

Case No. _____

In the Supreme Court of Nevada

JACUZZI , INC. doing business as JACUZZI
LUXURY BATH ,

Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT COURT of the
State of Nevada, in and for the County of Clark;
and THE HONORABLE CRYSTAL ELLER , District
Judge,

Respondents,

and

ROBERT ANSARA , as special administrator of
the ESTATE OF SHERRY LYNN CUNNISON ,
deceased, ROBERT ANSARA , as special
administrator of the ESTATE OF MICHAEL
SMITH , deceased heir to the ESTATE OF SHERRY
LYNN CUNNISON , deceased, and DEBORAH
TAMANTINI , individually and heir to the Estate
of SHERRY LYNN CUNNISON , deceased

Real Parties in Interest.

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

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

61	Recorder's Transcript of Pending Motions	10/05/20	27	6639–6671
94	Recorder's Transcript of Pending Motions	07/14/21	32 33	7893–8000 8001–8019
90	Reply in Support of “Co untermotion 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 , 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

E X H I B I T S (continued)

Exhibit	Description	Page
EXHIBIT 81	Smith and Cunnison tub Measurements vs. Houston tub	79
EXHIBIT 82	Tub seat angle	80
EXHIBIT 83	New tub evaluation Spreadsheet	80
EXHIBIT 84	Surface friction Measurements	80
EXHIBIT 85	FARO scan images	81
EXHIBIT 86	Tub labels	81
EXHIBIT 87	Notes	82

1 (All exhibits were marked prior to the deposition.)

2 ROBERT SWINT,

3 having been first duly sworn, testified as follows:

4 EXAMINATION

5 BY MR. COOLS:

6 Q. Sir, could you please state your name for the
7 record?

8 A. My name is Robert James Swint, S-W-I-N-T.

9 Q. Thank you. And you're aware you've been
10 identified as an expert in the Ansara v. Jacuzzi matter?

11 A. Yes.

12 Q. When were you retained in this case?

13 A. We were initially contacted in 8/7/17. We
14 started our case file in 8/24/2017.

15 Q. And what were you told about the case at the
16 time?

17 A. Initially we were told that -- Charles Allen
18 contacted us regarding the use of an analysis, hazard
19 analysis on this tub relative to the problem that he had
20 with his client. And also he mentioned the Las Vegas
21 case as well.

22 Q. And so when you say "his client," are you
23 referring to the Smith family?

24 A. The Smith family.

25 Q. Okay. And so you were asked to take a look at

1 So we had a range that doesn't surprise me,
2 but is really not a representation of a person in a tub
3 with the kind of materials, water and oils and soaps. I
4 think your test is by far the better test. And we
5 didn't try to do additional testing here in Houston
6 because we had your test data which seemed to be very
7 well done.

8 Q. So you're not critical of Jacuzzi's coefficient
9 of friction test? At least in terms of how it was
10 performed or the data itself?

11 A. No. It appears that it was done
12 professionally.

13 Q. Okay. But you will -- will you be -- well, let
14 me strike that.

15 Will you be offering an opinion as to a
16 defect in the slipperiness or the coefficient of
17 friction of the tub surface?

18 A. It is a factor that needs to be understood and
19 recognized in the usage and design of this tub. When
20 you have -- like you're sitting on ice, you don't want
21 to be moving forward on an ice cube to fall off the end
22 of the ice cube. What we're talking about is a surface.
23 Your numbers are less than .1, which means coefficient
24 of friction on ice is about .1 to .2 kind of numbers.
25 We are very slippery.

1 So therefore when you start talking about
2 movements in the tub to get you out of a controlled
3 balanced sitting position with your back and your legs
4 and everything sort of locked in place, you're risking
5 falling. You're risking slipping. That needs to be
6 looked at and designed into such things as to reach for
7 the controls. When you have as many inches as there
8 shows to be necessary to get to the controls requiring
9 you to move your body forward, repositioning your body,
10 taking it out of a stabilized position, that creates a
11 significant hazard, especially on a slippery surface.

12 Q. So my question though is: Are you going to
13 offer an opinion that the coefficient of friction
14 should have been something other than what it is in this
15 tub?

16 A. It is what it is. And because of what it is,
17 it should be compensated for by the correct design so
18 that you don't have a person unable to control their
19 stable position.

20 Q. So you'll offer design criticisms as to other
21 aspects of the tub, you're not critical of the
22 coefficient of friction itself?

23 A. It is a number. With that number it is part of
24 what human factors design says, hey, we know what the
25 feature and the characteristic of the tub is.

DISTRICT COURT
CLARK COUNTY, NEVADA

ROBERT ANSARA, as Special) Case No: A-16-731244-C
Administrator of the) Dept. No: II
Estate of SHERRY LYNN)
CUNNISON, Deceased; et al)
)
Plaintiffs)
)
vs.)
)
FIRST STREET FOR BOOMERS &)
BEYOND, INC.; et al)
)
Defendants)

REPORTER'S CERTIFICATION

THE STATE OF TEXAS:
COUNTY OF HARRIS:

I, Morgan Veletzuy, a Certified Shorthand Reporter
in and for the State of Texas, hereby certify to the
following:

That the witness, ROBERT SWINT, was duly sworn by
the officer and that the transcript of the oral
deposition is a true record of the testimony given by
the witness;

That the deposition transcript was submitted on
_____, 20____, to the witness, or to the
attorney for the witness, for examination, signature,
and return to Veritext Legal Solutions, by _____,

20_____;

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

Mr. Charles Allen - (0h0m)

Mr. Joshua Cools - (4h16m)

Mr. Philip Goodhart - (0h0m)

I further certify that I am neither counsel for, related to, nor employed by any of the parties or attorneys in the action in which this proceeding was taken, and further that I am not financially or otherwise interested in the outcome of the action.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, on this the 12th day of November, 2018.

<%13407,Signature%>

MORGAN VELETZUY, CSR No. 9271

Expiration Date: 12-31-19

Veritext Legal Solutions

Firm Registration No. 571

300 Throckmorton, Suite 1600

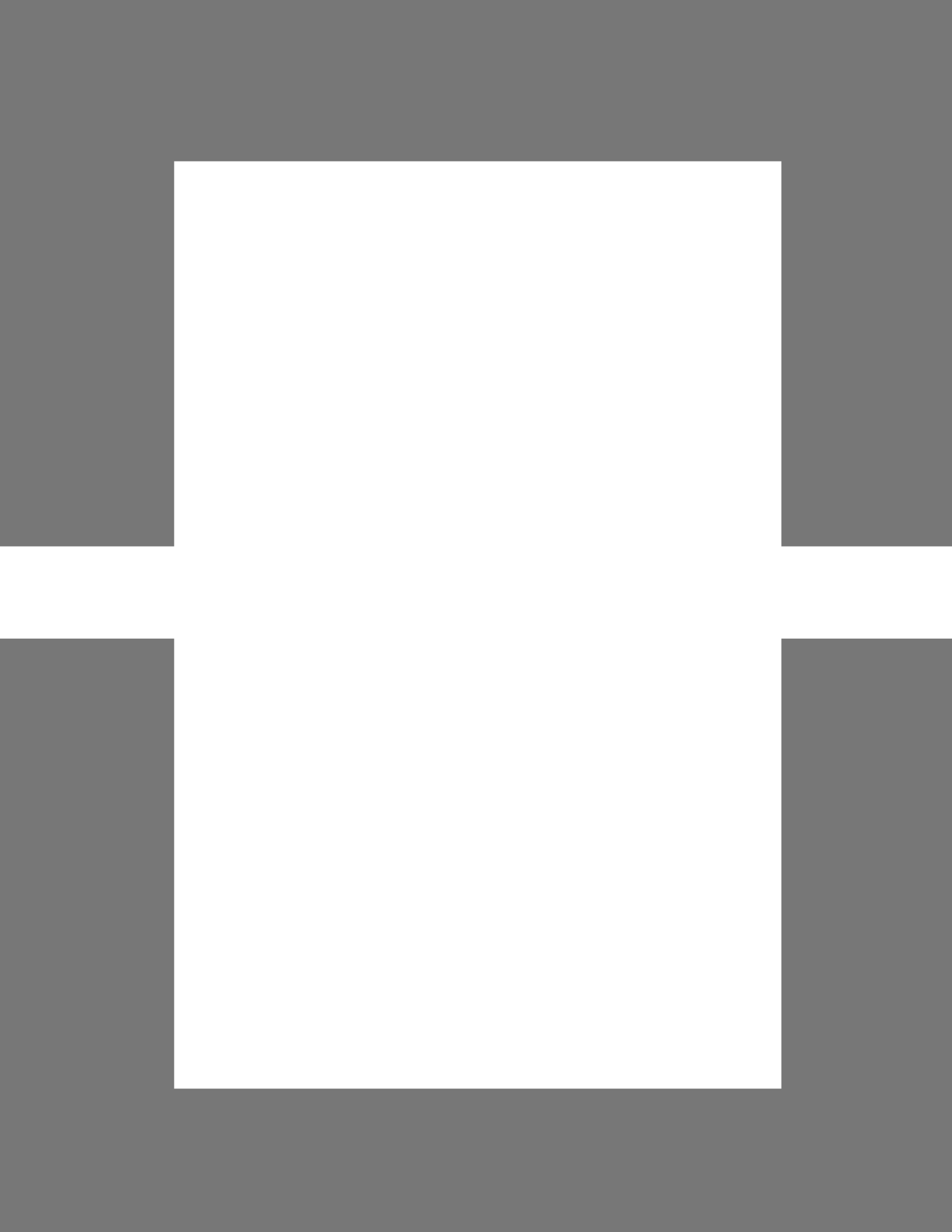
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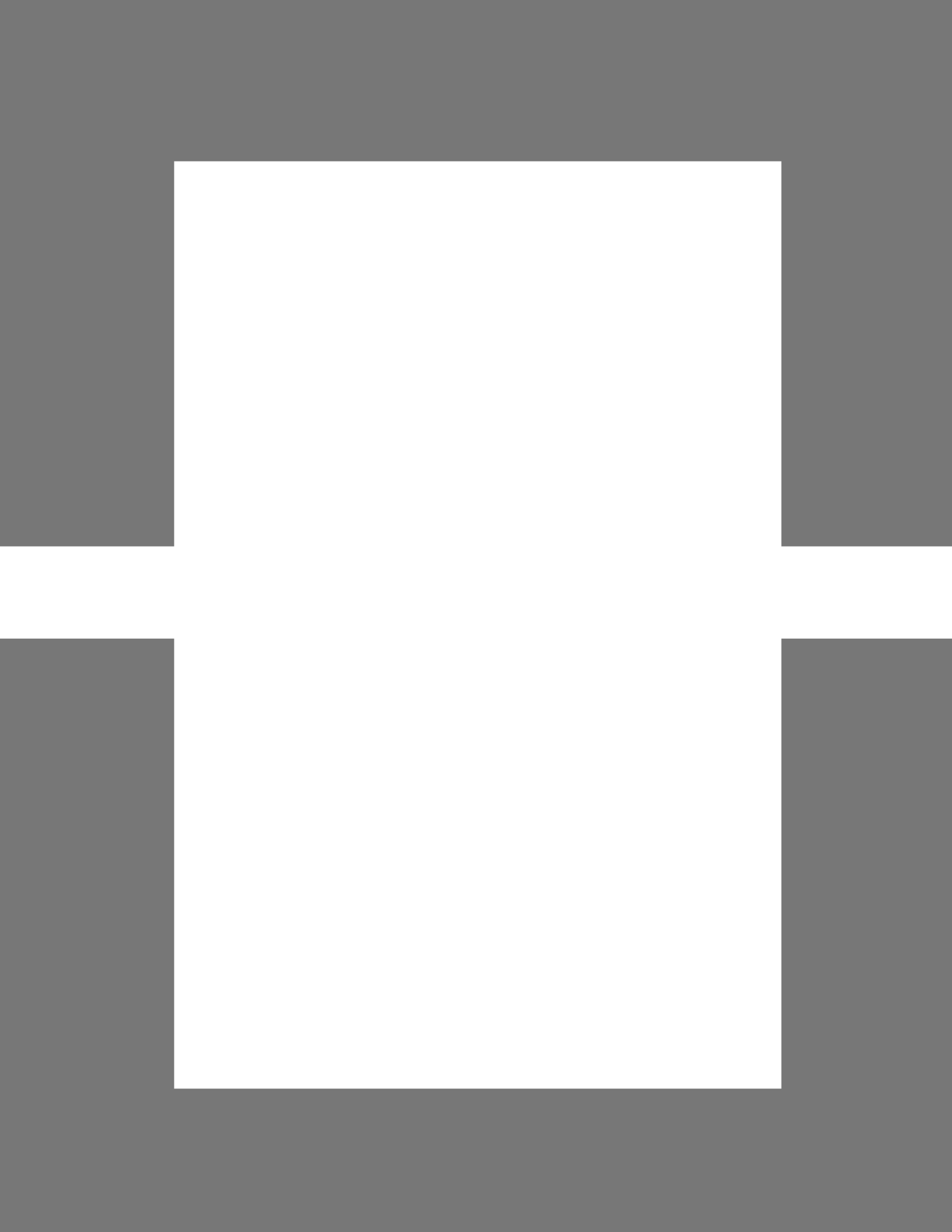
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Attorneys for Defendant Jacuzzi Inc.,
dba Jacuzzi Luxury Bath

DISTRICT COURT

CLARK COUNTY, NEVADA

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(HEARING REQUESTED)

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vs.

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MOTION TO CLARIFY THE PARAMETERS OF
THE WAIVER OF ATTORNEY-CLIENT
PRIVILEGE THAT WOULD BE REQUIRED
IN ORDER TO PRESENT EVIDENCE THAT IT
WAS ACTING ON ADVICE OF COUNSEL

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A. The Court Determined that Jacuzzi Could Proceed with a Second Phase of the Hearing if the Court Found Sanctionable Conduct

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B. To Make an Informed Election, Jacuzzi Requests Clarification of the Extent of
Waiver Necessary

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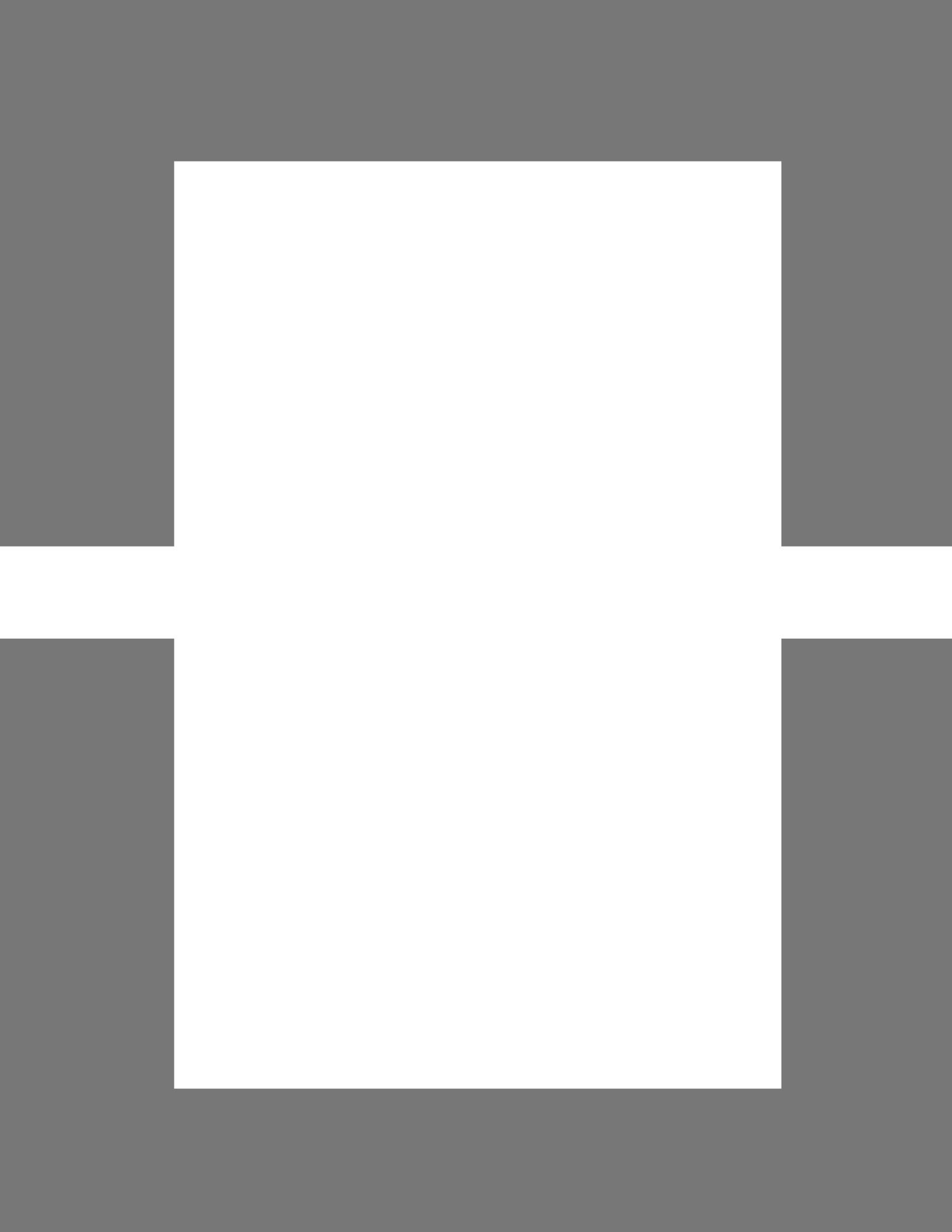
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Attorneys for Plaintiffs

/s/ Kelly L. Pierce

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OBJ

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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,

Plaintiffs,

vs.

FIRST STREET FOR BOOMERS &
BEYOND, Inc.; AITHR DEALER, INC.;
HALE BENTON, Individually;
HOMECLICK, LLC; JACUZZI INC., doing
business as JACUZZI LUXURY BATH;
BESTWAY BUILDING & REMODELING,
INC.; WILLIAM BUDD, Individually and
as BUDD'S PLUMBING; DOES 1 through
20; and ROE CORPORATIONS 1 through
20; DOE EMPLOYEES 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. 2

(Hearing Requested)

OBJECTIONS TO "ORDER STRIKING
DEFENDANT JACUZZI INC.,
D/B/A JACUZZI LUXURY BATH'S
ANSWER AS TO LIABILITY ONLY"

WITH

COUNTER-PROPOSED ORDER

Defendant Jacuzzi Inc. lodges the following objections to Plaintiffs' proposed "Order Striking Defendant Jacuzzi Inc., d/b/a Jacuzzi Luxury Bath's Answer as to Liability Only," submitted to chambers on May 19, 2020. (See Exhibit "1," App. 1 .)

I.

JACUZZI WILL NOT BELABOR ITS DISAGREEMENT
WITH EVERY FINDING AND CONCLUSION

Jacuzzi sets out only a few objections below, as Plaintiffs' proposed order is generally consistent with the Court's minute order and is tethered to the points and authorities Plaintiffs have filed and the Court has expressly adopted. Nevertheless, Jacuzzi maintains its substantive disagreement with the conclusions of this order, the rationale articulated, and the standards applied, for all of the reasons set out in Jacuzzi's prior arguments and briefs.

In addition to the select issues set out below, Jacuzzi would correct a few in the proposed order, which are highlighted in the attached redline version of Plaintiffs' proposed order (Exhibit "2," App. 22), and incorporated into Jacuzzi's counter-proposed order (Exhibit "3," App. 44).

II.

BEFORE ANY SECOND PHASE ,
THE COURT SHOULD REFRAIN FROM CONCLUDING
THAT JACUZZI WAS NOT FOLLOWING THE ADVICE OF ITS COUNSEL

Under the sixth Young factor ("whether sanctions unfairly operate to penalize a party for misconduct of his attorney"), the proposed order emphatically finds that "Jacuzzi misled its outside counsel" (prop. order at 18:14, Ex. 1, App. 19), that "Jacuzzi knew what it was required to produce" (id. at 18:27 , App. 19), the sanction "will not unfairly penalize Jacuzzi for any decisions of its outside counsel" (id. at 19:3, App. 20), and "Jacuzzi fully

understood” what was required (id . at 19:17, App. 20). This proposed order reads as if the Court had already considered all testimony and evidence regarding Jacuzzi’s advice-of-counsel defense. But it hasn’t.

A. The Definitive Nature of these Findings and Conclusions is Unfair and Inappropriate

Jacuzzi made its determinations about what to disclose and what to withhold in consultation with its outside counsel. Yet, Jacuzzi was constrained from presenting that defense at the evidentiary hearing unless it would agree to waive the attorney-client privilege.

Fairness dictates that the Court refrain from making such absolute findings or reaching definitive conclusions. In light of the constraint on the witnesses’ testimony, any finding or conclusion on this Young factor should leave unresolved what any person at Jacuzzi knew or understood regarding legal requirements and what may have been communicated between Jacuzzi and its outside counsel. At most, the Court could find only that Jacuzzi has not demonstrated that it was relying upon advice of counsel in the decisions it made and, therefore, the Court assumes that Jacuzzi understood the requirements of various Court rulings and acted on its own judgment in choosing what to disclose. In other words, on the record as it stands, the Court could conclude only that the potentially mitigating Young factor does not apply.

B. No Order Should Be Entered Until Jacuzzi Can Make an Informed Election Whether to Proceed with a Second Phase

The Court, however, should not enter any order yet. As the Court will recall, it understood the bind placed on Jacuzzi¹ and determined that

¹ Day 3 (9/18/20) Tr. at 104 -108.

Jacuzzi would be allowed to proceed with a second phase of the evidentiary hearing to present an advice-of-counsel defense if the Court were to find sanctionable conduct (as it now has):

THE COURT: So perhaps in the interest of attempting at this point to meet, if fairness, both sides' concerns, maybe we need to bifurcate this, which is for me to hear the rest of the evidence here, make a determination whether there was willfulness or bad faith on the part of Jacuzzi, and then allow outside counsel to make the determination in consultation with their client, if the client's going to waive the privilege, and like outside – or demand that outside counsel come in and say, it wasn't our fault. It was their fault.

* * *

THE COURT: All right. So I'm not ruling that you're not allowed to [introduce] the correspondence between outside counsel and Jacuzzi; I'm deferring that determination until such time as we complete a first phase of this now bifurcated proceeding to determine if there's sufficient evidence for me to conclude that there was bad faith or willfulness to level required by Ribeiro for me to sanction Jacuzzi by way of striking the answer, which is what you're asking for here.

If I make a [] preliminary decision that Jacuzzi has faulted to that level and a sanction of striking the answer should be imposed, then I will provide outside counsel the opportunity to come in and say, some of the blame or all of the blame should be shifted to us, and the company, the client, should not be punished for that reason.

* * *

THE COURT: So -- but we'll get to that second phase and that analysis after we complete the first phase.

(Day 3 (9/18/20) Tr. at 113-14.)

Here we are. Jacuzzi must be permitted to make that election. And to enable Jacuzzi to make an informed choice, Jacuzzi requests the Court define the extent of the waiver of attorney-client privilege that would result from an election to proceed with its advice-of-counsel defense. That privilege is sacred in the law, and not put aside lightly.

Jacuzzi is filing concurrently herewith a motion to establish the limited extent of the waiver that would attend a second phase of this proceeding. Put simply, Jacuzzi contends the waiver should extend only to communications relating to the discovery responses and orders regarding discovery. And even those communications should be redacted to shield the privacy of other issues addressed therein. Further, any privileged material or testimony disclosed in the second phase may be used only for purposes of the Court's determination of a sanction and may not be presented to the jury.

III.

THERE 'S NO NEED TO PUBLICLY LAMBASTE NONPARTIES

Jacuzzi objects to the superfluous naming of individuals in this proposed order, which serves only to humiliate Jacuzzi's employees. First, as a general matter, judiciousness calls for sensitivity to the privacy and reputations of nonparties and reasonable efforts to avoid their embarrassment and oppression whenever possible. See, e.g., NRCP 26(c)(1) ("The court may, for good cause, issue an order to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense,

including one or more of the following”). Although the analysis at issue entails inquiry into the thoughts and actions of real people, it is not necessary for the order to publicly vilify anyone. It would be sufficient to discuss the actions of Jacuzzi in terms of the entity itself and job titles.

Second, judicial restraint is particularly appropriate here because the Court’s findings and conclusions rest on several inferences. And, although fact-finding occasionally entails reasonable inferences, intellectual humility and transparency should prevent the Court from stating those inferences emphatically as if they were facts. Respectfully, the Court should recognize that it has adopted rather cynical assumptions about Jacuzzi’s agents, and has done so based upon testimony in which they were restricted from fully explaining themselves because of the specter of waiving the attorney client privilege. For instance, the Court has no evidence in regard to what communications Mr. Templer had with outside counsel, what they advised him, and whether he was following their advice.

There is no need to add insult to injury.

IV.

THE ORDER SHOULD MAKE CLEAR THAT THE SANCTION DOES NOT LIMIT JACUZZI’S ABILITY TO DEFEND AGAINST PUNITIVE DAMAGES

The proposed order establishes liability on Plaintiffs’ various causes of action for compensatory damages but is silent as to punitive damages. (Exhibit “1” at 20, App. 21.) While the language is accurate as far as it goes, the Court should clarify now that the sanction does not at all hinder Jacuzzi’s ability to contest liability for punitive damages.

Indeed, the Court should determine now to afford Jacuzzi the same rights to defend itself, and to implement the same protections against jury passion and prejudice, as Judge Loehrer did in *Bahena v. Goodyear*. In that case, the Nevada Supreme Court upheld an order striking a

defendant's liability defenses because the defendant received a full jury trial on compensatory and punitive damages. *Bahena v. Goodyear Tire & Rubber Co.*, 126 Nev. 606, 612-12, 245 P. 3d 1182, 1186 (2010) (*Bahena II*) citing *Sims v. Fitzpatrick*, 288 S.W.3d 93 (Tex. Ct. App. 2009). In *Bahena*, the district court trifurcated the trial, to ensure at every stage that inflammatory material never infected the jury's discrete determinations²:

Phase 1: The first phase was limited to evidence and argument concerning compensatory damages, at the beginning of which the court informed the jury: "Very briefly, ladies and gentlemen, this portion of the trial is going to involve damages. Liability was been determined already in this case. There are a number of people who were involved . . ." (*Goodyear 1/29/07 Trans.*, attached as Exhibit "7," at 36, App. 101.) The phase I jury instructions (Exhibit "8," App. 112) and Phase I opening statements (1/29/07 Tr. at 98 -157, App. 102-11) corroborate that limited scope. All evidence of prior incidents, accidents, etc., was excluded from the compensatory damages phase of trial because it was relevant only to liability for punitive damages and allowing discussion of that evidence—while hindering defendant from rebutting and contextualizing it—would serve only to inflame passion and prejudice when assessing compensatory damages. (See *Goodyear 1/23/07 Trans.* at 27 -29, Exhibit 6, App. 86.) And the history of discovery was never an issue for the jury's consideration during any phase. Goodyear was also permitted to cross-examine plaintiff's witnesses on damages and present its own. *Bahena II*, 126 Nev. at 612-12, 245 P.3d at 1186 (2010).

² See "Findings of Fact, Conclusions of Law and Order," attached as Exhibit "4," at 9, App. 74; "Liability Default Judgment Against Defendant Goodyear Tire and Rubber Company," attached as Exhibit "5," at 3, App. 77; *Goodyear 1/23/07 Trans.*, attached as Exhibit "6," at 3-5, App. 80.

Phase 2: After rendering its verdict on compensatory damages, the jury returned to hear evidence and argument from both parties relevant to punitive damages, including evidence of prior incidents, accidents, etc. (Goodyear 1/23/07 Trans. at 27-29, Ex. 6, App. 86.) As the judge explained to the jury at the commencement of the second phase:

This is the second phase of the trial. In the first phase of trial, you determined compensatory damages. In the second phase, you will determine whether to assess punitive damages against Defendant Goodyear.

While compensatory damages are intended to compensate a wronged party, punitive damages are designed solely for the sake of example and by way of punishing the defendant.

If you find that punitive damages will be assessed, there will be a third phase . . . ³

Goodyear was given unfettered ability to present evidence and argument justifying its manufacturing decisions, to distinguish prior accidents and incidents and to contest that the alleged defect even caused the subject accident. (See *id.*; Goodyear Phase II jury instructions, attached as Exhibit “9,” App. 149; and Goodyear 2/6/07 Trans., attached as Exhibit “10,” at 35, App. 186.)

Phase 3: The jury returned from Phase 2 with a verdict in favor of Goodyear. Had the jury instead determined that Goodyear acted with malice, they would have returned for a third phase in which to assess the amount of punitive damages. That never occurred, however, because “Goodyear prevailed upon Bahena's claim for punitive damages.” Bahena II, 126 Nev. at 612 -12, 245 P. 3d at 1186.

³ Goodyear 2/6/07 Trans., attached as Exhibit “10” at 12, App. 180.

Now that the Court has decided to sanction Jacuzzi along the lines of Goodyear v. Bahena, the Court should implement the same safeguards to ensure that the “limited” sanction of striking only liability defenses will not spill over to hinder Jacuzzi’s rights to defend in all other respects.

CONCLUSION

For the foregoing reasons, the Court should refrain from entering the “Order Striking Defendant Jacuzzi Inc., d/b/a Jacuzzi Luxury Bath’s Answer as to Liability Only” proposed by Plaintiffs.

Dated this 22nd day of May, 2020.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

By /s/ Joel D. Henriod

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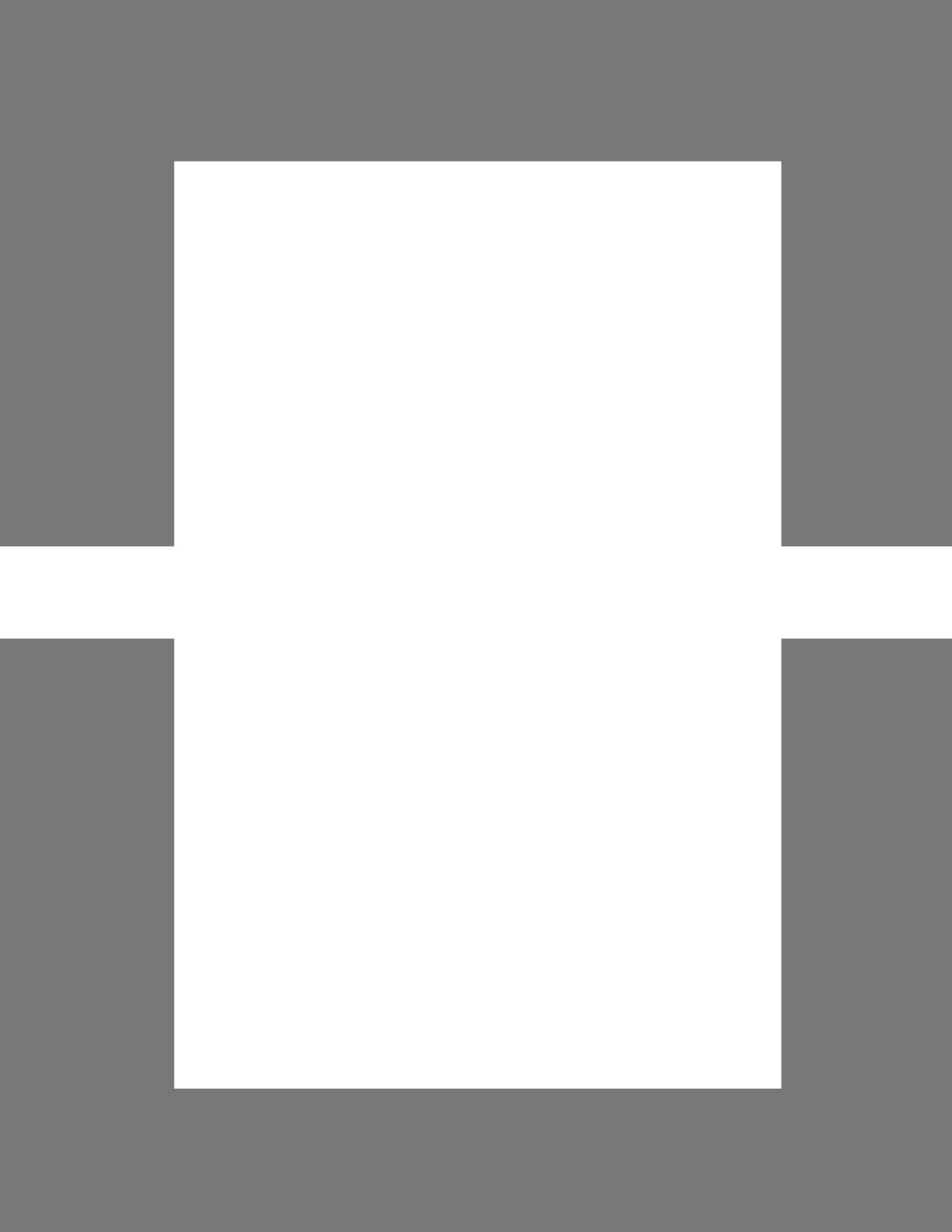
CERTIFICATE OF SERVICE

I hereby certify that on May 22, 2020, I served the foregoing
“Objection to Order Striking Defendant Jacuzzi Inc., d/b/a Jacuzzi Luxury
Bath’s Answer as to Liability Only with Counter-Proposed Order” on
counsel by the Court’s electronic filing system and by courtesy email to the
persons and addresses listed below:

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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,

Plaintiffs,

vs.

FIRST STREET FOR BOOMERS &
BEYOND, Inc.; AITHR DEALER, INC.;
HALE BENTON, Individually;
HOMECLICK, LLC; JACUZZI INC., doing
business as JACUZZI LUXURY BATH;
BESTWAY BUILDING & REMODELING,
INC.; WILLIAM BUDD, Individually and
as BUDD'S PLUMBING; DOES 1 through
20; and ROE CORPORATIONS 1 through
20; DOE EMPLOYEES 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. 2

APPENDIX OF EXHIBITS TO :

OBJECTIONS TO "ORDER STRIKING
DEFENDANT JACUZZI INC.,
D/B/A JACUZZI LUXURY BATH'S
ANSWER AS TO LIABILITY ONLY"

WITH

COUNTER-PROPOSED ORDER

TABLE OF CONTENTS TO APPENDIX

Exhibit	Document	Date	Bates
01	Plaintiffs' Proposed Order Striking Defendant Jacuzzi Inc., d/b/a Jacuzzi Luxury Bath's Answer as to Liability Only	05/19/20	1–21
02	Redline Version Showing Jacuzzi, Inc.'s Corrections to Plaintiffs' Proposed Order Striking Defendant Jacuzzi Inc., d/b/a Jacuzzi Luxury Bath's Answer as to Liability Only		22–43
03	Jacuzzi, Inc.'s Counter -Proposed Order Striking Defendant Jacuzzi Inc., d/b/a Jacuzzi Luxury Bath's Answer as to Liability Only	05/22/20	44–65
04	Findings of Fact, Conclusions of Law and Order, filed in Bahena, et al. v. Goodyear Tire and Rubber Company, Case No. A503395	01/29/07	66–74
05	Liability Default Judgment Against Defendant Goodyear Tire and Rubber Company, filed in Bahena, et al. v. Goodyear Tire and Rubber Company, Case No. A503395	01/30/07	75–78
06	Reporter's Transcript of Motions in Limine, filed in Bahena, et al. v. Goodyear Tire and Rubber Company, Case No. A503395	01/23/07	79–98
07	Reporter's Transcript of Jury Trial, filed in Bahena, et al. v. Goodyear Tire and Rubber Company, Case No. A503395	01/29/07	99–111
08	Phase I Jury Instructions, filed in Bahena, et al. v. Goodyear Tire and Rubber Company, Case No. A503395	02/05/07	112–148
09	Phase II Jury Instructions, filed in Bahena, et al. v. Goodyear Tire and Rubber Company, Case No. A503395	02/09/07	149–176
10	Reporter's Transcript of Jury Trial, filed in Bahena, et al. v. Goodyear Tire and Rubber Company, Case No. A503395	02/06/07	177–188

Dated this 22nd day of May , 2020.

LEWIS ROCA ROTHGERBER CHRISTIE LLP

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CERTIFICATE OF SERVICE

I hereby certify that on May 22, 2020, I served the foregoing
“Appendix of Exhibits to Objection to Order Striking Defendant Jacuzzi
Inc., d/b/a Jacuzzi Luxury Bath’s Answer as to Liability Only with Counter-
Proposed Order” on counsel by the Court’s electronic filing system and by
courtesy email to the persons and addresses listed below:

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WKH IROORZLQJ)LQGLQJV RI)DFW DQGLW QFCEXWL
IDFWXDO DQG OHJDO DQDO\VLV SUHVHQW &RGREALQD%QWL
1RY DQG WKHLU 5HSO\ LQ 6XSSRUW RI (YL\$HQL
ILQGLQJV RI IDFW GHVFULEHG KHUHLQ DUH VXSSRUWHG
, 67\$1'\$5' 2) 5(9,(:

,Q UHDFKLQJ WKL V GHFLVLRQ WKH &RXUW DSSOLHG
5LEHLUR %OGJ1HYQF DQGLW QFCEXWL KDV GLV
WR LPSRVH DQ\ VDQFWLRQV WKDW &RXUW QRVHG WKDW
&RXUW QRVHG WKDW 3>H@YHQ LI >WKH 1HYDGD 6XSUHP
LQ WKH ILUVW LQVWDQX ZKH ZKH ZKH ZKH ZKH ZKH ZKH
,Q UHYLHZLQJ WKH HYLGHQFH SUHVHQWHG DQG UH
DSSOLHG WKH SUH\$BGGH DQGLW QFCEXWL WKH &RXUW
FDVH ODZ LQ UHDFKLQJ WKH 3ODLQWLIIV DOOHJH WKDW
,,),1',1*6 2))\$&7

7KL V LV D SURGXFW OLDELOLW\ FDFGHQW ZRFXW
LQ WKH GHDWK RI 6KHUUV &DQWLQ K'DYH SOOHKDG HG
-DFX:]DQ7XE WR DVVLVW KKHU:QMEUVEDXEZQWKD R/VWKS
GRRU LQ ZKH DQG LQW3ODLQWLIIV DOOHJH WKDW F
6KHUUV LQDFXUDQXE 3ODLQWLIIV DOOHJH WKDW GXH V
WE 6KHUUV\ VOLSSHCHRUHDKHLQHDWUZWKH WXE FRQWURO

7KH &RXUW QRVHV WKDW LQ UHDFKLQJ WKL V GHFLVLRQ
HYLGHQFH QXPURXV SULRU SOHDGLQJV QXPURXV
GLVFRYHU\ DQG UHVSQRVHV WKUHW RGRSRGLVSRQ
WUDQVFRYHU\QVSHFWLRQ RI YROXPLQRXV HPDLO FRPP
WHVWLPRQ\ H[WHQVLYH EULHILQJ DQG DOO RWKHU HY
WKURXJKRXW WKHVH SURFHGHGLQV2U\$QV Q'DOORIQSVHIE
RPLVLRQ RI FRQVLGHUWLRQ E\ WKH &RXUW



LQ VXFK D ZD\ WKDW VKH ZDV XQDEOH WR VWDQG CEDFN
WKH WRXEHLD\WKHUU\ ZDV GLVFRYHUHG WUDSXBEDLQQWK
DOOHJH\WKDWVVKHG WR WKH KRVSLWDO ZKHUH VKH GLH
UKDEGRP\3ODLQWLIIV DOOHJH WKDW 6KHU,Q173EDDQWLZ
DOOHJH WKDW -DFX]]LQ7QHEZSWKDWWQWKKHULBNXVHUV OLNH

3ODLQWLIIV ILOHG WKHLU LQLWLDO &RPSOD7KQW D
FRQWUROOLQJ FRPSODLQW LV 3ODL&RPSOD1QWFKWZD\$PIH
RQ -XQH \$PRQJ RWKHU FDXVHLRHQDFHWDRG 3WDL
OLDELOLW\ FODLPV DJDLQVW -DFX]]L \$V D SURGXFW G
VLPLODU LQFLGHQWV DUH U,QO7HYEDQW WVRVZKHZDKHGHWKF
-DFX]]L KDG QRWLFH \$GLOLWLPXFKOGHIHFWWRPHU FRPSOD
GHIHFWV DUH UHOHYDQW

7KLV 2UGHU LV WKH FXOPLQDWLRQ RI D ORQJRODVWR
3ODLQWLIIV1 OHJLWLPDWH HIIRUWV WR GLRORXU +DFXC
ZDQ WXEY DQG RWKHU HYLGHQFH UHOHYDQW WR -DFX]]
)URP WKH EHJLQQLQJ RI GLVFRYMHFKY-IDFKQJFYHILBDDHGLRQ
PDQGDWRU\ GLVFORVXUH UHQXLP+PHQSVCRBOD&QWLIIV1
GLVFRYHU\ DQGXGHSRVLWL,RQIDFWW-LPRQ]]L DUGHQWO\ D
WKDW VXFK HYLGHQFH G[LDFX]]DWDDOOWR1SURBQDH WKH
PLVUHSUHVHQWHG IDFWV DERXW LWV HIIRUWV WR ORFD

\$V GLVFRYHU\ FRQWLQXHG WKH 3ODLQWLIIV DQG
GLVFRYHU\ GLVSXWHV EHIRUH IRUP&RPLPLVYLROHQRBRO
WKLV &RXLWDFHQL ZDV RUSHBQRMUPDGRFQPHQV SHU
WR LQFLGHQWV LQYROYLQJ LQMXU\ RU GHDWK DQG V
GRFXPHQWV FUHDWHGVHQRWKNHBMGRVQDDOXERQJ EXW QRV
HPDLOV

7KH &RXUW DGRSWV WKH VWLSXODWHG 7LPHOLQH RI (YHQWV VXEP



)URP WKH ERHJG DQFLRQFX]]L GHILQLWLYHO\ DQG FRQF
QR SULRU LQF DGHQWV3ODLQWLVKHVUUYHQBWHVHMDRUR
5HTXH V3WVRGRUWLRQ RRRQR-DFX]]LQWVWLIIV UHTXH VWHG LQI
-DFX]]LGHKBU UHFHLYHG QRWLFH RI DQ\ ERGLO\ LQM XU\ P
ZDQ WQXSVZMURV,QWHUDQGDVHRVLRQDFX]]L FORBQPHG V
EH DZDUH RI WZR LQF&GHLQWLVGQDZWRDEQDMLGHQWDFX]]L FOR

(YLGHQWLDU\ +HDULQJ ([KLELW LQDUD, QFLVGRWV 26.6X2PBUH' 6LPH
3ODLQWLIIV ZKLFK VXPPDULJHV WKH FRQWHQWV RI WKH UHOHYDQW
RI &DWKHULQJ (FK%ELUQKGO OFFHSWV WKDW ([KLELW WKH GRFOPHQW
GHVFULEHV
6HH3ODLQWLII 7DPDQWLQLTV VW 6HW RHUQD UUR\$DW RLRXVOW R GHP
DY YLGHQWLDU\ +HDULQJ ([KLELW
6HH3ODLQWLII 7DPDQWLQLTV URGXFWLRQ RI 'RFXPHQWV WR 'HIHQ
SUHYLRXVO\ (YGHQWHDUD +HDULQJ ([KLELW
6HH-DFX]]LTV)LUVW 5HVSQVHV HWRR 3IO, DLQHLUR 7DPDQWLQLTV
DGPLW (YGHQWLDU\ (KLELW QJ
6HH-DFX]]LTV)LUVW 5HVSQVHV HWRR 3IO, DLQHLUR 7DPDQWLQLTV
SUHYLRXVO\ (YGHQWLDU\ (KLELW QJ



NQRZ DERXWKHZHQWWDQW OLWLJDWLRLQKBIQGPIDQKZWBPIUOR
3ODLQWLIIV↑ &RXQVHO UHISZVXLHQWVDLEQFMQ]IDGUKBIDORMG
DQ\ RWKHU SULRU RUSWXEKRIZQHECHWORLD/ULDSUJHVLWQWHG W
ZULWWHQ GLVFRYHU\ UHVSQRQVHV

B. JACUZZI WILLFULLY & KNOWINGLY MISREPRESENTED FACTS IN AMENDED RESPONSES TO PLAINTIFFS' MAY 1, 2017 INTERROGATORIES

3ODLQWRXQVHO EHOLHYLQJ LW RGG WKDW WKH RQ
ZDV WKH RWKHU LQFLGHQWVZKRXPHOQGVFRQVHUSHGLQV
FKDOOHQJHQZUDFWHQVGLWSRQMHV DV QRW EHLDFXQOO
UHSUHVHQWHG WRRDGLFQWHLGIDQRKDWHLWDEDFKHRIWR L
VLPLODU LQFQDFXQMLUYHG \$PHQG HG 5HVS RQVHV WR ,QW

79PHQ5H6SRQVHV DJDLQ VWDWHG WK\$W WKRZQHEZHOU
-DFX]]L PLVUHSUHVHSDPHQG HVGK5HDSRQVHQLWRV,QWHUURJ

C. JACUZZI WILLFULLY & KNOWINGLY MISREPRESENTED FACTS IN AN APRIL 23, 2018 LETTER TO PLAINTIFFS

,Q)HEUXDU\ RI VWLOO LQ GLVEHOLHI WKDW WH
SUREOHP ZLWDO,NDWZHUH FRLQFLGHQWDOOWKHVDPH HOSU
3ODLQWLIIV DJDLQZEPWW DDFGJFVONHIGU+DFX]]L WR ORRN D
3ODLQWLIIV DJDLQZEPWW DDFGJFVONHIGU+DFX]]L WR XWLOLJH
2Q \$SULO VHQDFX]]LHWWHU WWR 3ODLQZHLUIRFDHGP
XWLOLJHDPHSDH DUFK WKEPOVHWB@WVDWHG -DFX]]L K
VHDUFK IRU SULRU LQFLGHQWVRVHGQJ WKM@KHUFKDWFK
DQGR UHVSQRVLYH GRFXPH\$WWZRZQ-BLWYRZPLVHG SUHV
IDFWV LQ LWV\$SWMOHU WR 3ODLQWLIIV

6HH-DFX]]LTV \$PHQGHG 5HVSQRQVHWW 3ODQQWLIURJDPVDRULHQLTVHU
SUHYLRXVO\(\DGGHWWHGDV\KLELWQJ
6HH(PDLO FRUUVSRQGHQFH EHWZHHQ -RVKXD &RROV (VT DQG %H
SUHYLRXVO\(\DGGHWWHGDV\KLELW
6HH/HWWHFXIURPWR3ODLQWLIIVSGDWHRX\$SU(DGGHWWHGDV\KLELW
HPSKDVLV DGGHG



D. JACUZZI WILLFULLY & KNOWINGLY MISREPRESENTED FACTS IN SEVERAL
RULE 30(B)(6) DEPOSITIONS

,Q DGGWLWRQ WR WKH ZULWWHQ GLVFRYHUOLDPWHFJHL
'LUHFWRU RI 5LVNWDQDQDHPHQWWHVWLILHBUWKEDWTKG
LQFLGHQWV

E. PLAINTIFFS FIRST MOTION TO STRIKE

:KLOH -DFX]]L FRQWLQXHG WR GHQ3ODLQWLIIVHQQFH
GLVFRYHUHG WZR VKEVROXHQW LQFLGHQWWRPSODLQLQJ
-DFX]]L LQ DFXED-DFX]]L IDLOHVKWRWZLV F B VHTXDQS & B Q
GLVFORVXUHV UHVSQRQVHV WR GLVFR3ODLQWLIIVXHLV
ORWLRQ WR 6WULNH 'HIHQGDQW -DFX]]L L V \$QVZHU RQ -X

F. JACUZZI MISREPRESENTED FACTS TO THE COURT IN FILED BRIEFS

(YHQ LQ WKH IDFH RI D PRWLROPLWRHSUWLIIVHQQWIDDFX]
3ODLQWELIJDQGLVUHSUHWKH &RXUWEDWEDWLIIV ORWL
-DFX]]L L V \$QVZHU 3ODLQWELIIVHQQWIDDFX] V X EVHTXHQV
-DFX]]L L V EDG IDLWK GLVFRYHU\ FRQGXFWDQG UHTXHV
2Q -XO\ -DFX]]L ILOHG DQ 2SSRVLWLRO WR
-DFX]]L L V Z H 3ODLQWLIIV L & ORVLQJD%N L H IDWUPDWLYH
PXOWLSOH WLPHV WKDW LW KDG SURGXFHG DOO UHOHY
QR SULRU LQFLGHQWV DQG WKDWEW]]KDFDGRWWKHWRKH
VWDWHPHQWV WR WKH &RXUW

x ³,Q VXDFX]]L KDV SURGXFHG DOO UHOHYDQW HYLG
LQFLGHQWV

x ³)XUWKHUPRUH 3ODLQWLIIV VWDWH μ\$W WKLV SR
DZDUH RI SULQFLGHQWODEXW KDV ZLOOLQJO\ ZLWK
WRR LV7KDWVH DUH QR RWKHU-SFX]]L K D F L G H Q K K
QRWKLQJ '

6H3ODLQWLIIV ORWLRO WR 6WULNH 'HIHQGDQW L F X W L D Q F H G
(KELW

LGDW HPSKDVLV DGGHG
LGDW HPSKDVLV DGGHG



x 3-DFX]]L¶V DWKRVHDDQGLQXWVLGH FRXQVHO RYH
DQDO\VLV RI GRFXPHQWQVDO¶GHVFRULHHVSRQGHQFH
See\$SULO OHWWHU IURP - &RROV WR % &O
DQG &RROV 'HFO DW ^)XQGD¶FHQWDOO\([KLELW
SULRU VLPLODU LQFLGHQWV 1WRW-DHUX]QD¶X]QVRZC
DWWRUQH\V ZLWKKHOG DQ\ HYLGHQFH '

x 3-DFX]]L KDV FRQVLVWHQWO\ SURGXFXHGDUDOWKSHUFR
GRFXPHQWV UHOHYDQWQWRQVDFIXY]]L ¶RZQDULWLFXO
SURGXFWLRQ '

\$V VKRZQ EHORZ WKHWHH VWDWHPHQWV ZHUH IDO

G. THE JULY 20,2018HEARING AND ORDER

7KH KHDULQJ RQ 3ODLQWLIIV¶ ORWLRQ WR 6WULNH -

\$W WKH &R¶BLQVLRQHU %XOOD PDGH KHU ILUVW

-DFX]]L¶V SERGXFWRQV 8S XQWLO WKDW WLPH -DFX]]L

LQFLGHQWV QHHGHG\$WWRKHEDUSQRG&R¶BLVDROQHUG %XOOD

DOWHUQDWXU¶SHLUPODMEDQG XQHTXLYRFDQWISURGXFXH

LQIRUPDWLRQ IRU DOO DFFLGHQWV RU LQFLGHQWVWKWULQYR

ZDV QR OLPLWDWLRQ WR 3VHULRXV' RU 3VLJQLILFDQW' I

LQIRUPDWLFDQWVSDRWLHQRWUKHSLQ¶KH 2UGHU UHTXLUH

WR SURGXFH VXFK GRFXPHQWVGEW\$XQDOW\ WKHUH ZD

3FODLPV' RU LQFLGHQWV ZKHUH D FXVWRPHU ZDV GH

VRPHWKLQJ EH GRQH DONRIWKHIWQ6 BV UDFX]]LQDZSRBU

ODWHU WU&R¶BLRVLQDPU %XOOD FRQWLQXHG WKH KHDO

GDW HPSKDVLV DGGHG

GDW HPSKDVLV DGGHG

,W LV QRZ FOHDU WKDW -DFX]]L¶V DUJXPHQW WKDW LWWZD\WRDOO

DUJXPHQW ZKLFK -DFX]]L PDGH WR GHIHQG DJDLQVW 3ODLQWLIIV¶

LQFLGHQWV 3ODLQWLIIV¶ &RXQVHO IRXQG

6HH5SWU ¶V 7U RI +U¶JLQKOWLQDU\ +HDUDWJ ([KLELW

6HH5SWU ¶V 7U 2I +U¶JLQKOWLQDU\ +HDUDWJ ([KLELW

,G

H. JACUZZI MISREPRESENTED FACTS TO COMMISSIONER BULLA ON AUGUST 27, 2018

\$W WKH FRQWLQXHG KHDULQJ RQ 3ODLQWLIIV VHUYH 2Q 6HSWHPEHU -DFX]]L ILOHGUDJRUGLQDU 53RQD BQ R DQPDGHLPIPDVUHSUHWKDWDOVRWKHU LWKDOH-DW-X]]LWKDGH ZLWK &RPPLVVLRQHU %XOODV RUGHU WR 3GRXEORH FRIUHVK'H&RPPLVVLRQHU %XOOD DOVR RUGHUHG -DFX]]L WKH RUGLQDU\ FRX&RPPLVVLRQHU %XOOD PDGKHDW DE

I. JACUZZI MISREPRESENTED THE FACTS IN MOTION FOR PROTECTIVE ORDER

\$IWHU WKH -XO\ KHDULQJ 3ODLQWLIIV VHUYH 2Q 6HSWHPEHU -DFX]]L ILOHGUDJRUGLQDU 53RQD BQ R DQPDGHLPIPDVUHSUHWKDWDOVRWKHU LWKDOH-DW-X]]LWKDGH ZLWK &RPPLVVLRQHU %XOODV RUGHU WR 3GRXEORH FRIUHVK'H&RPPLVVLRQHU %XOOD DOVR RUGHUHG -DFX]]L WKH RUGLQDU\ FRX&RPPLVVLRQHU %XOOD PDGKHDW DE

J. THE SEPTEMBER 19, 2018 HEARING: JACUZZI MISREPRESENTED FACTS AND THE COURT \$ORDER

-DFX]]LTV ORWLRQ IRFD B H R V Q F R U H K H U D W L R Q H 6HSWHPEHU\$W WKH -DFX]]LQVHSUHWKDWDOVRWKHU LWKDOH-DW-X]]LWKDGH ZLWK &RPPLVVLRQHU %XOODV RUGHU WR 3GRXEORH FRIUHVK'H&RPPLVVLRQHU %XOOD DOVR RUGHUHG -DFX]]L WKH RUGLQDU\ FRX&RPPLVVLRQHU %XOOD PDGKHDW DE

6HH5SWU TV 7U RI +U TJ \$XJ (YLGHDWL R K D O L D G R L W L V H G D V
HPSKDVLV DGGHG
1GDW HPSKDVLV DGGHG
1G DW HPSKDVLV DGGHG
1G DW 6HDOVRVKXD &RROV (VT 0HPRUDQGXP WR 'LVFRYHU\ &F
SUHYLRXVO\ (DLGHQWLHG D V H D U L Q J W K H I K L E I W L R Q H S O W U H O H Y D Q V
HPSKDVLV DGGHG
6HH-DFX]]LTV ORW IRU 3URWHFWLYH 2UGHU ILOHG (YLGHDWL R K D O L D G R L W L V H G D V
+HDULQJ ([KLELW
6HH5SWU TV 7U RI +U TJ (YLGHDWL R K D O L D G R L W L V H G D V
6HH5SWU TV 7U RI +U TJ (YLGHDWL R K D O L D G R L W L V H G D V
1G DW





UHTXLULQJ -DFX]]L WR VHDUFK DOO LSRVOKCWDND DEXJL
V\ VWHPWRWDELW ZDVDFSRJQITXHVW IRU FODULFXJPDVLRG
FRQFHUQV DERXW WKH SRWHQWLDO EXUGHQ IRU FRQ
&RPPLVVLRQHU %XOOD PDGHPDWODEZRGHQRDQSDOAKHJW
ZDV UHTXLUHG WR VHDUFK DOO VRXUFHV FRQWDLQLQJ
EXVLQHVV

K. JACUZZI FULLY UNDERSTOOD THE SCOPE OF COMMISSIONER BULLA'S ORDERS

7KH &RXUW ILQGV WKDW &RPPLVVLRQHU %XOOD V
\$GGLWLWLRQDQXUWDILQJGLVWGLWGXQGHUWVRJLGVRKHKZU GH
WKH RUGHUV E\ ILOLQJ D 3HWLWLRQ IRU HU&RXPDVLRQKLV
RZQ GHVFULSWLRQ RI WKH RUGHUVXLOOLQWUVMRIRGLRQ
-DFX]]L V 3HWLWLRQVDFHXRUGVHUOFGZWFULEH

>7@KH GLVWULFW FRXUWIRQGHGHOVROGJIXWR GLV
KRZHYHU VOLJKW RU KRZHYHUGHLOVRLPDQJL\$QZDF
LQWXE UHJDUGOHVV RI KRZ WKH LQMXU\ RFFXUUH
FORVLQJ WKH ERXUERLWDZDOOG EH VXEMHFW WR
LQFOXVGLHQ\$ULYDWH LGHQWLILQJ LQIRUPDWLRQ RI

>7@KH GLVWULFW FRXUW V RUGHU anyUEFKGHQW-D
LQYROYERGLO\LQMXU\DWDOO KRZHYHU VOLJKW
ZDQWZKHWKHU FRQWDLQLQJ WKH VDPH DOOHJHG
RI DQ\ VLPLQDULW\ WR SODLQWLIV FODLPV RI GH

L. JACUZZI MISREPRESENTED THE FACTS TO THE NEVADA SUPREME COURT

-DFX]]L V 3HWLWLRQVDFHXRUGVHUOFGZWFULEH
3ODLQWLIV DOO RI WKH HYLGHQFH LQ -DFX]]L V SRVVH
DOOHJHG ERGLO\LQMXU\LQMXU\RU GHDWDFXJHIDVHHQV
DOVR IDOVHO\ VWDVDFHQRHSDKGRXFDHGXJMKKDXGLYHUVH RI S
LQFLGHQWV LQYROYLQJ WKH WXE LQ TXHVWLRQ

6HHSWURVU16HSW (YLGHQWLDU\ +HDULQW ([KLEPSKDVLV DGGHG

6HHSWURVU16HSW (YLGHQWLDU\ +HDULQW ([KLEPSKDVLV DGGHG

6HH-DFX]]L1V :ULW RI 3URKLELWL(RQGHLQWLDU\KHEHVDUJ
GDW

6HH-DFX]]L1V :ULW RI 3URKLELWLRQ (YLGHQWLDU\KHEHVDUJ
HPSKDVLV DGGHG

6HH-DFX]]L1V :ULW RI 3URKLELWLRLGLHQWGD'WFKHEHVDUJ
HPSKDVLV DGGHG



M. PLAINTIFFS RENEWED MOTION TO STRIKE

,Q 1RYHPEHU RI 'HI+DFXJ]L QG SURGXFHG WDR ØVD
FRUUHVSRRQGHQFH %XULHG LQ WKH HPDLOV 3ODLQWLI
PDGH QXPHURXV FRPSODLQWV WR -DFXJ]LQ DEXXW 3ODLQW
D 5HQHZHG 0RWLRQ WRWUDWLNDFXJ]L ZLWKKHOG HYLGHQ
ZHOO DV RWKHU HYLGHQFH UHJDUGLQJ FXVWRPHU FRPS
2Q 0DUFK WKHfirst & RXQWWHQZHUHUG VHWWLQJ DQ
RQ WDWWHU 7KH 0DUFK 0LQXWH 2UGHU DOVR RU
0DUFK 3>W@KH QDPHV RI DQ\ UHOHYDQW FXVWRPH
2Q 0DUFK WKLsecond & RXQWWHVZHUHUG WDWWKH
FRQFOXGHG WKDW 3QHLWKHU -DFXJ]L QRU)LUVW 6WUHH
LQWHQWLRQDO YLRODWLRQ RI DQ\ GLVFRYHU7ZHUHURUH
WKH &RXUW YDFDWHG WKYLSURYLDFXsecond & RXQWWH
PDGHHIRWKH &RXUW DSSUHFLDWHGWWKDOOHHDFXJ]LVKXGVZ
EHORZ

N. JACUZZI VIOLATED THE JULY 20,2018ORDER

7KH &RXUW ILQGV WKDW -DFXJ]L YLRODWHG WKH -XC

1. Plaintiffs Motion for Reconsideration: the PullenDeath

,Q UHVSRRQVH WR WKH &RXUWfirst & RXQWWH
WR WKH 0DUFKXWH 2QGHU'FK ZKLFK UHYHDOHGGEWKDW -
DZDslide October 2018RI D GHDWK LQYROYLQJ D SHUVRQ QJWWV
3XOOHHQK 3ODLQWLRWLROHBUD5HFRQVLGHUDWLRQ DUJX
GLVFOR3XDOHHQGHUWK 0DUFKZDV D YLRODWLRQ RI &RPPLVV
RUGHUV WR SURGXFH DOO HYLGHQFH RILQQWKEH KUDGHQ
RQO3DLQWLIIV¶ 0RWLRQ IRU 5HFRQVLGHUDWDRQ WDKH &RQ

6H¶ W3ODLQWLIIV¶ 0RWLRQ IRU 5HFRQVLGHUDWLRQ
6H¶ W3ODLQWLIIV¶ 0RWLRQ IRU 5HFRQVLGHUDWLRQ
6H¶ W3ODLQWLIIV¶ 0RWLRQ IRU 5HFRQVLGHUDWLRQ



RUGHUHG DQ HYLGHQWLDU\ KHDULQJ WR GHWH3XPQ QHQZ
'HDWK

D -DFX]]LG LQ 9DRO DWH WKH -XO\
:LWKKROG3XQJOMR 'HDWK

7KH &RXUW\ZVLQGV WKDW -DFX]]L ZLOOX3XQJOMR
'HDWK YLRODWLRQ RI &RPPLVVLRQH0Q%2XOVEDHQG WKLV
3XOOHQGDFD DFX]]L DQG LQIRUPHG -DFX]]LHURW 8X0OPROKBC
DJDLQ RQ 2FWRZKHU UHOHYDQW 6DOHV18XUFMRGPRIEX2HQWV
OHJDO DFWLRQ EHFDXVH KH WK-DFX]]LWKH88XOXS/UNDVIR
7HPSOHU ZDV LPPHGLDW3X0OPROKHDWZD DDFRGLDSDUWLFL
WKH GHFLVLRQ QRW WR SURGX3X0OCHRU7KDWKRQUSHUMQ
-DFX]]L V IDLOXUH WR WLPHOQS W3XOYCH QCHDUP3WLBQWS
&RPPLVVLRQH0 %XOOD -XO\ DQG 6HSWHPEHU

\$GGLWLRQDOO\ WKH &RXUW UMHFWV -DFX]]L V DU
3XOOHQEHFDXKH LW3FZDVZQHRVDDHVGREXPHQWV VSHFLILF
5REHUW3ZD0W3HQG@ WR WDNH OHJDO DFWLRQ'7KFD&RXHUM
ILQGV WKDW -DFX]]L V QDU'ROZLQWHR3XQJOMRWRGQEQHFK
IDLWKH IDF5REHUKDW3XOOHQ DGYLVHG -DFX]]L WKDW KH Z
-DFX]]L V D7KXPHQRW WKH &RXUW UMH3X0OHOZDNDQW
D3FODLP

2. Jacuzzi Willfully Violated the July 20, 2018 Order to Produce Documents Involving Personal Injury or Death

\$IWHU WKLV &RXUW RUGHUHG DQ HYLGHQWLDU\ KHD
RI SDJHV RI GRFXPHQWV FRQWDLQLQJ HYLGHQFHORI ERV
RYHU D\HDU DIWHU &RPPLVVLRQH0Q%2XOVEDHQG WKLV
WKH GHSRVLWLRQ RI -DFX]]L1V 'LUHFWRU RI &XVWRPHU
(PSOR\HHV (GD 5RMDV DQG 'HERUDK 1XDQHUV0DQGDWRBS
DQG WKUHH EXVLQHVV GD\V EHIRUH WKH IRUHQVLF FRP
VHUYHG LWV (LJKWHHQWK 6XSSOHPHQWDO 15&3 'LV



FRQWDLQHG HYLGHQFH RI XS SURVHTUWQWZLOMFLQWKOMM
RI WKRV SUEW BQWKH &XQQLVR \$XJXVW GHQW -DFX]]L
1LQHWHHQWK 6XSSOHPHQWDO 15&3 SULRU RGHQWZKD
VXEVTXHQW LQFLGHQWV -DFX]]L DOVR SURGXFHG DGG

-DFX]]LTV -XO\ \$XJXVW \$XJXVW DQG
GLVFORPQHFWLYHO\ 3-DFX]]LTVHGHQWPHQWPHQW
FRPPXQLFDWLRQV DQG SUHYLRXVDFX]]LTVLVRERWRPHQW
ODQDJHPHQWHQWVWZHDVZKLFK SULRU RGHQWZKD
UHIH SULRU LQFLGHQWV LQYROYLQJ ERGLO\ LQMXU
7KH &RXUWODGPHQWVZKLFKWLVEDHDVXJXVW WK
WK QG UG 15&3 \$6XSSOHPHQWPHQWVWKDFX]]L
NQHZ RI FXVWRPHUV ZKR FRPSODQHQWVFDVHGHQW
GHD)WK H[DPSON D 'HFHPHQW SULRUWR WKH &XQQLVR
-DFX]]LTV GHDOHUV LQVWDOOHUVFDVHGHQWVFDVHGHQW
UHIHUVFHG LQMXUFDVHGHQWVFDVHGHQWVFDVHGHQW
DQG WZR ZKLFK RGHQWVWKHPVHOYHV

\$OVR KH VDIV WKH ERWWRP RI WKH WXE LV H[WUH
IUQK KDV VOLSS:HGJHQWXLQWLRPSODLQW D ORW Z
ULJKW QRZ WKDW KDYH LQMXUHG WKHPVHOYHV VH
:H KDYH VHQW RXW EDWK PDWV WR SXW LQ WKH V
VOLSSHGHQWGHQWWR XVH WKH WXE

\$ -XO\ PDLQ FKDLQ DOVR SULRU WR WKH &XQQL
)LQWVHHW XQUHVROYHG LQFLGHQWV' FRQWDLQHG D U
FRPSODLQLQJ DERXW WKH VOLSSDELEQWSDQG PDENRI

7KH &RXUWODGPHQWVRI WKH WHEH\QHQWZLWR FODLPV RFF
HSLVRGHV ZDUQLQJV QRWLILFDWLRQV RFFDVLQV HYHQWV
WR NQRZ DERXW DGHQWV LQ WKH ZDON
1RWDEO\ DW WKLV WLP WKH FDVH KDG D ILUP WULDO VHWLQJ
6HH7DEOHV 6XSSOHPHQW 'RFXPHQWVWKDFX]]LTV 6XSSOHPHQW
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6HHYLGHQWLDU\ +HDUDQW -(\$8E=LW HPSKDVLV DGGHG
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FKDLQ DOVR SULRU WR &XQQLVRQ FRQWDLQHG LQIRUP
FDOOHG WR FRPSODLQ WKDW KH VOLSSHG DQG IHOO DQG
WR JHW D ODXEHLV LQ RWKHU \$DNHFORH HPDLO DOVR

3ZHKDDELUVVXHG 'XH WR WKH FLUFXPVWDVCOHSMKQYRV
WKQNHGRH VHWWSOHXQH PDIHO FKDLQ SULRU WR &XQQL

³6HUylFH LVVXHVRQ 'IURP 5HJLQD 5H\HV WR .XU
6WROGW ZKR EHFDPHKHVWDXFN HLDNDYERIGQWUHQ ZHOO ZK
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*UHHQZHVXDOO WR FDOO WKH ILUH GLPSLUDWDHQWVWV J
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³KDG WR UHPRYH WKH GRRU WR JHW KHU RXW '

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J. JACUZZI VIOLATED THE SEPTEMBER 19, 2018 ORDER TO SEARCH ALL
DOCUMENTS MADE IN THE ORDINARY COURSE OF BUSINESS

7KH &RXUW ILQGV WKDW -DFXJ]L GLG QRW VHDUFK U
³IUHVK H\HV ' -DFXJ]L GLG QRW SURGXFH GRFXPHQWV P
&RXUW ILQGV WKDW -DFXJ]L NQRZLQJOTXDVHZLCHOLVQDDE
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~~,Q LWV -DQXDSUHVHQQV)3DFX]]L DIILUPDWLYHO\ UHSU~~

~~GRFXPHQWV UHJDUGLQJ RWKHU LQFLGHQWV XEVSURPRQ~~
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ULJKW WR KDYH WKHLU FHDSOM&OHDULQDHY/SUHLGLW,WRXVOZARUV
QRWLQJ WKDW JLYHQ WKH WDUJH\WQGHDPWKWDXSEKLVFRPHVR
LQYROYHG LQ RWKHU LQFLGHQWV KDYH VLQFH SDV\HG
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PLVFRQGXFWDZDFX]]LDQIRZUQDQFRQGXFWHGLQYDOLC
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')DFWRU)RXU :KHWKHU DQ\ (YLGHQFH KDV %HHQ
&UXFLDO HYLGHQDFHXQDVLZEDMNEORDWH VROG DQG PDU
,Q D FDVH ZKHUH VLPLODU LQFLSHUWRQZLVWQDEK\GDDWKD
LQ ZLWQHVV PHDFX]]LHVVDGWH 'LVFORVXUHV FRQWDLQH
ZKR VOLSSHG DQG I3ODLQWDIHDZHQ\HVGXESULYHG RI WKH
WKR\H VOLSLDQGFDOONVXOWWRQ-DEMXU\TV GLVFRYHU\ W
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VHYHUH VDQFWLRQ RI VWULNLQJW-DRQJQLTLV\$QKZKSUVRSH
VDQFWLRQ LV QDUURZO\ WDLORUHG WR DGGUHVW WKH H
WR FRQGXFWSURSHUVGLVNYFLVHFKDDQFWLYRCHQWLZDUXOSUH
QRW HOLPLQDWHQW\VLWLJDWH WKH S,UHMR&OGHQRWIE
UHTXLUH 3ODLQWLIIV WR H[SHQG DGGLWLRQDO WLPH D
PLVOHDGLQJ DQG LQFRPSOHWH GLVFRYHU\ WR SUHSDUH
)DFWRU 6WKH6H6DQFWLRQV 8QIDLWO\ 2SHUDWH
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7KH &RXUW ILQGV WKDW -DFX]]L LV GLUHFWOYKHVSP
IDFW WKDW -DFX]]L GLVFORVHG WKH GRFXPDQWWDWDELV
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LWV RXWVLGH FRXQVHO DERXWHYDQW-DRFXJDRLOLWVVRX
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HYLGHQFH LKDEKRELVHQXW EH DVVXUHG WKDW WKH UXO
EH IROORZHG FRPPXQLW EH DVVXUHG WKDW WKH MXGLFLDO
1R SDUW\ VKRXOG EH DEOH WR IUXVWUDWH OHJLWLPDV
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Attorneys for Plaintiffs

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 Attorneys for Plaintiffs

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VXEPLWWHG WKHLU 5HSO\ WR -DFX]]L¶M RYQHGHQVPEHUA +H
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+HDULQJ WKH 2SSRVLWLRQV WKHUSURWDRG WQHVRUFDK
&RXUW DOVR FRQVLGHUHG WKH SURV FONDGLQJV DQG

\$IWHU IXOO WKRURXJK DQG FDUHDLQFRQWKGH&RXU
WKH IROORZLQJ)LQGLQJV RI)DFW DQG &RQFOXVLRQV
IDFWXDO DQG OHJDO DQDO\VLV SUHVHQWHG E\ 3ODLQV
ILOHG 1RY DQG WKHLU 5HSDORVQQGXSSRHW RLOH

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VDQFWLRQV LQ WKH ILUVW LQVWDQFH ZH ZLOO QRW VX
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,Q UHYLHZLQJ WKH HYLGHQFH SUHVHQWHG DQG UHO
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VWHS WKURXJK GRODQGWKH LQVWUJZDQDQWLDW IDOV
)HEUXDU\ 6KHUU\ ZDV LQ KHUWLD FXJDQDQW MKD

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HYLGHQFH QXPHURXV SULRU SOHDGLQVSWQXPHUWQV L
GLVFRYHU\ DQG UHVRQWHLWLRQHQWRFHV DQG DPHQ
WUDQVFRQVSHFWLRQ RI YROXPLQRXV HPDLQFRPP
WHVWLPRQ\ H\WHQVLYH EULHILQJ HQDGSDQVFRQWKGH
WKURXJKRXW WKHVH SURFHGHGLQJZUGHVQVODQQRWSEHF
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GUDLQ DQG EHFDPH ZHGJHG LQ VXFKQG ZDFNWSW YQBLZ
WKDW 6KHUU\ ZDXEWEDSFSYHUGULQGDKH W6KHUU\ ZDV GLVFR
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DOWHUQDWLYH UHOLHI DQG DIILUPDWLYHO\ FOHDUO\
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7KHUH ZDV QR OLPLWDWLRQ WR 3V\HULVXDG R-DFX]]LQZDL
SURGXFH LQIRUPDWLRQSHURODLQHQWR HYHQ D7KSLQZFK
UHTXLUHG -DFX]]L WR SURGXFH VXFK\$GGEWRQDWOE\ \$X
OLPLWDWLRQ WR 3FODLPV' RU LQFLGHQWVWZPXQHHDW
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SULRU LQF1ZHQDQ D VHDUFK EDVHG RII RI WKH \$DZHP

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\$IWHU WKH -XO\ 3ODLQWIDUWQHUYHG DGGWLWRQDO

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FRPSOLHG ZLWK &RPPLVVLRQHU %XOOD\$RFXPHQWWRLV

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6HH 5SWU IV 7U RI +UJ \$XJ V(YLGHQWLYDURXVEDUDQWHELV
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RICHARD HARRIS
LAW FIRM



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VKH ZDV UHTXLULQJ -DFX]]L WR VHRUPFKWDROO SLOWEODW
HPDLO V\VWHPDVEO\ LW ZDV XSRQ -DFX]]L V UHTXHVW IF
FRQFHUQV DERXW WKH SRWHQWLDO HEDUFGHORIIRUPDFROO
&RPPLVVLRQHU %XOOD PDGH LW DEEDGDQVXGFGHDOGW
ZDV UHTXLUHG WR FROUWKLDOOJ GRXUQPHQWVREUGHQWUG
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\$GGLWLRQDOO\ WKHDFX]]LWIXDOOGVZQWKDUVWRDFXWJLHVR
IURP WKH RUGHUV E\ ILOLQJ D 3HWKWLWRQ 1IRYDGLVXSU
-DFX]]L V RZQ GHVFRULSHWLRLQILWQH3+DWXWJL RXOODK RZQ
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DQG UHJDUGOHVVRRSODQWLPILOMEDDLPW RI GHIHF
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-DFX]]L V IDLOXUH WR GLVFORVH WKH 3XOOHQ 'HDWK
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5REHUW 3XOOHQ 3ZDQW>HG@ WR WDNH VOXEJ DQ DFDX]]L RQ
&RXUW ILQGV WKDW -DFX]]L V QDODRZ' LQVPHVWR WLO
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U H I H S H U Q R W L Q F L G H Q W V L Q Y R O Y L Q J E R G L O \ L Q M X U \
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GHDWK)RU H[DPSOH D 'H F H P E H U Q Q L V R G P Z L O I U S U P L R
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IULHQG KDV VOL: SISJHGLQKWLQGRPS SODLQW D ORW
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SDVVHV UHVXOWV LQ ZLWQHVV PHRRXUHV FRGLQDLQBSX
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VHYHUH VDQFWLRQ RI VWULNLQJ DFXV]LWKH\$QVZBHUDV
VDQFWLRQ LV QDUURZO\ WDLORUH WR DGGUHVV WKH
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Attorneys for Plaintiffs



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

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ORWLRQ WR 6WULNH 'HIHQGDQW -DQXKQV, \$F\$QVEZ DU- D
5HSHDWHG &RQLQXRXV DQG 3%ODQWQWV L VLFURVW UQRV
7KLV &RXUW GHQLHG 3ODLQWLIIV ILUVW ORWLRQ WR 6
2Q -DQXDU\ 3ODLQWLIIV ILOHGH DQSDQZHG
\$QVZHU IRU 5HSHDWHG &RQLQXRXV 3ODQWQWV DQW DQW
ORWLRQ WR 6WULNH 3ODLQWLIIV 5HQHZHG ORWLRQ HWRUHWWK
+RQRUDEOH &RXUW RQ)HEUXDU\ IIV 5HQHZHG RQRWL
2Q 0D\ 3ODLQWLIIV ILOHGV 3ODLQWLIIV UHR
5HQHZHG ORWLRQ WR 6WULNH 'HIHQGDQW DFX]]LORV
5HFRQVLGHUDWLIIV ORWLRQ IRU 5HFRQVLGHUDW
+RQRUDEOH &RXUW RQ -XO\ LDKLV KSDULV JR BQH
ORWLRQ IRU 5HFRQVLGHUDWLRQ 3ULRU WR WKH (YLG
ILOHG 3ODLQWLIIV ORWLRQ WR ([SDQ 6FRSHV RI (YLG
OLQXWH 2UGHU WKH 3ODLQWLIIV ORWLRQ (WBG(HSDQGL
7KLV &RXUW FRQGXFWL BGDW LIRXU -GDIU]]Q DRRQ R30
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VXEPLWWHG WR WKH LQVSHFWWRBQ 7KH &RXUW FDUHIX
(YLGHQWLDU\ +HDULQJQFORXGLQJ DQDHSBHQGLFKMUDQ
FRQVLGHUHG 3ODLQWLIIV ORWLRQ DQG ORWLRQ W



+HDULQJ WKH 2SSRVLWLRQV WKHUSDUWLHGRVQKHXRI
&RXUW DOVR FRQVLOHGHGQJWKHOSMSHFDWRQILOHLQ

\$IWHU IXOO WKRURXJK DQG FDUHIXO FRQVLGHUD
WKH IROORZLQJ)LQGLQJV RI)DFW DQV &REWDXQWROV
IDFWXDO DQG OHQWGHGDEDOYDLQSGHLOWLDUWKHIDWLQJ
ILOHG 1RY DQG WKHLU 5HSORVQQGXSSRHW RLC

\$OO ILQGLQJEWRIKIDFWLGHDVXVSRWWBG BYLGHC
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6XSUHPH &RXUW QRWHVWKMDHYDGHQZRXQHQRWRKDYWH@L
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,Q UHYLHZLQJ WKH HYLGHQFH SUHWHQLWHGHBDQGLRQ
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1HYDGD FDVH OXZVLGHFLVLRQJQRWHQ3ODLQWLDWJ &O
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UHVXOWHG LQ WKH GHDWK RI 63KHLLQW&XIQQKVRQ DOK
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VWHS WKURXJK GRUDQG WQHLQWGHFLZDWHG VHQWW LQV
)HEUXDU\ 6KHUU\ ZDV LQ KHQWDFXJDOODON MQ
GHIHFWLYH GHVLJQ RI WKH WXE UHGHFUKLQVOIRSSMQHRW
GUDLQ DQG EHFDPH ZHGJHG LQ VXHQG ZDFNKS WYGBL

7KH &RXUW QRWHV WKDW LQ UHDFKQJRQKPLQQRK/HQRRQFWQW Q
SULRU SOHDGLQJV QXPURXV SUZLWWHHQVFRVBDQVFDQSWHV
QRWLFHV DQG DPHQGPHQWV WKHWHQ LQGHSHFWLVRQRIRWYDQV
FRPPXQLFDWLRQV IRXU GD\ RI OLDBQWBDVLPKRUHHWHQVQH BQ
WKH SDUWLHV WRIRKGLQW WQVHDSUNQRWKS MF2ULGHU VKDOO Q
RPLVVLRQ RI FRQVLGHUDWLRQ E\ WKH &RXUW



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UHOHYDQW GDWDEDVHV KDG EHHQDW G RMDRDKH OYDQVG GR
KDG EHHQ GLVFORVHG 2Q 0DUFK FRYHUD GVLN S XRMHM
LQYROYHHPHQW -DFX]]L UHYHDOHGQW KDW WDWWW ZUWLKQYRC
G\LQJ DIWHU EHFRPLQJ VWXFN LQHDG LDFXO]R V XUXE 3%DLV
DQ HYLGHQWLDU\ KHDULQJ ZKLFK VKULW JRDQWH GU DQV
KHDULQJ -DFX]]L URQXEDQJEKXDG USYLG HRQ FSD RH VR WIK HI
LQYROYLQJ -DFX]]L ZDON RIXQW XIESDQV KIS MYKLGN QMSHD UP
GHHUPLQH ZKHWKHW -DFX]]L L BQM DSSURSULDWH %DUQ
IROORZLQJ IDFWXEDUMLQGQGVVW WDW XWULNLQJ -DFX]]L
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QR SULRU LQFLGHQWV 2Q 0D\ UVW 3DWLQWLDWGHU
5HTXHVWV IRU 3URGXFWRQ -DFX]]L RFXP 3ODLQWLIIV UHT
ZKHWKHU -DFX]]L KDG HYHU UHFHODLQ B WLVFHQRIRDXW
-DFX]]L ZDON LQ WXE ,Q LWVDSQV 3HVS RQR HDVWHLUBODI
WR RQO\ EH DZDUH QDWLZRQZQG HG HSKL QVZLG HLQ WIDGHQW
FODLPHG WR NQRZ DERXW ZHUH WDVHLLQYRDQWL QJLW KH

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3ODLQWLIIV ZKLFK VXPPDUL]HV WKH GERDORQWVRI WIKH JRIXUHW DQD
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GHVFULEHV

6HH 3ODLQWLII 7DPDQWLQLV VVDQWW -BFX,QWHVHURYBWRDLHV
DGPLWWHG DV (YLGHQWLDU\ +HDULQJ ([KLELW
6HH 3ODLQWLII 67DVPDRQWHLXHW IRU 3URGXFWRQ LRIGBFXHGHQW
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6HH -DFX]]L V)LUVW 5HVSROVGHWWRI 3QWHLQRIJDVDRDQHWL QM VYH
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-XQH SUHYLRXVLOGHDQPLDULYKHGEDUMLQJ



ZKRP 3ODLQWLIIV ~~Q & R X L Q V H O~~ ~~U X S U H O W W G - D B X Y J L L W D~~
GLVFORVH DQ\ ~~R M K M H Q S W L R Q F L R G H Q R V E V - D F X J J K R P Z Q U E H S O U~~
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FKDOOHQJHG -DFX]]L ~~¶ V Z U L W W H Q G L O V R D G G \ F U R P S S O R Q W~~
UHSUHVHQWHG WR 3ODLQWLIIV ~~W K D W G D W D F E D Q G X F W R G L~~
VLPLODU LQFLGH ~~Q W M U Y 7 K H Q P H D E X J G~~ 5HVSQRQVHV WR ,Q

7KH \$PHQGHHG 5HVSQRQVHV DJDLQ VWDWH ~~S G W K R V C~~
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,Q)HEUXDU\ RI VWLOO LQ GLVH/HQDMIL ~~R Q Z L G W~~
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3ODLQWLIIV DQG -DFX]]L DJUHHG X-~~S F X J J L Z W R W X W L O L J H I~~
2Q \$SULO -DFX]]L VHQW D OHWWHU WR 3ODLQW
XWLOLJLQJ WKH DJUHHG XSRQ VHDFK WHUPV 7KH OH
VHDFK IRU SUL ~~R U W Q F L G H Q W F K W H U P V W R Q K S U R S B U F K~~
DQG QR UHVSQRQVLYH GRFXP ~~S H Q W K R Z I Q U E H G I R Z F R - D F X J J G P~~
IDFWV LQ LWV ~~S S U L H O U~~ WR 3ODLQWLIIV

6HH -DFX]]L ~~¶ V~~ \$PHQGHHG 5HVSQRQ ~~W H H W R I 3 O D L Q W L R I J D W R D Q W V Q M T~~
SUHYLRXVO\ ~~(D G G H Q W H G U D P K H E D W L Q J~~
6HH (PDLO FRUHH ~~V S R Q K Q D F H E R O D P L Q T & O R Z O U G H Q M T~~ GDWHG
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HPSKDVLV DGGHG



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5LVN ODQDJHPHQW WLWHDG MDWD \WWKH MHTXHQYRLSELG
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LQGHSHQQGHQWO\ GLVFRYHUHG WZRVXDEVFRFBQDLQQQU
IURP WKH XVH RI D -DFX]]L ZDON MCRVGEFORMFDWKH V
LQFLGHQWV YLD 15&3 GLVFORVXUHV V URUSGRHSRHLW
3ODLQWLIIV ILOHSHD'IRHQLDQWR-BRX]]LQV \$QVZHU

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(YHQ LQ WKH IDFH RI D PRWLRQ WRUWHUQWHQJ DFX
3ODLQWLIIV DQG ELQJDDPWVUMBUMKHQVRXUW DV ZHOO
-DFX]]LQV \$QVZHU 3ODLQWLIIV DUJXHG WKDW WKH XQC
-DFX]]LQV EDG IDLWK GLVFRYHU\ FRQGXFWLQHG-DFX]]LH

2Q -XO\ -DFX]]L ILOHG DQ LQSWV LQVLRQ V
-DFX]]LQV \$QVZHU 6HH 3ODLQWLIIV D & R]LQD I%LUH
PXOWLSOH WLPHV WKDW LW KDGV BGRG FSLG DQ QFLGH
QR SULRU LQFLGHQWV DQG WKDW EW]]K DGDQRWWZHWIRK
VWDWHPHQWV WR WKH &RXUW

€ 3,Q VDFX]]L KDV SURGXFHG DOO UHOHYDQW HYL
LQFLGHQWV '

€ 3)XUWKHUPRUH 3ODLQWLIIV VWDWHDU \$WKDWKLD FS
LV DZDUH RI SULRU VLPLODU LQFLGHQWV LKQFKH
7KLV WRR7KUBODUH QR RWKHU DFX]]LUKIDFZGWQ
QRWKLQJ '

6HH 3ODLQWLIIVQ ORWLRQ WR 6DU-DFX]]LH I%QVQW \$QVZHU\ ,QH
([KLELW
_G DW HPSKDVLV DGGHG
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PLVUHSUHVHQQW DWLRQV FKH JD URGVQR IDVGV WKVH DUVFKW
SULRU LQF1ZHQVQ D VHDUFK EDVHG RII RI WKHQ SDZHD
LGHQWLILHG QRWKHLQH V' QRWKLEOH KDYHDWHH DUFKHG DQ
SRVLWLRQ WKDW WKHMHV DUDWQH D WV ZHUH DOO IDOVH

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2Q 6HSWHPEHU -DFX]]L ILOGHU ORVLRQ ORU3 OD
DQG PDGH VLPLODU PLVUHSUHVHQQW DWLRQV WKDW QF
FRPSOLHG ZLWK &RPPLVVLRQHU %XQVDFRFXUDWWR V
KDV FRPSOLHG ZRWGHWKDV &SRUWV FHG UHFRUGV VKRZ
SUHVHQQW ' 3 WKH DQGSORRU FRQVGHQWV RI SHUVRQDO
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2UGHU WKDW LW SHUIRUPHG D VHDUFKHQW WKDW WKH
1RQHWKH OHVV &RPPLVVLRQHU %XOODKHU GHUHG
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ZLWK IUHVK&RPPLVVLRQHU %XOOD DOVR RUGHUHG W
SUHSDUHG LQ WKH RUGLQDU\ FRXUDV H DGH XWLQEVROX&

6HH 5SWU V 7U RI +UJ \$XJ V(YLGHSUHYLRXVOD UDWL W WHEG
HPSKDVLV DGGHG
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SUHYLRXVO\ DGLPHQWLDU\ +HDULQJ H KHEZWUH QR SUH LQF
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VKH ZDV UHTXLULQJ -DFX]]L WR VIRUFDKWDRO SRWEOO
HPDLO V\VWHPDEO\ LW ZDV XSRQ -DFX]]L HVLUHQHFKXJW U
FRQFHUQV DERXW WKH SRWHQWLDO HEDUFKH RI IRUPDLRO
&RPPLVVLRQHU %XOOD PDGH LW DEJEDDOFVOXGFCHDOQGV
ZDV UHTXLUHG WRVVFHDQWDLQDQJVBKFKPHQWV FUDHW
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-DFX]]L V RZQ GHVFULEHWRLOQLWKKHWDWKRJQ MKOZVXW
RUGHUV -DFX]]L V 3HWLWLRQ DFXOZWHO\ GHVFULEHV

>7@KH GLVWULFW FRXUW AULGHU BGOVEXRQD\WR
LQMXU\ KRZHYHU VOLJKW RU KRYZPHGHUO GRMVL
-DFX]]LŠ ZDON LQ WXE UHJDUGOHVV RILKQZ W
FRQVXPHU SLQFKHG D ILQJHU FORVLQBXCKG ERH
VXEMHFW WR WKHFRKBUJWVKHGSULLQIRVHDLVHQQV
-DFX]]L V FXVWRPHUV

> 7 @ K H G L V W UHTXLUHFRDFX]]L WORMHGH DQ
LQFLGHQWanyFRBDOOLQMXU\ DW DOO KRZHYHU V
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DQG UHJDUGOHVVRSSODLQWLPILOMDQDLPW RI GHIHF

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PDLO FRUUHVSRQGHPDLQ %X3LDLQWQ IWK 6 LVFRYHUHG
ZKR PDGH QXPHURXV FRPSODLQWV WR R-IDFKXJUL ZDORXV
3ODLQWLIIV ILOHG DR56WUZN6 DRVLZQW KK-DWG -DFXGJHC
OV &KRSSHU DV ZHOO DV RWKHU HYLGHQFH UHJDUGLQ
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2Q 0DUFK WKH first & R X Q WWHQ ZUHGHHU 6 MDHQLDUD G
RQ WKH PDWWHU 7KH 0DUFK H OS.LQXWHH 2 UG R UL
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LQWHQWLRQDO YLVFDYWRURQ2URGH D Q\R 6 GF RRG XFDW PL 3 V E
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,Q UHVSRRQH WR WKH &RXUW 1V 0DUFK 0LQXV
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HPSKDVLV DGGHG

6HH ([WR 3ODLQWLIIV1 0RWLRQ IRU 5HFRQVLGHUDWLRLQ

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3DJH RI

7KH &RXUW DGRSWV 3ODLQWLIIIVTVXQHQRFRRWKHZWWHUFGDQPLVGHRG
HSLVRGHV ZDUQLQRFFDRLRQLVFDMYTHQRM BRPSPORDWKWH U Z R
-DFXJJL WR NQRZ DERXW D GHIHFW LQ WKH ZDON LQ 7XE
1RWDEO\ DW W KDG VDLRH PWWKE MDREHHUV WLQJ IRU 2
6HH 7DEOHV 6XPFDL'RLXP3HQWL'G I Wk wkw pql ug 15&3 6XS SOHPH
3ODLQ(WLL ELTW

:H KDYH VHQW RXW EDWK PDWV WRRSPXWU V QE MFKDIX
VOLSSHG DQGGZMBHXDHUWKH WXE

\$ -XO\ H PDLO FKDLQ DOVR SULRU UW KHR 6XKHM

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FRPSODLQLQJ DERXW WKH VOLSSHULQSHV\$SDUG ODFN R
FKDLQ DOVR SULRU WR &XQQLVRQVVRFRMDLQDPHGLQRQ
ZKR FDOOHG WR FRPSODLQ WKDWFKH+HOLQSRUPBGGDFIX
ZLOOLQJ WR JHW D ODZ\HU \$I'WHPHLE LV GRWLWDNEX
3ZH KDYH D DQGLVVXHXH WR WKH FLUFXPVWDVQESVLQMYX
WKLQ QHGGV «WR\$HXQHWWOHHGPDLO FKDLQ SULRU WR
36HUUYLFH LVVXHV RQHG WR D BKHVZKRH BHFDPWRQGVXFN
7KH VDPH HPDLO PHQWLRQHG 'DYLQ *UNWQZINOLOQ ZKRH V
WZR KR\$UWHFRQG H PDLO FKDLQ VKRZHG WKDFWOOJWKU
GHSDUWPHQW 6LRLOHWORXWKDW VDPH H PDLO UN1HUH
ZKRVH SDUWQHU VOLSSHG LQ WKH WMERWYFVWKHGRRW
RXW

7KH &RXUW ILQGV WKDWVWKHWHOBREOVHQQGF&PWHQ
VKRXOG KDYH EHHQ YROXQWDULO\ GLVROBWHSRQXUVW
GLVFRYHU\ UHTXHVWV 7KH &RXUW ILQGVORWKDWKDFM
\$GGLWLRQDOO\ WKHD&XJLWUHLQGHVQWKO VWRVBOISLQWLI
&RPPLVVLRQHU WKLQ &RXUW DQG WKHGRFXDQGVXSLK
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Attorneys for Defendant/Cross-Defendant
Jacuzzi Inc. doing business as Jacuzzi Luxury Bath

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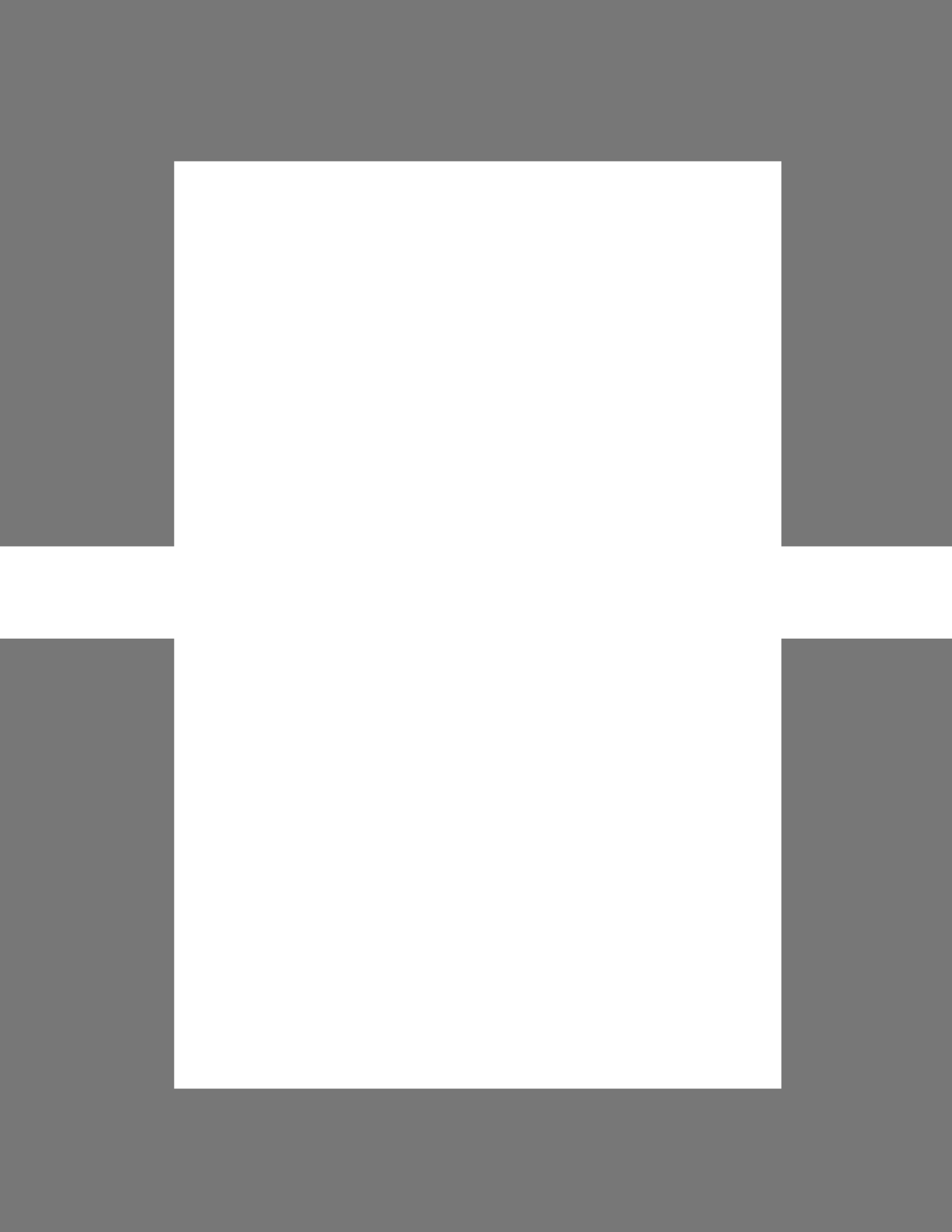
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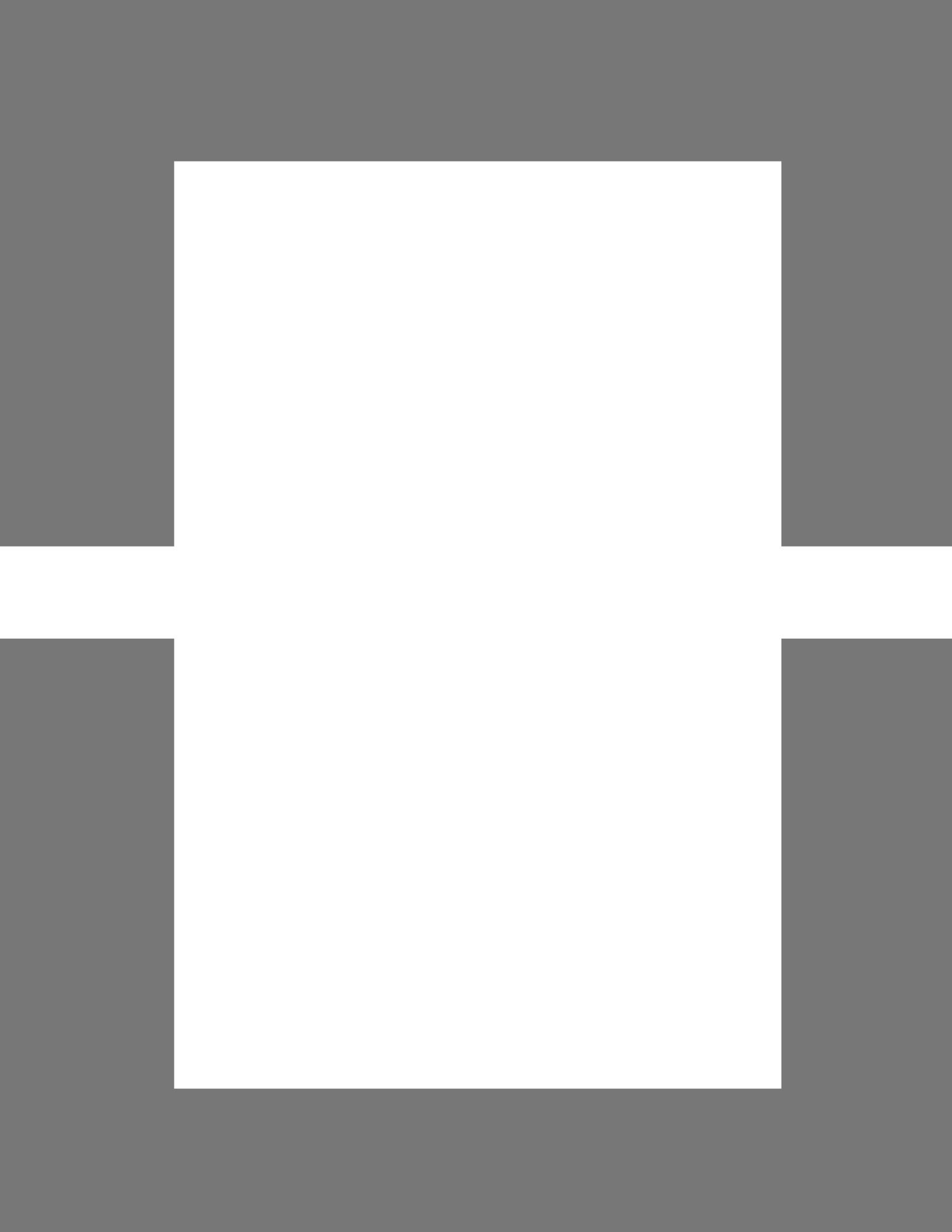
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0U 7HPSOHU ZDV LQYROYHG LQ 3TXDUWV BDFN
\$V KH WHVWLILHG DW WKH (YLGHQWLDU\ +HDUL
ZRUNHG ZLWK RXWVLGH FRXQVHOULQ7 HPSOHRQ
WHVWLILHG WKDW DOO SURGXFWLRQV ZHUH GR
WKDWV BDFN GHFLVLRQV ZGFXHRRQWKHPGB
ZLWKKROG WKH 3XOXHQ0PDWVSOHU DQG -DFXJ
LQYRQHGDFXJ]]LTV GLVFRYHU\ FRQGXFV LQ WKLV

4 :KDW FRXQVHO"
\$2XU KRXVH FRQVHO RXWVLGH FRXQVHO , WKLQN KLV Q

6HH5HFRUGRU\VLQDU\ DWWDFKHGLHWWRBDLQWLII\DVORV

4 :HOO , P WU\LQJ WR JHW DQVZHUV WR LGHWWNQRZ DERX
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\$,Q UHJDUG WR UHVSRRGLQJ WR D GLVFRYHU\ UHTXHVW"

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\$ 1RERG\ LW VKRXOG EH PH

4 6R \RX UH WKH RQO\ JX\"

\$, ZDV WKH RQH WKDW LGHDORXZLVW LQ UHVSRRGLQJ WR
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4 8OWLPDWHO\ ZLWKRXWHJWWKQDQWRIDQH FRPPXQLFD
KDG WKH GHFLVLRQ DV WR ZKDW BDFNWWKDRW DEXQRY
GHFLVLRQ RU ZDV WKDW 6QHOO :LOPHU DQG RXWVLGH FR

\$ \$OO SURGXFWLRQV DQG GLVFRYHU\ ZQWKRXFWLGHKDFR
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4 2ND6RV D XQGHUVWDQG \RXU UHVSRRQH WKH GHFLVLR
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PLVLQWHLRQJHWRP LWV RXWVLGH FRXQVHO EHFDXVH -D
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WKDWKDWVGLHG QRW LQIRUP -DFX]]L WKDW -DFX]]L ZDV U
LQYROYLQJ LQMXU\ RU GHDWLQ WKEDWLQCPJ WR WR-SEXJYIH
7HPSOKHUV DOWHVDGLDHFENJLHDKDWKDW LW ZDV UHTRULPDVLRB
6LPLODUO\ -DFX]]L FDQQRW QRZ DUJXH WKDW RXWVLG
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\$1R , PHDQ ,RGLGQMDQ WKHOKRRESBQ\ B LG QRW VHUYH D
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Attorney for Plaintiffs

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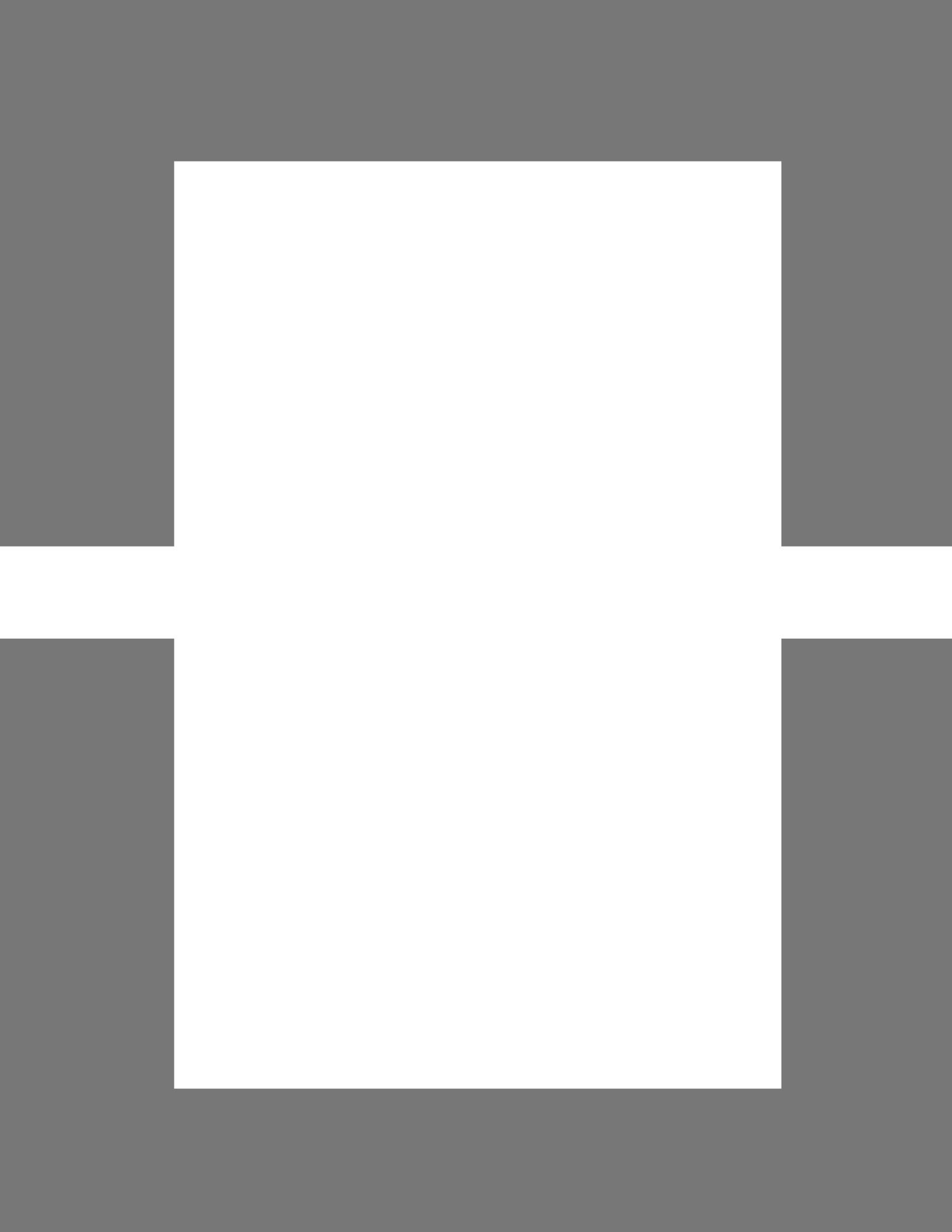
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Attorneys for Defendant/Cross-Defendant Jacuzzi, Inc. dba Jacuzzi
Luxury Bath

/s/ Catherine Barnhill

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Attorneys for Defendant Jacuzzi Inc.,
dba Jacuzzi Luxury Bath

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RU ~~currently~~ ZLWK WKH PRWLQJ IRU FODULILFDWLRQ
ZDLYHU GXULQJ WKH VHFRQG SKDVH ~~from making~~
such absolute findings or reaching definitive conclusions ~~DERXW~~ GLVFLVLRQ
UHJDUGDW WRDQGRZORRSHUIRUP VHDUFKHV 8QOH
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DGYLFH RI FRXQVHO LQ WKH GHFLVLRQV LW PDGH D
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3ODLQWLIIVDU DQG FRQSe\Q156QJ HYLGHQFH

7KH GRFXPHQWV DQG RWKHUHQGLDQFH]]LWKBWOW
SURGXFHG HDUOLHU LQ WKH OLWLJDWLRQ UHODWH

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DV D VDQFWLRQ 1RQH RI WKH HYLGHQFH DW LVVXH
OLNHO\ WKDQ QRW 3ODLQWLIIV KDYH EHHQ LQ SRV
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3ODLQWLII UHTXHVWV WKDW ³DOO GRFXPHQWV
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