

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

San Bernardino District - Civil
247 West Third Street

San Bernardino, CA. 924150210

CASE NO: CIVDS1821780

CARPENTER ZUCKERMAN & ROWLEY LLP
407 BRYANT CIRCLE
STE F
OJAI CA 93023

NOTICE OF TRIAL SETTING CONFERENCE

IN RE: SMITH -V- JACUZZI

THIS CASE HAS BEEN ASSIGNED TO: BRYAN F FOSTER IN DEPARTMENT S22
FOR ALL PURPOSES.

Notice is hereby given that the above-entitled case has been set for
Trial Setting Conference at the court located at 247 W. 3RD ST
SAN BERNARDINO, CA 92415-0210.

HEARING DATE: 02/20/19 at 8:30 in Dept. S22

DATE: 08/20/18 Nancy Eberhardt, Court Executive Officer

By: DAISY MONDRAGON

CERTIFICATE OF SERVICE

I am a Deputy Clerk of the Superior Court for the County of San
Bernardino at the above listed address. I am not a party to this
action and on the date and place shown below, I served a copy of the
above listed notice:

() Enclosed in a sealed envelope mailed to the interested party
addressed above, for collection and mailing this date, following
standard Court practices.

() Enclosed in a sealed envelope, first class postage prepaid in the
U.S. mail at the location shown above, mailed to the interested party
and addressed as shown above, or as shown on the attached listing.

() A copy of this notice was given to the filing party at the counter

() A copy of this notice was placed in the bin located at this office
and identified as the location for the above law firm's collection of
file stamped documents.

Date of Mailing: 08/20/18

I declare under penalty of perjury that the foregoing is true and
correct. Executed on 08/20/18 at San Bernardino, CA

BY: DAISY MONDRAGON

SUMMONS (CITACION JUDICIAL)

NOTICE TO DEFENDANT: (AVISO AL DEMANDADO):

JACUZZI INC. dba JACUZZI LUXURY BATH; AITHR DEALERS, INC.;
FIRSTSTREET FOR BOOMERS AND BEYOND, INC.; and DOES 1 to 100, inclusive

YOU ARE BEING SUED BY PLAINTIFF:

(LO ESTÁ DEMANDANDO EL DEMANDANTE):

TRACE SMITH and BRIAN SMITH, individually and as Successors in Interest to
MACK SMITH, deceased, and BARBARA SMITH, deceased,

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)
FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

AUG 20 2018

BY Daisy Mondragon
DAISY MONDRAGON, DEPUTY

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is: Superior Court of Riverside County- Riverside
(El nombre y dirección de la corte es): Historic Courthouse, 4050 Main Street, Riverside,
CA 92501

CASE NUMBER:
(Número del Caso):

CIV DS1821780

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

John A. Kawai, Esq. of CARPENTER, ZUCKERMAN & ROWLEY
407 Bryant Circle, Suite F, Ojai, CA 93023, (805) 272-4001

DATE:

(Fecha)

Clerk, by

(Secretario)

Daisy Mondragon

, Deputy

(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).

[SEAL]

COPY

NOTICE TO THE PERSON SERVED: You are served

- ☐ as an individual defendant.
- ☐ as the person sued under the fictitious name of (specify):

- ☐ on behalf of (specify):

under: ☐ CCP 416.10 (corporation)

☐ CCP 416.20 (defunct corporation)

☐ CCP 416.40 (association or partnership)

☐ other (specify):

☐ CCP 416.60 (minor)

☐ CCP 416.70 (conservatee)

☐ CCP 416.90 (authorized person)

- ☐ by personal delivery on (date):

Nicholas C. Rowley, Esq. (SBN 220036)
John A. Kawai, Esq. (SBN 260120)
CARPENTER, ZUCKERMAN & ROWLEY, LLP
407 Bryant Circle, Suite F,
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FILED
SUPERIOR COURT OF CALIFORNIA
COUNTY OF SAN BERNARDINO
SAN BERNARDINO DISTRICT

AUG 20 2018

Benjamin P. Cloward, Esq. (Nevada Bar No. 11087)
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[Pro Hac Vice Application Pending]

BY 
DAISY MONDRAGON, DEPUTY

Charles H. Allen, Esq. (Georgia Bar No. 009883)
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Attorneys for Plaintiffs,
TRACE SMITH and BRIAN SMITH, individually and
as Successors in Interest to MACK SMITH, deceased,
and BARBARA SMITH, deceased.

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN BERNARDINO**

TRACE SMITH and BRIAN SMITH,
individually and as Successors in Interest
to MACK SMITH, deceased, and
BARBARA SMITH, deceased,

CASE NO.:

CIV DS1821780

COMPLAINT FOR DAMAGES

Plaintiffs,

v.

JACUZZI INC. dba JACUZZI LUXURY
BATH; AITHR DEALERS, INC.;
FIRSTSTREET FOR BOOMERS AND
BEYOND, INC.; and DOES 1 to 100,
inclusive,

Defendants.

Carpenter,
Zuckerman, &
Rowley
LLP

1 COME NOW Plaintiffs, TRACE SMITH and BRIAN SMITH, individually and as
2 Successors in Interest to MACK SMITH, deceased, and BARBARA SMITH, deceased
3 (“Plaintiffs”), by and through their attorneys and for their causes of action against all Defendants,
4 and each of them, allege as follows:

5
6 I

7 GENERAL ALLEGATIONS.

8 1. At all times herein, Plaintiff TRACE SMITH is and was a competent adult
9 residing in the State of Georgia.

10 2. At all times herein, Plaintiff BRIAN SMITH is and was a competent adult
11 residing in the State of Florida.

12 3. At all times herein, BARBARA SMITH was the spouse of Decedent MACK
13 SMITH (“Decedent” hereinafter refers to MACK SMITH), and the mother of Plaintiffs TRACE
14 SMITH and BRIAN SMITH, and inherited Decedent’s right to sue for claims incurred during his
15 lifetime.
16

17 4. Upon the death of BARBARA SMITH, Plaintiffs TRACE SMITH and BRIAN
18 SMITH inherited BARBARA SMITH’s right to sue for claims incurred during her lifetime. This
19 included BARBARA SMITH’s individual claims for the wrongful death of MACK SMITH, as
20 well as MACK SMITH’s survival claims.
21

22 5. As such, Plaintiffs TRACE SMITH and BRIAN SMITH (“Plaintiffs”) bring 1)
23 their own individual claims for the wrongful death of MACK SMITH, as well as 2) survival
24 claims on behalf of their mother BARBARA SMITH for the losses she incurred individually as a
25 result of the wrongful death of MACK SMITH; and 3) the survival claims of MACK SMITH
26 that were inherited by BARBARA SMITH, and which Plaintiffs inherited when BARBARA
27 SMITH died.
28

6. At all times relevant hereto, upon information and belief, Defendant JACUZZI, INC. dba JACUZZI LUXURY BATH (hereinafter “JACUZZI”) is and was a Delaware corporation that is domiciled in California, as its headquarters and corporate nerve center is located in Chino Hills, County of San Bernardino, California.

7. At all times relevant hereto, upon information and belief, Defendant AITHR DEALERS, INC. is and was a corporation doing business in the State of California.

8. At all times relevant hereto, upon information and belief, Defendant FIRSTSTREET FOR BOOMERS AND BEYOND, INC. is and was a corporation doing business in the State of California.

9. The true names and capacities, whether individual, corporate, associate or otherwise of Defendants sued herein as DOES 1-200 are unknown to Plaintiffs at this time, who therefore sue said Defendants by such fictitious names; and leave of court will be requested to amend this complaint to show their true names and capacities when such information has been ascertained.

10. At all times herein mentioned, each of the Defendants named as a DOE, was, and still is, legally responsible in some manner for the events and happenings herein referred to and proximately caused all injuries and damages to Plaintiff, thereby, as herein alleged.

II

GENERAL ALLEGATIONS.

11. Defendant JACUZZI, 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,

1 commercial faucets and other plumbing products, and the manufacturer, supplier and/or installer
2 of the Jacuzzi walk-in tub, being utilized by the deceased, MACK SMITH in his residence, and
3 who marketed its product to the elderly and individuals who were overweight or had physical
4 limitation.

5
6 12. Defendant AITHR DEALERS, INC., upon information and belief was and is a
7 general contractor, supplier and/or installer of the Jacuzzi walk-in tub that was used by Decedent
8 MACK SMITH in his residence.

9
10 13. Defendant FIRSTSTREET FOR BOOMERS AND BEYOND, INC., upon
11 information and belief, was and is a retailer of home improvement products and unique gifts and
12 the manufacturer, supplier, and/or installer of the Jacuzzi walk-in tub that was used by Decedent
13 MACK SMITH in his residence.

14
15 14. Defendants DOES 1 to 200 are the employees, manufacturers, designers,
16 component part manufacturers, installers, owners, distributors, repairers, maintainers, warned
17 for use, retailers, and/or warrantors of said defective product as set forth herein.

18
19 15. Plaintiff is informed and believes and thereon alleges that at all relevant times
20 herein, Defendants, and each of them, were the agents and/or servants and/or employees
21 and/or partners and/or joint venture partners and/or employers of the remaining Defendants
22 and were acting within the course and scope of such agency, employment, partnership or
23 joint venture and with the knowledge and consent of the remaining Defendants.

24
25 16. The Jacuzzi tub's dangerous design made it a death trap for the elderly and others
26 with physical limitations to which the tub was marketed.

27
28 17. In or about July 2013, Decedent MACK SMITH entered into a contract for the
purchase and installation of a Jacuzzi walk-in tub.

18. On or about September 12, 2016 Decedent MACK SMITH was using the Jacuzzi

1 walk-in tub, and had his feet on the edge of the tub and was enjoying the advertised features of
2 the tub.

3 19. Because of the dangerous design of the tub, MACK SMITH was unable to get up
4 out of the tub to prevent himself from drowning, which caused him great stress causing him to
5 suffer a medical episode.
6

7 20. Because of the dangerous design of the tub, despite her best efforts, BARBARA
8 SMITH was unable to remove MACK SMITH from the tub to prevent him from drowning.

9 21. Because of the dangerous design of the tub, despite her best efforts BARBARA
10 SMITH was unable to remove a sufficient quantity of water from the tub to prevent MACK
11 SMITH from drowning.
12

13 22. Because of the dangerous design of the tub, MACK SMITH drowned. He was
14 transported immediately to the hospital, where he eventually died of the drowning injuries on
15 December 14, 2016.

16 23. Venue is appropriate because at least one defendant (JACUZZI) is a citizen of
17 San Bernardino County, California.
18

19 III

20 CAUSES OF ACTION.

21 **First Cause Of Action:**
22 **STRICT PRODUCT LIABILITY**
As To All Defendants

23 24. Plaintiffs re-allege and incorporate by reference each and every allegation made
24 above in this Complaint as though fully set forth herein.

25 25. Defendants, and each of them, are the manufacturers, designers, component
26 part manufacturers, installers, owners, distributors, repairers, maintainers, retailers, warned
27 for use, warrantors of said defective product as set forth herein.
28

1 26. Upon information and belief, Defendants, and each of them, sold the subject
2 product and failed to warn Plaintiffs of the hazards of the use of the subject product.

3
4 27. At the time of this incident, the product had a design and/or manufacturing
5 defect that rendered the product unreasonably dangerous and potentially deadly.

6
7 28. The defect, which rendered it unreasonably dangerous, existed at the time the
8 subject product and its component parts left the care, custody and control of the above
9 named Defendants and DOE Defendants

10 29. The Defendants and/or DOE Defendants, knew or should have known of the
11 subject product's defect which rendered it unreasonably dangerous at the time of placing the
12 subject product into the stream of commerce and failed to undertake measures to prohibit it
13 from entering into the stream of commerce and into the hands of users such as Decedent,
14 including warnings of the risks for product failure, proper use and maintenance of the
15 product and proper inspection of the product for potential hazards and/or defects.

16
17 30. The subject product was defective due to Defendants, and each of their failure
18 to warn of the potential dangers associated with using said product.

19
20 31. Said product was defective due to a manufacturers' defect, design defect, or
21 defect due to lack of adequate warnings.

22 32. The Jacuzzi walk-in tub was defective as a result of its design which
23 rendered the product unreasonably dangerous.

24
25 33. That the Jacuzzi walk-in tub was unreasonably dangerous and defective
26 because it lacked suitable and adequate warnings concerning its safe and proper use which
27 rendered the product unreasonably dangerous.

34. That the Jacuzzi walk-in tub failed to perform as safely as an ordinary consumer, such as MACK SMITH, would expect when used in an intended or reasonably foreseeable manner, which rendered the product defective and unreasonably dangerous.

35. Moreover, the tub's design embodied excessive preventable danger when used in the intended or a reasonably foreseeable way, in that on balance the risk of danger inherent in the design of the Jacuzzi walk-in tub outweighed the benefits of its design.

36. The failure to warn by Defendants, and each of them, was a proximate cause of MACK SMITH's injuries and death.

37. Said product's manufacturing and/or design defect was the proximate cause of MACK SMITH's injuries and resulting death.

38. Said product's manufacturing and/or design defect was the proximate cause of MACK SMITH's injuries and resulting death.

39. The wrongful conduct of Defendants, and each of them, was a legal, actual, and proximate cause of MACK SMITH's injuries and ultimate death.

Second Cause Of Action:
NEGLIGENCE
As To All Defendants

40. Plaintiffs re-allege and incorporate by reference each and every allegation made above in this Complaint as though fully set forth herein.

41. Defendants owed a duty to Decedent MACK SMITH, and others similarly situated, to ensure that their product, and particularly the Jacuzzi walk-in tub was properly functioning and safe for use by the end consumer.

42. Defendants, and each of them, while in the course and scope of their employment and/or agency with other Defendants, negligently failed to failed to warn

1 Decedent MACK SMITH of safety hazards which resulted in MACK SMITH's injuries and
2 resulting death.

3
4 43. Defendants, and each of them, knew or should have known that unreasonably
5 dangerous conditions existed with the Jacuzzi walk-in tub, being used by Decedent, namely
6 the inability to get back up or exit the tub.

7
8 44. Defendants owed a duty of due care to Plaintiffs, and others similarly situated,
9 in the design, testing, manufacture, installation, assembly, marketing, instructions for use
10 and warnings for the subject Jacuzzi walk-in tub.

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

13 a. The negligent and improper design, testing, manufacture, installation assembly,
14 instructions for use and warnings for the Jacuzzi walk-in tub; and

15
16 b. The failure to provide adequate, accurate, and effective warnings and instructions
17 to owners, operators, and users of the subject Jacuzzi walk-in tub.

18 46. The wrongful conduct of Defendants, and each of them, was a legal, actual, and
19 proximate cause of MACK SMITH's injuries and ultimate death.
20

21 **Third Cause Of Action:**
22 **BREACH OF EXPRESS WARRANTIES**
23 *As To All Defendants*

24 47. Plaintiffs re-allege and incorporate by reference each and every allegation made
25 above in this Complaint as though fully set forth herein.

26 48. Defendants, and each of them, expressly warranted that the walk-in Jacuzzi tub
27 was free from defects and was safe for us.
28

1 49. Defendants, and each of them, breached the express warranties, and such breach
2 was the proximate and legal cause of the failure of the walk-in tub.

3 50. The wrongful conduct of Defendants, and each of them, was a legal, actual, and
4 proximate cause of MACK SMITH's injuries and ultimate death.
5

6 **Fourth Cause Of Action:**
7 **BREACK OF IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE**
8 *As To All Defendants*

9 51. Plaintiffs re-allege and incorporate by reference each and every allegation made
10 above in this Complaint as though fully set forth herein.

11 52. Defendants, and each of them, impliedly warranted that the walk-in Jacuzzi tub
12 was fit to be used for a particular purpose and was safe for use.
13

14 53. Defendants had reason to know: (a) The particular purpose for which the walk-in
15 tub would be used, and (b) That MACK SMITH was relying on Defendants' skill and judgment
16 to provide a suitable product.

17 54. Defendants, and each of them, implicitly warranted that the walk-in bathtub was
18 fit for a particular purpose for which it was required and that it was safe for MACK SMITH to
19 use in the manner contemplated.
20

21 55. Defendants, and each of them, breached their implied warranty of fitness for a
22 particular purpose, and such breach was the proximate and legal cause of the failure of the walk-
23 in tub.

24 56. The wrongful conduct of Defendants, and each of them, was a legal, actual, and
25 proximate cause of MACK SMITH's injuries and ultimate death.
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1 **Fifth Cause Of Action:**
2 **BREACH OF IMPLIED WARRANTY OF MERCHANTABILITY**
3 ***As To All Defendants***

4 57. Plaintiffs re-allege and incorporate by reference each and every allegation made
5 above in this Complaint as though fully set forth herein.

6 58. Defendants, and each of them, breached the implied warranty of merchantability,
7 and such breach was the proximate and legal cause of the failure of the walk-in tub.

8 59. The wrongful conduct of Defendants, and each of them, was a legal, actual, and
9 proximate cause of MACK SMITH's injuries and ultimate death.
10

11 **PUNITIVE DAMAGES**
12 **As To JACUZZI; AITHR DEALERS, INC.;**
13 **and FIRSTSTREET BOOMERS AND BEYOND, INC.**

14 60. Plaintiffs re-allege and incorporate by reference each and every allegation made
15 above in this Complaint as though fully set forth herein.

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

23 62. Defendants' conduct was wrongful because Defendants engaged in malice,
24 oppression, and fraud toward individuals like MACK SMITH who purchased and used the
25 walk-in bathtub, and said conduct was despicable. The conduct of Defendants, and each of
26 them, amounted to "despicable conduct" in that it was carried on with a willful and
27 conscious disregard of the rights or safety of others, including consumers such as MACK
28

1 SMITH and other members of the public.

2 63. Specifically, Defendants market the walk-in tub to elderly individuals like
3 MACK SMITH who are weak, feeble and at a significant risk for falling down.

4 64. Defendants advertise that millions of Americans with mobility concerns know
5 that simply taking a bath can be a hazardous experience.

6 65. Defendants advertise that the solution to having a hazardous experience while
7 taking a bath is the Jacuzzi Walk-in Tub.

8 66. Defendants advertise that those who purchase a walk-in tub can feel safe and
9 feel better with every bath.

10 67. Defendants advertise that the Jacuzzi bathtub is an industry leader with regard
11 to safety of those who use the walk-in tub.

12 68. Defendants advertise that the unique bathtubs can make the user's experience
13 a pain and stress reducing pleasure.

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

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

18 71. Despite knowing that the users of the Jacuzzi walk-in bathtub are weak, feeble
19 and at a significant risk for falling down, Defendants did nothing to plan for the foreseeable
20 event of having a user like MACK SMITH be unable to get up from the tub and thereby
21 suffer a medical episode while inside the walk-in bathtub.

22 72. Defendants did not use reasonable care in the design of the bathtub by
23 providing a safe way for users who have a medical episode while using the Jacuzzi walk-in
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1 bathtub to safely exit the bathtub.

2 73. Defendants knew of the heightened risk of having users like MACK SMITH
3 be unable to get up or out from the tub and thereby suffer a medical episode inside the
4 Jacuzzi walk-in bathtub and even drown, but did nothing to alleviate that risk.

5 74. Defendants knew of the heightened risk of having users like MACK SMITH
6 be unable to get up or out from the tub and thereby suffer a medical episode inside the
7 Jacuzzi walk-in bathtub and even drown, but did nothing to mitigate that risk.

8 75. Defendants knew of the heightened risk of having users like MACK SMITH
9 be unable to get up or out from the tub and thereby suffer a medical episode inside the
10 Jacuzzi walk-in bathtub and even drown, but did nothing to reduce that risk.

11 76. In fact, Defendants knew of feasible alternative designs for a walk-in bathtub
12 that were much safer to users like MACK SMITH who were at a substantial risk of being
13 unable to get up or out from the tub and thereby suffer a medical episode inside the Jacuzzi
14 walk-in bathtub and even drown, but chose against implementing those feasible alternative
15 designs for increased profitability.

16 77. Because of Defendants' conscious choices to put profits before safety, the
17 Jacuzzi walk-in bathtub is a death trap for nearly any elderly person who happens to fall
18 down or have a medical episode inside the bathtub because there are no grab bars positioned
19 in a way that someone can get back up if they fall down or brace themselves when they are
20 unable to get up or out of the tub and thereby suffer a medical episode or even drown
21 because the door opens inward and traps the elderly person inside the bathtub.

22 78. In summary, Defendants, and each of them, were aware of the probable
23 dangerous consequences of their conduct and willfully and deliberately failed to avoid those
24 consequences.

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IV
PRAYER.

WHEREFORE, Plaintiffs pray for judgment be entered against Defendants, as follows:

1. General damages for Plaintiffs' individual claims and the survival claims of
BARBARA SMITH and MACK SMITH in an amount to be proven at trial;
2. Compensatory damages in an amount to be proven at trial;
3. Special damages for MACK SMITH's medical expenses in an amount to be proven at
trial;
4. Punitive damages in an amount to be proven at trial;
5. For prejudgment interest;
6. For reasonable attorneys' fees;
7. For costs incurred herein; and
8. For such other and further relief as the Court may deem just and proper in this action.

DATED: August 17, 2018

CARPENTER, ZUCKERMAN & ROWLEY, LLP

By: _____

NICHOLAS C. ROWLEY, ESQ.

JOHN A. KAWAI, ESQ.

Attorneys for Plaintiffs,
TRACE SMITH and BRIAN SMITH, individually
and as Successors in Interest to MACK SMITH,
deceased, and BARBARA SMITH, deceased

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address): John A. Kawai, Esq. (SBN 260120) CARPENTER, ZUCKERMAN & ROWLEY 407 Bryant Circle, Suite F, Ojai, CA 93023 TELEPHONE NO.: 805.272.4001 FAX NO.: 805.719.6858 ATTORNEY FOR (Name): Plaintiff, NANCY BROWN		FOR COURT USE ONLY <div style="border: 1px solid black; padding: 5px; margin: 10px auto; width: 80%;"> FILED SUPERIOR COURT OF CALIFORNIA COUNTY OF SAN BERNARDINO SAN BERNARDINO DISTRICT AUG 20 2018 </div> BY <u>DAISY MONDRAGON, DEPUTY</u>	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO STREET ADDRESS: 4050 Main Street MAILING ADDRESS: 4050 Main Street CITY AND ZIP CODE: Riverside, 92501 BRANCH NAME:		CASE NUMBER: <div style="border: 1px solid black; padding: 2px; margin: 5px auto; width: 80%;">CIV DS1821780</div> JUDGE: DEPT:	
CASE NAME: TRACE SMITH v. JACUZZI INC. dba JACUZZI LUXURY BATH, et al.			
CIVIL CASE COVER SHEET <input checked="" type="checkbox"/> Unlimited (Amount demanded exceeds \$25,000) <input type="checkbox"/> Limited (Amount demanded is \$25,000 or less)		Complex Case Designation <input type="checkbox"/> Counter <input type="checkbox"/> Joinder Filed with first appearance by defendant (Cal. Rules of Court, rule 3.402)	

Items 1–6 below must be completed (see instructions on page 2).

1. Check **one** box below for the case type that best describes this case:
- | | | |
|---|--|--|
| Auto Tort
<input type="checkbox"/> Auto (22)
<input type="checkbox"/> Uninsured motorist (46)
Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort
<input type="checkbox"/> Asbestos (04)
<input type="checkbox"/> Product liability (24)
<input type="checkbox"/> Medical malpractice (45)
<input checked="" type="checkbox"/> Other PI/PD/WD (23)
Non-PI/PD/WD (Other) Tort
<input type="checkbox"/> Business tort/unfair business practice (07)
<input type="checkbox"/> Civil rights (08)
<input type="checkbox"/> Defamation (13)
<input type="checkbox"/> Fraud (16)
<input type="checkbox"/> Intellectual property (19)
<input type="checkbox"/> Professional negligence (25)
<input type="checkbox"/> Other non-PI/PD/WD tort (35)
Employment
<input type="checkbox"/> Wrongful termination (36)
<input type="checkbox"/> Other employment (15) | Contract
<input type="checkbox"/> Breach of contract/warranty (06)
<input type="checkbox"/> Rule 3.740 collections (09)
<input type="checkbox"/> Other collections (09)
<input type="checkbox"/> Insurance coverage (18)
<input type="checkbox"/> Other contract (37)
Real Property
<input type="checkbox"/> Eminent domain/Inverse condemnation (14)
<input type="checkbox"/> Wrongful eviction (33)
<input type="checkbox"/> Other real property (26)
Unlawful Detainer
<input type="checkbox"/> Commercial (31)
<input type="checkbox"/> Residential (32)
<input type="checkbox"/> Drugs (38)
Judicial Review
<input type="checkbox"/> Asset forfeiture (05)
<input type="checkbox"/> Petition re: arbitration award (11)
<input type="checkbox"/> Writ of mandate (02)
<input type="checkbox"/> Other judicial review (39) | Provisionally Complex Civil Litigation (Cal. Rules of Court, rules 3.400–3.403)
<input type="checkbox"/> Antitrust/Trade regulation (03)
<input type="checkbox"/> Construction defect (10)
<input type="checkbox"/> Mass tort (40)
<input type="checkbox"/> Securities litigation (28)
<input type="checkbox"/> Environmental/Toxic tort (30)
<input type="checkbox"/> Insurance coverage claims arising from the above listed provisionally complex case types (41)
Enforcement of Judgment
<input type="checkbox"/> Enforcement of judgment (20)
Miscellaneous Civil Complaint
<input type="checkbox"/> RICO (27)
<input type="checkbox"/> Other complaint (not specified above) (42)
Miscellaneous Civil Petition
<input type="checkbox"/> Partnership and corporate governance (21)
<input type="checkbox"/> Other petition (not specified above) (43) |
|---|--|--|
2. This case ☐ is ☒ is not complex under rule 3.400 of the California Rules of Court. If the case is complex, mark the factors requiring exceptional judicial management:
- | | |
|--|--|
| a. <input type="checkbox"/> Large number of separately represented parties
b. <input type="checkbox"/> Extensive motion practice raising difficult or novel issues that will be time-consuming to resolve
c. <input type="checkbox"/> Substantial amount of documentary evidence | d. <input type="checkbox"/> Large number of witnesses
e. <input type="checkbox"/> Coordination with related actions pending in one or more courts in other counties, states, or countries, or in a federal court
f. <input type="checkbox"/> Substantial postjudgment judicial supervision |
|--|--|
3. Remedies sought (check all that apply): a. ☒ monetary b. ☐ nonmonetary; declaratory or injunctive relief c. ☒ punitive
4. Number of causes of action (specify):
5. This case ☐ is ☒ is not a class action suit.
6. If there are any known related cases, file and serve a notice of related case. (You may use form CM-015.)

Date: August 17, 2018

John A. Kawai, Esq.
(TYPE OR PRINT NAME)

(SIGNATURE OF PARTY OR ATTORNEY FOR PARTY)

NOTICE

- Plaintiff must file this cover sheet with the first paper filed in the action or proceeding (except small claims cases or cases filed under the Probate Code, Family Code, or Welfare and Institutions Code). (Cal. Rules of Court, rule 3.220.) Failure to file may result in sanctions.
- File this cover sheet in addition to any cover sheet required by local court rule.
- If this case is complex under rule 3.400 et seq. of the California Rules of Court, you must serve a copy of this cover sheet on **all** other parties to the action or proceeding.
- Unless this is a collections case under rule 3.740 or a complex case, this cover sheet will be used for statistical purposes only.

Page 1 of 2

INSTRUCTIONS ON HOW TO COMPLETE THE COVER SHEET

To Plaintiffs and Others Filing First Papers. If you are filing a first paper (for example, a complaint) in a civil case, you **must** complete and file, along with your first paper, the *Civil Case Cover Sheet* contained on page 1. This information will be used to compile statistics about the types and numbers of cases filed. You must complete items 1 through 6 on the sheet. In item 1, you must check **one** box for the case type that best describes the case. If the case fits both a general and a more specific type of case listed in item 1, check the more specific one. If the case has multiple causes of action, check the box that best indicates the **primary** cause of action. To assist you in completing the sheet, examples of the cases that belong under each case type in item 1 are provided below. A cover sheet must be filed only with your initial paper. Failure to file a cover sheet with the first paper filed in a civil case may subject a party, its counsel, or both to sanctions under rules 2.30 and 3.220 of the California Rules of Court.

To Parties in Rule 3.740 Collections Cases. A "collections case" under rule 3.740 is defined as an action for recovery of money owed in a sum stated to be certain that is not more than \$25,000, exclusive of interest and attorney's fees, arising from a transaction in which property, services, or money was acquired on credit. A collections case does not include an action seeking the following: (1) tort damages, (2) punitive damages, (3) recovery of real property, (4) recovery of personal property, or (5) a prejudgment writ of attachment. The identification of a case as a rule 3.740 collections case on this form means that it will be exempt from the general time-for-service requirements and case management rules, unless a defendant files a responsive pleading. A rule 3.740 collections case will be subject to the requirements for service and obtaining a judgment in rule 3.740.

To Parties in Complex Cases. In complex cases only, parties must also use the *Civil Case Cover Sheet* to designate whether the case is complex. If a plaintiff believes the case is complex under rule 3.400 of the California Rules of Court, this must be indicated by completing the appropriate boxes in items 1 and 2. If a plaintiff designates a case as complex, the cover sheet must be served with the complaint on all parties to the action. A defendant may file and serve no later than the time of its first appearance a joinder in the plaintiff's designation, a counter-designation that the case is not complex, or, if the plaintiff has made no designation, a designation that the case is complex.

CASE TYPES AND EXAMPLES

Auto Tort

Auto (22)–Personal Injury/Property Damage/Wrongful Death
Uninsured Motorist (46) (*if the case involves an uninsured motorist claim subject to arbitration, check this item instead of Auto*)

Other PI/PD/WD (Personal Injury/Property Damage/Wrongful Death) Tort

Asbestos (04)
Asbestos Property Damage
Asbestos Personal Injury/Wrongful Death
Product Liability (*not asbestos or toxic/environmental*) (24)
Medical Malpractice (45)
Medical Malpractice–Physicians & Surgeons
Other Professional Health Care Malpractice
Other PI/PD/WD (23)
Premises Liability (e.g., slip and fall)
Intentional Bodily Injury/PD/WD (e.g., assault, vandalism)
Intentional Infliction of Emotional Distress
Negligent Infliction of Emotional Distress
Other PI/PD/WD

Non-PI/PD/WD (Other) Tort

Business Tort/Unfair Business Practice (07)
Civil Rights (e.g., discrimination, false arrest) (*not civil harassment*) (08)
Defamation (e.g., slander, libel) (13)
Fraud (16)
Intellectual Property (19)
Professional Negligence (25)
Legal Malpractice
Other Professional Malpractice (*not medical or legal*)
Other Non-PI/PD/WD Tort (35)

Employment

Wrongful Termination (36)
Other Employment (15)

Contract

Breach of Contract/Warranty (06)
Breach of Rental/Lease
Contract (*not unlawful detainer or wrongful eviction*)
Contract/Warranty Breach–Seller Plaintiff (*not fraud or negligence*)
Negligent Breach of Contract/Warranty
Other Breach of Contract/Warranty
Collections (e.g., money owed, open book accounts) (09)
Collection Case–Seller Plaintiff
Other Promissory Note/Collections Case
Insurance Coverage (*not provisionally complex*) (18)
Auto Subrogation
Other Coverage
Other Contract (37)
Contractual Fraud
Other Contract Dispute

Real Property

Eminent Domain/Inverse Condemnation (14)
Wrongful Eviction (33)
Other Real Property (e.g., quiet title) (26)
Writ of Possession of Real Property
Mortgage Foreclosure
Quiet Title
Other Real Property (*not eminent domain, landlord/tenant, or foreclosure*)

Unlawful Detainer

Commercial (31)
Residential (32)
Drugs (38) (*if the case involves illegal drugs, check this item; otherwise, report as Commercial or Residential*)

Judicial Review

Asset Forfeiture (05)
Petition Re: Arbitration Award (11)
Writ of Mandate (02)
Writ–Administrative Mandamus
Writ–Mandamus on Limited Court Case Matter
Writ–Other Limited Court Case Review
Other Judicial Review (39)
Review of Health Officer Order
Notice of Appeal–Labor
Commissioner Appeals

Provisionally Complex Civil Litigation (Cal. Rules of Court Rules 3.400–3.403)

Antitrust/Trade Regulation (03)
Construction Defect (10)
Claims Involving Mass Tort (40)
Securities Litigation (28)
Environmental/Toxic Tort (30)
Insurance Coverage Claims (*arising from provisionally complex case type listed above*) (41)

Enforcement of Judgment

Enforcement of Judgment (20)
Abstract of Judgment (Out of County)
Confession of Judgment (*non-domestic relations*)
Sister State Judgment
Administrative Agency Award (*not unpaid taxes*)
Petition/Certification of Entry of Judgment on Unpaid Taxes
Other Enforcement of Judgment Case

Miscellaneous Civil Complaint

RICO (27)
Other Complaint (*not specified above*) (42)
Declaratory Relief Only
Injunctive Relief Only (*non-harassment*)
Mechanics Lien
Other Commercial Complaint Case (*non-tort/non-complex*)
Other Civil Complaint (*non-tort/non-complex*)

Miscellaneous Civil Petition

Partnership and Corporate Governance (21)
Other Petition (*not specified above*) (43)
Civil Harassment
Workplace Violence
Elder/Dependent Adult Abuse
Election Contest
Petition for Name Change
Petition for Relief From Late Claim
Other Civil Petition

SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN BERNARDINO

TRACE SMITH, et al.

CIV DS1821780
CASE NO.: _____

vs.

CERTIFICATE OF ASSIGNMENT

JACUZZI INC. dba JACUZZI LUXURY BATH, et al.

A civil action or proceeding presented for filing must be accompanied by this Certificate. If the ground is the residence of a party, name and residence shall be stated.

The undersigned declares that the above-entitled matter is filed for proceedings in the
San Bernardino District of the Superior Court under Rule 404 of this court for the
checked reason:

☒ General

☐ Collection

Nature of Action

Ground

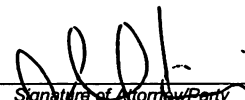
- | | |
|---|--|
| <input type="checkbox"/> 1. Adoption | Petitioner resides within the district |
| <input type="checkbox"/> 2. Conservator | Petitioner or conservatee resides within the district. |
| <input type="checkbox"/> 3. Contract | Performance in the district is expressly provided for. |
| <input type="checkbox"/> 4. Equity | The cause of action arose within the district. |
| <input type="checkbox"/> 5. Eminent Domain | The property is located within the district. |
| <input type="checkbox"/> 6. Family Law | Plaintiff, defendant, petitioner or respondent resides within the district. |
| <input type="checkbox"/> 7. Guardianship | Petitioner or ward resides within the district or has property within the district. |
| <input type="checkbox"/> 8. Harassment | Plaintiff, defendant, petitioner or respondent resides within the district. |
| <input type="checkbox"/> 9. Mandate | The defendant functions wholly within the district. |
| <input type="checkbox"/> 10. Name Change | The petitioner resides within the district. |
| <input checked="" type="checkbox"/> 11. Personal Injury | The injury occurred within the district. |
| <input type="checkbox"/> 12. Personal Property | The property is located within the district. |
| <input type="checkbox"/> 13. Probate | Decedent resided or resides within the district or had property within the district. |
| <input type="checkbox"/> 14. Prohibition | The defendant functions wholly within the district. |
| <input type="checkbox"/> 15. Review | The defendant functions wholly within the district. |
| <input type="checkbox"/> 16. Title to Real Property | The property is located within the district. |
| <input type="checkbox"/> 17. Transferred Action | The lower court is located within the district. |
| <input type="checkbox"/> 18. Unlawful Detainer | The property is located within the district. |
| <input type="checkbox"/> 19. Domestic Violence | The petitioner, defendant, plaintiff or respondent resides within the district. |
| <input type="checkbox"/> 20. Other _____ | |
| <input type="checkbox"/> 21. THIS FILING WOULD | NORMALLY FALL WITHIN JURISDICTION OF SUPERIOR COURT |

The address of the accident, performance, party, detention, place of business, or other factor which qualifies this case for filing in the above-designed district is:

<u>Jacuzzi Inc.,</u>	<u>13925 City Center Drive, Suite 200</u>
<small>NAME - INDICATE TITLE OR OTHER QUALIFYING FACTOR</small>	<small>ADDRESS</small>

<u>Chino Hills, CA 91709</u>	STATE	ZIP CODE
<small>CITY</small>		

I declare, under penalty of perjury, that the foregoing is true and correct and that this declaration was executed
on 17th of August, 2018 at Ojai, California



Signature of Attorney/Party

CERTIFICATE OF ASSIGNMENT