent the plaintiff.  
11 MR. GOODHART: This is Philip Goodhart, and I  
12 represent First Street and AITHR Dealers.  
13 MS. HACKNEY: Stacy Hackney, counsel for  
14 AITHR Dealer and First Street.  
15 MR. COOLS: Joshua Cools, counsel for  
16 Jacuzzi, Inc.  
17 DAVID MODENA,  
18 having been duly sworn, testified as follows:  
19 DIRECT EXAMINATION  
20 BY MR. CLOWARD:  
21 Q Good to go. How are you today, sir?  
22 A Very good. Thanks.  
23 Q What -- what do you prefer to be called?  
24 A Just call me Dave.  
25 Q Okay.

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1 **A Dave's good.**

2 Q Dave, I appreciate that. My name is Ben, and I  
3 represent the plaintiffs. As I'm sure you're aware, this is  
4 what's called a Rule 30(b)(6) deposition. And what that  
5 means is you've been designated as kind of the corporate  
6 spokesperson to speak on behalf of the companies designated  
7 in the notice. Are you aware of that?

8 **A Yes.**

9 Q Okay. And so I always like to just give a couple  
10 admonitions. I'm sure you've been deposed before.

11 **A Not -- not -- no, I don't think so.**

12 Q First time?

13 **A Probably so. I don't -- I can't recall to this  
14 level, yes -- so, no.**

15 Q Hopefully it will be a decent experience for you.

16 **A It's going to be.**

17 Q Try not to make it too rough on you. But as the  
18 designee, the corporate designee, because you're speaking on  
19 behalf of the company, at times I may ask a question and  
20 maybe you have a personal opinion about a specific topic,  
21 but you know that the company does it a different way, I  
22 mean no disrespect by this at all, I'm not interested to  
23 know your personal opinion, because your testimony is  
24 binding on the company. You know, that's what I'm  
25 interested in.

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1 You know, maybe if there are certain issues that  
2 you have a personal opinion about, we can talk about those  
3 another day. Does that make sense?

4 **A Yes. Yes.**

5 Q Okay. And then, similarly, companies obviously  
6 change, policies change, people change, the way things are  
7 done changes sometimes. And so if, say, for instance,  
8 things are done differently today than they were back in  
9 2011 through early 2014, I'm not interested to know today,  
10 as I am interested in the operative time period that I've  
11 just given you.

12 And when I say the operative time period, what I  
13 mean by that is from, you know, the inception of the  
14 agreement between Jacuzzi and First Street and AITHR to the  
15 time shortly after, maybe one month after my client died, so  
16 that's kind of the period when I talk about policies and  
17 things like that, advertising practices, things of that  
18 nature.

19 **A Sure.**

20 Q If, say, for instance, something is -- has  
21 changed, I'm asking you, you know, in -- urging you to  
22 please let me know in your testimony, because what I don't  
23 want to have happen is I ask you a question and you give me  
24 an answer and we kind of rely on that answer. And then we  
25 go to trial and then at trial you say, "Well, I didn't tell

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1 you, but I meant to mean -- meant to say that we changed  
2 things, and that's not the way that we did it back then. We  
3 do that now, so that didn't apply back then. Does that make  
4 sense?

5 **A Absolutely, yeah. I will --**

6 Q So I kind of just want to be able to rely on the  
7 testimony, and so if there are, you know, changes, I would  
8 just ask that you, you know, let me know. I guess, qualify  
9 your answer.

10 And then the other thing, in Nevada we have a case  
11 called Coyote Springs. It's kind of a weird case that took  
12 a lot of practitioners, a lot of lawyers off guard, but what  
13 that stands for is, is that during breaks, any conversation  
14 that you have with counsel is no longer privileged while the  
15 deposition is going, and I always -- I think it's fair to  
16 just let people know that, so if, you know -- if there's a  
17 big, long discussion during a break, I'm going to ask you  
18 about it. I just think that that's fair for me to tell you  
19 that, so I just would caution you about that.

20 Do you have any -- any questions about the process  
21 before we begin?

22 **A The only thing I can think of, and I can -- I can  
23 raise the question, maybe, when the time comes up, but there  
24 will be situations, I suspect, you'll ask me a question and  
25 I won't know for sure, and I can --**

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1 Q Okay.

2 **A -- this is not a matter of my personal opinion  
3 versus a corporate policy, but just the situation itself, I  
4 may not know the actual fact or the answer, and so I can  
5 speculate why something may have been done or may have been  
6 done, may not have been done, if you want me to do that. Or  
7 I can just tell you it would be pure speculation, so I don't  
8 know how you want to handle that.**

9 Q Sure.

10 **A I suspect there will be questions I won't know for  
11 a hundred percent sure. I just -- I suspect I won't know  
12 it.**

13 Q I appreciate that. You -- you're represented by a  
14 great attorney, a great firm, very highly respected, and I  
15 have a lot of respect for Mr. Goodhart, so I'm sure that he  
16 did a nice job preparing you for your deposition.

17 We have -- we have cases in Nevada regarding this  
18 deposition in particular, the 30(b)(6). There is a duty to  
19 prepare the witness, so -- but there's also -- you know,  
20 there's a lot of information, so I -- I understand you're  
21 just one person. You're not a computer, so I would just say  
22 this: If it gets to a point where maybe there's an  
23 individual that might, I guess, have more information --

24 **A Uh-huh, right.**

25 Q -- maybe you just let me know, but please just do

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1 the best job that you can answering the questions. Again, I  
2 don't want you to speculate, but, because this is a  
3 corporate deposition, there's -- there's an obligation that  
4 you be an actual prepared witness.

5 **A Uh-huh.**

6 **Q** If we start to run into, maybe, a topic area that,  
7 you know, there's a lot of speculation, maybe we can revisit  
8 that topic down the road.

9 **A Okay.**

10 **Q** How does that sound?

11 **A Sure.**

12 **Q** Okay. I do appreciate that.

13 **A Okay.**

14 **Q** Please let me know if there's any subject that,  
15 you know, you -- you're just not sure on --

16 **A Okay.**

17 **Q** -- let me know.

18 **A Okay.**

19 **Q** Is there anything else? Any other questions?

20 **A I don't think so.**

21 **Q** Okay. So have you been given a copy of the  
22 notice, deposition notice? Did you receive a copy of that?

23 **A Uh-huh, yes. That's --**

24 **Q** Okay.

25 **A -- in many documents that we received, I think,**

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1 **marketing, and so I think he'll -- he's best, you know, to**  
2 **answer those. And probably when it comes to sales**  
3 **techniques and those type of operational issues, that would**  
4 **be me.**

5 **Q** Okay. Perfect.

6 **MR. CLOWARD:** So, Mr. Goodhart, did you have  
7 an opportunity to, I guess, go through the list?

8 **MR. GOODHART:** Yeah.

9 **MR. CLOWARD:** Could you just maybe give us a  
10 rundown of what topics which one will address and then I  
11 won't waste --

12 **MR. GOODHART:** Really, Mr. Modena's --

13 **MR. CLOWARD:** -- Mr. Modena's time.

14 **MR. GOODHART:** -- going to be addressing all  
15 of the topic areas, because they're all, in my view,  
16 addressed, to a certain extent, his area of knowledge, with  
17 respect to the -- or the sales force, the negotiation of the  
18 contract with Jacuzzi, and how it was implemented by First  
19 Street and by AITHR.

20 **Mr. Fleming** is dealing mainly with the  
21 advertising and marketing, so there are some crossovers with  
22 some of the topic areas. For example, when you get to 20,  
23 which is sales and marketing testimony general, there is  
24 information in there that Mr. Modena would have knowledge  
25 about, because he was in charge of the sales force, more or

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1 **from -- from -- yes.**

2 **Q** Okay. And then I'm assuming that you also -- my  
3 understanding is, is that you -- you're going to be the  
4 30(b)(6) for both AITHR and for First Street; is that  
5 accurate?

6 **A That's correct. My understanding is that's**  
7 **correct, yes.**

8 **Q** Okay. So --

9 **A There's two people -- there's two of us being**  
10 **deposed today, so is John in a different position? Am I**  
11 **allowed to ask that? We have another person that's coming**  
12 **later. Is he in a similar role or not?**

13 **Q** My understanding is that he's in a similar --  
14 similar role but for different topics.

15 **A Yes.**

16 **Q** So --

17 **A Yes.**

18 **Q** Maybe -- do you know what topics you have been  
19 designated to actually address?

20 **A Well, largely, the operations. I was responsible**  
21 **for the overall sales and operations of the AITHR group,**  
22 **where the second gentlemen, John Fleming, he was our vice**  
23 **president of marketing.**

24 **Q** Okay.

25 **A So there seems to be a lot of questions around the**

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1 less, however, the actual advertising, print advertising,  
2 online advertising and marketing, that would be Mr. Fleming.

3 **MR. CLOWARD:** Okay.

4 **MR. GOODHART:** So there's going to be  
5 crossover with some of these areas, but, again, the vast  
6 majority of the areas, my -- my impression is that  
7 Mr. Modena would be able to respond to those ones.

8 **MR. CLOWARD:** Okay. Do you -- do you know,  
9 number-wise, which one will do which one?

10 **MR. GOODHART:** Well, as I indicated,  
11 Mr. Modena will do all of them, with respect to his area of  
12 knowledge. I think Mr. Fleming is really going to be  
13 focusing on 20, 21, and, to a certain extent, 22, with  
14 respect to their applications to the advertising and  
15 marketing.

16 For example, number 22, you have First Street  
17 sales department generally concerning the advertising,  
18 marketing, sale and post-sale matters concerning the subject  
19 Jacuzzi design of walk-in tubs.

20 I know what you're trying to get at there,  
21 but it's more or less -- it's compound because we're going  
22 to have different people, for example, Mr. Modena will talk  
23 about the sale and post-sale matters, as well as the sales  
24 department.

25 **MR. CLOWARD:** Okay.

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1 MR. GOODHART: However, Mr. Fleming will talk  
2 about the advertising and marketing materials.

3 MR. CLOWARD: Okay.

4 MR. GOODHART: I don't know if that helps.

5 MR. CLOWARD: A little bit.

6 BY MR. CLOWARD:

7 Q Sir, I would just ask, one thing that I don't want  
8 to have happen, I don't want to have you give testimony and  
9 then, when we depose Mr. Fleming, he says, well, actually,  
10 I'm the person that's best knowledgeable on that, and the  
11 answer is actually not this. It's not X. It's Y.

12 A Uh-huh.

13 Q And so I'm just going to ask that if before you  
14 even answer a question, please just don't even give me an  
15 answer if you don't believe that you're the person for that.

16 A I'll tell you. If it's clearly right in his area  
17 of responsibility, I'll just say that's what -- would be  
18 better for John.

19 Q Perfect. Thank you very much.

20 Okay. So we can begin. Now, one thing that I  
21 also would like to know is: What did you do to prepare for  
22 the deposition today? And when I ask that question,  
23 generally speaking, I'm not entitled to know anything that  
24 was discussed among the lawyers. However, because you're  
25 what's designated as a Rule 30(b)(6) deposition, if certain

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1 thing, just to pull all the information we possibly had  
2 together --

3 Q Okay.

4 A -- to provide and make available.

5 From that point, we've had a few discussions, and  
6 then I met with Mr. Goodhart and he sort of went over the  
7 case at a -- at a good level but not going down too far into  
8 what happened and what's been said, other than the basic  
9 facts of it --

10 Q Sure.

11 A -- and not a lot of detail from anyone else that's  
12 been deposed, really. It's really about the case itself,  
13 the facts and being prepared to answer the questions that we  
14 needed to answer.

15 Q Okay. And what is First Street and AITHR? May I  
16 just refer to both parties as just First Street?

17 A Sure.

18 Q That will include AITHR. That way we don't make  
19 the court reporter work more than she has to.

20 A That's fine by me, if that's -- you know, if  
21 there's any legal issues between the -- they're -- belong to  
22 the same company so I don't know if that makes a difference  
23 or not.

24 Q Well, I guess let me -- one more qualification.  
25 If, say, for instance, an answer is different for First

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1 facts were shared with you, I am entitled to know about  
2 those facts.

3 Now, any legal conclusion that is drawn from that,  
4 I am not entitled to that. I don't want to know that. I  
5 don't even want to get close to that area. An example of  
6 that would be let's say Mr. Goodhart told you Hale Benton  
7 testified X, Y, and Z, so that was a fact that was  
8 communicated to you. And then the next thing he said, "And  
9 what that means for our case is," I'm not entitled to the  
10 second part of that.

11 A Got it.

12 Q But I am entitled to know if you've been informed  
13 of certain facts. Does that make sense?

14 A Uh-huh, yes.

15 Q Is there any uncertainty about that with you?

16 A I don't think so. If so, I'll let you know.

17 Q Okay. So can you just walk me through, generally,  
18 the process of what you did to prepare for the deposition?

19 A Just reviewing a lot, a lot of documentation.  
20 First, just trying to provide documentation to, you know,  
21 in-house and outside counsel, to Mr. Goodhart, so just  
22 pulling information back during that time frame, any  
23 correspondence about this issue or about this particular  
24 situation, you know, from our internal documentation and in  
25 my emails that I would have held onto, so that was the first

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1 Street than it might be for AITHR, just let me know,  
2 otherwise can we assume that all answers are the same for  
3 both?

4 A Sure.

5 Q Okay. So let me know: What is First Street's  
6 basic understanding of the facts and what happened in the  
7 case?

8 A I know myself, personally, and -- well, I  
9 shouldn't say that personally, but very, very little  
10 information that came to me that was --

11 Originally, we heard about it, came in from -- I  
12 guess it was in March or February, whenever it came up,  
13 April, I think, maybe is when it was, and -- and we heard  
14 about it from the insurance company calling us, and I  
15 immediately went to our in-house counsel, to Stacy Hackney,  
16 and was told to turn it over to her, so -- and that was  
17 almost the extent of pretty much what I understood and never  
18 heard much more about -- it was just: You're not involved.  
19 We'll take it from here.

20 Not until, frankly, recently did I know a few more  
21 of the details of what happened. I honestly didn't know  
22 many of the details at all and have heard more about it when  
23 we met with Mr. Goodhart and some details I wasn't aware of  
24 and that's about it.

25 Q Okay. And what are the facts that you have

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1 learned about the -- the case?

2 **A** What I've understood was she -- she was stuck --  
3 she got herself into the well of the tub, was unable to open  
4 the door. After a couple, three days, I believe, medics  
5 came in, was -- had -- was difficult to remove her and  
6 removed an arm, I think is what I understood, to help get  
7 her out of the tub, was taken out of the tub, and that then  
8 a short period of time after that, she passed away.

9 **Q** Okay. And is that the extent of your knowledge to  
10 this point?

11 **A** That is the extent of my knowledge, yes, it is.

12 **Q** Thank you, Dave.

13 And that's an easy name to remember because that's  
14 my dad's name.

15 **A** Okay.

16 **Q** Let me ask, I guess, how does -- how does First  
17 Street obtain information regarding incidents? Say, for  
18 instance, if there's a claim or an injury or something along  
19 those lines, you mentioned that you were informed by the  
20 insurance company. Do consumers -- do they actually call  
21 First Street at times --

22 **A** Yes.

23 **Q** -- directly?

24 **A** Depends on what the issue is. There's -- they may  
25 be calling because the drain was -- I think in her case, the

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1 to handle this? We knew it was a serious situation and was  
2 advised to let it be turned over to legal counsel.

3 **Q** Is that -- is that atypical for it to come that  
4 direction versus maybe coming through the call center?

5 **A** Well, it -- issues -- any significant issue like  
6 that where we may get contacted by, like, an attorney,  
7 there -- they knew then if it was an outside attorney  
8 contacting, typically, our Denver office is where they will  
9 normally contact.

10 They knew to immediately get that to myself and  
11 our legal counsel and turn -- if it's a letter, typically we  
12 get a letter, you may get a phone call, but normally we  
13 would receive letters from -- from outside legal counsel  
14 if -- if it got to that -- to that point, and then that --  
15 they would immediately get those to me and over to Stacy  
16 Hackney, our legal counsel inside.

17 So they knew they needed to turn that over. They  
18 weren't to try to reply or respond or to answer or remedy  
19 the situation.

20 **Q** Is it only when a -- when a claim comes through a  
21 lawyer, does it -- does it go to you or -- or if a consumer  
22 calls and -- does that sometimes -- is that also routed --

23 **A** If it --

24 **Q** -- to you?

25 **A** It would need to be reasonably significant,

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1 history and documentation says she may have had some drain  
2 issues.

3 So they'll call in for all types of reasons,  
4 whether it's faulty -- warranty issues, questions, so we --  
5 a lot of calls come right into us, into the -- into -- our  
6 headquarters are in Denver, and it gets routed to the right  
7 people, customer service, the production department, who  
8 handles installations. They try to answer the -- answer the  
9 questions, take care of it, contact Jacuzzi if it's a  
10 warranty claim that needed Jacuzzi's, you know, assistance.

11 And in all cases, they're supposed to then put  
12 that information into our CRM system, Lead Perfection, so  
13 there's notes made. You know, anyone has access to it  
14 that's involved at that level of taking that information,  
15 and it goes into the system, logs in the date and time, and  
16 puts it in their notes, and so it's just -- it's a -- it  
17 goes on file so there's a running record of any information  
18 that comes in on a particular incident.

19 Sometimes we can -- the communication can come in  
20 around about ways. It can come directly from the consumer  
21 and user right to us, or it can -- in this case, I think it  
22 came -- my understanding is it came from the insurance  
23 company, and they contacted our Denver office, and our  
24 Denver office contacted me, and so then I contacted our  
25 legal counsel going: What should we do? What should we do

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1 because they had a general manager and a sales manager.  
2 They had a team that was responsible for the day-to-day  
3 operations.

4 So depending upon the situation, they would  
5 obviously try to remedy the situation, whether it's working  
6 with the customer or working with the -- you know, the  
7 manufacturer Jacuzzi to help with the warranty claim. But  
8 if it was something extremely significant, and there are  
9 very rare situations that it would, that they would probably  
10 need to come to me without -- without first trying to remedy  
11 it themselves.

12 **Q** Okay. How many times, say, for instance, do you  
13 receive -- how often do you receive, like, a letter from a  
14 lawyer or something along those lines?

15 **MR. GOODHART:** Object to form. Ben, can you  
16 be a little bit more definitive? Are you talking about any  
17 type of claim, or is it a warranty claim, a property damage  
18 claim? Here we're talking about a personal injury claim.  
19 Do you want everything or --

20 **MR. CLOWARD:** Yeah. We'll just do  
21 everything.

22 **MR. GOODHART:** Everything?

23 **MR. CLOWARD:** And narrow it down from there.

24 **MR. GOODHART:** All right. Thank you.

25 **A** We would -- I guess we started -- was it 2012?

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1 And so, to answer your question fairly, these -- the  
2 frequency would probably be one every six months. But then  
3 as time goes on, as more -- more installations occurred in  
4 the field and we were doing hundreds a month, so probably by  
5 '13, we may be getting one every couple months at that  
6 point. I'm guessing a little bit, but they would -- as  
7 business went on into the thousands of tubs being installed  
8 and --

9 Q Sure.

10 A -- then the opportunity for issues to come up,  
11 like warranty claims, you know, just build over time. So my  
12 sense would be that it would be around once every two or  
13 three months at that time we'd get a letter of some sort,  
14 not very often.

15 Q I mean, that makes sense. The more tubs there are  
16 out there, the more folks are using --

17 A More opportunities for --

18 Q Sure.

19 A -- something to happen.

20 Q That makes sense. So you indicated that when it's  
21 serious, it comes to your, I guess, attention. Do you also  
22 address warranty claims, if it's a --

23 A If -- if -- if the situation just wasn't getting  
24 done, they would come to me to say, you know, can you -- can  
25 you go to your guy at Jacuzzi, because we're not -- our

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1 resolution they needed, and so, you know, see if I could  
2 help.

3 Q Okay. Say, for instance, when someone would  
4 contact the attorney general, what are those claims usually  
5 about?

6 A Typically, it's probably about a -- they -- the  
7 tub has been installed. It's not working properly or not to  
8 their satisfaction, and we're still trying to -- you know,  
9 we've sold it, installed it, and we think we've completed  
10 the work as agreed to in the contract.

11 And they would be objecting to -- to something and  
12 not wanting to pay, and we're still trying to get them to  
13 pay, so we're in this little, you know, discussion, urging  
14 them to pay, so -- and they're pushing back so they want to  
15 then use legal counsel like a state attorney general to come  
16 up with some reason to push back, just so they wouldn't have  
17 to pay, you know, because normally in those situations, the  
18 product ends up staying in the house.

19 They were using it and it stayed in the house.  
20 They just ended up not paying the full amount for some  
21 reason. It could have been some issues where it didn't  
22 quite work properly or the workmanship in the installation  
23 was done not to their expectation, didn't finish the job,  
24 the caulking wasn't as neat. I mean, a lot of issues would  
25 come up that weren't necessarily big issues, but they would

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1 normal channels of the customer service department just are  
2 not seemingly getting it done, or they needed to make an  
3 exception of some sort. They knew we had a good  
4 relationship with Jacuzzi. I did. You know, I knew the  
5 folks from top to bottom, could get to the right people if  
6 we needed some extra assistance or just some pushing to help  
7 get a customer taken care of, so they would come to me  
8 sometimes just, you know -- just need a little extra help,  
9 but not often because Jacuzzi normally was very responsive.

10 Q Okay. You indicated when it's something  
11 reasonably significant. Does that apply to all different  
12 types of claims that may come in?

13 A Yes. Yes, because -- because it could -- it could  
14 be the situation like with the Cunnisons that was extremely  
15 serious and very rare. I don't -- I can't -- I'm not sure  
16 if we -- I can remember one even prior to that like that,  
17 but there might be an attorney general issue on -- that a --  
18 that a customer had contacted and that always got our  
19 attention, for whatever the reason, it was just -- it was  
20 just not getting the service you wanted quick enough, so  
21 they would go that route.

22 And so that would normally, obviously, come to me,  
23 like I said before. But it was -- normally, it was just a  
24 situation that had gotten to the point where we just -- they  
25 couldn't handle it. They just couldn't quite get the

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1 push back and not want to make the final payment.

2 That was --

3 Q Sure.

4 A -- most of them.

5 Q What are some serious issues that came up -- that  
6 have come up?

7 A I mean, I -- the Cunnison, obviously, was a very  
8 serious one, which we -- I didn't hear about until I told  
9 you, and then that was handled quickly, or by inside  
10 counsel. It was more just those. Those -- I mean, those  
11 were just ones that just escalated that -- that we couldn't  
12 resolve and -- and so we just needed to try to come to some  
13 resolution.

14 And so we would try to -- and if it hasn't  
15 escalated to, like, the attorney general, I would try to get  
16 with the customer and talk to them myself and just see what  
17 we could resolve so it didn't turn into something that ended  
18 up -- get lawyers involved where we could hopefully resolve  
19 it ourselves.

20 Q Okay. When lawyers have been involved, what are  
21 some of the -- some of the issues that you recall?

22 A It's normally those same ones that I'm talking  
23 about now. It's just -- it's just issues where customers  
24 didn't feel the workmanship was -- you know, they -- somehow  
25 we fell short on delivering the promise of the product's

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1 performance or installation. It's, you know, one of those  
2 two things.

3 And we would go back time and time again, say  
4 we'll send someone back in. No, we're tired of it. We  
5 don't want anyone coming back in. We're done. They'd get  
6 frustrated.

7 Q Yeah.

8 A And we were trying to do our best, you know, to in  
9 some cases even put a new product in, you know, and just  
10 replacing it if we couldn't get it fixed, and they'd then  
11 say, no, I'm done. I want that product out, where, even  
12 though we're willing to replace it with a new product, no,  
13 we want all of our money back.

14 And by this time, we've obviously invested a lot  
15 of time and money. We're trying to deliver on our promise,  
16 and -- and -- and so your -- those type of issues, they  
17 were -- they were serious in our mind because we didn't --  
18 we didn't get it done the way we -- you know, the way they  
19 would have liked for us to do it, so we tried everything we  
20 could and sometimes your -- attorneys would get involved.

21 Q Okay. Now, initially, there was an objection, was  
22 kind of some parameters about different types of claims that  
23 might come in, like warranty versus, you know, injury and  
24 different things like that, so --

25 A Uh-huh.

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1 A To this level, for sure. But I -- I feel like  
2 there must have been a couple, but, as honest I can be, I  
3 just don't recall incidents like this. I -- concerns -- you  
4 know, people addressing maybe other concerns about their tub  
5 or something like that, you'd get into those, but an actual  
6 injury? I don't -- I -- I feel like there must have been  
7 one or two. I just -- I couldn't tell you who they were and  
8 when they were, if it was before that point in time.

9 Q Were you informed of, say, for instance, when a  
10 lawsuit is filed?

11 A Normally. Normally, I would have -- I would have  
12 known. I would -- normally it would have come in. It would  
13 always go into our in-house legal counsel. That's where it  
14 went first. And then typically our in-house counsel would  
15 approach me with making sure we had all the information in  
16 our files and turned over to the right people, so, normally,  
17 yes.

18 Q Okay. And is this the only -- the only case that  
19 First Street is aware of?

20 A I can't answer that, because, again, legal -- our  
21 in-house counsel would probably be -- probably could answer  
22 that better than myself. I'm just not able to tell you that  
23 there were two or three more that I can think of like this.

24 Q Okay. Well, I'm entitled to have the most -- I  
25 guess, the information.

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1 Q -- you've done a nice job addressing kind of the  
2 warranty claims or the, you know, performance issues.

3 A Uh-huh.

4 Q How about we focus now on kind of the safety  
5 aspect of the tub. How often and what types of claims are  
6 called in on that?

7 A Very, very few that I can -- I just don't remember  
8 many at all, honestly. I don't -- I just -- the issues were  
9 normally the warranty or the installation. I just didn't  
10 hear about those. There may -- there may have been a couple  
11 of -- I mean, there's just -- that wasn't an occurrence that  
12 happened very often at all.

13 Q So if it -- I mean, if it didn't happen often at  
14 all, you would probably remember the ones that did happen,  
15 right? They would kind of --

16 A You would think so.

17 Q So they didn't stand out when you --

18 A Well, I just -- I honestly just can't think of  
19 particular ones in general because it just did not happen  
20 that -- I mean, you would have people raising concerns about  
21 certain things, but an actual injury? I just don't -- I'm  
22 just not -- I can't recall. I don't remember incidents,  
23 anything like this that come up to that point.

24 Q So is it fair to say that -- that the Cunnison  
25 case is the only incident you recall?

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1 A Sure.

2 MR. CLOWARD: If you're relying on your  
3 memory, maybe what we could do is take a break and have  
4 Ms. Hackney testify. Is that -- is that okay?

5 MR. GOODHART: Or I can -- we can take a  
6 break and I can re-educate my witness on certain things.

7 MR. CLOWARD: I mean, that's -- if that's  
8 what's -- what's necessary.

9 MR. GOODHART: Yeah. That's fine with me.

10 MR. CLOWARD: It's a topic in the --

11 MR. GOODHART: I understand. I just have not  
12 been objecting and have not been trying to coach the witness  
13 in any way, shape, or form. But you know as well as I do,  
14 you know, sometimes memories fade and things like that, but  
15 I can certainly have a discussion with Mr. Modena and  
16 Ms. Hackney, and we can clear this up for you.

17 MR. CLOWARD: Yeah.

18 MR. GOODHART: And just so I'm clear on your  
19 question, you're asking him even up through to today --

20 MR. CLOWARD: Yeah.

21 MR. GOODHART: -- about any type of claims of  
22 any injuries that have taken place --

23 MR. CLOWARD: Yeah.

24 MR. GOODHART: -- in a Jacuzzi product?

25 MR. CLOWARD: Correct.

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1 MR. GOODHART: Okay. All right. Why don't  
2 we take two minutes and we'll clear it up for you.  
3 MR. CLOWARD: Okay. Do you want me to leave  
4 or --  
5 MR. GOODHART: No. We can just go out there.  
6 MR. CLOWARD: Okay.  
7 MR. GOODHART: That's fine. Thank you.  
8 THE VIDEOGRAPHER: We are going off the  
9 record at 11:01 a.m.  
10 (Recess from 11:01 a.m. to 11:07 a.m.)  
11 THE VIDEOGRAPHER: We are back on the record  
12 at 11:07 a.m.  
13 BY MR. CLOWARD:  
14 Q Dave, have you had a chance to talk with your  
15 counsel, both in-house and outside counsel?  
16 A Yes.  
17 Q Okay. Were you able to discuss, I guess, the  
18 other reasonably significant events that you're --  
19 A Uh-huh.  
20 Q -- that First Street is aware of?  
21 A Right. Right.  
22 Q Okay.  
23 A Yeah.  
24 Q So what other reasonably significant events are --  
25 is First Street aware of?

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1 A After the Cunnison is -- because I think I was  
2 working a little bit prior -- prior to the Cunnison -- up to  
3 that point, I think I was more concerned about that, but --  
4 in answering that, but there -- there had been two, one in  
5 Texas, Baez or something, and I was -- I wasn't directly  
6 notified on that one, but eventually so -- and that went to  
7 legal counsel, and -- not even sure that was an injury --  
8 we're not sure that's even an injury case.  
9 The -- probably the more significant one is Max  
10 Smith, I believe, which is in Georgia, and that was well  
11 after the fact, as well, so that was something that would  
12 have gone to our legal counsel. First Street was notified  
13 and then, thus, I would have been notified at that time.  
14 Q Okay. So --  
15 A Those are the two situations, which, one, we're  
16 not even sure was an injury incident.  
17 Q Okay. So it's fair to say you now recall, I  
18 guess, those -- those incidents. You recall being told  
19 about those incidents at some point?  
20 A Well, the one -- certainly the one in Georgia.  
21 That's probably the one that would -- the more significant  
22 issue that was obviously an injury-related type issue. The  
23 one in Texas, we weren't sure about, so to say I absolutely  
24 a hundred percent remember that one, it sounds familiar.  
25 You know, it -- the -- I was -- and I've looked at

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1 it since then, too, since -- in prepping for this, too, as  
2 well, and the notes were even unclear on it, as well, so it  
3 was -- it's one that I could see if I was notified of -- it  
4 was relatively unclear what had even happened so it --  
5 Q So you reviewed some notes about that prior to the  
6 deposition?  
7 A We looked at it just recently. I was -- this was  
8 just going through probably those two situations and -- and,  
9 actually, our notes were relatively -- they were not that  
10 forthcoming on what had actually happened.  
11 Q Is there a reason you weren't able to recall  
12 reviewing those notes five minutes ago?  
13 A Well, I thought we were -- actually, I was going  
14 to bring that up, because that's the Baez thing, the one --  
15 that's -- because that is the one that I remember that,  
16 because I looked at it recently, but when I looked at the  
17 notes, and -- it wasn't in our -- in our LP system that I  
18 talked about earlier. There really wasn't much in there, so  
19 that's why I was having a hard time.  
20 We didn't -- it didn't show up as a -- as a -- you  
21 know, an injury report, so I was like -- I knew that that  
22 was potentially an issue that we could discuss, but I  
23 couldn't find anything in the note that even shows it as an  
24 injury, so I didn't -- didn't designate it as an injury type  
25 of an incident --

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1 Q Okay. And did you --  
2 A -- in my mind.  
3 Q Did you review notes in the system, as well,  
4 regarding the Smith case?  
5 A Yes. But there, again, in our system, because  
6 most of this, once it gets turned over -- once Denver sort  
7 of turns it over, there's not much in there, as well.  
8 Q Okay. You knew there was a death, though, right?  
9 A Yes.  
10 Q You were informed --  
11 A Yes.  
12 Q -- of that?  
13 A Yes. Yes.  
14 Q Is there a reason why you didn't remember that  
15 five minutes ago?  
16 A Well, again, I was thinking about up to that  
17 point. I thought that's how I'd answered it. I thought we  
18 were just trying to -- up to that point, what we were aware  
19 of.  
20 Q Okay. So why don't you tell me all of the  
21 incidents that you're aware of at any point, safety  
22 incidents.  
23 A Those would be it.  
24 Q Just those three?  
25 A That I would be aware of.

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1 Q Okay. Tell me about the system in Denver. What  
2 is the system?

3 A It's called a CRM system. That's just a customer  
4 retention system. That's pretty common to any home  
5 improvement company, you -- you -- any lead that comes into  
6 the organization, it then is given an ID, and that -- that  
7 person's information is put into the system and it's tracked  
8 all the way through. So from the date that customer either  
9 calls in from an ad, or in this -- I think with -- the  
10 Cunnison case actually was an Internet, I think, lead, and  
11 they may have submitted a form and then we'd get back in  
12 touch with them.

13 But that creates a file, and so at that point,  
14 anytime anything happens after that, you -- you make -- you  
15 make your -- there's a central place that customer has an ID  
16 and you go in and you put that information in. It's dated,  
17 time stamped, and it stays.

18 Q Who has access to that database?

19 A The primary users at the Denver office. I would  
20 have access to it. People that would need to be able to run  
21 reports, things like that, because it's not only just for  
22 putting data in or information in, but it -- for pulling  
23 information out, sales history, things like that.

24 So in the Denver office, you would probably have a  
25 handful of people that -- that have access to that, at that

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1 level, because whether it's customer service or production  
2 or sales, they'd have different points of contact, different  
3 reasons for talking to them, so they would need to be able  
4 to not have to run to someone to put it in. They could put  
5 it in themselves.

6 Q Okay. That's internally. Who outside the company  
7 has access to that?

8 A The only one would be the -- the administrator of  
9 the actual software company, Lead Perfection. They'd have  
10 access to it, as the company itself, which provides us that  
11 software.

12 Q What about Jacuzzi?

13 A Jacuzzi would not have access to that, no. I  
14 don't think so. I don't -- I don't think they were ever  
15 given a password or something to go. I don't believe so.

16 Q Does --

17 A That's not something they would use. I think they  
18 have their own CRM system, as far as I understand.

19 Q Does First Street have access to salesforce.com?

20 A No.

21 Q Okay. When there is an incident that occurs, is  
22 there a communication between First Street and Jacuzzi?

23 A Depending upon the issue. If it was an  
24 installation issue where it was our installer didn't call  
25 it properly or whatever, then that would stay between us.

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1 If it turned into a warranty issue, then we  
2 would -- we would contact their customer service. We had a  
3 direct relationship. We had a line to them and they would  
4 log it in and they kept good records of any warranty issue  
5 until resolved.

6 Q What about when there is an injury claim made  
7 through Jacuzzi? Are -- does First Street become  
8 knowledgeable of that?

9 A If --

10 MR. GOODHART: Object to the form. Calls for  
11 speculation.

12 MR. COOLS: Join.

13 MR. GOODHART: I'm objecting to form.

14 Calling for speculation. From time to time, I may object to  
15 questions.

16 THE DEPONENT: Sure.

17 MR. GOODHART: Allow me to get my objection  
18 out. Once I have finished my objection, you can then go  
19 ahead and answer the question, unless I instruct you not to.

20 THE DEPONENT: Okay. Go ahead and answer?

21 MR. GOODHART: Yeah.

22 A Okay. So assuming that they -- if they then came  
23 to us and went to us, they would have probably come to me or  
24 our legal counsel on a situation like that.

25 BY MR. CLOWARD:

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1 Q Okay. How many times has First Street been  
2 notified of an incident?

3 A From -- by Jacuzzi?

4 Q Yeah.

5 A I would not know. I would not know. I -- again,  
6 if I only know of two or three incidents at all, I would say  
7 not many, if any. Obviously, the Cunnison came through an  
8 insurance company, I believe.

9 Q Okay.

10 A Or, actually, I take that back. The -- I  
11 received -- well, the -- Audry Martinez, who was working at  
12 the time, was looking for information is how that worked  
13 out. I think she actually contacted our Denver office, and  
14 Denver office asked me was it okay for them to provide them  
15 information, what should we do. That's when I went to our  
16 legal counsel. So Audry Martinez was looking for  
17 information on behalf of their insurance company is how that  
18 actually came to us.

19 MR. CLOWARD: Okay. Phil, I think what I'm  
20 going to -- what I'm going to have to do is we're going to  
21 have to come back on this topic, because, clearly, in the  
22 documents from sales force, there's communication going back  
23 and forth between AITHR and First Street, so I don't believe  
24 that this witness has been properly educated on this topic.

25 So I'm going to just move on, and I'm just

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1 making my record that I'm going to -- I'm going to come back  
2 into this area after there's been more done to prepare this  
3 witness on First Street's knowledge on this area, because it  
4 appears as though Dave is relying on his own memory, rather  
5 than what First Street knows.

6 So with that -- and just an example so that  
7 you have -- so that you can review would be Bates labeled  
8 Jacuzzi 002927. This is a complaint that came in of the tub  
9 being too slippery. And in the claim notes, it indicates  
10 that specifically on Jacuzzi 002929 called to let me know  
11 that no one from AITHR has called her back.

12 And then there's also Jacuzzi 2930, spoke to  
13 blank -- the name is redacted -- to let her know that I  
14 contacted AITHR and to give you a call regarding the  
15 slippery floor and so forth, so, clearly, there's -- there's  
16 communication back and forth between the two parties, so I'm  
17 just going to reserve my right to come back into this area  
18 and we can move on.

19 MR. GOODHART: Well, I guess my comment to  
20 that would be: You've asked him questions about injuries  
21 and warranty claims and things like that. The question that  
22 has not been asked so far: Would a slippery floor complaint  
23 from a customer be considered a safety complaint in his  
24 mind?

25 MR. CLOWARD: Okay. I can go into that.

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1 concern that you -- that you -- if you -- if you have a  
2 concern like that, you -- you try to address it one way or  
3 the other. But how you determine what's dangerous versus is  
4 it just -- you know, I --

5 Q So is it fair to say you're unable to tell me  
6 whether a slippery floor is dangerous to the elderly that  
7 purchase your tub?

8 MR. GOODHART: Object to form. Asked and  
9 answered. Argumentative.

10 MR. COOLS: Join.

11 MR. GOODHART: You can answer the question,  
12 if you can.

13 A A slippery floor can be dangerous to an elderly  
14 person as well as a -- as a person like myself or any other  
15 person. To what level, how dangerous it is, that's -- I  
16 don't know how you define that. I don't now how you -- how  
17 you make that determination, and -- and it was certainly an  
18 issue that had been discussed, you know, a couple of times  
19 with Jacuzzi and trying to make sure it was -- you know, met  
20 all the standards.

21 BY MR. CLOWARD:

22 Q How many times was that addressed with Jacuzzi?

23 A I don't know how many times, but certainly a  
24 number of times. It would -- it would come up in -- in  
25 either direct conversation, maybe if it's -- especially if

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1 THE DEPONENT: I -- if it's okay --

2 MR. GOODHART: Wait until there's a question  
3 pending.

4 THE DEPONENT: Okay.

5 MR. GOODHART: So, you know, Ben, we work  
6 well together. I'm not going to object to you -- we're  
7 going to have to come back for a second day anyway, so if  
8 you would like me to go through those in greater detail with  
9 the witness, then I certainly will, but I believe he does  
10 have knowledge of -- or some knowledge of that. It just may  
11 be miscommunication as to definitions that are being used by  
12 you and what he is interpreting that to be, as we are here  
13 for a deposition concerning a wrongful death case.

14 MR. CLOWARD: Okay.

15 BY MR. CLOWARD:

16 Q Sir, let me ask you this question: Do you  
17 consider a slippery floor to be a danger to the elderly that  
18 buy your tub?

19 A That's such a relative question, because my  
20 response to you earlier was about injuries, not about  
21 concerns of a customer. Did Jacuzzi ever bring us a  
22 concern. I was strictly talking about injuries.

23 A slippery floor is such a relative thing to try  
24 to determine is that dangerous or not. Is it any more  
25 dangerous than a regular tub? It's -- it's -- it's always a

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1 they had referred a concern to us, if they did, which is --

2 I think we did, in preparation for this, was  
3 provided some documentation I had not seen before, because  
4 it had come through Jacuzzi, and -- but some of that I had,  
5 so -- the slippery floor issue, but it's -- it's a -- these  
6 would come up from time to time.

7 It would -- a customer would bring it up to one of  
8 our installers, and they would make a comment. They were  
9 just concerned. It wasn't over an incident, necessarily.  
10 It was just they had a concern, so we would address it from  
11 time to time with Jacuzzi and -- and acknowledge that there  
12 was -- had been expressed concerns by customers. Is there  
13 something we should do, something they should do? And so  
14 there were discussions on that.

15 I couldn't tell you exactly how many times, but  
16 I'm sure more than once or twice, probably, you know, half a  
17 dozen times, I would say.

18 Q What's the time period of those complaints?

19 A In reviewing and looking back, it was -- I don't  
20 know exactly for sure. We -- probably in the 2014 time  
21 frame, somewhere in there. It seemed we had probably more  
22 coherent conversations about that. Maybe -- maybe late '13,  
23 early '14 there were discussions about that. Again, there  
24 may have been some that came through Jacuzzi earlier, but I  
25 don't recall those.

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- 1 Q What documents did you review?
- 2 A As far as what Jacuzzi had done?
- 3 Q You represented you had two -- two sources of
- 4 information that you reviewed, one, documentation from
- 5 Jacuzzi and, two, documentation that you had internally, so
- 6 let's talk about Jacuzzi first.
- 7 A Well, the -- as far as -- as far as slippery
- 8 floors? As far as --
- 9 Q Yeah. That's where we're going to keep the focus
- 10 on right now.
- 11 A Right. So what I -- what I recall was when this
- 12 issue came up, the -- Ray Torres was the -- a product
- 13 engineer at the time, came back and provided us information
- 14 that showed that the -- the floor was to the standards of
- 15 whatever the -- I don't know if it's IMO, because it's a
- 16 public standard, but within the tub industry, whatever the
- 17 standard was, they showed -- gave evidence of a -- that
- 18 their tub was standard, as far as the floor and the way it
- 19 was done.
- 20 Q So it's fair to say we can -- we can determine
- 21 based on when Mr. Torres was employed, that's the operative
- 22 time period?
- 23 A He was -- it may have carried on past him, but,
- 24 yes, he was employed at the time that Jacuzzi addressed that
- 25 issue, as far as providing evidence of their tub being

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- 1 manufactured to the appropriate specs relative to the floor.
- 2 Q What did he provide?
- 3 A It would have been a document. I don't know if I
- 4 got it in the form of email or whatever that showed the
- 5 coefficient or whatever the terminology they would have used
- 6 for what the floor needed to -- how it needed to be
- 7 constructed so it's sort of slip resistant. I don't know
- 8 what the technical term of that would have been, but they
- 9 did provide us documentation.
- 10 Q Coefficient of friction?
- 11 A I don't know if that's the right term or not, but
- 12 it was -- it is -- it was specifically an engineering design
- 13 element that I believe is a tub industry standard that
- 14 Jacuzzi had met, relative to their floor of the tub.
- 15 Q Do you know what that is?
- 16 A No. I have no idea. I can't remember what that
- 17 number would have been, no.
- 18 Q Is that the only information that you received
- 19 from Jacuzzi?
- 20 A From the documentation point of view, yes, that
- 21 would have been the only documentation as far as what -- how
- 22 it met the standards.
- 23 Q I'm not limiting it to just the standards. I'm
- 24 talking broadly about the slippery issue. Is that the only
- 25 document that you received from Jacuzzi, or were there other

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- 1 emails about that?
- 2 MR. COOLS: Object to form.
- 3 MR. GOODHART: Are you talking -- is there a
- 4 time frame again, Ben? Ever? Like, post Cunnison incident?
- 5 Pre Cunnison incident?
- 6 MR. CLOWARD: Ever.
- 7 MR. GOODHART: Ever, okay.
- 8 MR. CLOWARD: His response was he reviewed
- 9 information internally, and he reviewed information from
- 10 Jacuzzi. So what I'm trying to do is find out the universe
- 11 of information that he reviewed in this aspect of his
- 12 testimony.
- 13 A Yeah. We -- once we -- once the discussion was
- 14 sort of ongoing, then we would have -- I would have received
- 15 a couple of different emails for sure, because we went about
- 16 trying to find additional solutions, if you will, if someone
- 17 was -- wanted to be provided additional assurance or
- 18 comfort, their floor could be made even more slip resistant,
- 19 you know, they were looking for other solutions that they --
- 20 just on an exception basis, if we wanted to do that.
- 21 So Jacuzzi went and actually worked and developed
- 22 and found other products that could be used to -- to, you
- 23 know -- for people that just had additional concerns, if --
- 24 similar to people, what they, I guess, do in their regular
- 25 tub. They want to put additional stuff, they can put

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- 1 additional stuff down in their tub.
- 2 BY MR. CLOWARD:
- 3 Q What was the additional stuff they put down in the
- 4 tub?
- 5 A It's called Kahuna Grip, I believe, is what it
- 6 was.
- 7 Q What was it?
- 8 A Kahuna Grip, I think, is what the name of it. It
- 9 was -- it's a product that's already out there and it can be
- 10 adhered to the tub. It just gives it more grip. It's was
- 11 provided after-market and upon request.
- 12 Q And, certainly, there were emails about that?
- 13 A Uh-huh.
- 14 Q Is that a yes?
- 15 A Yes. I'm sorry.
- 16 Q And those emails have been provided in this case?
- 17 A Yes.
- 18 MR. GOODHART: As you and I have discussed,
- 19 Ben, the only emails that my office has provided to you so
- 20 far predate the death of Ms. Cunnison.
- 21 I believe what Mr. Modena is talking about
- 22 are emails, as he indicated and testified earlier, that were
- 23 from early 2014, which have postdated the death. So First
- 24 Street has not produced those emails, given the discussions
- 25 that we have had in the past. I know you've raised an

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1 objection to that, and I've provided you with a response to  
2 that.

3 So I can represent those particular emails  
4 that Mr. Modena was just testifying about have not been  
5 produced by First Street to Plaintiffs, because they  
6 postdate Ms. Cunnison's death. Any emails relative to  
7 slipperiness of surfaces and things like that that predated  
8 Ms. Cunnison's death, if there are any, have been produced.

9 MR. CLOWARD: Okay. Counsel would just ask  
10 that you produce all the emails regarding slipperiness of  
11 the tub.

12 MR. GOODHART: Again, we have a dispute over  
13 that, as to what relevance an email about the slipperiness  
14 of the tub that postdated Ms. Cunnison's death has, with  
15 respect to First Street, as claims against First Street are  
16 based entirely upon the allegations that Ms. Cunnison relied  
17 upon advertising, sales, and marketing materials that it  
18 provided to her.

19 And I have used Ms. Cunnison's death as the  
20 time point where there is absolutely no way that  
21 Ms. Cunnison could have relied upon an email or a  
22 conversation that was generated after she had passed away.

23 MR. CLOWARD: Okay. And my position, I'll  
24 state it for the record, I believe I've shared it with you,  
25 but we can just use this as the 2.3 forum. Is that okay?

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1 MR. CLOWARD: Okay.

2 MR. GOODHART: -- Jacuzzi will provide the  
3 emails, since they have been ordered to provide those emails  
4 about post-death --

5 MR. CLOWARD: We would ask you --

6 MR. GOODHART: -- discussions.

7 MR. CLOWARD: We would ask that First Street  
8 provide them as well, because there may be internal  
9 communications within the folks at First Street who have the  
10 boots on the ground, who are in actually installing the  
11 product in consumers' homes. I think a better source of  
12 that information would actually be First Street, to be quite  
13 honest with you.

14 So we'd ask that you produce those. If not,  
15 I'm happy to take it up with the commissioner.

16 MR. GOODHART: I think we're going to have  
17 to, Ben. I apologize. It's --

18 MR. CLOWARD: Not a problem.

19 MR. GOODHART: We can agree to disagree on  
20 that one.

21 MR. CLOWARD: Not a problem. We'll move on.  
22 Thank you.

23 MR. GOODHART: Thanks.

24 BY MR. CLOWARD:

25 Q Okay. Sir, so why don't you just tell me as much

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1 MR. GOODHART: That's fine.

2 MR. CLOWARD: Our position is those emails  
3 would be relevant for whether or not the tub is actually  
4 dangerous, okay? So we believe that they're relevant,  
5 similar to the subsequent similar incidents for the same  
6 reason that Commissioner Buella has compelled production of  
7 that information, it's the same -- same reasoning.

8 MR. GOODHART: And just to respond to that,  
9 Ben, I didn't mean to cut you off. Those have dealt with  
10 the design and manufacturing of the tub, which is directed  
11 at Jacuzzi. The claims against First Street and AITHR, as  
12 neither of them designed nor manufactured that tub, I  
13 believe are quite different than those claims and that issue  
14 has not been brought before discovery commissioner.

15 MR. CLOWARD: But if there are internal  
16 communications and complaints from consumers, and that's  
17 generating conversation within First Street, as well as  
18 between First Street and Jacuzzi, and I'm including AITHR in  
19 this as well, then that would be relevant on whether or not  
20 that the product is dangerous, so I understand your  
21 objection. I think you understand my position.

22 MR. GOODHART: Right.

23 MR. CLOWARD: Fair to say you won't provide  
24 those without further court intervention?

25 MR. GOODHART: Correct. I'm assuming that --

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1 as you can about the -- the Kahuna Grip emails.

2 **A When -- when the issue -- when we -- I guess, when**  
3 **the issue was raised, I don't know the exact date when we**  
4 **had a discussion with them to where -- what would have**  
5 **instigated them going to the next level of trying to find**  
6 **something, may have been, you know, the second email or**  
7 **something that --**

8 **Anyway, we started a discussion with them, and it**  
9 **was just back and forth on here are some -- first they**  
10 **provided us the information the tub is to specs. This is --**  
11 **satisfied that. But then what else can we do? Is there**  
12 **something else we can do? Is there something that could be**  
13 **done to make it more aggressive?**

14 **And they came up with this solution, and it was**  
15 **just an off-the-shelf product that, I think, was used in --**  
16 **I think maybe for boats or things that are for wet surfaces,**  
17 **and so I think the -- probably was designed for -- I'm just**  
18 **going off recollection here -- for, like, surfboards, but,**  
19 **anyway, it's a product that --**

20 **And so they worked with that, looked at that and**  
21 **tried to see if there's any issues that -- would it work?**  
22 **Is there any other alternative situation that would come**  
23 **from using that and deemed it was certainly more aggressive**  
24 **and would give you another solution on top of what they've**  
25 **already done in manufacturing the tub.**

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1 They then decided to -- there was an issue came  
 2 up, they will make it available to us, and we would -- if  
 3 it -- if it was something that was -- a customer raised as  
 4 an issue, we could contact them directly and they would send  
 5 one out and we'd put it -- you could install it right --  
 6 since you could lay it out on the floor, it'd stick to the  
 7 floor of the tub.  
 8 Q Okay. Is it fair to say that there were concerns  
 9 about the tub being slippery from the time that First Street  
 10 requested from Mr. Torres information about the slip  
 11 resistance of the tub?  
 12 MR. COOLS: Object to the form.  
 13 MR. GOODHART: Join.  
 14 A I'm sorry. Ask that question again. I didn't  
 15 quite understand.  
 16 MR. CLOWARD: Sure. Madam reporter, would  
 17 you mind reading that again?  
 18 (The record was read.)  
 19 A Did Jacuzzi show concern --  
 20 MR. GOODHART: Same objection.  
 21 THE DEPONENT: Are you done?  
 22 MR. CLOWARD: Join.  
 23 THE DEPONENT: I'm sorry.  
 24 MR. GOODHART: Go ahead.  
 25 BY MR. CLOWARD:

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1 Q So now that we -- just to make sure we have a  
 2 clean record with clean question, clean objections, and then  
 3 hopefully a clean answer: Fair to say there was concern  
 4 about the slipperiness of the tub from the time First Street  
 5 was requesting information about the slip resistance from  
 6 Ray Torres?  
 7 A Yes.  
 8 MR. GOODHART: Object to the form of the  
 9 question.  
 10 MR. COOLS: Join.  
 11 BY MR. CLOWARD:  
 12 Q Okay. And that concern came from consumers  
 13 themselves?  
 14 MR. GOODHART: Object to form.  
 15 MR. COOLS: Join.  
 16 THE DEPONENT: Go ahead and answer?  
 17 MR. GOODHART: Yeah.  
 18 A Yes. It would have been from consumers probably  
 19 bringing it to our attention through an installer or  
 20 something. It wouldn't have been through a salesperson,  
 21 because they wouldn't be together at the time. They'd  
 22 normally be from an installer. The consumer may have said  
 23 she was concerned, may have asked about it, had a concern,  
 24 or it could come in through our production department. They  
 25 would -- if they were having used the tub, they may have

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1 called in to our production area and just asked.  
 2 BY MR. CLOWARD:  
 3 Q Okay. So someone would call into that CRM system  
 4 and --  
 5 A They'd call into our Denver office, and -- and  
 6 they would get, typically, production, and they would be the  
 7 one that would notate that.  
 8 Q Okay. And, obviously, it was enough of a concern  
 9 that First Street requested information from Ray Torres  
 10 about the slipperiness of the tub itself, true?  
 11 MR. GOODHART: Object to form.  
 12 Argumentative.  
 13 MR. COOLS: Join.  
 14 THE DEPONENT: Answer?  
 15 MR. GOODHART: Yeah.  
 16 A Any concern like that, yes, we -- we would brought  
 17 to their attention, because those are potential liability  
 18 issues so we would have brought to their attention just as  
 19 an issue that warrants discussing, make sure we're doing all  
 20 we could.  
 21 BY MR. CLOWARD:  
 22 Q Okay. And just so that you're aware of how the  
 23 objections -- how that plays out, that way, you know, you  
 24 can feel confident knowing when you're supposed to answer  
 25 and --

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1 A Okay.  
 2 Q -- when you're not supposed to. We don't have the  
 3 luxury of having a judge here before us today. I know a lot  
 4 of times we watch Court TV, Law and Order things, and you'll  
 5 see, "Objection," and then the judge will say, "Overruled,"  
 6 or, "I'll allow it."  
 7 A Right.  
 8 Q You know, the things that judges say. Because we  
 9 don't have that luxury today, what happens is we actually  
 10 take the objections at an appropriate time before the judge  
 11 and, in this case, Judge Scotty would rule on those. He  
 12 would make a determination as to whether the testimony is  
 13 allowed or not, and so feel comfortable --  
 14 A Answering.  
 15 Q -- giving an answer. Even if there are a whole  
 16 bunch of objections, you're supposed to answer.  
 17 A Okay.  
 18 Q The only time you're really not supposed to answer  
 19 is if counsel actually instructs you not to answer, says,  
 20 "Hey, I'm instructing you not to answer." That's very rare.  
 21 We have a case called In Re Stratosphere that kind of talks  
 22 about when that's appropriate. It's very rare so --  
 23 A Got it.  
 24 Q -- feel confident to give the answers.  
 25 A I'll quit asking. Sure.

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- 1 Q No, no.  
 2 **A No, no, no, I appreciate that. I'm good.**  
 3 Q Witnesses -- it's every time there's -- you know,  
 4 it's a first time witness and there's an objection, they  
 5 don't really know what to do, and we all do it all the time  
 6 so --  
 7 **A Sure.**  
 8 Q -- I just feel bad that sometimes we don't  
 9 communicate to the witnesses --  
 10 **A I appreciate it.**  
 11 Q -- a little more of the process.  
 12 **A I appreciate the clarification.**  
 13 Q No problem. All right. Now, I've also seen  
 14 emails about the grab bars --  
 15 **A Uh-huh.**  
 16 Q -- as being a concern. How often was that voiced  
 17 to -- to Jacuzzi?  
 18 MR. GOODHART: Objection to form.  
 19 MR. COOLS: Join.  
 20 **A Not very often. We -- grab bars were -- were**  
 21 **there, obviously, to help get them in and out of the tub and**  
 22 **while in the tub, and we offered additional grab bars, if**  
 23 **necessary, if they requested it, but those grab bars were**  
 24 **put on the -- on the bathroom wall where the tub was, not on**  
 25 **the tub, necessarily, could be so ...**

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- 1 record at 11:39 a.m.  
 2 (Discussion off the record.)  
 3 THE VIDEOGRAPHER: We are back on the record  
 4 at 11:41 a.m.  
 5 MR. CLOWARD: Okay. So, preliminarily,  
 6 there's a brief discussion held off site -- or off the  
 7 record between counsel. Some of the -- the emails, there  
 8 have been two productions recently. One was by First  
 9 Street. One was by Jacuzzi. Both were, you know, a couple  
 10 thousand pages, approximately.  
 11 The Jacuzzi production didn't happen until  
 12 just recently, maybe a week or so, within the last 10 days.  
 13 Counsel, would you agree?  
 14 MR. COOLS: I think -- I thought it was in  
 15 November, but -- thought it was before Thanksgiving, but  
 16 I'll --  
 17 MR. CLOWARD: In any case --  
 18 MR. COOLS: It is what it is.  
 19 MR. CLOWARD: Sure. In any case, the  
 20 deposition notice that we prepared indicated that -- because  
 21 at that time, I believe we had received the First Street  
 22 records, so it talked about the records from First Street.  
 23 Counsel has informed me that due to the --  
 24 which is reasonable, Counsel for First Street has notified  
 25 me that due to the production of emails, his witness has not

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- 1 BY MR. CLOWARD:  
 2 Q Okay. I noted that in -- in some of the  
 3 correspondence that was an issue, though, that was raised by  
 4 consumers, true?  
 5 MR. GOODHART: Object to form.  
 6 MR. COOLS: Join.  
 7 MR. GOODHART: Assumes facts not in evidence.  
 8 MS. HACKNEY: Join.  
 9 **A Could you be more specific? What concern? Not**  
 10 **having enough? Not being appropriate? I'm not sure that I**  
 11 **understand the question.**  
 12 BY MR. CLOWARD:  
 13 Q Sure. So the binder that you have there in front  
 14 of you -- or to your left, these are binders that we're  
 15 going to be using today.  
 16 **A Uh-huh.**  
 17 Q And I can direct you -- I can direct you to those.  
 18 THE VIDEOGRAPHER: Mr. Modena, your  
 19 microphone's falling off a little bit.  
 20 THE DEPONENT: Okay. Get back up there  
 21 fella.  
 22 THE VIDEOGRAPHER: Do you guys mind if we go  
 23 off the record for a minute?  
 24 MR. GOODHART: Go ahead.  
 25 THE VIDEOGRAPHER: Okay. Going off the

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- 1 had a chance to review the production from Jacuzzi, so I  
 2 guess what we would do is when we come back, I'm going to  
 3 revise the scope of the deposition notice to include these  
 4 documents, and then that way when we come back -- because  
 5 there are some -- there are some emails in here that are not  
 6 in the First Street production. I've had a chance to go  
 7 through the majority of them.  
 8 So is that a fair compromise? I'll ask him,  
 9 maybe, some questions. If he can answer them, great. If  
 10 not, then no problem.  
 11 MR. GOODHART: Yeah. I would just request  
 12 that prior to resuming the deposition, if there are specific  
 13 pages that you would want to make sure that Mr. Modena is  
 14 familiar with and aware of, that you notify me because  
 15 there's 2,500-plus pages of documents that were produced by  
 16 Jacuzzi within the last 10 days.  
 17 The notice of deposition is November the 7th,  
 18 so that was well before Jacuzzi's production. First Street  
 19 produced it's thousand or so pages of emails, I believe it  
 20 was at the end of October, prior to this deposition notice  
 21 coming out. So that is what Mr. Modena is prepared to talk  
 22 about. That's what he's been prepared for.  
 23 I have not had an opportunity to prepare him  
 24 for the extra 2,500, 3,000, whatever it is documents that  
 25 was recently produced by Jacuzzi. It will be a lot to ask

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- 1 Mr. Modena to go through 3,000 pages.  
 2 MR. CLOWARD: Yeah, I'm not --  
 3 MR. GOODHART: So if, prior to us resuming  
 4 this deposition, you can give me an idea of which of those  
 5 3,000 or so pages that Jacuzzi produced you would like him  
 6 to focus on, I think I can do that. But to say I'm going to  
 7 maybe ask him questions about all 3,000 pages, I think I  
 8 might have an objection to that.  
 9 MR. COOLS: And just for the record, they  
 10 were disclosed on November 27th. I think that they were  
 11 sent to Megan and not you, which is why there was a delay in  
 12 you getting the actual documents, but they were disclosed on  
 13 November 27th.  
 14 MR. CLOWARD: Okay.  
 15 BY MR. CLOWARD:  
 16 Q So I guess what we'll do is because we've got to  
 17 come back, we'll talk to you a little bit. And then, also,  
 18 I would just ask you to review internally, because these  
 19 documents I did not see in First Street's production, but  
 20 they're clearly -- one is authored by Mark Gordon, who is --  
 21 my understanding was the president and CEO of First Street;  
 22 is that accurate?  
 23 A Right.  
 24 Q Do you know why, say, for instance, the email on  
 25 October 31 on page 3196 was not produced in First Street's

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- 1 production?  
 2 A No, I wouldn't. I -- I -- obviously, I didn't  
 3 author that one, so anything that I authored, I typically  
 4 always kept in my folder, in my Jacuzzi folder on the  
 5 server, which was turned over, so it was --  
 6 Q Okay.  
 7 A That was all provided. This coming from another  
 8 source, potentially, is maybe why. I can only speculate.  
 9 Q Can you go to the next page, page 3197? Do you  
 10 see at the bottom of the page there, that's --  
 11 A Uh-huh.  
 12 Q -- an email that's authored by you?  
 13 A Uh-huh.  
 14 Q Is that true?  
 15 A Yes, uh-huh.  
 16 Q Do you know why this email wasn't produced?  
 17 Because it's part of the same chain, it should have.  
 18 A No. I would assume -- I would have to see if this  
 19 is -- was kept in my folder. That's the only place --  
 20 because they have -- our counsel has access to the entire  
 21 folder that anything that I kept from Jacuzzi was -- stayed  
 22 in.  
 23 So -- and did I keep every email that I sent? I'm  
 24 sure I didn't. I mean, I just -- you delete some, but if  
 25 it's in my folder, if this was in my folder, then we would

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- 1 have -- our counsel would have it.  
 2 Q Okay. So let's just -- let's just take a look  
 3 here. We'll go to page -- back to page 3196. This is Mark  
 4 Gordon's response. And, Mark Gordon, again, is the  
 5 president of First Street at the time, true?  
 6 A CEO, yes.  
 7 Q What was your position at the time?  
 8 A I would have been president of AITHR, I believe,  
 9 at this October 31st -- I think so. Yes, president of  
 10 AITHR.  
 11 Q Okay. And what is your current position?  
 12 A Senior vice president of First Street.  
 13 Q Is -- is Mark Gordon still the president and CEO?  
 14 A Yes.  
 15 Q Okay. So, here, Mark is responding to you, it  
 16 looks like, and he says -- I'm going to go about the  
 17 third -- the third line down. He says, quote, anything  
 18 related to safety, more, slash, better position grab bars or  
 19 nonslip surfaces, etc. Can't they spray gritty surface in  
 20 the bottom of the tub for almost no cost, question.  
 21 A Uh-huh.  
 22 Q And then earlier we were talking about kind of the  
 23 slipperiness of the tub. There was some communications  
 24 between First Street and Jacuzzi, true?  
 25 A Yes.

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- 1 Q And so now I'm asking about the positioning of the  
 2 grab bars and additional grab bars.  
 3 A Right.  
 4 Q What communication was -- was there on that?  
 5 MR. COOLS: Object to the form.  
 6 MR. GOODHART: Join.  
 7 A The -- as far as grab bar, Mark's questions, nine  
 8 times out of ten, is always from a marketing point of view  
 9 is: Are there things -- as we design this next phase two  
 10 tub, what things are we going to be able to talk about? You  
 11 know, and there's features in our tubs that are -- that are  
 12 just competitive issues, you know, like, karomatherapy and  
 13 aroma, things you have in the tub. So you're always looking  
 14 for something to -- in your marketing, something to talk  
 15 about.  
 16 So when you do new and improved -- he comes from  
 17 Proctor and Gamble, so he was brought up on new and improved  
 18 and how you sustain a brand and how do you -- how do you  
 19 market, so that's his forte. So his point of view always --  
 20 I can't say always -- 95 percent of the time is about: What  
 21 are we going to be able to say about it? How are we going  
 22 to continue to do the marketing and bring more life to the  
 23 marketing?  
 24 So as you consider things to do with, you know,  
 25 the -- the -- as you're -- as you develop this new tub with

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1 Jacuzzi, are there things like better positioned grab bars?  
 2 Not knowing that they're not positioned -- I mean, just are  
 3 there things -- what should we be thinking about that we can  
 4 talk to Jacuzzi about, that we can talk about in marketing  
 5 that makes -- that makes sense, that sounds like it's even  
 6 better still. That's his point of view, normally.

7 BY MR. CLOWARD:

8 Q So it wasn't a true concern for safety; is that  
 9 what your testimony is?

10 A No. I think --

11 MR. COOLS: Object to form.

12 MR. GOODHART: Join. Argumentative.

13 A I mean, safety was a -- was the reason that tub  
 14 was designed. It was designed to help people. That's why  
 15 the threshold was important, so it could be the lowest step  
 16 possible getting into the tub. That tub is there for safety  
 17 and independence first and foremost.

18 And then you -- then from there, the hydrotherapy  
 19 and the other features that Jacuzzi's known for. So safety,  
 20 obviously, is always at the forefront of that product. That  
 21 safety and independence is sort of the hallmark of aging in  
 22 home in -- in the walk-in tub category.

23 So that was -- so you always think of the things  
 24 that are important, as you talk about a product, and that's  
 25 certainly one of them is safety, so what can you talk about

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1 from a safety point of view? What are the safety features  
 2 you can talk about? So that is why that tub is designed the  
 3 way it's designed, for safety reasons.

4 BY MR. CLOWARD:

5 Q Okay. So we initially talked about -- you  
 6 informed me that there were concerns with the safety, told  
 7 me about the safety of the slipperiness of the tub, told me  
 8 about, you know, the Kahuna Grip, told me about the email  
 9 from Ray Torres providing that documentation regarding the  
 10 slipperiness of the tub.

11 Here, it appears as though that's what the focus  
 12 of Mark's comment was -- was, you know, were some issues  
 13 with regard to safety, said anything with regard to safety.  
 14 And so I guess my concern or my question is, is was there a  
 15 safety issue with regard to the grab bar, similarly to the  
 16 slip -- slipperiness and that's why Mark is pointing that  
 17 out, or is it your testimony there was never an issue at all  
 18 about the grab bars?

19 MR. COOLS: Object to form.

20 MR. GOODHART: Join.

21 A We were always looking to find ways to -- to  
 22 enhance our marketing, to enhance the key elements of the --  
 23 of the product's benefits, which is -- safety was front and  
 24 center to why it was even designed the way it was.

25 He, clearly, is not an engineer, Mark, and he

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1 was -- he'd ask those kind of questions. We knew that  
 2 customers would sometimes ask us to put in extra grab bars,  
 3 not on the tub, but on the wall and places like that. So it  
 4 was just one of those things that I can even recall talking  
 5 about, so we put another one on top of the tub, just another  
 6 one to -- it's just --

7 And not many other perspective, other than just  
 8 what should I be asking -- what should we be talking  
 9 about -- should we be talking about to them, because there  
 10 would also be the experts in the product and designing and  
 11 engineering and safety standards and meeting all the codes  
 12 and requirements, so -- so he --

13 So as you went down the list of -- of the low step  
 14 and the hydrotherapy and that benefits, safety is always  
 15 going to be something we're going to talk about. So what  
 16 other things should we be thinking about to enhance the  
 17 safety feature of that product? Grab bars.

18 To my knowledge, there was no particular issue he  
 19 had in mind at all, other than grab bars were there to help  
 20 get in and out of the tub. Should we be thinking about  
 21 that? Is there something better we can do? That's his  
 22 question.

23 BY MR. CLOWARD:

24 Q And, obviously, like the slipperiness of the tub,  
 25 with customers telling you about that, you're also getting

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1 feedback on the grab bars from the customers, as well?

2 MR. COOLS: Object to form.

3 MR. GOODHART: Join.

4 A I don't recall that. I don't recall that on  
 5 the -- on the grab bars, other than what I mentioned before.  
 6 Sometimes we would -- we'd install additional grab bars on  
 7 the wall on -- just for another point of contact, not  
 8 necessarily on the tub. I'm not sure that answers your  
 9 question or not but that's --

10 The slipperiness was -- at that time wouldn't have  
 11 been a lot of issues with it come up. It was more just a  
 12 general understanding of tubs are slippery, so there's --  
 13 what do other tubs do? What are the other things we should  
 14 we be thinking about that you do for tubs, even though it's  
 15 a small -- small well versus what a full tub has.

16 BY MR. CLOWARD:

17 Q Okay. Now, the -- if you want to, I'll come grab  
 18 that. Set that aside.

19 I'm going to hand you what will be marked as  
 20 Exhibit 1 and this is the documents that have been produced  
 21 in this case. There is a table of contents, if you want to  
 22 just turn to A first.

23 MR. COOLS: You're marking the whole binder  
 24 as Exhibit 1?

25 MR. CLOWARD: Yeah. I'm just going to have

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- 1 him authenticate so we can use them at the time of trial.  
 2 MR. GOODHART: It's my understanding, Ben, I  
 3 don't mean to interrupt, these are all documents that were  
 4 produced by First Street --  
 5 MR. CLOWARD: Correct.  
 6 MR. GOODHART: -- and/or AITHR, correct?  
 7 MR. CLOWARD: Correct.  
 8 MR. GOODHART: And they should all have Bates  
 9 stamps that begin with First, F-i-r-s-t?  
 10 MR. CLOWARD: Correct.  
 11 MR. GOODHART: Okay.  
 12 THE DEPONENT: All right.  
 13 (Exhibit 1 was marked.)  
 14 MR. CLOWARD: Yes. Counsel, on page -- at  
 15 the table of contents, if you want to just peek over there,  
 16 it lists in the column, the third column, all the Bates  
 17 labels and, basically, First 1 through --  
 18 MR. GOODHART: Okay.  
 19 MR. CLOWARD: -- First 1320.  
 20 MR. GOODHART: All right. If there's a  
 21 particular document that you're going to be referring to, if  
 22 you can let me know the Bates number so I can pull it up on  
 23 my computer, that way I'm not going to have to lean over  
 24 Mr. Modena's shoulder.  
 25 MR. CLOWARD: Okay. No problem.

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- 1 Q Sure.  
 2 A -- to turn the drain.  
 3 Q Okay. And then let's do Exhibit B. I would  
 4 imagine this came with that product?  
 5 A Uh-huh.  
 6 Q Is that your understanding?  
 7 A Yes.  
 8 Q Okay.  
 9 A Looks familiar. Looks like the piece that would  
 10 have been attached.  
 11 Q And now we can go to Exhibit C. Do you know why  
 12 the billing -- it says bill to Jacuzzi, but the address  
 13 that's given is the AITHR address there in Denver -- or  
 14 Littleton.  
 15 A Sometimes -- who would have this come from? This  
 16 was Budds Plumbing. Sometimes people, and in this case I'm  
 17 speculating, but we -- you know, we would wear Jacuzzi on  
 18 our shirt when we were in the home, because we were  
 19 installing a Jacuzzi brand. People would sometimes think of  
 20 us as Jacuzzi.  
 21 Q Gotcha.  
 22 A And we're not. Our contract said AITHR but people  
 23 would say you're not Jacuzzi? No, we're not Jacuzzi. We  
 24 never, you know, tried to portray ourselves as Jacuzzi, so  
 25 my only assumption here would be Budds Plumbing just because

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- 1 MR. GOODHART: Thank you.  
 2 BY MR. CLOWARD:  
 3 Q Let's first start with Exhibit A. This is First  
 4 0001, and the question I have is about HomeClick. Is there  
 5 any relation between First Street or AITHR and HomeClick?  
 6 A Not to my knowledge, no.  
 7 Q Okay. This invoice indicates that there is a  
 8 handle, and it shipped to Ralph Stout. Who is Ralph Stout?  
 9 A Ralph Stout was our production manager for  
 10 installation.  
 11 Q Okay. And so I guess it's a -- it's a part that  
 12 he orders and then gives that to the install folks to have  
 13 them install it. Is that how it usually goes?  
 14 A Not -- not normally, because normally the parts  
 15 are -- would typically come from Jacuzzi, if it's a standard  
 16 part. So this is a handle that was a modification to the --  
 17 to the -- to how you release the drain, and I wasn't -- I'm  
 18 not familiar with HomeClick, but it must be the manufacturer  
 19 that provided it.  
 20 And he -- and he may or may not have worked with  
 21 Jacuzzi directly on -- you know, sometimes you can find  
 22 things locally that could help, you know, in a situation on  
 23 a given installation, but this, I believe, was that piece  
 24 that just gives an extension for people with a much weaker  
 25 grip.

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- 1 they -- they knew us as Jacuzzi.  
 2 Q Fair enough.  
 3 A I guess so.  
 4 Q Fair enough. Now, Exhibit D --  
 5 MR. COOLS: Could you just identify the last  
 6 three of the Bates number when you're looking at the exhibit  
 7 numbers --  
 8 MR. CLOWARD: Absolutely.  
 9 MR. COOLS: -- agreement?  
 10 MR. CLOWARD: No problem at all. And I  
 11 referred to -- this is somewhat confusing. The entire  
 12 binder is going to be marked as Exhibit 1. Within the  
 13 binder, there is table of contents, and then there are  
 14 dividers A, B, C, D, E through O. We've just covered  
 15 Exhibit A, which was Bates labeled First 001. Exhibit B,  
 16 which is the ADA install- -- installation manual for the --  
 17 the lever that's First 00002 through 3. And then Exhibit C,  
 18 which is the Budds Plumbing invoice, which is First 0004.  
 19 And I will try to do a better job going  
 20 forward.  
 21 MR. COOLS: Thanks.  
 22 MR. GOODHART: I don't think you need to put  
 23 the zero, zero, zero.  
 24 MR. CLOWARD: Okay. Good.  
 25 MR. GOODHART: We'll know what you mean.

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1 MR. COOLS: I don't even care if you do the  
 2 range. If you just want to do at least the first number --  
 3 MR. CLOWARD: Perfect.  
 4 MR. COOLS: -- in the file, that's enough to  
 5 identify it for me.  
 6 MR. CLOWARD: Okay. Fair enough.  
 7 BY MR. CLOWARD:  
 8 Q So this will be Exhibit D and it's First 5 through  
 9 First 022. Do you recognize this document?  
 10 A Yes.  
 11 Q What is this document?  
 12 A It's our basic operating manufacturing agreement  
 13 with Jacuzzi.  
 14 Q All right. Is this document still active, meaning  
 15 is it still -- is the relationship still ongoing?  
 16 A It's been amended, but, yes.  
 17 Q When was it amended?  
 18 A I would have to look. It's been amended a couple  
 19 times. Am I able to ask Stacy?  
 20 This is the basic agreement. We don't have the  
 21 amendment in here, I guess. We -- we amended it. I don't  
 22 know if we amended it a couple different times with pricing  
 23 and all, but we, I guess, most recently amended, I couldn't  
 24 tell you the date, but it was when the -- when the  
 25 exclusivity was -- was removed, which would have been --

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1 it's been a couple years now, where we were -- just decided  
 2 to -- we removed the "not hitting volumes" that was part of  
 3 this agreement.  
 4 We said, okay, we're going to continue the  
 5 relationship, but the exclusivity is -- is pulled off. They  
 6 were free then to sell to other -- other people, but, yeah,  
 7 we still continued to purchase product from Jacuzzi.  
 8 That would have -- is it -- am I able to ask?  
 9 Stacy may be able to answer that. She may remember. If  
 10 not, I don't have record of it, but it would have been --  
 11 how long has it been since we did that? A couple years, I  
 12 think it was. I don't know when we actually -- you know,  
 13 discussion started on exclusivity and by the time we  
 14 actually had an amendment, probably six months later, so I'm  
 15 going to say it's been a year and a half, but we can find  
 16 that out and give you a date on it.  
 17 MR. GOODHART: What I'll do --  
 18 MR. CLOWARD: Sure.  
 19 MR. GOODHART: -- Ben, is I'll provide you  
 20 with the dates of the amendments --  
 21 MR. CLOWARD: Okay.  
 22 MR. GOODHART: -- as well as the amendments.  
 23 MR. CLOWARD: Fair enough.  
 24 MR. GOODHART: Just via correspondence  
 25 through a supplement. I can do that probably within the

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1 next 10 days.  
 2 MR. CLOWARD: Fair enough. Thank you.  
 3 THE DEPONENT: Sure.  
 4 BY MR. CLOWARD:  
 5 Q Do you know what other companies now sell the  
 6 Jacuzzi tub?  
 7 A Jacuzzi purchased Liners Direct, correct?  
 8 Q Purchased what?  
 9 A Purchase a company called Liners Direct. It's --  
 10 it's another company that's in the bathtub/shower business,  
 11 about a year and a half ago, I believe. I could be wrong on  
 12 the date, as well.  
 13 And part of that exclusivity was they were going  
 14 to start to sell to that network of dealers. Liners Direct  
 15 is a company that does tub to shower conversions, probably  
 16 have a hundred dealers across the country, so they made  
 17 their product available to their newfound partner, which  
 18 is -- they now wholly own, is my understanding.  
 19 They may also be selling to other people, but I  
 20 don't know.  
 21 Q And that's Liners?  
 22 A Liners Direct. It's a separate company that --  
 23 yeah. That all happened at the same time, the purchase of  
 24 that company, them removing the exclusivity, them turning  
 25 that tub over to their -- their dealers.

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1 Q Okay. Now, my understanding is that the  
 2 manufacturing agreement dealt with the 5229 model; is that  
 3 your understanding?  
 4 A Not at the time, because at that time we had --  
 5 they had the Laura, which was their existing tub. When this  
 6 agreement was done, they had an existing walk-in tub called  
 7 the Laura, and then the 5229 was the product two that you  
 8 saw earlier being designed to improve to make it a better --  
 9 you know, come up with a new tub for us.  
 10 Q Okay. So there was the Laura, then the 5229?  
 11 A 5229. That became the -- it was just a tub the  
 12 Cunnison family purchased.  
 13 Q What about the Finestra?  
 14 A Finestra was an existing tub. It was a tub  
 15 designed for new construction. It was larger, so a standard  
 16 tub opening is 60 by 30. A typical tub in a house is 60 by  
 17 30. To put a walk-in tub in, you have to have some relief  
 18 so you can do plumbing, so that's why it's 52 wide so you  
 19 can still have a panel to do access to plumbing.  
 20 The Finestra was 60", because you didn't need  
 21 access, because you were building the house from scratch, so  
 22 Finestras were, you know, very seldom sold, but in a case,  
 23 if you needed a larger tub, they had two or three different  
 24 sizes, so we didn't have exclusivity on that, which the  
 25 agreement stated, but it was one we had access to at a

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- 1 wholesale price --  
 2 Q Okay.  
 3 A -- for when you needed a larger tub.  
 4 Q So the Finestra was 60", whereas the 5229 is --  
 5 A 52" wide, also long, if you're looking at the  
 6 length -- you know, the width of the tub. So a standard  
 7 opening of the tub 60". Your wall's typically 60". The  
 8 whole tub fills up 60". Those walk-in tubs are  
 9 traditionally 51, 52 to fit in there so you can then access  
 10 plumbing.  
 11 Q Okay.  
 12 A Finestra was 60.  
 13 Q Other than the width, were there any other --  
 14 A There were some --  
 15 Q -- changes?  
 16 A -- within -- well, there was a couple of different  
 17 ones of Finestra, but that was -- the 60" was a deal. Then  
 18 they had different feature sets, you know, where they have  
 19 jets or not, those type of things. From a dimensional point  
 20 of view, it was just -- it was just a larger tub.  
 21 Q Was the door -- did the door open inward on all of  
 22 those models?  
 23 A All do. Yes.  
 24 Q Okay. So the door opening inward was  
 25 substantially similar for all the models?

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- 1 MR. COOLS: Object to form.  
 2 A Yes.  
 3 BY MR. CLOWARD:  
 4 Q Okay. Now, E, which is First 23, I believe this  
 5 is just the signature page. Is that your signature there,  
 6 sir?  
 7 A Yes.  
 8 Q Okay. So the contract was effective  
 9 September 29th of 2011?  
 10 A Uh-huh, yes. September, yes.  
 11 Q Okay. And then we'll go to Exhibit F, which is  
 12 First 24. This is a letter that was sent by my office.  
 13 A Yeah.  
 14 Q True?  
 15 A Yes.  
 16 Q Okay.  
 17 A That's --  
 18 Q Exhibit G -- oh, I removed that. That's just a  
 19 copy of the policy. We don't need to address that.  
 20 A Okay.  
 21 Q So Exhibit H --  
 22 MR. GOODHART: What is the first page in  
 23 Bates numbers?  
 24 MR. CLOWARD: First 225.  
 25 BY MR. CLOWARD:

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- 1 Q Do you know what these photographs are?  
 2 A It looks like with and without that extra  
 3 attachment for the handle.  
 4 Q Okay. And then the next is -- because I, we don't  
 5 need to talk about that one, so we'll go to J.  
 6 MR. GOODHART: Bates number for the first  
 7 page?  
 8 MR. CLOWARD: First 280 through First 296.  
 9 A Okay.  
 10 BY MR. CLOWARD:  
 11 Q And we'll, actually, redact First 296. Actually  
 12 just -- why don't you go ahead and --  
 13 MR. GOODHART: Take that page out?  
 14 MR. CLOWARD: Yeah.  
 15 BY MR. CLOWARD:  
 16 Q Let me ask you a quick question before you take it  
 17 out, though. You agree that the commissions were district  
 18 deposited into the independent contractor's bank accounts?  
 19 A That's the way they were normally set up, so I'd  
 20 assume yes.  
 21 MR. CLOWARD: Okay. So we'll just go ahead  
 22 and remove that page. You have to open the red thing first.  
 23 Thanks.  
 24 THE DEPONENT: Uh-huh. Thank you.  
 25 MR. GOODHART: Ben, it's my understanding a

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- 1 redacted version of some of these documents was provided in  
 2 an errata. I'm not sure whether they made it into here or  
 3 not.  
 4 MR. CLOWARD: On this Exhibit J?  
 5 MR. GOODHART: Yeah.  
 6 MR. CLOWARD: 281 through -- I don't see  
 7 anything that's redacted.  
 8 MR. GOODHART: Yeah. There was -- just for  
 9 the record, there was a redaction that was provided to you  
 10 as -- I'm trying to find the name of the document. Hang on  
 11 one second.  
 12 It's entitled First Street and AITHR's -- I  
 13 thought I had it. Initial early case conference production  
 14 that was redacted with privileged information removed. And  
 15 by privileged information, I mean financial information. It  
 16 was an errata to Defendants First Street's and AITHR's  
 17 initial early case conference, and that would have been  
 18 provided to you on December 12, 2017.  
 19 MR. CLOWARD: Do you want to just thumb  
 20 through this? Because this exhibit that I have here, I  
 21 don't see anything --  
 22 MR. GOODHART: Yes.  
 23 MR. CLOWARD: -- redacted, so maybe this is  
 24 the full version. I don't know. Maybe you could --  
 25 MR. GOODHART: This --

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- 1 MR. CLOWARD: -- compare them, or was it a  
2 supplement?  
3 MR. GOODHART: No. It was an errata. Like,  
4 for example, on First Street 280, okay, which is part of the  
5 exhibit you handed to me, it contains Mr. Benson's Social  
6 Security number.  
7 MR. CLOWARD: Uh-huh.  
8 MR. GOODHART: That had been redacted in the  
9 errata that was produced on December the 7th, so you have  
10 the original here.  
11 MR. CLOWARD: I have the original unredacted.  
12 MR. GOODHART: Correct.  
13 MR. CLOWARD: Okay. Perfect. Thanks.  
14 And that's -- I'm glad you pointed that out,  
15 because First 280 --  
16 MR. GOODHART: Right. The only things that  
17 were redacted were First 280 and First 296. I think we just  
18 dealt with 296. And First 347 had a redaction on it, as  
19 well.  
20 MR. CLOWARD: Okay. So we'll redact the  
21 first page of 280, with the -- leave that in there. We'll  
22 just get a black marker and cross it off.  
23 MR. GOODHART: Just cross off the Social  
24 Security Number, yeah, and we've dealt with 296. The only  
25 other one redaction was 347.

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- 1 MR. CLOWARD: Okay.  
2 MR. GOODHART: I apologize.  
3 MR. CLOWARD: It's fine. It's not a problem.  
4 MR. GOODHART: And on 347, again, Mr. Edward  
5 Tilt's Social Security Number was redacted.  
6 MR. CLOWARD: Sounds good.  
7 BY MR. CLOWARD:  
8 Q Okay. So on this document, what is that document  
9 in front of you?  
10 A The agreement with our 1099 salespersons.  
11 Q Okay.  
12 A Direct seller agreement.  
13 Q Is it fair to say that this is the agreement that  
14 governed the relationship between independent contractors  
15 and First Street, slash, AITHR?  
16 A Yes. He signed it. Yes.  
17 Q Were there any other amendments or supplements to  
18 this agreement?  
19 A We made them probably every -- maybe a couple of  
20 years, we would update how the commission might work, if  
21 something significantly had changed. But we'd try to,  
22 frankly, do that within an exhibit way of doing things,  
23 versus the basic agreement, which stayed intact.  
24 So it's typically -- yeah, most of them -- all  
25 should have been this way, largely. It may have been a

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- 1 change in the exhibit material provided, something like  
2 that, but this was, obviously, one he signed.  
3 Q Okay. If there is an amendment to Mr. Benton's  
4 specific agreement, are you aware of that?  
5 A No. No. I wouldn't know.  
6 Q So is it fair to say what you have in front of you  
7 is -- is the full breadth of the agreement between --  
8 A It should be.  
9 Q -- Mr. Benton --  
10 A Should be.  
11 Q Okay. Now, I noted at the first that the  
12 agreement was between AITHR Dealer, Inc., and Mr. Benton.  
13 Is there a reason why the agreement wasn't between First  
14 Street and AITHR and the contractor?  
15 A AITHR is a separate -- separate entity under First  
16 Street, so all business done out of that Denver office was  
17 AITHR Dealer.  
18 Q Okay. Can you explain to me the --  
19 MR. CLOWARD: We good to go?  
20 THE VIDEOGRAPHER: Yeah, yeah.  
21 BY MR. CLOWARD:  
22 Q -- the relationship between First Street and  
23 AITHR? Are there any contracts between those two companies?  
24 Are they solely --  
25 A It's wholly owned by First Street. There's no

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- 1 contracts between the two. It's just a division of First  
2 Street.  
3 Q So it's just a -- it's just a division within  
4 First Street?  
5 A LLC. Is it LLC? Am I able to ask -- I mean,  
6 technically --  
7 MS. HACKNEY: Can I answer?  
8 MR. GOODHART: No.  
9 THE DEPONENT: You can't answer?  
10 A I'm not sure I understand the technical term.  
11 I'm -- we have our own number. It was -- I don't know if  
12 it's an LLC. I could be wrong. I don't know what it was.  
13 BY MR. CLOWARD:  
14 Q I'm not too concerned about that.  
15 A Okay.  
16 Q What I am interested in, though, is knowing, for  
17 instance, do some folks have dual roles, maybe one position  
18 within First Street and one position within AITHR?  
19 A Once we set this up and I became president of  
20 AITHR, I worked with the First Street people. So I was  
21 working with the marketing people who were under First  
22 Street, so -- so I had a working relationship with First  
23 Street. I worked with them directly in developing  
24 marketing, as far as understanding what's going on there.  
25 But if they were First Street people, they

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1 would -- there were First Street people, like the marketing  
2 people that did marketing activities that supported the  
3 AITHR business, but they were under -- under the First  
4 Street corporation, technically, if I answered your question  
5 or not.

6 Q Kind of. I'm still trying to figure out, I guess,  
7 the distinction between AITHR, First Street, what each  
8 company does.

9 A It's a different -- it was a -- it was a different  
10 business model unit by itself, supported by First Street's  
11 marketing and some -- some other supportive services like  
12 accounting.

13 But AITHR was a -- ended up forming a separate  
14 company under First Street and they operated independently,  
15 but we had our own business, our own CRM, our own phone  
16 system. And, of course, the Denver office, which is the  
17 AITHR Dealer, Inc., was an entity within AITHR, because we  
18 also had dealers that reported in to AITHR that we worked  
19 with outside -- outside dealers.

20 So at the beginning, we had dealers as well as our  
21 own dealer, which Denver was one of, thus the dealer  
22 designation. They were -- they controlled only part of the  
23 country.

24 MR. COOLS: Can we take a break when you're  
25 in a good spot?

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1 but documents that they have produced, they will agree to  
2 authentication. Is that --

3 MR. GOODHART: Yeah.

4 MR. CLOWARD: -- state that correctly?

5 MR. GOODHART: If there's a document that  
6 First Street and/or AITHR generated and we produced, we have  
7 no problem with the authenticity of those.

8 And as I indicated to you, the only question  
9 then becomes documents that First Street and/or AITHR  
10 received from third parties at their request. We can say we  
11 received this document that we have produced in this  
12 litigation, but we can't necessarily authenticate that  
13 particular document.

14 MR. CLOWARD: Okay.

15 MR. GOODHART: If that makes sense.

16 MR. CLOWARD: Yeah, that does.

17 BY MR. CLOWARD:

18 Q So just to clean this up, I think that the next  
19 exhibit is probably the largest exhibit and is really  
20 probably the most -- the one that we would have the most use  
21 of, and that's Exhibit O.

22 MR. GOODHART: What Bates number does that  
23 begin on?

24 MR. CLOWARD: Let's see.

25 MR. COOLS: Just for clarity, that's still

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1 MR. CLOWARD: Yeah. Let's just take a break  
2 now.

3 MR. COOLS: Bathroom break.

4 THE VIDEOGRAPHER: We're going off the record  
5 at 12:16 p.m.

6 (Recess from 12:16 p.m. to 12:18 p.m.)

7 THE VIDEOGRAPHER: This is the end of disc 1,  
8 and we are ending this at 12:18 p.m.

9 (Recess from 12:18 p.m. to 12:30 p.m.)

10 THE VIDEOGRAPHER: This is the beginning of  
11 disc number 2, and we're back on the record at 12:30 p.m.

12 MR. CLOWARD: Okay. There was a brief  
13 discussion off the record. I voiced my concerns about  
14 authenticating the documents. I understand that I cannot  
15 compel an out-of-state Rule 30(b)(6) designee to attend  
16 trial, and I voiced my concerns with both counsel for First  
17 Street and AITHR as well as Jacuzzi that a lot of my work  
18 through the RFAs as well as some of the deposition work is  
19 to simply authenticate the documents so that we can use them  
20 for time of trial.

21 Both counsel have indicated that we can have  
22 further discussions, have indicated that counsel for Jacuzzi  
23 is going to at least talk to his client about some sort of  
24 stipulation on the documents. Counsel for First Street and  
25 AITHR has indicated that -- and correct me if I'm wrong --

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1 Exhibit 1. It's tab O in Exhibit 1?

2 MR. CLOWARD: Correct. Where did my  
3 little -- I have so many papers here. It's hard to keep it  
4 all straight. There it is.

5 MR. GOODHART: It looks like it begins on --

6 THE DEPONENT: 424.

7 MR. GOODHART: First 424, which are the  
8 emails?

9 MR. CLOWARD: Correct.

10 MR. GOODHART: Okay.

11 MR. CLOWARD: The emails, the range on that  
12 is --

13 MR. GOODHART: It should go to First 1320.

14 MR. CLOWARD: First 1320 and then it starts  
15 at First 424. Is that accurate, Counsel?

16 MR. GOODHART: Yeah. That's correct.

17 MR. CLOWARD: Okay. So as to the  
18 authenticity, genuineness and -- these are true and correct  
19 copies of the emails in First 424 through First 1320. Do we  
20 have an agreement on that?

21 MR. GOODHART: Yeah. Those are -- those  
22 emails are authentic of -- the contents of the emails are  
23 authentic. We're not going to object to any of that. Any  
24 of the attachments to the emails that First Street produced  
25 or First Street generated, there will be no question about

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1 that either.

2 However, there are some attachments that  
3 First Street received from Jacuzzi and other entities. I  
4 can say that, as far as us receiving that, that is what was  
5 received by First Street. As to whether that is the actual  
6 authentic document that a third party actually generated, I  
7 cannot authenticate that, obviously, because it's a third  
8 party's document. Does that make sense?

9 MR. CLOWARD: Kind of.

10 MR. GOODHART: Like, for example, there was  
11 an email where I believe Jacuzzi provided First Street with  
12 a 30-second movie or commercial. What I can say is that,  
13 yes, this is the 30-second movie or commercial that we  
14 received from Jacuzzi. However, how Jacuzzi produced it,  
15 how they manufactured it or generated it or videoed it, I  
16 cannot say.

17 MR. CLOWARD: Sure.

18 MR. GOODHART: Does that -- that's kind of  
19 what I'm trying to get at.

20 MR. CLOWARD: Yeah. That makes sense. You  
21 can't speak to the -- to the creation of the document  
22 itself, but you -- you're not going to -- you're not going  
23 to object that the document was, in fact, received by First  
24 Street.

25 MR. GOODHART: Correct.

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1 with Cunnisons. Building permits for the installation of  
2 the tub, notes in our CRM system that we talked about.

3 Q Is that page 312? 312?

4 A Yes. Yes. 312, those are the notes in our CRM  
5 system we talked about, so that would be their sort of  
6 recordkeeping of that installation.

7 Wikipedia on rhabdo. I'm not sure what that is.  
8 I'm not as familiar with that document.

9 MR. GOODHART: Which Bates number is that?

10 A It's 318 through 320- -- it's an old Wikipedia --  
11 through 327. 318 through 327. I'm not familiar with that  
12 information. That's on dehydration and I guess,  
13 potentially, what the -- Cunnison may have suffered from,  
14 I'm assuming. I don't recall seeing this documentation. I  
15 may have missed it somewhere.

16 BY MR. CLOWARD:

17 Q Do you know where -- where it came from? You  
18 don't know?

19 A What's -- I mean, I -- this is obviously from  
20 Wikipedia is where this has come from about this particular  
21 condition, but I don't recall reading this.

22 Q Okay.

23 A I may have -- I may have just recently received  
24 it, but I thought I have gone through all the documentation  
25 I've received, but I may have missed this. This would not

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1 MR. CLOWARD: And that the document -- you  
2 know, whatever it says it says.

3 MR. GOODHART: Correct.

4 MR. CLOWARD: Okay.

5 MR. GOODHART: If that helps you.

6 MR. CLOWARD: Yeah. That does.

7 BY MR. CLOWARD:

8 Q And then -- so that's First 424 through First  
9 1320. I skipped over some documents --

10 MR. GOODHART: Yeah.

11 BY MR. CLOWARD:

12 Q -- by mistake. Exhibit K, which is First 297  
13 through 356. Sir, do you recognize those documents? And it  
14 appears as though this -- some of these are the same that we  
15 have gone over.

16 A Under section K?

17 Q Yes.

18 MR. COOLS: What are the Bates range?

19 MR. CLOWARD: 297 through 356.

20 MR. COOLS: Thanks.

21 A These look familiar, yes.

22 BY MR. CLOWARD:

23 Q What do you recognize these documents to be?

24 A Sales contracts initially, which would have been  
25 the sales contracts that Hale Benton would have used to work

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1 be one of our documents, obviously. This is just  
2 information, correct?

3 Q I don't know. It was produced as --

4 A Right.

5 Q -- as part of the documents that First Street --

6 A This might have -- this might have been -- yeah, I  
7 can speculate this could have been a document that was put  
8 into our CRM, possibly. I -- but I sure didn't -- I don't  
9 remember seeing it.

10 Q Okay.

11 MR. GOODHART: If you want --

12 A It's come out of the documents in there, and I --  
13 contract for sure but --

14 MR. GOODHART: Ben, I can track down and find  
15 out how that got included in this for you.

16 MR. CLOWARD: That would be helpful. Thank  
17 you.

18 I mean, I note that the -- the date is '14.

19 As we the lawyers know, Ms. Cunnison had a bout of rhabdo  
20 before the incident and that was one of the diagnoses that  
21 she had at the time of death.

22 MR. GOODHART: Right.

23 MR. CLOWARD: But the bottom of this  
24 document, so it's -- I don't want to create confusion  
25 unfairly, but the bottom of the document is dated 4/24/14,

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1 so I would imagine that this was probably relative to after,  
2 but let me ask some questions about that.

3 BY MR. CLOWARD:

4 Q Are independent contractors -- are they trained to  
5 obtain medical history from patients?

6 A No.

7 Q Okay. So it wouldn't necessarily be something  
8 that the independent contractor would have gone through the  
9 history of health concerns with the patient?

10 A No. They would talk about just challenges they  
11 might have, but when you get into medical conditions,  
12 they're not qualified to do that.

13 Q Okay.

14 MR. GOODHART: And, Ben, you had referenced  
15 the initial representation of letter -- initial  
16 representation letter, which you sent to AITHR, dated  
17 April 9, 2014. And the Wikipedia research post-dates that  
18 letter, so I'm thinking, as Mr. -- as David testified to  
19 earlier, it may have been something that was prompted by  
20 your letter or something.

21 MR. CLOWARD: Fair enough. That's --

22 MR. GOODHART: But I will double check on  
23 that for you, let you know.

24 MR. CLOWARD: Sounds good.

25 BY MR. CLOWARD:

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1 Brands, Inc., and then we changed to First Street. And to  
2 my recollection and understanding, Techno Brands still was  
3 the -- was the incorporated name, and First Street came  
4 under that for some period of time is my understanding.  
5 Because Techno Brands was our original  
6 corporate -- was our corporate name, First Street came after  
7 that as a -- as a separate -- as a different name, and I --  
8 my recollection and understanding, and I could absolutely be  
9 wrong, that -- that we were still technically operating  
10 under Techno Brands because this was -- this was drafted up  
11 by an outside legal counsel, who -- who I thought would have  
12 got that part of trying to make sure we get it right, what  
13 was the technically legal name for our company, so that  
14 would be my assumption why Techno Brands, because that was  
15 our original corporate name.

16 Q Okay. Do you know: Is First Street still  
17 technically considered Techno Brands or --

18 A I don't know that. I don't know. I thought --  
19 just my understanding is that I thought at some point in  
20 time First Street became sort of independent of that name,  
21 but I don't know that. I mean, it's -- our legal counsel  
22 could answer that, but I couldn't to be a hundred percent --  
23 with a hundred percent accuracy but . . .

24 Q Okay. First Street was doing business as, I  
25 guess, itself, though, true?

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1 Q Sir, the next thing, 328, First 328, what do you  
2 recognize that to be?

3 A This looks like the person that would have  
4 installed the tub. His license, general contractor license  
5 shows that he's licensed to do work as a general contractor.

6 Q And that goes to, it looks like, First 330.

7 A Uh-huh.

8 MR. GOODHART: Is that a yes?

9 A Yes. I'm sorry. Yes.

10 BY MR. CLOWARD:

11 Q No problem. Next you have 331. First 331 through  
12 approximately --

13 A 6.

14 Q Looks like 355?

15 A Uh-huh.

16 Q Is that accurate?

17 A Yes. Yeah, that -- that's similar to our sales  
18 independent agreement. We have another agreement for our  
19 contractors. It's similar but different, relative to what  
20 they're performing installations for us.

21 Q Okay. Now, it appears as though the -- this  
22 agreement starting on 331 through 355 is between Best Way  
23 Building and Remodeling and Techno Brands Inc. d/b/a First  
24 Street. Could you talk to that a little bit?

25 A Techno Brands was -- was our company name, Techno

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1 A Uh-huh.

2 MR. GOODHART: Is that a yes?

3 A Yes. Yes. I'm sorry.

4 BY MR. CLOWARD:

5 Q And then AITHR was a division within First Street?

6 A Yes.

7 Q Okay. Next is L, which is First 357 through 362,  
8 and this appears just to be duplication of the CRM; is that  
9 accurate?

10 A Yes.

11 Q Okay. While we're here, has the entire CRM file  
12 been provided? Are those all of the pages?

13 A To my knowledge it's -- it -- I'd have -- I would  
14 have to go back and compare. It should be and it -- it  
15 appears to be. Let's -- you can also tell by looking at the  
16 first date of -- let's see here. Yeah. 10/21 is -- would  
17 be the beginning, because I think it was sold to her on --  
18 right there at that date, so this would thus begin her  
19 record of installation.

20 So it does start here and runs through to the end.  
21 Yes, it should be complete.

22 Q And then next you have First 363. This is M. 363  
23 through 385.

24 A Brand guide, uh-huh.

25 Q These are the brand guidelines First Street

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- 1 received from Jacuzzi, true?
- 2 **A Yes, uh-huh.**
- 3 **Q And next is First 386 through 423, correct?**
- 4 **A Yes. Mine is not numbered, so say that again,**
- 5 **please.**
- 6 **Q They are. It's just hard to see. They're in red**
- 7 **in the corner.**
- 8 **MR. GOODHART: Can I point to him?**
- 9 **A Yes. Okay. Yes. Sorry.**
- 10 **BY MR. CLOWARD:**
- 11 **Q First 386 through --**
- 12 **A Yes.**
- 13 **Q -- First 423?**
- 14 **A Yes.**
- 15 **Q What are these?**
- 16 **A This is the sales presentation Hale should have**
- 17 **provided to Cunnison in her home.**
- 18 **Q Okay. Now, was this in video format, or was this**
- 19 **in --**
- 20 **A It should have been on his laptop.**
- 21 **Q Okay.**
- 22 **A You pull up a slide at a time.**
- 23 **Q So it's a PowerPoint?**
- 24 **A PowerPoint with video embedded, so you can click**
- 25 **on certain parts of this and a -- and a video would play.**

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- 1 **sales presentation at this point in time, but we use that**
- 2 **for a -- for two or three, four years for sure.**
- 3 **Q Okay.**
- 4 **A It should have been used 10 and thereafter.**
- 5 **Q Okay. So --**
- 6 **A It's just the basis of -- it's just the basics --**
- 7 **basis of normalizing the situation that they're in, of -- of**
- 8 **the tendency to fall and, you know, unfortunate**
- 9 **circumstances when people do.**
- 10 **MR. GOODHART: And I'll get you a copy of**
- 11 **that video.**
- 12 **MR. CLOWARD: Thank you.**
- 13 **A Yeah. Then here's the one that Jacuzzi provided**
- 14 **on 412, which shows the jets, one of the key selling points**
- 15 **with Jacuzzi, obviously. They're synonymous with**
- 16 **hydrotherapy and so that was obviously a very important part**
- 17 **of our sales presentation, the therapeutic features of**
- 18 **hydrotherapy, which they also help us with, but the video**
- 19 **came from them.**
- 20 **MR. GOODHART: And I'll also try and get a**
- 21 **copy of that video, as well.**
- 22 **MR. CLOWARD: Thank you.**
- 23 **MR. COOLS: I'll do the same.**
- 24 **A I think there was one more video. I don't see the**
- 25 **obvious place, but I thought that we had a video at the very**

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- 1 **Q Can we walk through the pages and can you tell me**
- 2 **which -- which pages have the video and which ones --**
- 3 **A I could, I think, pretty close to it, but I can --**
- 4 **with reasonable accuracy, I should because, normally, they**
- 5 **show up as a -- there's only a couple, and I'm trying to**
- 6 **find where that would have been. There's a Katie Couric**
- 7 **news story on people falling. That was one of the videos.**
- 8 **It should have been one that we showed Jacuzzi jets. Let me**
- 9 **see if I can find --**
- 10 **Okay. So this is -- this is where it would have**
- 11 **been, so as you move into 406, 407, 408, that blank screen,**
- 12 **that's where a video would be.**
- 13 **Q Do you know which one would --**
- 14 **A That should be -- that should be the Katie Couric,**
- 15 **and it's about falls.**
- 16 **Q Okay.**
- 17 **A One of them is a -- is a news story from Katie**
- 18 **Couric that's just a national news about people falling.**
- 19 **MR. GOODHART: What's the Bates number on**
- 20 **that, Mr. Modena?**
- 21 **THE DEPONENT: This is 408.**
- 22 **BY MR. CLOWARD:**
- 23 **Q And do you still have access to that video? Is**
- 24 **that still shown? Is that a yes?**
- 25 **A I don't know, because I'm not involved with the**

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- 1 **end for customer testimonials that we would play. There you**
- 2 **go. Right here. 421. We would -- we had customers that**
- 3 **had the Jacuzzi tub testimonials was played at the end, just**
- 4 **as sort of an affirmation of those people that have**
- 5 **purchased a Jacuzzi tub, what they liked about it.**
- 6 **BY MR. CLOWARD:**
- 7 **Q Were those paid testimonials, or were those actual**
- 8 **clients?**
- 9 **A These were -- these were testimonials we**
- 10 **actually -- we had a Jacuzzi -- prior to us becoming -- our**
- 11 **relationship with Jacuzzi, so prior to that agreement being**
- 12 **signed, Jacuzzi was working with some -- a couple other**
- 13 **dealers. One was in Northern California, Home Safety Bath,**
- 14 **and Ken Jenkins was the owner and he was one of their better**
- 15 **dealers.**
- 16 **And Ken Jenkins at Home Safety Bath did a lot of**
- 17 **TV advertising, so they used -- so they -- they were**
- 18 **customers of theirs that they had sold Jacuzzi products to,**
- 19 **and he used it in his -- in his advertising, and so we were**
- 20 **allowed to use those testimonials, although they weren't our**
- 21 **specific customers at the time.**
- 22 **Q They were customers of a walk-in tub?**
- 23 **A Of a Jacuzzi walk-in tub.**
- 24 **Q Okay. And then who are some of the other -- you**
- 25 **said there were a couple others, other than --**

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- 1 A Testimonials?  
 2 Q -- Ken Jenkins.  
 3 A Oh, other dealers or --  
 4 Q Yeah.  
 5 A Back before then, I don't -- I couldn't tell you  
 6 who they were. I could tell you on a couple of them, but  
 7 Ken Jenkins -- Home Safety became one of our dealers as part  
 8 of us taking over Jacuzzi distribution and sales for this  
 9 walk-in tub category. They recommended us meet with them  
 10 and they could be one of our dealers for that part of the  
 11 country, Northern California.  
 12 He became -- he subsequently became a dealer.  
 13 That's why he allowed us to use his information, and they  
 14 had another dealer. That's not true. That was another one  
 15 in Tennessee, but that wasn't -- they were not a Jacuzzi --  
 16 Well, there was another dealer in Tennessee,  
 17 because they had sold Jacuzzi products and recommended we  
 18 talk to them, so that was another one. Those are probably  
 19 the only two I can think of that ended up becoming dealers  
 20 for us, taking over whole states and territories that had  
 21 sold Jacuzzi previously.  
 22 Q What was the one in Tennessee?  
 23 A American Home Design, based out of Nashville.  
 24 Q What can you tell me about Home Living Solutions?  
 25 A Yes. Bless you. That was a company that they

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- 1 were working with, and they were based out of Southern  
 2 California, Jacuzzi's headquarters. And they were  
 3 apparently working together to try to do what we did and  
 4 cobble together some marketing and some dealers and -- and  
 5 put together this dealer-type network that we eventually put  
 6 together.  
 7 And, in fact, Michael Schulze, the owner of that  
 8 company, we actually had come to know because we had -- when  
 9 we first started getting into the walk-in tub business, they  
 10 were a company that we actually bought tubs from, so  
 11 happens, Home Living Solutions. They provided us our first  
 12 walk-in tub that we actually sold and marketed to our  
 13 customers directly.  
 14 Q And then --  
 15 A But anyway -- but they ended up -- Mike Schulze  
 16 and Home Living Solutions ended up partnering up with  
 17 Jacuzzi. My sense it was some sort of an exclusive deal. I  
 18 don't know but it was some sort of deal like that, and it  
 19 wasn't going anywhere. There weren't any sales happening  
 20 and that's why Tom Koons, the CEO at that time, contacted me  
 21 and said we understand you might be available, and we're not  
 22 getting anywhere here. We would like to talk to you.  
 23 Q Do you know how to spell Michael's last name?  
 24 A S-c-h-u-l-z-e, I believe, should be correct.  
 25 Q Okay. On this last page 423, can you just

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- 1 describe this relationship, this --  
 2 A This was -- would be a page that we -- because at  
 3 this time we had dealers across the country, so -- so when  
 4 we would sit with a customer, just try to explain who we  
 5 were, so not to be taken that we weren't Jacuzzi, because  
 6 people could get that confused. You had a great brand and a  
 7 great product. You have the company First Street behind  
 8 doing the marketing, first-class marketing company. And in  
 9 this case, the dealer, like a Home Safety Bath, then that's  
 10 how they fit in, so they're there.  
 11 We do the marketing. They do the selling and  
 12 installation, and Jacuzzi, the manufacturer with the quality  
 13 product, so we're just trying to show the relationship and  
 14 so they could understand how this all works together and  
 15 who's behind it.  
 16 Hopefully, with the pedigree the first three has,  
 17 the dealer that he has his own, you know, history of being  
 18 in the market for 20 or 30 years, give that information, BBB  
 19 information. They would tell their company story and  
 20 Jacuzzi spoke for itself. They knew the name, the company.  
 21 Trusted the name.  
 22 Q Now, Jacuzzi dealer, would that be AITHR?  
 23 A No. It could have been -- this was a generic  
 24 slide that all of our dealers could have -- would have used.  
 25 They're just a dealer, so they were a dealer that sold

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- 1 Jacuzzi products, so they were authorized in that matter,  
 2 but their dealer relationship, although they purchased --  
 3 they purchased through us, Jacuzzi would ship directly to  
 4 them.  
 5 Invoicing would happen through us. That may be a  
 6 little too technical, but they were authorized to sell and  
 7 install Jacuzzi products. Their relationship was with us,  
 8 not Jacuzzi, because we did the marketing for them and all  
 9 the transactions occurred between us and the dealer.  
 10 Q So who was the dealer in this case?  
 11 A Depends on who was -- well, in this particular  
 12 case, it would have been us, AITHR Dealer, if this was the  
 13 slide that -- that he would have used, then that would have  
 14 been us. That would have been Denver operation AITHR  
 15 Dealer. That's why we gave it the dealer name. They were  
 16 dealing like any other dealer, as far as they were  
 17 concerned.  
 18 Q Are there other dealer divisions within First  
 19 Street?  
 20 A No.  
 21 Q So AITHR is the only dealer division within First  
 22 Street?  
 23 A Yes.  
 24 Q So looking at 423, Jacuzzi is at the top, correct?  
 25 And then First Street would be in the bottom left hand

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1 corner?

2 A Marketing company. AITHR Dealer is the sales  
3 organization, sales and installation.

4 Q That's represented on the right hand of the --

5 A Yes.

6 Q -- triangle?

7 A Uh-huh.

8 Q Okay. So I'm just trying to figure out, I guess,  
9 what other dealers there are of --10 A At the time, there were Ken Jenkins Home Safety  
11 Bath, American Home Design. We had about 13 dealers when we  
12 started. At this time, we probably still had 10 to 11  
13 dealers that we sent leads to. And our Denver AITHR Dealer  
14 organization was carrying -- was covering the states in the  
15 middle of the country. Some of the large states represented  
16 13 percent of the leads and population.17 Q So what are -- what are the other -- you have  
18 given me Home Safety Bath, Home Living Solutions, American  
19 Home Design --20 A Home Living Solutions -- Home Living Solutions was  
21 not a dealer for us. They were a company that had a  
22 relationship with Jacuzzi you had asked about earlier. They  
23 were the company that was responsible in trying to  
24 distribute and sell and market Jacuzzi tubs at the time.  
25 They had some sort of exclusive arrangement. This wasn'tLitigation Services | 800-330-1112  
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1 least 10 during this time of this event we're talking about,  
2 the Cunnison situation. There were -- I would have to go  
3 back and look and see exactly how many we still had. But we  
4 had most of them in place at the time. As time went on, if  
5 the dealer was not doing a good job, we would -- we would  
6 stop that relationship and take that territory ourself.7 Q Okay. Let me just see if I nail this part down,  
8 see if I understand it. So just let's use this 4- -- 423.

9 The top you had Jacuzzi. Bottom left is First Street.

10 Bottom right would be one of the dealers, which, at the time  
11 the agreement started in, approximately, September of 2011,  
12 there were 13 dealers. At the time this incident took  
13 place, at the first of 2014, there were at least still 10  
14 dealers.15 A Give or take one or two. It may have been 14. I  
16 don't know -- I want to -- we can -- we can be very precise,  
17 if you'd like exactly how many there were, but most of them  
18 were still in place at this time. They were still part of  
19 the program. We probably had not, you know, stopped but  
20 maybe one or two at the time, by that time.21 Q Okay. Fair enough. Now, the two that you recall  
22 as you sit here today are American Home Design, based out of  
23 the Nashville, Home Safety Bath, based out of California,  
24 and that's Ken Jenkins.

25 A Uh-huh.

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1 going anywhere.

2 Q So is it fair to say that Home -- Home Living  
3 Solutions was kind of like the First Street before First  
4 Street?5 A In fact, they came to us to see if we could help  
6 them with their marketing because they're not a marketing  
7 company.8 Q Okay. So American Home Design is a dealer,  
9 though?

10 A Yes. They were at the time.

11 Q All right. You said there were --

12 A I think there were 13 when we started this program  
13 with Jacuzzi, in setting up our own dealer network and  
14 working with Jacuzzi exclusively, and then we covered the  
15 country, with the exception of the -- ourself being a dealer  
16 for those states in the middle of the country, and we can  
17 define that for you at a later date if you'd like to know  
18 who those were at the time.19 Q Yeah. Your testimony today is, is that there are  
20 still, I think you said, 10 to 12?21 A Not now. Not now. There are no dealers now. We  
22 are the only -- AITHR Dealer is the only company that's  
23 doing Jacuzzi tubs for us, that's still doing our tub  
24 program.

25 At that time -- at the time there were probably at

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1 Q As you sit here today, are there any others that  
2 you can recall?3 A Absolutely. The two that I told you I recalled  
4 was those that were already doing business with Jacuzzi  
5 prior to our relationship.

6 Q Okay.

7 A That's the two that were mentioned to you.

8 They -- they were already doing business with them, so  
9 that's how we got access to them, their information, their  
10 knowledge of them being pretty good partners, competent  
11 enough to be a part of our dealer network. But, no, we  
12 had -- we had -- I can name a bunch of them for you, if  
13 you'd like. There's -- I mean, do you want me to name --14 Q Hold on a second. Yeah, I do. Just one moment.  
15 Thank you very much.16 A This may not be a hundred percent complete, but I  
17 can give you most of them, many of them. I'm getting older.  
18 Q Okay. Yeah, if you have those names, that would  
19 be great.

20 A Fairbanks. Fairbanks Construction.

21 Q Okay.

22 A Beldon, B-e-l-d-o-n. Hausner, H-a-u-s-n-e-r. OBR.

23 Q OD?

24 A O-B, as in boy.

25 Q Okay.

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## DAVID MODENA - 12/11/2018

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- 1 A OBR.  
 2 Q And are these construction companies?  
 3 A These are home improvement companies. These are  
 4 companies that know how to sell and install home  
 5 improvement. They do siding, windows, typically the type of  
 6 dealers we dealt with go into homes and sell and close and  
 7 install.  
 8 Q Gotcha. Okay.  
 9 A Airtite, one word, A-i-r-t-i-t-e. OBR.  
 10 Fairbanks. Home Safety. American Home Design. Beldon.  
 11 I'm trying to think of the one up in New York that we  
 12 just -- didn't last very long. I'm forgetting. Did I say  
 13 Atlas? Did I say Atlas?  
 14 Q Huh-uh.  
 15 A Atlas. I'm trying to think of the one in New  
 16 York. Can't think of their name. They didn't last long.  
 17 Shoot.  
 18 Beldon was one of our largest ones. They had,  
 19 like, 27 percent of the country. They were their first  
 20 dealer. Hausner. American Home Design. Atlas. OBR.  
 21 Airtite. Fairbanks. There was a guy in Georgia. He may  
 22 have been gone by then. Tub Doctor, Tub Doctor was one.  
 23 They were in Georgia. They didn't last long. He may not  
 24 have been around at this point in time. There's one up in  
 25 New York. I just can't think of their name.

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- 1 understand if you want to do it again, so every ad had a  
 2 unique number.  
 3 That unique number then went into a third party  
 4 contact, the call center that then knew, based on where the  
 5 call was coming in from, it was coming in from the state of  
 6 New York, that goes to Airtite. That call then just got  
 7 routed as they heard sort of the call may be monitored  
 8 for -- for, you know, quality control. While you're hearing  
 9 that, it was routing the call to the direct -- to the  
 10 dealer.  
 11 So those calls, based on the origination of the  
 12 caller and based on the territories those dealers were  
 13 responsible for, it would be routed to them directly and  
 14 immediately.  
 15 Q Okay. Now, is there a map of the territories?  
 16 Could that be also provided to counsel?  
 17 A Yes.  
 18 Q Okay. Thank you.  
 19 Now, back to the initial question. So the first  
 20 contact that an individual would have would actually be with  
 21 one of the dealers, not necessarily with First Street?  
 22 A Well, not -- well, in this case, be specific,  
 23 since we had Nevada at the time, so that lead would have  
 24 gone into Denver.  
 25 Q Through AITHR?

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- 1 Q It's okay.  
 2 A Yeah.  
 3 MR. CLOWARD: Counsel, if you could just  
 4 provide that.  
 5 MR. GOODHART: Yeah. Yeah, and just so I'm  
 6 clear on what I'm providing as well, I'm going to ask him  
 7 just one question about --  
 8 MR. CLOWARD: Sure.  
 9 MR. GOODHART: Would AITHR Dealer be a  
 10 dealer?  
 11 THE DEPONENT: Yes. That's us. Yes.  
 12 MR. GOODHART: Okay. Okay. I'll get that  
 13 information to you, Ben.  
 14 MR. CLOWARD: Thank you.  
 15 BY MR. CLOWARD:  
 16 Q Okay. So would -- would -- would an individual,  
 17 let's say that back around the time that this -- this  
 18 incident took place in 2013, 2014, let's say that someone  
 19 sees an ad in AARP. What number is generally listed as the  
 20 individual they call?  
 21 A The number is -- every ad we run has a unique  
 22 number for marketing purposes so we can measure response of  
 23 an ad. That's what we do as a company. The ad may be the  
 24 same, but the date and the place and the time and what  
 25 magazine we were in, you need to measure the response to

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## DAVID MODENA - 12/11/2018

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- 1 A Right into the Denver AITHR Dealer office.  
 2 Q Okay.  
 3 A Because she -- her number -- her location was  
 4 inside the territory they were responsible for, so they  
 5 would have been the first point of contact. I think it was  
 6 an Internet lead, but that's -- may not be important, other  
 7 than it's either a phone call or web form that comes in,  
 8 still to the same place.  
 9 Q Now, let's say somebody, just using the knowledge  
 10 that we have gained recently in this deposition, assume  
 11 somebody called in New York, that would --  
 12 A We never -- we'd have a record of it corporately,  
 13 as a managing of the whole program. Denver would never have  
 14 received that call. It would have no record of it either.  
 15 Q So that would be routed to whoever the dealer --  
 16 A Airtite, yeah.  
 17 Q -- is up in New York? Was it Airtite that was in  
 18 New York? So that was the name of the New York one that you  
 19 couldn't remember?  
 20 A No, no. There was one that had New York City,  
 21 Long Island, and I just can't think of them, but they didn't  
 22 last long. They weren't very good.  
 23 Q Okay.  
 24 A There was another one down in Virginia Beach, Ray  
 25 Melani. I just cannot think of -- because he's changed the

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1 name of his company, so there's two names and we can get you  
2 a full list.

3 Q Ray Melani?

4 A Ray Melani is the owner of the one that had  
5 Virginia, Maryland area. M-e-l-a-n-i.

6 Q Okay. Now, after the tub is sold and installed,  
7 and let's say there's a problem with the drain or a problem  
8 with, you know, the faucet or whatever it is --

9 A Yes.

10 Q -- in any issue, let's say it's even a safety  
11 issue, or let's say it's a -- you know, somebody got hurt,  
12 do they call the dealer or are they told to call Jacuzzi or  
13 are they told to call First Street?

14 A The customer normally would call the dealer.  
15 That's who they dealt with. That's who they -- that's who  
16 they -- that's who they know. That was the face.

17 So this Jacuzzi dealer, when they give them their  
18 company story and Airtite would give them their information,  
19 so in the leave-behind packet that you're pulling out now,  
20 you would -- you would put -- you would put -- they would  
21 put their name and information in there. That's what they  
22 are supposed to do.

23 So, now, they would -- also would receive a  
24 Jacuzzi manual, as well, which -- which would have a Jacuzzi  
25 number. So as true in many cases in home improvement, they

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1 told them who to contact if there was an issue. They left  
2 the warranty, because they left the manual behind, you know,  
3 to go over the tub. The manual came with the product. They  
4 could have referred them to that Jacuzzi number, which was  
5 in there, but, again, most people typically would go back to  
6 the sales contract that they received, which had a  
7 customer -- had the home improvement company's information,  
8 just like ours did.

9 You know, the contract that you have in one of the  
10 other exhibits was the AITHR Dealer contract. That  
11 information rang into -- into our production center, not  
12 Jacuzzi.

13 Q Okay. So I'm going to show you these documents.  
14 Be careful because it's kind of coming apart, but I'm going  
15 to show you these documents and then I'm going to attach as  
16 an exhibit, but as a photographed exhibit, because this is  
17 the original, so I'm not going to leave it with you.

18 So take a look there. Let me know. I'm handing  
19 you what will be marked as Exhibit 2, and we'll take  
20 photographs of that and provide the photographs to the court  
21 reporter. I can actually take photos now and then email the  
22 court reporter and copy you and everybody on that email that  
23 way --

24 MR. GOODHART: Okay.

25 MR. CLOWARD: -if you say that the photograph

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1 may call the person that sold it to them, because that's  
2 their first point of contact. That's where they typically  
3 go to. But in a manufacturer situation, too, they would --  
4 especially if they thought it was warranty situation, they  
5 would contact the manufacturer.

6 But, normally, the first point of contact, and I  
7 would say most of the time, it would come back to the  
8 dealer, because --

9 Q Okay.

10 A -- that's who they dealt with.

11 Q Okay. And that -- is that who they were trained  
12 to deal with, I guess?

13 A Yes.

14 MR. GOODHART: Object to form.

15 MR. COOLS: Join.

16 A Yes.

17 BY MR. CLOWARD:

18 Q Did First Street train the independent contractors  
19 to instruct or advise the end user, consumer, to contact the  
20 dealer as the first point of contact for issues?

21 A I can't say for sure. They were -- they were  
22 trained to -- to take certain paperwork, leave certain  
23 paperwork. Take the last payment. Show them how to use the  
24 tub.

25 I would -- it would be an assumption on if they

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1 isn't true and correct.

2 MR. GOODHART: We're coming up to 1:15 and  
3 you wanted to break at 1:15. This is the first time that I  
4 am able to see this document as well. I know you sent me  
5 photographs last week of it, so I would like to also take a  
6 look at it. I don't know if that's going to result in us  
7 not have enough time to ask any questions specifically about  
8 that document. I don't know.

9 MR. CLOWARD: I just want him to authenticate  
10 that that's an actual document that First Street produced  
11 and that it was left.

12 MR. GOODHART: Yeah.

13 MR. CLOWARD: That's it.

14 MR. GOODHART: Okay.

15 A A couple -- obviously, Clark County, that would  
16 not be our document. That came from an inspection report.  
17 That would not be ours. The sales contract would be. The  
18 contract amendment would be. This would not be. This is --  
19 there's some record of there home, I assume, but this would  
20 not be something. This obviously is not our document.  
21 Something -- this is obviously -- that's not an AITHR  
22 document.

23 The folder, the leave-behind information on what  
24 to do next, the testimonials, and then a contract, all those  
25 would be our documents.

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1 Q Okay. Thank you. And they're -- these would have  
2 been provided and were provided you agree?

3 A At the point of sale.

4 MR. CLOWARD: Okay. So because of the time  
5 constraint, I'm going to just end the deposition or, I  
6 guess, suspend the deposition, continue it. I'll take a  
7 picture of this and email them to you and I'll copy both  
8 counsel on this.

9 I hesitate to leave this in the possession of  
10 the court reporter just because it's the original document,  
11 but now that we have it, I don't think there's a dispute. I  
12 think there was initially, but is everybody okay with that?

13 MR. GOODHART: Yeah.

14 MR. CLOWARD: Okay.

15 MR. GOODHART: Yeah. I don't have a problem  
16 with that. Josh, do you?

17 MR. COOLS: Yeah. I don't have a problem, as  
18 long as we all get to look at it first.

19 MR. CLOWARD: Absolutely. Okay. So we can  
20 go off the record.

21 THE VIDEOGRAPHER: Okay. This is the end  
22 of -- end of disc 2 in this part of the deposition, but it  
23 will continue. We are going off the record at 1:14 p.m.

24 (Exhibit 2 was scanned to PDF.)  
25

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## DAVID MODENA - 12/11/2018

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1 COMMONWEALTH OF VIRGINIA AT LARGE, to wit:

2 I, Angela N. Sidener, CCR, RPR, and Notary

3 Public in and for the Commonwealth of Virginia at large, and  
4 whose commission expires November 30, 2022, do certify that  
5 the aforementioned appeared before me, was sworn by me, and  
6 was thereupon examined by counsel; and that the foregoing is  
7 a true, correct, and full transcript of the testimony  
8 adduced.

9 I further certify that I am neither related  
10 to nor associated with any counsel or party to this  
11 proceeding, nor otherwise interested in the event thereof.

12 Given under my hand and notary seal at  
13 Richmond, Virginia, this 14th day of December, 2018.  
14  
15  
16

17 \_\_\_\_\_  
Angela N. Sidener, CCR, RPR  
Notary Registration No. 7378859  
18  
19  
20  
21  
22  
23  
24  
25

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## DAVID MODENA - 12/11/2018

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1 And further this deponent saith not.  
2 (Whereupon this deposition was suspended at 1:18 p.m.)  
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## DAVID MODENA - 12/11/2018

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1 ERRATA SHEET  
2  
3  
4

5 I declare under penalty of perjury that I have read the  
6 foregoing \_\_\_\_\_ pages of my testimony, taken  
7 on \_\_\_\_\_ (date) at  
8 \_\_\_\_\_ (city), \_\_\_\_\_ (state),  
9

10 and that the same is a true record of the testimony given  
11 by me at the time and place herein  
12 above set forth, with the following exceptions:  
13

14 Page Line Should read: Reason for Change:  
15

16 \_\_\_\_\_  
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DAVID MODENA - 12/11/2018

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## 1 ERRATA SHEET

2 Page Line Should read: Reason for Change:

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Date: \_\_\_\_\_

Signature of Witness

\_\_\_\_\_  
Name Typed or PrintedLitigation Services | 800-330-1112  
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# EXHIBIT 217

E-MAIL FROM RON TEMPLER  
SUBJECT TO PROTECTIVE ORDER -  
WILL BE SUBMITTED TO JUDGE'S  
CHAMBERS PURSUANT TO ORDER

# EXHIBIT 217

# EXHIBIT 217

005798

005798

# EXHIBIT 217



**Bonney, Audra R.**

**From:** Templer, Ron <Ron.Templer@jacuzzi.com>  
**Sent:** Tuesday, September 17, 2019 7:42 PM  
**To:** Bonney, Audra R.; Roberts, Lee  
**Subject:** FW: Cunnison v. Jacuzzi (CONFIDENTIAL ATTORNEY CLIENT/WORK PRODUCT COMMUNICATION)

**Importance:** High

This Message originated outside your organization.

---

**From:** Templer, Ron  
**Sent:** Wednesday, July 25, 2018 6:15 PM  
**To:** Bachmeyer, Kurt <[Kurt.Bachmeyer@jacuzzi.com](mailto:Kurt.Bachmeyer@jacuzzi.com)>; Reyes, Regina <[Regina.Reyes@jacuzzi.com](mailto:Regina.Reyes@jacuzzi.com)>; Demeritt, William <[William.Demeritt@jacuzzi.com](mailto:William.Demeritt@jacuzzi.com)>; Dominguez, Mike <[Mike.Dominguez@jacuzzi.com](mailto:Mike.Dominguez@jacuzzi.com)>; Castillo, Jess <[Jess.Castillo@jacuzzi.com](mailto:Jess.Castillo@jacuzzi.com)>  
**Cc:** Lovallo, Anthony <[Anthony.Lovallo@jacuzzi.com](mailto:Anthony.Lovallo@jacuzzi.com)>  
**Subject:** Cunnison v. Jacuzzi (CONFIDENTIAL ATTORNEY CLIENT/WORK PRODUCT COMMUNICATION)  
**Importance:** High

Kurt, Regina & Jess:

Jacuzzi Inc./Jacuzzi Luxury Bath has been ordered by a court in a pending case to produce ALL customer complaints regarding personal injuries sustained in a walk-in tub. As such, **I need each of you to provide me with the following no later than August 3:**

- All letters, emails, customer service/warranty entries and all other communications and documents (written or electronic) that mention or refer to a personal injury sustained in a walk-in tub from 1/1/2008 to the present. This requires a search of **all** databases (both current and old), email and other potential locations where the information may be stored. When running a search of electronic files and records, the search can be limited to complaints and communications regarding walk in tubs that include one or more of the following terms:
  - Injury
  - Injure
  - Injured
  - Injuries
  - Death
  - Hurt
  - Pain

**THIS SEARCH AND PRODUCTION WAS ORDERED BY A COURT, AND AS SUCH, NEEDS TO BE TIMELY AND COMPLETE. FAILURE TO PROPERLY AND THOROUGHLY CONDUCT THE SEARCH AND PRODUCE ALL REQUESTED INFORMATION WILL RESULT IN MAJOR ADVERSE CONSEQUENCES TO THE COMPANY.**

**Ron Templer**  
 Corporate Counsel

005799

005799

# EXHIBIT 218

005800

005800

# EXHIBIT 218

1 **SLWD**

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10 Admitted Pro Hac Vice

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12 GUNN &amp; DIAL, LLC

13 6385 South Rainbow Blvd., Suite 400

14 Las Vegas, Nevada 89118

15 Telephone: (702) 938-3838

16 Facsimile: (702) 938-3864

17 *Attorneys for Defendant/Cross-Defendant*18 *Jacuzzi Inc. doing business as Jacuzzi Luxury Bath*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 Estate  
19 of SHERRY LYNN CUNNISON, Deceased,

20 Plaintiffs,

21 vs.

22 FIRST STREET FOR BOOMERS & BEYOND,  
23 INC.; AITHR DEALER, INC; HALE BENTON,  
24 individually; HOMECLICK, LLC; JACUZZI  
25 INC. doing business as JACUZZI LUXURY  
26 BATH; BESTWAY BUILDING &  
27 REMODELING, INC.; WILLIAM BUDD,  
28 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 RELATED CASES

Case No.: A-16-731244-C

Dept. No.: II

**DEFENDANT JACUZZI INC. DOING  
BUSINESS AS JACUZZI LUXURY  
BATH'S TWENTY-FIFTH  
SUPPLEMENTAL DISCLOSURE  
STATEMENT**

1 Defendant Jacuzzi Inc. dba Jacuzzi Luxury Bath ("Jacuzzi"), by and through its  
2 attorneys, the law firm of Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC., hereby submits its  
3 Supplemental Disclosure Statement. Any supplemental or modified information appears in **bold**  
4 **font**.

5 **PRELIMINARY STATEMENT**

6 This Disclosure Statement and its contents represent the product of Jacuzzi's  
7 investigation to date. Because of the limited information available to Jacuzzi, Jacuzzi cannot yet  
8 provide a significant level of detail regarding the facts of the incident. Further investigation and  
9 discovery may bring to light additional information that may have a bearing on Jacuzzi's theories  
10 of defense. Jacuzzi may identify additional documents, if any, after Plaintiffs have specified the  
11 defect allegations, through additional pleadings, if any, through any disclosure made, and  
12 through discovery (particularly expert discovery) in accordance with Rule 16.1 of the Nevada  
13 Rules of Civil Procedure. Jacuzzi is prepared to meet with Plaintiffs and, as necessary or  
14 appropriate, to cooperate in the scheduling of a conference for purpose of refining and clarifying  
15 Jacuzzi's disclosures and Plaintiffs' contentions.

16 Accordingly, this disclosure is not intended to represent Jacuzzi's complete defense of  
17 the case, but is merely a preliminary disclosure statement until further information is obtained  
18 regarding Plaintiffs' specific claims and the specific claims against Jacuzzi and is subject to  
19 supplementation. If any part of this statement is ever read to the jury, fairness would require that  
20 this preliminary statement also be read indicating that at the time it was filed only limited  
21 information had been acquired. In addition, because Plaintiffs may assert, clarify, modify, or  
22 otherwise develop defect theories in this lawsuit, Jacuzzi reserves the right, at any time in this  
23 litigation, to identify additional witnesses or documents, if any, which pertain to any such  
24 theories.

25 Jacuzzi's disclosures are made without waiving, in any respect, the (1) right to object on  
26 the grounds of competency, privilege, relevancy and materiality, hearsay, or any other proper  
27 ground, to the use of any such information, for any purpose, in whole or in part, in any  
28 subsequent stage or proceeding in this action or any other action, and (2) the right to object on



1 any and all grounds, at any time, to any other discovery proceeding involving or relating to the  
2 subject matter of these disclosures.

3 Jacuzzi reserves the right to supplement or amend its disclosures before trial based on  
4 continuing investigation, if appropriate. All of the disclosures set forth below are made subject  
5 to the above comments and qualifications.

6 The following disclosures are made based on the information reasonably available to  
7 Jacuzzi as of the date of this disclosure, and represent Jacuzzi's good faith effort to identify  
8 information pertaining to the allegations of Plaintiffs' Second Amended Complaint. If Plaintiffs  
9 further define the scope of their defect investigation, research and analysis will supply additional  
10 facts and documents, add meaning to known facts, all of which may in turn lead to substantial  
11 additions or changes to this disclosure.

12 A. **THE NAME, AND IF KNOWN, THE ADDRESS AND TELEPHONE NUMBER**  
13 **OF EACH INDIVIDUAL LIKELY TO HAVE INFORMATION DISCOVERABLE**  
14 **UNDER RULE 26(b), INCLUDING FOR IMPEACHMENT OR REBUTTAL,**  
15 **IDENTIFYING THE SUBJECTS OF THE INFORMATION**

16 In accordance with Rule 16.1(a)(1)(A), Jacuzzi is presently aware of the following  
17 individuals who may possess responsive information concerning the circumstances surrounding  
18 the incident, and the nature of Plaintiff's injuries:

19 **CASE SPECIFIC WITNESSES**

- 20 1. Robert Ansara, as Special Administrator of the  
21 Estate of Sherry Lynn Cunnison, and as Special  
22 Administrator of the Estate of Michael Smith, Deceased heir  
23 to the Estate of Sherry Lynn Cunnison  
24 c/o Benjamin P. Cloward, Esq.  
25 RICHARD HARRIS LAW FIRM  
26 801 S. Fourth Street  
27 Las Vegas, NV 89101

28 Mr. Ansara is a Plaintiff in this matter and is believed to have information as to the  
allegations set forth in the Second Amended Complaint, claimed damages and the circumstances  
of the subject incident.

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2. Michael Smith, individually, and heir to the  
Estate of Sherry Lynn Cunnison  
c/o Benjamin P. Cloward, Esq.  
RICHARD HARRIS LAW FIRM  
801 S. Fourth Street  
Las Vegas, NV 89101

Mr. Smith is a Plaintiff in this matter and is believed to have information as to the allegations set forth in the Second Amended Complaint, claimed damages and the circumstances of the subject incident.

3. Deborah Tamantini, individually, and heir to the  
Estate of Sherry Lynn Cunnison  
c/o Benjamin P. Cloward, Esq.  
RICHARD HARRIS LAW FIRM  
801 S. Fourth Street  
Las Vegas, NV 89101

Mr. Tamantini is a Plaintiff in this matter and is believed to have information as to the allegations set forth in the Second Amended Complaint, claimed damages and the circumstances of the subject incident.

4. Corporate Representative(s)  
First Street for Boomers & Beyond, Inc.  
c/o Philip Goodhart, Esq.  
Michael C. Hetey, Esq.  
Meghan M. Goodwin, Esq.  
THORNDAL, ARMSTRONG, DELK  
BALKENBUSH & EISINGER  
1100 East Bridger Avenue  
Las Vegas, NV 89101

First Street for Boomers and Beyond, Inc. is a Defendant/Cross-Defendant in this matter. The Corporate Representative(s) for First Street for Boomers and Beyond, Inc. is expected to testify as to the facts and circumstances surrounding the circumstances of the subject incident.

5. Corporate Representative(s)  
Aithr Dealer, Inc.  
c/o Philip Goodhart, Esq.  
Michael C. Hetey, Esq.  
Meghan M. Goodwin, Esq.  
THORNDAL, ARMSTRONG, DELK  
BALKENBUSH & EISINGER  
1100 East Bridger Avenue  
Las Vegas, NV 89101

Aithr Dealer, Inc. is a Defendant/Cross-Defendant in this matter. The Corporate Representative(s) for Aithr Dealer, Inc. is expected to testify as to the facts and circumstances surrounding the circumstances of the subject incident.

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6. Corporate Representative(s)  
Homeclick, LLC  
c/o Michael E. Stoberski, Esq.  
OLSON, CANNON, GORMLEY, ANGULO & STOBERSKI  
9950 West Cheyenne Avenue  
Las Vegas, NV 89129

Homeclick, LLC is a Defendant/Cross-Claimant/Third Party Plaintiff/Cross-Defendant in this matter. The Corporate Representative(s) for Homeclick, LLC. is expected to testify as to the facts and circumstances surrounding the circumstances of the subject incident.

7. Corporate Representative(s)  
Budds Plumbing  
c/o Joseph P. Garin, Esq.  
LIPSON, NEILSON, COLE,  
SELTZER & GARIN, P.C.  
9900 Covington Cross Drive, Suite 120  
Las Vegas, NV 89144

Budds Plumbing is a Defendant/Cross-Claimant/Cross-Defendant in this matter. The Corporate Representative(s) for Budds Plumbing is expected to testify as to the facts and circumstances surrounding the circumstances of the subject incident.

8. William Budd  
Budds' Plumbing  
c/o Joseph P. Garin, Esq.  
LIPSON, NEILSON, COLE,  
SELTZER & GARIN, P.C.  
9900 Covington Cross Drive, Suite 120  
Las Vegas, NV 89144

William Budd is a Defendant/Cross-Claimant/Cross-Defendant in this matter. Mr. Budd is expected to testify as to the facts and circumstances surrounding the circumstances of the subject incident.

9. Corporate Representative(s)  
The Chicago Faucet Company  
c/o Scott R. Cook, Esq.  
Jennifer L. Micheli, Esq.  
KOLESAR & LEATHAM  
400 South Rampart Boulevard, Suite 400  
Las Vegas, NV 89145

The Chicago Faucet Company is a Third-Party Defendant in this matter. The Corporate Representative(s) for The Chicago Faucet Company is expected to testify as to the facts and circumstances surrounding the circumstances of the subject incident.

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10. Corporate Representative(s)  
Bestway Building & Remodeling, Inc.  
c/o Elizabeth Skane, Esq.  
Dione C. Wrenn, Esq.  
SKANE & WILCOX LLP  
1120 Town Center Drive, Suite 200  
Las Vegas, NV 89144

Bestway Building & Remodeling, Inc. is a Defendant/Cross-Defendant/Cross-Claimant in this matter. The Corporate Representative(s) for Bestway Building & Remodeling, Inc. is expected to testify as to the facts and circumstances surrounding the circumstances of the subject incident.

11. Corporate Representative(s)  
Jacuzzi Inc.  
c/o WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC  
6385 S. Rainbow Blvd., Ste. 400  
Las Vegas, NV 89118

Jacuzzi Inc. is a Defendant/Cross-Defendant in this matter. The Corporate Representative(s) for Jacuzzi Inc. is expected to testify regarding the Walk-In Bathtub at issues in this litigation.

12. Hale Benton  
c/o Philip Goodhart, Esq.  
Michael C. Hetey, Esq.  
Meghan Goodwin, Esq.  
THORNDAL, ARMSTRONG, DELK  
BALKENBUSH & EISINGER  
1100 East Bridger Avenue  
Las Vegas, NV 89101

Hale Benton is a Defendant in this matter. He is expected to testify as to the facts and circumstances surrounding the circumstances of the subject incident.

13. Designated Representative and/or  
Custodian of Records for  
Clark County Coroner  
1704 Pinto Lane  
Las Vegas, NV 89106

The Designated Representative and/or Custodian of Records for Clark County Coroner is expected to testify regarding its investigation into Plaintiff's injuries and the circumstances surrounding the incident.

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14. Timothy Dutra, M.D., Coroner  
Kristen Peters, Coroner Investigator  
Daniel S. Isenschmid, Ph.D., D-ABFT, Forensic Toxicologist  
Clark County Coroner  
1704 Pinto Lane  
Las Vegas, NV 89106

Dr. Dutra, Kristen Peters, and Dr. Isenschmid are expected to testify regarding Plaintiff's injuries and the circumstances surrounding the incident.

15. Designated Representative and/or  
Custodian of Records  
Decedent's Treating Medical Providers

The Designated Representative and/or Custodian of Records from Decedent's Treating Medical Providers are expected to testify as to Decedent's condition, care, treatment provided to Decedent.

16. Designated Representative and/or  
Custodian of Records for  
Palm Eastern Cemetery  
7600 S. Eastern Avenue  
Las Vegas, NV 89123  
(702) 464-8500

The Designated Representative and/or Custodian of Records for Palm Eastern Cemetery is expected to testify regarding the services provided, including associates costs, and other issues.

17. Designated Representative and/or  
Custodian of Records for  
Medic West Ambulance  
9 W. Delhi Avenue  
North Las Vegas, NV 89032  
(702) 650-9900

The Designated Representative and/or Custodian of Records for Medic West Ambulance is expected to testify as to Decedent's condition, care and treatment provided to Decedent.

18. Carlos Fonseca, Paramedic  
Brennan Demille, EMT Intermediate  
Jimmy Chavez, Paramedic  
Luke Crawford, EMT Intermediate  
Jenna Lamperti, EMT Intermediate  
Jacob Stamer, EMT  
Jesse Blanchard, Paramedic  
Victor Montecerin, Paramedic  
Medic West Ambulance  
9 W. Delhi Avenue  
North Las Vegas, NV 89032  
(702) 650-9900

Paramedics and EMTs of Medic West Ambulance are expected to testify as to Decedent's condition, care and treatment provided to Decedent.

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19. Designated Representative and/or  
Custodian of Records for  
Sunrise Hospital & Medical Center  
3186 S. Maryland Parkway  
Las Vegas, NV 89109  
(702) 731-8000

The Designated Representative and/or Custodian of Records for Sunrise Hospital & Medical Center is expected to testify as to Decedent's condition, care and treatment provided to Decedent.

20. Muhammad A. Syed, M.D.  
James Walker, M.D.  
Kitty Ho Cain, M.D.  
Lindsey C. Blake, M.D.  
Holman Chan, M.D.  
Hany F. Ghali, M.D.  
Sayed Z. Qazi, M.D.  
Muhammad Bhatti, M.D.  
Wayne Jacobs, M.D.  
Yekaterina Khronusova, M.D.  
Mark Vandembosch, M.D.  
Chris J. Fischer, M.D.  
Shirin Rahman, M.D.  
Sean D. Beaty, M.D.  
Joshua Owen, M.D.  
Rafael Valencia, M.D.  
David P. Gorczyca, M.D.  
Dean P. Berthoty, M.D.  
Robert N. Berkley, M.D.  
Daniel D. Lee, M.D.  
Shameyel Roshan, D.O.  
Richard A. Schwartz, M.D.  
Ronald F. Sauer, Jr., D.O.  
Arjun V. Gururaj, M.D.  
Nicolaos Tsiouris, M.D.  
Warren Wheeler, M.D.  
Gyorgy Varsanyi, M.D.  
David Silverberg, M.D.  
Douglas M. Sides, M.D.  
Sunrise Hospital & Medical Center  
3186 S. Maryland Parkway  
Las Vegas, NV 89109  
(702) 731-8000

The above-referenced Decedent's Treating Medical Providers at Sunrise Hospital & Medical Center are expected to testify as to Decedent's condition, care and treatment provided to Decedent.

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- 1           21.    Designated Representative and/or  
2                   Custodian of Records for  
3                   Clark County Fire Department  
                  575 East Flamingo Rd.  
                  Las Vegas, NV 89119

4           The Designated Representative and/or Custodian of Records for Clark County Fire  
5           Department is expected to testify as to Decedent's condition, care and treatment provided to  
6           Decedent.

- 7           22.    Paramedic Nicholas Stahlberger  
8                   Paramedic Raymond LeClair  
                  Clark County Fire Department  
                  575 East Flamingo Rd.  
                  Las Vegas, NV 89119

9           Paramedics Nicholas Stahlberger and Raymond LeClair of Clark County Fire Department  
10          are expected to testify as to Decedent's condition, care and treatment provided to Decedent.

- 11          23.    Officer Matthew Scanlon  
12                   Officer Kevin Lemire  
13                   Officer Matthew Shake  
14                   Officer Keith Bryant  
15                   Officer Shakeel Abdal-Karim  
16                   Officer B. Venpamel  
17                   Sergeant Dana Pickerel  
18                   Sergeant Allen Larsen  
19                   Las Vegas Metro Police Department  
20                   400 S. Martin Luther King Blvd.  
21                   Las Vegas, NV 89106

22          Police Officers from Las Vegas Metro Police Department are expected to testify as to  
23          Decedent's condition and as to the facts and circumstances surrounding the circumstances of the  
24          subject incident.

- 25          24.    William Lewis  
26                   5354 Camden Avenue  
27                   Las Vegas, NV 89122

28          William Lewis called 911 for wellness check on Plaintiff in 2007 is also the person who  
29          called 911 regarding the subject incident. Mr. Lewis is expected to testify as to the facts and  
30          circumstances surrounding the 911 calls.

- 31          25.    Michael Zuvar  
32                   746655 Willow Drive  
33                   Doyle, CA 96109  
34                   775-560-7791

35          Michael Zuvar is expected to testify regarding the removal of the subject walk-in tub  
36          after the incident and as to the facts and circumstances surrounding the subject incident.

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26. Michael Showalter  
5500 Celestial Way  
Citrus Heights, CA 95610  
831-595-1015 (cell)  
916-903-7186 (home)

Michael Showalter is expected to testify as to the facts and circumstances surrounding the subject incident.

27. Frederick J. Tanenggee, M.D.  
HealthCare Partners  
129 West Lake Mead, Suite 10  
Henderson, NV 89015  
(702) 565-1007

Dr. Tanenggee is expected to testify as to Decedent's condition, care and treatment provided to Decedent.

28. Benjamin Muir, M.D.  
Michael Carducci, M.D.  
HealthCare Partners Nevada  
700 E. Warm Springs Road, Suite 110  
Las Vegas, NV 89119  
(702) 318-2400

The above-referenced Decedent's Treating Medical Providers are expected to testify as to Decedent's condition, care and treatment provided to Decedent.

29. Designated Representative and/or  
Custodian of Record for  
HealthCare Partners Nevada  
700 E. Warm Springs Road, Suite 110  
Las Vegas, NV 89119  
(702) 318-2400

The Designated Representative and/or Custodian of Records for HealthCare Partners Nevada is expected to testify as to Decedent's condition, care and treatment provided to Decedent.

30. Designated Representative and/or  
Custodian of Records for  
Kindred Hospital Las Vegas-Flamingo  
2250 E. Flamingo Road  
Las Vegas, NV 89119  
(702) 784-4300

The Designated Representative and/or Custodian of Records for Kindred Hospital Las Vegas-Flamingo is expected to testify as to Decedent's condition, care and treatment provided to Decedent.

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- 1           31.    Sachit Das, M.D.  
2                Robert M. Yeh, M.D.  
3                Kindred Hospital Las Vegas-Flamingo  
4                2250 E. Flamingo Road  
5                Las Vegas, NV 89119  
6                (702) 784-4300

7           The above-referenced Decedent's Treating Medical Providers at Kindred Hospital Las  
8 Vegas-Flamingo are expected to testify as to Decedent's condition, care and treatment provided  
9 to Decedent.

- 10           32.    Designated Representative and/or Custodian of Records for  
11                Premier Health & Rehab Center  
12                f/k/a Southern Nevada Medical & Rehab Center  
13                2945 Casa Vegas Street  
14                Las Vegas, NV 89109  
15                (702) 735-7179

16           The Designated Representative and/or Custodian of Records for Premier Health & Rehab  
17 Center f/k/a Southern Nevada Medical & Rehab Center is expected to testify as to Decedent's  
18 condition, care and treatment provided to Decedent.

- 19           33.    Designated Representative and/or  
20                Custodian of Records for  
21                Davis Funeral Homes & Memorial Park  
22                6200 S. Eastern Avenue  
23                Las Vegas, NV 89119  
24                (702) 736-6200

25           The Designated Representative and/or Custodian of Records for Davis Funeral Homes &  
26 Memorial Park is expected to testify regarding the services provided, including associates costs,  
27 and other issues.

- 28           34.    Personnel and/or  
29                Custodian of Records for  
30                Walgreens Pharmacy  
31                4895 Boulder Highway  
32                Las Vegas, NV 89121  
33                (702) 898-5264

34           Personnel of Walgreens Pharmacy provided medications to Decedent and are expected to  
35 testify regarding medications and medical care provided, and any other relevant knowledge.

- 36           35.    Designated Representative and/or  
37                Custodian of Records for  
38                Mountain View Hospital  
39                3100 N. Tenaya Way  
40                Las Vegas, NV 89128  
41                (702) 962-5000

42           The Designated Representative and/or Custodian of Records for Mountain View Hospital

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1 is expected to testify as to Decedent's condition, care and treatment provided to Decedent.

2 36. Designated Representative and/or  
3 Custodian of Records for  
4 Desert Springs Hospital  
5 2075 E. Flamingo Road  
6 Las Vegas, NV 89119  
7 (702) 733-8800

8 The Designated Representative and/or Custodian of Records for Desert Springs Hospital  
9 is expected to testify as to Decedent's condition, care and treatment provided to Decedent.

10 37. Prashant Bharucha, M.D.  
11 Nakeisha Curry, M.D.  
12 Randal Shelin, M.D.  
13 Armen Hovanessian, M.D.  
14 Desert Springs Hospital  
15 2075 E. Flamingo Road  
16 Las Vegas, NV 89119  
17 (702) 733-8800

18 The above-referenced Decedent's Treating Medical Providers at Desert Springs Hospital  
19 are expected to testify as to Decedent's condition, care and treatment provided to Decedent.

20 38. Designated Representative and/or  
21 Custodian of Records for  
22 HealthCare Partners  
23 9280 W. Sunset Road  
24 Las Vegas, NV 89148  
25 (702) 534-5464

26 The Designated Representative and/or Custodian of Records for HealthCare Partners is  
27 expected to testify as to Decedent's condition, care and treatment provided to Decedent.

28 39. Othella A. Jurani-Suarez, M.D.  
HealthCare Partners  
9280 W. Sunset Road  
Las Vegas, NV 89148  
(702) 534-5464

Dr. Jurani-Suarez at HealthCare Partners is expected to testify as to Decedent's condition,  
care and treatment provided to Decedent.

40. Designated Representative and/or  
Custodian of Records for  
Comprehensive & Interventional Pain Management  
10561 Jeffreys Street, Suite 211  
Henderson, NV 89052  
(702) 990-4530

The Designated Representative and/or Custodian of Records for Comprehensive &



Interventional Pain Management is expected to testify as to Decedent's condition, care and treatment provided to Decedent.

41. Daniel Fabito, M.D.  
Comprehensive & Interventional Pain Management  
10561 Jeffreys Street, Suite 211  
Henderson, NV 89052  
(702) 990-4530

Dr. Fabito at Comprehensive & Interventional Pain Management is expected to testify as to Decedent's condition, care and treatment provided to Decedent.

42. Michael Her, M.D.  
1236 N. Magnolia Avenue  
Anaheim, CA 92801  
(714) 995-1000

Dr. Her is expected to testify as to Decedent's condition, care and treatment provided to Decedent.

43. Designated Representative and/or  
Custodian of Records for  
Social Security Administration  
4340 Simmons Street  
North Las Vegas, NV 89032

The Designated Representative and/or Custodian of Records for the Social Security Administration is expected to testify as to the disability and retirement benefits provided to Decedent.

44. Designated Representative and/or  
Custodian of Records for  
Nevada Orthopedic  
1505 Wigwam Parkway, #330  
Henderson, NV 89074

The Designated Representative and/or Custodian of Records for Nevada Orthopedic is expected to testify as to Decedent's condition, care and treatment provided to Decedent.

45. Designated Representative and/or  
Custodian of Records for  
Torrey Pines Rehabilitation  
1701 South Torrey Pines Dr.  
Las Vegas, NV 89146

The Designated Representative and/or Custodian of Records for Torrey Pines Rehabilitation is expected to testify as to Decedent's condition, care and treatment provided to Decedent.

46. Designated Representative and/or  
Custodian of Records for  
Orthopedic Institute of Henderson  
10561 Jeffrey's Street, Suite 230  
Henderson, NV 89052

The Designated Representative and/or Custodian of Records for Orthopedic Institute of

Henderson is expected to testify as to Decedent's condition, care and treatment provided to Decedent.

**B. COPY OF, OR A DESCRIPTION BY CATEGORY AND LOCATION OF, ALL DOCUMENTS, DATA COMPILATIONS, AND TANGIBLE THINGS THAT ARE IN THE POSSESSION, CUSTODY, OR CONTROL OF THE PARTY AND WHICH ARE DISCOVERABLE UNDER RULE 26(b)**

Per rule 16.1(a)(1)(B), Jacuzzi hereby discloses the following documents, electronically stored information, and tangible things:

	DOCUMENT DESCRIPTION	BATES NO.
1.	Installation and Operation Instructions Manual, Jacuzzi 5229 Walk-In Bathtub Series, 2013	JACUZZI 000001-20
2.	DWO Geberit Installation Manual, 2012.	JACUZZI 000021-22
3.	DWO Geberit Pin Drawing for Fitting No. 241.789.21.1. Subject to Protective Order. <del>Will be produced upon entry of appropriate Protective Order.</del> Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI 000023
4.	MT31 Geberit Installation Instructions	JACUZZI 000024-27
5.	Commercial General Liability Declarations for Policy GL 509-47-59 (redacted)	JACUZZI 000028-31
6.	No Records Declaration received from Las Vegas Fire and Rescue pursuant to Jacuzzi's Subpoena	JACUZZI000032-33
7.	Records received from Palm Eastern Cemetery pursuant to Jacuzzi's Subpoena	JACUZZI000034-77
8.	Records received from Medic West Ambulance pursuant to Jacuzzi's Subpoena. (According to ChartSwap, pages bates numbered JACUZZI000083-87 are part of the PCR and contain the patient's name, and were intentionally left blank).	JACUZZI000078-87
9.	Records and photographs received from Clark County Coroner / Medical Examiner's Office pursuant to Jacuzzi's Subpoena	JACUZZI000088-118
10.	Medical records received from Sunrise Hospital & Medical Center pursuant to Jacuzzi's Subpoena	JACUZZI000119-1311
11.	Photographs produced by Las Vegas Metropolitan Police Department in response to Jacuzzi's subpoena	JACUZZI001312-1319





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	DOCUMENT DESCRIPTION	BATES NO.
12.	Officer's Report from Las Vegas Metropolitan Police Department in response to Jacuzzi's subpoena	JACUZZI001320-1321
13.	911 Logs and audio file from Las Vegas Metropolitan Police Department in response to Jacuzzi's subpoena	JACUZZI001322-1325
14.	Sunrise Hospital and Medical Center radiology records in response to Jacuzzi's subpoena	JACUZZI001326-1327
15.	Las Vegas Metro Police Department 911 records in response to Jacuzzi's 2 <sup>nd</sup> subpoena	JACUZZI001328-1332
16.	Sunrise Hospital and Medical Center billing records in response to Jacuzzi's subpoena	JACUZZI001333-1348
17.	Drawing LW19000_Shell FS5229 RH Walk In <del>(Will be produced upon entry of a Protective Order)</del> Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI001349
18.	Drawing LW32827_Grab Bar Assembly <del>(Will be produced upon entry of a Protective Order)</del> Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI001350
19.	Drawing LW47000RevD_SHL T&D FS 5229 RH SLN <del>(Will be produced upon entry of a Protective Order)</del> Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI001351-1352
20.	Drawing LW48000RevB_SHL Bond FS 5229 RH <del>(Will be produced upon entry of a Protective Order)</del> Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI001353-1354
21.	Drawing LX22000_Piping Suction <del>(Will be produced upon entry of a Protective Order)</del> Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI001355
22.	Drawing LX24000B_Piping Discharge <del>(Will be produced upon entry of a Protective Order)</del> Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI001356-1357
23.	Drawing LX25000_Piping Airline <del>(Will be produced upon entry of a Protective Order)</del> Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI001358
24.	Drawing LX26000A_Piping Blower <del>(Will be produced upon entry of a Protective Order)</del> Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI001359-1360
25.	Drawing LX27000_Two Pt Quarter Turn Door Latch <del>(Will be produced upon entry of a Protective Order)</del>	JACUZZI001361-1368

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	DOCUMENT DESCRIPTION	BATES NO.
1		
2	<i>Copies produced to Plaintiff via electronic mail on 1/30/18.</i>	
3	26. Drawing LX62000_Door Assembly <del>(Will be produced upon entry of a Protective Order)</del> Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI001369
4		
5	27. Drawing LX82000_Skirt Access Panel <del>(Will be produced upon entry of a Protective Order)</del> Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI001370
6		
7	28. Drawing LX91827A_Handle_Sub <del>(Will be produced upon entry of a Protective Order)</del> Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI001371
8		
9	29. Door Life Cycle <del>(Will be produced upon entry of a Protective Order)</del> Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI001372-1375
10		
11	30. ETL Certification Listing <del>(Will be produced upon entry of a Protective Order)</del> Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI001376-1441
12		
13	31. IAPMO Certification Listing <del>(Will be produced upon entry of a Protective Order)</del> Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI001442-1446
14		
15	32. IAMPO Lab Test Report ASTM F 462-79 <del>(Will be produced upon entry of a Protective Order)</del> Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI001447-1449
16		
17	33. WIT Tub Standards Certificate of Listing	JACUZZI001450-1454
18		
19	34. 2011 National Electrical Code	JACUZZI001455-1471
20	35. 2012 Uniform Mechanical Code	JACUZZI001472-1479
21	36. 2012 Uniform Plumbing Code	JACUZZI001480-1493
22		
23	37. Clark County Building Code	JACUZZI001494-1587
24	38. Jacuzzi's Manufacturing Agreement with First Street For Boomers & Beyond, Inc., which is related to the subject Jacuzzi® Walk-In Bathtub <del>(Will be produced upon entry of a Protective Order)</del> Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI001588-1606
25		
26		
27	39. Drawing 4486000B_Label Bath Safety <del>(Will be produced upon entry of a Protective Order)</del> Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI001607
28		

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WEINBERG WHEELER  
HUDGINS GUNN & DIAL



	DOCUMENT DESCRIPTION	BATES NO.
1		
2	40. Drawing BA35000A Label Lift Here <del>(Will be produced upon entry of a Protective Order)</del> Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI001608
3		
4	41. Drawing N261000B_Label No Wrench <del>(Will be produced upon entry of a Protective Order)</del> Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI001609
5		
6	42. Drawing R958000F_Label Caution Union <del>(Will be produced upon entry of a Protective Order)</del> Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI001610
7		
8	43. 270244 Order Acknowledgement <del>(Will be produced upon entry of a Protective Order)</del> Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI001611-1612
9		
10	44. Jacuzzi 270244 Invoice 68325423 <del>(Will be produced upon entry of a Protective Order)</del> Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI001613
11		
12	45. SEFL Southeastern Freight Lines Invoice 180106252 <del>(Will be produced upon entry of a Protective Order)</del> Copies produced to Plaintiff via electronic mail on 1/30/18.	JACUZZI001614-1617
13		
14	46. Social Security Administration records in response to Jacuzzi's request for Release of Information	JACUZZI001618-1620
15		
16	47. Certificate of Custodian of Records of No Records for Torrey Pines Rehabilitation in response to Jacuzzi's Subpoena	JACUZZI001621
17		
18	48. Comprehensive & Interventional Pain Management records in response to Jacuzzi's Subpoena	JACUZZI001622-1811
19		
20	49. Orthopedic Institute of Henderson records in response to Jacuzzi's Subpoena	JACUZZI001812-2036
21		
22	50. Certificate of Custodian of Records of No Records for Davis Funeral Homes & Memorial Park in response to Jacuzzi's Subpoena	JACUZZI002037
23		
24	51. Certificate of Custodian of Records of No Records for Premier Health & Rehab Center f/k/a Southern Nevada Medical & Rehab Center	JACUZZI002038
25		
26	52. Nevada Ortho and Spine records in response to Jacuzzi's Subpoena	JACUZZI002854-2911
27		
28	53. Documents regarding other incidents of personal injury or death in walk-in tubs from 2008 to present produced in compliance with Discovery Commissioner's direction at July 20, 2018 hearing	JACUZZI002912-002991

005817

005818

WEINBERG WHEELER  
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	DOCUMENT DESCRIPTION	BATES NO.
1		
2	produced to Plaintiff on August 17, 2018. The	
3	production should not be regarded as a waiver to the	
4	documents and information's relevance or	
5	admissibility.	
6	54. Email correspondence with FirstStreet regarding	JACUZZI002992-004521
7	walk-in tub development and marketing from	
8	January 1, 2008-February 21, 2014. The production	
9	includes some native files.	
10	55. FirstStreet Installer Completion Training document.	JACUZZI004522-004533
11	56. Jacuzzi Brand Guidelines	JACUZZI004534-004577
12	57. Jacuzzi Engineering Drawing LW17000.	JACUZZI004578-004579
13	(Confidential – Subject to Protective Order)	
14	58. Jacuzzi Engineering Drawing LW17000B.	JACUZZI004580-004581
15	(Confidential – Subject to Protective Order)	
16	59. Jacuzzi Engineering Drawing LW17000C.	JACUZZI004582-004583
17	(Confidential – Subject to Protective Order)	
18	60. Jacuzzi 5229 Walk-In Bath Series – Installation and	JACUZZI004584-004603
19	Operation Manual LX64000B – 05/2013	
20	61. Jacuzzi 5229 Walk-In Bath Series – Installation and	JACUZZI004604-004625
21	Operation Manual LX64000C – 04/2014	
22	62. Jacuzzi 5229 Walk-In Bath Series – Installation and	JACUZZI004626-004649
23	Operation Manual LX64000D – 10/2015	
24	63. Jacuzzi 5229 Walk-In Bath Series – Installation and	JACUZZI004650-004673
25	Operation Manual LX64000E – 04/2017	
26	64. Jacuzzi 5229 Walk-In Bath Series – Installation and	JACUZZI004674-004695
27	Operation Manual PT13000A – 1/2018	
28	65. Warranty claim and other documents produced in	JACUZZI004696-004716
	compliance with Discovery Commissioner's and	
	District Court's direction. The production should not	
	be regarded as a waiver to the documents and	
	information's relevance or admissibility.	
	66. Jerre Chopper communications. The production	JACUZZI004717-004724
	should not be regarded as a waiver to the documents'	
	and information's relevance or admissibility.	
	67. Correspondence from Audrey Martinez regarding	JACUZZI004725-004726
	theft of laptop computer and photograph of vehicle	
	damage. The production should not be regarded as a	
	waiver to the documents' and information's	

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	DOCUMENT DESCRIPTION	BATES NO.
1	relevance or admissibility.	
2		
3	68. Email correspondence regarding P. Herman. Confidential information has been redacted. See enclosed Privilege Log. The production should not be regarded as a waiver to the documents' and information's relevance or admissibility.	JACUZZI004727-005033
4		
5		
6	69. Email correspondence regarding marketing. Confidential information has been redacted. See enclosed Privilege Log. The production should not be regarded as a waiver to the documents' and information's relevance or admissibility.	JACUZZI005034-005188
7		
8		
9	70. K. Bachmeyer email and other correspondence. The production should not be regarded as a waiver to the documents' and information's relevance or admissibility.	JACUZZI005190-5270
10		
11		
12	71. Email correspondence regarding customer complaints regarding slipperiness. Confidential information has been redacted. See enclosed Privilege Log. The production should not be regarded as a waiver to the documents' and information's relevance or admissibility.	JACUZZI005271-5688
13		
14		
15	72. Salesforce records regarding Customer complaints regarding slipperiness. The production should not be regarded as a waiver to the documents' and information's relevance or admissibility.	JACUZZI005689-5722
16		
17		
18	73. List of Companies marked at deposition of Michael Dominguez	JACUZZI005723-5730
19		
20	74. CPSC Complaints and related materials regarding customer complaints. The production should not be regarded as a waiver to the documents' and information's relevance or admissibility.	JACUZZI005731-5741
21		
22	75. Salesforce records and related materials regarding customer complaints. The production should not be regarded as a waiver to the documents' and information's relevance or admissibility.	JACUZZI005742-5800
23		
24	76. Additional correspondence from and to Audrey Martinez. The production should not be regarded as a waiver to the documents' and information's relevance or admissibility.	JACUZZI005801-5934 (document numbering has not changed, only identification in disclosure)
25		
26		
27	77. Salesforce records and related materials regarding customer complaints. The production should not be regarded as a waiver to the documents' and	JACUZZI005835-6281 REV JACUZZI 5935-6381
28		

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WEINBERG WHEELER  
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	DOCUMENT DESCRIPTION	BATES NO.
1	information's relevance or admissibility.	
2		
3	78. Additional correspondence from and to Audrey Martinez. Confidential information has been redacted. See enclosed Privilege Log. The production should not be regarded as a waiver to the documents' and information's relevance or admissibility.	JACUZZI006282-6674 REV JACUZZI 6382-6774
4		
5		
6	79. Salesforce records regarding Robert Pullen. The production should not be regarded as a waiver to the documents' and information's relevance or admissibility.	JACUZZI 6775-6800
7		
8		
9	80. Additional correspondence from and to Audrey Martinez, and additional salesforce records. The production should not be regarded as a waiver to the documents' and information's relevance or admissibility.	JACUZZI 6801-6962-6862 (produced via ShareFile)
10		
11		
12	81. Live Sales Force Searches (native documents):	Native documents produced as noted via ShareFile
13	<ul style="list-style-type: none"> <li>• Search 3</li> <li>• Search 4</li> <li>• Search 5</li> <li>• Search 6</li> <li>• Search 7</li> <li>• Search 9</li> <li>• Search 10</li> <li>• Search 11</li> <li>• Search 12</li> </ul>	
14		
15		
16		
17		
18		
19	82. Salesforce records regarding bathmats supplied to customers. The production should not be regarded as a waiver to the documents' and information's relevance or admissibility.	JACUZZI 6863-6894
20		
21	83. Email and attachments regarding customer satisfaction survey. The production should not be regarded as a waiver to the documents' and information's relevance or admissibility.	JACUZZI 6895-6902
22		
23		
24	84. Spreadsheets regarding LX07000 supplied to customers. The production should not be regarded as a waiver to the documents' and information's relevance or admissibility.	JACUZZI 6903-6906
25		
26		
27		
28		

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WEINBERG WHEELER  
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005821

	DOCUMENT DESCRIPTION	BATES NO.
85.	<p>During the Evidentiary Hearing, on September 17, 2019, the Court requested that Jacuzzi produce for in camera inspection certain communications between counsel for Jacuzzi and Jacuzzi employees related to the searches conducted by Jacuzzi for documents responsive to discovery requests made by Plaintiffs and ordered by the Discovery Commissioner and the Court. Jacuzzi complied with the request from the Court and submitted three binders of documents for in camera inspection on September 18, 2019.</p> <p>In a Minute Order dated September 26, 2019, the Court determined that the following documents in Binder One produced for in camera inspection “are probably relevant and not-privileged, and must be produced if they have not already been so: J000001-27, 28-61, 260-270, 281, 368, 392, 412-423, 461-478, 482-484, 489, 490-499 (which seem to have wholesale redactions not even available to the Court’s review, which we can address at the next hearing), 500-513, 532, 533, 539, and 541”.</p> <p>In compliance with the direction of the Court, Jacuzzi is disclosing the documents identified in the 9/26/2019 Minute Order in this Supplemental 16.1 disclosure. These documents are all stamped “Privileged” [sic] and marked “For In Camera Inspection Only”. Jacuzzi contends that all of the bates ranges listed above are privileged attorney client communications and/or attorney client work product and are not otherwise discoverable or likely to lead to admissible evidence. Jacuzzi complies with the court minute order but is not voluntarily disclosing these documents or waiving privilege as to the bates ranges disclosed or as to any other privileged documents.</p>	J000001-27, 28-61, 260-270, 281, 368, 392, 412-423, 461- 478, 482-484, 489, 490-499, 500-513, 532, 533, 539, and 541
86.	Separate chain for internal emails already produced. The production should not be regarded as a waiver to the documents’ and information’s relevance or admissibility.	JACUZZI 6907-6909
87.	<b>During the Evidentiary Hearing, on September 17, 2019, the Court requested that Jacuzzi produce for in camera inspection certain communications between counsel for Jacuzzi and Jacuzzi employees related to the searches conducted by Jacuzzi for documents responsive to</b>	<b>J000551-1105 (Vol 2) and J001138-1139, 191-1192, 1193-1199, 1200-1232, 1266-1268, 1365, 1368, 1400-1408, 1142-1150, 1151-1154, 1473-1487, 1488-1491, 1538-1540, 1541-1563, 1568-1607, 1612-1630, 1638-1645, 1649,</b>

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WEINBERG WHEELER  
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	DOCUMENT DESCRIPTION	BATES NO.
1	discovery requests made by Plaintiffs and ordered	1655-1661 (Vol 3)
2	by the Discovery Commissioner and the	
3	Court. Jacuzzi complied with the request from	
4	the Court and submitted three binders of	
5	documents for in camera inspection on September	
6	18, 2019.	
7	In a Minute Order dated October 8, 2019, the	
8	Court determined that the following documents in	
9	Binders Two and Three produced for in camera	
10	inspection "are probably relevant and not-	
11	privileged, and must be produced if they have not	
12	already been so J000551-1105 (Vol 2) and	
13	J001138-1139, 191-1192, 1193-1199, 1200-1232,	JACUZZI 4727-28, 4768, 4832-4966, 4992, 5009-5020, 5039, 5040-5041, 5042, 5048, 5050, 5056-5060, 5066, 5067-5106, 5135-5175
14	1266-1268, 1365, 1368, 1400-1408, 1142-1150,	
15	1151-1154, 1473-1487, 1488-1491, 1538-1540,	
16	1541-1563, 1568-1607, 1612-1630, 1638-1645,	
17	1649, 1655-1661 (Vol. 3).	
18	In compliance with the direction of the Court,	
19	Jacuzzi is disclosing the documents identified in	
20	the 10/08/2019 Minute Order in this Supplemental	
21	16.1 disclosure. These documents are all stamped	
22	"Privileged" [sic] and marked "For In Camera	
23	Inspection Only". Jacuzzi contends that all of the	
24	bates ranges listed above are privileged attorney	
25	client communications and/or attorney client	
26	work product and are not otherwise discoverable	
27	or likely to lead to admissible evidence. Jacuzzi	
28	complies with the court minute order but is not	
	voluntarily disclosing these documents or waiving	
	privilege as to the bates ranges disclosed or as to	
	any other privileged documents.	
88.	In a Minute Order dated October 8, 2019, the	JACUZZI 4727-28, 4768, 4832-4966, 4992, 5009-5020, 5039, 5040-5041, 5042, 5048, 5050, 5056-5060, 5066, 5067-5106, 5135-5175
	Court determined that the following documents in	
	previously produced in Jacuzzi's 17 <sup>th</sup> Supplement	
	to 16.1 on July 2, 2019 must be produced in an	
	unredacted format.	
	In compliance with the direction of the Court,	
	Jacuzzi is disclosing the documents identified in	
	the 10/08/2019 Minute Order in this Supplemental	
	16.1 disclosure with the exception of 5021-	
	5022. Jacuzzi contends that all of the bates ranges	
	listed above are privileged attorney client	
	communications and/or attorney client work	
	product and are not otherwise discoverable or	



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WEINBERG WHEELER  
HUDGINS GUNN & DIAL

	DOCUMENT DESCRIPTION	BATES NO.
	likely to lead to admissible evidence. Jacuzzi complies with the court minute order but is not voluntarily disclosing these documents or waiving privilege as to the bates ranges disclosed or as to any other privileged documents	

As Discovery is continuing, Jacuzzi reserves the right to supplement the disclosures as necessary.

**C. A COMPUTATION OF ANY CATEGORY OF DAMAGES CLAIMED BY THE DISCLOSING PARTY, MAKING AVAILABLE FOR INSPECTION AND COPYING AS UNDER RULE 34 OF THE DOCUMENTS OR OTHER EVIDENTIARY MATTER, NOT PRIVILEGED OR PROTECTED FROM DISCLOSURE, ON WHICH SUCH COMPUTATION IS BASED, INCLUDING MATERIALS BEARING ON THE NATURE AND EXTENT OF INJURIES SUFFERED**

Jacuzzi does not allege any damages as required by Rule 16.1(a)(1)(C). Plaintiffs have the burden of proving damages. Jacuzzi disputes liability and, to the extent it is necessary and appropriate, Jacuzzi contests Plaintiffs' damages. Jacuzzi will seek its costs and attorneys' fees to the extent permitted by law.

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1 **D. FOR INSPECTION AND COPYING AS UNDER RULE 34 ANY INSURANCE**  
 2 **AGREEMENT UNDER WHICH ANY PERSON CARRYING ON AN**  
 3 **INSURANCE BUSINESS MAY BE LIABLE TO SATISFY PART OR ALL OF A**  
 4 **JUDGMENT WHICH MAY BE ENTERED IN THE ACTION OR TO**  
 5 **INDEMNIFY OR REIMBURSE FOR PAYMENTS MADE TO SATISFY THE**  
 6 **JUDGMENT AND ANY DISCLAIMER OR LIMITATION OF COVERAGE OR**  
 7 **RESERVATION OF RIGHTS UNDER ANY SUCH INSURANCE AGREEMENT**

8 Pursuant to Rule 16.1(a)(1)(D), Jacuzzi produces the attached declaration page for its  
 9 insurance agreement applicable to this claim, which will be adequate to satisfy any possible  
 10 judgment in this case.

11 Dated this 10<sup>th</sup> day of October, 2019.

12 WEINBERG, WHEELER, HUDGINS,  
 13 GUNN & DIAL, LLC

14 */s/ Brittany M. Llewellyn*

15 D. Lee Roberts, Jr., Esq.

16 Brittany M. Llewellyn, Esq.

17 Johnathan T. Krawcheck, Esq.

18 6385 South Rainbow Blvd., Suite 400

19 Las Vegas, Nevada 89118

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

**CERTIFICATE OF SERVICE**

I hereby certify that on the 10th day of October, 2019, a true and correct copy of the foregoing **DEFENDANT JACUZZI INC. DOING BUSINESS AS JACUZZI LUXURY BATH'S TWENTY-FIFTH SUPPLEMENTAL DISCLOSURE STATEMENT** was electronically served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted. A separate email will follow with a sharefile link of all documents produced within this disclosure:

Benjamin P. Cloward, Esq.  
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*Attorneys for Defendant/Cross-Defendant  
Jacuzzi Inc. doing business as  
Jacuzzi Luxury Bath*

  
An employee of WEINBERG, WHEELER,  
HUDGINS, GUNN & DIAL, LLC

005825

WEINBERG WHEELER  
HUDGINS GUNN & DIAL

005825

# EXHIBIT 219

005826

005826

# EXHIBIT 219

ELECTRONICALLY SERVED  
12/28/2018 8:57 AM

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Joshua D. Cools, Nevada Bar No. 11941  
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*Attorneys for Defendant*  
*Jacuzzi Inc. doing business as Jacuzzi Luxury Bath*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

Plaintiffs,

vs.

FIRST STREET FOR BOOMERS &  
BEYOND, INC.; AITHR DEALER, INC.;  
HALE BENTON, individually; HOMECCLICK,  
LLC; JACUZZI INC., doing business as  
JACUZZI LUXURY BATH; BESTWAY  
BUILDING & REMODELING, INC.;  
WILLIAM BUDD, individually and as BUDDS  
PLUMBING; DOES 1 through 20; ROE  
CORPORATIONS 1 through 20; DOE  
EMPLOYEES 1 through 20; DOE  
MANUFACTURERS 1 through 20; DOE 20  
INSTALLERS 1 through 20; DOE  
CONTRACTORS 1 through 20; and DOE 21  
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  
SUPPLEMENTAL RESPONSE TO  
PLAINTIFF DEBORAH TAMANTINI'S  
FIRST SET OF INTERROGATORIES**

**(Originally served June 19, 2017)**

005827

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

005827

1 Defendant Jacuzzi Inc. doing business as Jacuzzi Luxury Bath (“Defendant” or “Jacuzzi”),  
2 by and through its attorneys of record, Snell & Wilmer L.L.P., provides this supplement its  
3 responses to Plaintiff Robert Ansara, as Special Administrator of the Estate of Sherry Lynn  
4 Cunnison’s (“Plaintiff”) Second Set of Interrogatories, as follows:

5 **Supplementary responses are bold.**

6 **GENERAL OBJECTIONS**

7 Defendant objects to each interrogatory to the extent they require the identification of  
8 documents already produced in this matter. Such documents are as accessible to Plaintiff as they  
9 are to Defendant.

10 Defendant responds to interrogatories, subject to the following additional reservations:

11 (a) The right to object on any ground whatsoever to the admission into evidence or other  
12 use of any of these responses at the trial of this action or any other proceeding in this action or any  
13 other action;

14 (b) The right to object on any ground whatsoever at any time to any demand for further  
15 responses to interrogatories, or any other discovery procedures involving or relating to the subject  
16 matter of the interrogatories;

17 (c) The right at any time to revise, correct, add to or clarify, any of the responses set  
18 forth herein; and

19 (d) The responses contained herein are based upon information presently known and  
20 ascertained by Defendant. The responses herein are without prejudice to utilizing subsequently  
21 discovered documents or information; and Defendant reserves the right to amend, add to, delete  
22 from, or in any other manner modify these responses after it has completed its discovery and  
23 investigation efforts and ascertained all relevant facts.

24 Defendant specifically objects to the timeframe listed in Plaintiffs’ Interrogatories.  
25 Plaintiffs note that **“UNLESS OTHERWISE NOTED, THE DOCUMENTS, RECORDS, AND**  
26 **DATA REQUESTED ARE THOSE THAT APPLY TO AND/OR COVER ANY PART OF**  
27 **THE TIME PERIOD FROM JANUARY 1, 2008 TO THE PRESENT.”** This timeframe is  
28 arbitrary and extends years prior to Ms. Cunnison’s purchase and installation of the subject bathtub.

**RESPONSES TO INTERROGATORIES**

Please state the name, address, telephone number, and position of any and all individuals preparing these answers and all individuals with whom you conferred in preparing answers to these interrogatories.

**INTERROGATORY NO. 3:**

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

**SUPPLEMENTAL RESPONSE**

Pursuant to NRCP 33(d), Defendant refers Plaintiff to the following previously-produced design documents that were disclosed after entry, and subject to, the protective order: JACUZZI001349-1375. Defendant further states that Defendant first made the subject Jacuzzi® Walk-In Bathtub in or about the year 2012. Between 2012 and the present, there have been some minor changes to the tub, but there were no modifications to the subject Jacuzzi® Walk-In Bathtub related to the vague defect claims asserted in this case, which have materially changed over time, as Jacuzzi understands them. While Jacuzzi is unaware of any relevant revisions, if Plaintiff identifies specific components or design characteristics of the tub at issue, Defendant can confirm that there were no revisions.

Defendant objects to this Interrogatory as overbroad, unduly burdensome, and without reasonable limitation in scope because it is seeking information unrelated to the subject incident and claims because the Subject Incident occurred in 2014, and there were no subsequent developments or modifications done after the Subject Incident.

**INTERROGATORY NO. 5:**

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

**SUPPLEMENTAL RESPONSE:**

Pursuant to NRCP 33(d), Defendant refers Plaintiffs to the following previously-produced design documents that were disclosed after entry, and subject to, the protective

order: JACUZZI001349-1375. Defendant further states that there are some third-parties that manufacture specific components of the subject Jacuzzi® Walk-In Bathtub, and were involved in their development. However, Defendant is unaware of any third party who “designed or developed the subject Jacuzzi Walk-In-Tub or components thereof for the Defendant” that are relevant to Plaintiffs’ vague defect claims, which have materially changed over time. Some components, like the grab bar and plumbing components were not designed by or for Jacuzzi, but are utilized in the Jacuzzi® Walk-In Bathtub.

Defendant objects to this interrogatory because it is overly broad without reasonable limitation in scope, because it seeks information that is wholly unrelated to Plaintiffs’ claims is not likely to lead to the discovery of relevant or admissible evidence. The interrogatory is vague and ambiguous as to the phrase “for the Defendant,” because it is unclear if Plaintiffs are referring to components developed at the direction of Jacuzzi or simply utilized by Jacuzzi.

**INTERROGATORY NO. 6:**

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

**SUPPLEMENTAL RESPONSE:**

Defendant identifies the documents previously disclosed in Jacuzzi's initial disclosures and supplements, including:

Installation and Operation Instructions Manual, Jacuzzi® 5229 Walk-In Bathtub Series, 2013	JACUZZI 000001-20
DWO Geberit Installation Manual, 2012.	JACUZZI 000021-22
DWO Geberit Pin Drawing for Fitting No. 241.789.21.1. Subject to Protective Order. Will be produced upon entry of appropriate Protective Order.	JACUZZI 000023
MT31 Geberit Installation Instructions	JACUZZI 000024-27



**Produced subject to protective order:**

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 LX22000_Piping Suction	JACUZZI001355
Drawing LX24000B_Piping Discharge	JACUZZI001356-1357
Drawing LX25000_Piping Airline	JACUZZI001358
Drawing LX26000A_Piping Blower	JACUZZI001359-1360
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 the Interrogatory as overbroad in that it is not limited to any particular aspects of the design of the subject tub. Accordingly, Defendant has limited its responses to design aspects criticized by Plaintiffs, which include the size of the tub, the inward swinging door, the placement of grab bars and controls, the seat, and the drain.**

**INTERROGATORY NO. 8:**

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

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- 1 (a) the date it was performed;
- 2 (b) the name, company position, and present address of the person responsible for the
- 3 test or study;
- 4 (c) the method used;
- 5 (d) the purpose of the test or study; and
- 6 (e) the results of the test or study

7 **SUPPLEMENTAL RESPONSE:**

- 8 (a) IAPMO Compliance Test: IAPMO Certification Listing.pdf
  - 9 1. September 2012
  - 10 2. IAPMO R&T Lab, 5001 East Philadelphia Street, Ontario, California
  - 11 91761
  - 12 3. Test Standards
    - 13 i. ASME A112.15-2012
    - 14 ii. CSA B45 Series-2002 (R2013)
  - 15 4. Complied with test standard
- 16 (b) ETL Compliance Test: ETL Certification Listing.pdf
  - 17 1. September 2012
  - 18 2. Intertek, 25800 Commercentre Dr, Lake Forest, CA 92630 (Kathryn Jones)
  - 19 3. Test Standards
    - 20 i. UL 1795 UL Standard for Safety Hydromassage Bathtubs
    - 21 ii. CSA C22.2 No. 218.2:2015 Hydromassage Bathtub Appliances
  - 22 (c) Co-efficiency of Friction Test: ASTM F 462-79 (R2007).pdf
    - 23 a. June 2013
    - 24 b. IAPMO R&T Lab, 5001 East Philadelphia Street, Ontario, California
    - 25 91761
    - 26 c. Test protocol ASTM F 462-79 (R2007)
    - 27 d. Complied with test standard
  - 28 (d) Door Mechanism Life Cycle Test: Door Life Cycle.pdf

1. December 2012
2. SCO Monte Vista Ave, Chino, CA 91710
3. Test Protocol: Force Failure Analysis/Life Cycle Testing
4. First Article Accepted

Defendant refers Plaintiff to the following previously-produced design documents that were disclosed after entry of the protective order:

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

Defendant's experts have also evaluated the subject bathtub, and will provide their opinions.

Defendant objects to this Interrogatory as overbroad because it is seeking information beyond the implication of the subject incident and claims outside the scope of NRCP 26(b) because it requests "all tests or studies performed by the Defendant or by any independent laboratory," and some tests are not related to Plaintiffs' claims, which Defendants' believe to be related to the size of the tub, the inward swinging door, the placement of grab bars and controls, the seat, and the drain. Defendant has limited its response to those tests it believes are relevant to Plaintiffs' claims. If Plaintiff seeks additional responses, they must clarify design elements or a scope of tests at issue, which are relevant to the subject incident and claims.

**INTERROGATORY NO. 9:**

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

**SUPPLEMENTAL RESPONSE:**

No changes or modifications were needed.

Defendant objects to this Interrogatory as overbroad because it is seeking information beyond the implication of the subject incident and claims and outside the scope of NRCP 26(b) because Interrogatory No. 8 requests “**all tests or studies performed by the Defendant or by any independent laboratory,**” and some tests are not related to Plaintiffs’ claims, which Defendants’ believe to be related to the size of the tub, the inward swinging door, the placement of grab bars and controls, the seat, and the drain. Defendant has limited its response to those modifications it believes are relevant to Plaintiffs’ claims. If Plaintiff seeks additional responses, they must clarify design elements or a scope of modifications at issue, which are relevant to the subject incident and claims.

**INTERROGATORY NO. 10:**

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

**SUPPLEMENTAL RESPONSE:**

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

**INTERROGATORY NO. 11:**

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

If so, please state:

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

(c) the substance of the allegations of such notice

**SUPPLEMENTAL RESPONSE:**

Defendant is unaware of any persons claiming injury from his or her use of the Jacuzzi® 5229 Walk-In Tub, or any other Jacuzzi® Walk-In Tub, prior to the subject incident. Pursuant to NRCP 33(d), Jacuzzi refers Plaintiffs to the previously produced subsequent incidents, identified as JACUZZI002912-002991, which relate to any Jacuzzi® Walk-In Tub. Jacuzzi further refers Plaintiffs to the Smith and Baize matters, although the Baize matter does not arise out of a personal injury claim, but rather a Deceptive Trade Practices Act/Breach of Contract/Fraud claim in regard to the sale of a tub. After reasonable inquiry, Jacuzzi is unaware of any other claims.

Defendant objects because the interrogatory is overly broad without reasonable limitation in scope because it was not limited to substantially similar bathtubs, was not limited by any sort of timeframe, and employs overly broad terms such as “damage.” Further, it is unduly burdensome because it seeks to have Jacuzzi review thousands of records to look for any “injury” or “damage,” both of which are overly broad terms, especially when considering the relevance to the case at hand. Furthermore, the interrogatory seeks information irrelevant to the subject matter of this action and that is not likely to lead to the discovery of relevant or admissible evidence because subsequent incidents are not relevant to Defendants’ notice and Defendants contend subsequent incidents are at most only relevant to show the presence of an ongoing dangerous condition. The interrogatory is vague and ambiguous in its use of the word “damage,” because “damage” is not limited to personal injury and could be construed to include property damage, which is not relevant to the claims at issue. The interrogatory seeks information protected from disclosure by the right of privacy of third parties because it would require Jacuzzi to produce the address of its customers, without its customers’ consent. Further, Jacuzzi states that subsequent incident documents it has produced are not substantially similar to Plaintiffs’ incident and are inadmissible at trial.

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**INTERROGATORY NO. 12:**

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

If so, please state as to each:

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

**RESPONSE:**

Defendant refers Plaintiffs' to the Smith matter, which was filed after this case. Plaintiffs' counsel already has all relevant information about this matter. Further, while not arising out of a personal injury claim, Defendant refers Plaintiffs' to *Baize v. R.G. Galls et al.*, which involves a Deceptive Trade Practices Act/Breach of Contract/Fraud claim in regard to the sale of a tub. Plaintiffs' counsel already has all relevant information about this matter. Jacuzzi does not concede that either are similar to the subject incident, relevant, or admissible.

Defendant objects to this interrogatory because it is overly broad without reasonable limitation in scope, unduly burdensome, and seeks information irrelevant to the subject matter of this action and is not likely to lead to the discovery of relevant or admissible evidence. The interrogatory is vague and ambiguous. Furthermore, the interrogatory seeks information irrelevant to the subject matter of this action and that is not likely to lead to the discovery of relevant or admissible evidence because subsequent incidents are not relevant to

Defendants' notice and Defendants contend subsequent incidents are at most only relevant to show the presence of an ongoing dangerous condition. The interrogatory is vague and ambiguous in its use of the word "damage," because "damage" is not limited to personal injury and could be construed to include property damage, which is not relevant to the claims at issue. Defendant objects to this request as overbroad to the extent it would include unrelated claims, such as property damage claims or claims unrelated to the vague defects claimed to have caused plaintiffs' injuries, or dissimilar products. Such claims are outside the scope of Rule 26(b) and not included in Defendant's response.

**INTERROGATORY NO. 19:**

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

**SUPPLEMENTAL RESPONSE:**

Limiting its response to the scope set by the Discovery Commissioner for claims of personal injury or death for any Jacuzzi® Walk-In Tub, pursuant to NRCP 33(d), Jacuzzi refers Plaintiffs to the previously produced subsequent incidents, identified as JACUZZI002912-002991, and the *Smith* matter. Further, while not arising out of a personal injury claim or relating to product safety, Defendant refers Plaintiffs to *Baize v. R.G. Galls et al.*, which involves a Deceptive Trade Practices Act/Breach of Contract/Fraud claim in regard to the sale of a tub. Jacuzzi further states that it is not aware of any employee or agent that complained of or objected to the design of the subject Jacuzzi® Walk-In Tub.

Defendant objects because the interrogatory is overly broad without reasonable limitation in scope because it was not limited to substantially similar bathtubs, and was not limited by any sort of timeframe. Further, it is unduly burdensome because it requires Jacuzzi to review thousands of records for any complaints regarding "the means used to provide safety," which is vague and nonsensical. Further, it seeks information irrelevant to the subject matter of this action and is not likely to lead to the discovery of relevant or admissible evidence because it seeks records related to irrelevant aspects of the tub and

1 dissimilar incidents. The Interrogatory is also vague and ambiguous because “the means used  
2 to provide safety” is undefined and nonsensical. Further, the interrogatory seeks information  
3 protected from disclosure by the right of privacy of third parties, because it would require  
4 Jacuzzi to produce the its customers’ personal information without their consent. Further,  
5 the interrogatory improperly requests the production of documents.

6 **INTERROGATORY NO. 22:**

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

10 **SUPPLEMENTAL RESPONSE:**

11 Jacuzzi contends that Ms. Cunnison would not have gotten stuck in the subject Jacuzzi  
12 Walk-In Tub if she was using it properly. Jacuzzi contends that if Plaintiff was physically  
13 unable to use the bathtub safely, she should not have used it. Discovery is ongoing, and the  
14 extent to which Ms. Cunnison’s misuse, abuse, medical condition, or otherwise contributory  
15 negligence may have caused or contributed to the subject incident is still under investigation,  
16 and the issues are anticipated to be addressed in part by Defendant’s designated experts.  
17 Jacuzzi will supplement this response consistent with its obligation under NRCP 26(e).

18 **INTERROGATORY NO. 26:**

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

22 **SUPPLEMENTAL RESPONSE:**

23 Plaintiffs’ counsel or representatives have been present for all of Jacuzzi’s inspections of  
24 the subject Walk-In Bathtub. In its response to Interrogatory No. 2, Defendant identified the  
25 individuals who were present for the inspections. **Defendant also refers Plaintiffs to Defendants’**  
26 **expert disclosures and reports.** Defendant has no other non-privileged information responsive to  
27 Plaintiff’s Interrogatory.

28 ///



1 Defendant objects to the Interrogatory to the extent that it requests any information  
2 protected by the attorney work product doctrine or materials protected by attorney-client privilege.

3  
4 DATED this 28<sup>th</sup> day of December, 2018.

5 SNELL & WILMER L.L.P.

6  
7 By: /s/ Joshua D. Cools  
8 Vaughn A. Crawford, Nevada Bar No. 7665  
9 Joshua D. Cools, Nevada Bar No. 11941  
10 Alexandria L. Layton, Nevada Bar No. 14228  
11 3883 Howard Hughes Parkway, Suite 1100  
12 Las Vegas, NV 89169

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

**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 SUPPLEMENTAL RESPONSE TO PLAINTIFF DEBORAH TAMANTINI'S FIRST SET OF INTERROGATORIES** 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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*Defendant Pro Per*

DATED this 28<sup>th</sup> day of December, 2018.

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

# EXHIBIT 220

005841

005841

# EXHIBIT 220

AARON & COMPANY	30 TURNER PLACE	PISCATAWAY	NJ	08855	732	752-8200
ABE'S DISCOUNT PLUMBING	950 SOUTH 9TH ST	MODESTO	CA	95351	209	521 8600
ABLE DISTRIBUTING	P.O. 1367	WAUSAU	WI	54402-1367	715-	842-2256
ACE PLBG, HTG & ELECTRICITY	601 SOUTH DELSEA DRIVE	VINELAND	NJ	08360	856	6929374
ACME SUPPLY - DO NOT USE	DIV PREMIER ALTERNATIVE RESRCE	MILWAUKEE	WI	53208	(blank)	476-3003
ACTION SUPPLY CO	5411 NW 15TH STREET	MARGATE	FL	33063	954	9717782
ACTIVE PLUMBING SUPPLY	216 RICHMOND STREET	PAINESVILLE	OH	44077	440	352 4411
AF SUPPLY CORP./NY	1000 SOUTH 2ND ST	HARRISON	NJ	07029	263	4436900
ALGOR PLBG & HTG SUPPLY	5220 W CERMAK ROAD	CICERO	IL	60804	708	6562066
ALLIED KITCHEN AND BATH	616 W OAKLAND PARK BLVD	FT. LAUDERDALE	FL	33311	954	564 1611
ALLIED PLBG & HTG SPLY CO, INC	6949 W. IRVING PARK ROAD	CHICAGO	IL	60634	773-	777-2670
APH GROUP	DBA ADVANTAGE KITCHEN & BATH	CHICAGO	IL	60731	547	965 4444
APR SUPPLY COMPANY	749 GUILFORD STREET	LEBANON	PA	17046	717-	274-5999
ARTEXA MEXICO S.A. DE C.V.	CANON GRANDE #7720 COL. LA	MEXICO	XX	64984	(blank)	6255000
AUBURN SUPPLY CO	3850 W. 167TH STREET	MARKHAM	IL	60426	708-	596-9800
B&C CUSTOM HARDWARE & BATH	32 TESLA	IRVINE	CA	92618	949	8596073
B&M PLUMBING, HEATING AND TILE	6810 ROUTE 53	WOODRIDGE	IL	60517	630	769-0700
BABCOCK LUMBER COMPANY	PO BOX 8348	PITTSBURGH	PA	15218	412	351-3515
BAKER-MITCHELL COMPANY, INC.	2135 THRIFT ROAD	CHARLOTTE	NC	28208	704	376-3521
BANNER PLUMBING SUPPLY CO., INC	1020 E. LAKE COOK ROAD	BUFFALO GROVE	IL	60089	847	520-6100
BATH CONCEPTS & SUPPLIES, INC.	1902-D BRITTANY PL	NEW BERN	NC	28560	252	6365957
BATH CREATIONS	389 WEST 1465 NORTH	CENTERVILLE	UT	84014	801	296-0585
BATH TECH	2304 W. NORDALE DRIVE	APPLETON	WI	54914	920-	380-0303
BATHCREST OF TUCSON	4244 N. 16TH. PLACE	TUCSON	AZ	85705	520	579-6535
BATHCREST OF WICHITA	11426 E PAWNEE	WICHITA	KS	67207	316	685-1627
BATHWRAPS BY LINERS DIRECT	401 S GARY AVE	ROSELLE	IL	60172	630	227-1737
BEACON SUPPLY	1125 BROAD AVE.	BELLE VERNON	PA	15012	724	9296600
BEESON DECORATIVE HARDWARE	P.O. BOX 1390	HIGH POINT	NC	27261	336-	821-2100
BELL'S SUPPLY CO. INC.	PO BOX 6386	WILMINGTON	DE	19804-0986	(blank)	(blank)
BENJAMIN SUPPLY INC	440 N 7TH AVENUE	TUCSON	AZ	85705	520-	623-3448
BRIGGS INC. OF OMAHA	14549 GROVER STREET	OMAHA	NE	68144	402	330-3400
BROCO SUPPLY	5267 EAST SIMPSON FERRY RD	MECHANICSBURG	PA	17050	877-	2244266
BUCKNER DISTRIBUTING	505 EAST CENTER ROAD	KOKOMO	IN	46902	765-	453-3022
BUILD.COM	DBA FAUCETDIRECT.COM	CHICO	CA	95928	800	864-2555
BUILDERS PBG DBA CRAWFORD SPLY	8150 LEHIGH AVE	MORTON GROVE	IL	60053	847	9671414
BY DESIGN GROUP, INC.	11 EAST RUNNION ROAD	SEQUIM	WA	98382	360	582-1843
CABINET WHOLESALERS	195 RAYMOND HILL RD	NEWMAN	GA	30265	770	683-2600
CALIFORNIA TILE KING CORP.	9906 LOWER AZUSA ROAD	EL MONTE	CA	91731	D26	279-9366
CAROLINA PLUMBING SUPPLY CO	PO BOX 1496	SENECA	SC	29679	864	888 3030

vns: M. DOMINGUEZ \*PLFTEX  
 date: 07/15/2019  
 csr: V. Kubat CSR 6360  
 1

CARR PLUMBING SUPPLY INC	2611 SOUTH GALLATIN ST	JACKSON	MS	39204	601-	352-3999
CARR SUPPLY, INC.	1415 OLD LEONARD AVENUE	COLUMBUS	OH	43219	414-	252-7883
CCS INDUSTRIAL SALES, INC	GALLERIA HOME CENTER, INC	PICAYUNE	MS	39466	1740	798-5400
CENTRAL ARIZONA SUPPLY	208 S. COUNTRY CLUB DR.	MTA	AZ	85210	480	8345817
CENTRAL SUPPLY COMPANY	DO NOT MAIL-EDI	INDIANAPOLIS	IN	46206	260-	745-4961
CENTURY EVERGLADES LLC	DBA EVERGLADES DESIGN CENTER	MIAMI	FL	33144	305	261-1155
CHAPMAN SUPPLY, DIV OF ROCHE	124 NORTHERN BLVD	CLARKS SUMMIT	PA	18411	570	586-1611
CITY PLUMBING SUPPLY, INC.	P. O. BOX 2665	VICTORIA	TX	77902	361-	572-3191
CLARK HARDWARE	1202 CLARK BLVD	LAREDO	TX	78040	956-	723-2241
CLINTON ELECTRICAL & PLUMBING	PO BOX 748	WILMINGTON	OH	45177	937-	382-3804
CLYDE HARDWARE	4808 N 15TH ST	PHOENIX	AZ	85014	602	264 2106
COASTAL BATH & KITCHEN	133 SOUTHERN BLVD	SAVANNAH	GA	31416	(blank)	238-3400
COBURN SUPPLY COMPANY, INC	PO BOX 2177	BEAUMONT	TX	77704	985	6435262
CONSOLIDATED SPY OF DES MOINE	600 HOLCOMB	DES MOINES	IA	50305	515-	283-2244
CONSOLIDATED SUPPLY CO.	PO BOX 5788	PORTLAND	OR	97128	503	620-7050
CONSUMERS SUPPLY	1110 WEST LAKE ST	CHICAGO	IL	60607	312	6666080
CONSUMERS WAREHOUSE	717 BROADWAY AVENUE	HOLBROOK	NY	11741	631	5633200
CONTRACTORS PIPE & SUPPLY CORP	24895 N INDUSTRIAL	FARMINGTON HILLS	MI	48335	248	888-5840
CORAL GABLES PLUMBING SUPPLY	13101 SW 87TH AVE	MIAMI	FL	33176	305	254-3434
CRAWFORD SPY	8150 LEHIGH AVE	MORTON GROVE	IL	60053	847	967-1414
CREGGER CO.	PO BOX 2197	COLUMBIA	SC	29202	803-	217-0710
CRESCENT & SPRAGUE SUPPLY CO.	P.O. BOX 1027	MARIETTA	OH	45750-2413	740	373-2331
DAHL PLUMBING OF SANTA FE	1000 SILER PARK LANE	SANTA FE	NM	87505	505	4711811
DAKOTA SUPPLY GROUP	PO BOX 6018	HELENA	MT	59604	406	4434012
DAKOTA WHOLESALE PLBG & ELECT	DBA S.G. SWENSON & SONS INC.	SIOUX FALLS	SD	57101	605	3349600
DAVIDA'S KITCHEN & TILES	435 E DIAMOND AVE STE A	GAITHERSBURG	MD	20877	(blank)	361-9331
DEALERNET	60 ELMIRA ST.	SAN FRANCISCO	CA	94124	415-	468-1414
DELAWARE VALLEY PLMBG SUPPLY	253 TERRACE BLVD	VOORHEES	NJ	08043	856-	435-6666
DIXIELINE'S CLASSIC COLLECTION	7595 TECHNOLOGY WAY STE 500	DENVER	CO	80237	858-	695 9712
DONGLIM HOMES CO. LTD	113-1 SAMSUNG-DONG	SEOUL, KOREA	XX	135-090	.22	563-6106
DON'S SUPPLY CO., INC.	851 MCARTHUR STREET	MANCHESTER	TN	37335	931	7286040
DORMAN PLUMBING SUPPLY-(BATH)	DO NOT USE	KANSAS CITY	MO	64108	816	8424656
DOUG JOHNSON & ASSOCIATES INC.	1387 SHOTGUN ROAD	SUNRISE	FL	33326	954	423-2250
EDELMAN PLUMBING SUPPLY, INC.	26201 RICHMOND ROAD	BEDFORD HEIGHTS	OH	44146	216	591-0150
EIMPROVEMENT LLC	DBA EFAUCETS.COM	RACINE	WI	53402	800	891-0896
ELECTRICAL MATERIALS CO. (EMC)	1236 FIRST AVE. SOUTH	FORT DODGE	IA	50501	515	573-7166
ELITE PLUMBING	2335 WASHINGTON RD., SUITE 102	CANONSBURG	PA	15317	724	745-5022
EMPIRE BATH AND KITCHEN	600 STATE STREET	UTICA	NY	13502	315	7330545
EXCEL PLUMBING	659 S. VAN NESS AVE	SAN FRANCISCO	CA	94110	415	863-8889

EXPRESS PIPE & SUPPLY CO., INC	1235 S. LEWIS STREET	ANAHEIM	CA	92805	714	635-3131
F.W. WEBB COMPANY	160 MIDDLESEX TURNPIKE	BEDFORD	MA	01730	781	761 7353
FACTORY BUILDER STORES	8700 FALLBROOK	HOUSTON	TX	77064	281	477 6464
FARREY'S WHOLESALE HARDWARE CO	PO BOX 619500	N. MIAMI	FL	33261-9500	305	9475451
FERGUSON ENTERPRISES	PO BOX 9285	HAMPTON	VA	23670	541	7734223
FERGUSON FROSTPROOF DC	1225 SCENIC HWY 5	FROSTPROOF	FL	33843	863	635 8340
FERGUSON SUPPLY	345 PLEASANT ST SW	GRAND RAPIDS	MI	49503	616	4561688
FERGUSON TRAVERSE SUPPLY CO	DO NOT USE	TRAVERSE CITY	MI	49684	231	9473580
FIRSTSTREET BOOMERS & BEYOND	1998 RUFFIN MILL ROAD	COLONIAL HEIGHTS	VA	23834	804	451-2305
FIXTURES N' FAUCETS	DO NOT USE	CAN MATEO	CA	94401	650	344-2828
FREEDOM SUPPLY COMPANY, INC.	DO NOT USE	EAST FREEDOM	PA	16637	814-	6953450
FRIEDMAN'S APPLIANCE CENTER	1827 E SPRING ST	LONG BEACH	CA	90806	562	989-7756
FRONTIER SUPPLY COMPANY	981 VAN HORN ROAD	FAIRBANKS	AK	97701	907	374-3500
GATEWAY SUPPLY	PO BOX 2826	COLUMBIA	SC	29202	803	771 7160
GENERAL PLUMBING SUPPLY CO,INC	6085 BRENTWOOD BLVD.	BRENTWOOD	CA	94513	(blank)	(blank)
GENERAL PLUMBING SUPPLY, INC.	980 NEW DURHAM RD	EDISON	NJ	08817	732	248-5650
GENERAL PLUMBING SUPPLY, INC.	1530 SAN LUIS ROAD	WALNUT CREEK	CA	94596	925	9394622
GEORGE MORLAN PLUMBING	2222 N.W. RALEIGH ST.	PORTLAND	OR	97210	(blank)	(blank)
GOODIN COMPANY	2700 NORTH 2ND STREET	MINNEAPOLIS	MN	55411	612	588-7811
GORMAN/PENSACOLA #255	4149 WAREHOUSE LANE	PENSACOLA	FL	32505	850-	434-5669
GORMAN/SARASOTA-HAJOCA	5757 MCINTOSH BLVD	SARASOTA	FL	34233	941-	921-7971
GRAY-HODGES CORPORATION	103 JESSAMINE STREET	KNOXVILLE	TN	37901	865-	522-3113
GROVE SUPPLY INC	P.O. BOX 3029	WARMINSTER	PA	18974-3029	215-	672-8666
H & S SUPPLY CO., INC.	229 NORTH ST AUGUSTINE ROAD	VALDOSTA	GA	31601	229	2446942
H.A. CAMPBELL SUPPLY CO.	2671 SOUTH DIVISION AVE	GRAND RAPIDS	MI	49507	616	243-0144
H.L. CLAEY'S & COMPANY	PO BOX 1087	WARREN	MI	48090	-86-	264-2561
HAJOCA CORP.	P.O. BOX 842912	BOSTON	MA	02284-2912	404	3516351
HAJOCA CORP	444 W 21ST ST SUITE 104	TEMPE	AZ	85282	800	533 3511
HAJOCA CORPORATION	BATON ROUGE SERVICE CENTER	BATON ROUGE	LA	70821-0951	877-	269-0044
HARMAN APPLIANCE	334 N. 115TH STREET	OMAHA	NE	68154	402	3341883
HARRY COOPER SUPPLY - BATH	605 SHERMAN	SPRINGFIELD	MO	65802	417	8658392
HD SUPPLY	4828 W. 145TH ST.	HAWTHORNE	CA	90250	310	9700007
HD SUPPLY - PLUMBING/HVAC	PO BOX 4933	ORLANDO	FL	32802-4933	937	5482181
HEIECK/CONCORD-HAJOCA	PO BOX 52172	PHOENIX	AZ	85072 2172	480	9683509
HEIECK/SACRAMENTO-HAJOCA	PO BOX 52172	PHOENIX	AZ	85072 2172	480-	968-3509
HEIECK/SAN FRANCISCO-HAJOCA	PO BOX 52172	PHOENIX	AZ	85072	480	321-8802
HENRY PLUMBING SUPPLY	1616 KINGSHIGHWAY	ST LOUIS	MO	63110-2230	314	7733636
HERMITAGE ELECTRIC SUPPLY	500 LAFAYETTE ST.	NASHVILLE	TN	37202	615	2444167
HIRSCH PIPE & SPLY	15025 OXNARD ST. SUITE 200	VAN NUYS	CA	91411	818	7560908



HISER SUPPLY CO	11900 MCMULLEN HIGHWAY	CUMBERLAND	MD	21501-1289	301	7292800
HIM WALLACE, INC.	210 THE BLUFFS STE A	AUSTELL	GA	30168	770	876-8699
HODGES SUPPLY	4281 HOLIDAY DR	FLINT	MI	48507	810	239-9421
HODGES SUPPLY COMPANY	1730 EAST HIGHWOOD	PONTIAC	MI	48340	248-	858-2605
HOLMES PLBG & HTG SUPPLY	P.O. BOX 460	KEARNEY	NE	68848	308	2341922
HOLT SUPPLY COMPANY	2441 S MAIN ST	BLOOMINGTON	IL	61702	309-	820-0566
HOME & STONE	1663 CONEY ISLAND AVE	BROOKLYN	NY	11230	430	787-1000
HOME DECOR PRODUCTS, INC.	245 BELMONT DRIVE	SOMERSET	NJ	08873	832-	412 9700
HOME EVOLUTION(CHERRY HILL)LLC	2791 ROUTE 73 SOUTH	MAPLE SHADE	NJ	08052	856	206-9539
HOME LIVING SOLUTIONS	DO NOT USE	TEMECULA	CA	92590	(blank)	760-7350
HOME MODIFICATION SOLUTIONS	P.O. BOX 10541	BROOKSVILLE	FL	34603	866	939-6637
HOME RESORT LIVING INC.	4500 HAWKINS STREET NE	ALBUQUERQUE	NM	87109	505	765-2600
HOME SAFETY BATH	448 DUBOIS ST	SAN RAFAEL	CA	94901	415	456-0233
HUTCHINSON PLUMBING SUPPLY	PO BOX 423	MATAWAN	NJ	07747	.32-	5666000
INDEPENDENT LIVING USA, LLC	13900 JOG ROAD STE 203252	DELRAY BEACH	FL	33446	561	859-1010
IRA WOOD & SONS, INC.	DO NOT USE	OWENSBORO	KY	42301	800	472 9923
ISLAND PLBG SUPPLY	1956 McDONALD AVE	BROOKLYN	NY	11223	718	9987000
J&H AITCHESON-HAJOCA	315 SOUTH ST	LEESBURG	VA	20175	703	771 9500
J.H. LARSON COMPANY	10200 51ST AVENUE NORTH	PLYMOUTH	MN	55442	763	545-1717
J.W. WOOD CO., INC.	P.O. BOX 991600	REDDING	CA	96099-1600	530	222 0423
JOHNSTON SUPPLY, INC.	P.O. BOX 408	MARION	OH	43301-0408	740	383-5291
KEELING SUPPLY	PO BOX 15310 GMF	NO. LITTLE ROCK	AR	72231	501	9454511
KEIDEL SUPPLY CO., INC.	2026 DELAWARE AVENUE	CINCINNATI	OH	45212	513	351 1600
KELLER SUPPLY INC.	DO NOT USE	METAIRIE	LA	70010	504	828 4949
KELLY'S PIPE AND SUPPLY	2124 INDUSTRIAL ROAD	LAS VEGAS	NV	89114	(blank)	(blank)
KESSLER INDUSTRIES, INC.	500 GREEN STREET	WOODBIDGE	NJ	07095	973	6842130
KOVAL BLDG AND PLBG - (BATH)	PO BOX 429	GRANVILLE	WV	26534	304	5995050
LAMI WOOD PRODUCTS	#1 LAMI INDUSTRIAL DRIVE	ST. CHARLES	MO	63304-5500	636	441 4430
LCR CORPORATION-BATON RGE DIV	6232 SIEGEN LANE	BATON ROUGE	LA	70821	25	2929910
LEE BUILDERS SUPPLY CORP	4002 HERMITAGE RD - DO NOT USE	RICHMOND	VA	23227	804	264-9797
LEE L. DOPKIN-HAJOCA	P.O. BOX 951	BATON ROUGE	LA	70821	410	4663500
LEEP'S SUPPLY COMPANY INC	8001 TYLER STREET	MERRILLVILLE	IN	46410	219	7565337
LEWIS SMITH SUPPLY CORPORATION	PO BOX DRAWER 6236	DOTHAN	AL	36302	334	7935088
LOWES COMPANIES CANADA ULC	EPCA	NO. WILKESBORO	NC	28697	(blank)	(blank)
LOWES CORP-TRADE PAYABLES	LOWES COMPANIES, INC.	NO. WILKESBORO	NC	28656	1	6582121
LUTE SUPPLY, INC.	3920 US HIGHWAY 23	PORTSMOUTH	OH	45662	740	353-1447
LUTER SUPPLY INC. OF TYLERTOWN	104 SOUTH ADAMS STREET	TYLERTOWN	MS	39667	601	8763455
LUXURY BATH OF TAMPA BAY	33851 US HIGHWAY 19N	PALM HARBOR	FL	34684	727	786-6400
LUXURY BATH OF TEXAS	3320 N MIDKIFF RD	MIDLAND	TX	79705	(blank)	(blank)

LUXURY BATH-TUB DOCTOR	453-1 COLUMBIA IND. BLVD.	EVANS	GA	30809	706	863-6572
LUXURY PLUMBING PLUS	9341 GRAND ESTATES WAY	BOCA RATON	FL	33496	(blank)	(blank)
LUXURY REMODELING & BATH	245 ROSELAWN AVE. E	MAPLEWOOD	MN	55117	651	330-6414
M. COOPER SUPPLY	8605 SPRING LAKE DRIVE	MOKENA	IL	60448	708	444-1600
MALLUS SUPPLY COMPANY C/O	THE PLUMBING STUDIO & MORE	STUART	FL	34994	772	678-7070
MARYLAND PIPE & SUPPLY	100 FORD DRIVE	HANCOCK	MD	21750	301	678-2970
MCARDLE & WALSH, INC.	PO BOX 503	TIMONIUM	MD	21094-0503	410	252-8700
MCCBARY SUPPLY CORPORATION	3057 LEEMAN FERRY ROAD	HUNTSVILLE	AL	35801	256	883-1790
MCREY'S, LLC	PO BOX 2644	SPARTANBURG	SC	29304	864	582 8106
MERIDIAN PLUMBING	1999 E SAGINAW HIGHWAY	EAST LANSING	MI	48823	517	339-6300
MERRITT SUPPLY, INC	1948 ROCKFORD STREET	MOUNT AIRY	NC	27030	336	786 4165
METRO BUILDERS SPLY-DO NOT USE	DBA METRO APPLIANCES AND MORE	OKLAHOMA CITY	OK	73127	405	751-8833
METRO BUILDERS SUPPLY	DBA METRO APPLIANCES AND MORE	TULSA	OK	74146	918	622-7692
MICHAEL WAGNER AND SONS	2321 S. FOSTER AVENUE	WHEELING	IL	60090	847	398-5308
MICHEL SALES COMPANY	2805 FAIRVIEW AVENUE NORTH	ROSEVILLE	MN	55113	651	4877272
MID CITY SUPPLY CO. INC	940 INDUSTRIAL PARKWAY	ELKHART	IN	46516	574	2945551
MIDDLESEX SUPPLY CO.	180 MAIN ST EXTENSION	MIDDLETOWN	CT	06457	860	347 2503
MISC REGION 4	OVERRIDDEN AT ENTRY	XX	XX	XXXX	(blank)	(blank)
MISC. HOUSE ACCOUNT	14525 MONTE VISTA AVE	CHINO	CA	91710	(blank)	(blank)
MISSISSIPPI COAST SUPPLY	241 CAILLAVET STREET	BILOXI	MS	39530	228	432-2617
MOE DISTRIBUTORS INC	55 ABBETT AVENUE	MORRISTOWN	NJ	07960	373-	539-8200
MOORE SUPPLY COMPANY	PO BOX 951	BATON ROUGE	LA	70821	225	7561360
MORRISON SUPPLY COMPANY	311 EAST VICKERY BLVD	FT WORTH	TX	76104-1385	325-	677-8174
MOUNTAIN SUPPLY CO	2101 MULLAN RD	MISSOULA	MT	59808	406	543 8255
MOUNTAIN SUPPLY CO	5509 KING AVE E	BILLINGS	MT	59101	406	259 2909
MWI PLBG WHOLESale	PO BOX 5169	OCEANSIDE	CA	92052-5169	760	7263996
N & S SUPPLY CORP	205 OLD ROUTE 9	FISHKILL	NY	12524	845	8966291
NEENAN COMPANY	5701 BLUE PARKWAY	KANSAS CITY	MO	64130	816	923 1300
NEW YORK KITCHENS AND BATHS	4955 BROADWAY	DEPEW	NY	14043	718-	686-0010
NICOLAS VENTURES INC.	719 W POWELL LANE	AUSTIN	TX	78753	512	832-0013
NOLAND COMPANY	PO BOX 1127	DAYTON	OH	45439	757-	928-9000
NORTHEASTERN SUPPLY COMPANY	8323 PULASKI HIGHWAY	BALTIMORE	MD	21237	410	5740010
NORTHERN CENTRAL DISTRIBUTING	4250 WEST SHAW AVE	FRESNO	CA	93722	559	276-1500
NU-WAY SUPPLY KITCHEN & BATH	5227 AUBURN ROAD	UTICA	MI	48317	586	731-4000
OVERKAMPF SUPPLY, INC.	714 E. 2ND. STREET	ODESSA	TX	79761	432	337-7345
OLDE TYME HARDWARE	1117 N CARBON STREET	MARION	IL	62959	618-	993-9145
PACIFIC PLUMBING SUPPLY CO LLC	7115 W. MARGINAL WAY SW	SEATTLE	WA	98106	206-	762-5920
PACIFIC SALES KITCHEN & BATH	ATTN: ACCOUNTS PAYABLE	TORRANCE	CA	90505	310	357 2168
PARK SUPPLY CO., INC.	PO BOX 11880	HUNTSVILLE	AL	35814	256	8374036



PASS WHOLESALE SUPPLY, INC.	306-10 FEITAS AVE.	PASS CHRISTIAN	MS	39571	601	4524616
PATETE K&B	1105 WASHINGTON AVE	CARNEGIE	PA	15106	800-	255-5099
PENN SUPPLY CO., INC.	618 E. STATE STREET	TRENTON	NJ	08609	609	3941151
PLUMBERS & FACTORY SUPPLY	2645 MORSE ROAD	COLUMBUS	OH	43231	1	4782645
PLUMBERS SUPPLY CO OF ST LOUIS	12012 MANCHESTER ROAD	ST. LOUIS	MO	63131	314	984 0440
PLUMBER'S WHOLESALE SUPPLY	24377 WEST 8 MILE ROAD	DETROIT	MI	48219	313	537-5400
PLUMBING DISTRIBUTORS INC.	PO BOX 1167	LAWRENCEVILLE	GA	30046	770	963-9231
PLUMBING MATERIALS SUPPLY INC	PO BOX 2041	BEAVERTON	OR	97075	503	681-8221
PREMIER BATH LIGHTING	1765 W MAPLE	TROY	MI	48084	248	3984560
QUARLES SUPPLY CO.INC.	1616 CALHOUN ROAD	GREENWOOD	SC	29649	864	2293638
R. JACOBS FINE PLUMBING & HRDWR	8613 GLENWOOD AVENUE SUITE 103	RALEIGH	NC	27617	919	600-9579
R.A. MANLEY & SONS	PO BOX 548	PALMER	MA	01069	413	283-6981
RAMAPO WHOLESALE INC	54 B KENNEDY DRIVE	SPRING VALLEY	NY	10977	845	4258400
RAMCO	3013 KATE BOND	MEMPHIS	TN	38133	(blank)	(blank)
RAMPART PLUMBING	1801 NORTH UNION BLVD	COLORADO SPRINGS	CO	80909	719	471 7200
REMODEL WORKS BATH & KITCHEN	12147 KIRKHAM RD # B	POWAY	CA	92064	858	602 1069
REMODELERS SPY CNTR/STUDIO 41	2500 N PULASKI RD	CHICAGO	IL	60639	773-	235-2500
REPUBLIC PLBG SUPPLY CO.	890 PROVIDENCE HWY	NORWOOD	MA	02062	.81	7623900
RICHARDS PLUMBING-HAUOCA	DO NOT USE	HOLLAND	MI	49423	616-	393-6184
RIDGEWOOD CORP.	PO BOX 768	MAHWAH	NJ	07430	.01	252-8000
ROBINSON PLUMBING & HEATING CO	PO BOX 2071	FALL RIVER	MA	02722	508	6757433
RSSA HOME IMPV CTR	122 W BROADWAY	ANAHEIM	CA	92805	(blank)	(blank)
RUBENSTEIN SUPPLY	PO BOX 8370	OAKLAND	CA	94662	510	444-6614
RUEHLEN SUPPLY COMPANY	PO BOX 778	CONCORD	NC	28026-0778	704	788-2180
RUNDLE-SPENCE MFG CO.	PO BOX 510008	NEW BERLIN	WI	53151	262	7823000
RUSSELL'S DESIGN CENTER, INC.	2075 MCDONALD AVE	BROOKLYN	NY	11223	718	645-3139
S.F. INT'L BLDG SUPPLY	2442 SAN BRUNO AVE	SAN FRANCISCO	CA	94134	415	822 1838
SAMON'S TIGER STORES INC.	2511 MONROE NE	ALBUQUERQUE	NM	87110	505	8844615
SATELLITE CATCHERS INC -(BATH)	PO BOX 547	CLARKSTON	WA	99403	208	7460707
SCHUMACHER & SEILER INC	10 W. AYLESBURY ROAD	TIMONIUM	MD	21093	410	5612461
SEYMOURS THE FINISHED BATH INC	3121 PENN AVE	PITTSBURGH	PA	15201	412	261-2050
SHACK GROUP LLC	DBA SHACK DESIGN GROUP	DAVIE	FL	33328	954	434 3267
SIERRA PLUMBING SUPPLY, INC.	11423 LABARR MEADOWS ROAD	GRASS VALLEY	CA	95949	530	477-5168
SIMPKINS COMPANY	4448 W RANCH ROAD 1431	KINGSLAND	TX	78639	937	207 4544
SISBRO DECORATIVE PLUMBING	242 COMMERCIAL STREET	SUNNYVALE	CA	94085	408	720-0327
SMARDAN SUPPLY COMPANY	17273 MT. HERRMANN STREET	FOUNTAIN VALLEY	CA	92708	800	576-6912
SNYDER DIAMOND, INC.	1399 OLYMPIC BOULEVARD	SANTA MONICA	CA	90404-3776	310	450 1000
SOUTHERN PIPE & SUPPLY	P.O. BOX 6037	MOBILE	AL	36606	251	4796524
SOUTHERN PLUMBING & HEATING	1947 GEORGE WASHINGTON MEM HWY	YORKTOWN	VA	23693	757	595-7231

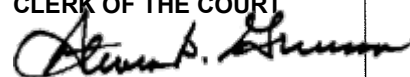
SOUTHLAND PLUMBING SUPPLY	2321 N. ARNOULT ROAD	METAIRIE	LA	70001	504	8358411
SPA AND DECK CREATIONS	19 HOLLOW HILL RD	BLAIRSVILLE	GA	30512	706-	745-0630
SPA CRAFTERS	2730 N. LOOP 1604 E.	SAN ANTONIO	TX	78232	210	4906806
STANDARD PLUMBING SUPPLY	P.O. BOX 708490	SANDY	UT	84070	(blank)	(blank)
STAR SUPPLY	410 SYNDICATE ST. N	ST. PAUL	MN	55104	(blank)	6443668
STATE LINE SUPPLY CO. INC.	115 LAFAYETTE RD.	SEABROOK	NH	03874	603	4743421
STREATOR PIPE & SUPPLY	410 BEDLOE LANE	ARROYO GRANDE	CA	93420	1822	0100851
SUN CITY WALK IN TUBS, INC.	8550 W DESERT INN STE 102-551	LAS VEGAS	NV	89117	702	645-2284
SUNEX INTL. INC	1401 GREEN ROAD	POMPAÑO BEACH	FL	33064	954-	418-2186
T. OKI TRADING LTD	DBA HAWAII HOME EXPO	HONOLULU	HI	96819	808	695-3976
T.A.GENTRY	2096 112TH	HOLLAND	MI	49424	616	3921535
T.W. SMITH CO	1200 CAMPBELL AVE	SAN JOSE	CA	95126	(blank)	(blank)
TALLMAN COMPANY OF OSAGE BEACH	5555 OSAGE BEACH PARKWAY	OSAGE BEACH	MO	65065	573	348-1770
TALLMAN COMPANY OF SEDALIA, INC	1400 N MISSOURI (MAIN BRANCH)	SEDALIA	MO	65302	660-	826-6001
THE BRENNER COMPANY	PO BOX 5540	SOMERSET	NJ	08875-5540	732	873-1500
THE LOVELL COMPANY	1970 ALEXANDER ST	SALT LAKE CITY	UT	84119	801	975-7053
THE PLUMBING PLACE	5678 FRUITVILLE ROAD	SARASOTA	FL	34234	941	3785678
THV HOLDINGS LLC	PO BOX 39219	LOUISVILLE	KY	40233	502	968-2020
TODD PIPE & SUPPLY - BUELLTON	P.O. BOX 1872	BUELLTON	CA	93427	805	688-3960
TRENDZ, INC	700 E. DUNNE AVE SUITE D	MORGAN HILL	CA	95037	408	778 5282
TRITON STONE - LOUISVILLE	10801 PLANTSIDE DRIVE	LOUISVILLE	KY	40299	502	267-9303
TRITON STONE GROUP - HARAHAH	6131 RIVER ROAD	HARAHAH	LA	70123	504	738-2228
TRITON STONE OF KNOXVILLE	220 TECH CENTER DRIVE	KNOXVILLE	TN	37912	615	613-0440
TRUMBULL INDUSTRIES	PO BOX 30	WARREN	OH	44482	330	393-6624
TUBS-THE ULTIMATE BATH STORE	80 THE EAST MALL	ETOBICOKE	ON	M8Z5X1	416-	640-8827
TUBZ	4796 DAVENPORT PLACE	FREMONT	CA	94538	209-	845-9115
TUBZ	830 NATIONAL DRIVE, SUITE 120	SACRAMENTO	CA	95834	916	5759100
UNIVERSAL PLBG & HTG SUPPLY	1829 S. STATE STREET	CHICAGO	IL	60616	312	2254549
UNIVERSAL PLUMBING SUPPLY	14511 W ELEVEN MILE RD	OAK PARK	MI	48237	248-	542-3888
V.P.SUPPLY CORP	PO BOX 23868	ROCHESTER	NY	14692	585	2720110
W.S. TOWNSEND COMPANY	106 E. OLIVER DRIVE	MARSHALL	MI	49068-1798	269	781-5131
WESTAR CONTRACT KITCHEN & BATH	9025 S. KYRENE RD.	TEMPE	AZ	85284	602	271 0100
WESTERN NEVADA SUPPLY	950 S. ROCK BLVD.	SPARKS	NV	89431	(blank)	(blank)
WEXFORD SUPPLY	3014 WEXFORD ROAD	WEXFORD	PA	15090	724-	935-0740
WHOLESALE DIST OF ALASKA(BATH)	2548 N POST RD	ANCHORAGE	AK	99501	907	277 8584
WILKINSON SUPPLY COMPANY	3300 BUSH STREET	RALEIGH	NC	27609	919	834-0395
WILLIAMS DISTRIBUTING COMPANY	658 RICHMOND NW	GRAND RAPIDS	MI	49501-2585	616	7710505
WINNELSON	P.O. BOX 1127	DAYTON	OH	45401-1127	937	222-9491
WINSTON WATER COOLER, LTD.	6626 OAKBROOK BLVD.	DALLAS	TX	75235	214	748-1484

WISEWAY, INC.	7103 TURFWAY ROAD	FLORENCE	KY	41042-2924	859	283-9473
WORLY PLUMBING SUPPLY, INC.	400 GREENLAWN	COLUMBUS	OH	43223	614	445-1000
YORGEY SUPPLY COMPANY	4185 INDEPENDENCE DRIVE	SCHNECKSVILLE	PA	18078	610	7993211
YOW MERCH.PAYABLES	PO BOX 105843	ATLANTA	GA	30348	225	215-9500

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

10 **DISTRICT COURT**  
11 **CLARK COUNTY, NEVADA**

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

16 Plaintiffs,

17 vs.

18 FIRST STREET FOR BOOMERS & BEYOND,  
INC.; AITHR DEALER, INC; HALE BENTON,  
19 individually; HOMELICK, LLC; JACUZZI  
INC. doing business as JACUZZI LUXURY  
20 BATH; BESTWAY BUILDING &  
REMODELING, INC.; WILLIAM BUDD,  
21 individually and as BUDDS PLUMBING; DOES  
1 through 20; ROE CORPORATIONS 1 through  
22 20; DOE EMPLOYEES 1 through 20; DOE  
MANUFACTURERS 1 through 20; DOE 20  
23 INSTALLERS 1 through 20; DOE  
CONTRACTORS 1 through 20; and DOE 21  
24 SUBCONTRACTORS 1 through 20, inclusive,

25 Defendants.

26 AND RELATED CASES  
27  
28

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

**DEFENDANT JACUZZI INC. DOING  
BUSINESS AS JACUZZI LUXURY  
BATH'S EVIDENTIARY HEARING  
CLOSING BRIEF**

098500  
WEINBERG WHEELER  
HUDGINS GUNN & DIAL




005850

1 Defendant Jacuzzi Inc. dba Jacuzzi Luxury Bath ("Jacuzzi"), by and through its  
2 attorneys, the law firm of Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC, hereby submits its  
3 Evidentiary Hearing Closing Brief. This Brief is based on the papers and pleadings on file  
4 herein, the evidence admitted at the Evidentiary Hearing, and the following Memorandum of  
5 Points and Authorities.

6 Dated this 2 day of December, 2019.

7 WEINBERG, WHEELER, HUDGINS,  
8 GUNN & DIAL, LLC

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17 *Jacuzzi Luxury Bath*  
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## MEMORANDUM OF POINTS AND AUTHORITIES

### INTRODUCTION

Through a week of testimony, multiple witnesses flown in from out-of-state, and a series of pre- and post-hearing briefs, the evidence supporting an evidentiary sanction is no more compelling than when we started this time consuming and expensive process. Before the evidentiary hearings began, Jacuzzi had supplemented its discovery and by doing so acknowledged that it had identified discoverable documents that had not been disclosed earlier in the discovery period. This was not the issue that required an evidentiary hearing. This much was admitted before we started. Plaintiffs demanded the expanded scope of hearing because they wanted to prove that Jacuzzi intentionally and willfully violated discovery orders. There was no testimony rising to this level, and there is no basis to impose the ultimate sanction of denying Jacuzzi a defense.

More importantly for the purposes of sanctions, Jacuzzi has fully cooperated to ensure Plaintiffs have not and will not be prejudiced by the late disclosure of documents. Jacuzzi did not oppose Plaintiffs request for a trial continuance, and there will now be no trial until October 2020. Discovery is still open and to the extent that discovery is proper in relation to any new issue raised by the supplemental productions, Plaintiffs have a reasonable opportunity to accomplish it. The legal prejudice required to support the draconian discovery sanctions requested does not exist here.

Despite the constantly expanding scope of discovery and changing defect theories, Jacuzzi has tried to respond to Plaintiffs' discovery requests in good faith and consistent with the Court's guidance on Jacuzzi's objections. When deficiencies were discovered, Jacuzzi supplemented to correct them. Important for the Court's decision here is the undisputed fact that every customer complaint or alleged incident that Plaintiffs rely upon to argue for severe discovery sanctions was *produced by Jacuzzi* by way of supplement. Evidence was at most produced late -- it was not hidden or destroyed. Jacuzzi should not be harshly penalized under such circumstances.





1 The issue complained of is remedied: Plaintiffs have the documents they wanted, have  
2 the opportunity to search themselves in the forensic searches ordered by the court, and have  
3 already deposed witnesses across the country in connection with many of the new complaints  
4 identified in the supplemental discovery. Plaintiffs have had an opportunity to supplement these  
5 documents and depositions to their experts.

6 Punishing Jacuzzi, merely for the sake of punishment, is not called for under these  
7 circumstances. Fundamental notions of due process require that sanctions for discovery abuses  
8 be just, and that the sanctions, if awarded, relate to the claims which were at issue in the  
9 discovery order violated. Even if the Court feels that punishment is necessary, which Defendant  
10 disputes, the circumstances cannot justify striking Jacuzzi's Answer, and do not warrant the  
11 severe "lesser" sanction of striking Jacuzzi's liability defense.

12 While Plaintiffs argue for fees and costs spent in prosecuting this discovery issue, they  
13 have spent inordinate and unnecessary expense trying to avoid a trial on the merits. Ultimately,  
14 the hearing was a waste of time and resources. All documents Plaintiffs base their arguments on  
15 were produced PRIOR to the filing of their latest motion and request for the evidentiary hearing.  
16 Any sanction imposed by the court should be narrowly tailored to relate to the discrete issue of  
17 late production and any actual prejudice suffered.

## 18 **I. SUMMARY OF FACTS**

### 19 **A. SUMMARY OF THE CASE**

20 At the beginning of this litigation, Plaintiffs claimed that Ms. Cunnison's incident was  
21 caused by the Jacuzzi® 5229 Walk-In Tub's ("the Tub") failure to drain. Specifically, the  
22 original Complaint filed February 3, 2016 alleged that the incident occurred when Decedent  
23 "attempted [sic] exit the Jacuzzi walk-in tub by pulling the plug to let the water drain, allowing  
24 her to open the Jacuzzi walk in tub's door and exit. The drain would not release, trapping  
25 Decedent in the tub for 48 hours."<sup>1</sup> Plaintiffs maintained this theory of liability in the First and  
26 Second Amended Complaints. When testing of the tub unequivocally proved that claim to be  
27 meritless, Plaintiffs changed their theory of liability to vague references regarding the grab bars

28 <sup>1</sup> See Plaintiffs' Complaint, ¶ 24.



1 and the inward opening door. To date, Plaintiffs have still failed to answer direct discovery  
2 requests and articulate a discrete defect in the tub because they do not know whether Ms.  
3 Cunnison fell or slipped off the seat, and are simply speculating as to how Ms. Cunnison became  
4 stuck in the tub.

5 While Plaintiffs have falsely represented time and again that their claims have not  
6 materially changed, it is indisputable that this litigation has changed is no longer based on the  
7 original allegation that Ms. Cunnison was trapped due to a drain issue. Jacuzzi, in response to the  
8 vague claims that were first asserted, sought discovery in an effort to direct its initial searches.  
9 Jacuzzi asked for an explanation of Plaintiffs' theory of liability, and based its searches upon the  
10 terms included in Plaintiffs' discovery responses:

11 INTERROGATORY NO. 21:

12 With respect to your allegations that Jacuzzi was negligent, please provide a full  
13 and complete description of each negligent act and/or omission by Jacuzzi, and an  
14 explanation of how each alleged negligent act and/or omission caused Decedent's  
15 death.

16 ANSWER TO INTERROGATORY NO. 21:

17 Objection, this requires Plaintiff to divulge information protected by attorney-  
18 client and work-product privileges. Plaintiff further Objects as this Interrogatory  
19 premature. Plaintiff will identify any experts and will produce and identify any  
20 experts and their reports and/or investigations pursuant to 16.1(a)(2).  
21 Notwithstanding and without waiving said objection, Plaintiff responds as  
22 follows: Jacuzzi tub advertised and sold to elderly, obese folks with health  
23 limitations and health problems. This inward opening door creates a safety  
24 hazard, if a medical incident or a simple event such as a fall occurs while inside  
25 the tub, **the high tub walls, narrow doorway, and the inward-opening door**  
26 found on the Jacuzzi Walk-in tubs made it extremely difficult for family members  
27 or emergency medical teams to get people out. **A grab bar should have been**  
28 **installed. . . .**

(Plaintiff Deborah Tamantini's First Supplemental responses to Jacuzzi's First set of  
Interrogatories, 16:10-27, Exhibit A) (emphasis added). Accordingly, in an effort to ensure that  
it was producing what Plaintiffs wanted, Jacuzzi's original searches were based upon Plaintiffs'  
discovery responses. While Plaintiffs repeatedly raise the issue that Jacuzzi has not  
supplemented certain discovery responses, it is likewise true that Ms. Tamantini has never  
supplemented the above response since 2017. Moreover, Plaintiffs have never given a



1 comprehensible description of their new theory of what they believe happened to Ms. Cunnison  
2 since determining there was no issue in draining the tub.

3 Because Plaintiffs do not know precisely what happened to Ms. Cunnison, they have  
4 sought discovery that is overbroad and grossly disproportionate to the case. As further explained  
5 herein, one reason Jacuzzi is continuing to produce documents not produced earlier in discovery  
6 is that Plaintiffs' claims, as well as the scope of discovery ordered by the Court, have expanded  
7 over time. For example, in July of 2019, Plaintiffs submitted forty-two (42) new requests for  
8 production that sought—**for the first time**—communications with end users regarding the  
9 slipperiness of the tub, the slipperiness of the tub's seat, and "all documents pertaining to a  
10 customer or end-user slipping on the floor (or allegedly slipping on the floor) of a Jacuzzi walk-  
11 in tub from 2008 to present."<sup>2</sup> The documents produced in response to this discovery (without  
12 any court intervention needed) form in large part, the basis of Plaintiffs' motion, yet Plaintiffs  
13 disingenuously argue these documents should have been produced previously. The obvious  
14 question that is raised is if Plaintiffs in good faith believe these documents should have  
15 previously been produced in response to prior discovery, why did they serve 42 new discovery  
16 requests in July 2019 instead of simply moving to compel?

#### 17 **B. A TIMELINE OF DISCOVERY ISSUES**

18 On June 22, 2018—nearly a year ago—Plaintiffs filed their first Motion to Strike  
19 Jacuzzi's Answer.<sup>3</sup> During the hearing on that Motion, on July 20, 2018, the Discovery  
20 Commissioner ordered Jacuzzi to produce any personal injury or death **claims** involving a  
21 Jacuzzi walk in tub with an inward opening door from 2008 to present—August 17, 2018.<sup>4</sup> This  
22 was the first time Jacuzzi was ordered to search for incidents *after* the subject incident. Further,  
23 Jacuzzi's discovery responses and communications with Plaintiffs counsel up to this date made  
24 clear Jacuzzi's objections and that Jacuzzi's searches had been limited to incidents that pre-date  
25 the subject incident. Following the Court's direction, Jacuzzi performed a subsequent incident

26 \_\_\_\_\_  
27 <sup>2</sup> Jacuzzi's Responses to Plaintiffs' Seventh Request for Production of Documents to Jacuzzi, Inc.,  
attached hereto as **Exhibit B**.

28 <sup>3</sup> See Plaintiffs' Motion to Strike Defendant Jacuzzi, Inc.'s Answer (June 22, 2018).

<sup>4</sup> See July 20, 2018 Hearing Transcript at 9:10-3; 10:15-11-16.



1 search for any claims for injury or death. Jacuzzi then promptly produced the database entry for  
2 each relevant hit to Plaintiffs' counsel on August 17, 2018—months before being made aware of  
3 the Pullen communications first received by Jacuzzi in October 2018, that were initially the sole  
4 subject of the evidentiary hearing.<sup>5</sup>

5 After Jacuzzi produced the incident reports for the handful of responsive (but irrelevant  
6 and dissimilar) subsequent incidents it found in response to the Discovery Commissioner's order,  
7 on August 27, 2018, Plaintiffs served additional discovery requests that sought more than just  
8 other claims of personal injury or death, but also documents related to any complaint involving a  
9 walk-in tub, regardless of injury or similarity in circumstances:

10 **REQUEST NO. 43.**

11 All documents relating to complaints made to you about your Walk-In Tubs from  
12 January 1, 2012 to the present.<sup>6</sup>

13 Based on the clear overbreadth of this request, and other discovery requests, on September 13,  
14 2018, Jacuzzi moved for a protective order that would relieve Jacuzzi from having to answer  
15 these abusive and burdensome requests.<sup>7</sup> **At the hearing on September 19, 2018, the Discovery**

16 **Commissioner agreed with Jacuzzi and ordered Plaintiffs' to revise the scope of the**  
17 **requests from any complaint or incident imaginable to all "bodily injury and wrongful**  
18 **death claims."**<sup>8</sup> The Discovery Commissioner also ordered Jacuzzi to produce the spreadsheet  
19 relating to the results of its *prior* search based on agreed terms to the Discovery Commissioner  
20 for in-camera inspection.<sup>9</sup> The prior search results were produced to the Discovery  
21 Commissioner for in camera inspection, and the Discovery Commissioner agreed with the  
22 limitations of Jacuzzi's prior production.

23 On January 10, 2019, Plaintiffs filed a "renewed" motion to strike Jacuzzi's Answer,  
24 asserting that Jacuzzi should now be compelled to produce any documents related to

25 <sup>5</sup> August 17, 2018 Letter from J. Cools to B. Cloward, attached as **Exhibit C**.

26 <sup>6</sup> See Plaintiffs' Second Request for Production of Documents to Jacuzzi, Inc. (August 27, 2018), attached  
hereto as **Exhibit D**.

27 <sup>7</sup> See Jacuzzi's Motion for Protective Order (September 13, 2018).

28 <sup>8</sup> Discovery Commissioner Report and Recommendations (signed October 16, 2018) ("October 16, 2018  
DCRR"), attached as **Exhibit E**, (emphasis added).

<sup>9</sup> See October 16, 2018 DCRR.



1 “slipperiness issues.”<sup>10</sup> It remained Plaintiffs’ position that Jacuzzi must produce all complaints  
 2 from users, regardless of whether there was an incident or injury, and regardless of the model or  
 3 design of walk-in tub. Regardless of Plaintiffs’ position, though, the fact of the matter is that  
 4 **Jacuzzi was never ordered to turn over *all* documents relating to complaints about the tub;**  
 5 **Jacuzzi was only ordered to produce “bodily injury and wrongful death claims.”<sup>11</sup>**

6 Despite the language of the prior orders, this court did not agree with the prior limitations  
 7 and expanded the scope of the forensic search to include “all incidents involving a Jacuzzi walk-  
 8 in tub with inward opening doors, for the time period of January 1, 2008, through the date of  
 9 filing of the complaint, where a person slipped and fell, whether or not there was an injury,  
 10 whether or not there was any warranty claim, and whether or not there was a lawsuit.” On July  
 11 1, 2019, the Court further expanded the scope of the search to include incidents from the filing of  
 12 the Complaint to present.<sup>12</sup> Although the Court modified the scope of the forensic search, the  
 13 Court did not modify the scope of the prior orders compelling Jacuzzi to produce claims of  
 14 personal injury or death.

15 Despite the fact that the Court did not modify the prior orders, **and that Plaintiffs never**  
 16 **moved to compel a broader scope**, Jacuzzi understood the Court’s inclinations and voluntarily

17 <sup>10</sup> Following the hearing on February 4, 2019, this Court issued a minute order on March 4, 2019 (the  
 18 “March 4th Order”), setting an evidentiary hearing “to determine whether, and to the extent to which,  
 19 sanctions might be assessed against Jacuzzi and/or First Street for failure to timely disclose the Chopper  
 20 incident.” *See* March 4, 2019 Minute Order. In the March 4th Order, the Court also limited the timeframe  
 21 but expanded the scope of the forensic review to “all incidents involving a Jacuzzi walk-in tub with  
 22 inward opening doors, for the time period of January 1, 2008, through the date of filing of the complaint,  
 23 where a person slipped and fell, whether or not there was injury, whether or not there was a warranty  
 24 claim, and whether or not there was a lawsuit.” *See* March 4, 2019 Minute Order. The Court further  
 25 ordered the parties to file a brief identifying, among other information, “the names of any relevant  
 26 customers of Jacuzzi/First Street that have died.”<sup>10</sup> In compliance with the Court’s broad order to identify  
 any “customers that have died,” on March 7, 2019, Jacuzzi filed a status brief that this Court reviewed  
 and considered at the last hearing. On March 12, 2019—*after* Jacuzzi’s disclosure of the October 2018  
 incident to Plaintiffs and the Court—this Court entered another Minute Order (the “March 12th Order”)  
 vacating the evidentiary hearing based on the Courts arduous review of the briefing on Plaintiffs’  
 “renewed” motion to strike.<sup>10</sup> After studying all of the exhibits, the Court reached the ultimate conclusion  
 that Jacuzzi did not engage in any egregious bad faith conduct, or intentional violation of any discovery  
 order, or any conduct intended to harm Plaintiffs. *See* March 12, 2019 Minute Order. The Court further  
 changed its prior reference to “Chopper Incident” to “Chopper Communication.” *See* March 12, 2019  
 Minute Order.

27 <sup>11</sup> Discovery Commissioner Report and Recommendations (signed October 16, 2018) (“October 16, 2018  
 DCRR”), attached as **Exhibit E.** (emphasis added).

28 <sup>12</sup> *See* Hearing Transcript of July 1, 2019 at 28:17-20.



renewed its efforts to search for responsive documents under the scope of forensic search articulated by the Court on March 4 and July 1, 2019.

The customer complaints produced in July of 2019, and which are at issue now before the Court, are not “bodily injury and wrongful death claims” as Plaintiffs suggest. Jacuzzi appropriately objected to Plaintiffs’ request for “[a]ll documents relating to complaints made to you about your Walk-In Tubs from January 1, 2012 to the present,”<sup>13</sup> and **Plaintiffs did not submit specific requests for complaints relating to slipperiness issues until their Seventh Set of Requests for Production, sent on July 3, 2019.**<sup>14</sup> Accordingly, the “prior and subsequent incidents” to which Plaintiffs refer in their brief<sup>15</sup> are not “incidents” – they are customer and consumer<sup>16</sup> complaints produced in response to the Court’s revised scope of the forensic search and responsive to Plaintiffs’ Seventh set of Requests for Production. Almost all of them relate to slips not involving a claim of injury – which was never previously ordered by the Court or requested specifically by Plaintiffs separate and apart from their overbroad request for “all complaints” which had been quashed by the Discovery Commissioner.

Likewise, Jacuzzi produced an additional set of complaints concurrent with their responses to Plaintiffs’ Requests for Production, which Plaintiffs continue to refer to as “incidents.” As this Court is aware, it has had to correct Plaintiffs’ incorrect phrasing before when dealing with Plaintiffs’ references to the Jerre Chopper. Just as this Court found that the “Chopper incident” was actually “Chopper communications,”<sup>17</sup> Plaintiffs are again trying to entice this Court to issue sanctions by conflating incidents with complaints and blurring the lines as to what Jacuzzi was ordered to produce and when.<sup>18</sup>

<sup>13</sup> See Plaintiffs’ Second Request for Production of Documents to Jacuzzi, Inc. (August 27, 2018), attached hereto as **Exhibit F**.

<sup>14</sup> Plaintiffs’ Seventh Request for Production of Documents to Jacuzzi, Inc. (July 3, 2019), attached hereto as **Exhibit G**.

<sup>15</sup> At 2:20–9:5.

<sup>16</sup> Consumers are the end users of Jacuzzi walk-in tub products. Because Jacuzzi does not sell direct to consumers, it considers its distributors, such as firstStreet, to be its customers.

<sup>17</sup> See March 12, 2019 Minute Order where this Court corrected prior references to the “Chopper Incident” to “Chopper Communications.”

<sup>18</sup> Plaintiffs’ choice to label their hearing binders as “OSI” or “other similar incident” binders was another misnomer: there were few “incidents” contained in the document sets, and *none* of the incidents were “similar.”

## II. PLAINTIFFS' CLAIMS REGARDING "DISCOVERY ABUSES" ARE UNSUPPORTED BY THE RECORD

Plaintiffs filed their Motion to Strike upon the basis that Jacuzzi engaged in repeated "discovery abuses" throughout the pendency of this case. Within the week of testimony, the briefing currently before the Court, and the documents produced (both privileged and not), it is clear that Jacuzzi sought in good faith to respond to discovery within the purview of Nevada law. Jacuzzi, nevertheless, responds to each of Plaintiffs' allegations of "abuse":

### A. JACUZZI PERFORMED MULTIPLE COMPREHENSIVE SEARCHES OF ITS SYSTEMS, AND BELIEVED IN EARNEST THAT IT HAD PRODUCED ALL DOCUMENTS RELEVANT TO THIS LITIGATION

On July 25, 2018, Ron Templer sent an email to Kurt Bachmeyer, Regina Reyes, William Demeritt, Jess Castillo, and Anthony Lovallo directing the employees on the email to provide him with "[a]ll letters, emails, customer service/warranty entries and all other communications and documents (written or electronic) that mention or refer to a personal injury sustained in a walk-in tub from 1/1/2008 to the present." (Email from Ron Templer, Esq. to Various Jacuzzi Employees, July 25, 2018, (produced to Plaintiffs on Oct. 10, 2019) attached to Plaintiffs' brief as Exhibit 217). Mr. Templer set forth that it would require "a search of all databases (both current and old), email and other potential locations *where the information may be stored.*" (Email from Ron Templer, Esq. to Various Jacuzzi Employees, July 25, 2018, (produced to Plaintiffs on Oct. 10, 2019) attached to Plaintiffs' brief as Exhibit 217) (emphasis added). This email does not acknowledge that "all databases" had to be searched, only databases which Jacuzzi reasonably believed would contain responsive documents.

The timeline of Jacuzzi's discovery efforts overall shows a similar pattern of good faith efforts to uncover relevant documents. As was discussed in § I.A, Jacuzzi's original searches were based upon Plaintiffs' exact representations about their claims (**which to date have never been amended**). As set forth more fully above, Jacuzzi asked Plaintiffs to provide a description of each negligent act and/or omission in its Interrogatory No. 21 to ensure that its searches were appropriately targeted. In response, Plaintiffs claimed that "high tub walls, narrow doorway, and the inward-opening door found on the Jacuzzi Walk-in tubs made it extremely difficult for



1 family members or emergency medical teams to get people out. A grab bar should have been  
 2 installed... ." (Plaintiff Deborah Tamantini's First Supplemental responses to Jacuzzi's First set  
 3 of Interrogatories, 16:10–27) (emphasis added).

4 Consistent with this, and as it pertained to Jacuzzi's first set of discovery responses, Mr.  
 5 Templer testified as follows:

6 Q What was the scope of your discovery response?

7 A I believe discovery response -- the written discovery responses were back in  
 8 May of 2017, at which time Plaintiffs were asking for claims for personal injury  
 9 and property damage. At that time the claims were limited to, my understanding,  
 10 and having reviewed the discovery responses from Plaintiffs, was the height of  
 the tub walls, inward versus outward opening door, grab handles, and I think with  
 the door. I don't recall what the fourth one was. That's what Kurt Bachmeyer  
 mentioned yesterday.

11 (Transcript of Evidentiary Hearing, Day 2, 112:12–20) (emphasis added). While Plaintiffs  
 12 repeatedly raise the issue that Jacuzzi has not supplemented certain discovery responses, it is  
 13 likewise true that Ms. Tamantini has never supplemented this response since 2017, and thus,  
 14 their written theories of recovery remain the same as that initially searched for by Jacuzzi..

15 After Plaintiffs began to expand their discovery efforts, Mr. Templer's testimony  
 16 confirmed that Jacuzzi believed and understood that its obligation was not to produce  
 17 "complaints" or "incidents," but "incidents involving serious personal injury or death, involving  
 18 walk-in tubs" (although Jacuzzi's actual production was not limited to "serious" injury).  
 19 (Transcript of Evidentiary Hearing, Day 2, 104:2–3) (emphasis added). While Plaintiffs  
 20 repeatedly attempted to introduce colloquy from the hearings before Commissioner Bulla,<sup>19</sup> the  
 21 fact of the matter is that her formal, written reports and recommendations—those adopted by this  
 22 Court—were controlling of the discovery issues between the parties. The reasoning underlying  
 23 the requirement for a formal, written order is so to memorialize the entire scope of the Discovery  
 24 Commissioner's decision for the certainty and clarity of the parties and this Court. While there  
 25 was nothing substantially dissimilar ordered in the hearings versus the written reports, if  
 26 Plaintiffs took issue with the scope set out in the formal Order, they could have submitted a more

27 \_\_\_\_\_  
 28 <sup>19</sup> At the evidentiary hearing. *See, e.g.*, Transcript of Evidentiary Hearing, Day 2, 136:5–11; 140:1–7;  
 142:19–24; 144:25–145:17; 147:8–13.



1 comprehensive Order for consideration and adoption.

2 As this case proceeded through discovery, discovery orders limited the scope of  
3 discovery to walk-in tubs and all Jacuzzi employees were directed to limit their searches to  
4 incidents involving only walk-in tubs. Mr. Templer testified that this may have inadvertently led  
5 to some relevant documents being excluded from search "hits":

6 Q Okay. And at some point in this litigation, when you were running Salesforce  
7 searches, did you ask anyone to enter JB in that field limit the hits to walk-in-tub  
products, or Jacuzzi-luxury-bath products?

8 A I didn't ask somebody to enter JB, because I didn't know that, but I did ask that  
the searches be limited to walk-in tubs.

9 Q And is it your understanding that in order to limit searches to walk-in tubs, that  
10 some of the searches were run with the JB field required?

A That is accurate.

11 Q Okay. And when was this?

A That I asked the search to be run with the walk-in tubs?

12 Q Yes.

A I mean, each search I've requested in this case, I've asked that it be limited to  
13 walk-in tubs since that's the product that we're talking about in this case.

14 Q Okay. Has it come to your attention that limiting the searches to walk-in tubs in  
that field can fail to come up with records that are relevant to the walk-in-tub  
15 division?

A Yeah.

16 (Transcript of Evidentiary Hearing, Day 3, 65:3–21). Simply put, the employees performing the  
17 searches were entering "JB" in the brand search field to limit results to "Jacuzzi Bath" in an  
18 effort to (properly) exclude "Jacuzzi Spa" results. Some of the later produced documents that  
19 Plaintiffs argue should have been turned over sooner were not discovered because the "brand"  
20 field on the form was not populated. As such, the search that was run with "JB" in the brand  
21 search field inadvertently excluded consumer cases ("cases" being a term used in Salesforce)  
22 where JB was not included in the brand field when the case was originated. If this Court  
23 determines that one or two of these documents were responsive to earlier discovery requests, this  
24 error was not done intentionally so to constitute "willful noncompliance" with a Court Order.  
25 Jacuzzi acted in good faith, and the record is replete with evidence of Jacuzzi's repeated efforts  
26 to comply with court orders.

27 ///

28

1           **B. JACUZZI WAS NEVER SPECIFICALLY ORDERED TO SEARCH EMAILS, BUT BELIEVED**  
2           **ITS SEARCHES WOULD HAVE CAPTURED ANY EMAILS RELEVANT TO THIS**  
3           **LITIGATION.**

4           Plaintiffs' brief begins with a claim that "Jacuzzi knowingly failed to search the one place  
5           most likely to have pertinent information: employee emails." (Plaintiffs' Brief at 1:24–25). This  
6           claim is demonstrably false per the evidence at the hearing before this Honorable Court. First,  
7           considering the testimony of Ron Templer, his understanding was such that a search of the  
8           Salesforce and KBM databases should have encompassed emails, because emails were supposed  
9           to be captured by Salesforce:

10           Q So in 2018, so before 2019, what was your understanding of whether emails  
11           would be captured by Salesforce?

12           A **My understanding those -- Salesforce was capturing emails.**

13           Q And would these have to be manually entered or what was your understanding  
14           how they got into the Salesforce database?

15           A That I couldn't answer. I don't know that I had a specific understanding as to  
16           how they got in there. I have learned -- I -- as I sit here today, I believe some -- at  
17           least some are captured automatically. I don't know whether it's all of them as I sit  
18           here today.

19           Q Have you seen email spam that's been captured by the Salesforce database?

20           A Quite a bit of it.

21           (Transcript of Evidentiary Hearing, Day 3, 62:10–21) (emphasis added). Accordingly, when Mr.  
22           Templer and other Jacuzzi employees were performing searches, they believed and understood  
23           that relevant emails should have been uncovered in their searches of Salesforce and KBM.  
24           Further, plaintiffs' premise that the most likely place to locate the information was employee  
25           email is patently false. Significant testimony was presented that the vast majority of customer  
26           complaints come to the company by way of telephone call, and are entered into Salesforce and  
27           KBM. The record is full of emails produced because they were found in Salesforce.

28           Nevertheless, although Mr. Templer *did* expect that emails would be subsumed into the  
Salesforce and KBM databases, he also asked employees to perform searches of emails.  
Specifically, in an email of July 25, 2018 to Kurt Bachmeyer, Regina Reyes, William Demeritt,  
and Jess Castillo, Mr. Templer expressly directed those employees to perform searches of emails  
for "mention or refer[ence] to . . . personal injur[ies] sustained in a walk-in tub from 1/1/2008 to  
the present." (Email from Ron Templer, Esq. to Various Jacuzzi Employees, July 25, 2018,





(produced to Plaintiffs on Oct. 10, 2019) attached to Plaintiffs' brief as Exhibit 217). To the extent that Plaintiffs are attempting to use this email as evidence that Jacuzzi was acting in bad faith, the argument is nonsensical. Mr. Templer, by way of this email, specifically directed these employees to "search . . . all databases (both current and old), **email** and other potential locations where the information may be stored." (Email from Ron Templer, Esq. to Various Jacuzzi Employees, July 25, 2018, (produced to Plaintiffs on Oct. 10, 2019) attached to Plaintiffs' brief as Exhibit 217) (emphasis added). Mr. Templer also stressed that the search needed to be **"TIMELY AND COMPLETE"** which Plaintiffs also acknowledge in their brief. (See Plaintiffs' brief at 29:5; Email from Ron Templer, Esq. to Various Jacuzzi Employees, July 25, 2018, (produced to Plaintiffs on Oct. 10, 2019) attached to Plaintiffs' brief as Exhibit 217).

Further, contrary to Plaintiffs' arguments, Mr. Bachmeyer, Jacuzzi's Director of Customer Service before 2014, testified that **he was specifically directed to search through his emails** to assist in responding to discovery:

**A For me, personally, I was supposed to look through letters, emails that I had attained, had obtained, excuse me, that were directed to me, and -- but the other things, I was not asked to look at.**

(Transcript of Evidentiary Hearing, Day 1, 174:1-3) (emphasis added). In Counsel's questioning of Mr. Bachmeyer, it was further made clear that emails were supposed to be subsumed into Salesforce, word-for-word, and there is evidence before the Court showing that many were, in fact, captured in the Salesforce database:

Q Mr. Bachmeyer, you agree that this email, this information in this email, where it says customer's tub . . . customer's tub was installed on 12/13 and they say his wife slips on the seat and floor, is the same information on the sales force document, true, word-for-word?

MR. ROBERTS: Your Honor, Jacuzzi is stipulating that they match, the portion read by Mr. Cloward.

...  
Q So you agree that these -- that the language contained in the emails is also housed in sales force, true?

A I agree that these are correct now, now that I look at them. I'm sorry about that.

Q Okay. It's okay. So the question was, you agree that the information contained in the emails is the same information that's housed in the sales force document, true?

A It would appear that one is.



1 Q Okay. And you agree that by searching the sales force database it would also  
2 pull up emails that were contained in that specific customer file, true?

3 A It may.

4 (Transcript of Evidentiary Hearing, Day 1, 44:9–46:10). Per the above testimony, it is clear that  
5 even counsel for Plaintiffs recognized that emails were supposed to be (and generally were)  
6 captured, word-for-word, within the Salesforce program. Jacuzzi's counsel expected that all  
7 relevant emails would have been captured by Salesforce, and in most cases, they were. However,  
8 the record shows that Jacuzzi also endeavored to have Mr. Bachmeyer, Jacuzzi's Director of  
9 Tech Support and Warranty, search through his emails for relevant emails and documents.  
10 Jacuzzi also later separately performed its own search, and then produced, emails from Mr.  
11 Bachmeyer in July of 2019.<sup>20</sup> There is no evidence that Jacuzzi's counsel was on notice of the  
12 emails prior to this production and made a conscious decision to withhold them.

13 Plaintiffs have also attempted, both at the hearing and within their brief, to mislead the  
14 Court into thinking that Jacuzzi was specifically ordered to produce emails, but failed to do so. In  
15 this effort, Plaintiffs mischaracterized a directive from Commissioner Bulla given in a hearing of  
16 September 19, 2018 on Jacuzzi's Motion for Protective Order, wherein there was discussion  
17 regarding a search of Jacuzzi employee emails. Plaintiffs made his misrepresentation within their  
18 brief at § C.1, and also at the hearing on Tuesday, September 17:

19 Q. . . . You said you didn't have an understanding of whether or not email was in  
20 the scope of what Jacuzzi was required to do. You agree with me, however,  
21 though, that at this hearing, Commissioner Bulla specifically indicated that it was,  
22 true?

23 MR. ROBERTS: Objection. Mischaracterizes the transcript.

24 THE COURT: He can speak to his -- overruled, he can speak  
25 to his understanding of what was required, not what the transcript, itself, says.

26 THE WITNESS: Again, I wasn't there. I don't read this as saying what she was  
27 represented.

28 BY MR. CLOWARD:

Q Okay. So you don't -- when Commissioner Bulla says -- or Mr. Cools has asked  
the question, Are you requiring us to also do an ESI search and Privileged Law  
for all privileged communications about those claims?

And he's talking about emails, via email, and she says,  
Ordinary course of business is what I'm talking about.

<sup>20</sup> See Jacuzzi's July 26, 2019 Eighteenth Supplemental Disclosure Statement, JACUZZI005190-5270, Exhibit H.

1           **You don't see that as her saying hey, you need to search email?**  
2           **A That's not the way I read this.**

3 (Transcript of Evidentiary Hearing, Day 2, 150:22–151:15) (emphasis added). Critically,  
4 Plaintiffs left out a very important component of the September 19, 2018 hearing: that the onus  
5 was upon Plaintiffs to determine which claims they wanted Jacuzzi to search employee emails  
6 for. Jacuzzi would be tasked with conducting searches of emails only after Plaintiffs “f[ound] out  
7 which claims [they] want[ed] information on”:

8           MR. COOLS: I guess is it possible to -- you know, since we've already given, for  
9 instance, the subsequent incident claims, is it possible to have plaintiff identify  
10 which ones they're arguing are substantially similar, which is the criteria for any  
11 admissibility of subsequent claims, and then have us drill down on those  
12 particular claims versus, you know any claims? And I use that one as an example,  
13 but, you know, even like Request No. 24, which would involve prior and  
14 subsequent.

15           DISCOVERY COMMISSIONER: I don't know the answer because I don't know  
16 the scope of the information we're dealing with. So what I think you need to do is  
17 a little bit of research and tell me exactly what we're dealing with. In terms of the  
18 other information on the eleven claims, **Mr. Cloward, take a look, find out**  
19 **which claims you want information on. I wouldn't ask for information on all**  
20 **eleven because I don't think that's really that exciting. All of them are not**  
21 **that exciting for you. But I think you can, you know, pare down what you**  
22 **need.**

23 (Transcript Re: Defendant Jacuzzi's Motion for Protective Order, Exhibit 180 to Evidentiary  
24 Hearing, 27:1–13) (emphasis added). The fact of the matter is that Jacuzzi was never specifically  
25 told to conduct *email* searches, except at the September 19, 2018 hearing, and only after  
26 Plaintiffs identified which claims they wanted to search emails for. Plaintiffs never did this, and  
27 Jacuzzi cannot be blamed here for Plaintiffs' mistake.

28           Notably, Mr. Templer was also asked about the privilege log that was discussed at the  
September 19, 2018 hearing, and which would have been prepared in relation to the  
aforementioned email searches:

Q Okay. Do you disagree that Commissioner Bulla, and it's not what you know,  
this is do you disagree that Commissioner Bulla said look, I want you to search  
emails. I want you to produce a privilege log with regard to 24 through 25, 41  
through 43? Do you disagree with that?

A I don't agree or disagree. I don't know enough. I haven't read this entire  
transcript, I don't know what she had said.

Q Okay. So you don't know what the expectations of Commissioner Bulla were;





1 is that fair?

2 A I knew some of it, from based on the order and the conversations with counsel.  
3 I don't know the details of which you're discussing.

4 Q Okay. Was one of the things that you understood was that Jacuzzi needed to  
5 provide a privilege law regarding communications with counsel?

6 A In what regard?

7 Q What?

8 A Communications with counsel in regard to other complaints, you mean?

9 Q Yeah.

10 A I don't recall that. I don't recall that as I sit here. Having said that, I also don't  
11 recall any -- I don't recall, as I sit here, any communications regarding those  
12 claims.

13 THE COURT: Was a privilege log ever done at that --

14 MR. CLOWARD: No, no.

15 THE COURT: Okay.

16 MR. CLOWARD: No privilege log was ever done.

17 (Transcript of Evidentiary Hearing, Day 2, 159:19–160:19). These questions from Plaintiffs'  
18 Counsel, as well as the ultimate conclusion regarding the privilege log, were misleading for the  
19 same reason as above: Plaintiffs were tasked with first “paring down” what they needed. Jacuzzi  
20 was thereafter to run a search, produce documents, and draft a privilege log, but only after  
21 Plaintiffs determined which claims they wanted additional information on. Plaintiffs never did  
22 this, and it is disingenuous for them to now suggest that this was the fault of Jacuzzi.

23 Notwithstanding the fact that Plaintiffs did not ever identify the claims for which it was  
24 seeking additional email searches, Jacuzzi reasonably believed that all emails pertaining to  
25 bodily injury and death incidents would all have been captured by searches in Salesforce and  
26 KBM. Jacuzzi should not be penalized for conducting searches to the extent it understood was  
27 reasonable and comprehensive.

28 **C. ALL OF THE DOCUMENTS WITHIN PLAINTIFFS' POSSESSION WERE WILLINGLY  
PRODUCED BY JACUZZI PRIOR TO THEIR REQUEST FOR THE EVIDENTIARY HEARING**

Plaintiffs falsely lamented, both at the hearing and again in their brief, that “Jacuzzi to  
date has not supplemented RFPD 43.” (Plaintiffs’ brief at 34:11–13). Importantly, though, and as  
this Court acknowledged, RFPD 43 was supplemented:

Q. . . . After that order are you aware of whether Jacuzzi ever supplemented  
number 43?

A Again, I think the production was supplemented. The written response, I don't  
recall any supplementation.



1 THE COURT: So we know more documents were produced. That's one of the  
2 reasons why we're here and I think they were produced by documents that may  
3 have been called, you know, supplemental 16.1 production. So I understood new  
documents were produced under different procedural vehicles, but perhaps  
number 43 itself wasn't amended.

MR. CLOWARD: Yeah. Well --

4 THE COURT: Either way there was additional production by Jacuzzi's counsel,  
5 right? RPT's aren't verified under oath, neither are, you know, supplemental 61  
[sic] production. So it really doesn't matter what they call it, there was a  
6 supplement, right?

MR. CLOWARD: Well, I think it does matter what they call it.

7 THE COURT: Okay.

8 MR. CLOWARD: Because we specifically requested information and even the  
9 information that was provided, Your Honor, was only provided -- keep in mind  
that timeline, the Friday before the Wednesday forensic examination. So they  
were -- we're barking at the door, we're there, and all of a sudden --

10 THE COURT: Oh, absolutely. The timing of what was provided and what  
actually was provided is super important here.

11 MR. CLOWARD: Okay.

12 THE COURT: **But whether it was done with a coversheet that says amended  
number 43 or a cover sheet that says supplemental 61 [sic], that doesn't  
matter in my mind.**

13 MR. CLOWARD: I'll argue why it does, but --

14 THE COURT: All right.

MR. CLOWARD: -- in closing, in closing.

15 (Transcript of Evidentiary Hearing, Day 2, 177:10–178:15) (emphasis added). Plaintiffs did not,  
16 in closing, explain why the means or method of supplementation mattered. Jacuzzi's position is  
17 in line with this Court: it produced the documents sought by RFPD 43 in NRCP 16.1  
18 supplements, and there is no reason why Jacuzzi specifically needed to amend RFPD 43. NRCP  
19 26(e)(1) states "a party is under a duty to supplement at appropriate intervals its disclosures  
20 under Rule 16.1(a) or 16.2(a) if the party learns that in some material respect the information  
21 disclosed is incomplete or incorrect and if the additional or corrective information has not  
22 otherwise been made known to the other parties during the discovery process or in writing." As a  
23 matter of course, Jacuzzi has produced documents responsive to written discovery by and  
24 through NRCP 16.1 supplements. There is no legitimate reason that Jacuzzi's supplements  
25 should be considered defective simply because they were done through NRCP 16.1.

26 Although the "Pullen documents" were not produced immediately, Jacuzzi *did* produce  
27 the records on its own accord after this Court's March 4th Order was issued. Plaintiffs were able  
28





1 to depose Mr. Pullen in July of 2019, well before the last scheduled trial date. There was no  
 2 prejudice resulting from the short delay in production, and it was ultimately learned that the  
 3 incident had nothing to do with the Jacuzzi walk-in tub: Ms. Pullen's death was related to her  
 4 mobility issues and schizophrenia.<sup>21</sup> On the day of her slip in the tub, Mr. Pullen was by her side  
 5 bathing her.<sup>22</sup> Per his testimony, she slipped off the seat into the foot well, and was on the ground  
 6 for a matter of minutes.<sup>23</sup> We don't know what day the incident occurred, but we know she had a  
 7 second incident where she fell out of a bed after she slipped in the tub, and Mr. Pullen alleges  
 8 that she was transported days after the fall from the bed to a hospital to be treated for c. diff.<sup>24</sup>  
 9 She was hospitalized for months related to her diagnosis of c. diff.<sup>25</sup> before she ultimately died of  
 10 a pulmonary embolism in December of 2017.<sup>26</sup> Furthermore, and strangely, Mr. Pullen made  
 11 several calls to Jacuzzi in the months after his mother's death never claiming the tub had  
 12 anything to do with the death.<sup>27</sup> He did not allege that his mother died as a result of the tub until  
 13 ten months after her passing.<sup>28</sup>

14 Mr. Templer also offered testimony regarding Jacuzzi's evaluation of the Pullen matter in  
 15 advance of disclosing the documents in March of 2019:

16 Q One of the questions he asked you about is if someone hires a lawyer, someone  
 17 retains a lawyer, did you have any actual knowledge of whether Mr. Pullen had  
 18 retained a lawyer at the time you received those communications back around  
 19 October 30th of 2018?

20 A No, we had -- I had no information that Mr. Pullen had a lawyer.

21 Q Did you receive any contact from any lawyer claiming to represent Mr. Pullen?

22 A No.

23 Q Internally, did you treat that communication as if a claim for wrongful death  
 24 had been filed against Jacuzzi?

25 A No.

26 <sup>21</sup> See Deposition of Robert Pullen, attached as **Exhibit I**, at 8:2-9, 17:4-9; 72:13-24. (Ms. Pullen sat in a  
 chair all day long and developed blood clots in her legs).

27 <sup>22</sup> See *id.* at 41:15-20.

28 <sup>23</sup> See *id.* at 41:15-20, 92:15-17.

<sup>24</sup> See *id.* at 63:22-64:8, 65:18-22, 16:18-23; *Clostridium difficile*, often referred to as *C. diff.*, is a  
 bacterium that can cause symptoms ranging from diarrhea to life-threatening inflammation of the colon.

<sup>25</sup> See *id.* at 63:22-64:8, 65:18-22, 16:18-23; *Clostridium difficile*, often referred to as *C. diff.*, is a  
 bacterium that can cause symptoms ranging from diarrhea to life-threatening inflammation of the colon.

<sup>26</sup> See *id.* at 63:22-64:8, 62:12-14, 71:2-10.

<sup>27</sup> See Pullen communications, produced as JACUZZI006775-6800, Exhibit H.

<sup>28</sup> *Id.*



1 Q Did you -- let me go back and ask another question. Let me rephrase it. Did you  
2 provide notice of Mr. Pullen's communication to  
3 Jacuzzi to Bill Demeritt?

4 A No.

5 Q Do you have any knowledge as to whether anyone else communicated the  
6 Pullen communications to Mr. Demeritt?

7 A To my knowledge, he was not involved in that at all.

8 Q Do you have the foundation and background to know whether the general  
9 liability insurance maintained by Jacuzzi requires Jacuzzi to put the insurance  
10 company on notice when you receive a claim for wrongful death?

11 A I have a general understanding.

12 Q Okay. And who would submit those notices to the insurance company?

13 A Bill Demeritt.

14 Q And let me go back. You answered my question correctly, but I don't think I  
15 got to the question. Does the policy require you to put the insurance company on  
16 notice upon receiving a claim for wrongful death?

17 A Yes.

18 Q And can you lose your coverage if you fail to do that?

19 A Yes.

20 Q Did you put the insurance carrier on notice when you received the October 30th  
21 communications?

22 A No. It was not viewed as a claim.

23 (Transcript of Evidentiary Hearing, Day 3, 56:13–57:24). Black's Law Dictionary defines claim  
24 as "A legal assertion; a legal demand; taken by a person wanting compensation, payment, or  
25 reimbursement for a loss under a contract, or an injury due to negligence. 2. Amount a claimant  
26 demands".<sup>29</sup> Although this Court has expressed skepticism over Jacuzzi's interpretation of the  
27 word "claim" in the prior orders of the Court, Jacuzzi's definition was exactly the same as  
28 Black's.

At the end of the day, **Jacuzzi has willingly produced all of the documents that Plaintiffs point to as evidence of malfeasance.** Although there may be minor costs associated with delays in production, there is no other prejudice to Plaintiffs.

**D. EVIDENTIARY HEARING TESTIMONY CONFIRMS THAT JACUZZI ACTED REASONABLY AND IN GOOD FAITH**

The testimony before this Court undoubtedly debunked Plaintiffs' allegations of nefarious wrongdoing, and confirms that Jacuzzi did not engage in "abuses." Each of the witnesses called to testify corroborated that evidence was not withheld intentionally. Jacuzzi

<sup>29</sup> See <https://thelawdictionary.org/claim/> (last retrieved on August 19, 2019).



endeavored to discover and produce that which it understood it was required to produce in discovery.

*1. Ron Templer*

Mr. Templer, Jacuzzi's in-house counsel, has served in his role for approximately six years. Plaintiffs' counsel has sought to wrongfully paint Mr. Templer as villainous; alleging that he sought to conceal Jacuzzi documents, no matter that he had no motive to do so, and without any evidence to support his baseless claim of concealment. The evidentiary hearing and the documents produced thereafter show that Mr. Templer and Jacuzzi were at all times operating in good faith to comply with and accomplish the Court's directives.

Prior to this lawsuit, Mr. Templer had never been involved in litigation that required him to do ESI searches for terms. (Transcript of Evidentiary Hearing, Day 3, 55:16–22). He involved several employees in the searches at issue before this Court, but none of those employees worked in the legal department such that they could allocate all of their time to document searches. (Transcript of Evidentiary Hearing, Day 3, 56:1–7). However, there can be no doubt that Jacuzzi, and especially Mr. Templer, spent significant time and resources on its attempts to fully respond to Plaintiffs' discovery requests.

At the Evidentiary Hearing, Mr. Templer specifically confirmed to Plaintiffs that Jacuzzi did search for the 20 "agreed upon" terms, and that they were run through Salesforce—which should have included documents from Jacuzzi's older databases, as well as emails—and the KBM databases:

Q And, Mr. Templer, my question going back to -- I want to be very clear so that the hearing transcript, for the record, is clear on this issue. So let's just start off, did Jacuzzi, prior to the Judge's ruling, did Jacuzzi ever search the RNT system for these 20 search terms?

A I believe so.

Q And you have those results, and those could be provided to the Judge?

A I believe they're captured within -- I'm just trying to thinking, the way things worked. Yes, and no. I can explain what happened. I guess that's probably the easiest way to do this. **The RNT system, and my understanding was the beta was captured into sales force when the company went to sales force. Sales force has been searched for those terms.**

Q Okay. So your testimony, let's -- first let's just focus on the RNT, okay. Did



Jacuzzi specifically search the RNT database; yes, or no?

A I can't answer it, yes or no, because again, **I don't think the RNT database still exists, it was migrated into sales force.**

Q Okay, understood. The KBM system. **Did Jacuzzi ever search the KBM system for these 20 search terms?**

A Yes.

Q And what was done with those results?

A I reviewed them, and those results were also submitted to Commissioner Bulla, and she reviewed them.

...

Q Okay. Next, is the Legacy click view system. Did Jacuzzi ever review a search of the Legacy Click View system for search terms 1 through 20?

A I don't believe that's a separate database, to my understanding. Click View is a business -- I'm trying to remember the acronym, business intelligence software. It enable -- it enables people to pull information out of KBM. **I don't think it's a separate database.**

...

Q Okay. Now the Legacy database, did Jacuzzi ever search the Legacy database for these search terms, 1 through 20?

A So again, I'm not -- my understanding **there is not a separate Legacy database**, it's all part of KBM.

(Transcript of Evidentiary Hearing, Day 2, 125:1-23, 126:1-7, 126:20-23). While Plaintiffs sought to show that Jacuzzi failed to search certain databases, per the testimony captured above, the fact of the matter is that **Plaintiffs believe certain databases separately exist where they do not.**

Per Jacuzzi's understanding, running these searches through these databases should have provided comprehensive results, and Mr. Templer testified that these results were produced for *in camera* review by Commissioner Bulla, as ordered:

Q Okay. And on the next page she asks for the search term, or guess for those -- the stack of documents to be turned over to her; correct, do you remember that?

A I remember they were turned over to her. I didn't read the transcript, or I wasn't at the hearing, but they were requested and turned over.

Q Okay. So it was your understanding that the stack of documents, the hits, were turned over to the Commissioner, right?

A I think there was two different things handed over to the Commissioner, or maybe three, actually. One I believe was the KBM, search of those terms. And, again, I don't think it was produced in a stack of documents. I think that was provided on a thumb drive, if I'm not mistaken. There was another spreadsheet with a search that had been done on the sales force of those same terms. And then I believe there was a third set of document produced to Commissioner Bulla, which were the unredacted hits that we had produced to you, they had the customer names on them, so she could make a ruling on the propriety of privacy

objections.

(Transcript of Evidentiary Hearing, Day 2, 142:19–143:12). Simply put, Mr. Templer’s testimony confirms that Jacuzzi acted in good faith to comply with its discovery obligations in this case.

## 2. *Bill Demeritt*

Mr. Demeritt, no longer working full time and soon to be retired, was Jacuzzi’s Vice President and Director of Risk Management. To that end, Plaintiffs have repeatedly attempted to argue that Mr. Demeritt should have had more knowledge of “customer complaints” of the type that Plaintiffs have been trying to obtain. However, Mr. Demeritt was not involved in any of the searches that are at issue before this Court, except that he relied upon information obtained in searches in order to testify as one of Jacuzzi’s NRCP 30(b)(6) designees. Per Mr. Demeritt’s testimony, his role as “Vice President and Director of Risk Management” was not related to customer service issues, such as those in the recently produced customer complaints. Mr. Demeritt testified on that issue as follows:

Q Okay. And Mr. Bachmeyer testified that he was copied on the email with those search results. You don’t have a recollection of also being copied on those?

A No, sir, I don’t.

Q Is that the type of a thing that the vice-president of risk management would not be copied on, but a former customer service manager would be?

A Well, that depends on what the vice-president and director of risk management does. And I’m not trying to be smart; I’m just trying to clear up this issue. My role with the company as director of risk management was to manage the insurance program. If -- if the -- if the incident did not directly impact the insurance program, I was not intimately involved in the -- in the activity, in the facts. So if it was a subrogation or property damage, I probably knew about it. If it was anything else, I can’t say that I definitely would have known about it.

...

Q Okay. And at the time of your deposition you told me that any time any incidents or claims of injury that come in, you and Ron talk about it. And so I’m trying to reconcile that testimony that you gave in your deposition versus the testimony you just gave, which seems like you have, kind of, a hands-off approach.

A Well, I would’ve had a hands-off approach. Ron -- if Ron and discussed it, Ron would’ve probably said to me, listen, I’m going to need the dec page off the insurance policy, or I’m going to need the tower of all of the insurance coverages; not only the primary, but the excess and the umbrellas. That would’ve been my involvement there. He would’ve come to me to ask me for those documents.



(Transcript of Evidentiary Hearing, Day 4, 21:25–22:15; 23:5–15). Mr. Demeritt was generally involved in injury and death *claims* only to the extent that insurance was involved.

Plaintiffs continue to take issue with the fact that Mr. Demeritt was prepared to discuss prior incidents, not subsequent ones, at his deposition. (Plaintiff's Brief at 6:17). This remains Jacuzzi's position: Mr. Demeritt was prepared, as Jacuzzi's NRCP 30(b)(6) witness only on prior incidents of which it was aware. Mr. Demeritt was clearly designated only to testify regarding prior incidents and Jacuzzi's search of its records regarding prior incidents.<sup>30</sup> Plaintiffs' counsel unilaterally expanded the scope of inquiry at the deposition and asked Mr. Demeritt if there were any *subsequent* incidents. Mr. Demeritt testified that he was not aware of any.<sup>31</sup> The fact that Mr. Demeritt was not prepared to discuss certain incidents, or forgot that they existed, does nothing to show that Jacuzzi was willfully hiding evidence.

### 3. *Kurt Bachmeyer*

Kurt Bachmeyer was, prior to 2014, Jacuzzi's Director of Customer Service. He now serves as the Director of Warranty and Technical Services. Mr. Bachmeyer testified, importantly, that running searches through Jacuzzi's systems is not as simple as Plaintiffs have attempted to suggest to this Court:

Q And then at the conclusion of that line of questioning, I asked you whether Jacuzzi had the capability to gather data for specific issues.

A Correct.

Q Okay. And do you have any recollection as to whether or not you testified that issues like the grab bar, issues like the door opening or out, issues like the tub being too slippery or the floor being slippery, issues like the seat being too slippery could be tracked?

A They could be tracked, yes, sir.

Q Okay. So you agree with that?

A Yes.

Q Okay. And you agree that Jacuzzi has the ability to narrow its searches to just the walk-in tubs, true?

A True.

Q I mean that's not a hard thing for Jacuzzi to do, correct?

A Back in that timeframe, **I would say it would be.**

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

<sup>31</sup> *Id.* at 76:1-77:2.



1 (Transcript of Evidentiary Hearing, Day 1, 152:5–19) (emphasis added). Further, Mr. Bachmeyer  
2 testified that he did not have the requisite knowledge to run searches within Salesforce without  
3 assistance:

4 Q Let's skip over a few of these for a minute. Do you have the capability to search  
5 Sales Force yourself without assistance?

6 A No.

7 Q Are you familiar with the details of how you would run a search if you wanted  
8 to define certain complaints or issues, or data?

9 A No.

10 Q Would you typically delegate requests to you to provide incidents or claims  
11 data?

12 A Yes.

13 (Transcript of Evidentiary Hearing, Day 1, 163:5–13). However, Mr. Bachmeyer was informed  
14 that there were discovery obligations in this case, and was enlisted to assist in searches to the  
15 extent he was able to:

16 Q In this case, were you aware of searches being run for terms so that Jacuzzi  
17 could respond to discovery?

18 A Yes.

19 Q And were you either sent emails or copied on emails requesting all documents  
20 containing certain search terms?

21 A Yes.

22 (Transcript of Evidentiary Hearing, Day 1, 163:14–22). Mr. Bachmeyer also confirmed that  
23 several other individuals were tasked with performing searches for responsive documents,  
24 confirming that Jacuzzi was trying to be thorough in its probe. (Transcript of Evidentiary  
25 Hearing, Day 1, 174:13–175:5).

26 While Counsel makes the argument that emails were never searched, Mr. Bachmeyer's  
27 testimony set forth that **he was directed to search through his emails** to assist in responding to  
28 discovery:

29 A **For me, personally, I was supposed to look through letters, emails that I**  
30 **had attained, had obtained, excuse me, that were directed to me,** and -- but the  
31 other things, I was not asked to look at.

32 (Transcript of Evidentiary Hearing, Day 1, 174:1–3) (emphasis added). Plaintiffs also sought to  
33 elicit testimony from Mr. Bachmeyer such that he regularly sent emails regarding "incidents" to



1 in-house counsel and Mr. Demeritt. Notably, though, any such emails should have been included  
2 in any search that Mr. Bachmeyer would have conducted within his inbox. Nevertheless, after  
3 the Evidentiary Hearing, Jacuzzi agreed to re-search emails between William Demeritt and Kurt  
4 Bachmeyer. On October 22, Jacuzzi provided Plaintiffs with 42 pages of email documents. There  
5 was an email within the set showing that a June 2013 email chain titled "Service issues on  
6 5230/5229" was forwarded to William Demeritt and Anthony Lovallo. However, to the extent  
7 that Plaintiffs were seeking to show that Mr. Bachmeyer forwarded every incident to Mr.  
8 Demeritt, the evidence shows that he did not.

9 In Counsel's questioning of Mr. Bachmeyer, it was further made clear that emails were  
10 supposed to be subsumed into Salesforce, word-for-word, and there is evidence before the Court  
11 showing that they were, in fact, loaded into the database:

12 Q Mr. Bachmeyer, you agree that this email, this information in this email, where  
13 it says customer's tub . . . customer's tub was installed on 12/13 and they say his  
14 wife slips on the seat and floor, is the same information on the sales force  
15 document, true, word-for-word?

16 MR. ROBERTS: Your Honor, Jacuzzi is stipulating that they match, the portion  
17 read by Mr. Cloward.

18 . . .  
19 Q So you agree that these -- that the language contained in the emails is also  
20 housed in sales force, true?

21 A I agree that these are correct now, now that I look at them. I'm sorry about that.

22 Q Okay. It's okay. So the question was, you agree that the information contained  
23 in the emails is the same information that's housed in the sales force document,  
24 true?

25 A It would appear that one is.

26 Q Okay. And you agree that by searching the sales force database it would also  
27 pull up emails that were contained in that specific customer file, true?

28 A It may.

(Transcript of Evidentiary Hearing, Day 1, 44:9-46:10). Jacuzzi's counsel expected that all  
relevant emails would have been captured by Salesforce, and in most cases, it was. However, the  
record shows that Jacuzzi also endeavored to have Mr. Bachmeyer, Jacuzzi's former Director of  
Customer Service and current Director of Technical Services and Warranty, search through his  
emails for relevant emails and documents. Further, Jacuzzi later separately performed its own



search, and then produced, emails from Mr. Bachmeyer.<sup>32</sup> Mr. Bachmeyer's testimony affirms that Jacuzzi acted in good faith, and did not intentionally withhold evidence from production.

### III. THE BURDEN OF PROOF APPLICABLE TO PLAINTIFFS' MOTION FOR SANCTIONS

The Nevada Supreme Court has never held which burden of proof applies to motions for sanctions. As it concerns the issues currently before the Court, and specifically Plaintiffs' Motion to Strike, Jacuzzi contends that Plaintiffs have not justified striking the answer even by a preponderance of the evidence. If this Court agrees, it should indicate so and avoid overcomplicating its analysis with whether the higher burden applies. If this Court determines that it must reach the issue of which burden applies, case law from other jurisdictions foretells that ultimate sanctions must be justified by clear and convincing evidence. Nevada law is in accord with adopting this burden.

#### A. THE CLEAR-AND-CONVINCING BURDEN OF PROOF SHOULD APPLY

Numerous courts have determined that motions for sanctions must be warranted by clear and convincing evidence. *See, e.g., Shepherd v. Am. Broad. Companies, Inc.*, 62 F.3d 1469, 1472 (D.C. Cir. 1995) ("a district court may use its inherent power to enter a default judgment only if it finds, first, by clear and convincing evidence—a preponderance is not sufficient—that the abusive behavior occurred; and second, that a lesser sanction would not sufficiently punish and deter the abusive conduct while allowing a full and fair trial on the merits"); *Qantum Comms. Corp. v. Star Broadcasting, Inc.*, 473 F.Supp.2d 1249, 1277 (S.D.Fla.2007) (finding by clear and convincing evidence that defendant engaged in abusive conduct, including lying under oath, and that no sanction less than default judgment and fees would sufficiently deter and punish such conduct); *Chemtall, Inc. v. Citi-Chem, Inc.*, 992 F.Supp. 1390, 1408 (S.D.Ga.1998) (observing that district court may use its inherent power to enter a default judgment only if it finds by clear and convincing evidence that the abusive behavior occurred and that lesser sanction would not suffice).

<sup>32</sup> *See* Jacuzzi's July 26, 2019 Eighteenth Supplemental Disclosure Statement, JACUZZI005190-5270, Exhibit X



1 Nevada law, moreover, generally indicates that ultimate sanctions must be justified by  
2 clear and convincing evidence:

3 (1) The Nevada Supreme Court recently suggested the standard applies in *Valley Health*  
4 *System, LLC v. Estate of Doe*, by reviewing a sanctions decision and noting thrice without  
5 disapproval that the district court had applied the clear-and-convincing standard below.  
6 134 Nev. Adv. Op. 76, 427 P.3d 1021, 1027–28 (2018).

7 (2) That standard is consistent with the “somewhat heightened” standard of review that  
8 Nevada appellate court’s employ when reviewing the district court’s imposition of  
9 ultimate sanctions. *Foster v. Dingwall*, 126 Nev. 56, 65, 227 P.3d 1042, 1048 (2010).

10 (3) Plaintiff seeks to deprive Jacuzzi of a constitutional right to a jury trial, which cannot  
11 be denied lightly. *See* Nev. Const. art. I, § 3 (“The right of trial by Jury shall be secured  
12 to all and remain inviolate forever; but a Jury trial may be waived by the parties in all  
13 civil cases in the manner to be prescribed by law . . .”).

14 (4) Imposing discovery sanctions implies misconduct. At least in bar-disciplinary  
15 matters, “clear and convincing evidence must support any findings of misconduct.” *In re*  
16 *Discipline of Drakulich*, 111 Nev. 1556, 1566–67, 908 P.2d 709, 715 (1995).

17 (5) Plaintiff effectively accuses Jacuzzi of fraud on the court, which must be proven by  
18 clear and convincing evidence. *NC-DSH, Inc. v. Garner*, 125 Nev. 647, 657, 218 P.3d  
19 853, 860–61 (2009).

20 (6) The key to unlocking a court’s inherent power to sanction is a finding of bad faith  
21 (*see Bahena v. Goodyear Tire & Rubber Co.*, 126 Nev. 606, 615, 245 P.3d 1182, 1188  
22 (2010) (propriety of sanctions are based on “criteria of willfulness, bad faith, and  
23 prejudice”)), which Nevada generally requires be proven by clear and convincing  
24 evidence. *See, e.g., In re Discipline of Drakulich*, 111 Nev. at 1566–67, 908 P.2d 715  
25 (*bad faith in context of attorney discipline*); *Albert H. Wohlers & Co. v. Bartgis*, 114 Nev.  
26 1249, 1260, 969 P.2d 949, 957 (1998), as amended (Feb. 19, 1999) (insurance bad faith).

27 (7) Striking an answer is punitive in nature, which calls for the clear and convincing  
28 standard. *C.f.*, NRS 42.005(1) (punitive damages must be proven by clear and  
convincing evidence).

#### 20 **B. EVIDENCE MUST BE COMPELLING, NOT MERELY POSSIBLY INFERRED**

21 The clear-and-convincing standard applies to any inferences from indirect evidence, as  
22 well. The Nevada Supreme Court has explained that clear and convincing evidence must be:  
23

24 “satisfactory” proof that is so strong and cogent as to satisfy the mind and  
25 conscience of a common man, and so to convince him that he would venture to  
26 act upon that conviction in matters of the highest concern and importance to his  
27 own interest. It need not possess such a degree of force as to be irresistible, but  
28 there must be evidence of tangible facts from which a legitimate inference ... may  
be drawn.

*In re Discipline of Drakulich*, 111 Nev. at 1566–67, 908 P.2d at 715 (1995), citing *Gruber v.*



1 *Baker*, 20 Nev. 453, 477, 23 P. 858, 865 (1890). Clear and convincing evidence has been defined  
2 by other courts as “evidence establishing every factual element to be highly probable,” or as  
3 “evidence [which] must be so clear as to leave no substantial doubt.” *Id.*

4 And that high burden of proof carries over to the application of evidentiary inferences.  
5 Although bad-faith intent can be inferred from indirect and circumstantial evidence, “such  
6 evidence must still be clear and convincing, and inferences drawn from lesser evidence cannot  
7 satisfy the deceptive intent requirement.” *Star Sci., Inc. v. R.J. Reynolds Tobacco Co.*, 537 F.3d  
8 1357, 1366–67 (Fed. Cir. 2008). Moreover, “the inference must not only be based on sufficient  
9 evidence and be reasonable in light of that evidence, but it must also be the single most  
10 reasonable inference able to be drawn from the evidence to meet the clear and convincing  
11 standard.” *Id.*

12 For instance, Plaintiff urges the Court to assume that particular decision-makers were  
13 aware of certain reports or emails because similar emails have been forwarded in the past. Even  
14 assuming the rule allowing so-called “habit” evidence (NRS 48.059) applies in this  
15 circumstance, which it does not, adequate foundation must be laid. *Thomas v. Hardwick*, 126  
16 Nev. 142, 151, 231 P.3d 1111, 1117 (2010). “Th[at] foundation requires that specific, recurring  
17 stimuli have produced the same specific response often and invariably enough to qualify as habit  
18 or routine.” *Id.* In the criminal context—analogue to ultimate discovery sanctions—a  
19 defendant’s habit must establish “more than a mere ‘tendency’ to act in a given manner, but  
20 rather conduct that is ‘semi-automatic’ in nature.” *United States v. Collins*, 42 F.3d 1392 (7th  
21 Cir. 1994). Put simply, at each level of inference, any indirect evidence relied upon to justify  
22 sanctions also must clear and convincing.

#### 23 **IV. THE EXTREME SANCTION THAT PLAINTIFFS SEEK IS NOT JUSTIFIED** 24 **BY THE EVIDENCE, AND NOT IN ACCORD WITH NEVADA LAW**

25 “Fundamental notions of fairness and due process require that discovery sanctions be just  
26 and that sanctions relate to the specific conduct at issue.” *GNLV Corp. v. Service Control Corp.*,  
27 900 P.2d 323, 325 (Nev. 1995); *Young v. Johnny Ribeiro Bldg., Inc.*, 106 Nev. 88, 92, 787 P.2d  
28 777, 779-80 (1990). “Generally, NRCP 37 authorizes discovery sanctions only if there has been

1 *willful noncompliance with a discovery order of the court,”* and case-ending sanctions require a  
 2 heightened standard of review. *Fire Ins. Exch. v. Zenith Radio Corp.*, 103 Nev. 648, 651, 747  
 3 P.2d 911, 913 (1987); *Foster v. Dingwall*, 126 Nev. 56, 65, 227 P.3d 1042 (2010). Additionally,  
 4 any case-terminating order requires “an express, careful and preferably written explanation of the  
 5 court's analysis of the pertinent factors.” *Young*, 106 Nev. at 93.

6 “Sanctions interfering with a litigant's claim or defenses violate due process when  
 7 imposed merely for punishment of an infraction that did not threaten to interfere with the rightful  
 8 decision of the case.” *Bahena v. Goodyear Tire & Rubber Co.*, 235 P.3d 592, 605 (Nev. 2010)  
 9 (Pickering, J., dissenting) (quoting *Wyle v. R.J. Reynolds Industries, Inc.*, 709 F.2d 585, 589 (9th  
 10 Cir. 1983)). *Emerson v. Eighth Jud. Dist. Ct.*, 263 P.3d 224, 230 (Nev. 2011) (quoting *Heinle v.*  
 11 *Heinle*, 777 NW.2d 590, 602 (N.D. 2010)) (“Despite the district court's broad discretion to  
 12 impose sanctions, ‘a district court may only impose sanctions that are reasonably proportionate  
 13 to the litigant's misconduct.’”).

14 The striking of a pleading based on a discovery abuse should only be used in the most  
 15 extreme cases, where the violation is so outrageous that it cannot be cured by lesser sanctions.  
 16 *Rish v. Simao*, 368 P.3d 1203, 1212 (Nev. 2016); *Blanco v. Blanco*, 311 P.3d 1170, 1172 (Nev.  
 17 2013). In determining an appropriate sanction, the Court must ensure that any sanction is just,  
 18 relates to missing or late-disclosed evidence at issue, and consider all of the circumstances in  
 19 light of the particular factors below. *Young*, 106 Nev. 88, 92, 787 P.2d 777, 779-80 (1990).<sup>33</sup> As  
 20 this Court acknowledged at the outset of the evidentiary hearing:

21 there is a distinction between, on the one hand, violating a specific court order, if  
 22 that occurred, and on the other hand, violating a discovery obligation under NRCP  
 23 16.1, or a document request under NRCP 34. A violation of a court order may  
 24 trigger this Court's discretion to award various sanctions under NRCP 37,  
 25 including the relief sought by the Plaintiff here; however, for a mere discovery  
 26 violation, the sanction that the Court may impose is generally limited to an award  
 27 of attorney's fee, plus such a fees should not be awarded, if a non-disclosure of  
 28 documents was substantially justified.

Here, Plaintiff is seeking the harsh sanction of striking Jacuzzi's answer. As

<sup>33</sup> The *Young* factors were also addressed in detail prior to the evidentiary hearing in Jacuzzi's Opposition to Plaintiffs' Motion to Strike.

1 stated, such relief cannot be imposed absent violation of a court order. Thus, the  
2 primary purpose of this evidentiary hearing is to determine whether Jacuzzi  
3 violated a court order; if so, how such order was violated; when such violation  
4 occurred; the extent of such violation; who, within Jacuzzi caused such violation;  
5 whether Jacuzzi acted in good faith or bad faith; and the extent of any prejudice  
6 suffered by Plaintiff.

7 (Transcript of Evidentiary Hearing, Day 1, 7:17–8:9). Jacuzzi wholly agrees with this Court’s  
8 recitation of the law. Pursuant to this Court’s distinction, Jacuzzi submits the following argument  
9 considering the *Young* factors:

10 **A. THE DEGREE OF WILLFULNESS OF THE OFFENDING PARTY**

11 This factor in the *Young* analysis speaks to the general rule that “sanctions may only be  
12 imposed where there has been willful noncompliance with [a] court’s order.” *Fire Ins. Exch. v.*  
13 *Zenith Radio Corp.*, 103 Nev. 648, 651, 747 P.2d 911, 913 (1987). The Nevada Supreme Court  
14 has upheld this rule time and again in reviewing case terminating sanctions issued by trial courts.

15 For example, in *Finkelman v. Clover Jewelers*, the Nevada Supreme Court reversed a  
16 trial court order striking the defendants’ answers and entering a default for alleged failure to  
17 comply with an order to produce documents. *Finkelman v. Clover Jewelers Boulevard, Inc.*, 91  
18 Nev. 146 (1975). In reversing, the Court observed that there was “nothing in the record that  
19 indicates willful disregard of the district court’s order to produce documents.” *Id.* at p. 147.  
20 Conversely, in *Temora Trading Company, Ltd. v. Perry*, the trial court dismissed a plaintiff’s  
21 case for failure to obey a discovery order compelling the corporation to produce its officers for  
22 deposition. *Temora Trading Co. v. Perry*, 98 Nev. 229, 645 P.2d 436 (1982). In upholding the  
23 trial court’s ruling, the Nevada Supreme Court based its decision on a finding of **willful**  
24 noncompliance that was supported by substantial evidence of obstruction on the record. *Id.* at  
25 231, 437.

26 Heading into the hearing, Plaintiffs repeatedly alleged that Jacuzzi colluded with its  
27 attorneys to conceal and withhold documents from Plaintiffs. The testimony and briefing  
28 currently before this Court show that not to be the case. Strangely, in an effort to show  
“willfulness,” Plaintiffs again cited to an email from Ron Templer which showed that he  
understood the importance of searching all databases, and therefore directed Jacuzzi employees



1 to proceed with that search. Specifically, he requested “[a]ll letters, emails, customer  
2 service/warranty entries and all other communications and documents (written or electronic) that  
3 mention or refer to a personal injury sustained in a walk-in tub from 1/1/2008 to the present” and  
4 instructed that it would require “a search of all databases (both current and old), email and other  
5 potential locations where the information may be stored.” (Email from Ron Templer, Esq. to  
6 Various Jacuzzi Employees, July 25, 2018, (produced to Plaintiffs on Oct. 10, 2019) attached to  
7 Plaintiffs’ brief as Exhibit 217).

8 Jacuzzi and its counsel have been working diligently and in good faith to produce  
9 information according to ever-changing theories and requests from Plaintiffs. There has been no  
10 showing from Plaintiffs of “willfulness” to disregard a Court Order, let alone “willfulness” to  
11 thwart Plaintiffs’ discovery efforts. Furthermore, and again, all of the documents upon which  
12 Plaintiffs base their motion are documents that were produced by Jacuzzi; the motion is not  
13 based on documents Jacuzzi has withheld from production. Plaintiff has not met its burden  
14 relative to this factor.

15 **B. PLAINTIFFS WOULD NOT BE PREJUDICED BY A LESSER SANCTION**

16 Plaintiffs had an opportunity at the evidentiary hearing to show that they would be  
17 prejudiced by lesser sanctions. And such proof is necessary; the Court cannot simply accept  
18 plaintiffs’ claims of prejudice and disregard this proof. *See Rubin v. Belo Broadcasting Corp.*,  
19 769 F.2d 611, 618 (9th Cir. 1985) (reversing a district court ultimate sanction where claimed  
20 prejudice resulting from alleged insufficient discovery was “directly contradicted by Creditor’s  
21 counsel’s assertion that they were ready to go to trial”). They failed to argue or produce any  
22 evidence to support such prejudice. The Court’s prompt and decisive action in extending  
23 discovery minimized, if not totally eliminated, any prejudice caused by late disclosures of  
24 documents. Additionally, now that Plaintiffs are in possession of every tangential document they  
25 sought to obtain, they have had sufficient time to engage in discovery. Nevertheless, Plaintiffs’  
26 argument to this factor is largely based on the fact that “[a]ll experts will now have to review the  
27 new materials and supplement their reports.” (Plaintiffs’ brief at 49:17). This is nonsensical.  
28



1 Plaintiffs have been provided with several supplements of documents from October of 2018  
2 through July of 2019, and yet **have not submitted any supplemental expert reports since they**  
3 **served their rebuttal expert disclosure in October 2018**. While Plaintiffs have cried prejudice  
4 over Jacuzzi's timing of the disclosure of documents, the absence of new expert reports indicates  
5 either (1) that their experts either have not formed new opinions after reviewing these additional  
6 materials, or (2) that Plaintiffs have not yet supplemented any of this information to their expert  
7 witnesses. This case is still actively in litigation, and there is no reason that Plaintiffs should not  
8 be continuing to supplement information to their experts. Plaintiffs' argument here is  
9 disingenuous both because Plaintiffs have had time to supplement their expert disclosures, and  
10 also because there is no evidence that the existence of customer complaints would have any  
11 impact on their experts' opinions in this case.

12 Plaintiffs also argue that they will have to re-depose Jacuzzi's Rule 30(b)(6) witnesses  
13 based on the new customer complaints. It is Jacuzzi's position that the recently produced  
14 documents will not materially change the testimony of these witnesses. However, Jacuzzi would  
15 be willing to produce these witnesses at the company's expense if the Court believes this is  
16 warranted. Any remaining prejudice yet unidentified could be cured by a monetary sanction to  
17 compensate Plaintiffs for fees and costs.

18 **C. STRIKING JACUZZI'S ANSWER WOULD BE SEVERE WHEN CONSIDERING THE**  
19 **CONDUCT AT ISSUE**

20 Plaintiffs rely primarily on *Young v. Johnny Ribeiro Bldg., Inc.* and *Bahena v. Goodyear*  
21 *Tire & Rubber Co.* in support of their position that Jacuzzi's Answer be stricken. The Plaintiffs  
22 rely on *Young*, primarily, in an effort to lay out the factors to consider in levying sanctions. The  
23 facts in *Young* were markedly different from the facts of the discovery dispute in this case. As  
24 this Court is aware, the district court in *Young* issued terminating sanctions only after a finding  
25 that *Young* had willfully fabricated evidence and refused to clarify his position. *Id.* at 91, 787  
26 P.2d at 778. The Supreme Court of Nevada recognized the importance of resolving cases based  
27 on their merits and cautioned that district courts must be hesitant when contemplating  
28 terminating sanctions: "Where the sanction is one of dismissal with prejudice . . . we believe that



1 a somewhat heightened standard of review should apply.” *Id.* at 92, 787 P.2d at 779. The reason  
2 for this is two-fold. First, fundamental notions of due process require that “discovery sanctions  
3 for discovery abuses be just and that the sanctions relate to the claims which were at issue in the  
4 ***discovery order which is violated.***” *Id.* at 92, 787 P.2d at 780 (emphasis added). Second,  
5 dismissal should be imposed “only after thoughtful consideration of all the factors involved in  
6 the particular case.” *Id.* Thus, every order issuing a terminating sanction be supported by an  
7 express, careful, and preferably written explanation of the court’s analysis. *Id.* at 93, 787 P.2d at  
8 780.

9 In *Bahena*, the tire manufacturer refused to provide a company representative for  
10 deposition. *Bahena v. Goodyear Tire & Rubber Co.*, 126 Nev. 243, 235 P.3d 592 (2010). The  
11 district court struck Goodyear's Answer after finding that the prejudice to Plaintiff Bahena was  
12 “extreme and inappropriate.” *Id.* at 248, 596. In support of its holding, the Nevada Supreme  
13 Court also acknowledged that “the degree of willfulness by [Defendant] was extreme” and noted  
14 that there were nine separate instances of conduct that it found to be untenable, unjustified, and  
15 appalling. *Id.* at 253, 598–99. (emphasis added).

16 There is no evidence of recalcitrance here, and certainly no evidence that Jacuzzi’s  
17 conduct was “extreme” or “willful.” In fact, there is no evidence that Jacuzzi ever refused to  
18 comply with any Court orders. This is not a case where a party failed to attend depositions, or  
19 where a party has already been sanctioned for repeated discovery violations. *Foster v. Dingwall*,  
20 126 Nev. 49, 66, 227 P.3d 1042, 1049 (2010). This is not a case where evidence is lost. *Stubli v.*  
21 *Big D Inter. Trucks, Inc.*, 107 Nev. 309, 313, 810 P.3d 785, 788 (1991). And this is certainly not  
22 a case where there is a “willful and recalcitrant disregard of the discovery process” on nine  
23 separate grounds. *Bahena v. Goodyear Tire & Rubber Co.*, 126 Nev. 243, 253, 235 P.3d 592,  
24 598 (2010). This is simply a case where Plaintiffs sought voluminous discovery of (arguably  
25 irrelevant) documents, which were ultimately produced, albeit some were late.

26 Plaintiffs have failed to show bad faith conduct on behalf of Jacuzzi, and have failed to  
27 show that Jacuzzi has willfully violated a discovery order. As above, the Nevada Supreme Court  
28 consistently refuses to uphold decisions striking pleadings except for willful violations of





1 discovery orders. *Hamlett v. Reynolds*, 114 Nev. 863, 963 P.2d 457 (1998); *Foster*, 126 Nev. 56,  
2 227 P.3d 1042; *Bahena*, 126 Nev. 243, 235 P.3d 592; *Temora Trading Co. v. Perry*, 98 Nev.  
3 229, 645 P.2d 436 (1982). There is no question that the striking of Jacuzzi's Answer would be  
4 severe when considering that Jacuzzi has acted in good faith to remedy any alleged prejudice to  
5 Plaintiffs.

6 Regarding the importance of prejudice, the sanction ruling of this Court upheld in *Valley*  
7 *Health System, LLC v. Peterson* is particularly instructive in contrast to this case. As the Court  
8 must recall, that case involved a claim for negligent failure to maintain the premises following a  
9 sexual assault on the plaintiff by an employee nurse when the plaintiff was a patient. 134 Nev.  
10 634, 427 P.3d 1021 (2018). The nurse had assaulted other patients, as well. Around the time of  
11 the assault on the plaintiff, the hospital and its law firm had investigated that nurse's assault on  
12 another patient and received statements from certain staff members regarding complaints and red  
13 flags concerning that nurse, which had been voiced prior to the assault on the plaintiff. The  
14 hospital and its law firm were also aware of police reports completed by those staff members  
15 concerning the nurse. Yet, the hospital and its law firm neither disclosed to the plaintiff the  
16 statements it received, nor that police reports existed, nor even the identity of the staff  
17 members. This Court struck the hospital's answer on liability, finding "Centennial's  
18 management was aware of the knowledge of numerous Centennial staff of various stations, and  
19 exhibited an unlawful pattern of suppression and denial over the course of years to [Doe's]  
20 detriment." *Valley Health System, LLC*, 427 P.3d at 1027-28.

21 Importantly, the prejudice was extreme, in contrast to this case. First, the evidence and  
22 witness identity withheld was essential to a "central issue in the case," what and when the  
23 hospital knew about the dangerous proclivities of the nurse. *Id.* at 1028. Here, the customer  
24 complaints about the tub are marginally relevant at most. Second, in *Valley Health*, the plaintiff  
25 learned about the potential witness identify more than *five years* after the defendants were  
26 required to have disclosed it, after which the witnesses testified that they could not recall the red  
27 flags and complaints about the nurse they once passed on. (See "Order Striking Answer of  
28

1 Defendant Valley Health System LLC as Sanction for Discovery Misconduct,” filed November  
2 2, 1015, in case no. 09-A-595780-C, attached as Exhibit B, at 28-29.) “Centennial’s acts of  
3 concealment ha[d] effectively irreparably destroyed evidence” about that dangerous nurse. (*Id.*  
4 at 37.)

5 Here, less than a year passed between the time that Jacuzzi arguably was required to  
6 disclose the customer complaints and the supplemental disclosure. And, importantly, the only  
7 conceivable relevance of the prior product complaints—assuming they are admissible at all—is  
8 the fact that the complaints with limited descriptions were received, which is conveyed in the  
9 documentation already provided. Here, there is no reason to depose all of the alleged customers  
10 or users because the evidence of those complaints about *other tubs* would be relevant (at most)  
11 only to whether the substance of the *descriptions reported by telephone representatives* to  
12 management and engineers at the company would have put them on notice that *this* tub is  
13 somehow defective in a materially similar way. Put simply, the difference between this case  
14 and *Valley Health* illuminates how excessive striking even Jacuzzi’s liability defense would be  
15 juxtaposed to the limited harm caused by delayed disclosure.

16 **D. NO EVIDENCE HAS BEEN IRREPARABLY LOST**

17 One of the most crucial *Young* factors is whether the evidence at issue was irreparably  
18 lost. *GNLV Corp. v. Service Control Corp.*, 111 Nev. 866, 871, 900 P.2d 323, 326 (1995).  
19 Plaintiffs have not identified a single piece of significant evidence that was lost as a result of  
20 Jacuzzi’s untimely disclosure of the subject records.

21 In support of this factor, Plaintiffs argue that they are somehow prevented from obtaining  
22 testimony of elderly witnesses. They disingenuously state that it has been “almost six years”  
23 since a December 27, 2013 email about a slip in a tub, conveniently ignoring that this litigation  
24 did not commence until 2016, and the fact that it was at first centered on a claim regarding a  
25 drain issue. (Plaintiff’s brief at 51:4–7). Further, Plaintiffs did not request documents where end-  
26 users complained about the tubs being slippery until July of 2019. Most importantly, though,  
27 Plaintiffs have been allowed (without objection from Jacuzzi) to set the depositions of these  
28



1 individuals. For months, the parties traveled around the country for depositions of people who  
2 have not been treated for injuries, nor filed claims; they simply made complaints about their  
3 walk-in tubs. To the extent that Plaintiffs believe they would, in a normal setting, be permitted to  
4 take the depositions of hundreds of people with no affiliation to the facts of the case, they are  
5 clearly mistaken.

6 **E. THE FEASIBILITY AND FAIRNESS OF ALTERNATIVE, LESS DRASTIC SANCTIONS<sup>34</sup>**

7 As the Nevada Supreme Court has noted, the clear due process concerns inherent in  
8 outcome-determinative sanctions require narrow tailoring between the infraction and sanction:  
9 “[F]undamental notions of due process require that the discovery sanctions for discovery abuses  
10 be just and that the sanctions relate to the claims which were at issue in the discovery order  
11 which is violated.” *Young*, 106 Nev. at 92, 787 P.2d at 779-80. As explained above, even  
12 construing the conduct at issue cynically, striking Jacuzzi’s answer would be excessive. The  
13 next step down would be to strike Jacuzzi’s affirmative defenses (including comparative  
14 negligence), as was the sanction in *Clark County School District v. Richardson Construction, Inc.*,  
15 123 Nev. 382, 168 P.3d 87 (2007). But that also would be harsh and not “fit the crime”  
16 because the discovery mishaps never jeopardized Plaintiffs ability to prosecute their case.  
17 Jacuzzi worked to mitigate and essentially eliminate any alleged prejudice that befell Plaintiffs.  
18 This sanction also would be severe in this *wrongful-death case*, where damages are virtually  
19 certain to be awarded and likely to be significant

20 The next lesser sanction would be to instruct the jury that a certain fact relating to the  
21 subject of the late-disclosed evidence is established—e.g., that users have submitted a number of  
22 complaints about the slipperiness of the tub. That would be unreasonable because it would be  
23 more detrimental to Jacuzzi than an adverse-presumption spoliation instruction would have been  
24 had the late-disclosed evidence been destroyed; it would establish as fact the most harmful  
25 inferences that a jury could ever draw.

26 It is clear that, at most, monetary sanctions are most fitting here, where Plaintiffs point to  
27

28 <sup>34</sup> See discussion of alternative sanctions in introduction above.



1 delay as the only prejudice that resulted. While Jacuzzi does not agree that Plaintiffs were at all  
2 prejudiced, Jacuzzi has submitted that it is willing to reproduce its NRCP 30(b)(6) witnesses at  
3 the company's expense. Further, Jacuzzi has offered to address any yet unidentified prejudice  
4 with compensation for Plaintiffs reasonable fees and costs.

5 **F. THIS CASE SHOULD BE TRIED ON ITS MERITS**

6 Nevada has long standing policy favoring adjudication on the merits. *See Saticoy Bay*  
7 *LLC Series 2021 Gray Eagle Way v. JPMorgan Chase Bank, N.A.*, 133 Nev. 21, 388 P.3d 226  
8 (2017). The principle reason for that policy is that "sanctions interfering with a litigant's claim or  
9 defenses violate due process when imposed merely for punishment." *Wyle v. R.J. Reynolds*  
10 *Indus., Inc.*, 709 F.2d 585, 591 (9th Cir. 1983). Thus, striking Jacuzzi's answer—or even the  
11 "lesser" sanctions on the harsh end of the spectrum—should be out of the question.

12 Courts have an overriding interest in deciding cases on the substantive merits rather than  
13 procedural grounds to further justice and ensure fairness to the parties. The glaring issue here is  
14 that the documents at issue do not concern information critical to the case at hand; they consist of  
15 complaints and "incidents" that are irrelevant and likely inadmissible at trial. Sanctions should  
16 relate to the conduct at issue, and Jacuzzi would be unfairly penalized here for a procedural  
17 sanction relative to—what amounts to, at most—a delayed response to a request for production.

18 The parties have spent countless hours on discovery and trial preparation to date,  
19 including the preparation of their respective motions in limine – more than forty in total. It is  
20 clear that the parties have vested a significant amount of time and energy in the substantive  
21 preparation on this case. The case should be tried on its merits

22 **G. STRIKING THE ANSWER WILL UNFAIRLY PUNISH JACUZZI**

23 As Jacuzzi represented to this Court, it does not currently intend to rely on the "advice of  
24 counsel" defense. Should this Court determine that Counsel's actions are to be considered in  
25 levying sanctions, the parties and this Court agreed to bifurcate the hearing to address this issue  
26 separately. As such, Jacuzzi does not need to address this factor in this analysis.

27 **H. STRIKING JACUZZI'S ANSWER WOULD NOT OPERATE AS A DETERRENT**

28



1 A “sanction imposed for its deterrent effect must be calibrated to the gravity of the  
2 misconduct.” *Bonds v. District of Columbia*, 93 F.3d 801, 808 (D.C. Cir. 1996). Here, there is  
3 no reason to “deter” conduct that was inadvertent in the first place. Furthermore, the lessons have  
4 already been learned. Jacuzzi has already sustained significant consequences in light of the non-  
5 disclosure, including: the costs of having to produce years of privileged communications, the  
6 costs in defending Plaintiffs’ numerous motions for sanctions, and in permitting Plaintiffs,  
7 without objection, to depose individuals all over the country in search of testimony to disparage  
8 Jacuzzi.

9 As a matter of public policy, moreover, the Court would be wise to consider the aspect of  
10 deterrence and moral hazards *both ways*. Assuming the Court finds Jacuzzi’s decisions during  
11 discovery to be sanctionable, it could only be for *momentary* litigation postures. Ultimately,  
12 Jacuzzi turned over everything. Plaintiff possesses the material it employs to assert that Jacuzzi  
13 withheld evidence only because Jacuzzi eventually turned it over, once it became crystal clear  
14 how this Court viewed discoverability. Put simply, this Court should encourage future litigants  
15 to correct course where possible, as Jacuzzi did here, by weighing that mitigating conduct.

16 **I. TO BE CLEAR, ASSUMING *ARGUENDO* THE COURT WERE TO IMPOSE ANY**  
17 **SANCTIONS BEYOND AN AWARD OF ATTORNEY FEES, ANY SANCTION CANNOT EXTEND TO**  
18 **PUNITIVE DAMAGES**

19 Even if the Court to strike Jacuzzi’s liability defenses, that could never extend to liability  
20 for punitive damages. A plaintiff never receives punitive damages as a matter of course. Rather,  
21 NRS 42.005(3), requires that the trier of fact make the requisite findings to support an award of  
22 punitive damages: “If punitive damages are claimed pursuant to this section, the trier of fact  
23 shall make a finding of whether such damages will be assessed. If such damages are to be  
24 assessed, a subsequent proceeding must be conducted before the same trier of fact to determine  
25 the amount of such damages to be assessed.” Moreover, “[a] plaintiff is never entitled to  
26 punitive damages as a matter of right, their allowance or denial rests entirely in the discretion of  
27 the trier of fact.” *Nevada Cement Co. v. Lemler*, 89 Nev. 447, 451, 514 P.2d 1180, 1182 (1973);  
28 *Ramada Inns v. Sharp*, 101 Nev. 824, 826, 711 P.2d 1, 2 (1985). The striking of an answer

1 accordingly cannot equate to a finding of pre-incident and incident-causing malicious conduct  
2 sufficient to support a punitive damages award.

3 The showing of malice as a predicate to an award of punitive damages, moreover, is an  
4 issue of constitutional dimension. Punitive damages have long been analogized to punishment in  
5 criminal law, implicating heightened due process concerns. Awards of punitive damages now  
6 routinely produce appeals based on U.S. Constitutional protections of due process, the same as  
7 criminal appeals. See, e.g., *Philip Morris USA v. Williams*, 549 U.S. 346 (2007); *BMW of North*  
8 *America, Inc. v. Gore*, 517 U. S. 559 (1996); *TXO Production Corp. v. Alliance Resources*  
9 *Corp.*, 509 U.S. 443 (1993); *Pacific Mut. Life Ins. Co. v. Haslip*, 499 U.S. 1 (1991); Kircher,  
10 PUNITIVE DAMAGES: LAW AND PRACTICE 2D. § 3.03 (2000).

11 The Court would err to simply impose liability for punitive damages. In the case of  
12 defaults, courts are particularly concerned that defendants be permitted to fully defend against  
13 punitive damages claims because such damages “are not favored in the law” to begin with. *C.f.*,  
14 *Moldon v. Reid*, 558 N.E.2d 239, 244 (Ill. Ct. App. 1990) (defendant against whom ex parte  
15 judgment was entered was entitled to contest issue of damages, “particularly punitive damages”);  
16 *Nettles v. MacMillan Petroleum Corp.*, 37 S.E.2d 134, 135 (S.C. 1946) (reversible error in  
17 awarding punitive damages by default without aid of a jury). Importantly, post-incident  
18 discovery abuse is no substitute for the type of pre-incident improper conduct required to justify  
19 an award of punitive damages. NRS 42.001(1) requires an assessment of how the defendant’s  
20 pre-incident conduct led to the plaintiff’s damages. See also *Bahena v. Goodyear Tire & Rubber*  
21 *Co.*, 235 P.3d 592, 602 (2010) (district court properly plaintiff to demonstrate entitlement to  
22 punitive damages, even where defendant’s discovery misconduct led to striking of liability  
23 defenses). Even for a sanction as severe as striking the answer, Plaintiff must still make a prima  
24 facie case showing he is entitled to the damages he seeks. *Foster v. Dingwall*, 227 P.3d 1042,  
25 1050 (2010) (“[W]e do not read *Young* and *Hamlett* as entitling a nonoffending party to  
26 unlimited or unjustifiable damages simply because default was entered against the offending  
27 party”).  
28



## CONCLUSION

Jacuzzi has never willfully violated a court order, and it has certainly never engaged in behavior deserving of the sanction of striking its Answer. As shown by the facts and testimony before this Court, Jacuzzi has made a good faith effort to participate in the discovery process. Jacuzzi acknowledges that a few certain documents, responsive to discovery requests, should have been located and produced sooner. The reason they were produced late was due solely to inadvertent mistakes; not intentional conduct. However, the Nevada Rules of Civil Procedure have mechanisms in place to address such mistakes; the goal of which is to rectify them. Here, the mistakes have been cured. Plaintiffs have received the records they sought, have been able to conduct virtually unlimited discovery, and still have the opportunity to fully present their case at trial. Jacuzzi should be afforded the same opportunity.

Dated this 2 day of December, 2019.

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GUNN & DIAL, LLC

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Jacuzzi Inc. doing business as  
Jacuzzi Luxury Bath*

**CERTIFICATE OF SERVICE**

I hereby certify that on the 2nd day of December, 2019, a true and correct copy of the foregoing **DEFENDANT JACUZZI INC. DOING BUSINESS AS JACUZZI LUXURY BATH'S EVIDENTIARY HEARING CLOSING BRIEF** was electronically served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted. A separate email will follow with a sharefile link of all documents produced within this disclosure:

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Jacuzzi Inc. doing business as  
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*Rebecca Mechan*

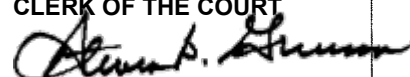
An employee of WEINBERG, WHEELER,  
HUDGINS, GUNN & DIAL, LLC

WEINBERG WHEELER  
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# 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 RELATED CASES

Case No.: A-16-731244-C

Dept. No.: II

### **ERRATA TO DEFENDANT JACUZZI INC. DOING BUSINESS AS JACUZZI LUXURY BATH'S EVIDENTIARY HEARING CLOSING BRIEF**

468500  
WEINBERG WHEELER  
HUDGINS GUNN & DIAL



005894

1 Defendant Jacuzzi Inc. dba Jacuzzi Luxury Bath ("Jacuzzi"), by and through its  
2 attorneys, the law firm of Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC, hereby submits this  
3 Errata to its Evidentiary Hearing Closing Brief ("Brief").

4 On page 9 of the Brief, Jacuzzi indicated that the "August 17, 2018 Letter from J. Cools  
5 to B. Cloward" was attached as Exhibit "C." Jacuzzi submits this errata to reflect that the  
6 "August 17, 2018 Letter from J. Cools to B. Cloward" is attached to Jacuzzi's Appendix of  
7 Exhibits as Exhibit "D."

8 On pages 9 and 11 of the Brief, Jacuzzi indicated that "Plaintiffs' Second Request for  
9 Production of Documents to Jacuzzi, Inc. (August 27, 2018)" was attached as Exhibit "D" and  
10 "F," respectfully. Jacuzzi submits this errata to reflect that the "Plaintiffs' Second Request for  
11 Production of Documents to Jacuzzi, Inc. (August 27, 2018)" is attached to Jacuzzi's Appendix  
12 of Exhibits as Exhibit "E."

13 On pages 9–10 of the Brief, Jacuzzi indicated that the "Discovery Commissioner Report  
14 and Recommendations (signed 10/16/2018)" was attached as Exhibit "E." Jacuzzi submits this  
15 errata to reflect that the "Discovery Commissioner Report and Recommendations (signed  
16 10/16/2018)" is attached to Jacuzzi's Appendix of Exhibits as Exhibit "F."

17 On page 21 of the Brief, Jacuzzi indicated that the "Pullen communications, produced as  
18 JACUZZI006775-6800" were attached as Exhibit "H." Jacuzzi submits this errata to reflect that  
19 the "Pullen communications, produced as JACUZZI006775-6800" are attached to Jacuzzi's  
20 Appendix of Exhibits as Exhibit "J."

21 On page 26 of the Brief, Jacuzzi indicated that "Jacuzzi's Objection to Plaintiffs' Fifth  
22 Amended Notice to Take Videotaped Depositions of 30(b)(6) for Jacuzzi" was attached as  
23 Exhibit "J." Jacuzzi submits this errata to reflect that "Jacuzzi's Objection to Plaintiffs' Fifth  
24 Amended Notice to Take Videotaped Depositions of 30(b)(6) for Jacuzzi" is attached to  
25 Jacuzzi's Appendix of Exhibits as Exhibit "K."

26 On page 29 of the Brief, Jacuzzi indicated that "Jacuzzi's July 26, 2019 Eighteenth  
27 Supplemental Disclosure Statement, JACUZZI005190-5270" was attached as Exhibit "X."  
28 Jacuzzi submits this errata to reflect that "Jacuzzi's July 26, 2019 Eighteenth Supplemental

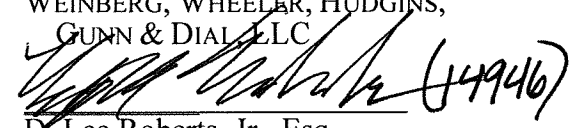
1 Disclosure Statement, JACUZZI005190-5270" is attached to Jacuzzi's Appendix of Exhibits as  
2 Exhibit "H."

3 On pages 37-38 of the Brief, Jacuzzi indicated that the "Order Striking Answer of  
4 Defendant Valley Health System, LLC as sanction for Discovery Misconduct, filed 11/2/2015 in  
5 Case 09-A-595780-C" was attached as Exhibit "B." Jacuzzi submits this errata to reflect that the  
6 "Order Striking Answer of Defendant Valley Health System, LLC as sanction for Discovery  
7 Misconduct, filed 11/2/2015 in Case 09-A-595780-C" is attached to Jacuzzi's Appendix of  
8 Exhibits as Exhibit "C."

9 Jacuzzi submits its Appendix of Exhibits in Support of its Evidentiary Hearing Closing  
10 Brief, reflecting the aforementioned changes, concurrently herewith.

11 Dated this 5th day of December, 2019.

12 WEINBERG, WHEELER, HUDGINS,  
13 GUNN & DIAL, LLC

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21 *Jacuzzi Inc. doing business as*  
22 *Jacuzzi Luxury Bath*  
23  
24  
25  
26  
27  
28



**CERTIFICATE OF SERVICE**

I hereby certify that on the 6th day of December, 2019, a true and correct copy of the foregoing **ERRATA TO DEFENDANT JACUZZI INC. DOING BUSINESS AS JACUZZI LUXURY BATH'S EVIDENTIARY HEARING CLOSING BRIEF** was electronically served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted. A separate email will follow with a sharefile link of all documents produced within this disclosure:

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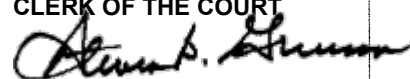
*Rebecca Mechem*

An employee of WEINBERG, WHEELER,  
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*Attorneys for Defendant*

*Jacuzzi Inc. doing business as*

*Jacuzzi Luxury Bath*

# DISTRICT COURT

## CLARK COUNTY, NEVADA

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

Plaintiffs,

vs.

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

Defendants.

CASE NO.: A-16-731244-C

DEPT. NO.: II

### APPENDIX OF EXHIBITS IN SUPPORT OF DEFENDANT JACUZZI INC. DOING BUSINESS AS JACUZZI LUXURY BATH'S EVIDENTIARY HEARING CLOSING BRIEF

868500  
WEINBERG WHEELER  
HUDGINS GUNN & DIAL



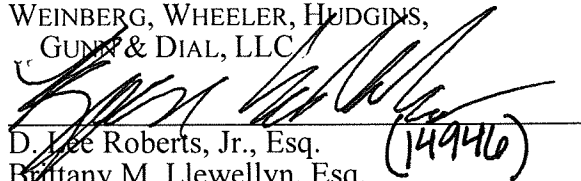
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Defendant Jacuzzi, Inc. dba Jacuzzi Luxury Bath ("Jacuzzi") by and through their attorneys of record, WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC, hereby submits this Appendix of Exhibits in Support of Defendant Jacuzzi Inc. doing business as Jacuzzi Luxury Bath's Evidentiary Hearing Closing Brief.

Exhibit	Description
A.	Plaintiff Deborah Tamantini's first Supplemental Response to Jacuzzi's First Set of interrogatories
B.	Jacuzzi's Responses to Plaintiffs' Seventh Request for Production of Documents to Jacuzzi, Inc.
C.	Order Striking Answer of Defendant Valley Health System, LLC as sanction for Discovery Misconduct, filed 11/2/2015 in Case 09-A-595780-C
D.	Letter from J. Cools to B. Cloward (08/17/2018)
E.	Plaintiffs' Second Request for Production of documents to Jacuzzi Inc. (08/27/2018)
F.	Discovery Commissioner Report and Recommendations (signed 10/16/2018)
G.	Plaintiffs' Seventh Request for Production of Documents to Jacuzzi Inc. (07/03/2019)
H.	Jacuzzi 5190-5270, disclosed via Jacuzzi 18 <sup>th</sup> Supplemental Disclosure
I.	Selected pages from Robert Pullen deposition
J.	Pullen communications, produced as JACUZZI006775-6800
K.	Jacuzzi's Objection to Plaintiffs' Fifth Amended notice to Take Videotaped Depositions of 30(b)(6)

Dated this 5th day of December, 2019.

WEINBERG, WHEELER, HUDGINS,  
GUNN & DIAL, LLC

  
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Las Vegas, Nevada 89118

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







## CERTIFICATE OF SERVICE

I hereby certify that on the 6th day of December, 2019, a true and correct copy of the foregoing **APPENDIX OF EXHIBITS IN SUPPORT OF DEFENDANT JACUZZI INC. DOING BUSINESS AS JACUZZI LUXURY BATH'S EVIDENTIARY HEARING CLOSING BRIEF** was electronically filed and served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

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Jacuzzi Inc. doing business as  
Jacuzzi Luxury Bath*

  
An employee of WEINBERG, WHEELER,  
HUDGINS, GUNN & DIAL, LLC

# EXHIBIT A

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005901

# EXHIBIT A

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*Attorneys for Plaintiffs*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

ROBERT ANSARA, as Special  
Administrator of the Estate of SHERRY  
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SMITH individually, and heir to the Estate of  
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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 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**  
**- RESPONSES TO DEFENDANT,**  
**JACUZZI INC.'S FIRST SET OF**  
**INTERROGATORIES**

1 **PLAINTIFF DEBORAH TAMANTINI – FIRST SUPPLEMENTAL RESPONSES TO**  
2 **DEFENDANT, JACUZZI INC.'S FIRST SET OF INTERROGATORIES**

3 COME NOW, DEBORAH TAMANTINI and provides her First Supplemental  
5 Responses to Defendant Jacuzzi Inc.'s First Set of Interrogatories. [Items in bold are being  
6 modified or added, all other items have been previously disclosed].

7 **GENERAL OBJECTION:**

8  
9 Plaintiff objects to the following statement by Defendant: "NOTE: these  
10 Interrogatories are to be deemed continuing to the day of trial herein." NRCP 26(e)(2)  
11 provides that a party only has a duty to supplement discovery responses "if the party learns  
12 that the response is in some material respect incomplete or incorrect and if the additional or  
13 corrective information has not otherwise been made known to the other parties during the  
14 discovery process or in writing." Plaintiff does not agree that NRCP 26(e)(2) imposes a  
15 continuing duty to supplement merely because further information may be obtained. The duty  
16 is only imposed if Plaintiff's original responses were incomplete or incorrect in some material  
17 respect and if the additional or corrective information has not otherwise been made known to  
18 the other parties during the discovery process or in writing. Therefore, Defendant's statement  
19 may be partially construed as contrary to the duty imposed by NRCP 26(e)(2).  
20

21 **INTERROGATORY NO. 1:**

22  
23 State your relationship to Decedent.

24 **ANSWER TO INTERROGATORY NO. 1:**

25  
26 Daughter

27 **INTERROGATORY NO. 2:**

28 State your full name, date of birth, social security number, and residence address.

**ANSWER TO INTERROGATORY NO. 2:**

1 Debra Jane Tamantini  
2 07/25/1965  
3 XXX-XX-0338  
4 10393 Primerose Lane  
5 Florence, Arizona 85132

6 INTERROGATORY NO. 3:

7 Did Decedent provide you any income or support during your lifetime? If so, please  
8 describe in detail.

9 ANSWER TO INTERROGATORY NO. 3:

10 I lived with my mother until I was 16, I then moved in with my father. Once I turned  
11 16, my mother no longer provided me with any type of financial support.

12 INTERROGATORY NO. 4:

13 State complete details for all claims for pecuniary loss (loss of Decedent's income;  
14 loss of household or other services; loss of support; etc.) alleged to be a result of Decedent's  
15 death. Please include a description of the type and nature of loss; amount of loss; amount of  
16 support or type of services (and financial equivalent thereof) received by you from Decedent;  
17 gifts received by you from Decedent; and complete details of method used to compute the  
18 total current value of said loss of support or services (e.g., work-life expectancy of Decedent,  
19 life expectancy of each recipient, basis and amount of Decedent's income, the percent per  
20 annum increase in Decedent's income during expected work-life and basis therefor, discount  
21 factors used and basis therefor, etc.).

22 ANSWER TO INTERROGATORY NO. 4:

23 Plaintiff objects to this Interrogatory as premature. Notwithstanding and without  
24 waiving said objection, this request requires evaluation by an expert in the field of  
25 economics. Plaintiff will identify any experts pursuant to 16.l(a)(2). Without waving said  
26

1 **Objections Plaintiff responds as follows: I did not receive any financial support from**  
2 **my mother, Sherry Cunnison.**

3 **Plaintiff reserves the right to supplement this answer as discovery is continuing.**

4  
5  
6 **INTERROGATORY NO. 5:**

7 State complete details for all claims for non-pecuniary damages (including loss of  
8 consortium, society, comfort, companionship, guidance, grief, sorrow, mental distress, etc.)  
9 resulting from Decedent's death. Please identify the type and nature of claim; amount of  
10 money damages claimed as compensation; basis for determining monetary compensation; and  
11 the manifestations of such loss, grief, sorrow, etc. If you are claiming damages for grief,  
12 sorrow or mental distress, please describe where you were at the time of the incident; state  
13 how you learned of Decedent's death; identify every person known to you who was a witness  
14 to any instance of such grief, sorrow, or mental distress; describe any counseling or medical  
15 treatment any claimant has received or is receiving as a result of Decedent's death; identify the  
16 provider of said services; and state all sums paid to date for said treatment or counseling.

17  
18  
19 **ANSWER TO INTERROGATORY NO. 5:**

20 **Plaintiff objects to this Interrogatory as premature. Notwithstanding and without**  
21 **waiving said objection, this request requires evaluation by an expert in the field of**  
22 **economics. Plaintiff will identify any experts pursuant to 16.l(a)(2). Without waving said**

23 **Objections Plaintiff responds as follows: I was at home when my brother, Michael**  
24 **Smith called me and said there had been an accident and that my mother passed away. I**  
25 **was told that my mother had purchased a Jacuzzi tub and while she was taking a bath**  
26 **she became trapped in the tub and could not get the tub to drain. He believed she was**  
27 **trapped in the bathtub for 3-4 days. He called 911 and a well check was performed and**  
28

1 they found by mother trapped and had to use the Jaws of Life to remove her. She passed  
2 away at the hospital 6 days later.

3 I think of my mother every day. When I shower or bath, all I can do is think: this  
5 is how my mother died, stuck in water. I try to imagine how scared she was and how  
6 much pain she was in. I can't get it out of my mind. I have a terrible time dealing with  
7 her death and wished I could have worked out the issues she and I had. I wished I had  
8 the chance to tell her I loved her one more time.

10 Plaintiff reserves the right to supplement this answer as discovery is continuing.

11 **INTERROGATORY NO. 6:**

12 If you are alleging that Decedent suffered any physical pain and suffering or mental  
13 distress prior to death as a result of the incident, please set forth in detail the nature of the pain  
14 and suffering and/or mental distress alleged to have been sustained by Decedent including, but  
15 not limited to, the type and areas of pain and discomfort and their duration, and state all  
16 evidence upon which you base your allegation that Decedent suffered said physical pain or  
17 mental distress and identify all witnesses to said suffering.

18 **ANSWER TO INTERROGATORY NO. 6:**

19 My mother was trapped in the subject tub for 3-4 days without food or water. I can  
20 only assume she suffered great mental distress not knowing if and when she would be freed  
21 from the tub. I am sure she was cold and hungry. I believe her entire body was in pain. I think  
22 she suffered great pain when her arm broke. I believe she suffered pain until she passed away.

23 ///

24 ///

1 INTERROGATORY NO. 7:

2 Describe fully each and every other claim for damages not stated in answer to any  
3 previous interrogatory (i.e., type of claim, basis for claim, amount of compensation claimed,  
4 method of computing compensation, etc.).  
5

6 ANSWER TO INTERROGATORY NO. 7:

7  
8 Plaintiff objects to this Interrogatory as premature. Notwithstanding and without  
9 waiving said objection, this request requires evaluation by an expert in the field of economics.  
10 Plaintiff will identify any experts pursuant to 16.l(a)(2). Plaintiff reserves the right to  
11 supplement this answer as discovery is continuing.  
12

13 INTERROGATORY NO. 8:

14 Describe in detail how and where the incident described in the Complaint happened,  
15 including all actions taken to prevent the incident.  
16

17 ANSWER TO INTERROGATORY NO. 8:

18 My brother, Michael Smith called me and said there had been an accident and that my  
19 mother passed away. I was told that my mother had purchased a Jacuzzi tub and while she was  
20 taking a bath she became trapped in the tub and could not get the tub to drain. He believed she  
21 was trapped in the bathtub for 3-4 days. He called 911 and a well check was performed and  
22 they found my mother trapped and had to use the jaws of Life to remove her. She passed away  
23 at the hospital 6 days later.  
24

25 INTERROGATORY NO. 9:

26 Please provide the following information concerning the Subject Tub.

27 (a) The reason(s) the Decedent chose to purchase the Subject Tub.

28 (b) All information provided to any Defendants about the Decedent and her intended  
use of the Subject Tub prior to the purchase and/or installation of the Subject Tub.



1  
2 (c) Identify the name, address, telephone number, of the person or entity who installed  
3 the Subject Tub.

4  
5 (d) The date of the installation of the Subject Tub.

6 (e) Any correspondence with the manufacturer, seller, or installer of the Subject Tub.

7  
8 ANSWER TO INTERROGATORY NO. 9:

9 (a) I do not know why my mother chose to purchase the subject tub.

10 (b) I am unaware of any information provided to any defendants about my mother and  
11 her intended use of the subject tub prior to the purchase and/or installation of the  
12 subject tub. Other than the contract she signed

13 (c) AITHR Dealers, Inc.

14  
15 William Budd of Budd's Plumbing  
16 1624 Carse,  
Boulder City, NV 89005

17 (d) I am told the tub was installed on 1/15/2014

18 INTERROGATORY NO. 10:

19 Describe any conversations that you had with anyone about the selection, installation,  
20 or performance of the Subject Tub, including the participants, content, and approximate dates  
21 of any such conversations.

22  
23 ANSWER TO INTERROGATORY NO. 10:

24 I did not have any conversations with anyone regarding the selection, installation, or  
25 performance subject tub.

26  
27 INTERROGATORY NO. 11:

28 If you are you aware of any photographs of the Subject Tub, scene of the Subject  
Incident and/or persons involved in the incident, provide the names and addresses of any

1 persons having possession, custody or control of such photographs and state the subject matter  
2 and dates of the photographs.

3 ANSWER TO INTERROGATORY NO. 11:

5 At this I am unaware of any photographs of the scene of the Subject Incident.

6  
7 Nine Photographs of the subject tub were taken at the house prior to the tub being removed  
8 were disclosed on July 27<sup>th</sup> 2016 in Plaintiff's Disclosures of Documents and Witnesses  
9 pursuant to NRCP 16.1

10 Photographs of the tub being inspected at loft works on October 19, 2016 by American  
11 Bio Engineers.

12  
13 American Bio Engineers  
14 6905 W. Charleston Blvd., #110  
15 Las Vegas, Nevada 89117  
702-395-67678

16 INTERROGATORY NO. 12:

17 If the Subject Tub has ever been serviced, repaired or modified for any reason, please  
18 identify the following for each service, repair or modification.

- 19  
20 (a) The nature of the repair, service or modification;  
21 (b) The date(s) of repair, service or modification;  
22 (c) The reason(s) the repair, service or modification was made;  
23 (d) The cost of the repair, service or modification;  
24 (e) Whether the repair, service or modification was covered by any warranty and/or  
25 insurance claim.

26 ///

27 ///

28

1 ANSWER TO INTERROGATORY NO. 12:

2 I believe on February 7, 2017, Budd's Plumbing returned to my mother's residence to  
3 install a level on the drain. The invoice generated by Budd's plumbing indicated the cost was  
4 \$135.00. The invoice was billed to Jacuzzi.  
5

6 INTERROGATORY NO. 13:

7 Describe the removal of the Subject Tub from the Subject Property, including the date  
8 it was removed, who authorized the removal, who removed the Subject Tub, all photographs  
9 or video taken of the removal, and state whether there were any written reports prepared  
10 relating to the removal.  
11

12 ANSWER TO INTERROGATORY NO. 13:

13 My brother, Michael Smith removed the bathtub from my mother's residence so he  
14 could sell the home. I do not know any further information about the removal.  
15

16 INTERROGATORY NO. 14:

17 List the names, addresses and telephone numbers of all persons believed or known by  
18 you, your agents or attorneys who saw or heard, or claims to have seen or heard, as an eye  
19 witness and/or after-the-fact witness, any of the events or happenings which occurred in this  
20 incident or otherwise has or may have knowledge concerning any of the issues raised by the  
21 pleadings, including but not limited to the subject incident, and specify the subject matter  
22 about which the witness has knowledge.  
23

24 ANSWER TO INTERROGATORY NO. 14:

25 The following witnesses were disclosed in the early case conference disclosures and  
26 any supplements thereto.  
27

28 DEBORAH TAMANTINI individually,  
and as heir to the Estate SHERRY LYNN CUNNISON, Deceased, Plaintiff

1 c/o Benjamin P. Cloward, Esq.  
2 Richard Harris Law Firm  
3 801 South Fourth Street  
Las Vegas, Nevada 89101

5 I will testify regarding the facts and circumstances surrounding the incident at issue  
6 herein.

7 Michael Showalter  
8 5500 Celestial Way  
9 Citrus Heights, California 95610  
10 831-595-1015 (cell)  
916-903-7186 (home)

11 This witness is expected to testify regarding the facts and circumstances surrounding  
12 the incident at issue herein.

13 Michael Zuvar  
14 746655 Willow Drive  
15 Doyle, California 96109  
16 775-560-7791

17 This witness is expected to testify regarding the facts and circumstances surrounding  
18 the incident at issue herein.

19 Cynthia Smith  
20 746655 Willow Drive  
21 Doyle, California 96109  
775-560-7791

22 This witness is expected to testify regarding the facts and circumstances surrounding  
23 the incident at issue herein.

24 Scott Cunnison  
25 23840 Southpoint Drive  
26 Denham Springs, LA 70726

27 This witness is expected to testify regarding the facts and circumstances surrounding  
28 the incident at issue herein.

James T. Cunnison

1 418 Burham Street  
2 Hampton, VA 23669

3 This witness is expected to testify regarding the facts and circumstances surrounding  
4  
5 the incident at issue herein.

6 John S. Cunnision  
7 501 S.W. 16<sup>th</sup> Street  
8 Blue Springs, MO 64015

9 This witness is expected to testify regarding the facts and circumstances surrounding  
10 the incident at issue herein.

11 Clark County Coroner Office  
12 1704 Pinto Lane  
13 Las Vegas, Nevada 89106

14 The Clark County Coroner Office, is expected to testify regarding her investigation  
15 surrounding the incident at issue herein.

16 Brennan Demille, MWA  
17 MedicWest Ambulance  
18 9 W. Delhi Ave  
19 N. Las Vegas, Nevada 89032

20 Brennan Demille, MWA for MedicWest Ambulance is expected to testify regarding the  
21 facts and circumstances surrounding the incident at issue herein.

22 Nicholas Stahlberger, paramedic  
23 Clark County Fire Department  
24 575 East Flamingo Road  
25 Las Vegas, Nevada 89119

26 Nicholas Stahlberger, paramedic for the Clark County Fire Department is expected to  
27 testify regarding the facts and circumstances surrounding the incident at issue herein.

28 Kristen Peters  
Clark County Coroner  
1704 Pinto Lane  
Las Vegas, Nevada 89106

1 Kristen Peters, of the Clark County Coroner is expected to authenticate the photographs  
2 taken of Sherry Deceased.

3 Daniel S. Isenschnid, Ph.D., D\_ABFT, Forensic Toxicologist  
4 Clark County Coroner  
5 1704 Pinto Lane  
6 Las Vegas, Nevada 89106

7 Daniel S. Isenschnid, Ph.D., D\_ABFT, is expected to testify regarding his investigation  
8 surrounding the incident at issue herein  
9

10 Muhammad A. Syed, M.D.  
11 James Walker, M.D.  
12 Kitty Ho Cain, M.D.  
13 Lindsey C. Blake, M.D.  
14 Holman Chan, M.D.  
15 Hany F. Ghali, M.D.  
16 Sayed Z. Qazi, M.D.  
17 Muhammad Bhatti, M.D.  
18 Wayne Jacobs, M.D.  
19 Yekaterina Khronusova, M.D.  
20 Mark Vandebosch, M.D.  
21 Chris J. Fischer, M.D.  
22 Shirin Rahman, M.D.  
23 Sean D. Beaty, M.D.  
24 Joshua Owen, M.D.  
25 Rafael Valencia, M.D.  
26 David P. Gorczyca, M.D.  
27 Dean P. Berthoty, M.D.  
28 Robert N. Berkley, M.D.  
Sunrise Hospital & Medical Center  
3186 S. Maryland Parkway  
Las Vegas, NV 89109

Decedent's Treating Medical Providers at Sunrise Hospital & Medical Center are  
expected to testify as to Decedent's condition, care and treatment provided to Decedent.

Officer Matthew Scanlon  
Officer Kevin Lemire  
Officer Matthew Shake  
Officer Keith Bryant  
Officer Shakeel Abdal-Karim  
Officer B. Venpamel

1 Sergeant Dana Pickerel  
2 Sergeant Allen Larsen  
3 Las Vegas Metro Police Department  
400 S. Martin Luther King Blvd.  
5 Las Vegas, NV 89106

6 Police Officers from Las Vegas Metro Police Department are expected to testify as to  
7 Decedent's condition and as to the facts and circumstances surrounding the circumstances of  
8 the subject incident.

9 INTERROGATORY NO. 15:

10 Are you aware of any physical or mental disorder, infirmity, illness or abnormality  
11 originating prior to the Accident, which may have caused or contributed to the death of  
12 Decedent?  
13

14 ANSWER TO INTERROGATORY NO. 15:

15 To the best of my knowledge, my mother was overweight, had asthma, she had knee  
16 problems and had a prior broken shoulder. I don't believe any of these issues caused or  
17 contributed to her death.  
18

19 INTERROGATORY NO. 16:

20 If your answer to No. 15 above is "YES," give a detailed description of each such  
21 physical abnormality, specifying how and to what extent it may have caused or contributed to  
22 the death of Decedent.  
23

24 ANSWER TO INTERROGATORY NO. 16:

25 I don't believe any of the issues listed above caused or contributed to my mother's  
26 death.  
27  
28

1 INTERROGATORY NO. 17:

2 Are you aware of the Decedent falling during the five (5) years prior to the Subject  
3 Incident? If so, describe the approximate date and location of the falls, how the falls occurred,  
5 how the decedent recovered from the falls, and any injuries sustained by the Decedent as a  
6 result of the falls.  
7

8 ANSWER TO INTERROGATORY NO. 17:

9 I unaware of any falls my mother may have had the five years prior to the subject  
10 incident.  
11

12 INTERROGATORY NO. 18:

13 At any time prior to, or at the time of the incident, was the Decedent, taking any  
14 prescription medications? If so, please list each prescription medication:

- 15 (a) The identification of the medical provider who wrote the prescription;  
16  
17 (b) The length of time the medication was prescribed to Decedent;  
18  
19 (c) The dosage;  
20  
21 (d) The reason for taking the medication;  
22  
23 (e) All locations where the prescription was filled.

24 ANSWER TO INTERROGATORY NO. 18:

25 I was not aware of the medications my mother was taking. Her medical records from  
26 Sunrise Hospital indicated she was taking the following medications.

27 AMITRIPTYLINE (ELAVIL)

28 METHOCARBAMOL (ROBAXIN 750 MG) 750 MG PO BID

ALPRAZOLAM (XANAX)

MAITRIPTYLINE (ELAVIL) 100 MG PO



1 CITALOPR120 MG PO DAILY

2 HYDROmorphone (OILAUDID) 2 MG PO Q4H

3 GABAPENTIN (NEURONTIN) 300 MG PO TID

5 OMEPRAZOLE (PRILOSEC (BRAND NNv1E)) 20 MG PO

7 TEMAZEPM1 (RESTORI1 30 MG PO DAILY

8 TEMAZEPAM (RESTORIL) 30 MG ORAL

9 M10XICILLIN/CLAV K 875/125 MG (AUG1v~ENTIN 875/125 MG} 875 MG  
10 ORAL

11 HYDROmorphone (DILAIJDID) R MG ORAL

12 ALPRAZOLAM (XANAX) 0.25 MG ORAL

13 AMITRIPTYLINE (ELAVIL) 100 MG ORAL

14 ACETAMINOPHEN (TYLENOL 8 HOUR) 650 MG

15 ONDANSETRON (ZOFTRAN ODT) 4 MG.

16 I do not know who prescribed the medication, why she was talking it or what  
17 pharmacy the medication as filled at.

18 INTERROGATORY NO. 19:

19 Identify account names and/or website url's for any internet blogs, Instagram, Twitter,  
20 Facebook e-mail, or other social media or other internet websites, which you maintain, own or  
21 post to.

22 ANSWER TO INTERROGATORY NO. 19:

23 My instagram account name: years\_of\_our\_lives

24 My Facebook account is under Debra Tamantini. The email for my facebook account is  
25 /DebsWorld12.

26 INTERROGATORY NO. 20:

1 Describe in detail all communications you have had with any defendant to this lawsuit  
2 or any Jacuzzi seller or distributor concerning how or why the subject incident occurred. For  
3 each, include the date of the communication, the substance of the communication, the name of  
4 the parties to the communication, and the method of communication.  
5

6  
7 ANSWER TO INTERROGATORY NO. 20:

8 I have not had any communication with any defendant to this lawsuit, or any Jacuzzi  
9 seller or distributor concerning how or why the subject incident occurred.  
10

11 INTERROGATORY NO. 21:

12 With respect to your allegations that Jacuzzi was negligent, please provide a full and  
13 complete description of each negligent act and/or omission by Jacuzzi, and an explanation of  
14 how each alleged negligent act and/or omission caused Decedent's death.  
15

16 ANSWER TO INTERROGATORY NO. 21:

17 **Objection, this requires Plaintiff to divulge information protected by attorney-**  
18 **client and work-product privileges. Plaintiff further Objects as this Interrogatory is**  
19 **premature. Plaintiff will identify any experts and will produce and identify any experts**  
20 **and their reports and/or investigations pursuant to 16.1 (a)(2). Notwithstanding and**  
21 **without waiving said objection, Plaintiff responds as follows: Jacuzzi tub advertised and**  
22 **sold to elderly, obese folks with health limitations and health problems. This inward**  
23 **opening door creates a safety hazard, if a medical incident or a simple event such as a fall**  
24 **occurs while inside the tub, the high tub walls, narrow doorway, and the inward-opening**  
25 **door found on the Jacuzzi Walk-in tubs made it extremely difficult for family members**  
26 **or emergency medical teams to get people out. A grab bar should have been installed.**  
27 **The subject Jacuzzi tub was designed, manufactured and sold with known limitations**  
28

1 that Jacuzzi intentionally failed and refused to adequately disclose. Formal discovery  
2 will establish Jacuzzi Walk-in tubs knew the tubs came with a host of problems. Jacuzzi  
3 markets its products & specifically targets members of our community who are  
4 particularly vulnerable due to their age, health and physical limitations, including but  
5 not limited to diabetes, weight and pain mobility issues.

6 Jacuzzi does nothing to identify where its products can be safely used by the target  
7 population due to the uniquely specific health constraints of each end user and does not  
8 train the salesforce or supply chain on how to properly identify and determine when and  
9 if an end user would not be a good fit for one of its products. Instead Jacuzzi has a "must  
10 sell" mentality where profits are put above safety considerations.

11 INTERROGATORY NO. 22:

12 Specify whether you are making a claim alleging defective warnings and/or  
13 instructions related to the Subject Tub, and if so, identify in detail:

- 14
- 15 (a) What it is about the Subject Tub that you contend Decedent did not know when  
16 the Subject Incident occurred;
- 17
- 18 (b) The specific language and content of all warnings and/or instructions that you  
19 contend Jacuzzi did not provide but should have provided with the Subject  
20 Tub;
- 21
- 22 (c) The specific location where you contend the warning and/or instruction should  
23 have been provided (i.e., in the owner's manual, on the Subject Tub, etc.);
- 24
- 25 (d) How any injuries resulted from any alleged defect in warnings or instructions  
26 for the Subject Tub; and
- 27
- 28 (f) Any documents or persons with knowledge upon which you base your  
contentions concerning allegedly defective warnings or instructions.

ANSWER TO INTERROGATORY NO. 22:

1 Jacuzzi gave limited warnings and/or disclosures of the *walk-in tub's* dangers due to  
2 its' high tub walls, narrow doorway, and the inward-opening door make it extremely  
3 dangerous to an individual if he or she falls. The Jacuzzi tub can hold up to 47 gallons of  
4 water, they risk trapping an individual in a bath, where he or she can slip, fall and possibly  
5 drown. Defendant Jacuzzi gave limited, inadequate or no warning of the dangers of one  
6 falling in the tub. The Substantial safety hazard, if a medical incident or even a simple event  
7 such as a fall occurs while inside the tub, the high tub walls, narrow doorway, and the  
8 inward-opening door found on the Jacuzzi Walk-in tubs make it extremely difficult for  
9 family members or emergency medical teams to get people out. While the firefighters were  
10 attempting to extract my mother from the tub, her arm broke. The medics were forced to use  
11 heavy tools to break apart the tub to remove Sherry and transport her to the hospital where  
12 she later died. The subject *Jacuzzi tub* was designed, manufactured and sold with known  
13 limitations that Jacuzzi intentionally failed and refused to adequately disclose. Formal  
14 discovery will establish Jacuzzi Walk-in tubs knew the tubs came with a host of problems

15 I believe specific language and content of all warnings and/or instructions should be  
16 included in the owner's manual, on the sales invoice, on the website and/or any type of  
17 advertising and on the tub itself.

18 INTERROGATORY NO. 23:

19 State whether you are currently on Medicare or Medicaid, or whether you are eligible  
20 to receive Medicare or Medicaid benefits and, if so, state when you became eligible to receive  
21 Medicare or Medicaid benefits, amount of such payments to date, and your Medicaid or  
22 Medicare Health Insurance Claim Nos.

1 ANSWER TO INTERROGATORY NO. 23:

2 I do not receive on Medicare or Medicaid, I am not eligible for on Medicare or  
3 Medicaid.

5 DATED THIS \_\_\_\_ day of June, 2017

7 **RICHARD HARRIS LAW FIRM**

8   
9 By: \_\_\_\_\_

10 BENJAMIN P. CLOWARD ESQ.

11 Nevada Bar No. 11087

12 801 South Fourth Street

13 Las Vegas, Nevada 89101  
14  
15  
16  
17  
18  
19  
20  
21  
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 23 day of June, 2017, I caused the foregoing PLAINTIFF DEBORAH TAMANTINI – FIRST SUPPLEMENTAL RESPONSES TO DEFENDANT, JACUZZI INC.'S FIRST SET OF INTERROGATORIES to be served as follows:

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

Michaele E. Stoberski, Esq.  
Daniel Labounty, Esq.  
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*Attorneys for Defendants, William Bud and  
Budds Plumbing*

  
An employee of the RICHARD HARRIS LAW FIRM

# EXHIBIT B

005922

005922

# EXHIBIT B

1 **RSPN**

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3 Nevada Bar No. 8877

4 lroberts@wwhgd.com

5 Brittany M. Llewellyn, Esq.

6 Nevada Bar No. 13527

7 bllewellyn@wwhgd.com

8 WEINBERG, WHEELER, HUDGINS,

9 GUNN & DIAL, LLC

6385 South Rainbow Blvd., Suite 400

Las Vegas, Nevada 89118

Telephone: (702) 938-3838 | Facsimile: (702) 938-3864

*Attorneys for Defendant Jacuzzi Inc.*

*doing business as Jacuzzi Luxury Bath*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

ROBERT ANSARA, as Special Administrator  
of the Estate of SHERRY LYNN CUNNISON,  
Deceased; 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.

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

**DEFENDANT JACUZZI INC., DOING  
BUSINESS AS JACUZZI LUXURY  
BATH'S RESPONSE TO PLAINTIFF  
ROBERT ANSARA'S 7TH REQUEST  
FOR PRODUCTION OF DOCUMENTS**

Defendant Jacuzzi Inc. dba Jacuzzi Luxury Bath ("Jacuzzi") by and through its counsel of  
record, the law firm of WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, responds to Plaintiff





1 Robert Ansara, as Special Administrator for the Estate of Sherry Lynn Cunnison, Deceased's  
2 ("Plaintiff") 7th Set of Requests for Production of Documents, as follows:

3 **GENERAL OBJECTIONS**

4 1. In responding to Plaintiffs' Requests, Jacuzzi does not waive, or intend to waive,  
5 but rather intends to preserve and is preserving:

- 6 a. all objections as to competency, relevancy, materiality and admissibility;  
7 b. all rights to object on any ground to the use in any proceeding, including  
8 trial of this or any other action, of any of the responses or documents  
9 referenced herein;  
10 c. all objections as to vagueness and ambiguity; and  
11 d. all rights to object on any ground to future discovery requests.

12 2. Jacuzzi objects to Plaintiffs' Requests to the extent they seek information  
13 protected from discovery by the attorney client privilege, the work product doctrine, or any other  
14 judicially recognized protection or privilege applicable to any requested information.

15 3. Jacuzzi objects to Plaintiffs' Requests to the extent they purport to impose on  
16 Jacuzzi obligations greater than those existing under the Nevada Rules of Civil Procedure.

17 4. Jacuzzi objects to Plaintiffs' Requests to the extent they purport to apply to  
18 persons and entities not parties to this action or purport to require Jacuzzi to produce information  
19 which is not within its possession, custody, or control.

20 5. Jacuzzi objects to Plaintiffs' Requests to the extent they seek information which is  
21 not relevant to the subject matter involved in the pending action, nor admissible or reasonably  
22 calculated to lead to the discovery of admissible evidence.

23 6. Jacuzzi objects to Plaintiffs' Requests to the extent they seek the disclosure of  
24 information which constitutes trade secrets or proprietary or confidential business information.

25 7. Jacuzzi incorporates the foregoing General Objections into each and every  
26 objection and/or individualized response contained herein and set forth below.

27 8. Jacuzzi objects generally to Plaintiffs' Requests to the extent they are dependent  
28 on an assumptions that are inconsistent with the facts of this case.





1           9. Jacuzzi objects to Plaintiffs' introductory paragraphs, wherein certain terms are  
2 defined and wherein certain instructions are provided. Requests for Production ought to be  
3 complete in and of themselves without the need for referring to lengthy definitions. In  
4 responding to Plaintiffs' Requests, Jacuzzi will give the word its plain, ordinary meaning and not  
5 such overly broad and all-inclusive meanings as stated by Plaintiffs.

6           10. To the extent that Plaintiff has requested documents and communications  
7 responsive to vague search terms, these requests are unduly burdensome. The ensuing  
8 search has resulted in the generation of hundreds of thousands of pages of potential results  
9 and Jacuzzi has narrowed those documents to the extent possible in the time frame allotted.  
10 Jacuzzi will not proceed with the review of these documents without court intervention  
11 requiring Plaintiffs to contribute costs for the review.

12                           **RESPONSES TO REQUESTS FOR PRODUCTION**

13           **REQUEST FOR PRODUCTION NO. 86:**

14           Defendant *firstSTREET*'s NRCP 30(b)(6) witness, Dave Modena, testified at his  
15 deposition that he was aware of customer complaints or concerns regarding the slipperiness of  
16 certain Jacuzzi walk-in tubs. See generally, Deposition of Dave Modena - Vol. I, pp.40-59,  
17 December 11, 2018. Mr. Modena testified that there were e-mails exchanged between Jacuzzi  
18 and AITHR/*firstSTREET* relating to customer complaints regarding the slipperiness of the tub.  
19 See, Deposition of Dave Modena - Vol. I, 47:1-51:1, December 11, 2018. Please produce all  
20 communications between You and AITHR, *firstSTREET*, or any dealer relating to customer  
21 complaints or concerns about the slipperiness of any Jacuzzi walk-in tubs. This request seeks  
22 information relating to the slipperiness of the walk-in tub surface, whether the floor or the seat.

23           **RESPONSE:**

24           Jacuzzi objects to this request because it is vague, ambiguous, overbroad and unduly  
25 burdensome, because it requires production not limited in scope to the subject Walk-In Bathtub  
26 or Plaintiffs' allegations of defect, and imposes an undue burden on defendant that is not  
27 commensurate with the information sought. The request includes an improper and self-serving  
28 introduction that will not be considered as part of the actual request. The request seeks

1 information that is not relevant to the issues in this action and is not likely to lead to the  
2 discovery of relevant or admissible evidence. Jacuzzi further objects to this Request as overly  
3 broad, in that the Interrogatory is not limited in time. Lastly, Jacuzzi objects to this request  
4 because it imposes an undue burden on defendant that is not commensurate with the information  
5 sought: a search of Jacuzzi's electronic mail accounts for the term "slip" returned 949,332  
6 potential results. Subject to and without waiving said objections, and subject to the General  
7 Objections above, Jacuzzi responds as follows: Please see JACUZZI002928-002991,  
8 JACUZZI003090-003095, JACUZZI004717-004724, JACUZZI004727-005033,  
9 JACUZZI005271-5722, JACUZZI005668-005688, JACUZZI005731-JACUZZI005743,  
10 JACUZZI005835-JACUZZI006281, JACUZZI006395-JACUZZI006398, JACUZZI006500-  
11 JACUZZI006502, JACUZZI006617-JACUZZI006618. Jacuzzi continues in its search for  
12 relevant information and information responsive to discovery propounded in this action, and will  
13 produce further information if located.

14 **REQUEST FOR PRODUCTION NO. 87:**

15 Defendant *firstSTREET*'s NRCP 30(b)(6) witness, Dave Modena, testified at his  
16 deposition that he was aware of customer complaints or concerns regarding the slipperiness of  
17 certain Jacuzzi walk-in tubs. See generally, Deposition of Dave Modena - Vol. I, pp.40-59,  
18 December 11, 2018. Mr. Modena testified that there were e-mails exchanged between Jacuzzi  
19 and AITHR/*firstSTREET* relating to customer complaints regarding the slipperiness of the tub.  
20 See, Deposition of Dave Modena - Vol. I, 47:1-51:1, December 11, 2018. Please produce all  
21 Documents relating to customer complaints or concerns made to You, directly or indirectly,  
22 regarding the slipperiness of any Jacuzzi walk-in tubs from 2008 to present. This request seeks  
23 such communications regardless of the method communication (e.g., direct communications  
24 from the user, or indirect communications from some customer service management company,  
25 marketing company, dealer, salesperson, or any other source.). This request seeks information  
26 relating to the slipperiness of the walk-in tub surface, whether the floor or the seat.

**RESPONSE:**

Jacuzzi objects to this request because it is vague, ambiguous, overbroad and unduly burdensome, because it requires production not limited in scope to the subject Walk-In Bathtub or Plaintiffs' allegations of defect, and imposes an undue burden on defendant that is not commensurate with the information sought. The request includes an improper and self-serving introduction that will not be considered as part of the actual request. The request seeks information that is not relevant to the issues in this action and is not likely to lead to the discovery of relevant or admissible evidence. Lastly, Jacuzzi objects to this request because it imposes an undue burden on defendant that is not commensurate with the information sought: a search of Jacuzzi's electronic mail accounts for the term "slip" returned 949,332 potential results. Subject to and without waiving said objections, and subject to the General Objections above, Jacuzzi responds as follows: Please see JACUZZI002928-002991, JACUZZI3090-3095, JACUZZI4717-4724, JACUZZI4727-5033, JACUZZI004696-004710, JACUZZI004716, JACUZZI005271-JACUZZI005722, JACUZZI005668-005688, JACUZZI005731-JACUZZI005743, JACUZZI005835-JACUZZI006281, JACUZZI006395-JACUZZI006398, JACUZZI006500-JACUZZI006502, JACUZZI006617-JACUZZI006618. Jacuzzi continues in its search for relevant information and information responsive to discovery propounded in this action, and will produce further information if located.

**REQUEST FOR PRODUCTION NO. 88:**

Please produce all communications between You and AITHR, firstSTREET, or any dealer relating to the decision to provide, sell, or otherwise making available the product referred to as "Kahuna Grip" by Dave Modena during his December 11, 2018 deposition.

**RESPONSE:**

Jacuzzi objects to this request because it is vague, ambiguous, overbroad and unduly burdensome, because it requires production not limited in scope to the subject Walk-In Bathtub or Plaintiffs' allegations of defect, and imposes an undue burden on defendant that is not commensurate with the information sought. The request seeks information that is not relevant to the issues in this action and is not likely to lead to the discovery of relevant or admissible



1 evidence. Jacuzzi further objects to this Request as overly broad, in that the Interrogatory is not  
2 limited in time. Lastly, Jacuzzi objects to this request because it imposes an undue burden on  
3 defendant that is not commensurate with the information sought: a search of Jacuzzi's electronic  
4 mail accounts for the term "Kahuna" returned 33,998 potential results. Subject to and without  
5 waiving said objections, and subject to the General Objections above, Jacuzzi responds as  
6 follows: Please see JACUZZI005282, JACUZZI005693, JACUZZI005706, JACUZZI005668-  
7 005688, JACUZZI006380-JACUZZI006382, JACUZZI006395-JACUZZI006398. Jacuzzi  
8 continues in its search for relevant information and information responsive to discovery  
9 propounded in this action, and will produce further information if located.

10 **REQUEST FOR PRODUCTION NO. 89:**

11 Please produce all communications between You and customer or end-user (or family  
12 member, friend, counsel, agent, representative, or any other person acting on behalf of a  
13 customer or end-user) of a Jacuzzi walk-in tub relating to the decision to provide, sell, or  
14 otherwise making available the product referred to as "Kahuna Grip" by Dave Modena during  
15 his December 11, 2018 deposition.

16 **RESPONSE:**

17 Jacuzzi objects to this request because it is vague, ambiguous, overbroad and unduly  
18 burdensome, because it requires production not limited in scope to the subject Walk-In Bathtub  
19 or Plaintiffs' allegations of defect, and imposes an undue burden on defendant that is not  
20 commensurate with the information sought. The request includes an improper and self-serving  
21 statement regarding deposition testimony that will not be considered as part of the actual request.  
22 The request seeks information that is not relevant to the issues in this action and is not likely to  
23 lead to the discovery of relevant or admissible evidence. Jacuzzi further objects to this Request  
24 as overly broad, in that the Interrogatory is not limited in time. Lastly, Jacuzzi objects to this  
25 request because it imposes an undue burden on defendant that is not commensurate with the  
26 information sought: a search of Jacuzzi's electronic mail accounts for the term "Kahuna"  
27 returned 33,998 potential results. Subject to and without waiving said objections, and subject to  
28 the General Objections above, Jacuzzi responds as follows: Please see JACUZZI004727-005033,



JACUZZI005282, JACUZZI005693, JACUZZI005706, JACUZZI005395-JACUZZI005417, JACUZZI005668-005688, JACUZZI006326-JACUZZI006334, JACUZZI006372-JACUZZI006374, JACUZZI006380-JACUZZI006382, JACUZZI006395-JACUZZI006398, JACUZZI006490-JACUZZI006493, JACUZZI006497-JACUZZI006499, JACUZZI006507-JACUZZI006509. Jacuzzi continues in its search for relevant information and information responsive to discovery propounded in this action, and will produce further information if located.

**REQUEST FOR PRODUCTION NO. 90:**

Produce all communications between You and firstSTREET, AITHR, or any dealer pertaining to the decision to provide, sell, or otherwise make available any products other than Kahuna Grip which were intended to decrease the likelihood of physical injury or bodily harm arising from the use of a Jacuzzi walk-in tub.

**RESPONSE:**

Jacuzzi objects to this request because it is vague, ambiguous, overbroad and unduly burdensome, because it requires production not limited in scope to the subject Walk-In Bathtub or Plaintiffs' allegations of defect, and imposes an undue burden on defendant that is not commensurate with the information sought. The request seeks information that is not relevant to the issues in this action and is not likely to lead to the discovery of relevant or admissible evidence. Jacuzzi further objects to this Request as overly broad, in that the Interrogatory is not limited in time. Subject to and without waiving said objections, and subject to the General Objections above, Jacuzzi responds as follows: Please see JACUZZI004727-005033, JACUZZI005282, JACUZZI005395-JACUZZI005417, JACUZZI005638-005650, JACUZZI005668-005688, JACUZZI006337-JACUZZI006346, JACUZZI006377-JACUZZI006379, JACUZZI006383-JACUZZI006384, JACUZZI006503-JACUZZI006509, JACUZZI006651-JACUZZI006653, JACUZZI006666-JACUZZI006667, JACUZZI006673-JACUZZI006674. Jacuzzi continues in its search for relevant information and information responsive to discovery propounded in this action, and will produce further information if located.

**REQUEST FOR PRODUCTION NO. 91:**

Please produce all communications You have received, directly or indirectly, from a customer or end-user (or family member, friend, counsel, agent, representative, or any other person acting on behalf of a customer or end-user) of a Jacuzzi walk-in tub regarding the slipperiness of the tub's seat and Your responses thereto. This request seeks such information regardless of the method You became aware of the communication (e.g., directly from the user, indirectly from some customer service management company, from a marketing company, a dealer, a salesperson, or any other source.).

**RESPONSE:**

Jacuzzi objects to this request because it is vague, ambiguous, overbroad and unduly burdensome, because it requires production not limited in scope to the subject Walk-In Bathtub or Plaintiffs' allegations of defect, and imposes an undue burden on defendant that is not commensurate with the information sought. The request seeks information that is not relevant to the issues in this action and is not likely to lead to the discovery of relevant or admissible evidence. Jacuzzi further objects to this Request as overly broad, in that the Interrogatory is not limited in time. Lastly, Jacuzzi objects to this request because it imposes an undue burden on defendant that is not commensurate with the information sought: a search of Jacuzzi's electronic mail accounts for the term "slip" returned 949,332 potential results. Subject to and without waiving said objections, and subject to the General Objections above, Jacuzzi responds as follows: Please see JACUZZI002927-002940, JACUZZI002970-002988, JACUZZI004727-005033, JACUZZI005722, JACUZZI005301, JACUZZI005303, JACUZZI005312, JACUZZI005338, JACUZZI005342, JACUZZI005361, JACUZZI005363, JACUZZI005366, JACUZZI005394, JACUZZI005419, JACUZZI005421, JACUZZI005486-JACUZZI005573, JACUZZI005652, JACUZZI005655, JACUZZI005666, JACUZZI005668-005688, JACUZZI005731-JACUZZI005743, JACUZZI005835-JACUZZI006281, JACUZZI006395-JACUZZI006398, JACUZZI006500-JACUZZI006502, JACUZZI006617-JACUZZI006618. Jacuzzi continues in its search for relevant information and information responsive to discovery propounded in this action, and will produce further information if located.

**REQUEST FOR PRODUCTION NO. 92:**

Please produce all documents relating to communications You have received, directly or indirectly, from a customer or end-user (or family member, friend, counsel, agent, representative, or any other person acting on behalf of a customer or end-user) of a Jacuzzi walk-in tub regarding the slipperiness of the tub's seat and Your responses thereto. This request seeks such information regardless of the method You became aware of the communication (e.g., directly from the user, indirectly from a customer service management company, from a marketing company, a dealer, a salesperson, or any other source.).

**RESPONSE:**

Jacuzzi objects to this request because it is vague, ambiguous, overbroad and unduly burdensome, because it requires production not limited in scope to the subject Walk-In Bathtub or Plaintiffs' allegations of defect, and imposes an undue burden on defendant that is not commensurate with the information sought. The request seeks information that is not relevant to the issues in this action and is not likely to lead to the discovery of relevant or admissible evidence. Jacuzzi further objects to this Request as overly broad, in that the Interrogatory is not limited in time. The request seeks information protected from disclosure by the attorney client and work product privileges. Lastly, Jacuzzi objects to this request because it imposes an undue burden on defendant that is not commensurate with the information sought: a search of Jacuzzi's electronic mail accounts for the term "slip" returned 949,332 potential results. Subject to and without waiving said objections, and subject to the General Objections above, Jacuzzi responds as follows: Please see JACUZZI002927-002940, JACUZZI002970-002988, JACUZZI004727-005033, JACUZZI005722, JACUZZI005301, JACUZZI005303, JACUZZI005312, JACUZZI005338, JACUZZI005342, JACUZZI005361, JACUZZI005363, JACUZZI005366, JACUZZI005394, JACUZZI005419, JACUZZI005421, JACUZZI005486-JACUZZI005573, JACUZZI005652, JACUZZI005655, JACUZZI005666, JACUZZI005668-005688, JACUZZI005731-JACUZZI005743, JACUZZI005835-JACUZZI006281, JACUZZI006395-JACUZZI006398, JACUZZI006500-JACUZZI006502, JACUZZI006617-JACUZZI006618.

005931

WEINBERG WHEELER  
HUDGINS GUNN & DIAL

005931



1 Jacuzzi continues in its search for relevant information and information responsive to discovery  
2 propounded in this action, and will produce further information if located.

3 **REQUEST FOR PRODUCTION NO. 93:**

4 Please produce all Documents You created in the ordinary course of business which arose  
5 out of You becoming aware of any customer or end-user (or family member, friend, counsel,  
6 agent, representative, or any other person acting on behalf of a customer or end-user) concern or  
7 complaint regarding the slipperiness of a Jacuzzi Walk-In tub's seat.

8 **RESPONSE:**

9 Jacuzzi objects to this request because it is vague, ambiguous, overbroad and unduly  
10 burdensome, because it requires production not limited in scope to the subject Walk-In Bathtub  
11 or Plaintiffs' allegations of defect, and imposes an undue burden on defendant that is not  
12 commensurate with the information sought. The request seeks information that is not relevant to  
13 the issues in this action and is not likely to lead to the discovery of relevant or admissible  
14 evidence. Jacuzzi further objects to this Request as overly broad, in that the Interrogatory is not  
15 limited in time. The request seeks information protected from disclosure by the attorney client  
16 and work product privileges. Lastly, Jacuzzi objects to this request because it imposes an undue  
17 burden on defendant that is not commensurate with the information sought: a search of Jacuzzi's  
18 electronic mail accounts for the term "slip" returned 949,332 potential results. Subject to and  
19 without waiving said objections, and subject to the General Objections above, Jacuzzi responds  
20 as follows: Please see JACUZZI002927-002940, JACUZZI002970-002988, JACUZZI004727-  
21 005033, JACUZZI005722, JACUZZI005301, JACUZZI005303, JACUZZI005312,  
22 JACUZZI005338, JACUZZI005342, JACUZZI005361, JACUZZI005363, JACUZZI005366,  
23 JACUZZI005394, JACUZZI005419, JACUZZI005421, JACUZZI005486-JACUZZI005573,  
24 JACUZZI005652, JACUZZI5655, JACUZZI005666, JACUZZI005668-005688,  
25 JACUZZI005731-JACUZZI005743, JACUZZI005835-JACUZZI006281, JACUZZI006395-  
26 JACUZZI006398, JACUZZI006500-JACUZZI006502, JACUZZI006617-JACUZZI006618.  
27 Jacuzzi continues in its search for relevant information and information responsive to discovery  
28 propounded in this action, and will produce further information if located.

005932

WEINBERG WHEELER  
HUDGINS GUNN & DIAL

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1 **REQUEST FOR PRODUCTION NO. 94:**

2 Please produce all documents pertaining to a customer or end-user (or family member,  
3 friend, counsel, agent, representative, or any other person acting on behalf of a customer or end-  
4 user) slipping off of the seat (or allegedly slipping off of the seat) of a Jacuzzi walk-in tub from  
5 2008 to present.

6 **RESPONSE:**

7 Jacuzzi objects to this request because it is vague, ambiguous, overbroad and unduly  
8 burdensome, because it requires production not limited in scope to the subject Walk-In Bathtub  
9 or Plaintiffs' allegations of defect, and imposes an undue burden on defendant that is not  
10 commensurate with the information sought. The request seeks information that is not relevant to  
11 the issues in this action and is not likely to lead to the discovery of relevant or admissible  
12 evidence. The request seeks information protected from disclosure by the attorney client and  
13 work product privileges. Lastly, Jacuzzi objects to this request because it imposes an undue  
14 burden on defendant that is not commensurate with the information sought: a search of Jacuzzi's  
15 electronic mail accounts for the term "slip" returned 949,332 potential results. Subject to and  
16 without waiving said objections, and subject to the General Objections above, Jacuzzi responds  
17 as follows: Please see JACUZZI002927-002940, JACUZZI002970-002988, JACUZZI004696-  
18 004710, JACUZZI004727-005033, JACUZZI005486-JACUZZI005573, JACUZZI005666,  
19 JACUZZI005668-005688, JACUZZI005668-005688, JACUZZI005731-JACUZZI005743,  
20 JACUZZI005835-JACUZZI006281, JACUZZI006395-JACUZZI006398, JACUZZI006500-  
21 JACUZZI006502, JACUZZI006617-JACUZZI006618. Jacuzzi continues in its search for  
22 relevant information and information responsive to discovery propounded in this action, and will  
23 produce further information if located.

24 **REQUEST FOR PRODUCTION NO. 95:**

25 Please produce all communications You have received, directly or indirectly, from a  
26 customer or end-user (or family member, friend, counsel, agent, representative, or any other  
27 person acting on behalf of a customer or end-user) of a Jacuzzi walk-in tub regarding the  
28 slipperiness of the tub's floor and Your responses thereto. This request seeks such information



1 regardless of the method You became aware of the communication (e.g., directly from the user,  
2 indirectly from some customer service management company, from a marketing company, a  
3 dealer, a salesperson, or any other source.).

4 **RESPONSE:**

5 Jacuzzi objects to this request because it is vague, ambiguous, overbroad and unduly  
6 burdensome, because it requires production not limited in scope to the subject Walk-In Bathtub  
7 or Plaintiffs' allegations of defect, and imposes an undue burden on defendant that is not  
8 commensurate with the information sought. The request seeks information that is not relevant to  
9 the issues in this action and is not likely to lead to the discovery of relevant or admissible  
10 evidence. Jacuzzi further objects to this Request as overly broad, in that the Interrogatory is not  
11 limited in time. Lastly, Jacuzzi objects to this request because it imposes an undue burden on  
12 defendant that is not commensurate with the information sought: a search of Jacuzzi's electronic  
13 mail accounts for the term "slip" returned 949,332 potential results. Subject to and without  
14 waiving said objections, and subject to the General Objections above, Jacuzzi responds as  
15 follows: Please see JACUZZI002927-002991, JACUZZI3090-3095, JACUZZI004696-004710,  
16 JACUZZI4717-4724, JACUZZI4727-5033, JACUZZI004696-004710, JACUZZI004716,  
17 JACUZZI005271-005722, JACUZZI005668-005688, JACUZZI005731-JACUZZI005743,  
18 JACUZZI005835-JACUZZI006281, JACUZZI006395-JACUZZI006398, JACUZZI006500-  
19 JACUZZI006502, JACUZZI006617-JACUZZI006618. Jacuzzi continues in its search for  
20 relevant information and information responsive to discovery propounded in this action, and will  
21 produce further information if located.

22 **REQUEST FOR PRODUCTION NO. 96:**

23 Please produce all documents **relating to** communications You have received, directly or  
24 indirectly, from a customer or end-user (or family member, friend, counsel, agent, representative,  
25 or any other person acting on behalf of a customer or end-user) of a Jacuzzi walk-in tub  
26 regarding the slipperiness of the tub's **floor** and Your responses thereto. This request seeks such  
27 information regardless of the method You became aware of the communication (e.g., directly  
28

1 from the user, indirectly from a customer service management company, from a marketing  
2 company, a dealer, a salesperson, or any other source.).

3 **RESPONSE:**

4 Jacuzzi objects to this request because it is vague, ambiguous, overbroad and unduly  
5 burdensome, because it requires production not limited in scope to the subject Walk-In Bathtub  
6 or Plaintiffs' allegations of defect, and imposes an undue burden on defendant that is not  
7 commensurate with the information sought. The request seeks information that is not relevant to  
8 the issues in this action and is not likely to lead to the discovery of relevant or admissible  
9 evidence. Jacuzzi further objects to this Request as overly broad, in that the Interrogatory is not  
10 limited in time. The request seeks information protected from disclosure by the attorney client  
11 and work product privileges. Lastly, Jacuzzi objects to this request because it imposes an undue  
12 burden on defendant that is not commensurate with the information sought: a search of Jacuzzi's  
13 electronic mail accounts for the term "slip" returned 949,332 potential results. Subject to and  
14 without waiving said objections, and subject to the General Objections above, Jacuzzi responds  
15 as follows: Please see JACUZZI002927-002991, JACUZZI3090-3095, JACUZZI4717-4724,  
16 JACUZZI4727-5033, JACUZZI004696-004710, JACUZZI004716, JACUZZI005271-005722,  
17 JACUZZI005668-005688, JACUZZI005731-JACUZZI005743, JACUZZI005835-  
18 JACUZZI006281, JACUZZI006395-JACUZZI006398, JACUZZI006500-JACUZZI006502,  
19 JACUZZI006617-JACUZZI006618. Jacuzzi continues in its search for relevant information and  
20 information responsive to discovery propounded in this action, and will produce further  
21 information if located.

22 **REQUEST FOR PRODUCTION NO. 97:**

23 Please produce all Documents You created in the ordinary course of business which arose  
24 out of You becoming aware of any customer or end-user (or family member, friend, counsel,  
25 agent, representative, or any other person acting on behalf of a customer or end-user) concern or  
26 complaint regarding the slipperiness of a Jacuzzi Walk-In tub's floor.

27  
28

**RESPONSE:**

Jacuzzi objects to this request because it is vague, ambiguous, overbroad and unduly burdensome, because it requires production not limited in scope to the subject Walk-In Bathtub or Plaintiffs' allegations of defect, and imposes an undue burden on defendant that is not commensurate with the information sought. The request seeks information that is not relevant to the issues in this action and is not likely to lead to the discovery of relevant or admissible evidence. The request seeks information protected from disclosure by the attorney client and work product privileges. Jacuzzi further objects to this Request as overly broad, in that the Interrogatory is not limited in time. Lastly, Jacuzzi objects to this request because it imposes an undue burden on defendant that is not commensurate with the information sought: a search of Jacuzzi's electronic mail accounts for the term "slip" returned 949,332 potential results. Subject to and without waiving said objections, and subject to the General Objections above, Jacuzzi responds as follows: Please see JACUZZI002927-002991, JACUZZI3090-3095, JACUZZI4717-4724, JACUZZI4727-5033, JACUZZI004696-004710, JACUZZI004716, JACUZZI005271-005722, JACUZZI005668-005688, JACUZZI005731-JACUZZI005743, JACUZZI005835-JACUZZI006281, JACUZZI006395-JACUZZI006398, JACUZZI006500-JACUZZI006502, JACUZZI006617-JACUZZI006618. Jacuzzi continues in its search for relevant information and information responsive to discovery propounded in this action, and will produce further information if located.

**REQUEST FOR PRODUCTION NO. 98:**

Please produce all documents pertaining to a customer or end-user slipping on the floor (or allegedly slipping on the floor) of a Jacuzzi walk-in tub from 2008 to present.

**RESPONSE:**

Jacuzzi objects to this request because it is vague, ambiguous, overbroad and unduly burdensome, because it requires production not limited in scope to the subject Walk-In Bathtub or Plaintiffs' allegations of defect. The request seeks information that is not relevant to the issues in this action and is not likely to lead to the discovery of relevant or admissible evidence. Jacuzzi further objects to this Request as overly broad, in that the Interrogatory is not limited in time.

The request seeks information protected from disclosure by the attorney client and work product privileges. Lastly, Jacuzzi objects to this request because it imposes an undue burden on defendant that is not commensurate with the information sought: a search of Jacuzzi's electronic mail accounts for the term "slip" returned 949,332 potential results. Subject to and without waiving said objections, and subject to the General Objections above, Jacuzzi responds as follows: Please see JACUZZI002927-JACUZZI002940, JACUZZI004696-004710, JACUZZI005486-JACUZZI005573, JACUZZI005668-005688, JACUZZI005731-JACUZZI005743, JACUZZI005835-JACUZZI006281, JACUZZI006395-JACUZZI006398, JACUZZI006500-JACUZZI006502, JACUZZI006617-JACUZZI006618. Jacuzzi continues in its search for relevant information and information responsive to discovery propounded in this action, and will produce further information if located.

**REQUEST FOR PRODUCTION NO. 99:**

Please produce all communications You received, directly or indirectly, from a customer or end-user (or family member, friend, counsel, agent, representative, or any other person acting on behalf of a customer or end-user) of a Jacuzzi walk-in tub regarding concerns or complaints relating to any actual or potential issues pertaining the ingress and egress of the tub; and Your responses thereto. This request seeks such information regardless of the method You became aware of the communication (e.g., directly from the user, indirectly from some customer service management company, from a marketing company, a dealer, a salesperson, or any other source.).

**RESPONSE:**

Jacuzzi objects to this request because it is vague, ambiguous, overbroad and unduly burdensome, because it requires production not limited in scope to the subject Walk-In Bathtub or Plaintiffs' allegations of defect. Further, the request seeks information that is not relevant to the issues in this action and is not likely to lead to the discovery of relevant or admissible evidence. Jacuzzi further objects to this Request as overly broad, in that the Interrogatory is not limited in time. Lastly, Jacuzzi objects to this request because it imposes an undue burden on defendant that is not commensurate with the information sought: a search of Jacuzzi's electronic mail accounts for the terms "ingress" and "egress" returned 8,995 potential results. Subject to

1 and without waiving said objections, and subject to the General Objections above, Jacuzzi  
2 responds as follows: Please see JACUZZI002912-002926, JACUZZI002945-002948,  
3 JACUZZI00004711, JACUZZI00004714, JACUZZI005190-005254, JACUZZI005261,  
4 JACUZZI005270, JACUZZI005731-JACUZZI005798, JACUZZI006046-JACUZZI006050,  
5 JACUZZI006052, JACUZZI006224. Jacuzzi continues in its search for relevant information and  
6 information responsive to discovery propounded in this action, and will produce further  
7 information if located.

8 **REQUEST FOR PRODUCTION NO. 100:**

9 Please produce all documents **relating to** communications You have received, directly or  
10 indirectly, from a customer or end-user (or family member, friend, counsel, agent, representative,  
11 or any other person acting on behalf of a customer or end-user) of a Jacuzzi walk-in tub  
12 regarding concerns or complaints about any actual or potential risks pertaining to ingress or  
13 egress issues of the tub and Your responses thereto. This request seeks such information  
14 regardless of the method You became aware of the communication (e.g., directly from the user,  
15 indirectly from a customer service management company, from a marketing company, a dealer, a  
16 salesperson, or any other source.).

17 **RESPONSE:**

18 Jacuzzi objects to this request because it is vague, ambiguous, overbroad and unduly  
19 burdensome, because it requires production not limited in scope to the subject Walk-In Bathtub  
20 or Plaintiffs' allegations of defect. Further, the request seeks information that is not relevant to  
21 the issues in this action and is not likely to lead to the discovery of relevant or admissible  
22 evidence. Jacuzzi further objects to this Request as overly broad, in that the Interrogatory is not  
23 limited in time. Lastly, Jacuzzi objects to this request because it imposes an undue burden on  
24 defendant that is not commensurate with the information sought: a search of Jacuzzi's electronic  
25 mail accounts for the terms "ingress" and "egress" returned 8,995 potential results. Subject to  
26 and without waiving said objections, and subject to the General Objections above, Jacuzzi  
27 responds as follows: Please see JACUZZI002912-002926, JACUZZI002945-002948,  
28 JACUZZI00004711, JACUZZI00004714, JACUZZI005190-005254, JACUZZI005261,

1 JACUZZI005270, JACUZZI005731-JACUZZI005798, JACUZZI006046-JACUZZI006050,  
2 JACUZZI006052, JACUZZI006224. Jacuzzi continues in its search for relevant information and  
3 information responsive to discovery propounded in this action, and will produce further  
4 information if located.

5 **REQUEST FOR PRODUCTION NO. 101:**

6 Please produce all Documents You created in the ordinary course of business which arose  
7 out of You becoming aware of any customer or end-user concern or complaint about any actual  
8 or potential risks pertaining to ingress or egress issues of the tub.

9 **RESPONSE:**

10 Jacuzzi objects to this request because it is vague, ambiguous, overbroad and unduly  
11 burdensome, because it requires production not limited in scope to the subject Walk-In Bathtub  
12 or Plaintiffs' allegations of defect. Further, the request seeks information that is not relevant to  
13 the issues in this action and is not likely to lead to the discovery of relevant or admissible  
14 evidence. Jacuzzi further objects to this Request as overly broad, in that the Interrogatory is not  
15 limited in time. Lastly, Jacuzzi objects to this request because it imposes an undue burden on  
16 defendant that is not commensurate with the information sought: a search of Jacuzzi's electronic  
17 mail accounts for the terms "ingress" and "egress" returned 8,995 potential results. Subject to  
18 and without waiving said objections, and subject to the General Objections above, Jacuzzi  
19 responds as follows: Please see JACUZZI002912-002926, JACUZZI002945-002948,  
20 JACUZZI00004711, JACUZZI00004714, JACUZZI005190-005254, JACUZZI005261,  
21 JACUZZI005270, JACUZZI005731-JACUZZI005798, JACUZZI006046-JACUZZI006050,  
22 JACUZZI006052, JACUZZI006224. Jacuzzi continues in its search for relevant information and  
23 information responsive to discovery propounded in this action, and will produce further  
24 information if located.

25 **REQUEST FOR PRODUCTION NO. 102:**

26 Please produce all documents pertaining to a customer or end-use of a Jacuzzi walk-in  
27 tub getting stuck (or allegedly getting stuck) in a Jacuzzi walk-in tub from 2008 to present.  
28



**RESPONSE:**

Jacuzzi objects to this request because it is vague, ambiguous, overbroad and unduly burdensome, because it requires production not limited in scope to the subject Walk-In Bathtub or Plaintiffs' allegations of defect, and imposes an undue burden on defendant that is not commensurate with the information sought. The request seeks information that is not relevant to the issues in this action and is not likely to lead to the discovery of relevant or admissible evidence. Jacuzzi further objects to this Request as overly broad, in that the Interrogatory is not limited in time. The request seeks information protected from disclosure by the attorney client and work product privileges. Lastly, Jacuzzi objects to this request because it imposes an undue burden on defendant that is not commensurate with the information sought: a search of Jacuzzi's electronic mail accounts for the term "stuck" returned 113,094 potential results. Subject to and without waiving said objections, and subject to the General Objections above, Jacuzzi responds as follows: Please see all documents produced in this litigation pertaining to decedent Sherry Cunnison, JACUZZI002912-002926, JACUZZI002945-002948, JACUZZI00004711, JACUZZI00004714, JACUZZI005744-JACUZZI005763, JACUZZI005778-JACUZZI005798, JACUZZI006046-JACUZZI006050. Jacuzzi continues in its search for relevant information and information responsive to discovery propounded in this action, and will produce further information if located.

**REQUEST FOR PRODUCTION NO. 103:**

Please produce all communications You have received, directly or indirectly, from a customer or end-user (or family member, friend, counsel, agent, representative, or any other person acting on behalf of a customer or end-user) of a Jacuzzi walk-in tub regarding the placement of the tub's grab-bars and Your responses thereto. This request seeks such information regardless of the method You became aware of the communication (e.g., directly from the user, indirectly from some customer service management company, from a marketing company, a dealer, a salesperson, or any other source.).

**RESPONSE:**

Jacuzzi objects to this request because it is vague, ambiguous, overbroad and unduly burdensome, because it requires production not limited in scope to the subject Walk-In Bathtub or Plaintiffs' allegations of defect, and imposes an undue burden on defendant that is not commensurate with the information sought. The request seeks information that is not relevant to the issues in this action and is not likely to lead to the discovery of relevant or admissible evidence. Jacuzzi further objects to this Request as overly broad, in that the Interrogatory is not limited in time. Subject to and without waiving said objections, and subject to the General Objections above, Jacuzzi responds as follows: Please see JACUZZI00005287, JACUZZI00005893-JACUZZI005897. Jacuzzi continues in its search for relevant information and information responsive to discovery propounded in this action, and will produce further information if located.

**REQUEST FOR PRODUCTION NO. 104:**

Please produce all documents relating to communications You have received, directly or indirectly, from a customer or end-user (or family member, friend, counsel, agent, representative, or any other person acting on behalf of a customer or end-user) of a Jacuzzi walk-in tub regarding the placement of the tub's grab-bars and Your responses thereto. This request seeks such information regardless of the method You became aware of the communication (e.g., directly from the user, indirectly from a customer service management company, from a marketing company, a dealer, a salesperson, or any other source.).

**RESPONSE:**

Jacuzzi objects to this request because it is vague, ambiguous, overbroad and unduly burdensome, because it requires production not limited in scope to the subject Walk-In Bathtub or Plaintiffs' allegations of defect, and imposes an undue burden on defendant that is not commensurate with the information sought. The request seeks information that is not relevant to the issues in this action and is not likely to lead to the discovery of relevant or admissible evidence. The request seeks information protected from disclosure by the attorney client and work product privileges. Jacuzzi further objects to this Request as overly broad, in that the

1 Interrogatory is not limited in time. Subject to and without waiving said objections, and subject  
2 to the General Objections above, Jacuzzi responds as follows: Please see JACUZZI00005287,  
3 JACUZZI00005893-JACUZZI005897. Jacuzzi continues in its search for relevant information  
4 and information responsive to discovery propounded in this action, and will produce further  
5 information if located.

6 **REQUEST FOR PRODUCTION NO. 105:**

7 Please produce all Documents You created in the ordinary course of business which arose  
8 out of You becoming aware of any customer or end-user concern or complaint regarding the  
9 placement of a Jacuzzi Walk-In tub's grab-bars.

10 **RESPONSE:**

11 Jacuzzi objects to this request because it is vague, ambiguous, overbroad and unduly  
12 burdensome, because it requires production not limited in scope to the subject Walk-In Bathtub  
13 or Plaintiffs' allegations of defect, and imposes an undue burden on defendant that is not  
14 commensurate with the information sought. The request seeks information that is not relevant to  
15 the issues in this action and is not likely to lead to the discovery of relevant or admissible  
16 evidence. Jacuzzi further objects to this Request as overly broad, in that the Interrogatory is not  
17 limited in time. The request seeks information protected from disclosure by the attorney client  
18 and work product privileges. Subject to and without waiving said objections, and subject to the  
19 General Objections above, Jacuzzi responds as follows: Please see JACUZZI00005287. Jacuzzi  
20 continues in its search for relevant information and information responsive to discovery  
21 propounded in this action, and will produce further information if located.

22 **REQUEST FOR PRODUCTION NO. 106:**

23 Please produce all documents pertaining to a customer or end-user of a Jacuzzi walk-in  
24 tub being unable to reach a grab bar (or allegedly being unable to reach a grab bar) in a Jacuzzi  
25 walk-in tub from 2008 to present.

26 **RESPONSE:**

27 Jacuzzi objects to this request because it is vague, ambiguous, overbroad and unduly  
28 burdensome, because it requires production not limited in scope to the subject Walk-In Bathtub



1 or Plaintiffs' allegations of defect, and imposes an undue burden on defendant that is not  
2 commensurate with the information sought. The request seeks information that is not relevant to  
3 the issues in this action and is not likely to lead to the discovery of relevant or admissible  
4 evidence. Jacuzzi further objects to this Request as overly broad, in that the Interrogatory is not  
5 limited in time. The request seeks information protected from disclosure by the attorney client  
6 and work product privileges. Subject to and without waiving said objections, and subject to the  
7 General Objections above, Jacuzzi responds as follows: Please see JACUZZI005287. Jacuzzi  
8 continues in its search for relevant information and information responsive to discovery  
9 propounded in this action, and will produce further information if located.

10 **REQUEST FOR PRODUCTION NO. 107:**

11 Any documents You made in the ordinary course of business in response to, or which  
12 arose out of, any customer or end-user contending or alleging that a Jacuzzi Walk-In tub was  
13 defective (or somehow did not meet the user's expectations) due to the slipperiness of the tub  
14 surface (whether the floor or seat).

15 **RESPONSE:**

16 Jacuzzi objects to this request because it is vague, ambiguous, overbroad and unduly  
17 burdensome, because it requires production not limited in scope to the subject Walk-In Bathtub  
18 or Plaintiffs' allegations of defect, and imposes an undue burden on defendant that is not  
19 commensurate with the information sought. The request seeks information that is not relevant to  
20 the issues in this action and is not likely to lead to the discovery of relevant or admissible  
21 evidence. Jacuzzi further objects to this Request as overly broad, in that the Interrogatory is not  
22 limited in time. The request seeks information protected from disclosure by the attorney client  
23 and work product privileges. Lastly, Jacuzzi objects to this request because it imposes an undue  
24 burden on defendant that is not commensurate with the information sought: a search of Jacuzzi's  
25 electronic mail accounts for the term "slip" returned 949,332 potential results. Subject to and  
26 without waiving said objections, and subject to the General Objections above, Jacuzzi responds  
27 as follows: This request is duplicative. Please see Jacuzzi's responses to REQUESTS FOR  
28 PRODUCTION 86 – REQUEST FOR PRODUCTION 98. Jacuzzi continues in its search for



1 relevant information and information responsive to discovery propounded in this action, and will  
2 produce further information if located.

3 **REQUEST FOR PRODUCTION NO. 108:**

4 Any documents You made in the ordinary course of business in response to, or which  
5 arose out of, any customer or end-user contending or alleging that a Jacuzzi Walk-In tub was  
6 defective (or somehow did not meet the user's expectations) in any way the customer or end  
7 user's ability to ingress or egress in or out of the tub.

8 **RESPONSE:**

9 Jacuzzi objects to this request because it is vague, ambiguous, overbroad and unduly  
10 burdensome, because it requires production not limited in scope to the subject Walk-In Bathtub  
11 or Plaintiffs' allegations of defect, and imposes an undue burden on defendant that is not  
12 commensurate with the information sought. The request seeks information that is not relevant to  
13 the issues in this action and is not likely to lead to the discovery of relevant or admissible  
14 evidence. Jacuzzi further objects to this Request as overly broad, in that the Interrogatory is not  
15 limited in time. The request seeks information protected from disclosure by the attorney client  
16 and work product privileges. Lastly, Jacuzzi objects to this request because it imposes an undue  
17 burden on defendant that is not commensurate with the information sought: a search of Jacuzzi's  
18 electronic mail accounts for the terms "ingress" and "egress" returned 8,995 potential results.  
19 Subject to and without waiving said objections, and subject to the General Objections above,  
20 Jacuzzi responds as follows: This request is duplicative. Please see Jacuzzi's responses to  
21 REQUESTS FOR PRODUCTION 99 – REQUEST FOR PRODUCTION 101. Jacuzzi continues  
22 in its search for relevant information and information responsive to discovery propounded in this  
23 action, and will produce further information if located.

24 **REQUEST FOR PRODUCTION NO. 109:**

25 Any documents You made in the ordinary course of business in response to, or which  
26 arose out of, any customer or end-user contending or alleging that a Jacuzzi Walk-In tub  
27 presented an unexpected a risk of bodily injury or physical harm.  
28



**RESPONSE:**

Jacuzzi objects to this request because it is vague, ambiguous, overbroad and unduly burdensome, because it requires production not limited in scope to the subject Walk-In Bathtub or Plaintiffs' allegations of defect, and imposes an undue burden on defendant that is not commensurate with the information sought. The request seeks information that is not relevant to the issues in this action and is not likely to lead to the discovery of relevant or admissible evidence. Jacuzzi further objects to this Request as overly broad, in that the Interrogatory is not limited in time. The request seeks information protected from disclosure by the attorney client and work product privileges. Subject to and without waiving said objections, and subject to the General Objections above, Jacuzzi responds as follows: This request is duplicative. Please see Jacuzzi's responses to REQUESTS FOR PRODUCTION 86 – REQUEST FOR PRODUCTION 101. Jacuzzi continues in its search for relevant information and information responsive to discovery propounded in this action, and will produce further information if located.

**REQUEST FOR PRODUCTION NO. 110:**

Produce all communications You received, directly or indirectly, from any customer or end-user (or family member, friend, counsel, agent, representative, or any other person acting on behalf of a customer or end-user) of a Jacuzzi Walk-In bathtub in which the customer or end-user contends, alleges, or states a concern that a Jacuzzi Walk-In tub was presented any type of risk of bodily injury or physical harm.

**RESPONSE:**

Jacuzzi objects to this request because it is vague, ambiguous, overbroad and unduly burdensome, because it requires production not limited in scope to the subject Walk-In Bathtub or Plaintiffs' allegations of defect, and imposes an undue burden on defendant that is not commensurate with the information sought. The request seeks information that is not relevant to the issues in this action and is not likely to lead to the discovery of relevant or admissible evidence. Jacuzzi further objects to this Request as overly broad, in that the Interrogatory is not limited in time. Subject to and without waiving said objections, and subject to the General Objections above, Jacuzzi responds as follows: This request is duplicative. Please see Jacuzzi's

1 responses to REQUESTS FOR PRODUCTION 86 – REQUEST FOR PRODUCTION 101.  
2 Jacuzzi continues in its search for relevant information and information responsive to discovery  
3 propounded in this action, and will produce further information if located.

4 **REQUEST FOR PRODUCTION NO. 111:**

5 Produce all communications You received, directly or indirectly, from any customer or  
6 end-user (or family member, friend, counsel, agent, representative, or any other person acting on  
7 behalf of a customer or end-user) of a Jacuzzi Walk-In bathtub in which the customer or end-user  
8 contends that a Jacuzzi walk-in tub did not meet the user's expectations due to concerns  
9 regarding a risk of bodily injury or physical harm.

10 **RESPONSE:**

11 Jacuzzi objects to this request because it is vague, ambiguous, overbroad and unduly  
12 burdensome, because it requires production not limited in scope to the subject Walk-In Bathtub  
13 or Plaintiffs' allegations of defect, and imposes an undue burden on defendant that is not  
14 commensurate with the information sought. The request seeks information that is not relevant to  
15 the issues in this action and is not likely to lead to the discovery of relevant or admissible  
16 evidence. Jacuzzi further objects to this Request as overly broad, in that the Interrogatory is not  
17 limited in time. Subject to and without waiving said objections, and subject to the General  
18 Objections above, Jacuzzi responds as follows: This request is duplicative. Please see Jacuzzi's  
19 responses to REQUESTS FOR PRODUCTION 86 – REQUEST FOR PRODUCTION 101.  
20 Jacuzzi continues in its search for relevant information and information responsive to discovery  
21 propounded in this action, and will produce further information if located.

22 **REQUEST FOR PRODUCTION NO. 112:**

23 Your Opposition to Plaintiffs' Motion for Reconsideration Re: Plaintiffs' Renewed  
24 Motion to Strike Jacuzzi's Answer (filed May 28, 2019) states Jacuzzi's interpretation of the  
25 Court's March 4, 2019 Minute Order. Your Opposition states: "Jacuzzi interpreted the Court's  
26 March 4th Order to include any user of a Jacuzzi walk-in tub that has passed away at any time,  
27 whether or not the death was related to or caused by the decedent's use of the walk-in tub,  
28 whether or not there was a warranty claim related to the death, and whether or not there was a



lawsuit.” Opp. at 6:8-11. Please produce all documents pertaining to any incident in which a user of a Jacuzzi walk-in tub has been injured (or was alleged to have been injured), whether the injury, or alleged injury, was caused by the use of the walk-in tub or only alleged to have been caused by the use of the walk-in tub, whether or not there was a warranty claim related to the injury, and whether or not there was a lawsuit or other type of bodily injury claim. This request seeks information from 2008 to present.

**RESPONSE:**

Jacuzzi objects to this request because it is vague, ambiguous, overbroad and unduly burdensome, because it requires production not limited in scope to the subject Walk-In Bathtub or Plaintiffs’ allegations of defect, and imposes an undue burden on defendant that is not commensurate with the information sought. The request includes an improper and self-serving introduction that will not be considered as part of the actual request. The request seeks information that is not relevant to the issues in this action and is not likely to lead to the discovery of relevant or admissible evidence. Jacuzzi further objects to this Request as overly broad, in that the Interrogatory is not limited in time. Subject to and without waiving said objections, and subject to the General Objections above, Jacuzzi responds as follows: Please see JACUZZI002927-JACUZZI002937, JACUZZI002945-JACUZZI002971, JACUZZI002989-JACUZZI002991, JACUZZI004696-JACUZZI004710, JACUZZI004715, JACUZZI005315, JACUZZI005320, JACUZZI005327, JACUZZI005367, JACUZZI005340-JACUZZI005345, JACUZZI005438, JACUZZI005478-JACUZZI005485, JACUZZI005731-JACUZZI005739, JACUZZI005742-JACUZZI005743, JACUZZI005872, JACUZZI006059-JACUZZI006074, JACUZZI006249. Jacuzzi continues in its search for relevant information and information responsive to discovery propounded in this action, and will produce further information if located.

**REQUEST FOR PRODUCTION NO. 113:**

Your Opposition to Plaintiffs’ Motion for Reconsideration Re: Plaintiffs’ Renewed Motion to Strike Jacuzzi’s Answer (filed May 28, 2019) states Jacuzzi’s interpretation of the Court’s March 4, 2019 Minute Order. Your Opposition states: “Jacuzzi interpreted the Court’s





1 March 4th Order to include any user of a Jacuzzi walk-in tub that has passed away at any time,  
2 whether or not the death was related to or caused by the decedent's use of the walk-in tub,  
3 whether or not there was a warranty claim related to the death, and whether or not there was a  
4 lawsuit." Opp. at 6:8-11. Please produce all documents which You created in the ordinary  
5 course of business as a result of any incident in which any user of a Jacuzzi walk-in tub was  
6 injured (or alleged to have been injured), whether the injury (or alleged injury) was caused by the  
7 use of the walk-in tub or only alleged to have been caused by the use of the walk-in tub, whether  
8 or not there was a warranty claim related to the injury, and whether or not there was a lawsuit or  
9 other type of bodily injury claim. This request seeks documents from 2008 to present.

10 **RESPONSE:**

11 Jacuzzi objects to this request because it is vague, ambiguous, overbroad and unduly  
12 burdensome, because it requires production not limited in scope to the subject Walk-In Bathtub  
13 or Plaintiffs' allegations of defect, and imposes an undue burden on defendant that is not  
14 commensurate with the information sought. The request includes an improper and self-serving  
15 introduction that will not be considered as part of the actual request. The request seeks  
16 information that is not relevant to the issues in this action and is not likely to lead to the  
17 discovery of relevant or admissible evidence. Jacuzzi further objects to this Request as overly  
18 broad, in that the Interrogatory is not limited in time. The request seeks information protected  
19 from disclosure by the attorney client and work product privileges. Subject to and without  
20 waiving said objections, and subject to the General Objections above, Jacuzzi responds as  
21 follows: Please see JACUZZI002927-JACUZZI002937, JACUZZI002945-JACUZZI002971,  
22 JACUZZI002989-JACUZZI002991, JACUZZI004696-JACUZZI004710, JACUZZI004715,  
23 JACUZZI005315, JACUZZI005320, JACUZZI005327, JACUZZI005367, JACUZZI005340-  
24 JACUZZI005345, JACUZZI005438, JACUZZI005478-JACUZZI005485, JACUZZI005731-  
25 JACUZZI005739, JACUZZI005742-JACUZZI005743, JACUZZI005872, JACUZZI006059-  
26 JACUZZI006074, JACUZZI006249. Jacuzzi continues in its search for relevant information and  
27 information responsive to discovery propounded in this action, and will produce further  
28 information if located.



1 **REQUEST FOR PRODUCTION NO. 114:**

2 Please produce all Documents, informational brochures, pamphlets, marketing materials,  
3 guides, instructions, manuals, warnings, or any other similar document which was given to any  
4 customer or end-user regarding the 9-1-1 system – regardless of whether such 9-1-1 system is a  
5 Jacuzzi product.

6 **RESPONSE:**

7 Jacuzzi objects to this request because it is vague, ambiguous, overbroad and unduly  
8 burdensome, because it requires production not limited in scope to the subject Walk-In Bathtub,  
9 sales presentation or materials viewed by Plaintiff, or Plaintiffs' allegations of defect. The  
10 request seeks information that is not relevant to the issues in this action and is not likely to lead  
11 to the discovery of relevant or admissible evidence. Jacuzzi further objects to this Request as  
12 overly broad, in that the Interrogatory is not limited in time. Subject to and without waiving said  
13 objections, and subject to the General Objections above, Jacuzzi responds as follows: Jacuzzi did  
14 not distribute documents regarding a "9-1-1 system" to consumers.

15 **REQUEST FOR PRODUCTION NO. 115:**

16 The Manufacturing Agreement between You and firstSTREET (JACUZZI 001588-1606)  
17 states: "H. J1 represents and warrants that it has terminated its license agreement with Home  
18 Living Solutions ("HLS") and has no further contractual obligations to HLS with respect to the  
19 HLS dealers or otherwise." Produce all contracts, covenants, or agreements between You and  
20 Home Living Solutions that were in effect prior to October 1, 2011.

21 **RESPONSE:**

22 Jacuzzi objects to this request because it is vague, ambiguous, overbroad and unduly  
23 burdensome, because it requires production not limited in scope to the subject Walk-In Bathtub,  
24 the sale to Plaintiff, or Plaintiffs' allegations of defect. The request includes an improper and  
25 self-serving introduction that will not be considered as part of the actual request. The request  
26 seeks information that is not relevant to the issues in this action and is not likely to lead to the  
27 discovery of relevant or admissible evidence. Jacuzzi further objects to this Request as overly  
28 broad, in that the Interrogatory is not limited in time. Subject to and without waiving said





1 objections, and subject to the General Objections above, Jacuzzi responds as follows: Jacuzzi's  
2 contracts, covenants, or agreements with Home Living Solutions, a California company, do not  
3 relate to the parties, venue, or claims at issue in this litigation and Jacuzzi will not produce any  
4 such documents without court intervention.

5 **REQUEST FOR PRODUCTION NO. 116:**

6 The Manufacturing Agreement between You and firstSTREET (JACUZZI 001588-1606)  
7 states: "H. J1 represents and warrants that it has terminated its license agreement with Home  
8 Living Solutions ("HLS") and has no further contractual obligations to HLS with respect to the  
9 HLS dealers or otherwise." Please identify all Home Living Solutions dealers with whom You  
10 had any contractual obligations from 2008 to present.

11 **RESPONSE:**

12 Jacuzzi objects to this request because it is vague, ambiguous, overbroad and unduly  
13 burdensome, because it requires production not limited in scope to the subject Walk-In Bathtub,  
14 the sale to Plaintiff or Plaintiffs' allegations of defect. The request includes an improper and self-  
15 serving introduction that will not be considered as part of the actual request. The request seeks  
16 information that is not relevant to the issues in this action and is not likely to lead to the  
17 discovery of relevant or admissible evidence. Subject to and without waiving said objections,  
18 and subject to the General Objections above, Jacuzzi responds as follows: Jacuzzi's relationship  
19 with Home Living Solutions, a California company, does not relate to the parties, venue, or  
20 claims at issue in this litigation and Jacuzzi will not produce any such documents without court  
21 intervention.

22 **REQUEST FOR PRODUCTION NO. 117:**

23 Produce all communications between You and Home Living Solutions regarding the  
24 development, creation, execution, implementation of any marketing campaigns related to Jacuzzi  
25 walk-in tubs from 2008 to present.

26 **RESPONSE:**

27 Jacuzzi objects to this request because it is vague, ambiguous, overbroad and unduly  
28 burdensome, because it requires production not limited in scope to the subject Walk-In Bathtub,



1 sales presentation or materials viewed by Plaintiff, or Plaintiffs' allegations of defect. The  
2 request includes an improper and self-serving introduction that will not be considered as part of  
3 the actual request. The request seeks information that is not relevant to the issues in this action  
4 and is not likely to lead to the discovery of relevant or admissible evidence. Subject to and  
5 without waiving said objections, and subject to the General Objections above, Jacuzzi responds  
6 as follows: Advertising done by Home Living Solutions, a California company, does not relate to  
7 the parties, venue, or claims at issue in this litigation, and Jacuzzi will not produce any such  
8 documents without court intervention.

9 **REQUEST FOR PRODUCTION NO. 118:**

10 Produce all documents You provided to Home Living Solutions relating to the marketing  
11 and advertising of any Jacuzzi Walk-In Series Bathtubs from 2008 to present.

12 **RESPONSE:**

13 Jacuzzi objects to this request because it is vague, ambiguous, overbroad and unduly  
14 burdensome, because it requires production not limited in scope to the subject Walk-In Bathtub,  
15 sales presentation or materials viewed by Plaintiff, or Plaintiffs' allegations of defect. The  
16 request includes an improper and self-serving introduction that will not be considered as part of  
17 the actual request. The request seeks information that is not relevant to the issues in this action  
18 and is not likely to lead to the discovery of relevant or admissible evidence. Subject to and  
19 without waiving said objections, and subject to the General Objections above, Jacuzzi responds  
20 as follows: Advertising or marketing done by Home Living Solutions, a California company,  
21 does not relate to the parties, venue, or claims at issue in this litigation, and Jacuzzi will not  
22 produce any such documents without court intervention.

23 **REQUEST FOR PRODUCTION NO. 119:**

24 Please produce any communications between You and firstSTREET relating to any  
25 dealer's sales methods as related to the marketing and sales of Jacuzzi Walk-In tubs to customers  
26 or end-users.

27  
28

**RESPONSE:**

Jacuzzi objects to this request because it is vague, ambiguous, overbroad and unduly burdensome, because it requires production not limited in scope to the subject Walk-In Bathtub, sales presentation or materials viewed by Plaintiff, or Plaintiffs' allegations of defect, and imposes an undue burden on defendant that is not commensurate with the information sought. The request seeks information that is not relevant to the issues in this action and is not likely to lead to the discovery of relevant or admissible evidence. Jacuzzi further objects to this Request as overly broad, in that the Interrogatory is not limited in time. Subject to and without waiving said objections, and subject to the General Objections above, Jacuzzi responds as follows: Please see JACUZZI005034–JACUZZI005188, JACUZZI005801–JACUZZI005934, JACUZZI006282– JACUZZI006674. Jacuzzi continues in its search for relevant information and information responsive to discovery propounded in this action, and will produce further information if located.

**REQUEST FOR PRODUCTION NO. 120:**

Please produce any communications between You and AITHR relating to any dealer sales methods as related to the marketing and sales of Jacuzzi Walk-In tubs to customers or end-users.

**RESPONSE:**

Jacuzzi objects to this request because it is vague, ambiguous, overbroad and unduly burdensome, because it requires production not limited in scope to the subject Walk-In Bathtub, sales presentation or materials viewed by Plaintiff, or Plaintiffs' allegations of defect, and imposes an undue burden on defendant that is not commensurate with the information sought. Jacuzzi objects to this Request as it is not reasonably calculated to lead to the discovery of relevant or admissible evidence. Subject to and without waiving said objections, and subject to the General Objections above, Jacuzzi responds as follows: Please see JACUZZI005034–JACUZZI005188, JACUZZI005801– JACUZZI005934, JACUZZI006282– JACUZZI006674. Jacuzzi continues in its search for relevant information and information responsive to discovery propounded in this action, and will produce further information if located.

**REQUEST FOR PRODUCTION NO. 121:**

Please produce any communications between You and any dealer relating to any dealer's sales methods as related to the marketing and sales of Jacuzzi Walk-In tubs to customers or end-users.

**RESPONSE:**

Jacuzzi objects to this request because it is vague, ambiguous, overbroad and unduly burdensome, because it requires production not limited in scope to the subject Walk-In Bathtub, sales presentation or materials viewed by Plaintiff, or Plaintiffs' allegations of defect, and imposes an undue burden on defendant that is not commensurate with the information sought. The request seeks information that is not relevant to the issues in this action and is not likely to lead to the discovery of relevant or admissible evidence. Jacuzzi further objects to this Request as overly broad, in that the Interrogatory is not limited in time. Subject to and without waiving said objections, and subject to the General Objections above, Jacuzzi responds as follows: Please see JACUZZI005034– JACUZZI005188, JACUZZI005801– JACUZZI005934, JACUZZI006282– JACUZZI006674. Jacuzzi continues in its search for relevant information and information responsive to discovery propounded in this action, and will produce further information if located.

**REQUEST FOR PRODUCTION NO. 122:**

Please produce any communications between You and firstSTREET, AITHR, or any dealer relating to any dealer or dealer sales representative in-home sales methods, policies, or procedures.

**RESPONSE:**

Jacuzzi objects to this request because it is vague, ambiguous, overbroad and unduly burdensome, because it requires production not limited in scope to the subject Walk-In Bathtub, sales presentation or materials viewed by Plaintiff or Plaintiffs' allegations of defect, and imposes an undue burden on defendant that is not commensurate with the information sought. The request seeks information that is not relevant to the issues in this action and is not likely to lead to the discovery of relevant or admissible evidence. Jacuzzi further objects to this Request

1 as overly broad, in that the Interrogatory is not limited in time. Subject to and without waiving  
2 said objections, and subject to the General Objections above, Jacuzzi responds as follows:  
3 Please see JACUZZI005034– JACUZZI005188, JACUZZI005801– JACUZZI005934,  
4 JACUZZI006282– JACUZZI006674. Jacuzzi continues in its search for relevant information and  
5 information responsive to discovery propounded in this action, and will produce further  
6 information if located.

7 **REQUEST FOR PRODUCTION NO. 123:**

8 Please produce any Documents in Your possession or control relating to dealer or dealer  
9 sales representative in-home sales methods, policies, or procedures.

10 **RESPONSE:**

11 Jacuzzi objects to this request because it is vague, ambiguous, overbroad and unduly  
12 burdensome, because it requires production not limited in scope to the subject Walk-In Bathtub,  
13 sales presentation or materials viewed by Plaintiff, or Plaintiffs' allegations of defect, and  
14 imposes an undue burden on defendant that is not commensurate with the information sought.  
15 The request seeks information that is not relevant to the issues in this action and is not likely to  
16 lead to the discovery of relevant or admissible evidence. Jacuzzi further objects to this Request  
17 as overly broad, in that the Interrogatory is not limited in time. Subject to and without waiving  
18 said objections, and subject to the General Objections above, Jacuzzi responds as follows:  
19 Please see JACUZZI005034– JACUZZI005188, JACUZZI005801– JACUZZI005934,  
20 JACUZZI006282– JACUZZI006674. Jacuzzi continues in its search for relevant information and  
21 information responsive to discovery propounded in this action, and will produce further  
22 information if located.

23 **REQUEST FOR PRODUCTION NO. 124:**

24 Any and all documents pertaining to any claims made to or against Jacuzzi concerning  
25 the individual who passed away after allegedly "getting stuck" in a Jacuzzi® walk-in tub and  
26 whom Jacuzzi was made aware of in October 2018, as asserted in Jacuzzi's Supplemental Brief  
27 filed with this Court on March 7, 2019.  
28



**RESPONSE:**

Jacuzzi objects to this request because it is vague, ambiguous, overbroad and unduly burdensome, because it requires production not limited in scope to the subject Walk-In Bathtub or Plaintiffs' allegations of defect. The request seeks information that is not relevant to the issues in this action and is not likely to lead to the discovery of relevant or admissible evidence. Jacuzzi further objects to this Request as overly broad, in that the Interrogatory is not limited in time. Subject to and without waiving said objections, and subject to the General Objections above, Jacuzzi responds as follows: Although a claim has not been made, please see JACUZZI00004696-4710. Jacuzzi continues in its search for relevant information and information responsive to discovery propounded in this action, and will produce further information if located.

**REQUEST FOR PRODUCTION NO. 125:**

Any and all documents that Jacuzzi provided to or received from the Consumer Product Safety Commission (CPSC) concerning the individual who passed away after allegedly "getting stuck" in a Jacuzzi® walk-in tub and whom Jacuzzi was made aware of in October 2018, as asserted in Jacuzzi's Supplemental Brief filed with this Court on March 7, 2019.

**RESPONSE:**

Jacuzzi objects to this request because it is vague, ambiguous, overbroad and unduly burdensome, because it requires production not limited in scope to the subject Walk-In Bathtub or Plaintiffs' allegations of defect. The request seeks information that is not relevant to the issues in this action and is not likely to lead to the discovery of relevant or admissible evidence. Jacuzzi further objects to this Request as overly broad, in that the Interrogatory is not limited in time. Subject to and without waiving said objections, and subject to the General Objections above, Jacuzzi responds as follows: Jacuzzi is not aware of any documents responsive to this request.

**REQUEST FOR PRODUCTION NO. 126:**

Any Corrective Action Plans (CAPs) concerning the Jacuzzi® walk-in tub model number 5229.



**RESPONSE:**

Jacuzzi objects to this request because it is vague, ambiguous, overbroad and unduly burdensome, because it requires production not limited in scope to the subject Walk-In Bathtub or Plaintiffs' allegations of defect. The request seeks information that is not relevant to the issues in this action and is not likely to lead to the discovery of relevant or admissible evidence. Jacuzzi further objects to this Request as overly broad, in that the Interrogatory is not limited in time. Subject to and without waiving said objections, and subject to the General Objections above, Jacuzzi responds as follows: Jacuzzi does not have any documents responsive as it understands the intended scope of this request.

**REQUEST FOR PRODUCTION NO. 127:**

Any and all documents that Jacuzzi has received from the Consumer Product Safety Commission (CPSC) concerning the Jacuzzi® walk-in tub model number 5229.

**RESPONSE:**

Jacuzzi objects to this request because it is vague, ambiguous, overbroad and unduly burdensome, because it requires production not limited in scope to the subject Walk-In Bathtub or Plaintiffs' allegations of defect. The request seeks information that is not relevant to the issues in this action and is not likely to lead to the discovery of relevant or admissible evidence. Jacuzzi further objects to this Request as overly broad, in that the Interrogatory is not limited in time. Subject to and without waiving said objections, and subject to the General Objections above, Jacuzzi responds as follows: Please see JACUZZI00002964-002966, JACUZZI005731-005741. Jacuzzi continues in its search for relevant information and information responsive to discovery propounded in this action, and will produce further information if located.

**REQUEST FOR PRODUCTION NO. 128:**

Any and all recalls concerning the Jacuzzi® walk-in tub model number 5229.

**RESPONSE:**

Jacuzzi objects to this request because it is vague, ambiguous, overbroad and unduly burdensome, because it requires production not limited in scope to the subject Walk-In Bathtub or Plaintiffs' allegations of defect. The request seeks information that is not relevant to the issues

1 in this action and is not likely to lead to the discovery of relevant or admissible evidence. Jacuzzi  
2 further objects to this Request as overly broad, in that the Interrogatory is not limited in time.  
3 Subject to and without waiving said objections, and subject to the General Objections above,  
4 Jacuzzi responds as follows: Jacuzzi does not have any documents responsive to this request.

5  
6 Dated this 12<sup>th</sup> day of August, 2019.

7 WEINBERG, WHEELER, HUDGINS,  
8 GUNN & DIAL, LLC

9 

10 D. Lee Roberts, Jr., Esq.  
11 Brittany M. Llewellyn, Esq.  
12 6385 South Rainbow Blvd., Suite 400  
13 Las Vegas, Nevada 89118

14 *Attorneys for Defendant*  
15 *Jacuzzi Inc. doing business as*  
16 *Jacuzzi Luxury Bath*

796900

WEINBERG WHEELER  
HUDGINS GUNN & DIAL

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CERTIFICATE OF SERVICE

I hereby certify that on the 25th day of August, 2019, a true and correct copy of the foregoing **DEFENDANT JACUZZI INC., DOING BUSINESS AS JACUZZI LUXURY BATH'S RESPONSE TO PLAINTIFF ROBERT ANSARA'S 7TH REQUEST FOR PRODUCTION OF DOCUMENTS** was electronically filed and served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

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WEINBERG WHEELER  
HUDGINS GUNN & DIAL

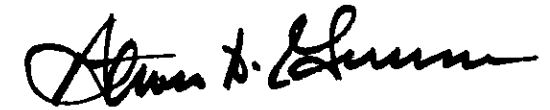
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# EXHIBIT C

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# EXHIBIT C

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**ORDR**

CLERK OF THE COURT

**DISTRICT COURT  
CLARK COUNTY, NEVADA**ESTATE OF JANE DOE, by and through its  
Special Administrator, Misty Petersen,

Plaintiff,

vs.

VALLEY HEALTH SYSTEM, LLC, a Nevada  
limited liability company, d/b/a CENTENNIAL  
HILLS HOSPITAL MEDICAL CENTER;  
UNIVERSAL HEALTH SERVICES, INC., a  
Delaware corporation; AMERICAN NURSING  
SERVICE, INC., a Louisiana corporation;  
STEVEN DALE FARMER, an individual;  
DOES I through X, inclusive; and ROE  
CORPORATIONS I through X, inclusive,

Defendants.

Case No.: 09-A-595780-C  
Dept. No.: IIDate: August 28, 2015  
Time: 9:00 a.m.**ORDER STRIKING ANSWER OF  
DEFENDANT VALLEY HEALTH  
SYSTEM LLC AS SANCTION FOR  
DISCOVERY MISCONDUCT****I. SUMMARY OF ORDER**

This action involves Plaintiff Jane Doe's claims that she was sexually assaulted by Nurse Farmer at Centennial Hills Hospital Medical Center on May 14, 2008. Plaintiff Jane Doe asserted the following two substantive claims against defendant Valley Health System, LLC d/b/a/ Centennial Hills Hospital Medical Center, and Universal Health Services, Inc., (collectively "Centennial" herein): negligent failure to maintain the premises in a safe manner; and *respondent superior* liability for the sexual assault by Nurse Farmer. See Amended Complaint, ¶¶ 11-17 (filed August 21, 2009).

The Amended Complaint established the relevance and materiality of the following questions of fact: (a) as to the negligence claim: whether it was reasonably foreseeable to Centennial, considering the totality of circumstances, that the premises were unsafe (See CD Audio Recording of the Evidentiary Hearing at 10:27:06) (hereinafter "E.H. at

Richard F. Scotti  
District JudgeDepartment Two  
Las Vegas, NV 89155

Hour:Minutes:Seconds"); and (b) as to the *respondeat superior* claim: whether the sexual assault by Nurse Farmer was reasonably foreseeable under the facts and circumstances of the case considering the nature and scope of [his] employment. NRS 41.745(1)(c).<sup>1</sup> Thus, in a general sense, it was critical to both the negligence and *respondeat superior* claims for the Plaintiff to conduct discovery on the issue whether it was reasonably foreseeable to defendant Centennial Hills that Nurse Farmer would commit a sexual assault. Plaintiff Jane Doe seeks sanctions against defendant Centennial for impeding Plaintiff's ability to acquire critical evidence on the "reasonable foreseeability" issues.

On April 29, 2015, Plaintiff Estate of Jane Doe ("Plaintiff") moved this Court to impose sanctions against Defendant Valley Health System, LLC d.b.a. Centennial Hills Hospital Medical Center ("Centennial") pursuant to NRC 37. Plaintiff contended that Centennial failed to timely disclose that nurses Murray, Wolfe, and Sumera had knowledge of relevant facts bearing on the most critical issue in this case – whether it was reasonably foreseeable to Centennial that Mr. Farmer would commit a criminal sexual assault against a patient. Plaintiff further contended that Centennial concealed from Plaintiff the existence of statements that nurses Murray and Wolfe gave to the Las Vegas Metropolitan Police Department ("LVMPD"). These statements are referenced herein as the "Police Statements."

The Discovery Commissioner heard this matter on June 3, 2015, expressed her findings and recommendations orally at that time and executed the Discovery Commissioner's Report and Recommendation ("DCRR") on July 14, 2014. The Discovery Commissioner succinctly stated the issue and her findings as follows:

[W]hat is at issue is the failure to disclose witnesses, whether or not failure to disclose identifies of nurses who had information about Mr. Farmer prior to this case being filed is at a level to warrant Rule 37 sanctions and, whether the failures prejudiced Plaintiff. . . . The basis of the Motion involves three nurses,

<sup>1</sup> For purposes of resolving the motion for sanctions, it is not necessary for this Court to determine whether the Plaintiff has the burden of proving "reasonable foreseeability" to recover under NRS 41.745, or the defendant has the burden of proving that the intentional tort was not reasonably foreseeable as an affirmative defense to avoid liability. In either case, whoever has the burden, the pleadings and briefs in this action have very clearly established that "reasonable foreseeability" is a relevant and material issue of fact.

1 Christine Murray, Margaret Wolfe, and Renato Sumera. Ms.  
2 Murray and Ms. Wolfe each gave statements to the LVMPD  
3 around the time of the sexual assault that resulted in the arrest of  
4 Mr. Farmer. Mr. Sumera met with Risk Management afterwards. .  
5 . . None of the nurses were identified at the initial 16.1. The nurses  
6 should have been identified as they were clearly likely to have  
7 information discoverable under Rule 26(b). . . . While there is no  
8 doubt but that Plaintiff was prejudiced by the delay, the Court is  
9 more concerned with the issues of memories that fade. The delay  
10 in this matter was not for a short time -- this was for 6 or more  
11 years. Accordingly, the Court finds that the failure to identify  
12 these three nurses has resulted in substantial prejudice sufficient to  
13 warrant NRCP 37 sanctions.

14 (DCRR filed August 17, 2015).

15 This Court has read and considered all applicable legal briefs of the parties, the  
16 Discovery Commissioner's Report and Recommendations, and Defendant Centennial's  
17 objection thereto. The Court has also listened to the argument of counsel at the Evidentiary  
18 Hearing conducted on August 28, 2015. The Court has considered the exhibits admitted  
19 during the Evidentiary Hearing, and the testimony of witnesses provided at the Evidentiary  
20 Hearing. The Court has also read and considered the deposition testimony that the parties  
21 have asked this Court to consider.

22 This Court finds that the Discovery Commissioner's factual findings are supported by  
23 substantial evidence, and that the Discovery Commissioner properly applied the law. The  
24 Court sustains the sanctions imposed by the Discovery Commissioner, and imposes the further  
25 sanctions as discussed below.

26 This Court further finds that, based on evidence that this Court considers to be clear  
27 and convincing, Centennial intentionally and willfully (a) violated its discovery obligations  
28 under NRCP 16.1 in failing to timely disclose that nurses Murray, Wolfe, and Sumera  
possessed relevant and material evidence relating to the central issue in this case -- whether it  
was reasonably foreseeable to Centennial that Mr. Farmer would commit a criminal sexual  
assault on a patient; and (b) violated its duty under NRCP 16.1 to timely disclose the Police  
Statements which also contained relevant and material evidence relating to the same central  
issue. The Court also finds that, based on evidence that this Court considers to be clear and  
convincing, Centennial's misconduct caused extreme unfair prejudice to Plaintiff Jane Doe,

1 and that Centennial's misconduct substantially impaired Plaintiff's ability to discover relevant  
2 evidence and prepare for trial with respect to the issue whether it was reasonably foreseeable  
3 that Mr. Farmer would commit a criminal sexual assault on a patient.

4       **The Court sanctions Defendant Centennial pursuant to NRCP 37 by striking its**  
5 **Answer in this action such that liability is hereby established on Plaintiff Jane Doe's**  
6 **claims against Defendant Centennial for negligence and *respondeat superior*; but**  
7 **Centennial shall still be entitled to defend on the question of the nature and quantum of**  
8 **damages for which it is liable. The procedures to implement this sanction are discussed**  
9 **below in the Conclusion section.**

10       The Court finds that this is the least-onerous sanction that it could impose upon  
11 Centennial and still mitigate the extreme prejudice that Centennial has unfairly and wrongfully  
12 inflicted upon Plaintiff. This sanction is narrowly tailored to address the exact harm caused by  
13 Centennial -- the infliction upon Plaintiff of an inability to conduct proper discovery as to  
14 "reasonable foreseeability" before memories had faded and evidence had either gone stale or  
15 disappeared entirely.

16 **II. PROCEDURAL POSTURE OF CASE**

17 **A. NATURE OF THE CASE**

18       This is an action by Plaintiff Jane Doe against Valley Health System, LLC d/b/a/  
19 Centennial Hills Hospital Medical center, Universal Health Services, Inc., American Nursing  
20 Service, and Steven Farmer arising out of a criminal sexual assault perpetrated by Certified  
21 Nursing Assistant (hereinafter "CNA") Farmer on a female patient at Centennial on May 14,  
22 2008. Plaintiff filed her Amended Complaint in this matter on or about August 21, 2009.

23 **B. DISCOVERY AND TRIAL SETTING**

24       Discovery in this action was conducted from about November 6, 2009 through about  
25 September 15, 2015 except for certain stay periods.

26       This action was stayed from January 21, 2011 until July 18, 2012, and again from  
27 February 29, 2014 through July 4, 2014.

28       This action is set for jury trial commencing on January 4, 2016.



1 Calendar Call is set for December 16, 2015.

2 **C. DISCOVERY HEARING REGARDING SANCTIONS**

3 Plaintiff Jane Doe filed her Motion for NRCP 37 Sanctions against Centennial on  
4 April 29, 2015.

5 This matter came before Discovery Commissioner Bonnie Bulla on June 3, 2015.  
6 Plaintiff Jane Doe asked the Discovery Commissioner to strike Centennial's Answer as a  
7 sanction for its discovery violations. Tr. of Proc. at p. 16, line 20 (June 3, 2015).

8 The Discovery Commissioner executed her Findings of Fact, Conclusions of Law and  
9 Recommendations on July 14, 2014, explaining as follows:

10 The basis of the Motion involves three nurses, Christine Murray,  
11 Margaret Wolfe, and Renato Sumera. Ms. Murray and Ms. Wolfe  
12 each gave statements to the LVMPD around the time of the sexual  
13 assault that resulted in the arrest of Mr. Farmer. Mr. Sumera met  
14 with Risk Management afterwards. Mr. Bemis confirmed that a  
15 Quality Assurance meeting was held shortly after the incident but  
16 did not know at the Hearing whether or not any of the individuals  
17 appeared.

18 None of the nurses were identified at the initial 16.1 The nurses  
19 should have been identified as they were clearly known to  
20 Defendants. The nurses should have been identified per NRCP  
21 16.1 as the nurses were certainly likely to have information  
22 discoverable under Rule 26(b). The Court queried Mr. Bemis as to  
23 why the nurses were not identified but Mr. Bemis could not answer  
24 the question.

25 The witnesses were certainly important to the matter because they  
26 provide evidence of "notice" regarding Mr. Farmer and his  
27 proclivities.

28 While there is no doubt but that Plaintiff was prejudiced by the  
delay in terms of filing motions, the Court is more concerned with  
the issues of memories that fade. The delay in this matter was not  
for a short period – this was for 6 or more years. Mr. Murdock  
stated that nurse Sumera had a substantial memory lapse and Mr.  
Bemis did not dispute this. Accordingly, the Court finds that the  
failure to identify these three nurses has resulted in substantial  
prejudice sufficient to warrant NRCP 37 sanctions.

The Discovery Commissioner recommended sanctions and a further evidentiary  
hearing as follows:

The UHS Defendants are sanctioned in the amount of One  
Thousand Dollars and No/100 (\$1000.00) per unidentified nurse  
(3) for each year not identified (6) for a total of Eighteen Thousand

1 Dollars and No/100 (\$18,000.00). Half of that amount, or Nine  
 2 Thousand Dollars and No/100 (\$9,000.00), shall be paid to Barbara  
 3 Buckley's Legal Aid Center of Southern Nevada, and the other  
 half shall be paid to Plaintiff in attorney's fees and costs to offset  
 additional work done to figure out witnesses to proceed forward.

4 IT IS FURTHER RECOMMENDED THAT because of the time  
 length involved in UHS' failure to identify the nurses, and the  
 5 memory issues that arise as a result, additional sanctions are  
 warranted. However, the District Court should determine those via  
 6 an evidentiary hearing and this Court defers the evidentiary  
 hearing to the District Court. As such, an evidentiary hearing  
 7 before the District Court should be conducted to determine (1) if  
 case terminating sanctions are appropriate based on the conduct of  
 8 failing to disclose witnesses, (2) whether or not that was intention  
 to thwart the discovery process in this case, and hinder Plaintiff to  
 9 discovery the relevant facts, and (3) a failure to let the Court know  
 what was going on in the case and whether the USH Defendants  
 misled the Court.

10  
 11 The Discovery Commissioner was deeply concerned by the prejudice inflicted upon  
 12 Plaintiff by Defendants' failure to disclose the nurses and their Metro Statements,  
 13 commenting:

14 That's the prejudice . . . It's the fact that memories fade, and now  
 15 we have a situation where we can't go back in time . . . and find  
 out exactly what they knew, the details of their observations, which  
 16 we don't have and, of course, details help you with credibility, to  
 know what happened. So that's the prejudice, and it's significant."

17 Tr. of Proc., p. 9 (June 3, 2015).

18 The District Court approved and signed the DCRR on August 15, 2015, and filed the  
 19 DCRR on August 17, 2015, setting the Evidentiary Hearing for August 28, 2015.

#### 20 **D. THE EVIDENTIARY HEARING**

21 The Evidentiary Hearing was conducted on August 28, 2015. Each side presented  
 22 opening statements. Plaintiff Jane Doe presented the following witnesses, who were subjected  
 23 to examination by both sides: John Bemis and Ken Webster (attorneys with Hall, Prangle,  
 24 Schooveld, LLC, counsel for Centennial). The following exhibits were admitted into  
 25 evidence: Plaintiff's exhibits 1, 1a-1n, 3-8, 10, 10a, and 11-19, 21-29, 30 (excerpt of  
 26 deposition of Carol Butler on June 19, 2015), 31 (excerpt of deposition of nurse Sumera on  
 27 May 15, 2015), 32 (excerpt of deposition of nurse Wolfe on May 5, 2015), 33 (excerpt of  
 28 deposition of Amy Blasing on July 28, 2015), and 34 (excerpt of deposition of Janet Callahan

1 on August 8, 2015; and Defendant Centennial's Exhs. A (Las Vegas Metropolitan Police  
2 Department file supposedly received by Centennial's counsel on or about May 6, 2013); and B  
3 (plaintiff's 15<sup>th</sup> Supplemental NRCP 16.1 Disclosure in the "RC" case). E.H. at 10:17-25.  
4 Each side presented closing arguments. The entire Evidentiary Hearing took more than half a  
5 day.

6 **III. UNDISPUTED FACTS**

7 **THE HIRING AND EMPLOYMENT OF MR. FARMER**

8 1. In May of 2008, Jane Doe was a patient at Centennial. For the purposes of the  
9 undisputed facts that follow, the term "Centennial" shall refer to the hospital facility, as well  
10 as the Defendant, as applicable.

11 2. In May of 2008, Centennial had a contractual agreement whereby American  
12 Nursing Services ("ANS") would provide certain hospital staff, which included CNAs.

13 3. In May of 2008, Mr. Farmer was an agency CNA working at Centennial through  
14 its agreement with ANS.

15 **FARMER'S ASSAULT AGAINST JANE DOE ON MAY 14, 2008**

16 4. On May 14, 2008, ANS sent Mr. Farmer to work at Centennial as a CNA.

17 5. On May 14, 2008, Centennial originally told Mr. Farmer to work in the  
18 Emergency Room.

19 6. In May of 2008, Mr. Farmer wore an employee badge that had his name, ANS,  
20 Centennial, and contract staff written on it.

21 7. At around 21:30 hours on May 14, 2008, while Farmer was working at  
22 Centennial, Centennial staff re-directed Mr. Farmer from the Emergency Room to the sixth  
23 floor to work.

24 8. On May 14, 2008, Jane Doe was on the sixth floor in Room 614 at Centennial.

25 9. On May 14, 2008, in the course and scope of his employment with ANS as a  
26 CNA, and in the course and scope of working at Centennial, it was expected that Farmer  
27 would enter patients' rooms on the sixth floor of Centennial as part of his tasks.

28 . . .

1           10. In addition, Mr. Farmer was expected to give bed baths, clean up stool, clean up  
2 urine, and check monitor leads when requested to do so by a nurse or doctor.

3           11. On May 14, 2008, Mr. Farmer entered Jane Doe's room, Room 614 at Centennial.

4           12. On May 14, 2008, having contact with a patient in the patient's room on the sixth  
5 floor of Centennial was in the course and scope of Farmer's employment with ANS and  
6 Centennial as a CNA.

7           13. Mr. Farmer had contact with Jane Doe in her room on the sixth floor of  
8 Centennial.

9           14. On May 14, 2008, Jane Doe awoke to find Mr. Farmer pinching and rubbing her  
10 nipples telling her that he was fixing her EKG monitor leads.

11           15. Mr. Farmer lifted up Jane Doe's hospital gown.

12           16. Mr. Farmer sexually assaulted Jane Doe by digitally penetrating her anus and  
13 vagina against her will.

14           17. Mr. Farmer sexually assaulted Jane Doe by pinching and rubbing her nipples  
15 against her will.

16           **FARMER'S ASSAULT OF MS. CAGNINA ON MAY 15 & 16, 2008**

17           18. The first criminal investigation of Mr. Farmer began from an incident involving  
18 the patient Roxanne Cagnina at Centennial. The matter involving Mr. Farmer's sexual assault  
19 against Ms. Cagnina, including the Centennial investigation, and the Cagnina lawsuit, is  
20 referenced herein as the "Cagnina Case."

21           19. Ms. Cagnina accused Mr. Farmer of sexually assaulting her while she was a  
22 patient at Centennial on May 15 and 16, 2008 -- beginning the day after Mr. Farmer assaulted  
23 Jane Doe.

24           20. Centennial hired the firm Hall, Prangle, Schooveld, LLC (hereinafter "HPS") to  
25 represent Centennial in the Cagnina Case on or about May 22, 2008. E.H. 9:57:15.

26           21. The HPS attorneys conducted an investigation of Mr. Farmer's conduct with  
27 respect to Ms. Cagnina, including an interview of nurse Wolfe (around mid-June 2008), nurse  
28 Murray (around mid-July 2008), and nurse Sumera (around mid-August). E.H. at 9:57. The

1 HPS attorneys contended at the Evidentiary Hearing that they had no knowledge at the times  
2 of these interviews that Mr. Farmer had assaulted Jane Doe.

3 22. The HPS attorneys had interviewed nurse Murray because she was the nurse  
4 assigned to attend to Ms. Cagnina at the time of the assault by Mr. Farmer. She had relevant  
5 and material information about the facts and circumstances surrounding Mr. Farmer's contact  
6 with Ms. Cagnina at the time of this assault.

7 23. Ms. Cagnina filed a Complaint in Case No. A570756 against Centennial and Mr.  
8 Farmer on September 2, 2008, alleging claims of sexual assault, negligence, intentional  
9 infliction of emotional distress, negligent misrepresentation, and false imprisonment.

#### 10 **THE NURSE STATEMENTS TO THE POLICE**

11 24. Nurse Margaret Wolfe gave a statement to the LVMPD on May 30, 2008.  
12 Plaintiff's Exh. 14 to Evidentiary Hearing. Ms. Wolfe told LVMPD about a conversation she  
13 had with nurse Ray Sumera who, before the assault on Jane Doe, expressed concern that  
14 Farmer was overly attentive to female patients and anxious to connect them to heart monitor  
15 leads, and that Mr. Sumera had asked Wolfe to keep an eye on Farmer. Wolfe Police  
16 Statement at 8. E.H. at 10:36-37.

17 25. Nurse Christine Murray, a Registered nurse at Centennial, gave a recorded  
18 statement to LVMPD on June 13, 2008 regarding Mr. Farmer. Plaintiff's Exh. 13 to  
19 Evidentiary Hearing. Ms. Murray told LVMPD that (a) Mr. Farmer would always ask if he  
20 could help with heart leads (where female breasts would be exposed and possibly touched) (b)  
21 Mr. Farmer was very attentive to and more helpful to female patients over male patients, and  
22 that (c) an incident occurred where Mr. Farmer was working as a "sitter" for an elderly  
23 woman, and the elderly woman was heard yelling: "Get outta here! I don't want you by me!"  
24 Murray Police Statement LVMPD00180-181. Murray Depo. at p. 60. E.H. at 10:35-37.

#### 25 **CENTENNIAL'S INVESTIGATION OF MR. FARMER**

26 26. Upon learning of the Cagnina allegations, Centennial began an "internal  
27 investigation" handled by the "risk and quality management" department. Butler Depo. at  
28 p. 120, lines 20-12.

1           27. Ms. Cagnina had been a patient at Centennial who alleged that Mr. Farmer  
2 sexually assaulted her on May 16, 2008. Exh. 4. Centennial Incident Report dated May 16,  
3 2008.

4           28. On the very day of Mr. Farmer's assault of Ms. Cagnina, the management and  
5 staff of Centennial held a meeting to discuss the allegations; the following persons from  
6 Centennial attended this meeting: the Centennial CEO, the CFO, the COO, the Risk Manager,  
7 and possibly others. Depo. of Pullarkat at pp. 35-36 (8/7/15) (Exh. 23). Depo. of Callihan at  
8 pp. 15-20) (8/18/15) (Exh. 25).

9           29. After the Cagnina incident became public, Plaintiff Jane Doe reported Mr.  
10 Farmer's sexual assault against her.

11           30. Nurse Margaret Wolfe gave a statement to Metro about Mr. Farmer on May 30,  
12 2008. *See* Wolf Statement to Metro. In the Statement, nurse Wolfe disclosed that Mr. Farmer  
13 was overly attentive to female patients. *Id.*

14           31. The Chief of Nursing, Carol Butler, learned about nurse Murray's Statement to  
15 LVMPD, received a copy of the Statement, and discussed it with nurse Murray and others  
16 shortly after the Farmer incidents. Murray Depo. at pp. 60-61.

17           32. Nurse Sumera met with Centennial staff and a Centennial lawyer about Mr.  
18 Farmer sometime shortly after the sexual misconduct of Mr. Farmer was exposed. Sumera  
19 Depo. at pp. 31-37.

20           33. The Centennial Head of the Emergency Room, Amy Blasing (a.k.a. Amy Bochek)  
21 knew, before August 1, 2008, that nurse Wolfe had reported that nurse Sumera had expressed  
22 concerns that Mr. Farmer was being "overly attentive" to female patients. Wolfe Depo. at  
23 pp. 41-42; Butler Depo. at p. 114; Blasing Depo. at pp. 28-35, 40, 99-103. Ms. Blasing  
24 testified that "We were made aware that Margaret [Wolfe] had expressed concerns." Blasing  
25 Depo. at p. 33. Ms. Blasing also knew that nurse Wolfe has spoken with the police: "Q. In  
26 fact, my understanding is that you became aware that a - - that Margaret had spoken with the  
27 police about the situation. Is that right? A. That sounds familiar." Blasing Depo. at  
28 pp. 33-34. Ms. Blasing further admitted: "[S]omehow it got back to us that Margaret [Wolfe]



1 had shared concerns with law enforcement ["between May and August"]. Blasing Depo. at  
2 p. 38.

3 34. Ms. Blasing admitted in her deposition that she knew about Ms. Wolfe's concerns  
4 from the Centennial internal investigation: "Margaret said that she expressed concerns that  
5 Steven Farmer seemed to seek out duties with females and was overeager and that she felt  
6 uncomfortable." Blasing Depo. at pp. 36-37.

7 35. Ms. Butler met with nurse Sumera and Amy Blasing shortly after the incident and  
8 before August 2008 to discuss Mr. Farmer. Blasing Depo. at pp. 28-33.

9 36. Ms. Butler became aware of the Wolfe Statement sometime before August 1,  
10 2008. Butler Depo. at pp. 113-115, 119 ("Q. By August 1 of 2008, you knew she had made a  
11 statement? A. Sure."); Blasing Depo. at pp. 28-33.

12 37. It is undisputed that the Chief of Nursing of Centennial, Carol Butler, had read the  
13 Murray Police Statement shortly after nurse Murray had given the Police Statement, and she  
14 discussed the substance of the Police Statement with nurse Murray and others. Murray Depo.  
15 at p. 61.

16 38. Centennial's counsel has admitted that he was "aware that some statements were  
17 given by [your] nursing staff" "prior to 2009." Tr. of Proc., p. 11, lines 12-17 (June 3, 2015).

18 39. Centennial's counsel further confirmed at the Evidentiary Hearing that Centennial  
19 became aware that nurses Murray and Wolfe had gone to the police and gave statements.  
20 E.H. at 9:53.

#### 21 **THE JANE DOE LAWSUIT, AND DISCOVERY THEREIN**

22 40. Plaintiff filed her lawsuit in this action on July 23, 2009. The matter involving  
23 Mr. Farmer's sexual assault of Jane Doe, and the civil lawsuit resulting therefrom, are  
24 referenced herein as the "Jane Doe Case."

25 41. Centennial hired the HPS firm to represent Centennial in the Jane Doe Case on or  
26 about August 3, 2009. E.H. at 9:58:40. The HPS attorneys contended at the Evidentiary  
27 Hearing that they did not re-interview nurses Murray, Wolfe, or Sumera about the Jane Doe  
28 Case.

1           42. Plaintiff filed its Notice of Early Case Conference ("ECC") on October 5, 2009,  
2 setting the time for the ECC on November 6, 2009. Counsel for the parties hereto, Plaintiff  
3 Jane Doe and defendants Centennial, ANS, and Mr. Farmer, attended the ECC on  
4 November 6, 2009.

5           43. Defendant Centennial filed its Initial list of Witnesses and Documents on  
6 November 24, 2009. Centennial's initial NRCP 16.1 disclosure failed to identify nurse Wolfe,  
7 nurse Murray, or nurse Sumera as persons with knowledge of relevant facts. Furthermore,  
8 Centennial's initial NRCP 16.1 disclosure failed to disclose the existence of the Murray Police  
9 Statement, or the Wolfe Police Statement.

10           44. The parties filed a Joint Case Conference Report ("JCCR") on December 9, 2009.  
11 As evident by this JCCR, Centennial failed to produce or identify Police Statements of nurse  
12 Murray or nurse Wolfe. Centennial also failed to identify nurses Murray, Wolfe, or Sumera as  
13 persons with knowledge.

14           45. Defendant Farmer filed a Motion for Protective Order on March 3, 2010, which  
15 the Discovery Commissioner granted on April 16, 2010. This Protective Order prohibited  
16 disclosure of documents protected by the Protective Order issued in the Cagnina Case. See  
17 Minutes 4-16-10; DCRR 9-15-9 (Cagnina Case).

18           46. This Protective Order in the Cagnina Case did not prohibit Centennial from  
19 producing the Police Statements to Jane Doe; did not prohibit Centennial from disclosing the  
20 existence of the Police Statements; and did not prohibit Centennial from identifying the nurses  
21 who gave the statements. See DCRR in Case No. A570756 (9-15-09).

22           47. For more than five and one-half (5 1/2) years, from November 24, 2009, through  
23 and including the date of the Evidentiary Hearing (August 28, 2015), Centennial never  
24 disclosed in any NRCP 16.1 disclosure that nurses Murray or Wolfe had given Police  
25 Statements regarding Mr. Farmer's conduct. For more than five and one-half (5 1/2) years,  
26 through and including the date of the Evidentiary Hearing, Centennial never disclosed in any  
27 NRCP 16.1 disclosure that nurses Wolfe or Sumera had knowledge of relevant facts in this  
28 action. See Plaintiff's Exhs. 1, and 1a-1j to Evidentiary Hearing. As for nurse Murray,



1 Defendant Centennial made no mention of her in any NRCP 16.1 disclosure in 2009, 2010,  
2 2011, 2012, 2013, or 2014. In a NRCP 16.1 disclosure on April 22, 2015, Centennial merely  
3 noted that nurse Murray had mentioned "the alleged incident with the elderly patient to which  
4 nurse Murray referred in her deposition testimony." But Centennial still failed to designate  
5 nurse Murray as a person with knowledge, and failed to give notice that nurse Murray had  
6 expressed concern about Mr. Farmer being more willing to help female patients, and failed to  
7 mention that nurse Murray had given a police Statement about Mr. Farmer.

8 48. Plaintiff Jane Doe had listed nurse Murray as a witness in January 2014; however,  
9 Plaintiff had no way of knowing at that time the expected testimony of nurse Murray, or her  
10 connection with the allegations against Mr. Farmer. (See State's Eighth Supp. Wit. List;  
11 Plaintiff's NRCP 16.1 Witness List of January 29, 2014; Affidavit of Murdock submitted with  
12 Plaintiff's Evidentiary Hearing brief). Plaintiff had merely designated nurse Murray as a  
13 witness because she had been designated as a witness Mr. Farmer's criminal case.

#### 14 **CENTENNIAL'S ATTORNEYS' RECEIPT OF THE POLICE STATEMENTS**

15 49. Prior to the Evidentiary Hearing, Defendant Centennial's attorneys admitted that  
16 they received nurse Wolfe's and nurse Murray's Metro Statements on **May 6, 2013**. See  
17 Centennial's Objection to the DCRR at p. 5-7 (7/30/15). The paragraphs below summarize  
18 Centennials' various and changing positions on when it received the Statements.

#### 19 **CENTENNIAL'S RECEIPT OF MURRAY POLICE STATEMENT**

20 50. At the Evidentiary Hearing, both sides presented evidence that proved that  
21 Centennial's counsel, Mr. Bemis, had asked the Deputy Public Defender ("DPD")  
22 representing Mr. Farmer in the criminal action, Amy Feliciano, to provide him with all of the  
23 files pertaining to Mr. Farmer, including the Police Statements. Exh 10, 10a. at PD00055-58;  
24 75-81. Ms. Feliciano specifically agreed to provide Mr. Bemis with the "voluntary statements  
25 to the police." Exh 10 at PD00079 (Ms. Feliciano's emails dated January 22, 2013). The  
26 correspondence between the DPD and Centennial's counsel suggests that the DPD anticipated  
27 providing the Police Statements to Centennial's counsel the end of January 2013. Exhs. 10,  
28 10a. Ms. Feliciano sent a letter to Mr. Bemis dated January 31, 2013, confirming that she

1 provided the "documents necessary for your review to assist with your consultation with us on  
2 this case." Exh. 11 at PDD15C0073.

3 Plaintiff Jane Doe submitted a FOIA request to the PD demanding a copy of all records  
4 that she had given to Centennial's counsel. In response thereto, Plaintiff received an Affidavit  
5 from DPD Feliciano stating she was providing copies of all of the records that she believed  
6 she had provided to Centennial's counsel around January 30, 2013. This Affidavit from Ms.  
7 Feliciano was accompanied by the Murray Police Statement. These facts all tend to prove that  
8 Centennial's attorney received the Murray Police Statement on or about January 30, 2013.

9 52. At the Evidentiary Hearing, Centennial's counsel denied that it received the  
10 Murray Police Statement by January 30, 2013.

11 53. Instead, Centennial's counsel, in its Opening Statement, admitted that he received  
12 the Murray Police Statement, and knew the "contents" of the Murray Police Statement, in  
13 "May 2013." (E.H. at 9:49-50). Centennial's counsel also argued that it received the Murray  
14 Police Statements in "May 2013" pursuant to a motion to compel in the "RC" case. E.H. at  
15 9:56:01. Attorney Bemis testified that he knew there was a Murray Police Statement before  
16 May 2013. E.H. at 11:02:10.

17 54. Attorney Bemis also testified that he had in his possession a CD audio recording  
18 of the Murray Police Statement in February 2013 – although he says he never listened to it.  
19 E.H. at 11:03-04. Attorney Bemis testified that his partner, Attorney Prangle, knew that Mr.  
20 Bemis had received the Murray Statement in February 2013. *Id.*

21 55. Attorney Bemis re-confirmed that he had the audio file of the Murray Police  
22 Statement in February 2013. E.H. at 11:11:40 and 11:13:45.

23 56. Based on the compelling evidence submitted at the Evidentiary Hearing, as well  
24 as the pre-hearing admission of Centennial's counsel, the Court concludes that Centennial's  
25 counsel **received the Murray Police Statement on or before May 6, 2013.**

26 **CENTENNIAL'S RECEIPT OF WOLFE POLICE STATEMENT**

27 57. At the sanction hearing before the Discovery Commissioner, the Discovery  
28 Commissioner told Centennial's counsel, John Bemis, that there was a "significant" non-

1 disclosure problem unless he could provide "some information" that he did not know about  
2 the Wolfe Police Statement at the time of Centennial's initial NRCP 16.1 disclosures. Tr. of  
3 Proc. at p. 13 (June 3, 2015). Mr. Bemis told the Discovery Commissioner that there was a  
4 "possibility" that he had the Wolfe Police Statement "at the time" – meaning prior to the  
5 initial NRCP 16.1 disclosure (11/24/09). *Id.* at p. 18.

6 58. In its Opening Statement, Centennial's counsel admitted that he received the  
7 Wolfe Police Statement, and knew its "contents" in "May 2013." E.H. at 9:49-50)

8 59. Attorney Bemis testified under oath that he received the Wolfe Police Statement  
9 in May 2013. E.H. at 10:33-34. Mr. Bemis testified: "Q. Okay. Now, the information you  
10 got from those police files that alerted you to the relevance of Murray, Wolf[e] and Samera,  
11 were the police – were the actual statements of Margaret Wolf[e] and Kristine Murray, which  
12 you had seen for the first time when you got the police file in May 2013, right? A. Correct."  
13 E.H. at 10:35

14 60. Mr. Bemis confirmed that he reviewed the Wolfe Police Statement promptly after  
15 receiving it in May 2013. E.H. at 10:35. ("Q. So it wasn't long... and would be fair to say, It  
16 wasn't long after receiving the police file that you reviewed it and actually saw the statements  
17 of Wolf and Murray. Would that be a fair statement? A. That would be a fair statement." ).  
18 E.H. at 10:35.

19 61. Attorney Bemis further confirmed under oath that he first became aware of the  
20 Wolfe Police Statement in May 2013 when he received files from the Las Vegas Metropolitan  
21 Police Department. E.H. at 11:24:10.

22 62. Centennial's counsel admitted that the Discovery Commissioner ordered  
23 Centennial to produce the entire Farmer criminal file, including both the Murray and Wolfe  
24 Police Statements on or about October 27, 2014. E.H. at 11:27. Centennial's counsel  
25 acknowledged that it made a production of the Farmer criminal file (that it had received from  
26 Metro) on October 27, 2014. E.H. at 11:27; Exh 16. While examining attorney Bemis, Jane  
27 Doe's counsel represented that the October 27, 2014 production DID NOT include the Wolfe  
28 Police Statement. When asked "why not," Mr. Bemis suggested, and seemed to speculate, that

1 Centennial did not have it. E.H. at 11:39. His story at this point changed. Earlier in his  
2 testimony Mr. Bemis had admitted that he had actually reviewed the Wolfe "in relatively short  
3 order" after receiving it in May 2013 from Metro. But later, when confronted with Jane Doe's  
4 evidence that Centennial failed to produce the Wolfe Police Statement to Jane Doe on October  
5 2014, Mr. Bemis contradicted himself and testified under oath that he never really saw the  
6 Wolfe Police Statement before October 2014.

7 63. On cross-examination, Attorney Bemis explained why his testimony changed. He  
8 said that during a break in the Evidentiary Hearing, he examined the files that he received  
9 from the Las Vegas Metropolitan Police Department (Exhibit "A"), and the Wolfe Police  
10 Statement was not there. Attorney Bemis further explained that Jane Doe's Exhibit 29  
11 (Centennial's 7<sup>th</sup> Supplemental NRCP 16.1 Disclosure to Jane Doe on October 27, 2014) is  
12 supposed to be the exact same thing as Exhibit "A", and the Wolfe Statement is not there  
13 either. According to Mr. Bemis, this all confirms that his earlier testimony that he received  
14 the Wolfe Police statement from Metro in May 2013 was wrong. But none of this explains  
15 why Mr. Bemis testified under oath that he had reviewed the Wolfe Police Statement in  
16 "relatively short order" after getting in in May 2013, and then testifying under oath that he  
17 never saw the Wolfe Police Statement before October 2014.

18 64. Finally, attorney Bemis testified that he received the Wolfe Police Statement  
19 sometime before the deposition of Nurse Wolfe on May 5, 2015, but he did not know when he  
20 had received it.

21 65. Here is a summary of the various positions of Centennial's counsel on when it  
22 received the Wolfe Police Statement:

- 23 • "Possibly" before November 24, 2009.
- 24 • On May 6, 2013.
- 25 • Sometime in May, 2013.
- 26 • Maybe sometime after October 2014; or
- 27 • Sometime prior to May 5, 2015.

28

1           66. Having considered and weighed the evidence, **the Court is persuaded that**  
2 **Centennial's counsel received the Wolfe Police Statement in or before May, 2013 –**  
3 Attorney Bemis may have been confused on HOW he received the Wolfe Police Statement,  
4 but he was clear in his early testimony on WHEN he received it – on or before May 6, 2013.  
5 E.H. at 10:33-34; 11:24:10. Mr. Bemis contradicted himself on WHETHER he REVIEWED  
6 the Wolfe Police Statement prior to October 2014 – but whether he reviewed it or not, that  
7 does not change his testimony that he had the Wolfe Police Statement in his POSSESSION on  
8 or before May 6, 2013.

9           67. It bears repeating here that it is undisputed that Centennial's management knew  
10 about the existence of the Wolfe Police Statement and Murray Police Statement by August  
11 2008. Centennial's knowledge is imputed to its attorneys. Thus the HPS attorneys had  
12 constructive knowledge as early as August 2009 (before Centennial's initial NRCP 16.1  
13 disclosure in the Jane Doe Case) about the Murray and Wolfe Police Statements.

14           **PLAINTIFF'S RECEIPT OF THE POLICE STATEMENTS, AND**  
15           **SUBSEQUENT DEPOSITIONS**

16           68. Plaintiff received the Murray Police Statement for the first time in October 2014.  
17 E.H. at 9:27:50; 11:34:15; 11:38:05; Exh. 29.

18           69. Plaintiff received the Wolfe Police Statement for the first time in January 2015.  
19 E.H. at 9:27:58.

20           70. Plaintiff took the deposition of Christine Murray in this action on January 8, 2015.

21           71. Plaintiff took the deposition of Renato Sumera in this action on May 1, 2015.

22           72. Plaintiff took the deposition of Margaret Wolfe in this action on May 5, 2015.

23           73. Plaintiff took the deposition of Amy Blasing in this action on July 28, 2015.

24           74. Plaintiff took the deposition of Janet Callahan in this action on August 8, 2015.

25           **THE PROTECTIVE ORDER IN THE CAGNINA CASE**

26           75. On April 3, 2013 the Discovery Commissioner issued an oral Protective Order in  
27 the Cagnina Case providing that "All discovery concerning the Criminal Action is subject to  
28 the Protective Order previously entered on September 17, 2009, which remains in full force

1 and effect; all Las Vegas Metropolitan Police Department depositions and transcripts; and Mr.  
2 Farmer's deposition and transcript must be kept under seal; and all documents relating to the  
3 Criminal Action must be kept as confidential. The Discovery Commissioner's Report and  
4 Recommendation relating thereto was entered as an Order of the Court on May 3, 2013. (See  
5 Notice of Entry of Order) (Case No. A570756, May 6, 2013).

6 76. The Discovery Commissioner issued an oral recommendation lifting the  
7 Protective Order on October 27, 2014. The written Discovery Commissioner recommendation  
8 was issued on November 6, 2014, and the Order of the Court was entered and served on  
9 November 14, 2014.

10 **CENTENNIALS'S REPEATED IMPROPER DENIALS OF EXISTENCE OF**  
11 **ANY POTENTIAL EVIDENCE REGARDING FARMER**

12 77. On October 14, 2014, Centennial filed and served an opposition to Plaintiff's  
13 Motion for Summary Judgment making the following statement: "[T]here were **absolutely no**  
14 **known prior acts** by Mr. Farmer that could **potentially put Centennial on notice** that Mr.  
15 Farmer would assault a patient." (Centennial Opposition to Motion For Summary Judgment at  
16 p. 9) (emphasis added).

17 78. In a brief filed with the Nevada Supreme Court on April 29, 2015, Centennial  
18 incorrectly represented that it had not withheld any relevant evidence. Petitioners Valley  
19 Health System, LLC [ ] Petition for Writ of Mandamus and/or Writ of Prohibition, pp. 14-15  
20 (April 29, 2015) (No. 67886). Centennial stated: "[T]here were no known prior acts or any  
21 other circumstances that could have put Centennial on notice that Farmer would sexually  
22 assault Ms. Doe." *Id.*

23 79. In its Objection to Discovery Commissioner's Report and Recommendation, filed  
24 July 30, 2015, Centennial argued that "Defendants did not have knowledge that these persons  
25 [nurses Wolfe, Sumera, and Murray] had information relevant to this Plaintiff's claims (or  
26 knowledge of the substance of either nurse Wolfe's or nurse Murray's 2008 statements to the  
27 LVMPD) until after they received a copy of Farmer's police file in May 2013). See  
28 Centennial's Objection at pp 3-4 (filed July 30, 2015). This statement is false.



1           80. The undisputed facts, as summarized above, are that Centennial had knowledge,  
2 before August 2008, that nurses Murray, Wolfe and Sumera had all expressed concerns or had  
3 discussions regarding Mr. Farmer being overly attentive to female patients, that nurse Murray  
4 had recounted the incident about the elderly lady who yelled at Mr. Farmer to "get out," and  
5 that nurse Murray and nurse Wolfe had given Police Statements about Mr. Farmer. Any  
6 reasonable person could reach the conclusion that this information is certainly relevant to the  
7 issue of whether Centennial had notice of Mr. Farmer's dangerous propensities. Centennial's  
8 statement that there were "absolutely no known prior acts" of Mr. Farmer to possibly put them  
9 on notice is a statement that goes far beyond the bounds of zealous advocacy, and  
10 demonstrates an intent to conceal relevant evidence.

11                   **FALSE DISCOVERY RESPONSES BY CENTENNIAL**

12           81. In Centennial's Objection to the DCRR, at pp 6-7, Centennial's attorneys wrote:  
13 "Prior to obtaining the police file, the Hospital Defendants were aware that several nurses had  
14 spoken with the police but they neither attended nor were privy to the substance of those  
15 interviews/statements." This is false. As stated in the above statements of undisputed fact,  
16 before August 2008, Centennial management had discussed the Police Statement given by  
17 nurses Murray and Wolfe.

18           82. In Centennial's Objection to the DCCR, at p. 7, Centennial states: "Upon  
19 obtaining a copy of Mr. Farmer's file, the Hospital Defendants learned for the first time that  
20 nurses Murray, Wolfe, and Sumera had information that could be relevant to Plaintiff's  
21 claims. . . . The Hospital Defendants did not willfully withhold any information, much less  
22 know that these witnesses had information relevant to the instant Plaintiff's claims until May  
23 2013 at the earliest." These statements are false. As stated in the above statements of  
24 undisputed facts, Centennial had conducted an internal investigation and absolutely learned  
25 that nurses Wolfe, Murray, and Sumera ALL had information relevant to the issue of  
26 Centennial's knowledge of Mr. Farmer's possibly dangerous proclivities. Perhaps the  
27 attorneys for the Defendants did not know about the nurses, but their client definitely knew.

28           . . .

1           83. Plaintiff asked Defendant Centennial by Interrogatory no. 18 to disclose "when  
2 you received LVMPD Statement of Margaret Wolfe." On June 12, 2015, Defendant  
3 Centennial objected and further stated: "Without waiving said Objection, this Answering  
4 Defendant has only learned of the LVMPD Statement of Margaret Wolfe through counsel."  
5 Centennial's Risk Analyst, Amanda Bell, signed a Verification swearing upon oath to the  
6 accuracy of this response. However, Ms. Bell verified a false statement. As indicated above,  
7 Centennial knew "of" the Wolfe Police Statement by August, 2009.

8           84. Plaintiff then asked Defendant Centennial by Interrogatory no. 19 to disclose  
9 "when you first became aware that Margaret Wolfe had spoken with LVMPD regarding  
10 Steven Farmer." Ms. Bell repeated the same response under oath. Again, Ms. Bell verified a  
11 false statement.

12           85. Plaintiff also asked, by Interrogatory no. 17, for Defendant Centennial to disclose  
13 all "persons present at the meeting between Renato Sumera and Centennial Hills Hospital after  
14 Farmer was arrested." Defendant Centennial, through the sworn response of Ms. Bell,  
15 responded: "Object. This Interrogatory is irrelevant. Counsel of record met with Mr. Sumera  
16 following Mr. Farmer's arrest. Former Centennial Hills Hospital Risk Manager, Janet  
17 Callihan, and her staff provided introduction and left the meeting prior to any substantive  
18 discussion." Plaintiff was entitled to the requested information because the memories of  
19 Sumera and the others had faded regarding persons involved in the internal investigation.  
20 Centennial had an opportunity to help alleviate some of the prejudice they had inflicted upon  
21 Plaintiff, but choose not to do so.

#### 22           **FARMER'S CRIMINAL CONVICTION**

23           86. On May 30, 2014, Farmer was convicted in the Eighth Judicial District Court,  
24 Clark County, Nevada, in Case Number 08C245739, as follows: Count 10 of **Sexual Assault**  
25 (Felony – Category A) in violation of NRS 200.364 & 200.366 for the digital penetration, by  
26 inserting his finger(s) into the anal opening of Jane Doe, against her will or under conditions  
27 in which Farmer knew, or should have known, that Jane Doe was mentally or physically  
28 incapable of resisting or understanding the nature of Farmer's conduct; Count 11 of **Open or**



1 **Gross Lewdness** (Gross Misdemeanor) in violation of NRS 201.210 for touching and/or  
 2 rubbing the genital opening of Jane Doe with his hand(s) and/or finger(s); Count 12 of **Sexual**  
 3 **Assault** (Felony – Category A) in violation of NRS 200.364 & 200.366 for the digital  
 4 penetration, by inserting his finger(s) into the genital opening of Jane Doe, against her will or  
 5 under conditions in which Farmer knew, or should have known, that Jane Doe was mentally or  
 6 physically incapable of resisting or understanding the nature of Farmer's conduct; Count 13 of  
 7 **Open or Gross Lewdness** (Gross Misdemeanor) in violation of NRS 201.210 for touching  
 8 and/or rubbing and/or pinching the breast(s) and/or nipple(s) of Jane Doe with his hand(s)  
 9 and/or finger(s). Count 14 of **Open or Gross Lewdness** (Gross Misdemeanor) in violation of  
 10 NRS 201.210 for touching and/or rubbing and/or pinching the breast(s) and/or nipple(s) of  
 11 Jane Doe with his hand(s) and/or finger(s); and Count 15 of **Indecent Exposure** (Gross  
 12 Misdemeanor) in violation of NRS 201.220 for deliberately lifting the hospital gown of Jane  
 13 Doe to look at her genital opening and/or anal opening and/or breast(s).

#### 14 **IV. STANDARD FOR AWARD OF SANCTIONS**

15 Centennial had a duty under NRCP 16.1 to timely disclose a list of all persons known  
 16 to have relevant knowledge relating to the claims and defenses alleged in this action. The  
 17 initial NRCP 16.1 disclosure was due in November 2009. Centennial filed its initial  
 18 disclosure on November 24, 2009. By this deficient disclosure, Centennial failed to comply  
 19 with its NRCP 16.1 obligations.

20 Nevada law provides that the remedy for a party's disclosure obligations under  
 21 NRCP 16.1 include the sanctions listed in NRCP 37. Pursuant to NRCP 37, the Court has the  
 22 discretion to impose any of the following sanctions that may be warranted in appropriate  
 23 circumstances:

24 **(2) Sanctions—Party.** If a party or an officer, director, or  
 25 managing agent of a party or a person designated under Rule  
 26 30(b)(6) or 31(a) to testify on behalf of a party fails to obey an  
 27 order to provide or permit discovery, including an order made  
 28 under subdivision (a) of this rule or Rule 35, or if a party fails to  
 obey an order entered under Rules 16, 16.1, and 16.2, the court in  
 which the action is pending may make such orders in regard to the  
 failure as are just, and among others the following:

1 (A) An order that the matters regarding which the order was made  
2 or any other designated facts shall be taken to be established for  
the purposes of the action in accordance with the claim of the party  
obtaining the order;

3 (B) An order refusing to allow the disobedient party to support or  
4 oppose designated claims or defenses, or prohibiting that party  
from introducing designated matters in evidence;

5 (C) An order striking out pleadings or parts thereof, or staying  
6 further proceedings until the order is obeyed, or dismissing the  
action or proceeding or any part thereof, or rendering a judgment  
by default against the disobedient party;

7 (D) In lieu of any of the foregoing orders or in addition thereto, an  
8 order treating as a contempt of court the failure to obey any orders  
except an order to submit to a physical or mental examination;

9 (E) Where a party has failed to comply with an order under Rule  
10 35(a) requiring that party to produce another for examination, such  
orders as are listed in subparagraphs (A), (B), and (C) of this  
11 subdivision, unless the party failing to comply shows that that  
party is unable to produce such person for examination.

12 In lieu of any of the foregoing orders or in addition thereto, the  
13 court shall require the party failing to obey the order or the  
attorney advising that party or both to pay the reasonable  
14 expenses, including attorney's fees, caused by the failure, unless  
15 the court finds that the failure was substantially justified or that  
other circumstances make an award of expenses unjust.

16  
17 Before the Court can strike a defendant's answer as a sanction, the Court is required to  
18 conduct an Evidentiary Hearing. Plaintiff Jane Doe asked the Court to strike Centennial's  
19 Answer as a sanction for its discovery violations. This Court determined that there were  
20 sufficient grounds to proceed with the Evidentiary Hearing.

21 The Nevada Supreme Court has provided guidance for the Court on the factors to  
22 consider at an Evidentiary Hearing before striking an answer as a sanction:

23 The factors a court may properly consider include, but are not  
24 limited to, the **degree of willfulness** of the offending party, the  
25 extent to which the non-offending party would be **prejudiced by a**  
26 **lesser sanction**, the **severity** of the sanction of dismissal relative to  
27 the severity of the discovery abuse, whether any **evidence has**  
28 **been irreparably lost**, the feasibility and fairness of alternative,  
**less severe sanctions**, such as an order deeming facts relating to  
improperly withheld or destroyed evidence to be admitted by the  
offending party, the **policy** favoring adjudication on the merits,  
whether sanctions unfairly operate to penalize a party for the  
**misconduct of his or her attorney**, and the **need to deter** both the  
parties and future litigants from similar abuses.

1 *Young v. Johnny Ribeiro Bldg.*, 106 Nev. 88, 93 (Nev. 1990) (emphasis added).

2 “Nevada jurisprudence does not follow the federal model of requiring progressive  
3 sanctions against a party for failing to comply with a discovery order.” *Bahena v. Goodyear*  
4 *Tire & Rubber Co.*, 245 P.3d 1182, 1184 (Nev. 2010). However, if a party requests a case  
5 concluding sanction, the Court must conduct an evidentiary hearing.

6 **V. ANALYSIS**

7 **A. CENTENNIAL CONCEALED EVIDENCE ABOUT THE NURSES**

8 Centennial’s failure to comply with NRCP 16.1 was not just a minor or technical non-  
9 compliance. Centennial’s failure to comply with its NRCP 16.1 obligations was material,  
10 substantial, and extremely prejudicial to Plaintiff Jane Doe. Centennial left out major  
11 witnesses and major documents from its NRCP 16.1 disclosure. Moreover, Centennial’s  
12 failure to comply with NRCP 16.1 was repetitive, and extended over a lengthy, multiple-year  
13 time period.

14 **B. CENTENNIAL’S “PROTECTIVE ORDER” DEFENSE LACKS MERIT**

15 Centennial contends that it could not produce the Police Statements or disclose nurses  
16 Murray, Wolfe, and Sumera, because Centennial was subject to a Protective Order in the  
17 Cagnina Case. Centennial’s argument lacks merit for several reasons:

- 18 • The Protective Order did not prohibit Centennial from submitting to Plaintiff a  
19 privilege log listing the Police Statements and identifying the privilege claimed.  
20 Centennial understood the importance of preparing a privilege log for relevant  
21 documents that it withheld. Centennial’s supplemental NRCP 16.1 disclosures  
22 contained privilege logs, but Centennial elected not to include the Police  
23 Statements in any of its privilege logs.
- 24 • The Protective Order did not prohibit Centennial from disclosing the existence of  
25 the Murray Police Statement or the Wolfe Police Statement. Centennial could have  
26 and should have disclosed the existence of the Police Statements in its initial  
27 NRCP 16.1 disclosure, and its supplemental disclosures.

28 . . .

- 1 • As admitted by attorney Bemis (E.H. at 10:41), the Protective Order did not  
2 prohibit Centennial from identifying the names of nurses Murray, Wolfe, and  
3 Sumera, as persons with knowledge of relevant facts, nor did the Protective Order  
4 prohibit Centennial from identifying the general knowledge that each of these  
5 nurses possessed. **Attorney Bemis admitted that Centennial's failure to**  
6 **disclose nurses Murray, Wolfe, and Sumera, was a violation of NRCP 16.1.**  
7 **(E.H. at 10:42:20).**
- 8 • Centennial suggests it acted in good faith by seeking to lift the September 17, 2009  
9 Protective Order. However, Centennial did not move to lift the Protective Order  
10 until October 2014. Centennial had a duty to identify the Police Statements in its  
11 initial NRCP 16.1 disclosure on November 24, 2009. If Centennial truly felt  
12 limited in disclosing the mere existence of the Police Statements due to the  
13 Protective Order, Centennial would have sought to lift the Protective Order in  
14 November 2009, rather than waiting almost five (5) years, until October of 2014, to  
15 do so.

16 **C. CENTENNIAL'S ARGUMENT - THAT THE NURSE EVIDENCE WAS**  
17 **ONLY RELEVANT TO THE CAGNINA CASE - IS FRIVOLOUS**

18 Centennial argues, in various iterations, that it had a good faith believe the early  
19 evidence it learned about Mr. Farmer only related to the Cagnina case. Centennial notes that  
20 nurse Murray was the nurse assigned to Mr. Farmer on the day Ms. Cagnina reported Mr.  
21 Farmer's sexual assault. This argument is logically flawed. Once Jane Doe filed her lawsuit  
22 on July 23, 2009, a major issue in the Jane Doe case was whether Centennial had notice that  
23 Mr. Farmer posed a risk of committing a sexual assault on a female patient at Centennial. If  
24 Mr. Farmer was overly attentive to female patients at Centennial, and liked to assist in monitor  
25 placements so he could lift their gowns and see and/or touch their breasts, then that  
26 information was undeniably relevant to the Jane Doe Case.

27 The fact that Centennial failed to make the connection is Centennial's own fault. As  
28 soon as Centennial discovered the information, they had a duty to disclose it. It is undisputed

1 that Centennial discovered the information by August 1, 2008 – long before Jane Doe filed her  
2 lawsuit. Therefore, Centennial had a duty to disclose the nurses and the existence of their  
3 police statements in the very first NRCP 16.1 production in 2008. This Court finds that there  
4 is no valid excuse for Centennial's failure to timely disclose the nurses and existence of the  
5 Police Statements.

6 **B. THE SANCTION FACTORS**

7 **1. Degree of Willfulness**

8 This Court finds that there is clear and convincing evidence that Centennial willfully  
9 and intentionally concealed the relevance of nurses Murray, Wolfe, and Sumera, and the  
10 existence of the Police Statements with an intent to harm and unfairly prejudice Plaintiff. This  
11 inescapable conclusion is derived from the following evidence:

- 12 • Centennial had knowledge prior to August 2009 of the very relevant information  
13 possessed by nurses Murray, Wolfe, and Sumera.
- 14 • Centennial's counsel in the Cagnina Case is the same counsel that began  
15 representing Centennial in the Jane Doe Case by August 2009.
- 16 • Centennial failed to timely disclose nurses Murray, Wolfe, and Sumera in its initial  
17 and supplemental NRCP 16.1 disclosures.
- 18 • Centennial failed to disclose the mere existence of the Police Statements in its  
19 initial and supplemental NRCP 16.1 disclosures.
- 20 • Centennial changed its story several times about when it discovered the  
21 significance of the information known by nurses Murray, Wolfe, and Sumera.
- 22 • Centennial changed its position several times about when it received the Wolfe  
23 Police statement.
- 24 • Centennial provided false discovery responses to Jane Doe, and incorrectly  
25 represented to this Court that it had not withheld any relevant evidence. Centennial  
26 and its counsel told this Court in October of 2014, a minimum of eighteen (18)  
27 months after admitting they had the criminal file with the names and statements,  
28 that "In the instant situation, there were absolutely no known prior acts by Mr.

Farmer that could potentially put Centennial on notice that Mr. Farmer would assault a patient.” CH. Opp. to MSJ at 9. Rule 3.3 of the Nevada Rules of Professional Conduct states “(a) A lawyer shall not knowingly: (1) Make a false statement of fact or law to a tribunal by the lawyer.” Centennial’s lawyers violated this Rule.

- Centennial incorrectly represented to the Nevada Supreme Court that it had not withheld any relevant evidence. Centennial stated: “there were no known prior acts or any other circumstances that could have put Centennial on notice that Farmer would sexually assault Ms. Doe.” Writ at 14-15. Again, Centennial’s lawyers violated Rule 3.3.
- Centennial’s argument that it withheld the Police Statements due to the September 17, 2009 Protective Order was a false, pre-textual excuse.
- Centennial unreasonably delayed in seeking to lift the Protective Order.
- Centennial unreasonably failed to identify the Police Statements in a Privilege log.
- Centennial understood that, through the passage of time, the memories of key witnesses would fade.
- With the passage of time, the memories of key witnesses did, in fact, fade.
- Centennial’s argument - that it failed to appreciate the importance of the information known by the nurses because the HPS firm interviewed the nurses before it started working on the Jane Doe Case – is frivolous.
- Centennial provided false discovery responses under oath, designed to mislead this Court.
- Centennial’s counsel admitted that it had a duty under NRCP 16.1 to review the recorded statement of Murray as soon as it received it to ascertain whether the Statement contained information relevant to the Jane Doe case. E.H. 11:15:35.
- Centennial admitted that it violated NRCP 16 in failing to timely disclose the names of nurses Murray, Wolfe, and Sumera, and to disclose their general knowledge. E.H. 10:38, and 10:42:20



## 2. The Prejudice To Jane Doe By a Lesser Sanction

The prejudice to Plaintiff, as discussed below, is that memories have faded over time. When Plaintiff finally discovered the importance of nurses Murray, Wolfe, and Sumera to this case, years had passed and, understandably, their memories had extensively faded. That evidence cannot be retrieved. A remedy must be fashioned to help overcome the prejudice that Plaintiff has suffered at Centennial's hands. The lost evidence related directly to the issue whether Centennial had notice that Mr. Farmer posed a risk of sexual assault to a female patient. The lost evidence likely would have assisted Jane Doe in proving that Centennial had such notice, that Centennial had a duty to protect Jane Doe from the danger posed by Mr. Farmer, that Centennial breached its duty to protect Jane Doe, and also that Centennial was liable to Jane Doe for Farmer's misconduct on a theory of respondeat superior. The evidence that Centennial concealed, and the probable fruits of such concealed evidence, would have assisted Jane Doe in establishing Centennial's liability, and in rebutting Centennial's defenses to liability.

Any lesser sanction would be wholly insufficient to mitigate the prejudice to Jane Doe caused by Centennial. A possible lesser sanction would be to impose an evidentiary presumption that it was reasonably foreseeable to Centennial that Mr. Farmer would sexually assault Jane Doe. But an evidentiary presumption would not bar Centennial from presenting evidence to try to rebut such presumption. Centennial would then be able to benefit from its conduct in hiding evidence. Moreover, an evidentiary presumption would create a huge logistical problem at trial. Further, any evidentiary presumption would apply against defendant Centennial, but not against ANS. This would undoubtedly confuse the jury.

A possible way to avoid such unnecessary confusion would be to bifurcate trial. If the Court were to bifurcate Jane Doe's claims against Centennial from Jane Doe's claims against ANS, however, this would impose undue burden and expense on Jane Doe to conduct essentially a second trial. It would be extremely unfair to impose a burden of a second trial on Plaintiff to mitigate the prejudice caused by Centennial.

...

1 This Court has already imposed a monetary sanction against Centennial. A stronger  
2 monetary sanction would not redress the prejudice to Plaintiff.

3 Finally, disqualifying Centennial's counsel would not eliminate the prejudice to  
4 Plaintiff.

5 **3. The Severity Of The Sanction Of Dismissal Relative To The Severity**  
6 **Of The Discovery Abuse**

7 The discovery abuse was indeed extreme, and warrants a very severe sanction against  
8 Defendant Centennial. Centennial utterly failed to honor its duty to disclose witnesses that it  
9 knew were critical witnesses as early as august 2008 -- before this lawsuit was even filed.  
10 Centennial also intentionally concealed the similarly critical police statements of nurses  
11 Murray and Wolfe. Again, Centennial didn't miss its disclosure deadline by a mere few days  
12 or even a few months; Centennial missed its deadline by more than five (5) years.

13 The sanction must be sufficiently severe. But the Court seeks not to impose a sanction  
14 for the primary sake of punishment of Centennial. Rather the Court is primarily motivated to  
15 impose a sanction that is no greater than necessary to undo the prejudice that Defendant  
16 Centennial inflicted upon Jane Doe. Striking Centennial's Answer is appropriately severe in  
17 light of Centennial's discovery abuses.

18 **4. Whether Evidence Has Been Irretrievably Lost**

19 Centennial's concealment of evidence has irreparably prejudiced Plaintiff Jane Doe,  
20 because the evidence has been irretrievably lost. Centennial's delay in disclosing the nurses'  
21 Police Statements has caused incurable and substantial prejudice to Plaintiff. The significant  
22 passage of time has resulted in extensive fading of witness memories and loss of evidence of  
23 the facts and circumstances discussed within the nurses' Police Statements, as follows:<sup>2</sup>

24 **NURSE MURRAY**

25 Nurse Murray suffered significant memory loss of relevant facts:

26 P.35-36 Nurse Murray recalled the incident where the lady yelled at Mr. Farmer  
27 (who had been acting as sitter for her) to leave her alone, but she could not recall the room

28 <sup>2</sup> The page numbers refer to the pages of each witness deposition transcript.  
28

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1 number, and she could not recall the attending nurse for that patient. If Plaintiff had been able  
2 to obtain the room number, they could have tracked down this patient who had complained  
3 about Mr. Farmer. Then Plaintiff could have learned the nature of the patient's undisputed  
4 complaint against Mr. Farmer. Plaintiff could have discovered whether Mr. Farmer had  
5 engaged in some sexual assault, and whether any other nurses attending to this lady had been  
6 alerted to Mr. Farmer's improper conduct. All of this discovery was prevented because  
7 Centennial concealed the existence of nurse Murray and the substance of her relevant  
8 testimony.

9 P.43 Nurse Murray could not recall the specifics of what she told the police in  
10 her statement without seeing the statement.

11 P.57 Nurse Murray could not recall the substance of her discussions with  
12 Centennial staff about the complaint from the lady about Mr. Farmer.

13 P.58 Nurse Murray could not recall if she had a conversation with the nurse  
14 about the "sitter" incident.

15 P.68 Nurse Murray recalled an incident when Mr. Farmer offered to place the  
16 telemetry leads on a female patient, but she could not recall any specifics.

17 P.68 Nurse Murray could not recall if, during the time that she worked at  
18 Centennial, CNAs were not allowed to apply telemetry leads without first being instructed to  
19 do so by a nurse.

20 **RAY SUMERA**

21 Ray Sumera was a nurse working at Centennial on May 15, 2008, and is the person  
22 whom nurse Wolfe reportedly heard say he was concerned about Mr. Farmer because he was  
23 overly attentive to female patients. In his deposition, he indicated that his memory of this  
24 conversation with nurse Wolfe had greatly faded:

25 P.75 Q: "Do you recall telling Ms. Wolfe that you were concerned about Mr.  
26 Farmer because he was very anxious to connect and disconnect them from heart monitors,  
27 which would require him to reach into their clothing?" A: "I don't remember any  
28 . . .

1 conversation." Q: "Okay. You're not saying it didn't happen, you're saying you just don't  
2 remember, right?" A: "I don't remember."

3 P.78 Q: "Do you recall Ms. Wolfe telling you about an incident where Mr.  
4 Farmer had exposed a female patient's breasts where he was allegedly checking monitor  
5 placements?" A: "I don't remember."

6 P.77 Q: "And you told Margaret that you had talked to him [Mr. Farmer],  
7 right?" A: "For a follow-up, I probably did tell Margaret that I talked to him." Q: "You just  
8 don't have any memory of it?" A: "I don't have any memory." Q: "But you have no reason to  
9 disagree with what she says here [in the police report], is that correct?" A: "Correct."

10 P.127 Q: "Were you the charge nurse on May 15th? A: "I don't know whether I  
11 was in charge or not - - on what specific day."

12 P.138 A: "It's possible it [the conversation with nurse Wolfe about Mr. Farmer  
13 being "overly attentive to female patients"] did occur, but I don't remember the exact  
14 conversation."

15 **AMY BLASING**

16 The Centennial Head of the Emergency Room, Amy Blasing, was extensively involved  
17 in investigating the allegations of nurse Sumera, Wolfe, and Murray, and their  
18 communications with each other. She expressed a great loss of memory when confronted with  
19 relevant and material questions at her deposition on July 28, 2015:

20 P. 29:13-20 She could not remember who she included in her internal discussions  
21 about Mr. Farmer other than Ray Sumera, Margaret Wolfe, Karen Goodhart, and Darby  
22 Curless.

23 P.30:19-24 She could not remember if she took any notes of her internal meeting  
24 regarding Mr. Farmer because "It was several years ago."

25 P.32-33 She recalled having discussions with Carol Butler about her meeting with  
26 Margaret Wolfe, but could not recall specifics.

27 P.33-34 She could not recall the specifics of what nurse Wolf said she had told the  
28 police.

1 P.35 She recalls that she spoke with nurse Wolfe and nurse Sumera about their  
2 different recollections about their concerns with Mr. Farmer, but she could not recall the  
3 specifics.

4 P.40:18-22 She could not recall the first time that she spoke with counsel for  
5 Centennial about Mr. Farmer's sexual assault against Ms. Cagnina.

6 P.90:12-18 She could not recall whether she had any other discussions about Mr.  
7 Farmer besides the very limited information given regarding staff discussions, because: "It  
8 just was a long time ago."

9 **CAROL BUTLER**

10 The Centennial Director of Nursing, Carol Butler, also had a significant memory loss  
11 by the time of her deposition, on June 19, 2015:

12 P.75 She could not recall whether she had spoken with Ray Sumera.

13 P. 75-76 She believes she spoke with nurse Wolfe, but she was not certain, and she  
14 also could not recall whether she took notes of her meeting with nurse Wolfe.

15 P.76 She admitted that if she had been asked questions about the Farmer  
16 investigation five (5) years ago, events "certainly would have been fresher in her mind:

17 "Q. . . . If I asked you five years ago, you might have a better answer; right? Your  
18 memory? A. Certainly."

19 P.87:2-13 She recalls the Centennial investigation concerned allegations that Mr.  
20 Farmer had an "inappropriate contact in the E.D. and then again on the sixth floor," but she  
21 could not recall "what" inappropriate contact was discussed.

22 P.87:17-22 She could not recall if her meetings regarding the Farmer investigation  
23 included separate meeting with Centennial staff, or with all staff all together.

24 P.114:4-7 She could not recall if she ever talked to nurse Wolfe about her Metro  
25 Statement.

26 P.121:10-16 She could not recall whether she notified the Centennial Risk Manager  
27 that Amy Blasing brought to her attention that a nurse had expressed concerns about Mr.  
28 Farmer.

1 P.130 She could not recall any of the conversations that she had with nurse  
2 Wolfe about the Farmer investigation.

3 P.130 She could not recall any of the conversations that she had with nurse  
4 Sumera about the Farmer investigation.

5 P.130:21-23 She admitted that her memory about conversation with nurses Wolfe and  
6 Sumera would have been better five years earlier.

7 **JANET CALLIHAN**

8 Janet Callihan was the Administrative Director for Quality Outcomes for Centennial  
9 beginning the summer of 2007 through the time of the Farmer incident. Her memory had  
10 faded as to significant events:

11 P.22-37 She could not recall if she had ever met with Christine Murray, even  
12 thought, as she acknowledged, nurse Murray would have prepared an incident report, and it  
13 was Ms. Callihan's duty to review such reports. Also she did not recognize the names of Ray  
14 Sumera or Margaret Wolfe.

15 **MARGARET WOLFE**

16 Nurse Margaret Wolfe also had significant memory loss due to the passage of time:

17 P.15 She could not recall whether she spoke to anybody at Centennial about her  
18 statement to the police.

19 P.20&51 She could not recall any specifics of her discussion with Ray Sumera  
20 about Mr. Farmer

21 P.27-28 She recalls that "all the nurses" were talking about concerns they had with  
22 Mr. Farmer; but she could not remember who because "it was so long ago."

23 P.40 She could not recall whether she had any conversation with anybody at  
24 Centennial about Mr. Farmer after she was terminated as a nurse from Centennial.

25 **SUMMARY**

26 The passage of time has clearly undermined, frustrated, and eliminated Plaintiff Jane  
27 Doe's opportunity to gather relevant information in this litigation, as follows:

28 . . .

- In a case where the most critical issue is whether Centennial had knowledge that Mr. Farmer might pose a risk of harm to female patients, Centennial concealed the fact that nurse Sumera reported concerns that Mr. Farmer might be a danger to female patients.
- Centennial concealed the fact that nurse Sumera had reported his concerns to nurse Wolfe.
- In July 2008, according to nurse Wolfe, nurse Sumera had expressed concern that Mr. Farmer was overly attentive to female patients. However, seven (7) years later, nurse Sumera's recollection had changed, as well as his tenor of remarks about Mr. Farmer.
- Jane Doe can no longer find out from nurses Murray, Wolfe, or Sumera, which of the other nurses, staff, and management at Centennial were suspicious of Mr. Farmer's conduct prior to May 14, 2008.
- If Centennial had complied with its disclosure obligations, Jane Doe could have deposed nurses Murray, Wolfe, and Sumera in 2009 -- when their memories were much more fresh regarding the facts and circumstances surrounding the 2008 events.
- If Jane Doe had taken the depositions of nurses Murray, Wolfe and Sumera in 2009, that would have led to the prompt depositions of Amy Blasing and Carol Butler in 2009 -- before their memories faded as to critical "notice" issues.
- Centennial concealed the fact that nurse Wolfe reported the Sumera disclosure to Centennial management.
- Centennial concealed the fact that nurse Wolfe provided a Police Statement to Metro about Mr. Farmer.
- Centennial concealed the fact that nurse Murray provided a Police Statement to Metro about Mr. Farmer.
- Centennial concealed the fact that it conducted an internal investigation involving nurses Murray, Wolfe, and Sumera prior to August, 2008.

- 1 • Centennial concealed the fact that nurse Murray had some information about  
2 the “crazy old lady” who yelled at Mr. Farmer to get out of her room.  
3 Centennial argues that nurse Murray concluded that Mr. Farmer had not done  
4 anything wrong. Centennial suggests that, if it had disclosed this incident and  
5 Jane Doe had taken depositions pertaining to this incident, it would not have  
6 yielded anything important. There are two problems with this argument. First,  
7 nurse Murray did not testify that Mr. Farmer did not do anything wrong.  
8 Second, if nurse Murray had testified years closer to the incident, she might  
9 have remembered facts that could have led to the identity of this “crazy old  
10 lady.” Then Jane Doe could have discovered what Mr. Farmer did to her, when  
11 he did these things to her, and who had notice of such misconduct of Mr.  
12 Farmer.
- 13 • Centennial concealed the fact that nurse Wolfe expressed concern that Mr.  
14 Farmer had on one occasion lifted the gown of a female patient exposing her  
15 breasts.
- 16 • Since Centennial concealed these facts, Plaintiff Jane Doe had no knowledge to  
17 conduct discovery about these facts. As time passed, memories faded. By the  
18 time Plaintiff Jane Doe received the metro statements, the memories of the  
19 nurses and other witnesses had already faded. Centennial had accomplished its  
20 objective.

21 Defendant Centennial contends that Plaintiff Jane Doe was not prejudiced by  
22 Centennial’s failure to disclose nurses Wolfe, Murray, and Sumera because Plaintiff already  
23 knew that these nurses “may have information relevant to the instant case” as early as May 13,  
24 2010. Defendants Objection to Discovery Commissioner Report and Recommendation, at  
25 p. 4 (7/30/15). Defendant Centennial fails to appreciate the huge difference between  
26 discovering that a person “may” know something, and discovering the “something” that such  
27 person may actually know. Plaintiff Jane Doe discovered the former but not the later.

28 . . .

1 Defendant Centennial concealed the information that Centennial knew about the  
2 criticality of the knowledge of nurses Wolfe, Murray and Sumera to this litigation.

3 Centennial contends that it is too speculative to assume that Jane Doe would have  
4 deposed the witnesses earlier than they did if they had received the Police Statements at the  
5 start of the case. Centennial notes that, prior to October 2014, Jane Doe had only deposed one  
6 (1) of the NRCP 16.1 witnesses designated by Centennial. The Court has not verified that  
7 fact. However, there are four main flaws with Centennial's argument. First, Centennial  
8 concealed the important information known by nurses Murray, Wolfe, and Sumera -- so it is  
9 understandable that Jane Doe was not in any hurry to depose the unimportant witnesses.  
10 Second, Centennial is the party that created the need to consider when Jane Doe might have  
11 taken the depositions of the key witnesses; so Centennial should not be allowed to benefit  
12 from a problem it created. Third, once Jane Doe did obtain the information that Centennial  
13 concealed, Jane Doe's attorneys aggressively pursued discovery related to such information.  
14 This aggressive action is strong evidence that Jane Doe would have taken prompt depositions  
15 earlier in the case if Centennial had complied with its discovery obligations. Fourth, as  
16 acknowledged by attorney Bemis, many of the witnesses designated in Centennial's early  
17 NRCP 16.1 witness lists DID NOT relate to the critical issue of foreseeability -- so there was  
18 no big need for depositions of such persons. E.H. 10:45.

19 **5. Consideration of less-severe sanctions**

20 As discussed above, the Court has considered the possible sanctions less severe than  
21 striking Centennial's answer.

22 The Discovery Commissioner already recommended the imposition of a modest  
23 monetary sanction, which this Court has approved. This monetary sanction does serve as a  
24 punishment of Centennial (and encouragement not to repeat its transgressions), but does  
25 nothing to reverse or mitigate the prejudice that Centennial has inflicted upon Jane Doe.

26 The Court could impose a "rebuttable" presumption that Centennial had notice of Mr.  
27 Farmer's dangerous propensities; but that would still leave Jane Doe at a disadvantage.

28 . . .



1 Centennial has caused the destruction of the evidence that Jane Doe could have used to  
2 negate Centennial's rebuttal evidence.

3 The Court could preclude Centennial from offering any evidence that it DID NOT  
4 have notice of Mr. Farmer's dangerous proclivities. But again this is insufficient. The Court  
5 has already held in this case that Plaintiff Jane Doe has an initial burden of proving that it was  
6 reasonably foreseeable to Centennial that Mr. Farmer posed a danger to female patients.  
7 Centennial has caused the destruction of evidence that Jane Doe may have needed to satisfy its  
8 initial burden. Thus it would not be an adequate remedy to merely prevent Centennial from  
9 rebutting Jane Doe's evidence.

10 The Court has considered other possible lesser sanctions, and concludes that the only  
11 reasonable sanction that sufficiently mitigates the harm caused by Centennial is to strike  
12 Centennial's Answer.

13 **6. The policy favoring adjudication on the merits**

14 Centennial is the party that elected to hide evidence to prevent Jane Doe from  
15 adjudicating its claims on the merits. Striking Centennial's Answer is the only way to undo  
16 the prejudice that Centennial created. Centennial is still entitled to defend itself with regard to  
17 damages. In sum, the Court merely mitigates the prejudice that Centennial caused, and  
18 permits the parties to proceed with the remainder of the lawsuit in a fair and even manner.

19 **7. Whether the sanction would unfairly punish centennial for its lawyers'**  
20 **misconduct**

21 The misconduct in this case is clearly that of Centennial, to an equal or greater extent  
22 that its lawyers. Centennial knew that Murray had given a police statement, but failed to  
23 provide such statement to its lawyers in this case. Centennial knew that nurses Murray,  
24 Wolfe, and Sumera were critical witnesses in this case, and yet allowed their attorneys to  
25 submit no less than Eight (8) NRCP 16.1 disclosures that omitted any reference to these  
26 witnesses. One need not be trained in the law to appreciate that one's list of persons with  
27 knowledge ought to have included critical witnesses such as these. Additionally, Centennial  
28 provided verifications of the false discovery responses discussed herein.



1           **8.       The need to deter sanctionable conduct**

2           A party who engages in misconduct must suffer reasonable consequences. No party  
3 should be allowed to conceal evidence, and then suffer merely a monetary sanction, while  
4 being allowed to reap the tactical benefit of the loss of that evidence. Litigants should be  
5 entitled to have their cases adjudicated on their merits.

6           Centennial failed to disclose relevant evidence that it knew it had a duty to disclose,  
7 caused extensive time to pass, and caused memories to fade. Centennial actions and inactions  
8 have prevented a critical issue in this case from being tried on its merits. Centennial has  
9 impaired the adversarial, and therefore must suffer the consequences of a sanction. The  
10 narrowly-tailored sanction in this case is designed to mitigate the prejudice to Jane Doe that  
11 Centennial caused, and deter future misconduct by Centennial.

12       **VI.     CONCLUSION**

13           The Court finds that Defendant Centennial intentionally, and willfully, and with the  
14 intent to unfairly prejudice and harm Plaintiff Jane Doe, concealed evidence regarding nurses  
15 Wolfe, Murray, and Sumera, and those acts of concealment unfairly, significantly, and  
16 irreparably prejudiced Plaintiff. As discussed above, the concealment has caused a great delay  
17 in Plaintiff Jane Doe's ability to pursue relevant discovery. This delay has resulted in the loss  
18 of memories of critical information. Centennial's acts of concealment have effectively  
19 irreparably destroyed evidence.

20           The Court has determined the least stringent, narrowly-tailored, remedy available to  
21 reverse the harm that Centennial caused to Plaintiff. This remedy, which the Court hereby  
22 imposes, is as follows:

23           **The Court sanctions Defendant Centennial pursuant to NRCP 37 by striking its**  
24 **Answer in this action such that liability is hereby established on Plaintiff's Jane Doe's**  
25 **claims against Defendant Centennial for (a) negligent failure to maintain the premises in**  
26 **a safe manner, and (b) *respondeat superior* liability for the sexual assault by Nurse**  
27 **Farmer; but Centennial still shall be entitled to defend on the question of the nature and**  
28 **quantum of damages for which it is liable.**

1 To implement this sanction, the Court further orders as follows:

2 a. Plaintiff shall be permitted to explain to the jury that liability has been established  
3 against Defendant Centennial, and to further explain to the jury what that means;

4 b. The Court shall submit a jury instruction to the jury regarding the establishment  
5 of liability as to Defendant Centennial;

6 c. Defendant Centennial is precluded from introducing any evidence to show that it  
7 is not liable for the harm to Jane Doe caused by Mr. Farmer. Specifically, but not limited  
8 thereto, Defendant Centennial is precluded from introducing any evidence that it was not  
9 reasonably foreseeable to Centennial that Mr. Farmer would commit a criminal sexual assault  
10 against a patient at Centennial. Additionally, Centennial is precluded from arguing that it has  
11 any defense to liability for damages caused by Mr. Farmer to Jane Doe, on either the pled  
12 claims of negligence or *respondeat superior*; and

13 d. the Court will set a Status Check by separate Order to discuss the manner of  
14 implementation of this Order to avoid any prejudice therefrom to defendant American Nursing  
15 Service, Inc.

16 Furthermore, the monetary sanctions recommended by the Discovery Commissioner,  
17 and imposed by Order of this Court on August 15, 2015, are hereby re-affirmed.

18 **IT IS SO ORDERED.**

19 DATED this 4<sup>th</sup> day of November, 2015.

20  
21   
22 RICHARD F. SCOTTI  
23 DISTRICT COURT JUDGE  
24  
25  
26  
27  
28

**CERTIFICATE OF SERVICE**

I hereby certify that on or about the date filed, a copy of this Order was electronically served, mailed or placed in the attorney's folder on the first floor of the Regional Justice Center as follows:


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# EXHIBIT D

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# EXHIBIT D

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August 17, 2018

## **VIA EMAIL AND ESERVICE**

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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

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