



ACOMP  
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**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

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

**Plaintiffs,**

**vs.**

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

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

**FOURTH AMENDED COMPLAINT**

**Defendants.**

COME NOW, Plaintiffs 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 and heir to the Estate of SHERRY LYNN CUNNISON, Deceased; and DEBORAH TAMANTINI individually, and heir to the Estate of SHERRY LYNN CUNNISON, Deceased by through their attorneys BENJAMIN P. CLOWARD, ESQ. and for their causes of action against all Defendant's, and each of them, alleges as follows:

## I.

## PARTIES AND JURISDICTION

1. That at all times relevant to these proceedings, Plaintiff, ROBERT ANSARA the Special Administrator of the Estate of SHERRY LYNN CUNNISON, was and is a resident of Nevada.

2. That at all times relevant to these proceedings, SHERRY LYNN CUNNISON, deceased (hereinafter "SHERRY") was a resident of Clark County, Nevada.

3. That at all times relevant to these proceedings, Plaintiff, ROBERT ANSARA, as Special Administrator of the Estate of SHERRY LYNN CUNNISON, Deceased was and is a resident of Clark County, Nevada.

4. That at all times relevant to these proceedings, Plaintiff, MICHAEL SMITH, Deceased heir to the Estate of SHERRY LYNN CUNNISON, was and is a resident of Nevada.

5. That at all times relevant to these proceedings, Plaintiff, ROBERT ANSARA the Special Administrator of the Estate of MICHAEL SMITH, Deceased, and heir to the Estate of SHERRY LYNN CUNNISON was and is a resident of Nevada.

1           6.     That at all times relevant to these proceedings, Plaintiff, DEBORAH TAMANTINI  
2 (hereinafter "DEBORAH") individually, and heir to the Estate of SHERRY LYNN CUNNISON, was  
3 and is a resident of the state of California.

4  
5           7.     That at all times relevant hereto, upon information and belief, Defendant, FIRST  
6 STREET FOR BOOMERS & BEYOND, INC., (hereinafter "FIRST STREET") is and was a foreign  
7 Corporation doing business in the State of Nevada.

8           8.     That at all times relevant hereto, upon information and belief, Defendant, AITHR  
9 DEALER, INC., (hereinafter "AITHR") is and was a foreign Corporation doing business in the State  
10 of Nevada.

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12           9.     That at all times relevant hereto, upon information and belief, Defendant HALE  
13 BENTON, was and is a resident of Clark County, Nevada.

14           10.    That at all times relevant hereto, upon information and belief, Defendant  
15 HOMECLICK, LLC., (hereinafter "HOMECLICK") is and was a foreign Corporation doing business  
16 in the State of Nevada,

17  
18           11.    That at all times relevant hereto, upon information and belief, Defendant JACUZZI  
19 INC., doing business as JACUZZI LUXURY BATH (hereinafter "JACUZZI") is and was a foreign  
20 Corporation doing business in Clark County, Nevada,

21  
22           12.    That at all times relevant hereto, upon information and belief, Defendant, BESTWAY  
23 BUILDING & REMODELING, INC., a Domestic Limited-Liability Company; (hereinafter  
24 "BESTWAY"), doing business in the State of Nevada.

25           13.    At all times mentioned, Defendant WILLIAM BUDD was and is a resident of Clark  
26 County, Nevada and was the business owner of Defendant, BUDD'S PLUMBING an unincorporated  
27 business, (hereinafter "BUDD and BUDD'S PLUMBING"), and doing business in the State of  
28 Nevada.

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II.

**GENERAL FACTUAL ALLEGATIONS**

14. At all times mentioned, Defendant FIRST STREET FOR BOOMERS & BEYOND, INC. upon information and belief was and is a retailer of home improvement products and unique gifts and the manufacturer, supplier and/or installer of the Jacuzzi walk-in tub, being utilized by the deceased, SHERRY in her residence.

15. At all times mentioned Defendant, AITHR DEALER, INC., upon information and belief was and is was a general contractor supplier and/or installer of the Jacuzzi walk- in tub, being utilized by the deceased, SHERRY in her residence.

16. At all times mentioned Defendant, HALE BENTON was an employee of AITHR DEALER, INC., and upon information and belief was the consultant and/or sales person of the Jacuzzi walk-in tub, being utilized by the deceased, SHERRY in her residence.

17. At all times mentioned, Defendant, HOMECLICK, LLC., upon information and belief was an online retailer of home improvement products primarily as a retailer of bath and kitchen products and the manufacturer, supplier and/or installer of the Jacuzzi walk-in tub, being utilized by the deceased, SHERRY in her residence.

18. That Defendant JACUZZI INC. doing business as JACUZZI LUXURY BATH through its subsidiaries, upon information and belief was a global manufacturer and distributor of branded bath and plumbing products for the residential, commercial and institutional markets. These include but are not limited to whirlpool baths, spas, showers, sanitary ware and bathtubs, as well as professional grade drainage, water control, commercial faucets and other plumbing products, and the manufacturer, supplier and/or installer of the Jacuzzi walk-in tub, being utilized by the deceased, SHERRY in her residence, and who marketed its product to the elderly and individuals who were overweight or had physical limitation.

1           19.     At all times mentioned Defendant BESTWAY BUILDING & REMODELING, INC.,  
2 was a general contractor and the manufacturer, supplier and/or installer of the Jacuzzi walk in tub,  
3 being utilized by the deceased, SHERRY in her residence  
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5           20.     That Defendant, WILLIAM BUDD, individually and as BUDDS PLUMBING upon  
6 information and belief was the manufacturer, supplier and/or installer of the Jacuzzi walk-in tub, being  
7 utilized by the deceased, SHERRY in her residence.

8           21.     That the true names and capacities, whether individual, corporate, association or  
9 otherwise of the Defendants, DOES 1 through 20 and/or ROE CORPORATIONS I through 20, and/or  
10 DOE EMPLOYEES 1 through 20, and/or DOE MANUFACTURERS 1 through 20 and/or DOE  
11 INSTALLERS 1 through 20, and/or DOE CONTRACTORS 1 through 20, and or ROE  
12 SUBCONTRACTORS 1 through 20, inclusive, are unknown to Plaintiff, who therefore sues said  
13 Defendants by such fictitious names. Plaintiff is informed and believes, and thereupon alleges, that  
14 each of the Defendants designated herein as DOES and/or ROES is responsible in some manner for  
15 the events and happenings herein referred to, and in some manner caused the injuries and damages  
16 proximately thereby to the Plaintiff, as herein alleged; that the Plaintiff will ask leave of this Court to  
17 amend this Complaint to insert the true names and capacities of said Defendants, DOES 1 through 20  
18 and/or ROE CORPORATIONS 1 through 20, and/or DOE EMPLOYEES 1 through 20, and/or DOE  
19 MANUFACTURERS 1 through 20 and/or DOE INSTALLERS 1 through 20, and/or DOE  
20 CONTRACTORS 1 through 20, and or ROE SUBCONTRACTORS 1 through 20, inclusive, when the  
21 same have been ascertained by Plaintiff, together with the appropriate charging allegations, and to join  
22 such Defendants in this action.  
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27           22.     That said DOE and ROE Defendants are the employees, manufacturers, designers,  
28 component part manufacturers, installers, owners, distributors, repairers, maintainers, warned for use,  
retailers, and/or warrantors of said defective product as set forth herein.

1           23.     Plaintiff is informed and believes, and based upon such information and belief, alleges  
2 that each of the Defendants herein designated as DOES and ROES are in some manner responsible for  
3 the occurrences and injuries sustained and alleged herein.  
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5           24.     Plaintiff is informed and believes and thereon alleges that at all relevant times herein  
6 mentioned Defendants, and each of them, were the agents and/or servants and/or employees and/or  
7 partners and/or joint venture partners and/or employers of the remaining Defendants and were acting  
8 within the course and scope of such agency, employment, partnership or joint venture and with the  
9 knowledge and consent of the remaining Defendants.  
10

11           25.     In October of 2013, SHERRY entered into a contract to for purchase and installation of  
12 a Jacuzzi walk-in tub.

13           26.     On January 27, 2014, the installation was completed and an installation checklist was  
14 completed.  
15

16           27.     Just over 20 days later on or about February 19, 2014, deceased SHERRY was in the  
17 Jacuzzi walk-in tub, when she fell down in the tub.

18           28.     Because of the dangerous design of the tub, SHERRY was unable to stand back up.

19           29.     Because of the dangerous design of the tub, SHERRY was unable to exit the tub.

20           30.     SHERRY struggled valiantly for several days trying to get up or exit the tub, but could  
21 not because the tub was so horribly designed.  
22

23           31.     On or about February 21, 2014 and after several unanswered telephone calls to the now  
24 deceased SHERRY, a well check was performed to check on her, which revealed that she was trapped  
25 inside the Jacuzzi walk-in tub and could neither get up nor exit the tub.  
26

27           32.     That SHERRY had been trapped in the Jacuzzi walk-in tub for at least forty-eighty (48)  
28 hours.

1           33. That even the firefighters and help that arrived were unable to safely remove her from  
2 the tub and broke her arm attempting to pull her up out of the tub.

3           34. Ultimately, because of the tub's horrible design preventing even trained emergency  
4 personnel from safely removing SHERRY from the tub, the firefighters had to literally cut off the door  
5 to remove SHERRY from the tub.  
6

7           35. That SHERRY was transported immediately to Sunrise Hospital where even after  
8 lifesaving measures were performed, SHERRY ultimately succumbed to her injuries and died.

9           36. That all the facts and circumstances that give rise to the subject lawsuit occurred in the  
10 County of Clark, Nevada.  
11

12                                   **FIRST CAUSE OF ACTION**  
13                                   ***Negligence as to All Defendants***

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

16           38. Defendants owed a duty to Plaintiffs, and others similarly situated, to ensure that their  
17 product, and particularly the Jacuzzi walk-in tub was properly functioning and safe for use by the end  
18 consumer.  
19

20           39. Defendants, and each of them, while in the course and scope of their employment  
21 and/or agency with other Defendants, negligently failed to failed to warn Plaintiff of safety hazards  
22 which resulted in SHERRY'S injuries and resulting death.

23           40. Defendants, and each of them, knew or should have known that unreasonably  
24 dangerous conditions existed with the Jacuzzi walk-in tub, being used by Plaintiff, namely the inability  
25 to get back up or exit the tub if Plaintiff fell.  
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1           41. Defendants owed a duty of due care to Plaintiffs, and others similarly situated, in the  
2 design, testing, manufacture, installation, assembly, marketing, instructions for use and warnings for  
3 the subject Jacuzzi walk-in tub.

4           42. Defendants breached their duty of due care by their negligent, careless, wanton,  
5 willful, and indifferent failure to act including, but not limited to:

- 6
- 7           a. The negligent and improper design, testing, manufacture, installation assembly,  
8 instructions for use and warnings for the Jacuzzi walk-in tub; and  
9
- 10           b. The failure to provide adequate, accurate, and effective warnings and instructions to  
11 owners, operators, and users of the subject Jacuzzi walk-in tub.

12                           **SECOND CAUSE OF ACTION**  
13                           ***Strict Product Liability Defective Design,***  
14                           ***Manufacture and/or Failure to Warn***  
                              ***as to all Defendants***

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

17           44. That upon information and belief, Defendants, and/or DOE/ROE Defendants, are and  
18 were a component part manufacturer, installer, owner, distributor, repairer, maintainer, warned for use,  
19 retailer, and/or warrantor of said defective product as set forth herein.  
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21           45. That the true names and capacities, whether individual, corporate, agents, association or  
22 otherwise of the DOE and ROE, are unknown to Plaintiff, who therefore sues said Defendants by such  
23 fictitious names. Plaintiff is informed and believes, and thereupon alleges, that each of the Defendants  
24 designated herein as DOE and/or ROE are responsible in some manner for the events and happenings  
25 herein referred to, and in some manner caused the injuries and damages proximately thereby to the  
26 Plaintiff as herein alleged; that the Plaintiff will ask leave of this court to amend this Complaint to  
27 insert the true names and capacities of said DOE and/or ROE Defendants, when the same have been  
28



1 ascertained by the Plaintiff, together with appropriate charging allegations, and to join such Defendants  
2 in this action.

3           46. That said DOE and ROE Defendants are the manufacturers, designers, component part  
4 manufacturers, installers, owners, distributors, repairers, maintainers, retailers, warned for use,  
5 warrantors of said defective product as set forth herein.  
6

7           47. That upon information and belief, Defendants, and each of them, sold the subject  
8 product and failed to warn Plaintiffs of the hazards of the use of the subject product.  
9

10           48. At the time of this incident, the product had a design and/or manufacturing defect that  
11 rendered the product unreasonably dangerous and potentially deadly.

12           49. The defect, which rendered it unreasonably dangerous, existed at the time the subject  
13 product and its component parts left the care, custody and control of the above named Defendants  
14 and/or ROE/DOE Defendants  
15

16           50. The Defendants and/or ROE/DOE Defendants, knew or should have known of the  
17 subject product's defect which rendered it unreasonably dangerous at the time of placing the subject  
18 product into the stream of commerce and failed to undertake measures to prohibit it from entering into  
19 the stream of commerce and into the hands of users in the State of Nevada, including warnings of the  
20 risks for product failure, proper use and maintenance of the product and proper inspection of the  
21 product for potential hazards and/or defects.  
22

23           51. That the subject product was defective due to Defendants, and each of their failure to  
24 warn of the potential dangers associated with using said product.

25           52. That said product was defective due to a manufacturers' defect, design defect, or defect  
26 due to lack of adequate warnings.  
27

28           53. That the Jacuzzi walk-in tub was defective as a result of its design which rendered the  
product unreasonably dangerous.

1           54. That the Jacuzzi walk-in tub was unreasonably dangerous and defective because it  
2 lacked suitable and adequate warnings concerning its safe and proper use which rendered the product  
3 unreasonably dangerous.

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5           55. That the Jacuzzi walk-in tub failed to perform in the manner reasonably expected in  
6 light of its nature and intended function, and was more dangerous than would be contemplated by the  
7 ordinary user, including SHERRY having the ordinary knowledge available in the community, which  
8 rendered the product unreasonably dangerous.

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10          56. That Defendants, and each of their failure to warn was a proximate cause of  
11 SHERRY'S injuries and death.

12          57. That said product's manufacturing and/or design defect was the proximate cause of  
13 SHERRY'S injuries and resulting death.

14          58. The Defendants and/or DOE/ROE Defendant' conduct was the direct and proximate  
15 cause of SHERRY'S injuries and damages.

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17          59. The Defendants and/or DOE/ROE Defendants are strictly liable to the Plaintiffs jointly  
18 and severally for the damages they have sustained.

19          60. That Plaintiffs have been forced to retain the service of an attorney to represent them in  
20 this action, and as such is entitled to reasonable attorney's fees and litigation costs.

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22                                   **THIRD CAUSE OF ACTION**

23                   ***Breach of Express Warranties as to as to Jacuzzi Inc., doing business as Jacuzzi Luxury Bath,  
24 First Street for Boomers & Beyond, Inc., AITHR Dealer, Inc., and Homeclick, LLC***

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

27          62. Defendants JACUZZI INC., doing business as JACUZZI LUXURY BATH, FIRST  
28 STREET FOR BOOMERS & BEYOND, INC., AITHR DEALER, INC., and HOMECCLICK, LLC,

1 and/or ROE/DOE Defendants, expressly warranted that the walk-in bathtub was free from defects and  
2 was safe for use.

3 63. Defendants breached the express warranties, and these breaches of warranty were the  
4 proximate and legal cause of the failure of the walk-in bathtub.  
5

6 64. Plaintiffs sustained injuries and damages as a result of the Defendants' breach.

7 **FOURTH CAUSE OF ACTION**

8 ***Breach of Implied Warranty of Fitness for a Particular Purpose as to as to Jacuzzi Inc.,***  
9 ***doing business as Jacuzzi Luxury Bath, First Street for Boomers & Beyond, Inc., AITHR***  
10 ***Dealer, Inc., and Homeclick, LLC***

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

13 66. Defendants JACUZZI INC., doing business as JACUZZI LUXURY BATH, FIRST  
14 STREET FOR BOOMERS & BEYOND, INC., AITHR DEALER, INC., and HOMECLICK, LLC,  
15 and/or ROE/DOE Defendants, impliedly warranted that the walk-in bathtub was fit to be used for a  
16 particular purpose and was safe for use.

17 67. Defendants had reason to know:

- 18 a. The particular purpose for which the walk-in bathtub would be used, and;  
19  
20 b. That SHERRY was relying on Defendants' skill and judgment to provide a suitable  
21 product.

22 68. Defendants implicitly warranted that the walk-in bathtub was fit for the particular  
23 purpose for which it was required and that it was safe for SHERRY to use in the manner  
24 contemplated.  
25

26 69. Defendants breached their implied warranty of fitness for a particular purpose, and the  
27 breaches of warranty were the proximate and legal cause of the failure of the walk-in bathtub.

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

1 **FIFTH CAUSE OF ACTION**

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

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

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

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

12 **PUNITIVE DAMAGES**

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

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

17 75. The Defendants JACUZZI INC., doing business as JACUZZI LUXURY BATH,  
18 FIRST STREET FOR BOOMERS & BEYOND, INC., AITHR DEALER, INC., and HOMECLICK,  
19 LLC, and/or ROE/DOE Defendants, knew or should have known of the subject product's defect which  
20 rendered it unreasonably dangerous at the time of placing the subject product into the stream of  
21 commerce and failed to undertake measures to prohibit it from entering into the stream of commerce  
22 and into the hands of users in the State of Nevada, including warnings of the risks for product failure,  
23 proper use and maintenance of the product and proper inspection of the product for potential hazards  
24 and/or defects.  
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1           76. Defendants conduct was wrongful because Defendants engaged in oppression, malice  
2 and with a conscious disregard toward individuals like SHERRY who purchased and used the walk-in  
3 bathtub and said conduct was despicable.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



**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 21 day of June 2017, I caused the foregoing **FOURTH AMENDED COMPLAINT** to be served as follows:

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

to the attorneys listed below:

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