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LETTER OF TRANSMITTAL

TO: Marjorie J. Walsh
Craig W. Walsh
350 Ward Avenue, #106-8
Honolulu, Hawaii 96814

FROM: RANDALL Y. KAYA, ESQ.

DATE: May 6, 2026

RE: Marjorie J. Walsh, Craig W. Walsh v. MMI Realty Services Inc.
Civil No. 1CCV-24-000003

COPIES	DATE	DESCRIPTION
1, filed	05/06/25	DEFENDANT MMI REALTY SERVICES INC.'S MOTION FOR SUMMARY JUDGMENT AGAINST PLAINTIFFS' CLAIMS ; MEMORANDUM IN SUPPORT OF MOTION; DECLARATION OF ESMERALDA "EZY" PAESTE; DECLARATION OF COUNSEL; EXHIBITS "A" – "I"; NOTICE OF HEARING OF MOTION; CERTIFICATE OF SERVICE

Transmitted herewith: ☒ For your information/file ☐ For your review

IF YOU HAVE ANY QUESTIONS, PLEASE CALL (808) 527-7103.

REMARKS:

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Attorney for Defendant
MMI REALTY SERVICES INC.

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FIRST CIRCUIT
1CCV-24-0000003
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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

MARJORIE J. WALSH	)	CIVIL NO. 1CCV-24-0000003
CRAIG W. WALSH,	)	
	)	DEFENDANT MMI REALTY
Plaintiffs,	)	SERVICES INC.'S MOTION FOR
	)	SUMMARY JUDGMENT AGAINST
vs.	)	PLAINTIFFS' CLAIMS;
	)	MEMORANDUM IN SUPPORT OF
MMI REALTY SERVICES INC.	)	MOTION; DECLARATION OF
	)	ESMERALDA "EZY" PAESTE;
Defendant.	)	DECLARATION OF COUNSEL;
	)	EXHIBITS "A" – "I"; NOTICE OF
	)	HEARING OF MOTION; CERTIFICATE
	)	OF SERVICE
	)	
	)	<u>Hearing (In-Person):</u>
	)	Date: Tuesday, May 26, 2026
	)	Time: 9:00 a.m.
	)	Judge: Honorable Shirley M. Kawamura
	)	
	)	Trial: June 29, 2026
	)	Judge: Honorable Shirley M. Kawamura

**DEFENDANT MMI REALTY SERVICES INC.'S MOTION FOR SUMMARY
JUDGMENT AGAINST PLAINTIFFS' CLAIMS**

COMES NOW Defendant MMI REALTY SERVICES INC. (hereinafter "Defendant"),
by and through its attorneys, the Law Offices of Leslie R. Kop, and hereby moves the Honorable

Court for an order granting summary judgment in its favor against claims asserted in this case by Plaintiff MARJORIE J. WALSH (hereinafter "Plaintiff MW") and to dismiss the derivative consortium claim of Plaintiff CRAIG W. WALSH (hereinafter "Plaintiff CW").

Plaintiffs claim that Plaintiff MW was injured on August 16, 2023, as a result of her falling at or near a storm drain cover/grate, located in the roadway portion of the parking lot of Kahala Mall, near Whole Foods (the "subject incident."). There is no evidence that the storm drain cover/grate or surrounding pavement were an unreasonably dangerous condition, nor is there evidence of actionable defects and instead Plaintiff MW admittedly fell for unknown and speculative reasons. In addition to there being no evidence of a unreasonably dangerous condition/"unreasonable risk of harm", there is no evidence that Defendant knew or should have known about any such condition, and furthermore, no evidence that supposed speculative acts/omissions being a legal cause of any claimed injuries and/or damages. Defendant respectfully submits that based on the admissible evidence and applicable Hawaii law, summary judgment should be granted in their favor on all negligence claims asserted by Plaintiff herein.

Furthermore, Plaintiff CW's claims are solely derivative claims for alleged loss of consortium due to the injury Plaintiff MW alleges were caused by the negligence of Defendant. As such, Defendant also seeks summary judgment as to Plaintiff CW's derivative consortium claims.

This motion is made pursuant to Rules 7 and 56 of the *Hawaii Rules of Civil Procedure* ("HRCPP"), Rules 7 and 7.2 of the *Rules of the Circuit Courts of the State of Hawaii* ("RCC"), and is supported by the attached Memorandum in Support of Motion, Declaration of Counsel, Declaration of Esmeralda "Ezy" Paeste, the attached exhibits, the records and files herein, and other such matters that may be adduced at the hearing of this Motion.

DATED: Honolulu, Hawaii, May 6, 2026.

/s/ Randall Y. Kaya

RANDALL Y. KAYA

Attorney for Defendant

MMI REALTY SERVICES INC.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

MARJORIE J. WALSH	)	CIVIL NO. 1CCV-24-0000003
CRAIG W. WALSH,	)	
	)	MEMORANDUM IN SUPPORT OF
Plaintiffs,	)	MOTION
	)	
vs.	)	
	)	
MMI REALTY SERVICES INC.	)	
	)	
Defendant.	)	
	)	

MEMORANDUM IN SUPPORT OF MOTION

I. STATEMENT OF FACTS

A. Plaintiff's Claims.

On January 2, 2024, Plaintiffs CRAIG W. WALSH ("Plaintiff CW") and MARJORIE J. WALSH ("Plaintiff MW") initiated this lawsuit by filing a Complaint and Summons Personal Injury and Loss of Consortium [Dkt. 9 CMP] (hereinafter "Complaint"). The Complaint alleges that on August 16, 2023, Marjorie J. Walsh tripped and fell in the outdoor parking lot of Kahala Mall, outside of Whole Foods (the "subject incident"). The Complaint provides the following account of what Plaintiffs allege occurred:

Marjorie stepped out of the car, closed the door, and turned to walk behind the car as is her custom. She promptly tripped on the storm grating or its decayed surround and fell...." (Exhibit "A", paragraph 16).

As the result of her falling, Plaintiff MW seeks damages for the alleged negligence of Defendant MMI REALTY SERVICES INC. (hereinafter "Defendant"). Exhibit "A". The Complaint also contains an un-numbered count for "Loss of Consortium" in paragraphs 69-72. Id. Although imperfect (alleging a count for loss of consortium for Plaintiff MW) the un-

numbered count alleges a claim for loss of consortium for Plaintiff CW for which summary judgment is also sought.

Plaintiff MW has multiple versions about the subject incident, including variations about the direction she was facing upon exiting her vehicle and/or the direction she turned, but what is clear and undisputed is that *she does not know what caused her fall*. Exhibit "B", (p. 50 line 19 -23, p. 51 line 1-2, p. 53, lines 9-14, p. 71, lines 22-25 and p. 72 lines 1-2, p. 85, lines 22-25 and p. 86, line 1).

Furthermore, Plaintiff MW admitted there is nothing obscuring her view of the subject storm drain cover/grate. *Id.* (p. 83, lines 18-25 and p. 84, line 1). Plaintiff MW further admitted simply to not looking where she was standing or stepping. *Id.* (p. 53 lines 15-19, p. 58, lines 13-17).

Moreover, Plaintiff MW failed to respond to Requests for Admissions. Exhibit "C" and Exhibit "D". The requisite 30 days under Rule 36 of the Hawaii Rules of Civil Procedure have long passed. Declaration of Counsel. Requests for Admissions numbers 22 through 33 sought admission or denial that Plaintiff MW:

- a) stopped and exited the motor vehicle in a no parking/stopping area,
- b) did not look down when she exited the motor vehicle,
- c) at no time before her fall did she look down,
- d) has no evidence that the storm drain cover/grate was slippery,
- e) has no evidence of the co-efficient of friction of the storm drain cover/grate,
- f) did not slip on the storm drain/grate,
- g) the storm drain/grate is not governed by the Honolulu Building Code
- h) the storm drain/grate not being subject to the Honolulu Building Code that there is no Building Code violation,
- i) did not trip on the storm drain cover/grate
- j) stumbled forward or backward either from a trip or slip on the storm drain cover/grate;
- k) does not have any testimony, reports or other material that would evidence that the storm drain cover/grate was hazardous, and
- l) does not have any testimony, reports or other material that would evidence that the storm drain cover/grate was unreasonably dangerous.

Exhibit “C”, (requests 22-23). Accordingly, under Rule 36, Hawaii Rules of Civil Procedure, Plaintiff MW admits those facts.

With regard to the alleged incident, Plaintiff CW did not know Plaintiff MW had fallen and did not see her fall. Exhibit “E” (response to interrogatory 3, and Exhibit “F”, p. 31, lines 19-23, p. 33, lines 5-12 and line 25, p. 36 lines 2-13). Further, Plaintiff MW testified Plaintiff CW did not examine the area of her fall on the date of the incident. Exhibit “B”, (p. 72, lines 6-8).

Esmeralda “Ezy” Paeste is and was the general manager of Kahala Mall. Declaration of Esmeralda “Ezy” Paeste. She has held this position since 2016. Id. She was therefore the general manager at the time of the August 16, 2023, incident involving Plaintiff MW. As the general manager of Kahala Mall, with regard to the storm drain (cover/grate and immediate surrounding pavement) in the Kahala Mall parking lot, on the Whole Foods side of the mall that is the subject of this lawsuit, there have been no reports of slipping, tripping or falling on or from it while Ms. Paeste has been the general manager. Id. Further, “with regard to the storm drain (cover/grate and immediate surrounding pavement) in the Kahala Mall parking lot, on the Whole Foods side of the mall that is the subject of this lawsuit, no reports or complaints about the condition of the storm drain (cover/grate and immediate surrounding pavement) have been received also. Id.

Additionally, the only qualified expert in this case, Brad Wong, P.E., opined in relevant part on August 5, 2024, that “the subject area where Ms. Walsh fell was not required to conform ADA standards/guidelines”. Exhibit “G”, p. 4. Further, in his September 12, 2024 report, Mr. Wong opined:

- a) I agree with the State of Hawaii Disability and Communication Access Board that the storm drain is not part of the accessible route required within the parking lot and

therefore not subject to ADA regulations. There is no requirement that the entire parking lot needs to conform with ADA regulations”,

- b) “The National Floor Safety Institute standard, NFSI B101.9-2020 is a voluntary standard with no evidence it has been adopted or recommended by any authoritative body in the State of Hawaii regarding building maintenance or inspection compliance”,
- c) The International Property Maintenance Code (IPMC)2021 is not a code that has been adopted by the State of Hawaii, and
- d) The subject area where Ms. Walsh fell was not required to conform with ADA standards/guidelines. Trea was outside the designed and marked area of the accessible route from the parking lot to the mall entrance. The other codes or standards cited by Ms. Walsh are either not applicable or voluntary standards. Additionally these codes or standards are not adopted by the State of Hawaii or Kahala Mall.

Exhibit “H”, p 2.

Finally, in his March 30, 2026 supplemental report, Mr. Wong opined:

- a) There is no technical basis or standard to support the conclusion that the subject grate was part of an accessible route and subject to ADA standards,
- b) ASTM F1637-95 is not part of the OSHA standards/regulations,
- c) ASTM F1637-95 is a voluntary standard that is not adopted by any municipality including the City & County of Honolulu where Kahala Mall is located. Without this ASTM standard being mandatory (e.g. part of the process of permitting and review for construction, or previous complaints or accident history) the ASTM standard is not relevant in the evaluation of the subject grate, and
- d) The “reconstruction” of Ms. Walsh’s fall is not based on reasonable engineering certainty.

Exhibit “I”, p 2 and 5.

B. This Motion.

Under Hawaii law, “negligence must be proved, and never will be presumed. The mere fact that an accident or injury has occurred, with nothing more, is not evidence of negligence on the part of anyone.” Carlos v. MTL, Inc., 77 Haw. 269, 276, 883 P.2d 691, 698 (Haw.App. 1994); W. Page Keeton et al., *Prosser and Keeton on the Law of Torts* § 39 at 242 (5th ed. 1984). Indeed, Hawaii law does not impose liability for every “trivial departure from perfection.”. Harris v. State, 1 Haw.App. 554, 557, 663 P.2d 446 (1981), (citing 62 Am.Jur.2d, *Premises Liability*, § 23 at 254).

In order to prevail in a negligence action in Hawaii, a plaintiff is required to prove the following elements:

- (1) A duty or obligation, recognized by law, requiring the defendant to conform to a certain standard of conduct, for the protection of others against unreasonable risks;
- (2) A failure on the defendant's part to conform to the standard required: a breach of the duty;
- (3) A reasonably close causal connection between the conduct and the resulting loss; and
- (4) Actual loss or damage resulting to the interests of another.

See, Dairy Road Partners v. Island Ins. Co., 92 Haw. 398, 419, 992 P.2d 93, 114 (2000); Knodle v. Waikiki Gateway Hotel, Inc., 69 Haw. 376, 385, 742 P.2d 377, 383 (1987).

Consistent with the foregoing, Hawaii negligence case law does not require an owner or occupant to be an insurer against all accidents that occur on the premises. Generally, no liability is incurred for every "trivial departure from perfection". Harris v. State, 1 Haw.App. 554, 557, 663 P.2d 446, 448 (1981). Rather, a landowner or occupier of land will be liable for injuries sustained by a person whose presence on the property was anticipated if there is a condition upon the land that poses an *unreasonable risk of harm which the possessor knows or should have known*, and which the possessor fails to take reasonable steps to eliminate or adequately warn against it. Corbett v. Association of Apartment Owners of Wailua Bayview Apartments, 70 Haw. 415, 417, 771 P.2d 1193 (1989). (emphasis added). In Corbett, supra, the Hawaii Supreme Court stated the following:

... In our view, the substance of our many cases, dealing with possessors of land, and their duty toward persons using the land, is that, if a condition exists upon the land which poses *an unreasonable risk of harm* to persons using the land, then the possessor of the land, *if the possessor knows, or should have known of the unreasonable risk*, owes a duty to

the persons using the land to take reasonable steps to eliminate the unreasonable risk, or to adequately warn the users against it.

Id., 70 Haw. at 417 (Emphasis added).

In short, Hawaii law only requires a possessor of land to warn or eliminate for “**an unreasonable risk of harm**” on the property. In addition, plaintiffs have the burden of proving notice; i.e. that a defendant knew or should have known about the alleged risk of harm at issue. On the issue of notice to support recovery in an action where an owner or occupant is charged with negligence, it must be shown that the owner or occupant *knows or should have known of the hazard or defect which caused the injury*. Id., 1 Haw.App. at 557, 663 P.2d at 448. (emphasis added). With the foregoing, liability cannot be imposed where a landlord or an owner or occupant of the premises has not been put on actual or constructive notice of the unsafe condition or of the defects that causes plaintiff injury. Id., 1 Haw.App. at 557, 663 P.2d at 448 (citing 62 Am.Jur.2d, *Premises Liability*, §27, at 258).

Finally, it is Plaintiffs’ burden of proving *causation* as an element of negligence claims. An act or omission is a legal cause of an injury, if it is a substantial factor in bringing about the injury. (*Hawaii Civil Jury Instruction 7.1 – Legal Cause*).

Defendant respectfully submits that: (1) there is no evidence of an unreasonable risk of harm on the subject premises; (2) there is no evidence of actual or constructive notice of any prior issues or complaints so as to have created a duty of care to warn and/or remediate the area; and (3) there is no evidence that any acts or omissions of the Defendants which were a legal cause of Plaintiff’s alleged injuries and/or damages. Thus, even if it is assumed for purposes of this motion that Defendant is an owner and/or possessor of the land in question, Defendant respectfully submit that there are no genuine issues of material fact and that they are entitled to summary judgment in their favor, as a matter of law.

II. ARGUMENT

A. Defendant Did Not Owe or Breach Any Duties of Care.

Again, Hawaii law does not impose liability for “trivial departures from perfection” under Harris v. State. Indeed, it is anticipated that Plaintiffs will argue that the subject storm drain cover/grating and/or the surrounding pavement were arguably not perfect. There is no evidence however, that whatever Plaintiffs argue about an alleged imperfection, being or creating an unreasonable risk of harm. Here, Plaintiff MW in deposition, admits she did not know what caused her to fall. Furthermore, by not responding the Request for Admissions, Plaintiff MW admitted there of there not being evidence that: a) the storm drain cover/grate was slippery, b) of the co-efficient of friction of the storm drain cover/grate, c) the storm drain/grate being governed by the Honolulu Building Code, d) of a building code violation, e) she tripped on the storm drain cover/grate, f) of stumbling forward or backward either from a trip or slip on the storm drain cover/grate; g) that the storm drain cover/grate was hazardous, and h) that the storm drain cover/grate was unreasonably dangerous. Accordingly, there is no evidence that there was an *unreasonable risk of harm* in this case.

Consistent with there being no unreasonable risk of harm present, there is also no evidence that Defendant had any *notice* of any supposed dangers, defects or even imperfections with regard to the subject storm drain cover/grating or surrounding pavement creating an unreasonable risk of harm. Indeed, Ms. Paeste’s declaration specifically states the absence of notice of slipping, tripping or falling, as well as the absence of reports or complaints about the condition of the storm drain (cover/grate and immediate surrounding pavement).

A prerequisite to any negligence action is the existence of a duty owed by the defendant to the plaintiff. See Knodle v. Waikiki Gateway Hotel, Inc., 69 Haw. 376, 385, 742 P.2d 377,

383 (1987)(emphasis added). In addition, "the existence of a duty owed by the defendant to the plaintiff. . . (i.e.) 'whether ... such a relation exists between the parties that the community will impose a legal obligation upon one for the benefit of the other--or, more simply, whether the interest of the plaintiff which has suffered invasion was entitled to legal protection at the hands of the defendant,' is entirely a question of law." Id. citing Bidar v. Amfac, Inc., 66 Haw. 547, 553, 669 P.2d 154, 158 (1983) (quoting W. Prosser, Handbook of the Law of Torts § 37, at 206 (4th ed. 1971))(emphasis added). Without proof of the presence of an unreasonable risk of harm and without proof of any notice of the same, Defendant did not owe nor breach any duties of care allegedly owed to Plaintiffs related to the supposed condition of the subject storm drain or surrounding pavement. Plaintiffs' claims therefore, fail as a matter of law and summary judgment is warranted.

B. Defendant's Alleged Acts and/or Omissions Were Not a Proximate Cause
of the Subject Incident and/or Plaintiff's Claimed Injuries and/or Damages.

Consistent with the lack of evidence of any unreasonable risks of harm due to Defendant's negligence where the subject incident occurred, there is no evidence to support a claim that she tripped and fell because the storm drain cover/grate or surrounding cement being less than perfect. Instead, the facts as testified to by Plaintiff MW about there no obstruction in viewing the subject storm drain cover/grate and her simply not looking where she was standing or stepping, make clear that Plaintiff MW, not Defendant, caused of her own fall and injuries.

Hawaii law has long been that a plaintiff is charged with a duty imposed on all men "to observe ordinary care for their own safety". See: DiCenzo v. Izawa, 68 Haw. 528, 540 (1986); Silva v. Oishi, 52 Haw.129 (1970); Young v. Price, 46 Haw. 309 (1960) (one who fails to see and avoid an obvious obstruction in or on a sidewalk just ahead in plain sight is guilty of contributory negligence as a matter of law). The "negligence is the doing of some act which a

reasonably prudent person would not do, *or* the failure to do something that a reasonably prudent person would do under the circumstances shown by evidence. It is the failure to use "ordinary care". DiCenzo v. Izawa, 68 Haw. 528, 540 (1986); Silva v. Oishi, 52 Haw.129 (1970), (need a reasonable opportunity to avert the injury by the exercise of ordinary care). Here, had Plaintiff MW exercised ordinary care, there would not have been an incident. By her own testimony she did not.

Plaintiffs' claims in this case also fail for lack of proximate cause. While it is true that the question of proximate cause is ordinarily not susceptible to summary adjudication, *where the facts are undisputed or are susceptible of only one reasonable interpretation, the trial court is under a duty to rule upon the question of proximate cause as a matter of law*. See, De Los Santos v. State, 65 Haw. 608, 610-11, 655 P.2d 869, 871 (1982) (citing Pickering v. State, 57 Haw. 405, 557 P.2d 125 (1976); cf. Tsugawa v. Reinartz, 56 Haw. 67, 527 P.2d 1278 (1974)) (emphasis added).

Consistent with the foregoing, Hawaii appellate decisions have consistently ***affirmed*** the granting of summary judgment on the issue of proximate cause, where there are no genuine issues of material fact. See, Pickering v. State, 57 Haw. 405, 557 P.2d 125 (1976)(affirming trial court's granting of summary judgment in favor of defendant State due to lack of evidence that defendant State's alleged negligence was proximate cause of accident); De Los Santos v. State, 65 Haw. 608, 610-11, 655 P.2d 869, 871 (1982)(affirming trial court's granting of summary judgment in favor of defendant state due to lack of evidence that any act or omission on the part of the state had materially contributed to the accident); Cordeiro v. Burns, 776 P.2d 411 (Haw.App. 1989)(affirming trial court's granting of summary judgment in favor of defendant state due to finding that sole cause of accident was negligence of intoxicated driver).

C. Summary Judgement Against Plaintiff CW's Loss of Consortium Claim is Also Appropriate.

Hawaii law is clear that since Plaintiff MW's claims are subject to summary judgment, Plaintiff CW's loss of consortium claim is also subject to summary judgment. Specifically, as stated in Mist v. Westin Hotels, Inc., 69 Haw. 192, 195, 738 P.2d 85 (1987), "[i]t is generally accepted that the action for loss of consortium is a derivative action, i.e., the action by the spouse for loss of consortium is derivative of the action for damages by the injured spouse.... Hence, where the initial claim of injury cannot be maintained the derivative action of loss of consortium must also fail." Citing Towse v. State, 64 Haw. 624, 637, 647 P.2d 696 (1982).

D. Defendant Has Met Its Burden as HRCF Rule 56 Movants and Are Entitled to Summary Judgment.

Summary judgment should be granted "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any *material fact* and that the moving party is entitled to a judgment as a matter of law." HRCF Rule 56(c) (emphasis added). "A fact is material if proof of that fact would have the effect of establishing or refuting one of the essential elements of a cause of action or defense asserted by the parties." Amfac, Inc. v. Waikiki Beachcomber Inv. Co., 74 Haw. 85, 104, 839 P.2d 10, 22 (reconsideration denied), 74 Haw. 650, 843 P.2d 144 (Haw. 1992).

Where the party moving for summary judgment is the defendant and does not bear the burden of proof at trial, the defendant may prevail by demonstrating that the "plaintiff fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." Thomas v. Kidani, 126 Haw. 125,

130, 267 P.3d 1230, 1235 (Haw. 2011) (quotations omitted) (citing Exotics Hawaii-Kona Inc., v. E.I. Du Pont De Nemours & Co., 116 Haw. 277, 302, 172 P.3d 1021, 1046 (2007). A principal purpose of summary judgment is to isolate and dispose of factually unsupported claims or defenses. Id. (citing Celotex Corp. v. Catrett, 477 U.S. 317, 319 (1986)). “A party opposing a motion for summary judgment *cannot* discharge his or her burden by alleging conclusions, ‘nor is he entitled to a trial on the basis of a hope that he can produce some evidence at that time.’” (emphasis added). Henderson v. Professional Coatings Corp., 72 Haw. 387, 401, 819 P.2d 84, 92 (1991).

Defendant respectfully submits that it has met its burden as the moving parties under HRCF Rule 56. In Ralston v. Yim, 129 Haw. 46, 292 P.3d 1276 (2013), the Hawaii Supreme Court provided the following regarding the initial burden for a summary judgment movant:

... (T)his court's case law indicates that a summary judgment movant may satisfy his or her initial burden of production by either (1) ***presenting evidence negating an element of the non-movant's claim***, or (2) ***demonstrating that the nonmovant will be unable to carry his or her burden of proof at trial***. See French, 105 Hawai'i at 470–72, 99 P.3d at 1054–56; Exotics Hawaii-Kona, 116 Hawai'i at 302, 172 P.3d at 1046. Where the movant attempts to meet his or her burden through the latter means, he or she must show not only that the non-movant has not placed proof in the record, but also that the movant will be unable to offer proof at trial. See French, 105 Hawai'i at 472, 99 P.3d at 1056 (citing Anderson, 834 F.Supp. at 1368). Accordingly, in general, a summary judgment movant cannot merely point to the non-moving party's lack of evidence to support its initial burden of production if discovery has not concluded. See id. (“[M]erely asserting that the non-moving party has not come forward with evidence to support its claims is not enough.”).

Ralston, 129 Haw. at 60-61; 292 P.3d at 1290-1291 (emphasis added).

Here, Defendant satisfies its burden by both: 1) presenting evidence to negate elements of Plaintiffs' claim; and 2) demonstrating that Plaintiff MW cannot carry her burden of proof at trial. As noted above, Plaintiffs cannot prove elements required in a negligence action involving claims of premises liability. Specifically, Plaintiffs cannot prove that there was an “unreasonable risk of harm” at the subject property that any of the Defendant knew or should have known

about. Hence, Plaintiffs cannot provide that Defendants owed or breached a duty of care owed to Plaintiff MW. Moreover, Plaintiffs cannot prove that there was a causal connection between the alleged breach of duty and any resultant injuries.

With the foregoing, Defendant respectfully submits it has carried its initial burden as the moving parties under HRCF Rule 56 and as set forth in Ralston v. Yim, supra.

III. CONCLUSION

In sum, the evidence is that the subject area did not present an “unreasonable risk of harm” that Defendant knew or should have known about, and that any supposed acts/omissions were not a legal cause of any claimed injuries and/or damages. Defendant respectfully submits that based on the evidence and applicable Hawaii law, summary judgment should be granted in its favor on all claims asserted by Plaintiffs herein, including Plaintiff CW’s derivative loss of consortium claim.

DATED: Honolulu, Hawaii, May 6, 2026.

/s/ Randall Y. Kaya

RANDALL Y. KAYA

Attorney for Defendant

MMI REALTY SERVICES INC.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

MARJORIE J. WALSH
CRAIG W. WALSH,

Plaintiffs,

vs.

MMI REALTY SERVICES INC.

Defendant.

) CIVIL NO. 1CCV-24-0000003
)
) DECLARATION OF ESMERALDA
) "EZY" PAESTE
)
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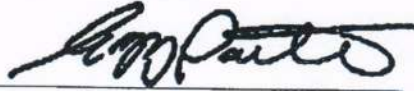
DECLARATION OF ESMERALDA "EZY" PAESTE

I, ESMERALDA "EZY" PAESTE, do hereby state and declare as follows:

1. I am the general manager of Kahala Mall and I am an employee of Defendant MMI Realty Services Inc. (hereinafter "Defendant"). I have been the general manager of Kahala Mall since 2016.
2. I have personal knowledge about the matters contained herein.
3. That with regard to the storm drain (cover/grate and immediate surrounding pavement) in the Kahala Mall parking lot, on the Whole Foods side of the mall that is the subject of this lawsuit, there have been no reports of slipping, tripping or falling on or from it while I have been general manager.
4. That with regard to the storm drain (cover/grate and immediate surrounding pavement) in the Kahala Mall parking lot, on the Whole Foods side of the mall that is the subject of this lawsuit, MMI has not received any reports or complaints about the condition of the storm drain (cover/grate and immediate surrounding pavement) while I have been general manager.

I, EZMERALDA "EZY" PAESTE hereby declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawaii, 5-06-2026.

A handwritten signature in black ink, appearing to read 'Ezy Paeste', written over a horizontal line.

ESMERALDA "EZY" PAESTE

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

MARJORIE J. WALSH
CRAIG W. WALSH,

Plaintiffs,

vs.

MMI REALTY SERVICES INC.

Defendant.

) CIVIL NO. 1CCV-24-0000003
)
) DECLARATION OF COUNSEL;
) EXHIBITS "A" – "I"
)
)
)
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)
)

DECLARATION OF COUNSEL

I, RANDALL Y. KAYA, do hereby state and declare as follows:

1. I am an attorney duly licensed to practice law in the courts of the State of Hawaii and am the attorney for Defendant MMI REALTY SERVICES INC. (hereinafter "Defendant") in the above referenced case.

2. Except as stated to be upon information and belief, I have personal knowledge about the matters contained herein and am personally familiar with the filings and pleadings in this case.

3. Attached hereto as Exhibit "A" is a true, accurate and correct copy of Pages 1-6 of Plaintiffs Craig W. Walsh and Marjorie J. Walsh's Complaint filed on January 2, 2024 [Dkt. 9].

4. Attached hereto as Exhibit "B" is a true, accurate and correct copy of the mini transcript of the oral deposition of Plaintiff Marjorie Walsh and correction sheet, taken on January 20, 2025.

5. Attached hereto as Exhibit "C" is a true, accurate and correct copy of the Hawaii Rule of Civil Procedure, Rule 36 Request for Admissions to Plaintiff Marjorie Walsh, *except*

Exhibits “C” – “K” to the Request for Admissions. Exhibits “C”–“K” to the Request for Admissions consisted of Plaintiff Marjorie Walsh’s medical records and had been attached as exhibits to the Request for Admissions for which admissions were sought. Exhibits “C”–“K” to Exhibit “C” – the Request for Admissions are not submitted for this motion due to Plaintiff Marjorie Walsh’s right to privacy and HIPAA concerns.

6. Attached hereto as Exhibit “D” is a true, accurate and correct copy of the JEFS filed Certificate of Service to the Hawaii Rule of Civil Procedure, Rule 36 Request for Admissions to Plaintiff Marjorie Walsh.

7. That more than 30 days have passed since the service of the Hawaii Rule 36 Request for Admissions to Plaintiff Marjorie Walsh and she never responded, thus, pursuant to Rule 36(a), they are deemed admitted.

8. Attached hereto as Exhibit “E” is a true, accurate and correct copy of Plaintiff Craig Walsh’s Answers to Defendant’s First Request for Answers to Interrogatories.

9. Attached hereto as Exhibit “F” is a true, accurate and correct copy of the mini transcript of the oral deposition of Plaintiff Craig Walsh and correction sheet, taken on January 20, 2025.

10. Attached hereto as Exhibit “G” is a true, accurate and correct copy of the August 5, 2024, report of Brad Wong P.E. in this matter.

11. Attached hereto as Exhibit “H” is a true, accurate and correct copy of the September 12, 2024, report of Brad Wong P.E. in this matter.

12. Attached hereto as Exhibit “I” is a true, accurate and correct copy of the March 30, 2026 report of Brad Wong P.E. in this matter.

I, RANDALL Y. KAYA, hereby declare under penalty of perjury that the foregoing is true and correct.

DATED: Honolulu, Hawaii, May 6, 2026.

/s/ Randall Y. Kaya
RANDALL Y. KAYA

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EXHIBIT “A”

MLF
9

Marjorie J. Walsh (pro se)
Craig W. Walsh (pro se)
350 Ward Avenue, #106-8
Honolulu, Hawaii 96814
Tel: (802) 359-2718
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STATE OF HAWAII
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M. L. FAGARRANG
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IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

Marjorie J. Walsh
Craig W. Walsh
Plaintiffs

vs.

MMI Realty Services Inc.
Defendant

1CCV NO. 24 - 0000003
Number: _____

COMPLAINT AND SUMMONS
PERSONAL INJURY AND
LOSS OF CONSORTIUM

DATE OF INJURY:
AUGUST 16, 2023

COMPLAINT

PARTIES

1. Plaintiffs Marjorie J. Walsh (hereafter **Marjorie**) and Craig W. Walsh (hereafter **Craig**) are individuals resident in the State of Hawaii. Defendant MMI Realty Services, Inc. (hereafter **MMI**) is a California corporation now and at all relevant times registered as a foreign corporation in the State of Hawaii. **MMI** owns and/or operates Kahala Mall, a popular shopping center in Honolulu selling to the public.

JURISDICTION AND VENUE

2. The First Circuit Court has jurisdiction in this matter and the venue is proper. **Marjorie's** injury occurred at Kahala Mall. The amount in controversy is greater than the minimum jurisdictional limits of this Court and a jury trial is requested. See HRS §603-21.5 (a)(3) and HRS §604-5 (b). The tortious action of defendant falls under HRS §663-1 and **Marjorie's** actual pain, suffering, and disfigurement proximate to the injury fall under HRS §663-8.5. **Craig's** loss of consortium also falls under HRS §663-8.5. Other statutes may apply.

FACTS ALLEGED

3. **Marjorie** is a 74-year-old *kupuna* who has resided in Palolo Valley since May 2022. She was born in England and has been married to **Craig** since April 1986. **Marjorie** has lived in Hawaii for many years and holds dual United States and United Kingdom citizenship.

4. **Craig** (also 74 years old) and **Marjorie** are retired financial services executives. They owned Lucies Farm in England where they ran a luxury dog resort and raised pedigree Highland and Aberdeen Angus cattle, Kurobuta pork, and wild boar.¹

5. They sold Lucies Farm in 2010 and moved to Vermont. They moved back to Hawaii full-time in the summer of 2016.

6. On Wednesday August 16, 2023 **Craig**, Ka Lā (**Craig's** service dog), and **Marjorie** went to pick up their mail at an office on Halekauwila Street near Ward Avenue. They left home at 1:45 PM², fetched the mail at 2:03 PM, and decided to window shop at the Hilton Hawaiian Village and have ice cream at Lappert's. They arrived at the Hilton at 2:28 PM and left Hilton at 4:01 PM.

¹ <https://kobe-beef.co.uk/>

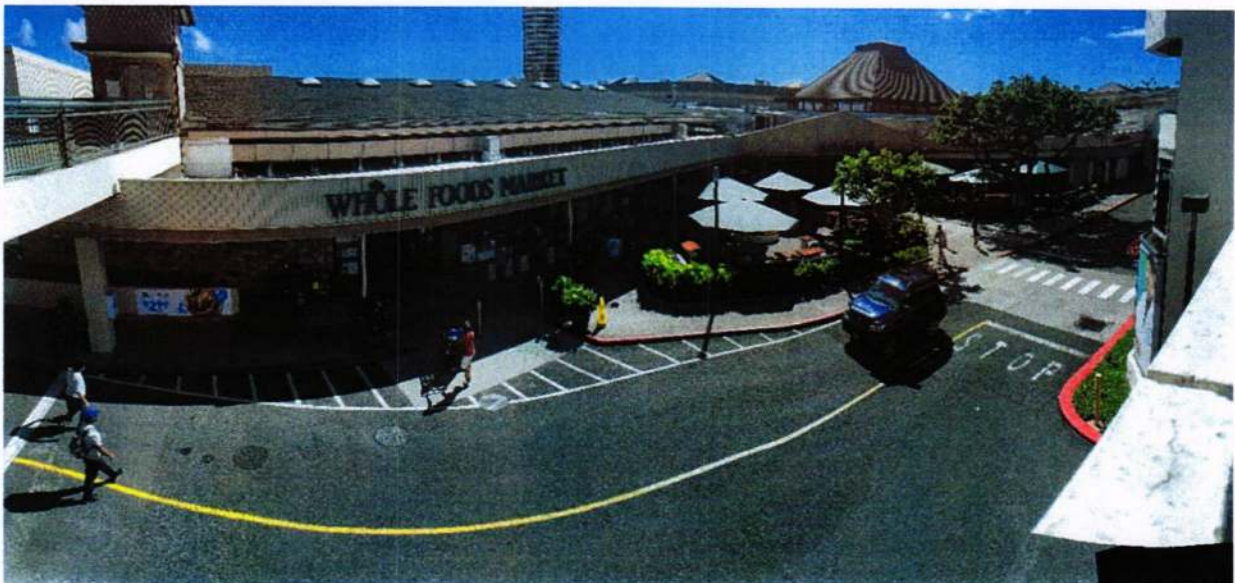
² All dates, times, and locations are automatically logged, contemporaneously, by Google Timeline installed on Craig's iPhone. It is difficult to print this out, but a KML file can be provided.

7. **Marjorie** needed a few groceries (milk and yoghurt) so they “cruised” down Kalakaua Avenue and around Diamond Head, heading to Whole Foods at Kahala Mall. **Craig** was driving, **Marjorie** was in the front passenger seat, and Ka Lā rode in the back of the car.

8. They arrived at Kahala Mall at 4:28 PM. The parking lot in front of Whole Foods was typically crowded. **Craig** and **Marjorie** each have disabled parking permits. Neither use a cane or other walking aid: they have the permits because they can’t walk or carry parcels long distances without discomfort.

9. There is no passenger drop off/pick up area in front of or near Whole Foods, so they agreed **Craig** would drop **Marjorie** off (as he has many times in the past) and see if he could find a space. If there was no parking space (as rarely happens) he’d simply drive around the lot with Ka Lā waiting for **Marjorie**’s call to return to the front of Whole Foods.

10. As shown in these photographs (taken on November 4, 2023) the red curb extends from The Counter Custom Burgers to beyond the American Savings Bank branch, on both sides of the road.





11. There is a single disabled space nearest the entrance to Whole Foods. There are other disabled spaces in some of the other aisles.

12. **Craig** was driving with Whole Foods on his left, the parking lot on his right, and the American Savings Bank in front – roughly in an ewa direction.

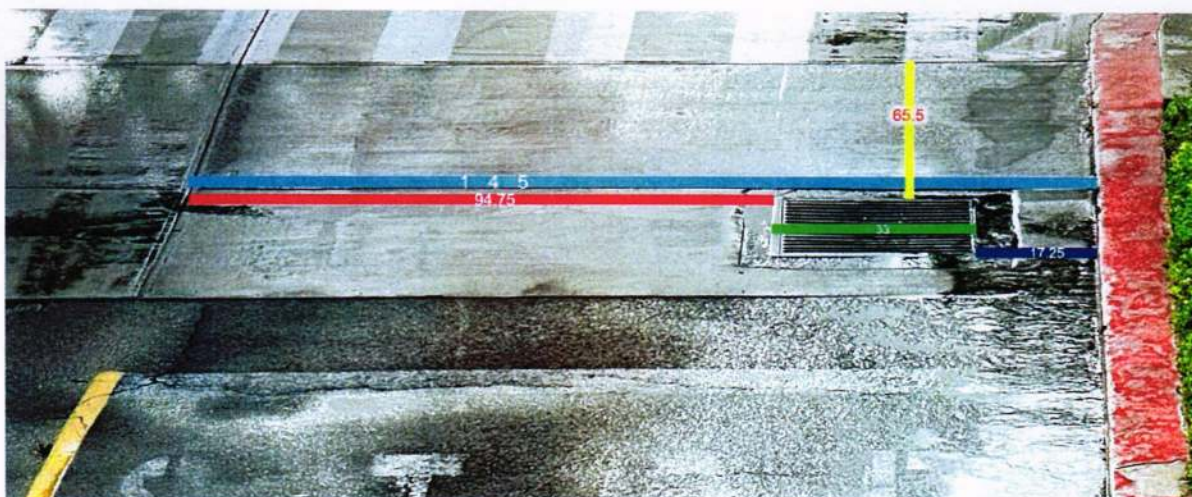
13. **Craig** fully stopped at the stop line, then stopped again just shy of the pedestrian crosswalk so **Marjorie** would be near the crosswalk but their car would not block other pedestrians. Despite many previous visits to Kahala Mall (**Craig** grew up on nearby Makaiwa Street) neither were aware that there was a storm drain, in a deteriorated condition, to the right of the car. **Marjorie** promptly exited their car (a 2022 Nissan Versa) on the passenger side. Their vehicle is 68.5 inches wide³ and Craig was to the right of the center line.

³ Nissan Versa 2020 Owner's Manual, §10-9

14. Here are relevant measurements taken on November 9, 2023⁴:

	inches
Distance from edge of metal grill to curb (parking lot side)	17.25
Width of metal grill	33.00
Distance from edge of metal grill to center line of road (mall side)	94.75
Distance from red curb to center line	145.00
Width of Nissan 2020 Versa	68.50
Distance from passenger side of Vectra to curb (approximately)	76.50
	145.00
Distance between metal grill bars (if not bent)	1.50
Distance from edge of metal grill to sidewalk (Bank side)	6.50

15. Here ere are the measurements layered on a photograph⁵ of the site:



16. **Marjorie** stepped out of the car, closed the door, and turned to walk behind the car as is her custom. She promptly tripped on the storm grating or its decayed surround and fell. She fell towards the car and the crosswalk, with her left hand (which she used to try to minimize her fall) going beneath the car. **Craig** –

⁴ In all instances, measurements and photographs were taken discreetly and without interruption to traffic or pedestrians. **Craig** and **Marjorie** did so at times when visiting Kahala Mall to shop at Whole Foods, Long's, Starbucks, etc.

⁵ Photographed September 21, 2023.

unaware of her fall – almost ran over her hand. Kind bystanders urgently made signals to **Craig** to remain stopped, which he did.

17. This photograph, taken on November 11, 2023 with their car, shows the approximate location of the vehicle when **Marjorie** fell:



18. It's easy to say, particularly with hindsight, that **Marjorie** should not have exited the car in this location. She had done in this approximate location on many previous occasions. Out of curiosity Plaintiffs had lunch at a table near this location on November 11, 2023. They observed (and photographed) people getting out of their vehicle at this identical location at 1:35 PM, 1:49 PM, and 2:22 PM. Three in the hour they were there – and the mall was not particularly crowded.

19. The crosswalk seems to be for the benefit of folks riding the elevator to and from the second floor of the garage. Essentially *all* the parking lot seems to be used by pedestrians, *including* the location of this storm drain. Mall management

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EXHIBIT “B”

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

MARJORIE J. WALSH	)	CIVIL NO. 1CCV-24-0000003
CRAIG W. WALSH,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
MMI REALTY SERVICES, INC.,	)	
	)	
Defendants.	)	
	)	

DEPOSITION OF MARJORIE J. WALSH

Taken on behalf of the Defendant MMI REALTY SERVICES,
INC.,, at the Law Offices of Leslie R. Kop, 1100 Ward
Avenue, Suite 500, Honolulu, Hawaii 96814, commencing at
10:01 a.m., on Monday, January 20, 2025 pursuant to
Notice.

BEFORE: MYRLA R. ROMERO, CSR No. 397
Notary Public, State of Hawaii

RALPH ROSENBERG COURT REPORTERS, INC.
Honolulu, HI (808) 524-2090

EXHIBIT "B"

2

1 APPEARANCES:

2 For Plaintiffs MARJORIE J. WALSH; CRAIG W. WALSH:

3 MARJORIE J. WALSH (Pro Se)

4 CRAIG W. WALSH (Pro Se)

5 350 Ward Avenue, #106-8

6 Honolulu, Hawaii 96814

7 marjorie@hmdp.com

8 craig@hmdp.com

9 For Defendant MMI REALTY SERVICES, INC.:

10 RANDALL Y. KAYA, ESQ.

11 Law Offices of Leslie R. Kop

12 1100 Ward Avenue, Suite 500

13 Honolulu, Hawaii 96814

14 rkaya@staffcounsel808.com

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1 (Disclosure presented to all counsel.)

2 MR. KAYA: On the record. This is

3 prior to Ms. Walsh -- Mrs. Walsh being sworn under

4 oath. I wanted to go over a couple of things. One

5 is my understanding is the Plaintiffs are objecting

6 to being deposed because the room is too cold. I've

7 explained to them that it's controlled -- the

8 temperature is controlled by the building.

9 Nonetheless, they objected to that and I'll allow one

10 of them to make a statement about that if they want

11 to.

12 MR. WALSH: The room is very cold.

13 You're wearing a jacket, the court reporter is

14 wearing a sweater. Both of you have been here

15 before. We've asked you if you could have the

16 thermostat changed so the room would be at least

17 72 degrees or thereabouts, and you said you have no

18 control over it.

19 I asked you if you could call the

20 building because you said the building had control

21 over it, and you said that quote, "I'm not going to

22 do that" unquote.

23 MR. KAYA: Well --

24 MR. WALSH: So I'm sitting here

25 freezing cold in an office, and we simply asked if

3

I N D E X

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5

1 you could make it warmer. You could have also told

2 us the room was cold and we would have brought

3 sweaters. We don't have sweaters in our car.

4 MR. KAYA: And my retort to that is

5 simply this, one, I don't know what the temperature

6 is in the room. I don't know whether it's at 72 or

7 71 or 70. I don't believe you do either.

8 So with that having been said, we're

9 going to proceed with the deposition. Now, we'll go

10 over the instructions so why don't we place

11 Mrs. Walsh under oath first.

12 MARJORIE J. WALSH,

13 called as a witness by and on behalf of the Defendant

14 MMI REALTY SERVICES, INC. having been first duly sworn

15 to tell the truth, the whole truth and nothing but the

16 truth, was examined and testified as follows:

17 EXAMINATION

18 BY MR. KAYA:

19 Q Okay. Mrs. Walsh, can you please state for

20 the record your name.

21 A Marjorie Janet Walsh.

22 Q Okay. And you're a plaintiff in this case,

23 correct?

24 A I am.

25 Q Okay. Now, let's -- I wanted to make a

6 1 statement for the record, and I'll allow you folks to 2 comment. Now, but I want to be clear, this is 3 Mrs. Walsh's deposition. Mr. Walsh is not, although 4 present, is not allowed to act as her attorney 5 because that would be practicing law without a 6 license. So you're not -- Mr. Walsh, I want to be 7 clear. You can't make objections for one another, 8 you can't confer with one another. It is simply 9 Mrs. Walsh's deposition so that we're clear about 10 that. 11 Now, I'm not asking for either of you to 12 respond. I just want it to be placed on the record 13 that those are the instructions. 14 The next thing I wanted to state for the 15 record is that because Mr. Ortiz, the arbitrator, and 16 because we disagreed over the scope of the medical 17 record discovery, the defense has been limited to 18 whatever medical records you folks produced to my 19 client's insurer before the lawsuit and/or what you 20 transmitted via the Dropbox link that you furnished. 21 I wanted to, therefore, advise you -- and 22 again, you don't have to agree -- that should this 23 matter go beyond the CAP program, we'll revisit once 24 we get any additional records, your deposition, 25 Mrs. Walsh's deposition. So essentially we're	8 1 your credibility can be questioned and commented on. 2 So that's why it's important that you both hear and 3 understand the question before you answer. Do you 4 understand that? 5 A Yes. 6 Q Okay. Now, we'll try to avoid -- we need 7 to avoid talking over one another. In other words, 8 please allow me to finish my question before you 9 answer, and I'll try to allow you unless you're going 10 off on some tangent to complete your answer, okay. 11 You need to avoid the usage of slangs or 12 nods and shakes of your head. You need to -- in 13 other words, you need to answer verbally. Please 14 avoid uh-huh or uh-uh because that's hard for the 15 reporter to take down even though she is facing you. 16 You understand that? 17 A I understand. 18 Q We will take short breaks because the 19 reporter needs to rest her hands because it's hard to 20 keep on going. And if you folks desire to use the 21 restroom or anything like that, please tell us. As 22 long as you complete your answer to the question, you 23 know, we'll take a break. As -- if my secretary 24 didn't tell you, the bathroom is outside in the 25 hallway past the elevators. Okay?
7 1 reserving the right to continue this deposition at a 2 later date. 3 Now, I'm going to go over the typical 4 instructions I give to people when they have their 5 deposition taken. The first is you understand you -- 6 have you sworn her yet? 7 THE REPORTER: Yes. 8 BY MR. KAYA: 9 Q Okay. You understand you've taken an oath 10 and it's the same oath that you would take in court? 11 A Yes. 12 Q Okay. So you understand your testimony 13 here is under penalty of perjury? 14 A Yes. 15 Q Okay. Probably the most important 16 instruction I can give you is please make sure you 17 both hear and understand the question before you 18 answer because if your -- because -- let me go back. 19 You do have an opportunity, after your 20 deposition is completed, to review the transcript and 21 make any changes or corrections you may choose to in 22 writing. Should you do make substantive changes 23 perhaps changing a yes to a no or changing a 24 description significantly, you need to understand 25 that those changes can be questioned. You may --	9 1 A Does it need a code or a key? 2 Q There's a code for that. 3 A Okay. 4 Q Okay. Another instruction I need to give 5 you is please do not guess. If you don't know the 6 answer, tell me you don't know the answer. If you 7 don't remember, tell me you don't remember. But 8 understand that if you tell me you don't remember and 9 you later tell me you do remember or testify you do 10 remember, that's going to be a substantive change. 11 Do you understand that? 12 A I understand. 13 Q Okay. If on the other hand you can furnish 14 an estimate, okay, we'll allow you to furnish an 15 estimate or I will ask for an estimate. Now, do you 16 know the difference between a guess and an estimate? 17 A Well, guessing is when you really don't 18 know and you're just guessing. 19 Q Okay. 20 A An estimate is what you think. 21 Q Okay. No, let me give you an example. An 22 estimate -- you see me walk in the room, you see me 23 walk out of the room, you can estimate my height. 24 You don't know my exact height, correct? 25 A Okay.

1 Q Okay. On the other hand if I asked you to
2 tell me how tall my son is, that would be a guess,
3 right?
4 A Correct.
5 Q Okay. So you understand the difference?
6 A I do.
7 Q Okay. Now, have you ever been deposed
8 before?
9 A No.
10 Q Okay. Are you on any medications today
11 that make it difficult for you to both hear or
12 understand my questions?
13 A No.
14 Q Okay. Are you on any medications that
15 would make it difficult for you to answer the
16 question?
17 A No.
18 Q Okay. Did you take any medication today?
19 A Yes.
20 Q Which ones did you take?
21 A A blood pressure pill.
22 Q Okay. Just one medication?
23 A Just one.
24 Q Okay. Thank you. Now, I'd like for you to
25 state for the record your address. I want to be

1 clear, okay. It's where you physically reside.
2 A 2140 Palolo -- 10th Avenue.
3 Q Okay. And the last four digits of your
4 social security number?
5 A 8949.
6 Q Okay. And what is your date of birth?
7 A [REDACTED] 49.
8 Q And where were you born?
9 A England.
10 Q Okay. What particular part?
11 A Wister.
12 Q Now, I'm going to ask you some questions
13 about your background, general questions at this
14 point. Now, are you presently married?
15 A I am.
16 Q Okay.
17 A Yes.
18 Q Were you married before?
19 A Yes.
20 Q To someone else, right?
21 A Yes.
22 Q Okay. And with regard to your prior
23 marriage, who was that person and how long were you
24 married?
25 A I don't think that's relevant.

1 Q Again, with regard to your prior marriage,
2 who was that person and how long were you married?
3 A I don't think that's relevant.
4 Q So you're refusing to answer that?
5 A I am, yes.
6 Q Okay. Who are you presently married to?
7 A Craig Walsh.
8 Q And how long have you been married?
9 A I'm a low maintenance kind of girl, I
10 don't -- I don't know, 35 years, something like that.
11 Q Okay. Do you know what year you were
12 married?
13 A Eighty-five or '86.
14 Q Okay. Do you folks have any children?
15 A We do not.
16 Q Do you have any children with your prior --
17 A I do not.
18 Q Are you an attorney?
19 A No.
20 Q Have you consulted an attorney with regard
21 to this claim?
22 A No.
23 Q I've seen emails where you indicated that
24 you were talking to an attorney. Are you saying that
25 you weren't talking to an attorney?

1 A Not me. I did not talk to an attorney.
2 Q Okay. You did not?
3 A No.
4 Q You personally did not?
5 A I did not.
6 Q Do you know whether Mr. Walsh did?
7 A He did.
8 Q Do you know who the attorney was?
9 A I do not.
10 Q More than one attorney?
11 A I don't know.
12 Q Okay. Do you know whether the attorney
13 that Mr. Walsh talked to was licensed to practice in
14 the state of Hawaii?
15 A I do not.
16 Q Do you know whether the person that
17 Mr. Walsh talked to is licensed to practice anywhere?
18 A I do not.
19 Q Okay. Now, how long have you resided at
20 the Palolo Avenue address or excuse me, the 10th
21 Avenue address you gave us?
22 A Two-and-a-half years.
23 Q So were you there at -- were you living
24 there at the time of the August 16, 2023 incident?
25 A Yes.

14 1 Q Okay. And where had you resided prior to 2 that? 3 A Manoa. 4 Q Do you recall the address? 5 A Lower Road. 6 Q Okay. Do you know the exact address? 7 A I don't remember. 8 Q Now, I'm going to ask you some questions 9 about your education. 10 Where did you go to your precollege 11 education? 12 A Chase. 13 Q Excuse me? 14 A The school was called Chase. 15 Q Chase. And what grades did that cover? 16 A From 11 to 18. 17 Q Okay. And is this in England? 18 A Yes. 19 Q Okay. And since I'm not -- I'm not that 20 familiar with the English education system, was there 21 any specialized area of study or is -- is -- or does 22 the English system include for those age groups 23 specialized areas of -- 24 A It's high school. 25 Q Okay. Post high school, did you go on to	16 1 Q Since graduating high school, have you had 2 any training in construction? 3 A No. 4 Q Okay. What about plans and permitting? 5 A No. 6 Q What about engineering? 7 A No. 8 Q What about premises security? 9 A No. 10 Q And what about property maintenance? 11 A No. 12 Q Have you ever had any professional 13 licenses? I'm not talking about a driver's license, 14 but any -- 15 A No. 16 Q None. So you didn't have any license 17 with -- for your -- to employ your economics degree 18 or accounting degree? 19 A I got my whatever they give you when you 20 leave -- when you graduate. 21 Q Okay. So you didn't have to take any 22 professional license testing -- strike that. I may 23 be jumping ahead of myself. 24 Did you ever practice as an accountant? 25 A I did not.
15 1 any further education? 2 A I did a university degree. 3 Q Okay. And where did you go? 4 A The University of Wales. 5 Q And what did your -- what was your field of 6 study? 7 A Economic specializing in accountancy. 8 Q And you got a bachelor of? 9 A Bachelor of science. 10 Q Any further higher degrees? 11 A No. 12 Q Any further study beyond getting the 13 bachelor of science? I'm talking about formal study. 14 A No. 15 Q Okay. At any time did you have any 16 education in building construction? 17 A No. 18 Q Okay. What about plans or permitting? 19 A No. 20 Q Engineering? 21 A No. 22 Q Premises security? 23 A No. 24 Q Building maintenance? 25 A No.	17 1 Q Okay. 2 (Secretary enters the conference room.) 3 BY MR. KAYA: 4 Q Well, the AC system on this side of the 5 building -- I just want to put this on the record -- 6 is not set up to change the thermostat in one room. 7 The building management office on top of that is 8 closed today. So the guard is going to try and 9 contact someone at building management to see if 10 anything can be done. 11 A Thank you. 12 MR. WALSH: Thanks. 13 BY MR. KAYA: 14 Q So let's go back to the questions. Have 15 you ever been convicted of a crime relating to 16 dishonesty that would be fraud, perjury, theft, 17 extortion, counterfeiting, things like that? 18 A No. 19 Q Okay. After you became or you got your 20 accounting degree, did you work? 21 A Yes. 22 Q Okay. Where did you work? 23 A We set up our own company. 24 Q And what year was that? 25 A 1995.

5 (Pages 14 to 17)

1 Q And what was the -- what -- what was the
2 name of the company?
3 A Transax.
4 Q I'm sorry?
5 A Transax, T-R-A-N-S-A-X.
6 Q Okay. This was like a check?
7 A Check guaranty.
8 Q Check guaranty company, okay. That's sort
9 of like Unicheck --
10 A Yes.
11 Q And things like that?
12 A Yes, exactly like Unicheck.
13 Q And what was your position with that
14 company?
15 A The managing director.
16 Q Okay. After Transax, did you have any
17 other employment?
18 A The Poi Company.
19 Q Okay. And my understanding is The Poi
20 Company describes what it was trying to do, correct,
21 you folks were manufacturing poi?
22 A We made poi.
23 Q Yes. Anything else after that?
24 A And a luxury dog hotel.
25 Q And where was that?

1 A In England.
2 Q And what years did you try -- did you run
3 that?
4 A Nineteen -- approximately 1998 to 2000 --
5 oh, no, sorry. I was here then. So 2000 --
6 approximately 2004 to 2010.
7 Q Okay. After the dog hotel venture, what
8 else did you do?
9 A Retired.
10 Q Okay. Now, I'm going to ask you some
11 general questions about falling.
12 How many times have you -- do you recall
13 falling in your entire life that includes when you
14 were a kid?
15 A I've never fallen.
16 Q So the only time in your life you've ever
17 fallen would have been the time at Kahala Mall back
18 in August of 2023?
19 A Yes.
20 Q Okay. Would you agree with this statement
21 "It's a matter of common knowledge that falling is
22 something to be avoided"?
23 A Yes.
24 Q Would you agree that the reason for that is
25 because you might get hurt?

1 A Yes.
2 Q Okay. So would you agree that you need to
3 be on the lookout to avoid trying to fall?
4 A Yes.
5 Q Okay. And how do you keep a lookout so
6 that you don't fall?
7 A It depends where I am and what I'm doing.
8 Q Okay. Well, we can go through -- let's go
9 through the different scenarios that you're thinking
10 about. Tell me about the first.
11 A Walking on ice, walking on --
12 Q Walking on what else?
13 A Walking on --
14 Q I'm sorry, please finish.
15 A Walking on uneven ground.
16 Q Any other surfaces or things like that?
17 A Not off -- no.
18 Q What about stairs?
19 A Well, I don't know how you -- I guess
20 tripping. I don't know.
21 Q Okay. What about sidewalks?
22 A If they're uneven.
23 Q And how do you keep a lookout for uneven
24 ground?
25 A When you're looking around.

1 Q Okay. Describe to me what you're looking
2 at when you say looking around?
3 A You want me to say looking down, but when
4 you're walking through a car park, you're looking for
5 moving cars. You're not looking at the ground
6 because your likelihood of being knocked down is far
7 greater than your likelihood of tripping and falling.
8 MR. KAYA: Madam court reporter, can
9 you read back my last question.
10 Whereupon, the record was read:
11 "QUESTION: Describe to me what you're
12 looking at when you say looking
13 around?"
14 BY MR. KAYA:
15 Q So move to strike as nonresponsive.
16 Now, when you furnish an answer to the
17 question --
18 MR. WALSH: Object.
19 MR. KAYA: You can't object, sir.
20 MR. WALSH: I can say object.
21 MR. KAYA: No, you cannot. And if you
22 persist in -- you have every right to be present, but
23 if you persist in acting like a lawyer, I'm going to
24 ask you to sit outside.
25 THE WITNESS: I'm going to say looking

22 1 around. 2 BY MR. KAYA: 3 Q Okay. I'm talking to Mr. Walsh now? 4 A Sorry. 5 Q -- now on the record. 6 So please, please, please do not do that. 7 Now, again, I'm sorry, what was your 8 response? 9 A Looking around. 10 Q Looking around. So where were your eyes -- 11 where would your eyes be directed? 12 A Anywhere. 13 Q Everywhere? 14 A Anywhere and everywhere. 15 Q Okay. And that's so that you can watch 16 where you step, right? 17 A You hope so. 18 Q You want to avoid things that you can trip 19 on, right? 20 A If possible. 21 Q Okay. You want to avoid things you can 22 slip on? 23 A If possible. 24 Q Well, how do you avoid things you can trip 25 on?	24 1 injury and loss of consortium. 2 Q Is this the Complaint that you and your 3 husband filed in this case? 4 A Yes. 5 Q Okay. Did you have -- what -- strike that. 6 Describe to me which allegations you 7 drafted, if any? 8 A I described them to my husband, he drafted 9 them. I read through them, and I made alterations, 10 so it was a joint effort. 11 Q Okay. Well, can I take a quick look at 12 that because I'm going to ask you some specific 13 questions. Paragraph 14 contains some measurements. 14 A Yes. 15 Q Okay. Did you take those measurements? 16 A I did. 17 Q So you took the measurements in November. 18 So it would be three months after the incident? 19 A If that's what it says. 20 Q Is that what it says, ma'am? 21 A Yes. 22 Q Okay. And do you know whether or not the 23 measurements are the same as what was present on Aug 24 -- in August of 2023? 25 A I do not.
23 1 A You can't always avoid things that you can 2 trip on. 3 Q Okay. So give me a situation where you 4 can't avoid the thing that you would trip on? 5 A Unseen things, unforeseen things. 6 Q Unseen things. So you didn't look at it. 7 That's what you're telling me? 8 A You didn't see it. 9 Q Okay. And how do you avoid slipping on 10 something? 11 A I don't know. 12 Q Have you fallen after the August 23 fall at 13 Kahala Mall? 14 A No. 15 Q Now, at this juncture, I'm going to just 16 hand you what we're going to have marked as Exhibits 17 1 and 2. 18 (Exhibit 1 was marked for 19 identification.) 20 (Exhibit 2 was marked for 21 identification.) 22 BY MR. KAYA: 23 Q I'm going to ask that you take a look at 24 Exhibit 1 and for you to identify what that is. 25 A It's a Complaint and summons of personal	25 1 Q Now, from pages 12 through 17 -- and I 2 guess it would be paragraph 45. Take a quick look at 3 that. It looks 36 to 45, paragraphs 36 to 45. Are 4 you done, ma'am? 5 A Yes. 6 Q Okay. What was your role in drafting those 7 paragraphs? 8 A I did not. 9 Q Okay. Is that something your husband 10 drafted? 11 A He did. 12 Q Okay. Did you do any of the research for 13 any of those paragraphs? 14 A I did some of the research. 15 Q Okay. Which ones, which paragraphs? 16 A I don't remember specifically. 17 Q Okay. Now, those paragraphs also talk 18 about speaking to different individuals -- 19 A Yes. 20 Q -- do you see that? Okay. 21 Were you participants in any of those 22 conversations? 23 A No. 24 Q Separate and apart from the conversations 25 described in those paragraphs, did you have any other

7 (Pages 22 to 25)

1 of your own conversations with any one about the
2 drain and/or the --
3 A No.
4 Q Okay.
5 MR. WALSH: I can't sit here. It's
6 too cold.
7 THE WITNESS: Okay.
8 MR. KAYA: I believe they offered you
9 hot water. Do you want some?
10 MR. WALSH: Is there another room?
11 MR. KAYA: No, this is the conference
12 room.
13 MR. WALSH: Okay. Then we're going.
14 THE WITNESS: Okay.
15 MR. WALSH: You'll have to reschedule
16 this when the room is warmer, sorry.
17 MR. KAYA: So let's be clear, you're
18 terminating the deposition --
19 MR. WALSH: Correct.
20 MR. KAYA: -- at this point in time?
21 MR. WALSH: Okay.
22 MR. KAYA: And your basis for
23 terminating the deposition?
24 MR. WALSH: I'm freezing.
25 THE WITNESS: I'm frozen too.

1 MR. WALSH: It's freezing cold in
2 here. I'm sorry if we spoke over each other. I
3 mean, apparently First Insurance must be closed
4 today. Is this Martin Luther King Day?
5 MR. KAYA: First Insurance.
6 MR. WALSH: Well, this is a First
7 Insurance building. You're First Insurance
8 employees. Is First Insurance closed today?
9 MR. KAYA: First Insurance, my
10 understanding, is it's open. The building is owned
11 by someone else.
12 MR. WALSH: And they're closed today.
13 MR. KAYA: They are closed.
14 MR. WALSH: I understand. It's
15 freezing cold in here. We can move to another room
16 if it's warmer, we can come back when we go and get
17 sweaters. We live in Palolo. It will take us about
18 20 minutes. Well, 20 minutes there and 20 minutes
19 back. You can't expect us to sit in a freezing cold
20 room. I'm sorry.
21 MR. KAYA: So are you telling me you'd
22 like a break so you can go home, grab some sweaters
23 and come back?
24 MR. WALSH: I'm happy to do that. Are
25 you happy to do that?

1 THE WITNESS: Yes.
2 MR. KAYA: Then we can take a break at
3 this point.
4 MR. WALSH: Okay. Great.
5 MR. KAYA: That's fine.
6 (Recess from 10:35 a.m. to 11:37 a.m.)
7 BY MR. KAYA:
8 Q Let's go back on the record and let me
9 first remind Mrs. Walsh that you're still under oath.
10 I did want to ask you one more question
11 about Exhibit 1 which is the Complaint, and it's my
12 understanding that paragraph 16 is the only
13 description in the Complaint of what transpired. Am
14 I correct in that?
15 A Yes.
16 Q Okay. So we can put Exhibit 1 on the side
17 and give it back to the reporter.
18 And let's look at Exhibit 2, which is your
19 Answers to Interrogatories. You've had, I think
20 before we took a break, an opportunity to look at it.
21 But why don't you take a look at it again.
22 A Yes.
23 Q Okay. So you had a chance to look at it,
24 Exhibit 1, is that correct, ma'am?
25 A This is Exhibit 1?

1 Q Excuse me, Exhibit 2, I'm sorry.
2 A Yeah.
3 Q Okay. And is it your signature on the last
4 page which, I believe, is exhibit -- page 15?
5 A Yes.
6 Q Okay. And it looks like you signed this
7 back in February of 2028; is that right?
8 A Twenty-four.
9 Q Excuse me, yeah, February of 2024, correct?
10 A Yes.
11 Q Okay. Is there anything -- anything with
12 regard to your Answers to Interrogatories that you
13 believe needs to be changed or corrected?
14 A No.
15 Q Okay. So this would still be your answers
16 even if these requests were before you today,
17 correct?
18 A Yes.
19 Q Okay. Now, I remember that you gave us a
20 Palolo Avenue -- excuse me, not Palolo Avenue, a 10th
21 Avenue address?
22 A Yes, and I'd like to change the -- it's not
23 an address I use. We don't have our mail sent there,
24 so it's not an address I use often. So I have
25 trouble remembering the number, but the number is

30 1 actually 2114. 2 Q Okay. 3 A Not what I gave you. 4 Q So I mean, just so we have a clear record, 5 ma'am, you're saying that the Palolo address you gave 6 us is that number that you just furnished? 7 A Correct. 8 Q Okay. And in your Answers to 9 Interrogatories, you have a 350 Ward Avenue address 10 which, I understand, is a mail drop; is that correct? 11 A Correct. 12 Q Now, I wanted to make sure that your 13 answers are unchanged for what starts as exhibit -- 14 excuse me, what starts as question 3 on page 3 and 15 goes through, I believe, page 4. Okay? 16 A Yes. 17 Q Okay. And this is the question that asked 18 for you to describe how the incident occurred from 19 the five minutes leading up to the incident and what 20 you've stated is to see your statement dated 21 November 15, 2023, correct? 22 A Yes. 23 Q Okay. And that remains unchanged, correct? 24 A Yes. 25 Q Okay.	32 1 what I did receive was an email -- and I believe it 2 was from your husband -- that contained a drop box 3 with different files. 4 A Right. 5 Q Okay. Is that your understanding of what 6 the response was to the request for Production of 7 Documents? 8 A I don't remember. 9 Q Okay. You don't remember or you don't 10 know? 11 A I don't remember. 12 Q Okay. Then before we go any further, what 13 I'm going to have to do is can we have this marked as 14 Exhibit 3. And I guess we're going to have to go 15 separately for each grouping of materials. Three -- 16 A Thank you. 17 Q This will be four and this will be five. 18 This will be six, seven. This will be eight. 19 (Exhibit 3 was marked for 20 identification.) 21 (Exhibit 4 was marked for 22 identification.) 23 (Exhibit 5 was marked for 24 identification.) 25 (Exhibit 6 was marked for
31 1 A You know how to get it open? 2 Q Now, on page 8, question 9, we have a 3 question there about any knowledge of any 4 photographs, sketches, drawings made in connection 5 with the area where you slipped and/or trip or fell. 6 Do you see that? 7 A Page 8? 8 Q Page 8, question 9. 9 A Oh. 10 Q Okay. And what you've referenced was 11 photographs that have been provided to the defendant 12 in response to Defendant's First Request for 13 Production of Documents and things dated January 26, 14 2024? 15 A Yes. 16 Q Okay. Is that -- that's your response, 17 right? 18 A Yes. 19 Q Okay. Now, did you folks ever do a formal 20 response to the Request for Production of Documents? 21 In other words, did you itemize in connection with 22 the actual request, a separate document that 23 responded to the request? 24 A I don't remember. 25 Q Okay. Because I'll represent to you that	33 1 identification.) 2 (Exhibit 7 was marked for 3 identification.) 4 (Exhibit 8 was marked for 5 identification.) 6 BY MR. KAYA: 7 Q Ma'am, let me first start off with No. 3. 8 Number three, ma'am, is an email my office received. 9 The top page is the one that's important. That 10 contains an email, I believe, from your husband to us 11 with a number of different files attached in a 12 Dropbox. Is that understanding too? 13 A Yes. 14 Q Okay. And I'll represent to you that the 15 files that we received are Exhibits 4, 5, 6, 7 and 8. 16 So I want first -- you can put No. 3 aside for now 17 No. 3. No, No. 3. 18 First with No. 4, take a look at No. 4. 19 And do you recognize the different pages that are 20 attached as Exhibit 4? And the reason I ask you in 21 that manner is because you didn't number the pages. 22 So I wasn't sure what exactly you were trying to 23 produce. 24 So let me first ask you, do you recognize 25 Exhibit 4?

9 (Pages 30 to 33)

1 A Yes.

2 Q Okay. And is this correspondence between
3 you and my client's insurer as well as I think it's
4 another piece of correspondence on the last two
5 pages, which I don't believe was with the insurer. I
6 believe it was your husband writing someone else.
7 Maybe you can take this.

8 A So it's these two pages?

9 Q Yeah. So we're clear, okay, you have what
10 was part of Exhibit 4 includes a page that starts
11 with what looks like a name card for someone that
12 works or was the general manager at Kahala Mall, is
13 that correct, the first page?

14 A Yes.

15 Q Okay. And then there's some correspondence
16 which I believe was with your insurer; is that
17 correct? Or not your insurer --

18 A Not our insurer.

19 Q -- but Kahala Mall's insurer?

20 A Yes.

21 Q Okay. And then the unmarked portion of
22 Exhibit 4, which is the other two pages you're
23 holding in your left hand, which I think we're going
24 to have marked as 4-A or something like that so we
25 understand, that looks like correspondence your

1 husband had with someone else; is that correct?

2 A Yes.

3 Q Okay. So let me first ask you with
4 regard -- why don't we have that additional marked as
5 4-A or something like that, please, madam reporter.

6 (Exhibit 4-A was marked for
7 identification.)

8 BY MR. WALSH:

9 Q Okay. Just so we can identify everything,
10 so the portion that's marked as four, Exhibit 4, is
11 that something that you were actively involved in
12 corresponding or why don't you explain to me what
13 Exhibit 4 is?

14 A Well, it's First Insurance explaining the
15 medical coverage for such incidents.

16 Q Okay. And -- that's fine, ma'am.

17 A Okay.

18 Q And Exhibit 4-A.

19 A Yes.

20 Q Okay. My question is did you have any --
21 were you the person involved in that correspondence
22 or is that solely with your husband?

23 A I have to explain. There's overlapping in
24 that I do a lot of the online research and he does
25 the physical part of it which is the telephone call

1 or the writing.

2 Q Okay. But as far as 4-A, correct me if I'm
3 wrong, but that appears to be between Mr. Kurata and
4 your husband; is that right?

5 A Yes.

6 Q Okay. Did you do a separate inquiry
7 yourself?

8 A I did not.

9 Q Okay. So is that the only correspondence
10 that you are aware of between your husband and, I
11 guess, it's storm drain maintenance, that unit of the
12 city and county?

13 A Yes.

14 Q Okay. Have you heard of any oral
15 discussions or anything else with that unit?

16 A No.

17 Q Okay. So why don't we put this aside and
18 look at No. 5. Now, can you take a look at that and
19 tell me what that is?

20 A Well, it's my statement and it's a
21 description of what happened.

22 Q Is this what you call the statement of
23 November 15, 2023, is that what you were referencing
24 in your Answers to Interrogatories?

25 A Yes, my sworn statement.

1 Q Okay. So just so we're clear, ma'am, in
2 Exhibit 2, which is your Answers to Interrogatories,
3 the response is to question 3 and the subparts that
4 we talked about earlier, that's the statement you're
5 referencing is what is part --

6 A This one.

7 Q -- of Exhibit 5, correct?

8 A Yes.

9 Q Okay. Okay. Now, Exhibit 6, this is going
10 to get a little tricky but nonetheless, I'll
11 represent to you that this is what was Dropboxed to
12 us. And the reason it has yellow tags is to try and
13 make this a little bit quicker. I will explain to
14 you what I did.

15 It looks like that these are various --
16 these are medical records starting in March of 2023,
17 and I believe ending in -- where's the last one?
18 September 29, 2023. And the reason I have tagged
19 these with a yellow tag is solely so that you can go
20 through this document and see whether I am correct in
21 understanding that the various dates that are on
22 these yellow tags, which we'll take off as you go
23 through it, okay.

24 In other words, the exhibit will not
25 contain the tags itself.

1 A So the date on your yellow tag --
 2 Q Is the date --
 3 A -- relates.
 4 Q Of the visit -- the date of the visit.
 5 Well, let me ask it to you this way, ma'am. Have you
 6 ever reviewed the medical records that you produced?
 7 A Yes.
 8 Q Okay. So I guess you're aware that, if I
 9 may, the date of visit would be up in the upper
 10 portion. It tells you what date you went to the
 11 facility?
 12 A Right, yes.
 13 Q Okay. So that's what I'm trying to get at.
 14 We -- the way that document is organized is that what
 15 you've produced are various visits between, I guess,
 16 March of 2023 and September of --
 17 A That's why this one says March 23, but
 18 actual date of visit was March 24.
 19 Q Okay. That's fine. You can correct that.
 20 That's fine. So the first sheet is what visit?
 21 A What do you mean what visit?
 22 Q March 24, 20 --
 23 A It says arrival date March 24th.
 24 Q 2023?
 25 A Correct.

1 Q Okay.
 2 A And this says March 23.
 3 Q Okay. That's fine. And what pages are
 4 those?
 5 A Okay. What does that mean?
 6 Q In other words, I think at the bottom --
 7 A Yeah.
 8 Q -- someone printed the page 1?
 9 A Right.
 10 Q Right, okay. And the last page of this is
 11 page 14?
 12 A Fourteen.
 13 Q Okay. And I believe that's what the tag
 14 says?
 15 A One to 14.
 16 Q One to 14?
 17 A Yes.
 18 Q Right?
 19 A I got it, okay.
 20 Q So that would be the record for the visit
 21 in March of 2023?
 22 A Yes.
 23 Q That's what you're telling me?
 24 A Yes.
 25 Q Okay. So if we can put aside that portion

1 of this exhibit and go on to the next date.
 2 A Okay.
 3 Q And again, you can correct me if I put down
 4 the wrong date, please tell me.
 5 A Okay. I got -- okay, yeah, that's correct
 6 because I guess -- because this says the 16th or the
 7 18th so I'm assuming that's the date of admission or
 8 the date of discharge.
 9 Q Correct. But again, can we be clear what
 10 the pages are?
 11 A Oh, I'm sorry. That says to 69 and it's
 12 the 24th.
 13 Q So you agree it's page 16 to page 15,
 14 excuse me, through page 69?
 15 A No, 24.
 16 Q To 24, okay.
 17 A Yeah.
 18 Q Well, actually, I think these are also part
 19 of it --
 20 A Are they part of it?
 21 Q Yes.
 22 A Oh, okay. Well, I was -- because it has a
 23 yellow tag on it.
 24 Q That's a question I was going to ask you so
 25 anyway.

1 A So ignore this yellow tag?
 2 Q No, ignore that, ignore the second yellow
 3 tag because we're going --
 4 A That's what I'm saying.
 5 Q Yeah, we're going to take them off anyway.
 6 But we're just trying to --
 7 A So ignore that, okay.
 8 Q Okay. All we're trying to do is see which
 9 records you produced. That's all. That's the
 10 exercise we're going through.
 11 A Okay. It's two -- yes, to 69, it's
 12 correct.
 13 Q Okay.
 14 A That's correct too.
 15 Q Okay. So identify for the record what the
 16 date of that visit --
 17 A It's the 9/11/2023 pages 70 to 81.
 18 Q Okay. Thank you.
 19 A Okay. Visit January 25, 82 to 90 -- pages
 20 82 to 90 is correct.
 21 Q Okay. I believe this one for some reason
 22 they were out of order. So this is January 25, 2023,
 23 pages 82 to 90, correct?
 24 A Yes.
 25 Q Okay.

1 A Okay, visit April 5, 2023, pages 91 to 97
 2 is correct. Okay, this -- this says -- the last page
 3 is 106. This says to 107. This is --
 4 Q Okay. So we're clear, ma'am, on page?
 5 A 8/24 date is the visit.
 6 Q Yeah, this one August 22, 2023.
 7 A Yeah, this is August 24 on the next sheet.
 8 Q So it should -- what you're telling me is
 9 the yellow tag is wrong, but it should be page 98
 10 through?
 11 A 106.
 12 Q 106; is that correct?
 13 A Yes, correct.
 14 Q Okay. That's fine. And again, we're going
 15 to take these tags off.
 16 A Okay. I got it.
 17 Q We just want to identify the dates.
 18 A Okay.
 19 Q Okay.
 20 A Okay. Visit 8/24/2023 pages 107 to 115 is
 21 correct.
 22 Q Okay.
 23 A Does that say 28?
 24 Q Let's see. I think it's August 28, 2023.
 25 A Okay, good. So visit August 28, 2023, 116

1 to 127.
 2 Visit August 30, 2023, 128 to 139; visit
 3 9/5/23, pages 140 to 151; visit 9/8/2023, pages 152
 4 to 163. So it doesn't matter if that's wrong. It
 5 says to 161.
 6 Q Okay. Well, you've identified it for the
 7 record?
 8 A Okay. That's what I'm saying, so I
 9 don't -- I don't need to mention it, right.
 10 Q Yeah, that's fine.
 11 A Visit 9/12/2023, pages 164 to 169; visit
 12 9/12/2023, pages 170 to 185; visit 9/19/2023, pages
 13 130 -- sorry, 186 to 202; visit 9/28/2023, pages 203
 14 to 212; visit 9/29/2023, pages 213 to 244.
 15 Q Are you aware of any additional records
 16 that were produced in connection with this case?
 17 A No.
 18 Q Okay. Now, on page 25 of the records for
 19 August 16, 2023 through August 18 of 2023, there's a
 20 description that you may have given a doctor of the
 21 incident?
 22 A It is a description, yes.
 23 Q Okay. So the description is you tripped?
 24 A Yes.
 25 Q Okay. Is that what you recall telling the

1 doctor?
 2 A Okay. If you've ever broken your femur,
 3 you are in excruciating pain, your body is in shock,
 4 and you do not remember what you told people at the
 5 time.
 6 Q Okay. So well, let me ask it to you this
 7 way then, ma'am, are you telling me you do not recall
 8 what you have told -- what you may have told a doctor
 9 immediately after the incident. That's what you're
 10 telling me?
 11 A Yes, with caveats.
 12 Q Okay. What would be the caveats?
 13 A That you're in pain, you're in shock.
 14 You're lying on a gurney not even in a private room
 15 in a corridor. It's a stressful -- it's a stressful
 16 time.
 17 Q Okay. Well --
 18 A And also -- and also, might I just say it's
 19 14, 15 months ago. I mean, time has elapsed and you
 20 don't -- you don't always remember what you had for
 21 lunch yesterday.
 22 Q Okay. Well, I just need to be clear. We
 23 just need some clear testimony, and I'm not trying to
 24 trick you.
 25 Is it that you don't remember what you may

1 have told a doctor or are you saying that whatever
 2 description is on page 25 of --
 3 A Well, I'd also -- excuse me, I'm sorry to
 4 interrupt, but I also would like to make the point
 5 and I have -- I have this proof in my own medical
 6 records that even when you're in a stressful state,
 7 what you tell a doctor doesn't always get accurately
 8 transcribed.
 9 Q That was going to be my next question,
 10 ma'am. Do you recall -- so again, let's first start
 11 off with is it you don't recall what -- what you told
 12 the doctor or are you saying this is incorrect?
 13 A I'm not saying either. It's -- prima facie
 14 it's a description of what happened. It's exactly
 15 what I said or did they transcribe it exactly what I
 16 said, we'll never know.
 17 Q Okay. Well, and you're telling me today
 18 anyway that you don't really remember what you may
 19 have said?
 20 A I don't remember precisely what I said.
 21 Q That's fine, ma'am. Going on to another
 22 group of materials that were Dropboxed to us. This
 23 is Exhibit 7 and I understand that those are medical
 24 bills that you believe relate to this incident; is
 25 that correct?

1 A Yes, yes.
 2 Q Okay. Take a quick look because I have
 3 some questions about whether they all relate to this
 4 incident.
 5 A Oh, I'll get them. I'll get them. I'll
 6 get them. And those two pages don't.
 7 Q Okay. Just so -- ma'am, again, can you
 8 keep them all together. And let's -- so we're
 9 talking about Exhibit 7 at this point, correct?
 10 A Yes.
 11 Q Okay. And I think you've identified what
 12 were the last two pages of this exhibit?
 13 A Yes.
 14 Q And you agree that those two pages do not
 15 relate to the incident at Kahala Mall; is that
 16 correct?
 17 A Correct.
 18 Q Okay. So what I want you to do is take
 19 with a red pen and mark at the bottom of the page not
 20 related and sign it so we have a clear record again
 21 of what you're talking about. And again, Exhibit 7
 22 will be an exhibit to this deposition so.
 23 A Actually, this page does relate.
 24 Q Okay.
 25 A So this one.

1 Q Okay.
 2 A So just not related?
 3 Q And you can -- if you can initial it for
 4 me, and that will be fine.
 5 A (Witness complies.)
 6 Q That's good.
 7 A Do you want me to date it?
 8 Q No, that's fine. It's going to be an
 9 exhibit to your deposition so.
 10 A Okay.
 11 Q Again --
 12 A Oh, sorry.
 13 Q All right. This is, I believe, the last
 14 portion of the files that have been Dropboxed to us.
 15 It's a series of various photographs some of which, I
 16 believe, are of Kahala Mall, some of are your
 17 injuries and some are of your shoes. And actually,
 18 some of these may be places outside of Kahala Mall.
 19 But in any event, my question to you is are these the
 20 photographs you reference in your Answers to
 21 Interrogatories No. 9 because remember that's where
 22 we were?
 23 A Yes, they are.
 24 Q Okay. Then for now we can put that aside.
 25 Thank you. Going back to -- let's see, this is

1 Exhibit 2. I think we're on No. 9 at that point so
 2 let's move on.
 3 Number 10 asked you to state the physical
 4 or mental injuries or conditions you claim resulted
 5 from the accident. I believe in the first paragraph
 6 you're talking about the fractured femur and the hip
 7 replacement. The second paragraph, I believe, you're
 8 talking about your mental state. Have you had a
 9 chance to look at it, ma'am?
 10 A Yes.
 11 Q Am I understanding of what you're claiming
 12 the hip replacement or fractured femur and hip
 13 replacement and some kind of emotional or mental --
 14 A Yes.
 15 Q -- issue?
 16 A Yes.
 17 Q Okay. Anything else?
 18 A No.
 19 Q Okay. With regard to No. 11, question 11,
 20 I -- take a look at your answer. It looks like you
 21 in, the second paragraph, you talk about spinal
 22 stenosis.
 23 A Yes.
 24 Q Which I understand is a condition you've
 25 had since at least 2016. Am I correct about that?

1 A Correct.
 2 Q Okay. And that's your low back, correct?
 3 A Correct.
 4 Q And so you previously -- you acknowledge
 5 you previously had cortisone injections because you
 6 had pain, correct?
 7 A Yes.
 8 Q Okay. If you can turn to -- let's see,
 9 page 12, which is your listing of physicians, you
 10 list David Lee?
 11 A Yes.
 12 Q What type of doctor is Dr. Lee?
 13 A Cardiologist.
 14 Q Okay. You also list Anna Parlin. You see
 15 that?
 16 A Yes.
 17 Q Okay. What kind of doctor is she?
 18 A I get -- I get confused. So she's an eye
 19 doctor. She actually does retinas or I get confused
 20 as to ophthalmologist, optometrist, optician. I
 21 don't know what they all -- so I don't know what her
 22 exact opt title is.
 23 Q Okay. Well she's an M.D. as opposed --
 24 A Correct.
 25 Q -- to a Ph.D.? Okay. And question 14 that

1 relates your response is -- well, question 14 relates
2 to the medical or health care expenses incurred, and
3 that is what we've identified as Exhibit 7, correct?

4 A Correct.

5 Q Okay. Let's talk a little bit about
6 Exhibit 5 if we can. Exhibit 5, page 5 in paragraph
7 15, I believe, is your description of what actually
8 happened.

9 A Yes.

10 Q Okay. And so you stated that, I guess,
11 previously under oath that you tripped on the storm
12 grating?

13 A Yes.

14 THE REPORTER: On the storm?

15 MR. KAYA: Grating.

16 BY MR. KAYA:

17 Q Okay. And when you say you tripped, what
18 caused you to trip?

19 A Well, I don't -- I don't know exactly. But
20 when I went back to look at it, there's a gap.
21 There's two of the bars are wider than the rest of
22 the bars, and all the concrete surrounding the
23 grating has deteriorated. So it could have been
24 either catching my foot in the bar or on the uneven
25 surround.

1 Q Okay. Well, do you know which?

2 A No.

3 Q Okay. Which direction were you going?

4 A Towards the separate crossing.

5 Q So you're talking toward the crosswalk. Is
6 that what you're saying?

7 A Correct.

8 Q Okay. So describe for me now say in the
9 minute before you tripped to the point that you
10 tripped, what happened?

11 A The car stopped right by the separate
12 crossing so I could use that to walk across the -- to
13 go to Whole Foods. I stepped out of the car, I
14 turned to my left and tripped.

15 Q Okay. So was the door open or closed --

16 A It was instant.

17 Q -- when you tripped?

18 A The door was closed. I'm pretty sure I
19 closed the door. Well, no, I know I must have closed
20 the door and I'll tell you why because my hand was
21 underneath the car and Craig was starting to leave
22 and it was only the people shouting at him that
23 stopped him running over my hand.

24 Q Okay. So we're clear, ma'am, you exited
25 the passenger's side of the vehicle?

1 A Correct.

2 Q Okay. And where you exited is a red curb,
3 correct?

4 A I don't know if there's a red curb there.

5 There's lots of red curbs at Kahala Mall.

6 Predominantly red curbs at Kahala Mall.

7 Q When you look -- when you look at page 6 of
8 exhibit -- of the exhibit.

9 A Yes, there's a red curb there.

10 Q Okay. So you stopped in a no parking, no
11 stopping zone. That's what you're telling us, right?

12 A But it's right by a separate crossing.

13 Q Again, you stopped in a no parking, no
14 stopping zone?

15 A I don't know that that's a no stopping no
16 parking zone because there are no signs to say so.

17 Q Okay. But red to you indicates what, that
18 you can stop and park there?

19 A I don't know. I don't know the meaning of
20 red curbs in a private shopping mall as opposed to
21 the open road.

22 Q Okay. On the open road, does that mean you
23 can stop there?

24 A No, you can't stop there.

25 Q Okay. So you then exited -- is that your

1 vehicle by the way in the photograph?

2 A It is.

3 Q Okay. So you exited your Sentra or Versa?

4 A Versa.

5 Q Okay. And you say you closed the door, and
6 you started to walk towards the crosswalk that we see
7 on page 6, correct?

8 A Yes.

9 Q Okay. And that you tripped on -- you're
10 not sure either the grating or the surround -- the
11 area surrounding the grating.

12 A Yes.

13 Q Is that what you're saying?

14 A Yes.

15 Q Okay. At any point, did you look down
16 before you tripped?

17 A I did not look down.

18 Q Okay.

19 A I don't look down when I get out of a car.

20 Q And why would that be, what were you
21 looking at then?

22 A Cars.

23 Q What cars?

24 A The cars behind me and the cars in front
25 because I wanted to make sure it was going to be safe

1 to cross the crosswalk.

2 Q Okay. So you're telling me you walked
3 towards the crosswalk looking behind of you?

4 A No, I was standing still and I didn't get
5 to walk towards the crosswalk because I fell almost
6 immediately.

7 Q Okay. So are you saying that you, as you
8 put your foot out the door, you fell immediately?

9 A No, because I had to close the car door, so
10 I didn't fall immediately. I got out of the car.

11 Q So there was some movement of your body
12 before you fell?

13 A I had to step forward, yes.

14 Q Okay.

15 A Away from the car.

16 Q You then closed the door --

17 A Yes.

18 Q -- turned to your right to start to go
19 toward the crosswalk?

20 A No, turned to my left.

21 Q Okay. You turned to your left. So your
22 back was to --

23 A The car.

24 Q Your car, okay.

25 A On the car -- on to the main entrance.

1 Q And you were looking for cars behind and
2 oncoming traffic. Is that what you're telling me?

3 A Yeah, looking right and left as you're
4 taught to do.

5 Q Okay. So you're telling me now you're
6 facing the parking structure and you're looking left
7 and right?

8 A I looked right and then left.

9 Q Okay. With -- with the car behind of you,
10 correct?

11 A My car behind me.

12 Q Okay. And the reason you were looking left
13 and right was to look for --

14 A Traffic.

15 Q -- either oncoming traffic coming in your
16 lane or traffic coming in the opposite direction?

17 A Correct.

18 Q Am I right? Okay.

19 And you didn't look down, and you say you
20 took one or two steps. Was it one step?

21 A I don't remember.

22 Q Okay. But there was movement of your body
23 at the time, correct?

24 A Yes.

25 Q Okay. And then you fell?

1 A Yes.

2 Q Okay. And did you fall forward, backward?

3 A No, to my left.

4 Q To your left. So you would have fallen
5 with your head to --

6 A I fell on this side, so I fell to my left
7 with my arm outstretched to as you automatically do
8 to support yourself.

9 Q Okay. So again, looking at the photograph
10 on page 6, you would have fallen toward the
11 crosswalk?

12 A But that photograph was not taken on the
13 day.

14 Q Well, are you saying the crosswalk --

15 A So the car --

16 Q Would have been someplace else?

17 THE REPORTER: Wait.

18 MR. KAYA: I'm sorry, I'm sorry.

19 Please.

20 BY MR. KAYA:

21 Q So let's take a step back. Please finish
22 your answer and then I'll follow up.

23 A How far did you get?

24 Q So my question then at that point -- well,
25 let me first ask you, are you done with your

1 response?

2 A Well, the car was a -- the car was a little
3 bit further back. So I took a step to my left.

4 Q Okay. And I believe you said that your
5 husband almost ran over your left hand, correct?

6 A He started to move the car.

7 Q Okay. And how far away had you stepped
8 away from your car?

9 A I don't remember.

10 Q So one full step, half a step, do you know?

11 A I don't remember.

12 Q Okay. But the car is behind you. Am I
13 right?

14 A Yes.

15 Q Okay.

16 A I was clear at the car.

17 Q Okay. And you can't tell me if you took
18 one step or a half step but you believe it was a step
19 and then you fell?

20 A Yes.

21 Q Okay. And when we talk about taking a
22 step, are you taking a step toward the curb or a step
23 toward the crosswalk?

24 A I was taking a step towards the crosswalk.

25 Q Okay. So you were stepping sideways?

- 1 A When you get out of a car, the passenger
2 door is -- so you're going to be facing that way so
3 you have to turn sideways to start your walk towards
4 the crosswalk.
5 Q Okay. So again, we're trying to go step by
6 step about what happened. So let's go back. You say
7 you exit the car, you're standing outside the
8 vehicle, correct?
9 A Correct.
10 Q Okay. The car starts to go. Am I right?
11 A No.
12 Q Okay. Is it -- is the car moving at the
13 time you start your fall?
14 A No.
15 Q Okay. So you're not --
16 A He doesn't move the car until he can't see
17 me anymore.
18 Q Okay. Well, let's go through this again.
19 So you've taken -- you've gotten out of the car. At
20 that point when you get out of the car, which
21 direction are you facing?
22 A The parking structure.
23 Q You're facing the parking structure, okay.
24 So again, you mentioned you look left and right or
25 right and left and then you took a step; is that

- 1 correct?
2 A Correct.
3 Q Okay. And you're telling me now you turn
4 from facing the parking structure, you turn to facing
5 the crosswalk. Is that what you're telling me?
6 A I took a step left.
7 Q Before or after you turned?
8 A To turn.
9 Q Okay. So you took a step to turn left?
10 A Yes.
11 Q Okay. And is that when you fell?
12 A Yes.
13 Q Okay. And just so we're clear from the
14 point you got out of the vehicle to the point that
15 you started to fall, you never looked down where your
16 feet were; is that correct?
17 A I did not.
18 Q After you started to fall -- now, this is
19 where I'm getting a little confused because I know
20 that you mentioned that he almost ran over your
21 foot -- I mean, your hand. So what I take from that
22 is that you've already fallen to the ground; is that
23 right?
24 A Correct.
25 Q Okay. So you've fallen to the ground and

- 1 is that when the car starts to move?
2 A Correct.
3 Q Okay. And which tire almost runs over your
4 hand?
5 A It would have been the rear off side tire.
6 Q Again, don't guess. If you don't know
7 it's --
8 A No, I've got to picture it in my mind.
9 Q Okay, okay. But again, I want to caution
10 you, please don't guess and it's perfectly okay to
11 tell me I don't remember or I don't know.
12 A Please, sir, I am not guessing. I know
13 which way the car was facing. I know where I was
14 lying. I just was trying to think of describing -- I
15 was trying to think of near side or off side, near
16 side the driver's side, right? Off side is the
17 passenger's side.
18 Q Okay. That's your terminology, but I can
19 go -- I understand what you're saying.
20 A Right. So the rear off side wheel, rear --
21 I can't say back. Rear is back. The rear off side
22 wheel.
23 Q Okay. So anyway, it's the rear passenger's
24 side wheel that --
25 A Correct.

- 1 Q -- almost ran over your -- that almost ran
2 over your hand?
3 A Correct.
4 Q Is that what you're saying? Okay. And
5 that's because -- by the way, you mentioned that you
6 were facing toward the crosswalk when you landed; is
7 that right?
8 A I was diagonal.
9 Q You were diagonal?
10 A Yes.
11 Q So partially toward the red curb. Is that
12 what you're saying?
13 A My feet would have been towards the red
14 curb.
15 Q Oh, you're telling me that you nearly fell
16 into the car?
17 A No, no, no, no, I was using that as a -- as
18 -- this is the way I fell. The car's got nothing to
19 do with it. That's the way I fell with my hand.
20 Only my hand and my sunglasses went under the car.
21 Q Okay. How tall are you?
22 A Five foot six.
23 Q Okay. So the space between where you --
24 where your feet were and the car would have been
25 several feet -- you would have been several feet away

1 from the car then, right?

2 A Where I was when I was standing and where I
3 was when I fell are two different things so because
4 you're falling, your body isn't in the same shape so
5 this arm is out stretched which is the bit that lands
6 underneath the car. But what happened to the rest of
7 my body because I fell because I couldn't stay
8 upright anymore.

9 Q Well, I guess what I'm trying to find out,
10 ma'am, is when you say -- when we talk about
11 tripping, sometimes people trip and they take a step
12 or two and then hit the ground, okay. Or are you
13 saying that you tripped and went straight down and
14 hit the ground?

15 A I would I tripped and went straight down.

16 Q Okay. And you say that your husband did
17 not move forward with the car. In other words, the
18 car stopped because bystanders said stop?

19 A Correct.

20 Q Okay. Now in paragraph 17 you say -- you
21 agree you shouldn't have exited the car at that
22 location but you indicate that you've done it many
23 times before. Is that --

24 A No, it says with hindsight.

25 Q Okay.

1 A So it's --

2 Q With hindsight?

3 A I'm just saying it's easy to say. I'm not
4 saying I said it or thought it. I'm saying with
5 hindsight it's easy to say you shouldn't have got out
6 there, but it's right by the separate crossing, so it
7 makes sense to be dropped there so that I could use
8 the separate crossing and not walk through the car
9 park with cars going everywhere.

10 Q Now, it also says in this same paragraph
11 that you've seen other people get out of the car, get
12 out of their respective vehicles at or near the same
13 area; is that right?

14 A Yes.

15 Q Okay. Did any of them fall?

16 A I haven't seen anybody fall.

17 Q Okay. So as far as you know, you're the
18 only person that tripped on that grate?

19 A I don't know of anybody else.

20 Q Okay. Now, on page problem 14, there's
21 some discussion about, I guess, emails with a
22 Mr. Mick. Do you see that paragraph 39?

23 A Yeah, I do.

24 Q Okay. Were you a party to those
25 communications?

1 A I -- not those communications. As before,
2 I did research into rules and regulations regarding
3 drains and what have you. I did not do the physical
4 side of it.

5 Q Okay. So you're the person that looked up
6 the building code and the ADA requirements?

7 A Yes.

8 Q Okay. And you understand that the building
9 code does not apply to this drain, right?

10 A There's no building code for this drain.

11 Q Correct. You understand that, right?

12 A But the Kahala Mall has the -- has --

13 Q Ma'am, my question is --

14 A Yes.

15 Q -- you understand?

16 A Yes, yes.

17 Q Okay. And you also understand from
18 paragraph 39 that the ADA does not apply to this
19 grate, correct?

20 A That is not correct.

21 Q Well, if you look at paragraph 39, it
22 appears to say that the ADA would apply if it was
23 located within or part of the accessible route.
24 However, the grate shown in the picture is at the
25 flared portion of the raised crosswalk and the flared

1 portions of the raised crosswalk are typically not
2 part of the accessible route. That's what you wrote,
3 correct?

4 A Yes.

5 Q Okay. So you understand that the location
6 of this grate is not part of the accessible route?

7 A I do not accept that.

8 Q Well, you understand that's what the ADA
9 person told you?

10 A No.

11 Q No? That's not what he said?

12 A I do not accept that the ADA rules do not
13 apply to that grate.

14 Q Okay. I understand you may not accept it,
15 ma'am, and I'm not trying to argue with you, okay.

16 What I'm trying to ascertain is whether you agree
17 that the ADA person told you folks that that -- that
18 the ADA would not apply to this grate. Do you agree
19 or disagree with that?

20 A Where is it?

21 Q Paragraph 39.

22 A They also said it would be covered by the
23 ADA and it requires it to be mandatory as it is a
24 public accommodation.

25 Q And why don't you read the next

- 1 paragraph -- I mean, the next sentence, ma'am. The
2 requirement would only apply when the grates are
3 located within or part of the accessible route. Do
4 you see that?
- 5 A I do see that.
- 6 Q Okay. And the next sentence says that the
7 grate shown in the flared portion of the raised
8 crosswalk and the flared portions of the raised
9 crosswalks are not typically part of the accessible
10 route?
- 11 A Not typically. That does not mean they
12 would not be applied.
- 13 Q Well, did I misread what?
- 14 A No, you did not misread. It's an
15 interpretation.
- 16 Q Okay. It's your interpretation, right?
- 17 A Not necessarily my interpretation. It's an
18 interpretation typically. It doesn't say it's
19 mandatory or it's not or no. It says typically.
- 20 Q Okay. Have you obtained a professional
21 opinion that the grate location is part of the
22 accessible route?
- 23 A I don't know.
- 24 Q The question is not if you know. The
25 question --

- 1 A I haven't.
- 2 Q Okay. We can take a break if you want, a
3 short break for the reporter.
- 4 (Recess from 12:43 p.m. to 1:19 p.m.)
- 5 BY MR. KAYA:
- 6 Q Let's go back on the record. And now I
7 think we're talking about the incident, and I need to
8 ask you first which foot tripped? Was it your --
- 9 A The left.
- 10 Q -- right foot or your left, okay. And you
11 said you fell sideways, right?
- 12 A Diagonally, I think.
- 13 Q In other words, it wasn't falling forward
14 or falling backward. It was diagonally sideways?
- 15 A Yes.
- 16 Q Okay. And as I understand it, you put your
17 left hand out to try and break the fall, is that
18 right, that's why it almost got run over?
- 19 A Yes.
- 20 Q Okay. And when you came to rest on the
21 ground, your left hand was -- was it on the actual
22 raised portion of the crosswalk?
- 23 A No.
- 24 Q Was it on the same level as the grating?
- 25 A Yes.

- 1 Q Now, did the car move at all?
- 2 A He started to pull forward when he was
3 ready to move.
- 4 Q Okay. When you say he started to pull
5 forward, was it -- and if you don't know, you don't
6 know, okay. But was it step on the gas started to
7 pull forward or was it just started to roll forward?
- 8 A Just started to ease forward.
- 9 Q Okay. And I think the description is some
10 bystanders said something?
- 11 A They were yelling stop.
- 12 Q Okay. And do you know where the bystanders
13 were situated?
- 14 A I don't -- I -- I can't remember how many
15 there were. There were quite a few, but I would say
16 they were behind -- behind me. So by the separate
17 crossing on, so they were on my side of the...
- 18 Q They were on the parking structure --
- 19 A Correct.
- 20 Q -- side of the roadway behind you?
- 21 A Correct.
- 22 Q So closer toward the Whole Foods entrance,
23 correct?
- 24 A No.
- 25 Q No, okay. Closer to what would be over

- 1 there?
- 2 A The separate crossing by the Lyft.
- 3 Q Okay. Did you get the names of any of the
4 people that yelled?
- 5 A I'm sorry, I'm lying there in so much pain.
- 6 Q Okay.
- 7 A And even though I don't think I've broken
8 anything, I had a sneaking suspicion I wasn't going
9 to be able to put any weight on that leg, so no, I
10 didn't get any names.
- 11 Q Would you be able to describe the people
12 that may have yelled?
- 13 A They were behind me.
- 14 Q Okay. So the answer is no, right?
- 15 A Correct.
- 16 Q Now, while you're on the ground -- this is
17 after your husband stopped the vehicle, someone --
18 people came to assist, am I right?
- 19 A Yes.
- 20 Q Okay. Do you know where they came from?
21 I'm just asking if you do or if you don't.
- 22 A No.
- 23 Q Okay. Did you recognize any of the actual
24 people that came to help you?
- 25 A No.

- 1 Q Now, did you ever, after you had fallen,
2 did you try to stand up?
3 A Yes.
4 Q Okay. And what happened?
5 A I couldn't put weight on my leg.
6 Q Okay. Now, my understanding is at some
7 point someone that you believe is Kahala Mall
8 security came by; is that right?
9 A Yes.
10 Q My understanding is that they were not in
11 the area of the fall at the time of the fall; is that
12 correct?
13 A Correct.
14 Q Okay. Do you know about how much time went
15 by before someone from Kahala Mall came?
16 A No.
17 Q Okay. Are they the first people that
18 offered to call an ambulance or did someone else
19 offer to call an ambulance, if you know?
20 A I don't know.
21 Q Okay. Did you hear anyone ask do we need
22 a -- do we need -- should we call an ambulance?
23 A I think so, but I can't be sure.
24 Q Okay. Did your car remain in the same
25 place it was stopped at?

- 1 A Yes.
2 Q And it remained there until you folks left
3 the mall?
4 A Correct.
5 Q Okay. And my understanding is you folks,
6 rather than waiting for an ambulance, you folks went,
7 drove down to Straub?
8 A Yes.
9 Q Okay. And the type of shoes you were
10 wearing are the Skechers that you have pictures of,
11 correct?
12 A Yes.
13 Q Do you still have the shoes?
14 A Yes.
15 Q Okay. Have you used the shoes since the
16 fall?
17 A No.
18 Q That day, in other words, immediately after
19 you fell until the point that you left the mall, did
20 you see anything that caused you to fall?
21 A I'm sorry, could you repeat that?
22 Q Okay. That day, in other words, the day of
23 the fall, until the time you left the mall, okay, did
24 you see anything specific that caused you to fall?
25 I'm talking about that day.

- 1 A I understand. I was in pain. I didn't
2 look at anything.
3 Q Okay. Were any photographs taken that day
4 of the area of the fall that you know of?
5 A No. And/or I don't know.
6 Q Okay. Do you know if your husband examined
7 the area of the fall that day?
8 A He did not.
9 Q Now, we've already talked about you're not
10 being sure what you may have told medical personnel
11 when you went to the hospital, correct?
12 A Correct.
13 Q Okay. Do you recall telling any medical
14 personnel at any time while you were in the hospital
15 so initially after the fall to the point you were
16 discharged, anything about how you fell?
17 A No, because then I was focused on
18 recovering.
19 Q Now, I'm going to explain what I'm asking.
20 My question is going to be do you have any medical
21 opinions, okay, not reports, okay. But actual --
22 excuse me, not medical records but actual medical
23 opinions written out in a report form that explains
24 your injuries and what your medical bills related to
25 this incident, the incident at Kahala Mall, what they

- 1 might be?
2 A I don't know.
3 Q Have you ever asked a physician to furnish
4 that kind of medical report?
5 A I don't remember.
6 Q Going back to Exhibit 5, my question is who
7 took the photographs that are in this?
8 A Both of us Craig and Marjorie.
9 Q Okay. Do you know which photographs you
10 took?
11 A I do not.
12 Q Do you know when the photographs were
13 taken?
14 A I'd have to look at the photographs to see
15 the date on it. They'd be date stamped.
16 Q Okay. So there's a version of the
17 photographs that are date stamped but the ones just
18 so we're clear, the ones that are part of this
19 exhibit don't appear to be date stamped.
20 A But the iPhone just keep freckles of
21 everything. I think it can even tell you where you
22 were this time last year; so there will be time and
23 date within the iPhone system.
24 Q Now, do you presently wear corrective
25 lenses?

1 A I do not.
 2 Q When was the last time you had your eyes
 3 checked before the incident of August 2023?
 4 A I don't remember. I'd have to look at my
 5 calendar.
 6 Q I think you mentioned Dr. Parlin is an
 7 eye physician.
 8 A I see doc -- sorry.
 9 Q Correct?
 10 A Yes, I see Dr. Palin.
 11 Q Okay. And --
 12 A Parlin, sorry, Parlin.
 13 Q And do you recall when the last time you
 14 had seen her before the incident of August 2023?
 15 A I don't remember. I'd have to look at the
 16 calendar.
 17 Q But you had been seeing Dr. Parlin before
 18 August of 2023?
 19 A I think so.
 20 Q Do you know what your -- what your vision
 21 is, in other words?
 22 A No, I'd have to look at my records.
 23 Q Okay. When was the last time you saw a
 24 physician for your hip?
 25 A It's approximately one year after the

1 surgery.
 2 Q So in your mind, August of 2024?
 3 A It might have been September.
 4 Q Okay. And do you recall which physician
 5 that was?
 6 A It's the PA. Dr. Nakasone was the surgeon,
 7 but subsequent appointments were held by his PA.
 8 Q The physician's assistant?
 9 A Correct.
 10 Q Okay. Do you recall what that person's
 11 name is?
 12 A I should, and I don't. Hold on. Well, I
 13 hopefully put in here Straub bone scan and hips. So
 14 sorry, I haven't put his name in. I'd have to go
 15 back.
 16 Q Okay. Well, the last visit would have been
 17 for a scan then and some kind of followup to discuss
 18 whatever the scan showed. Is that what you recall?
 19 A Correct.
 20 Q Okay. And your recollection is the
 21 followup would have been through the physician's
 22 assistant?
 23 A Correct. All of -- all of my appointments
 24 post apart from one, all of my appointments
 25 postsurgery were with a physician's assistant.

1 Q What is the present condition of your hip?
 2 A It still aches from time to time, but I do
 3 sleep better than I had. And sometimes, you know --
 4 sorry, I'm still looking for the name. Sometimes I
 5 have a little bit of numbness in the leg.
 6 Q Okay. And as far as walking, are you
 7 presently experiencing any difficulty with walking?
 8 A Only for longer -- short walks are fine,
 9 just longer walks.
 10 Q And what do you define as a longer walk?
 11 A Maybe more than a mile.
 12 Q Okay. Do you have any difficulty with
 13 lying down?
 14 A Yes, I still have to lie on my right side.
 15 Q Is that something you discuss with your
 16 physicians?
 17 A Okay. It's a culture thing, okay. I'm
 18 very British and we're just get on and get up with
 19 it. And I know there are people in more serious need
 20 than me, so I'm just managing it myself with ice
 21 packs and heat pads and so the answer is no.
 22 Q Okay. So any difficulties with sitting?
 23 A No.
 24 Q What about standing?
 25 A Yeah, I can't stand for a long period of

1 time.
 2 Q And so what is -- what do you mean by a
 3 long period?
 4 A Well, maybe after 20 minutes.
 5 Q Do you have any difficulty walking up or
 6 down stairs?
 7 A No.
 8 Q Do you ever climb up or down ladders?
 9 A I have a little one in the kitchen.
 10 Q That's a step stool. That's different.
 11 A No, it's dangerous don't you know.
 12 Q So --
 13 A I do not -- I do not use ladders.
 14 Q And you don't use ladders, but that's not
 15 related to this incident. You just don't use
 16 ladders?
 17 A I don't use ladders.
 18 Q Okay.
 19 A It might if I have to change a lightbulb.
 20 But I'm sorry, I've been looking. I can't find the
 21 name. I'd have to check my other records.
 22 Q That's fine. Now, say in the week before
 23 the incident, what were your chores around the house?
 24 A Cooking, cleaning, tidying up, vacuuming.
 25 Just -- I don't know how many more I could itemize.

1 It's just all regular household duties. It's
2 everything, laundry.

3 **Q** The reason I ask is you're both retired
4 so --

5 **A** Yes.

6 **Q** I would have -- I would have. I don't
7 know, maybe I thought that you divided the chores as
8 opposed to you did -- are you telling me you did all
9 the chores, the household chores?

10 **A** Yes.

11 **Q** Okay.

12 **A** It's -- again, it's a culture thing. I was
13 brought up to get on and do it.

14 **Q** Okay. And for how long did you have any
15 difficulty doing or returning to those chores?

16 **A** A long time. I'd have to -- I made notes
17 so I'd have to go back and check my notes.

18 **Q** So you're telling me today you can't tell
19 us?

20 **A** No, no.

21 **Q** Okay. What about hobbies, what was say a
22 typical hobby in the month before the incident of
23 August 2023?

24 **A** Walking the dog.

25 **Q** Okay. What else?

1 **A** Oh, going to movies, going to -- well, I
2 don't know that's probably not hobbies, is it?
3 Videos, I like making videos. I like going hiking.
4 We go to Koko Head Crater and Foster Gardens. So I
5 like walking. I've always walked. I like exercise,
6 I like doing exercise.

7 **Q** Have you been able to return to those
8 hobbies as you --

9 **A** I -- I can -- I can do some of the walking.
10 I can do the videos. I can't -- I haven't yet got
11 back to the exercise.

12 **Q** Now, I don't mean to pry but your husband
13 made a claim for loss of consortium, so I'm going to
14 have to ask you. How is it that you believe you've
15 been unable to provide companionship to your husband?

16 **A** I think it's a combination of what I wrote
17 in my statement and --

18 **Q** Why don't you tell me which paragraph.

19 **A** I just -- I just -- I don't -- it's not --
20 is this the one? I don't remember. It was the one
21 you asked me about what the contains the mental
22 state. It's just -- I just --

23 **Q** Oh, you're talking about your Answers to
24 Interrogatories. Is that what you're saying?

25 **A** Yes.

1 **Q** Okay. So you're talking about your
2 response to question No. 10. Is that what you're
3 saying?

4 **A** Well, it's that. It's because of the pain
5 and because -- there are parts at times where I just
6 feel I didn't want to live anymore. It just --
7 because you -- you just don't think you're ever going
8 to recover. I just --

9 **Q** Now, ma'am, you know, again, I don't mean
10 to pry but the loss of consortium also includes
11 intimacy.

12 **A** Yes.

13 **Q** Okay. So I need to ask you in say the two
14 months before, what -- what was the frequency of you
15 and your husband being intimate?

16 **A** Probably on average twice a week. If he's
17 lucky, it's three to four times a week.

18 **Q** Just so we're on the same page --

19 **A** Yes.

20 **Q** -- we're talking about vaginal intercourse,
21 right?

22 **A** Yes.

23 **Q** Now, then you have this incident. And for
24 how long were you unable to engage in that kind of
25 intimacy?

1 **A** I don't remember. You'll probably have to
2 ask him.

3 **Q** Okay. And --

4 **A** Excuse me, can I just clarify because
5 unless you think I'm being coy about this, I'm -- I
6 can't remember the end of movies. So I couldn't even
7 remember how long I've been married because
8 Einstein -- Einstein famously said that he didn't
9 keep things in his brain because he could always go
10 to the library and get a book and read it. And
11 whatever right brain left brain thing is, I tend
12 to -- I tend to live in the moment and not keep a lot
13 of stuff absorbed. So I'm not being coy. I'm being
14 honest.

15 **Q** Okay. Well, see, this is -- let me give
16 you some lead up because my understanding is your
17 husband has an injury claim from before the fall at
18 Kahala Mall. Are you aware of that?

19 **A** Yes.

20 **Q** Okay. So the injury claim is to his low
21 back; is that right?

22 **A** Yes.

23 **Q** Okay. So the question would be are you
24 telling me that even with a low back injury, he was
25 able to engage in intimate activities with you three

1 to four times a week?

2 A Yes, because he has Oxycontin if he needs
3 it or sometimes it's Aleve.

4 Q At present, do you have any plans for
5 future treatment?

6 A I do not.

7 Q Tell me what an ordinary work weekday is
8 for you folks now.

9 A An ordinary day, just a day?

10 Q Just a regular day.

11 A Okay. We try to let the dog out, meet
12 friends, go to a movie. I always liked movies. And
13 go and look at -- we always like places -- I don't
14 know what you call them but Foster Garden or you
15 don't call them national parks. What do you call
16 them, you know, like Koko Head Crater or I can't
17 remember the names of them all but what do you call
18 them? Not national parks but parks.

19 Q I know what you're talking --

20 MR. WALSH: Botanical gardens.

21 THE WITNESS: Botanical gardens, yes.

22 BY MR. KAYA:

23 Q Botanical gardens, yes.

24 A Yes, yes, yeah, in and amongst the laundry
25 and the cooking and the cleaning and the...

1 Q Now, with regard to the medical bills, has
2 anybody notified you of a lien? In other words, have
3 you gotten any kind of correspondence from any of the
4 insurers you identified in -- what is it?

5 Paragraph -- paragraph 15 that they have a lien
6 against any recovery that you may make in this
7 lawsuit?

8 A I don't know.

9 Q Well, do you recall ever receiving any kind
10 of correspondence -- let me finish, ma'am. Because
11 typically they send you something in writing saying
12 we hereby assert a lien.

13 A You talked earlier about division of labor,
14 okay, and it's what skills and what skills. I was
15 brought up on the NHS, so I really don't understand
16 the medical insurance in the U.S. so Craig handles
17 all of that. So you'll have to ask Craig.

18 Q Going back to -- look at Exhibit 5,
19 photographs. The one on page 6 which depicts your
20 vehicle. Ma'am, you agree with me that grate is in
21 plain site, right? There's nothing obscuring your
22 vision of that grate?

23 A No.

24 Q No, there is something obscuring your
25 vision?

1 A No, there's nothing obscuring the vision.

2 Q Okay. And you mentioned that you've
3 previously been dropped off in the same area; is that
4 right?

5 A Yes.

6 Q So you knew the grate was present?

7 A No.

8 Q You did not know?

9 A No.

10 Q How many times had you previously been
11 dropped off there?

12 A I don't know.

13 Q Over how many years have you been going to
14 Kahala Mall?

15 A Well, I haven't lived here continuously.
16 So off and on, I don't know how many years, but I
17 haven't lived there continuously so if I use the
18 number of years I've been associated with Hawaii,
19 it's a lot. But I haven't always been here, so I
20 don't know.

21 Q Okay. Well, when was the last time you
22 lived elsewhere?

23 A 2016.

24 Q Okay. So since 2016, how many -- how many
25 times have you been to Kahala Mall?

1 A I don't know.

2 Q And in those times you have been to Kahala
3 Mall, you have been dropped off in the same area?

4 A No, no.

5 Q No?

6 A No, we're dropped -- no, sometimes we park
7 the car, sometimes he'll drop me right outside.
8 Depends on how much traffic is behind us, he'll drop
9 me right outside Whole Foods. It depends on the
10 traffic situation.

11 Q Okay. So your testimony is you simply had
12 never seen that there before the day it occurred?

13 A Correct.

14 Q Okay. Now, you mentioned that there's a
15 grating that's a little wider than the others; is
16 that right?

17 A Two of the -- two of the -- so if you look
18 at this -- this example here, from there to there are
19 all the same but two of these are bent.

20 Q Okay.

21 A And bent open.

22 Q But you can't tell me that's what caused
23 you to fall?

24 A I -- I can't tell you it's what caused me
25 to fall. I can't tell you it isn't what caused me to

1 fall.

2 Q Ma'am, I think we're done.

3 A I'd like to do a couple of clarifications
4 about --

5 Q Okay.

6 A -- what we've talked about, if I may.

7 Q What do you want to clarify?

8 A I want to talk about the definition -- I
9 sort of feel like Bill Clinton but the definition of
10 fall.

11 Q Excuse me, what?

12 A The definition of fall.

13 Q Fall, okay.

14 A Because you asked me if I'd ever fallen and
15 the honest answer to that is no. However, when I was
16 a kid, I crashed my bike and came off it. But I
17 didn't fall. Something caused it to happen. I
18 slipped on some ice when I was living in Vermont, and
19 broke my wrist, but I slipped on ice. I didn't fall.
20 And one time I missed a step when I was going down
21 some steps and sprained an ankle, but that's the
22 limit. But I don't call those falls because they
23 aren't where I just toppled over. Something caused
24 it to happen. So it's slipping or tripping or
25 crashing.

1 Q Okay. Anything else you want to clarify?

2 A Yes, I do. I'd like to go back to your
3 questioning about any knowledge or education or
4 whatever I've had about planning or building permits
5 or I just would like to elaborate that while I
6 haven't had any professional education or
7 qualifications during our Transax business, we owned
8 eight properties in five different countries.

9 And in our personal life over time, we've
10 owned eight different properties. And particularly
11 if we go back to the dog hotel, which is a sort of
12 commercial property, all of those involved blue --
13 they call them blueprints. I can't remember what do
14 they call it? The thing but the planning, rules and
15 regulations, building permits, visits from agents to
16 make sure you've complied with those building
17 permits. So it's not that I don't know anything.
18 It's just I've never done it in a professional
19 capacity.

20 Q Then let's clarify then. You've had --
21 you're telling me you've had some experience in
22 discussing permits?

23 A Dealing with cancels.

24 Q Okay.

25 A Dealing with builders.

1 Q And with specific reference to your dog
2 hotel?

3 A Well, that would be -- well, if you want to
4 talk about whether it's commercial or whether it's
5 domestic, the eight houses would be domestic for the
6 most part except for when we added the dog hotel
7 which was going to be a commercial property, so --

8 Q And this is --

9 A -- that had to meet a certain code.

10 Q Okay. And this is what time frame, what
11 year?

12 A That would have been 2004ish to 2000 --
13 2010.

14 Q And 2004 to 2010 in English?

15 A Correct.

16 Q Okay. What about in America?

17 A It would -- The Poi Company in Kihei.

18 Q And what did you do to the structure at The
19 Poi Company in Kihei?

20 A We adapted -- adapted some -- some of
21 the -- we had OSHA visitors so that will tell you we
22 adapted some of -- we adapted the rooms as was
23 necessary for the operation of The Poi business. So
24 peeling of taro, putting in the machinery to process
25 that taro into poi.

1 Q And you had to submit building plans that
2 got -- had to get approved, right?

3 A Yes, yes.

4 Q And those --

5 A Yes, to give you -- excuse me, to give you
6 an example, we bought the lot next door to provide
7 parking and what have you. And when we asked to turn
8 the water on, they told us it was going to be \$15,000
9 because the -- there had been a house there
10 previously and they just walked away. But -- but
11 after Craig talked story, all of a sudden it came
12 down to nothing and it could be turned on the
13 afternoon.

14 So yeah, so we had experience of dealing
15 with the rules and the regulations and making sure we
16 complied. And I told you we had OSHA visit and they
17 would interview the staff.

18 Q Ma'am, with regard to The Poi Company where
19 you talk about submitting building plans, those are
20 not plans drawn by you --

21 A Correct.

22 Q -- or your husband, correct?

23 A Correct.

24 Q Okay. You had to hire an engineer or
25 architect or something -- someone like that?

1 A Yeah, we had to hire, yes.

2 Q Okay. They're the people that complied
3 with the code, right? They submitted plans that
4 complied with the code, correct?

5 A Correct.

6 Q Okay. So your experience was that of an
7 owner of the property, right?

8 A What I'm trying to elucidate is that it
9 might be peripheral, but I'm not a complete -- while
10 I don't do it in a professional capacity, I do
11 understand there are rules and regulations that have
12 to be met.

13 Q But you don't know the particular rules and
14 regulations?

15 A I can -- well, in this day and age, it's
16 much easier to go on the Internet and find them than
17 it was in those days. In those days you're more
18 dependent upon the experts to tell you what's needed.

19 Q Okay. Any other experience that you're
20 claiming?

21 A No, no. There's only one other thing I'd
22 like to say and I'd like to go back to the ADA thing
23 that we talked about and I'd like to go back to that
24 word typically.

25 Q You're talking about the statement, right?

1 A Correct, from Mr. Mick.

2 Q That's on page 14.

3 A I just want to say that typically means
4 there are exceptions. That's all I'd like to, just
5 that.

6 Q But Mr. Mick didn't say that this fell
7 within any exception?

8 A Well, Mr. Mick is not actually an ADA
9 expert.

10 Q Again, Mr. Mick did not say any -- this
11 falls within any exception, correct?

12 A He used the word "typically" and typically
13 means there can be exceptions.

14 Q I understand that's your -- that's your
15 interpretation. However, Mr. Mick did not say this
16 falls within any exception?

17 A Mr. Mick is not an ADA expert.

18 Q Okay. And you don't have an ADA expert
19 involved in this case, right?

20 A I don't know.

21 Q You don't know. Well --

22 A Because --

23 Q -- have you paid anyone?

24 A Because Craig is dealing with that aspect
25 of it.

1 Q Okay. Okay. This is mine, okay. Let's
2 take a quick break and we can switch seats and you
3 can -- hold on. You know, other than this lawsuit,
4 are you presently involved in any other active
5 litigation?

6 A No.

7 MR. WALSH: Yes, Reddit.

8 THE WITNESS: Sorry?

9 MR. WALSH: Reddit.

10 THE WITNESS: Oh, sorry. Yes, with
11 Reddit.

12 BY MR. KAYA:

13 Q Okay. And what about the collection
14 agencies that have sued you personally, are those
15 over?

16 A I don't think that's relevant.

17 Q Excuse me?

18 A I don't think that's relevant.

19 Q Are those over or not, yes or no?

20 A I don't think that's relevant.

21 Q They go to bias, interest and motive,
22 ma'am. So you do have to -- you're obliged to answer
23 that.

24 A Well, I'll let Craig deal with that.

25 Q No, you need to because those -- they're

1 separate lawsuits that name you. So the question is
2 are the collection lawsuits that were filed against
3 you over?

4 A I don't know.

5 Q Is it your testimony they're not active?

6 A I don't know.

7 Q Okay. So you're telling me that for
8 lawsuits against you in which people are suing you
9 for money, you don't know whether or not the cases
10 are over or not?

11 A Correct.

12 MR. KAYA: Okay. We can take a break.

13 We can switch. We'll start with Mr. Walsh.

14 (Deposition concluded at 2:03 p.m.)
15
16
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WITNESS CERTIFICATE

I, MARJORIE J. WALSH, do hereby certify that I have read the foregoing typewritten pages 1 through 93, inclusive, and corrections, if any, were noted by me, and that same is now a true and correct transcript of my testimony.

DATED this _____ day of _____, 2025.

MARJORIE J. WALSH

Signed before me this _____ day of _____, 2025.

Deposition of MARJORIE J. WALSH

Case: MARJORIE J. WALSH vs. MMI REALTY SERVICES, INC.

Civil No.: ICCV-24-0000003

Deposition Dated: January 20, 2025

Taken By: Myrla R. Romero

CERTIFICATE

STATE OF HAWAII)
) SS:
 CITY AND COUNTY OF HONOLULU)

I, MYRLA R. ROMERO, do hereby certify:

That on Monday, January 20, 2025, at 10:01 a.m., appeared before me MARJORIE J. WALSH, whose 93-page deposition is contained herein; that prior to being examined MARJORIE J. WALSH, was by me duly sworn or affirmed pursuant to Act 110 of the 2010 Session of the Hawaii State Legislature; that the deposition was taken down by me in machine shorthand and was thereafter reduced to typewritten form under my supervision; that the foregoing represents, to the best of my ability, a true and correct transcript of the proceedings had in the foregoing matter; that pursuant to Rule 30(e) of the Hawaii Rules of Civil Procedure, a request for an opportunity to review and make changes to this transcript were made by the deponent or a party prior to the completion of the deposition.

I further certify that I am not an attorney for any of the parties hereto, nor in any way concerned with the cause.

Dated this 2nd day of February, 2025 in Honolulu, Hawaii.

MYRLA R. ROMERO, CSR NO. 397
 Notary Public, State of Hawaii

C E R T I F I C A T E

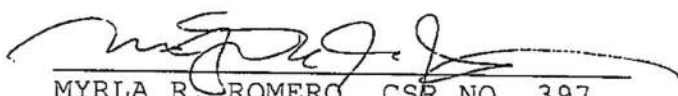
STATE OF HAWAII)
CITY AND COUNTY OF HONOLULU) SS:

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Dated this 2nd day of February, 2025 in Honolulu, Hawaii.


MYRLA R. ROMERO, CSR NO. 397
Notary Public, State of Hawaii

WITNESS CORRECTION SHEET

CASE: WALSH VS. MMI REALTY SERVICES, INC.; CIVIL NO. 1CCV-24-0000003

DEPOSITION OF MARJORIE WALSH (PRO SE), TAKEN ON 1-20-25.

PAGE	LINE	CORRECTION	REASON

(If additional space is needed, attach a blank sheet)

Signature of Deponent: _____ Date: _____
=====

CERTIFICATE

- ☐ Please be advised that the deponent signed and/or made corrections to the deposition within 30 days of notification.
- ☒ Please be advised that 30 days have expired and the deponent has failed to read and sign the deposition.
- ☐ Please be advised that signature and/or corrections were received and are **not being filed** with the transcript because:
 - ☐ the deponent failed to sign and/or make corrections within 30 days after notification that the transcript was available for review.
 - ☐ a request for an opportunity to review the transcript was **not** made by the deponent or a party before completion of the deposition.
- ☐ Please be advised that the above-named case is going to trial and/or hearing and the deponent has **not** had 30 days to read and sign the deposition before the filing of this transcript with the Court.

DATED: 3-17-25, HONOLULU, HAWAII.


COUR. NO. 379

Ralph Rosenberg by d.y.
Ralph Rosenberg Court Reporters, Inc.
1001 Bishop Street, Suite 2460, Honolulu, HI 96813
Phone: (808) 524-2090 Fax: (808) 524-2596

EXHIBIT "C"

LAW OFFICES OF LESLIE R. KOP

RANDALL Y. KAYA 3972
1100 Ward Avenue, Suite 500
Honolulu, Hawaii 96814
Telephone: (808) 527-7103
Facsimile: (808) 628-2525
Email: rkaya@staffcounsel808.com

Attorney for Defendant
MMI REALTY SERVICES INC.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

MARJORIE J. WALSH	)	CIVIL NO. 1CCV-24-0000003
CRAIG W. WALSH,	)	
	)	DEFENDANT MMI REALTY
Plaintiffs,	)	SERVICES INC.'S FIRST REQUEST
	)	FOR ADMISSIONS TO PLAINTIFF
vs.	)	MARJORIE J. WALSH; EXHIBITS "A" –
	)	"K"
MMI REALTY SERVICES INC.	)	
	)	
Defendant.	)	
	)	Trial: June 29, 2026
	)	Judge: Honorable Shirley M. Kawamura

DEFENDANT MMI REALTY SERVICES INC.'S
REQUEST FOR ADMISSIONS TO PLAINTIFF MARJORIE J. WALSH

TO: MARJORIE J. WALSH
350 Ward Avenue, #106-8
Honolulu, Hawaii 96814

(Plaintiff, *Pro Se*)

EXHIBIT "C"

REQUEST FOR ADMISSIONS

Pursuant to Rule 36 of the *Hawai'i Rules of Civil Procedure*, Defendant MMI REALTY SERVICES INC. ("Defendant") hereby requests Plaintiff MARJORIE J. WALSH ("Plaintiff") to answer in writing and under oath, within 30 days from the receipt thereof of the Request for Admissions a written answer or objection addressed to the matter signed by her or her attorney.

If objection is made, the reasons therefore shall be specifically stated. The answer shall specifically deny the matter or set forth *in detail* the reasons why the answering party cannot truthfully admit or deny the matter.

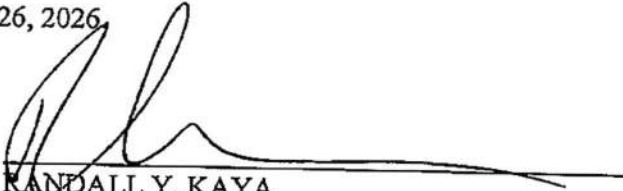
A denial shall fairly meet the substance of the requested admission, and when good faith requires that a party qualify her answer or deny any part of the matter of which an admission is requested, she shall specify so much of it as is true and qualify or deny the remainder. An answering party may not give lack of information or knowledge as a reason for failure to admit or deny unless she states that she has made reasonable inquiry and that the information known or readily obtainable by her is insufficient to enable her to admit or deny.

A party who considers that a matter of which an admission has been requested present a genuine issue for trial may not, on that ground alone, object to the request; she may, subject to the provisions of Rule 37(c), *Hawai'i Rules of Civil Procedure*, deny the matter and set forth reasons why she cannot admit or deny it.

The party who has requested the admission may move to determine the sufficiency of the answers or objections. Unless the Court determines that an objection is justified, it shall order that an answer be served. If the Court determines that an answer does not comply with the requirements of this rule, it may order either that the matter is admitted or that an amended answer be served.

The provisions of Rule 37(a)(4), *Hawai'i Rules of Civil Procedure*, apply to the award of expenses incurred in relation to the motion.

DATED: Honolulu, Hawaii, March 26, 2026

A handwritten signature in black ink, appearing to be 'R. Kaya', written over a horizontal line.

RANDALL Y. KAYA
Attorney for Defendant
MMI REALTY SERVICES INC.

FIRST REQUEST FOR ADMISSIONS

Request for Admission No. 1: Do you admit that attached hereto as Exhibit "A" is a true, correct, and accurate copy of paragraph 39 on page 14 of the statement of Marjorie Walsh, executed before notary public (Roberta Rivera) and under oath, on or about November 15, 2023?

ADMIT _____ DENY _____

Request for Admission No. 2: Do you admit that given your statement of November 15th that you knew before November 15, 2023, that the American With Disabilities Act (ADA) did not apply to the storm drain cover/grate at Kahala Mall that you claim caused you to fall and become injured, because it is not within the "accessible route" as defined by the ADA?

ADMIT _____ DENY _____

Request for Admission No. 3: Do you admit that before November 15, 2023, you knew the storm drain cover/grate at Kahala Mall that you claim caused you to fall and become injured, being not within the "accessible route" as defined by the ADA, that the ADA is not relevant to your claim in this lawsuit?

ADMIT _____ DENY _____

Request for Admission No. 4: Do you admit that attached hereto as Exhibit "B" is a true, correct, and accurate copy of paragraph 40 on page 14 of the Complaint filed by you on or about January 2, 2024?

ADMIT _____ DENY _____

Request for Admission No. 5: Do you admit that you have alleged in your Complaint that the American With Disabilities Act (ADA) does not apply to the storm drain cover/grate at Kahala Mall that you claim caused you to fall and become injured, because it is not within the "accessible route" as defined by the ADA?

ADMIT _____ DENY _____

Request for Admission No. 6: Do you admit that because the storm drain cover/grate at Kahala Mall you claim caused you to fall and become injured is not within the "accessible route" as defined by the ADA, that the ADA is not relevant to your claim in this lawsuit?

ADMIT _____ DENY _____

Request for Admission No. 7: Do you admit that Exhibit "C" is a true, accurate, correct and authentic copy of your Straub Clinic medical chart dated March 8, 2017 (see circled date), documenting then complaints of: "back pain (lumbar spinal stenosis), osteoarthritis and osteoporosis" (see circled musculoskeletal)?

ADMIT _____ DENY _____

Request for Admission No. 8: Do you admit that Exhibit "D" is a true, accurate, correct and authentic copy of your Straub Clinic medical chart dated May 16, 2019 (see circled date), documenting then complaints of: "chronic facial pain/swelling/fogginess" (see circled HPI notes)?

ADMIT _____ DENY _____

Request for Admission No. 9: Do you admit that Exhibit "E" is a true, accurate, correct and authentic copy of your Straub Clinic medical chart dated August 19, 2020 (see circled date), documenting then complaints of: "Vertigo: sensations of room spinning that occur when lying down and especially when turning to the right... symptoms have been intermittent for 3 months..." (see circled HPI)?

ADMIT _____ DENY _____

Request for Admission No. 10: Do you admit that Exhibit "F" is a true, accurate, correct and authentic copy of your Straub Clinic medical chart dated July 12, 2021 (see circled date), documenting your email to Straub Clinic concerning your seeking a referral to a vertigo specialist (see circled message)?

ADMIT _____ DENY _____

Request for Admission No. 11: Do you admit that Exhibit "G" is a true, accurate, correct and authentic copy of your Straub Clinic medical chart dated July 15, 2021 (see circled date), documenting your referral to a vertigo specialist (see visit diagnosis and message)?

ADMIT _____ DENY _____

Request for Admission No. 12: Do you admit that Exhibit "H" is a true, accurate, correct and authentic copy of your Straub Clinic medical chart dated July 16, 2021 (see circled date), documenting your treatments for dizziness and vertigo (see circled assessment)?

ADMIT _____ DENY _____

Request for Admission No. 13: Do you admit that Exhibit "I" is a true, accurate, correct and authentic copy of your Straub Clinic medical chart dated June 30, 2022 (see circled date), documenting your message to your physician Dr. Izuka (Iizuka) complaining of headaches, dizziness and no energy (see circled message)?

ADMIT _____ DENY _____

Request for Admission No. 14: Do you admit that Exhibit "J" is a true, accurate, correct and authentic copy of your Straub Clinic medical chart dated July 1, 2022 (see circled date), documenting your complaints of "headache, dizziness and fatigue x 1 month" (see clinical notes)?

ADMIT _____ DENY _____

Request for Admission No. 15: Do you admit that Exhibit "K" is a true, accurate, correct and authentic copy of your Straub Clinic medical chart dated March 24, 2023 (see circled date), documenting your complaints of "acute intractable headache" (diagnostic impression and HPI)?

ADMIT _____ DENY _____

Request for Admission No. 16: Do you admit that you do not have formal training, education or licensure in construction, in architecture, in engineering, or in building or project maintenance?

ADMIT _____ DENY _____

Request for Admission No. 17: Do you admit that you do not have occupational training, education or licensure in construction, in architecture, in engineering, or in building or project maintenance?

ADMIT _____ DENY _____

Request for Admission No. 18: Do you admit that since you do not have formal training nor occupational training education or licensure in construction, in architecture, in engineering, or in building or project maintenance, that you are not an expert in those areas?

ADMIT _____ DENY _____

Request for Admission No. 19: Do you admit that your husband Craig Walsh does not have formal training, education or licensure in construction, in architecture, in engineering, or in building or project maintenance?

ADMIT _____ DENY _____

Request for Admission No. 20: Do you admit that your husband Craig Walsh does not have occupational training, education or licensure in construction, in architecture, in engineering, or in building or project maintenance?

ADMIT _____ DENY _____

Request for Admission No. 21 Do you admit that since your husband, Craig Walsh, does not have formal training nor occupational training education or licensure in construction, in architecture, in engineering, or in building or project maintenance, that he is not an expert in those areas?

ADMIT _____ DENY _____

Request for Admission No. 22: Do you admit that immediately prior to your fall at Kahala Mall on August 16, 2023, you exited your vehicle in the road portion of the Kahala Mall parking lot and in a no parking/no stopping area?

ADMIT _____ DENY _____

Request for Admission No. 23: Do you admit that when you exited your vehicle on August 16, 2023, in the Kahala Mall parking lot that you did not look down and thus did not see the storm drain cover/grate you claim caused you to fall and become injured?

ADMIT _____ DENY _____

Request for Admission No. 24: Do you admit that at no time *prior* to your fall after you exited your vehicle on August 16, 2023, in the Kahala Mall parking lot did you look down and see the storm drain cover/grate you claim caused you to fall and become injured?

ADMIT _____ DENY _____

Request for Admission No. 25: Do you admit that you have no evidence that the storm drain cover/grate at Kahala Mall you claim caused you to fall and become injured on August 16, 2023, was slippery on August 16, 2023?

ADMIT _____ DENY _____

Request for Admission No. 26: Do you admit that you have no evidence of the coefficient of friction (if any) of the storm drain cover/grate at Kahala Mall you claim caused you to fall and become injured on August 16, 2023?

ADMIT _____ DENY _____

Request for Admission No. 27: Do you admit that you did not slip on the storm drain cover/grate at Kahala Mall you claim caused you to fall and become injured on August 16, 2023?

ADMIT _____ DENY _____

Request for Admission No. 28: Do you admit that the storm drain cover/grate at Kahala Mall you claim caused you to fall and become injured on August 16, 2023, is not subject to/governed by the Honolulu Building Code?

ADMIT _____ DENY _____

Request for Admission No. 29: Do you admit that because the storm drain cover/grate at Kahala Mall you claim caused you to fall and become injured on August 16, 2023, is not subject to/governed by the Honolulu Building Code that there is no Building Code violation?

ADMIT _____ DENY _____

Request for Admission No. 30: Do you admit that you did not trip on the storm drain cover/grate at Kahala Mall you claim caused you to fall and become injured on August 16, 2023?

ADMIT _____ DENY _____

Request for Admission No. 31: Do you admit that you did not stumble forward or backward after either a trip or slip on the storm drain cover/grate at Kahala Mall you claim caused you to fall and become injured on August 16, 2023?

ADMIT _____ DENY _____

Request for Admission No. 32: Do you admit that you have no testimony, reports or other material that would evidence that the storm drain cover/grate at Kahala Mall you claim caused you to fall and become injured, was hazardous on August 16, 2023?

ADMIT _____ DENY _____

Request for Admission No. 33: Do you admit that you have no testimony, reports or other material that would evidence that the storm drain cover/grate at Kahala Mall you claim caused you to fall and become injured, was unreasonably dangerous on August 16, 2023?

ADMIT _____ DENY _____

Request for Admission No. 34: Do you admit that no physician or other medical care provider or expert furnished a written opinion or report that any medical expenses you claim to have incurred as a result of the alleged incident of August 16, 2023 at Kahala Mall, were "reasonable, necessary and appropriate"?

ADMIT _____ DENY _____

VERIFICATION

STATE OF HAWAII

CITY AND COUNTY OF HONOLULU

)
) SS.
)

I, MARJORIE J. WALSH, being first duly sworn, on oath, deposes and certifies that the foregoing answers to Defendant MMI Realty Inc.'s Request for Admissions have been reviewed by me personally and are true, correct and complete to the best of my knowledge, information and belief.

MARJORIE J. WALSH

Subscribed and sworn to before me
this ____ day of _____, 2026.

Notary Public, State of Hawaii

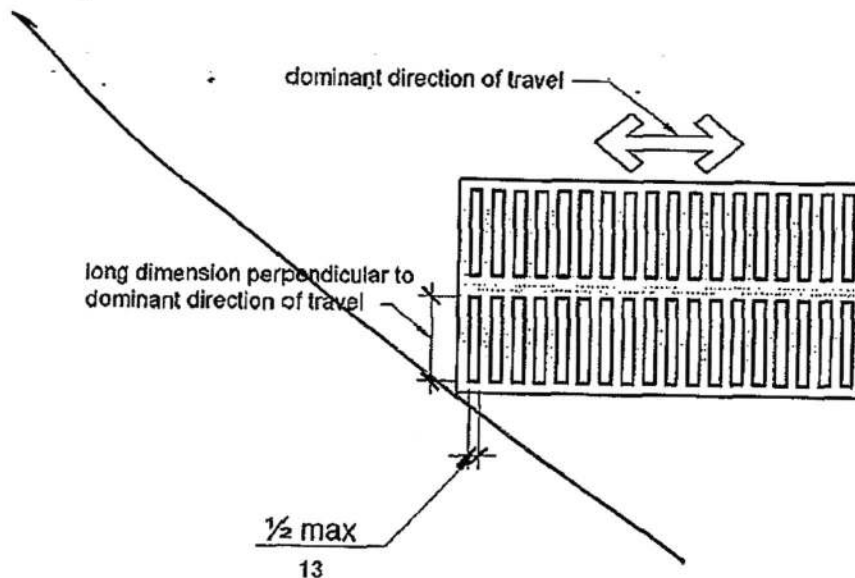
Print Name _____

My commission expires: _____

Doc. Date: _____ # Pages: _____
 Notary Name: _____ Circuit _____
 My commission expires: _____
 Doc. Description: _____

 Signature _____ Date _____
 NOTARY CERTIFICATION

EXHIBIT “A”



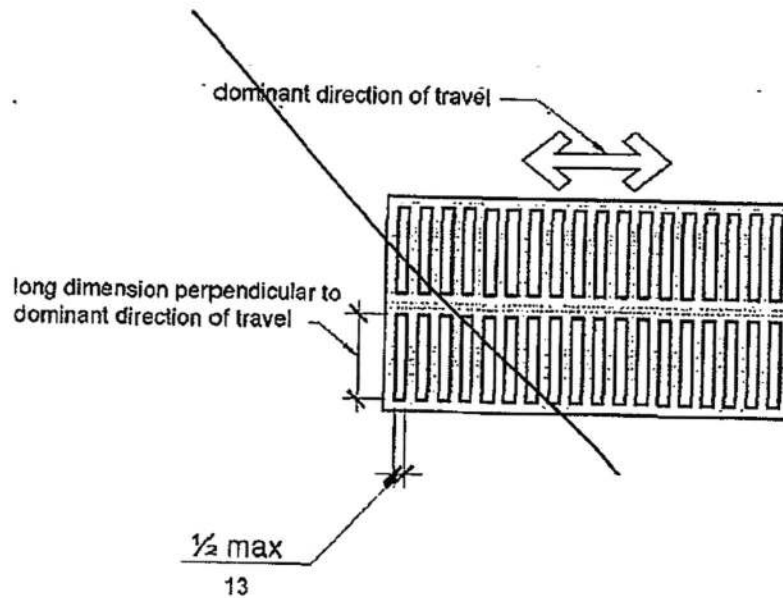
39. Mr. Myck replied to Craig by e-mail on November 7, 2023: "I asked our facility access head to take a look (they review government building construction plans for ADA compliance). Here is what they told me: "Kahala Mall and the public parking lot would be covered by the ADA and the requirements would be mandatory as it is a public accommodation. For ADA, the openings requirement (ADAAG 302.3) would apply to grates that are located within (or part of) an accessible route. The grate shown in the picture is at the flared portion of the raised crosswalk and the flared portions of raised crosswalks are typically not part of the accessible route. The striped area of crosswalks are typically the extents of the accessible portion."

40. For the reasons stated above, I believe that *all* the parking lot at near Whole Foods at Kahala Mall should be considered "an accessible route." An ADA violation would open the possibility of a private lawsuit, in Federal court, under the Civil Rights Act of 1964.

41. In his 2023 book *A Lawyer's Roadmap to Slip, Trip, and Fall Litigation* Russell J. Kendzior wrote:

"With respect to the condition of the premises, under most state laws, a Defendant would be considered negligent (i.e.: failed to provide a reasonably safe walkway) if:

EXHIBIT “B”



40. Mr. Myck replied to **Craig** by e-mail on November 7, 2023: "I asked our facility access head to take a look (they review government building construction plans for ADA compliance). Here is what they told me: "Kahala Mall and the public parking lot would be covered by the ADA and the requirements would be mandatory as it is a public accommodation. For ADA, the openings requirement (ADAAG 302.3) would apply to grates that are located within (or part of) an accessible route. The grate shown in the picture is at the flared portion of the raised crosswalk and the flared portions of raised crosswalks are typically not part of the accessible route. The striped area of crosswalks are typically the extents of the accessible portion."

41. For the reasons stated above it is arguable that *all* the parking lot at near Whole Foods at Kahala Mall should be considered "an accessible route." An ADA violation would open the possibility of a private lawsuit, in Federal court, under the Civil Rights Act of 1964.

42. In his 2023 book *A Lawyer's Roadmap to Slip, Trip, and Fall Litigation* Russell J. Kendzior wrote:

"With respect to the condition of the premises, under most state laws, a Defendant would be considered negligent (i.e.: failed to provide a reasonably safe walkway) if:

EXHIBIT “D”

LAW OFFICES OF LESLIE R. KOP

RANDALL Y. KAYA 3972
1100 Ward Avenue, Suite 500
Honolulu, Hawaii 96814
Telephone: (808) 527-7103
Facsimile: (808) 628-2525
Email: rkaya@staffcounsel808.com

Attorney for Defendant
MMI REALTY SERVICES INC.

Electronically Filed
FIRST CIRCUIT
1CCV-24-0000003
26-MAR-2026
04:05 PM
Dkt. 138 CS

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

MARJORIE J. WALSH	)	CIVIL NO. 1CCV-24-0000003
CRAIG W. WALSH,	)	
	)	CERTIFICATE OF SERVICE RE:
Plaintiffs,	)	DEFENDANT MMI REALTY
	)	SERVICES INC.'S FIRST REQUEST
vs.	)	FOR ADMISSIONS TO PLAINTIFF
	)	MARJORIE J. WALSH; EXHIBITS "A" –
MMI REALTY SERVICES INC.	)	"K"
	)	
Defendant.	)	
	)	Trial: June 29, 2026
	)	Judge: Honorable Shirley M. Kawamura

CERTIFICATE OF SERVICE

I hereby certify that an original and a copy of DEFENDANT MMI REALTY SERVICES INC.'S FIRST REQUEST FOR ADMISSIONS TO PLAINTIFF MARJORIE J. WALSH; EXHIBITS "A" – "K", dated March 26, 2026 was duly mailed via the U.S. Postal Service on March 26, 2026 to the following:

MARJORIE J. WALSH
350 Ward Avenue, #106-8
Honolulu, Hawaii 96814

(Plaintiff, *Pro Se*)

EXHIBIT "D"

I hereby certify that a copy of DEFENDANT MMI REALTY SERVICES INC.'S FIRST REQUEST FOR ADMISSIONS TO PLAINTIFF MARJORIE J. WALSH; EXHIBITS "A" – "K", dated March 26, 2026 was duly mailed via the U.S. Postal Service on March 26, 2026 to the following:

CRAIG W. WALSH
350 Ward Avenue, #106-8
Honolulu, Hawaii 96814

(Plaintiff, *Pro Se*)

DATED: Honolulu, Hawaii, March 26, 2026.

/s/Randall Y. Kaya

RANDALL Y. KAYA
Attorney for Defendant
MMI REALTY SERVICES INC.

Electronically Filed
FIRST CIRCUIT
1CCV-24-0000003
06-MAY-2026
05:17 PM
Dkt. 155 EXH

EXHIBIT “E”

Craig W. Walsh
350 Ward Avenue, #106-8
Honolulu, Hawaii 96814
Tel: (802) 359-2718
Fax: (808) 707-5711
E-Mail: craig@hmdp.com

Plaintiff *Pro Se*

**IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII**

Marjorie J. Walsh
Craig W. Walsh
Plaintiffs

vs.

MMI REALTY SERVICES INC.
Defendant

CIVIL NUMBER 1CCV-24-0000003

PLAINTIFF CRAIG W. WALSH'S
ANSWERS TO DEFENDANT'S
FIRST INTERROGATORIES

TRIAL DATE: None

**PLAINTIFF CRAIG W. WALSH'S ANSWERS TO DEFENDANT'S FIRST
INTERROGATORIES**

TO: MMI REALTY SERVICES INC.
c/o Law Offices of Leslie R. Kop
1100 Ward Avenue, Suite 500
Honolulu, Hawaii 96814

In accordance with Rule 33 of the *Hawaii Rules of Civil Procedure*, Rule 30
of the Hawaii Rules of the Circuit Court, and Rule 4 of the *Court Annexed*
Arbitration Rules, Plaintiff Craig W. Walsh responds to the Defendant's First
Request for Answers to Interrogatories (dated January 26, 2024) as follows:

1. State your full name, your present address, Social Security number and date of birth.

Answer:

Full Name: Craig Wilkinson Walsh
Mailing Address: 350 Ward Avenue #106-8
Honolulu, Hawaii 96814
Social Security #: [REDACTED] 0944
Date of Birth: [REDACTED] 1949

2. List your occupation or job (full and/or part-time) and employers' name and address during the last five (5) years, starting with your present employer.

Answer:

October 7, 2022 to Present:
Retired

April 16, 2019 to October 6, 2022:
Otis Elevator Company
863 Halekauwila Street
Honolulu, Hawaii 96813

November 20, 2017 to April 16, 2022:
Manpower Group (assigned to Otis Elevator Company)
100 Manpower Place
Milwaukee, Wisconsin 53212

3. Describe in your own words, in full detail, how the incident ("incident" is defined as the accident or other event which is the subject of this claim) occurred, including the events in the five (5) minutes leading up to the incident.

Answer:

Marjorie, my service dog, Ka Lā, and I went for a walk at the Hilton Hawaiian Village on August 16, 2023. After our exercise Marjorie said she needed a few things at Whole Foods so I drove through Waikiki (down Kalakaua Avenue), around Diamond Head, and into Kahala Mall from the Makaiwa Street entrance.

According to my Google Timeline, installed on my iPhone, we arrived at Kahala Mall at 4:28 PM. I drove us to near the front of Whole Foods. There are no loading/unloading zones. The few disabled spaces I could see were full (but the parking did not appear to be full). We both have disabled parking permits and it is particularly difficult for us to walk any distance carrying anything.

I told Marjorie I would drop her off and look for a parking space. I stopped just short of the cross walk on the raised area in front of the mall. I did not want to block the crosswalk for other pedestrians but I did want Marjorie to be close to the crosswalk so she could use it. I told her I would text her when I was parked. I should add that we stopped using the entrance/elevator for Whole Foods on the roof level of the parking lot because the elevator that gives direct access to Whole Foods was closed during COVID, and frequently out-of-order afterwards.

I grew up on Makaiwa Street (*circa* 1956-1969). Although I have visited Kahala Mall (and its predecessor Waialae Shopping Center) on many occasions I was not aware that there was a storm drain where I stopped the car on August 16, 2023. On this sunny summer day I was not looking for dangerous storm drains in an area where pedestrians frequently walk.

Marjorie exited the car on the passenger side of the vehicle and I was not aware that she fell until other pedestrians signaled and shouted at me to stop.

4. Indicate whether you contend ***your*** [emphasis added] slip and/or trip and/or fall resulted from:

a) Slipperiness of the floor and/or walking surface and/or stair(s), and if so, due to what substance?

Answer:

Not relevant to me – I did not slip and/or trip and/or fall.

b) Defects in the floor and/or walking surface and/or stair(s) and/or floor covering; and if so, due to what kind of defects?

Answer:

Not relevant to me – I did not slip and/or trip and/or fall.

- c) Debris, litter and/or obstructions on the floor and/or walking surface and/or stair(s), and if so, due to what kind of debris, litter and/or obstructions?

Answer:

Not relevant to me – I did not slip and/or trip and/or fall.

- d) Variations in the floor and/or walking surface and/or stair(s), and if so, due to what kind of variations?

Answer:

Not relevant to me – I did not slip and/or trip and/or fall.

- e) Inadequate lighting in the area, describing the lighting that was present and why you contend it was inadequate.

Answer:

Not relevant to me – I did not slip and/or trip and/or fall.

- f) Other defects (specify).

Answer:

Not relevant to me – I did not slip and/or trip and/or fall.

5. If you were wearing footwear at the time of the slip and/or trip and/or fall, please state:

- a) The type and brand name of the footwear;
- b) Where and when you purchased the footwear;
- c) The material of the sole and the type and height of the heel;
- d) The identity of the present custodian, if any, of the footwear.

Answer:

Not relevant to me – I did not slip and/or trip and/or fall.

6. If you reported the condition of the area where you tripped and/or slipped and/or fell to anyone either before or after the trip and/or slip and/or fall, please indicate to whom it was reported.

Answer:

Immediately after Marjorie's fall I was obviously focused on her, the possible extent of her injuries, and the best way to get her prompt medical attention. I considered calling an ambulance but she told me she didn't want a fuss. I also considered that I could probably get her to the Emergency Room faster if we left in our own car immediately. I did not see the uniformed Kahala Mall security guard arrive on scene. I do remember him asking us (and the other passer-by who gathered to help Marjorie) how the incident occurred.

Once we'd safely put Marjorie in the passenger seat of our car, the security guard wanted to ask her questions through the open window on the passenger side of our car. I walked over to the guard and politely explained I wanted to get Marjorie to the Emergency Room as quickly as possible. I did, however, take a moment to write Marjorie's and my contact details (as I recall I gave him our names, and my telephone number and e-mail address) and told him we'd be glad to answer questions on a later date.

I went to the Kahala Mall office on the afternoon of August 21, 2023 and spoke with Ms. Jewel Kawano. She and I worked together at the Bank of Hawaii in 1975-1976 but hadn't seen each other since then. Ms. Kawano and her colleague at the reception desk knew nothing about the incident. She said she'd contact their insurance company.

7. State the names and addresses of all persons known to you or to your attorney who witnessed any part of the incident, and give a brief description of all witnesses whose names or addresses are not known.

Answer:

It is my hope that the Kahala Mall security guard obtained this information. For the reasons stated in my answer to question 6, above, I did not.

8. Were any statements concerning the incident made to any police officer, private investigator, insurance company agent or adjuster, or anyone else?

Answer:

If so state:

- a) The name, address and employer of the person to whom the statement was made;
- b) The date of each statement;
- c) Whether the statement was oral or written, and if oral, whether it was recorded;
- d) The name and address of the custodian(s) of each statement.

Answer:

Please see my responses to questions 6 and 7, above.

Marjorie gave a written, sworn statement to First Indemnity Insurance Company dated November 15, 2023. It is presumably held by the Defendant or the Defendant's insurance company. The statement was delivered by me to the First Insurance receptionist at 1100 Ward Avenue and safe receipt was subsequently acknowledged by Lisa Kinoshita, the Claims Adjuster.

9. If you have any knowledge of any photographs, sketches, or drawings of the area where you slipped and/or tripped and/or fell, please state by whom they were made and who requested them, and who has present custody of such documents.

Answer:

Marjorie and I took numerous photographs of the area (and storm drain in particular) in the period following the incident. Many of these were used in the initial statement (November 15, 2023 – see my response to question 8, above) and in the Complaint in this action filed with the Court on January 2, 2024.

Please see the separate response to your First Request for Production of Documents and Things.

10. State all physical and/or mental injuries or conditions you claim are a result of the incident.

Answer:

Marjorie and I met in 1979 when I hired her to work with my colleagues and with me at the Bank of Hawaii branch in Pago Pago, American Samoa. We worked together for about six months. She and Peter (her husband) returned to their home in England, and Marcia (my wife), Chase (our daughter) and I returned to Honolulu a few months later when my 18 month overseas contract came to an end. I continued to work for the Bank of Hawaii in the Corporate Banking Department in downtown Honolulu.

In pre-internet days I kept in touch with Marjorie with the occasional short letter and Christmas card. She maintained an account at the Bank of Hawaii and I would forward the statements to her each quarter.

In 1985 I left the Bank to accept a position with a venture capital firm in Dallas. Marcia chose to remain in Honolulu with Chase, and thus began our marital separation. At some point I called Marjorie and learned that she had been separated from Peter for some time, and was in the process of finalizing their divorce.

I suggested Marjorie come to the States for a visit. After this visit she returned to England and decided to move back (by this point I'd returned to Hawaii) and marry me.

Once again we worked together in a bank – the small (and now long defunct) Aloha National Bank in Kihei, Maui. We were married in Kahului on April 26, 1986.

It became increasingly apparent to us that Aloha National Bank was heading towards failure, so we moved back to Marjorie's home in Malvern, England and we both sought employment in the United Kingdom. I was hired by ICL (the British equivalent of IBM at the time – now a part of Fujitsu) to help ICL understand the computing needs of banks and other financial institutions.

While I was at Bank of Hawaii I financed the purchase of Uni-check by a Seattle-based company. In doing so I gained a complete understanding of how check guarantee firms (like Uni-Check, Telecheck, and Telecredit) work. Marjorie graduated from university in the summer of 1985 as a so-called "mature student," and she wanted to start a business. We decided to start a cheque guarantee firm in the United Kingdom with £10,000 of money that we borrowed via a second mortgage on Marjorie's home. We named this business Cheque Point and changed its name about six months later to Transax. (It was easier to trademark the "Transax" name.) We guaranteed our first check on October 27, 1986.

As we had at the Bank of Hawaii and Aloha National Bank, Marjorie and I worked together. I resigned from ICL to spend full time on the Transax enterprise. ICL provided all our computer requirements – up to and including a large mainframe in a purpose-built computer suite.

Marjorie and I worked together in an office with a "partner desk." We built Transax into a large enterprise with operations in five countries (the United Kingdom, Republic of Ireland, France, Australia, and New Zealand). We also expanded operations into debt collection, private label credit card operations (in partnership with American Express), and Value Added Tax (VAT) refunds to tourists.

From the inception of Transax we knew the check (cheque) was doomed. Our strategy, therefore, was to build the company as quickly as possible and sell it. We found Equifax – a venerable NYSE-listed corporation – to be the perfect purchaser. Equifax had purchased Telecredit in the United States (the largest check guarantee firm worldwide) a few years earlier. Transax had become the second largest check guarantee firm worldwide in ten years. The soon-to-retire Equifax chairman was interested in international expansion, and was bullish on the future of the check, so Transax would allow him to put five more flags on the globe in his office and increase the Equifax position in the check guarantee industry.

We sold Transax in 1986 and retired. At the time of the sale Transax had 515 employees and well over 150,000 merchant locations using the service worldwide. In our retirement, Marjorie and I travelled, including a 90 day Pacific cruise from San Francisco to Sydney. We pursued our enjoyment of SCUBA diving, particularly on wrecks, in the Red Sea, the Caribbean, and throughout the Pacific. We purchased a co-op in New York City, homes in London and Grand Cayman, and an apartment in Honolulu.

Alas, we missed not working – so in 1998 we purchased the controlling interest in a small poi manufacturing company in Honolulu. We did our best to build this enterprise – renamed The Poi Company – and installed state-of-the-art Swiss manufacturing equipment. In retrospect we should have spent more time initially planting taro (we'd set up a joint venture with the Government of Honduras). The lack of taro eventually caused us to close PoiCo in 2002 with losses of \$3 million.

We started to spend more time back in England, where we raised Highland Cattle for show purposes. We started to raise pedigree Aberdeen Angus cattle in the traditional Kobe style for the luxury meat trade (at this time Kobe/Wagyu beef was a real luxury), also expanding into Kurobuta (Berkshire) pork and wild boar. We opened the first truly luxury dog resort in the United Kingdom. These activities attracted considerable press attention – please see www.bark.ch.

In 2009 I agree to help a friend of mine – a litigation solicitor in London – with the financial aspects of his new law firm. From 2009 until 2016 – as his firm grew from two fee earners to more than 25 – I was his CFO and Marjorie and I did all the billing and accounting. I also became quite knowledgeable about eDiscovery, attending a weeklong seminar at the Georgetown University Law Center. I assisted with the technical aspects of liquidating the London office of Dewey & LeBoeuf in 2012.

I've rambled about all of this to illustrate that Marjorie and I – who will celebrate our 38th wedding anniversary this April – have lived and worked together for many years. When Marjorie spent two nights in the Straub Hospital after the incident it was one of the very few times we didn't spend the night in the same bed.

As a result of the incident Marjorie has been in considerable pain and greatly reduced mobility. This has improved over the past six months, but she still has difficulty sleeping for the entire night – frequently waking up in pain.

Prior to the incident Marjorie loved to cook – and, in particular, to bake. On the other hand, I have zero cooking skills. She did all the grocery shopping and house cleaning – because my roto scoliosis makes it difficult for me to carry things or do the necessary gymnastics to sweep, mop, and scrub. We also liked to walk with Ka Lā – it is painful for me to walk slowly and I need to stop frequently, but I do well with taking a walk at a decent pace. Marjorie is no longer able to confidently walk on uneven surfaces -- such as grass fields -- or for any great distance. Again, this is improving slightly every day but we are a long way away from being back to her pre-incident normal.

Her discomfort and pain have curtailed our social interactions with friends and continue to do so. We previously went out to movies, meals, and other functions – and loved exploring Oahu in what we call “road trips.” It is now painful for Marjorie to sit for a prolonged period in the car.

The annual Punahou Carnival occurred earlier this month. We normally would have gone both days, working a volunteer shift each day. We ended up only going for part of one day, most of it spent selling script.

The *Merriam-Webster Dictionary* offers this as one definition of “horizon” –

the limit or range of a person's outlook or experience

The incident has caused our horizons to narrow – our world to become smaller, and less joyful. We now lack spontaneity. We watch movies on TV, rather than the social experience of watching them in a theater. We eat few meals out, whereas before we enjoyed trying new restaurants with friends. Marjorie has essentially stopped communicating with her family and Chase (her stepdaughter) in Australia, and my sister and her family in England. Before the incident she texted them all daily, if not more frequently.

“Loss of consortium” also includes sex. Marjorie and I have always had a robust sexual life. During the COVID lockdown I was working (remotely) for Otis Elevator Company. Marjorie challenged me to write an erotic novel for women (from the perspective of a woman). We worked together on this rather odd project, with assistance from her sister and Chase. The final produce was a 356 book that can be purchased on Amazon: <https://a.co/d/0KQt1qA>

Sex has become far less frequent and, for Marjorie, quite painful. She had an incision of four inches on the front/side of her left leg, as shown in the two photographs in ¶ 63 of the Complaint.

11. State all physical and/or mental injuries or conditions you suffered from at any time before the incident.

Answer:

- Idiopathic Roto-scoliosis of the spine
- Bilaterally shortened Achilles' Tendons
- Type 2 Diabetes, treated without insulin
- Crush fracture of T11 (endplate) – May 2, 2006
- Essential hypertension, controlled with medication.
- Worker's compensation injury to my back (February 2021) without fracture

12. State all physical and/or mental injuries or conditions you have incurred since the date of the incident which you claim either (a) aggravated your injuries, or (b) were new injuries.

Answer:

See my detailed response to question 10, above. I would say depression.

13. State the name and address of all doctors, chiropractors, hospitals, therapists, and other health care providers who have rendered medical and/or other types of care for the ten (10) years before the incident to the present.

Answer:

I'm almost 75 years old (my birthday is in May) and in the period from August 16, 2013 to present I have lived in Vermont and Hawaii and have travelled extensively. I believe this to be a complete list, but some providers may have been forgotten by me and, consequently, inadvertently excluded.

Dartmouth-Hitchcock Medical Center Medical Record 50629770-4
One Medical Center Drive
Lebanon, New Hampshire 03756

Dr. Diana C. Brown
BUPA Cromwell Hospital
164/178 Cromwell Road
London SW5 0TU

Dr. Holly Andersen
New York Cardiology Associates PC
425 East 61st Street
New York City, New York 10065-8722

Dr. Andrew Martorella
215 East 68th Street, Suite 8
New York City, New York 10065

Massachusetts General Hospital Medical Record 5117528
55 Fruit Street
Boston, Massachusetts 02114

Mayo Clinic Medical Record 4-487-674
200 First Street
Rochester, Minnesota 55905

Straub Clinic & Hospital
888 South King Street
Honolulu, Hawaii 96813

Medical Record 01219022

Dr. Cynthia Pau
1585 Kapiolani Boulevard
Honolulu, Hawaii 96814

Dr. David T. Lee
1329 Lusitana Street, Suite 809
Honolulu, Hawaii 96814

Dr. Anna Parlin
1329 Lusitana Street, Suite 502
Honolulu, Hawaii 96813

Dr. Andrew Parlin
1600 Kapiolani Boulevard, Suite 105
Honolulu, Hawaii 96814\

Dr. Jack Hsieh
405 North Kuakini Street, Suite 607
Honolulu, Hawaii 96817

Dr. Gregory Morris
1329 Lusitana Street, Suite 802
Honolulu, Hawaii 96813

Cleveland Clinic
9500 Euclid Avenue
Cleveland, Ohio 44195

Medical Record 59755790

Honolulu Pain Management Clinic LLC
500 Ala Moana, Suite 1-302
Honolulu, Hawaii 96813

Dr. Johathan Carlson
40 Aulike Street, Suite 411
Kailua, Hawaii 96734

Dr. Koji Iizuka
928 Nuuanu Avenue
Honolulu, Hawaii 96817

N.B. I have excluded physiotherapists because there were a few of them, and they all would have submitted reports to the prescribing doctor – so presumably their records are also held by the relevant physician. If, however, you would like a list of the therapists in Vermont and Hawaii, please let me know.

14. List all medical or health care expenses you incurred as a result of the incident.

Answer:

None to date

15. If applicable, identify each insurance carrier providing medical or other health care benefits or which might provide medical or other health care benefits to you.

Answer:

Not applicable to date

16. If you are claiming any loss of earnings as a result of the incident, state the periods of time you were off work, name of employer, rate of pay, and the amount of such loss.

Answer:

Not applicable to date

17. What loss of earnings, if any, do you believe you will incur in the future as a result of the accident?

Answer:

Not applicable to date

VERIFICATION

STATE OF HAWAII

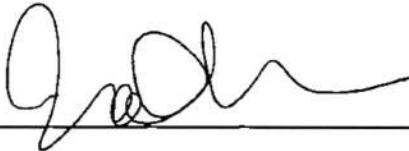
CITY & COUNTY OF
HONOLULU

)
) SS.
)

CRAIG W. WALSH, being first duly sworn on oath, deposes and says
that she has read the foregoing answers to interrogatories and that the same
are true to the best of her knowledge and belief.



Subscribed and sworn to before me this 28th day of February 2024.



Notary Public, State of Hawaii

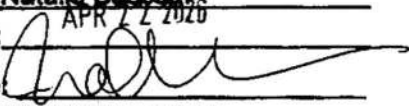
My commission expires: APR 22 2026



Date: FEB 28 2024 First Circuit

Notary Name: Natalie Baccam

Comm Exp Date: APR 22 2026

Notary Signature: 

NOTARY CERTIFICATION (Stamp or Seal)



EXHIBIT “F”

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT
STATE OF HAWAII

MARJORIE J. WALSH	)	CIVIL NO. 1CCV-24-0000003
CRAIG W. WALSH,	)	
	)	
Plaintiffs,	)	
	)	
vs.	)	
	)	
MMI REALTY SERVICES, INC.,	)	
	)	
Defendants.	)	
_____	)	

DEPOSITION OF CRAIG W. WALSH

Taken on behalf of the Defendant MMI REALTY SERVICES,
INC.,, at the Law Offices of Leslie R. Kop, 1100 Ward
Avenue, Suite 500, Honolulu, Hawaii 96814, commencing at
2:10 p.m., on Monday, January 20, 2025 pursuant to
Notice.

BEFORE: MYRLA R. ROMERO, CSR No. 397

Notary Public, State of Hawaii

RALPH ROSENBERG COURT REPORTERS, INC.
Honolulu, HI (808) 524-2090

EXHIBIT "F"

2 1 APPEARANCES: 2 For Plaintiffs MARJORIE J. WALSH; CRAIG W. WALSH: 3 MARJORIE J. WALSH (Pro Se) 4 CRAIG W. WALSH (Pro Se) 5 350 Ward Avenue, #106-8 6 Honolulu, Hawaii 96814 7 marjorie@hmdp.com 8 craig@hmdp.com 9 For Defendant MMI REALTY SERVICES, INC.: 10 RANDALL Y. KAYA, ESQ. 11 Law Offices of Leslie R. Kop 12 1100 Ward Avenue, Suite 500 13 Honolulu, Hawaii 96814 14 rkaya@staffcounsel808.com 15 16 17 18 19 20 21 22 23 24 25	4 1 (Disclosure presented to all counsel.) 2 CRAIG W. WALSH, 3 called as a witness by and on behalf of the Defendant 4 MMI REALTY SERVICES, INC., having been first duly sworn 5 to tell the truth, the whole truth and nothing but the 6 truth, was examined and testified as follows: 7 EXAMINATION 8 BY MR. KAYA: 9 Q Good afternoon, Mr. Walsh. Again, I 10 represent MMI. And you were present when your wife 11 was deposed, correct? 12 A I was. 13 Q And so right now I'd like for you to state 14 for the record your full name. 15 A Craig Wilkinson Walsh. 16 Q And you are one of the plaintiffs in this 17 lawsuit, correct? 18 A I am. 19 Q Okay. And once again, do you need me to go 20 over the instructions I gave your wife or do you want 21 to dispense with that? 22 A Dispense with it. 23 Q Okay. The things I do want you to remember 24 but -- and I always do this -- is please make sure 25 that you both hear and understand the question before
3 1 INDEX 2 3 EXAMINATION BY: PAGE 4 MR. KAYA.....4 5 6 7 EXHIBITS MARKED FOR IDENTIFICATION PAGE 8 Exhibit 6 Medical records of Marjorie 44 9 Walsh 10 Exhibit 7 Statement of hospital services 44 11 for Marjorie Walsh 12 Exhibit 8 Colored photographs 44 13 Exhibit 9 Email to Craig Walsh from Chase 47 14 Day, August 22, 2023 and 15 colored photographs 16 Exhibit 10 Plaintiff Craig W. Walsh's 71 17 Answers to Defendant's First 18 Interrogatories 19 20 21 22 23 24 25	5 1 you answer. Okay? 2 A Yes. 3 Q Now, have you ever been deposed before? 4 A Yes. 5 Q And when was that? 6 A Numerous times. I used to be a commercial 7 lender at the Bank of Hawaii. 8 Q So when was the last time you were deposed 9 in your capacity with the Bank of Hawaii? 10 A 1980 -- either '84 or '85. 11 Q Okay. Since 1984 or '85, have you been 12 deposed? 13 A Yes. 14 Q And in -- what -- in connection with what? 15 A Trademark infringement. 16 Q Okay. And when was that? 17 A That would have been between probably, I 18 would say '90, between 1990 and 1996. 19 Q Okay. After the trademark infringement 20 actions, have you been deposed? 21 A I don't think so, but I'm not absolutely 22 certain. I can't think of anything offhand. 23 Q Have you been deposed in connection with 24 the lawsuit you filed for a back injury? 25 A No.

2 (Pages 2 to 5)

6 1 Q That's against the Palolo Gardens? 2 A Correct. 3 Q Now, I think you've heard your wife testify 4 as to where you folks physically reside? 5 A Yes. 6 Q Is -- what exactly was the address again? 7 A 2140 10th Avenue. 8 Q And that's at the Palolo Gardens 9 Condominium? 10 A Correct. 11 Q Are you an attorney? 12 A No. 13 Q Okay. Have you consulted with an attorney 14 in connection with this lawsuit? 15 A Yes. 16 Q Who have you consulted with? 17 A That's privileged. 18 Q It is not. 19 A I'm not telling you. 20 Q Have you retained an attorney? 21 A Not yet, no. 22 Q Okay. So let's be clear, the attorney you 23 may have consulted with is not your attorney at this 24 time for this lawsuit. Is that a correct statement? 25 A Correct.	8 1 have consulted is not your attorney because you 2 didn't retain them, correct? 3 A I don't need to repeat myself, but yes, 4 that's correct. 5 Q Okay. 6 A If you ask me again, the answer is still 7 not retained. 8 Q Is it your belief that they're licensed in 9 this state? 10 A It's not my belief. I know they are 11 licensed in the state. 12 Q Okay. And what fields of practice do they 13 engage in? 14 A I'm not answering that. 15 Q So you're not going to tell me what fields 16 of practice -- 17 A Correct, I'm not. 18 Q -- they practice? You understand that if 19 you can do -- well, since you've refused, we can go 20 to court at some point and get a court order for you. 21 A Please be my guest. 22 Q Okay. Let's talk about your education. 23 Where did you go to high school? 24 A Punahou. 25 Q What year did you graduate?
7 1 Q And you refuse to divulge that person's 2 name? 3 A I do. Persons, I'll tell you that. 4 Q Okay. 5 THE REPORTER: I'm sorry? 6 THE WITNESS: Persons, plural. 7 BY MR. KAYA: 8 Q Are any of these persons licensed to 9 practice in the state of Hawaii? 10 A Yes. 11 Q And when did you last consult with them? 12 A Recently. 13 Q Recently is kind of ambiguous, sir. 14 A That's what you've, got recently. 15 Q No, that's not what I got so when was the 16 last time you -- 17 A Recently is my answer. 18 Q So you're refusing to say when was the last 19 time? 20 A I said recently. 21 Q No, you're refusing to say that to tell me 22 when. 23 A I'm refusing to give you the exact date in 24 part because I don't know it. 25 Q So let's be clear, any attorney you may	9 1 A Sixty-six. 2 Q After high school, where did you go for 3 education? 4 A RPI which is Rensselaer, 5 R-E-N-S-S-E-L-A-E-R. 6 Q And what kind of degree did you obtain? 7 A I have a BS in economics, but I had two 8 years of engineering as part of the Rensselaer 9 program. 10 Q What type of engineering? 11 A Well, it covered everything, mechanical, 12 civil, nuclear, chemical, architectural. It's the 13 base of engineering. 14 Q Civil? 15 A Yes. 16 Q Electrical? 17 A Yes, mechanical, bit of nuclear, bit of 18 chemical. 19 Q And this is undergraduate study? 20 A Correct. 21 Q Back in the '60s then? 22 A Correct. I graduated in 1970. 23 Q What codes or building codes did you -- did 24 you have to study? 25 A Well, all of them pretty much.

3 (Pages 6 to 9)

1 **Q Okay. What do you mean by all of them?**

2 A And equally to expand on the answer for
3 example, The Poi Company, we bought a shell of a
4 building in -- Marjorie said Kihei by mistake. It's
5 Kalihi. It's actually on Kopke Street on Kalihi, and
6 I'm not the type to just let the engineers and
7 architects just go and design something on their own.
8 So I was always intimately involved with the issues
9 about the building codes and making decisions about
10 placements of stairways, drains, et cetera, with the
11 doors, and even --

12 **Q So who?**

13 A Even before going to university, my
14 grandparents owned numerous properties here on Oahu,
15 and gave it to me, the grandson, to deal with all the
16 issues having to do with the building and the people
17 but doing the building and planning permits.

18 So I haven't walked into the planning
19 department myself with drawings that I've done. I've
20 been intimately involved with the plans that have
21 been walked in on my or my grandparents' behalf.

22 **Q So during what years were you intimately
23 involved?**

24 A Well, I mean, the last -- the last time we
25 did construction any type of work would have been The

1 Poi Company, so that would have been from high school
2 until The Poi Company closed in 2002. So beyond that
3 it was really mostly in England and mostly having to
4 do with building permits. We owned a 70-acre farm in
5 England which -- of which the dog hotel was only
6 part.

7 **Q Now, with regard to The Poi Company time
8 period --**

9 A Yes.

10 **Q -- who was -- who were the engineers?**

11 A I don't remember. It was in the early
12 20s -- 25 years ago.

13 **Q Okay. You don't recall who the engineers
14 were, who were --**

15 A I could look it up.

16 **Q Who were the architects?**

17 A I don't recall.

18 **Q You don't recall -- you don't recall who
19 the engineers nor architects were?**

20 A Correct.

21 **Q Okay. Who was the contractor?**

22 A I don't recall that either. Again, 25
23 years ago.

24 **Q But you recall building codes?**

25 A I don't recall specific building codes, but

1 I have knowledge of the principles of building codes
2 and certainly, at the time, the building codes that
3 were relevant I was familiar with.

4 **Q Did any of those building codes deal with
5 drainage?**

6 A Yes, at The Poi Company, yes.

7 **Q So which -- which ones?**

8 A Twenty-five years ago.

9 **Q Again, which ones?**

10 A I don't recall.

11 **Q Okay. What Maui -- this is on Maui you
12 said?**

13 A No, Marjorie made a mistake when she said
14 Kihei. Marjorie and I worked at a bank in Kihei,
15 right. So I guess she had Kihei on the brain. The
16 Poi Company is in Kalihi on Kopke Street.

17 **Q So you can't tell me what building codes
18 provisions relative to drainage?**

19 A Correct.

20 **Q Okay. Did any of your experience with the
21 Poi Company deal with the type of drainage at Kahala
22 Mall?**

23 A We did not have a storm drain.

24 **Q And so just so we're clear, any engineering
25 education was back in the '60s, ended by 1970; is**

1 **that right?**

2 A Correct, about the same time you probably
3 went to law school.

4 **Q And as far as the engineering aspect
5 sitting here today, is there anything in particular
6 you recall?**

7 A I think that's a silly question. I don't
8 know what you mean.

9 **Q Well, what -- tell me what you can recall
10 about civil engineering then.**

11 A That's a dumb question. Tell me what you
12 can recall about Ferae Naturae, the law of wild
13 animals. I mean, it's crazy. You want me to
14 consolidate four years of education from --

15 **Q You just told me it was two years.**

16 A I went to Rensselaer from 1966 to 1970.
17 It's not two years ago. The engineering portion of
18 my four-year degree was largely the freshman and
19 sophomore year.

20 **Q Okay. So your knowledge is actually back
21 from the '60s?**

22 A Yeah, about the same time as your law
23 school time.

24 **Q And as far as -- so let's be clear. You
25 can't tell me anything in particular that you may**

1 have learned in any of these various engineering
2 classes that you say you've taken?

3 A Again, I think the question is
4 preposterous. I mean, this isn't a civil engineering
5 exam and I'm not a civil engineer.

6 Q So you're not claiming any expertise in
7 that area, correct?

8 A I'm claiming I have education in that area,
9 but I never was nor did I ever seek to be an
10 engineer. I went to -- I went to university to be an
11 engineer, and I decided I didn't want to be an
12 engineer and so I switched into economics.

13 Q And your experience in planning and
14 permitting would have been what other
15 professionals -- what professionals may have
16 submitted on behalf of your companies; is that right?

17 A Yes, but with me involved I was instructing
18 them. So I just didn't tell them to go run away and
19 do something and leave me out of it.

20 Q Okay. And as far as planning and
21 permitting, for sure we know that it didn't involve
22 any storm drains, right?

23 A It did not specifically involve storm
24 drains, correct.

25 Q Any experience with premises security?

1 A Yes.

2 Q And what is your experience?

3 A Well, for one I had a guard card. So I'm
4 instructed in the law about guards. But further I
5 mean, we were responsible for and had offices in
6 seven countries and we guaranteed checks. So we
7 dealt with the possibility of disgruntled people
8 whose check we declined. And more importantly if the
9 check bounced, it was our responsibility to collect
10 on it. It belonged then to us and it would be
11 disgruntled debtors who owed us money. So I dealt
12 with the security in all of our properties to keep
13 our staff safe.

14 Q With regard to this guard card, what state?

15 A Hawaii.

16 Q Okay. And when did you have it?

17 A I had it in 2000 -- either '16 or '17.

18 Q And for how long?

19 A A year. You get them for a year.

20 Q Okay. And you no longer have one?

21 A Correct. Well, I don't because it expired
22 and I didn't need it anymore.

23 Q Okay. And that's so that you can act as a
24 security guard, correct?

25 A Correct.

1 Q Okay. You didn't own a security company,
2 right?

3 A I did not.

4 Q You were a guard?

5 A Well, I was for a day.

6 Q That's the reason you -- why you got a
7 guard card, right?

8 A Correct.

9 Q Okay. And where were you a guard at?

10 A Where actually did I work?

11 Q Yes.

12 A It's the hotel that's sort of two blocks
13 Ewa of Kapahulu. I think it might be a Marriott now.
14 I'm not really sure what it is.

15 Q Two blocks Ewa of Kapahulu?

16 A Yes.

17 Q On Kuhio or Kalakaua?

18 A On Kalakaua. It might be the hotel after
19 the Marriott if you're driving down Kalakaua.

20 Q Okay. Is it a small hotel?

21 A Oh, no, no, no, big.

22 Q Two blocks, okay. And which guard company
23 were you working for?

24 A Securitas.

25 Q Okay. So actually the post that you had

1 would have been at this hotel, but your employer was
2 Securitas?

3 A Correct.

4 Q Okay.

5 A Yes, correct.

6 Q Any experience in custodial maintenance of
7 a building?

8 A You mean did I push a broom around, no, but
9 in all of our offices. I picked the company that did
10 push the broom around and evaluated their work and
11 made changes when necessary. But no, I'm not a
12 cleaner.

13 Q Okay.

14 A But I was the person that made sure that
15 they did their work that was part of their scope of
16 contract.

17 Q Okay. Now at one point you were with Otis.
18 Am I correct?

19 A I was.

20 Q Okay. And in what capacity?

21 A I was -- well, finance essentially. I was
22 called a senior coordinator, but I was never really
23 sure where the juror coordinators were.

24 Q And when did you stop working with Otis?

25 A Either late -- I think early 2021.

1 Q Were you let go from that position?

2 A I was not.

3 Q So your testimony is you retired?

4 A I left. I resigned. Retired implies you
5 get a gold watch.

6 Q Now, have you had any specialized training
7 in construction, plans and permitting, engineering,
8 security? Well, you mentioned security because you
9 had a guard card. But any specific training in
10 construction?

11 A Other than what I mentioned at Rensselaer,
12 no.

13 Q Anything in plans and permits?

14 A Other than what I mentioned, no.

15 Q Anything in engineering. This is training,
16 not education.

17 A Other than what I mentioned, no.

18 Q Any specialized training in custodian
19 maintenance?

20 A No.

21 Q Have you ever had any professional
22 licenses?

23 A No. Well, other than my guard card.

24 Q Have you ever been convicted of a crime
25 relating to dishonesty?

1 but also took on a camera store and a television
2 movie production company for which we did the
3 accounting.

4 Q And so with regard to the Huge Mystery
5 Deal, LLC.

6 A Productions, LLC. Don't forget that.

7 Q What years were that?

8 A We sold Transax in 1996, and I became the
9 CFO of the law firm in 1998. So HMDP is really 1998
10 to about 2022, but it's more complicated than that
11 because during the Transax years, because of the way
12 income tax works, I earned part of my salary for work
13 done outside the UK through HMDP so Transax would pay
14 HMDP for my external to the UK work.

15 Q So --

16 A And HMDP also had other employees. So for
17 the law firm, I hired two CPAs here in Hawaii who
18 worked for HMDP, but I then sold their time to the
19 law firm.

20 Q Okay. But with regard to what you just
21 gone over Otis, HMDP?

22 A Huge Mystery Deal Productions.

23 Q Okay. None of those companies dealt with
24 construction?

25 A No.

1 A No.

2 Q Now, as I understand your last employment
3 was Otis here in Hawaii?

4 A Correct.

5 Q And you're saying you ended that in 2021?

6 A I don't believe so, yes.

7 Q Okay. Before that you would have been
8 employed where?

9 A Well, by our own companies.

10 Q Okay. So before Otis, what was the
11 company?

12 A So there's the main employer was Transax,
13 Transax PLC in the UK.

14 Q Well, I'm trying to work backwards now, so
15 from Otis, what was the company before that?

16 A It's a company called Huge Mystery Deal
17 Productions, LLC.

18 Q And what did that do?

19 A It did accounting and finance work.

20 Q And where was that company located or
21 situated in?

22 A Well, it's a Hawaii company. But for nine
23 years, I was the CFO of a medium to large size firm
24 of litigation solicitors in London. And when we
25 moved back to Hawaii, I continued that for a while

1 Q Or engineering?

2 A No.

3 Q Or security services?

4 A No.

5 Q Or custodial, right, none of them that --

6 A That is not --

7 Q That's not part of their business, right?

8 A That's not what they do. But, for example,
9 with the law firm, we remodeled all the offices so it
10 was dealing with all those people you mentioned,
11 cleaners, construction company, people who get
12 permits and, you know, get electrical cables
13 installed with internet, so there was a lot of
14 dealing with that but as the client, not as the
15 licensed professional.

16 Q Okay. And with regard to Huge Mystery
17 Deal, where were these offices that you're talking
18 about?

19 A Which offices?

20 Q Huge Mystery Deal you just mentioned.

21 A I didn't -- I mean, I worked remotely
22 before it was fashionable. The law firm was
23 located -- is located at Gray's Inn in London.

24 Q Okay.

25 A Two or three times a year we would go to

1 London.

2 **Q So with regard to any of this --**

3 A I dealt with all the property issues of the
4 law firm.

5 **Q In London?**

6 A In London.

7 **Q In your lifetime, you've -- have you ever
8 fallen?**

9 A I fell at Palolo Gardens. I fell -- I
10 don't know if it counts as a fall -- I fell roller
11 skating at the roller skating rink in Kahala when I
12 was young, and I tripped on the bottom step of the LA
13 Airport Hilton when I was trying to get on the
14 courtesy bus to fly back to Hawaii. I think that's
15 about it.

16 **Q And you understand falls are things to be
17 avoided, right?**

18 A Yes.

19 **Q Okay. And you know falling can cause you
20 to be injured, right?**

21 A I'm not an idiot, yes.

22 **Q Okay. So you know that you should keep on
23 lookouts to avoid falling, right?**

24 A I know that.

25 **Q And how do you keep a lookout?**

1 A I don't know how to answer that question.

2 It's like how do you breathe? I mean, I follow
3 normal sort of things about looking and being
4 careful. I would also say that I didn't fall at
5 Kahala Mall. So I'm not sure why you're even asking
6 me this. I'm not sure that they're particularly
7 relevant questions in my case.

8 **Q And part of looking and being careful is
9 watching where you step, right?**

10 A Yes.

11 **Q With regard to the incident back in August
12 of 2023, that is the subject of this lawsuit, you
13 accompanied your wife to the hospital; is that right?**

14 A I did.

15 **Q Okay. Did you hear your wife describe to
16 any medical care providers what happened?**

17 A I did.

18 **Q And what did she say?**

19 A She said that she had fallen at Kahala Mall
20 and that was pretty much it. It was -- the emergency
21 room was extremely busy and Marjorie, for the longest
22 time, just was in a gurney in the hallway until they
23 got to her.

24 **Q Okay. And did you accompany her when she
25 spoke to -- strike that. When she spoke to**

1 **Mr. Nakasone?**

2 A On some -- on some of the visits, not all
3 of them because there were times when the doctor
4 would have seen her in the ER. I was with her in the
5 ER most of the time. But again, they had to move
6 rooms around and whatnot so not all of the time.

7 **Q So all you heard your wife tell the doctors
8 was that she had fallen at Kahala Mall?**

9 A Correct, and that's all they were really
10 interested in. I'm not even sure they were
11 interested in where.

12 **Q And at no time did your wife explain to
13 them where in the mall?**

14 A No, they weren't interested in that. They
15 were really, really busy.

16 **Q At no time did she describe how she fell?**

17 A Correct, no. She was in, as she's
18 explained, in considerable pain, a lot of pain. As I
19 recall, they didn't really want to give her the
20 painkillers until they had sort of figured out what
21 it was, so they had to wait to get her in to be
22 x-rayed. Fortunately they seem to have an x-ray room
23 right down there and everything seemed to change once
24 they figured out what it was because then they knew
25 what it was and they could sedate her or alleviate

1 the pain.

2 **Q Well, did they also run a tox screen?**

3 A I don't know. You have the medical
4 records. I can see them from where I'm sitting.

5 **Q So you don't know whether they did or they
6 didn't?**

7 A I do not know. I don't think they did. I
8 looked at her medical records, and I don't remember
9 seeing it.

10 **Q And they would typically question her about
11 whether she was on any medication. Did you furnish
12 any of that information?**

13 A She's a Straub patient. It's all under My
14 Chart. So yeah, they basically go through and say
15 are you taking this, are you taking that? And she
16 said yes, and -- I mean, in her case, yes and yes and
17 yes. The chart is kept up to date. I'm not a doctor
18 either, but I would understand why they would run a
19 tox screen.

20 They were concerned about her breaking the
21 largest bone in her body and trying to fix it. You
22 know, I don't think they were all that worried about
23 how it broke. They were just worried about making
24 her feel better.

25 **Q Well, typically before they furnish**

1 medication especially pain medication, they do run
2 tox screens?

3 A I disagree. I've taken Oxycodone for a
4 long while, and I've never had a tox screen in my
5 life. So you might -- in your world they might do
6 that; in my world they do not do that.

7 Q That's fine, sir.

8 A Okay.

9 Q Now, from five minutes before the incident
10 to the point that she exits your vehicle, tell me
11 what happened.

12 A Well, we drove up to Kahala Mall from the
13 entrance because we were coming from Waikiki and went
14 around Diamond Head, as I recall, we drove in the
15 entrance sort of over by the Starbucks and around
16 what is now I guess Planet Fitness and past Chili's.
17 There's no loading area at all around Whole Foods.
18 The curbs are all red. So I dropped her just before
19 the crosswalk so she could get out. So she opened
20 the passenger door and got out of the car and that's
21 the point before she fell.

22 Q Okay. So you mentioned that the curbs are
23 all red?

24 A Correct.

25 Q So you know you couldn't stop?

1 A Correct. I don't agree with that. I mean,
2 the curbs are all red, but there's no place to drop
3 people off and there was no parking. So the plan was
4 to drop her off so she could go shopping at Whole
5 Foods, and then I would drive around the parking lot.
6 And if I found the space, I would call her and let
7 her know where I was. And if I didn't, she would
8 call me and I would go and pick her up.

9 Q So are you telling me you did not under --
10 you don't understand that when something is marked
11 red that you can't stop there?

12 A Well, I do know that the law about parking
13 and not parking does not apply on private property.

14 Q Move to strike as nonresponsive. My
15 question to you -- please read back the question.

16 Whereupon, the record was read:

17 "QUESTION: So are you telling me you
18 did not under -- you don't understand
19 that when something is marked red that
20 you can't stop there?"

21 THE WITNESS: I don't understand that.

22 BY MR. KAYA:

23 Q So now you've stopped, you're short of the
24 crosswalk. Am I correct?

25 A Correct.

1 Q Okay.

2 A Because I didn't want to block people
3 crossing the crosswalk; so the nose of my car was up
4 to but not across the crosswalk.

5 Q As you approach that, you're able to see
6 the roadway?

7 A Yes.

8 Q Okay. So you saw the drain?

9 A No, I wasn't looking at the drain. I
10 didn't see the drain.

11 Q You did not see drain, okay. Even though
12 that -- was there anything obscuring your vision of
13 it?

14 A No.

15 Q Okay. And how many times prior to this
16 incident had you stopped there?

17 A I don't know, a dozen.

18 Q So on the dozen --

19 A I don't keep track, but yes, not more than
20 a few times.

21 Q Okay. So on the dozen times you didn't
22 notice that there was a storm drain there?

23 A Correct.

24 Q And there was never, for those dozen times,
25 anything obscuring your vision of that, right?

1 A Correct.

2 Q So you stopped and let your wife exit your
3 vehicle on the storm drain?

4 A I stopped and let my wife exit the vehicle
5 where I had stopped.

6 Q Which had to be on the storm drain?

7 A Yeah, but I didn't know the storm drain was
8 there.

9 Q When she opened the door, did you see the
10 drain?

11 A No, and also with the benefit of hindsight
12 I think even while I was looking there, I wouldn't
13 look down and I'm not sure with the passenger seat
14 that I would have been able to see it if I wanted to
15 look down.

16 Q Well, that -- that begs the question so let
17 me ask it to you this way: Did you look to your
18 right as she exited the vehicle?

19 A I looked to her getting out of the vehicle
20 to make sure that she was safely out of the vehicle.

21 Q Okay. And what exactly did you see?

22 A I saw her shut the door, and then I was
23 just getting -- I wanted her to be clear of the
24 vehicle. And just as I was getting ready to start to
25 the move and began -- took my foot off the brake,

1 people to the right front of me. So you see where
 2 the car was roughly parked in that picture so people
 3 in the line from me to the first disabled parking
 4 space and where the carts go, there was an older
 5 couple that were waving like stop, stop, stop, but
 6 much like when somebody waves and you think they're
 7 waving at you but they're waving at someone behind
 8 you, I didn't think they were doing anything towards
 9 me. And I sort of almost continued but then they got
 10 really loud and they said stop, stop, stop so I
 11 stopped. And by that point, there was a commotion on
 12 the passenger's side of the vehicle as other people
 13 came to -- to find Marjorie.

14 Q So how long from the point that the door
 15 closed to the point that people started telling you
 16 to stop, do you know about how much time went by?

17 A I'd probably just be guessing, 30 seconds,
 18 20 seconds, seconds not minutes.

19 Q Okay. Again, you heard me explain don't
 20 guess. But if you can furnish an estimate, please
 21 feel free to do so. Now, 30 seconds seems to be
 22 rather long, so I'm going to give you an opportunity
 23 to think about it. You can count off one
 24 one-thousandth, two one-thousandth in your mind too
 25 if you want.

1 A Not long is the answer.

2 Q Okay. So I'm going to take that 30 seconds
 3 was a wrong guess?

4 A Probably a wrong guess.

5 Q Okay. And are you able to furnish an
 6 estimate as to how much time elapsed from the point
 7 that the door closed to the point that people started
 8 waving at you and telling you stop, stop, stop?

9 A Yes, not long that's the best I can do.

10 Q So no actual time frame, right?

11 A No.

12 Q Okay. And so at what point did you realize
 13 your wife had fallen?

14 A Well, there was the commotion on the side
 15 of the car. So I put the car into park. And put on
 16 the brake, got out of the car, walked around the
 17 front to the side and there she was lying on the
 18 pavement.

19 Q Okay. Since you did not realize your wife
 20 had fallen until you walked around the car?

21 A Yes.

22 Q That means, you didn't see her fall?

23 A I did not see her fall. I wouldn't have
 24 started to drive off if I saw her fall. I saw the
 25 door shut and her safely out of the car and not right

1 immediately next to it, and I was conscious that
 2 there were cars behind me, so I wasn't racing off,
 3 but I started to move forward when the people by the
 4 trolley place in the disabled parking started to wave
 5 at me.

6 Q And you agree that your wife exited, closed
 7 the door and that her back was faced to the car?

8 A Correct.

9 Q Right?

10 A Yes.

11 Q You agree with that, you've heard that
 12 description, right?

13 A Yes.

14 Q Okay. And --

15 A Well, I heard the description and also
 16 that's when I saw her back to the door.

17 Q Okay. And so she would have had to have
 18 turned to her left to walk toward the crosswalk,
 19 correct?

20 A Yes.

21 Q Not the right but to the left, right?

22 A Yeah, she was going towards the crosswalk.

23 Q Okay.

24 A And also again, there were cars behind us.
 25 I mean, they weren't tooting or any way upset but

1 there were cars behind us, so I would have
 2 expected -- and we can have a discussion about
 3 this -- that she would have wanted to get to the
 4 crosswalk and move off.

5 Q Okay. We're talking about what you saw.

6 A I saw her get out of the car.

7 Q Okay. And so you didn't see her take that
 8 step?

9 A I did not.

10 Q Okay. You didn't see her body fall to the
 11 ground?

12 A I did not.

13 Q Okay. What you did find out later on was
 14 that she was on the ground on her left side?

15 A I seem to recall her being on the ground at
 16 this stage left side more back like -- there were
 17 people already helping to move her because I guess
 18 they wanted to get her away from the car. So there
 19 was a time sort of middle-aged haole guy that had
 20 already sort of started to move her and she was
 21 shouting no, no, no, no, I can't stand on that.

22 Q Okay. So let's be clear then. So actually
 23 you don't know where she may have fallen then because
 24 you didn't see that either?

25 A I said I didn't see her fall.

1 Q Okay. And you don't know where she --
2 where her body came to rest also on the ground?

3 A When I got out, she was on the ground storm
4 drain sort of beneath her.

5 Q Okay. And where were her feet?

6 A I couldn't tell you. Well, they were away
7 from the crosswalk. But as to where they were in
8 relation to the car or curb, storm drain, I couldn't
9 tell you.

10 Q Okay. And you agree you heard your wife
11 describe that she was sort of diagonally placed?

12 A Yeah.

13 Q Okay. And to me that would mean legs maybe
14 pointed toward the red curb?

15 A No, pointed more towards the car behind.

16 Q Okay.

17 A She was more -- again, there were people
18 around, I was upset, she was screaming in pain. This
19 is not something where you record it in your brain
20 with any degree of accuracy. Her head was towards
21 the crosswalk, hand -- left hand sort of under --
22 near under the car and people were helping her with
23 her protesting.

24 I think the plan that the bald man had was
25 to sort of somehow get her over to the curb and to

1 A Okay.

2 Q So you cannot tell me the mechanics of her
3 fall, in other words --

4 A Correct.

5 Q -- which way her body went and things like
6 that?

7 A I cannot.

8 Q Okay. You can't tell me what she may have
9 tripped or slipped on, right?

10 A I cannot.

11 Q You can't tell me which foot is the foot
12 that actually lost grip, correct?

13 A I cannot.

14 Q You can tell me that there were people
15 around that may have seen things, correct?

16 A There were definitely people around that
17 may have seen things.

18 Q And you mentioned a bald individual?

19 A Yes.

20 Q Okay. Anyone else that comes to mind that
21 you actually, if you saw them again, you could say
22 hey, that's the guy?

23 A Well, the other people that played a big
24 part were the people that told me to stop, right,
25 stop-stop people because they then walked forward and

1 sit there, and she just -- she was having none of
2 that.

3 THE REPORTER: She was having?

4 THE WITNESS: None of that. She
5 didn't want to do that.

6 BY MR. KAYA:

7 Q Okay. And so --

8 A So I wasn't taking notes as to where her
9 feet were. I wanted to get her -- I wanted to find
10 out what had gone wrong and get her better.

11 Q Okay. No -- and no incrimination for that.

12 A None taken.

13 Q But I'm trying to get a clear picture of
14 what you know versus what we don't know. Okay?

15 A Yes, but you're trying to get a clear
16 picture of what at the time and the time is also a
17 year-and-a-half ago of what at the time was chaos.
18 It's hard to have a clear picture of chaos.

19 Q And again, if, you know, going over those
20 instructions, if you don't know or don't recall, that
21 is a valid response. Okay?

22 A I understand.

23 Q But you know, if you're able to tell me
24 some information, that's great. So let me go through
25 the questions and you can say I don't know that.

1 then they were assisting as well. Would I recognize
2 any of these people again, again, no, probably not.
3 To be honest, I probably wouldn't have recognized
4 them the next day. It's all just, at that point, a
5 big blur.

6 Q Okay. Now, my understanding of what
7 transpired is again, at some point rather than
8 getting -- rather than waiting for an ambulance, you
9 folks decided to go directly to the hospital; is that
10 right?

11 A You left out the security guard part.

12 Q Okay. We can get there.

13 A Okay.

14 Q But at some point you decided to go
15 directly to the hospital; is that right?

16 A Correct.

17 Q Okay. And before that, my understanding is
18 you said a guard came by?

19 A Yes.

20 Q Okay. And this is not a guard that
21 witnessed the event, right?

22 A The guard did not witness the event.

23 Q Okay. And you don't know the name of the
24 guard?

25 A I do know the name of the guard, but I only

1 know the game of the guard from the information you
2 disclosed.

3 **Q Okay. And so you have the name of the**
4 **guard. But as far as we know, the guard did not take**
5 **any witnesses' information?**

6 A As far as we knew, he did not.

7 **Q Okay. And we don't know whether the**
8 **witnesses stuck around and furnished that information**
9 **or didn't?**

10 A The witnesses stuck around until I drove
11 off. So the guard had ample opportunity to get it
12 had he desired to do so.

13 **Q Again, we don't know whether or not they**
14 **stuck around and were willing to furnish that**
15 **information?**

16 A We don't know.

17 **Q Okay.**

18 A We do know that they stuck around until he
19 left. They didn't all go running off and the bald
20 man, part of me almost thought but it was just
21 guessing the bald man was a doctor or a nurse or
22 something because, you know, Marjorie was doing the
23 British thing about saying oh, I'll be okay, I'll be
24 okay. And he was, like, not whispering to me but
25 sort of over her shoulder said take her, you know.

1 take her to the hospital. So he was definitely a, I
2 guess, what I would call categorically a carer. And
3 again, if my priority was not getting her help, I
4 would have asked for their names and addresses.

5 But to elaborate on the guard, the guard's
6 interest was in getting, to my amazement, a statement
7 from me and/or a statement from Marjorie. And I
8 could remember the guard with a sort of clipboard
9 with a note pad on it and some aluminum clipboard
10 wanting to get a statement. And when I said look,
11 I'm not trying to be evasive but I want to get her
12 help. And then with Marjorie at this point now
13 sitting in the passenger's seat of the car with the
14 window down and the guard not sticking his head in
15 but you understand what I'm trying to say with the
16 clipboard sort of bending down since I wouldn't give
17 him a statement, he's trying to get a statement from
18 Marjorie.

19 So with me standing on the front
20 passenger's side of the car by the front passenger's
21 headlight, I told the guard look, I'm not trying to
22 be difficult. I said I'm happy to give you a
23 statement or whatever but let me get her to her
24 doctor first, and I took the time to write my name
25 and the email address and Marjorie's name and email

1 address on his clipboard. And when I drove away, I
2 assumed -- remember, I have a guard card and it's
3 part of the guard rules, you know, get the names and
4 addresses of the witnesses. So I assumed as I drove
5 away, I believe prudently and sensibly attending to
6 my wife's injury, which I think anyone would have
7 done, I assumed the guard would have done his job and
8 would have obtained the names and addresses of the
9 witnesses who in my limited contact with them were
10 courteous, kind people. And I think they would -- I
11 don't know for sure -- but I think reasonably assume
12 that they would have been happy to have given that
13 information. But he didn't or at least we don't
14 think he did. You disclosed that he did not.

15 **Q Well, again, you were not present so you**
16 **don't know whether the witnesses were willing to**
17 **cooperate or not, correct?**

18 A But his report doesn't say that. The
19 report does not say I asked the witnesses and they
20 were unwilling to give their information.

21 **Q Well, again, you weren't there. So you're**
22 **speculating now whether or not the witnesses would**
23 **have been --**

24 A But half of the questions you've asked me
25 have sort of asked for me to speculate about things.

1 **Q No, I'm not asking for your speculation,**
2 **Mr. Walsh.**

3 A I don't know what he did. I know what I
4 read in his report.

5 **Q Again, I'm not asking you to speculate. If**
6 **you don't know, you are free to tell me I don't know.**

7 A I understand. I understand.

8 **Q Okay. Now, that day did you see anything**
9 **that caused your wife to fall?**

10 A No. Well, did I see anything like a log in
11 the road or something, no. I mean --

12 **Q Did you examine the area at all?**

13 A I did. I looked at it.

14 **Q Okay. And when you looked at it, you**
15 **didn't see anything that --**

16 A I saw the storm drain with bent tines and
17 deteriorated concrete so poorly that the rebars were
18 sticking out. I looked at the ground that she fell
19 on and that's what I saw.

20 **Q Okay. You saw the storm drain and what**
21 **portion of the storm drain was bent?**

22 A It is the -- I'm not sure if you call them
23 tines or rails or whatnot, but the method of bars
24 that constitute the actual, I guess, support of the
25 storm drain, they're the ones on -- hard to say,

1 Diamond Head or Ewa in that thing. They're the ones
2 on the Central Pacific Bank side of the storm drain.
3 Maybe not the first one but I think it's the second
4 or the third.

5 **Q I think you can go Koko Head and Ewa.**

6 **A** Maybe Koko Head. Diamond Head is
7 confusing. Yeah, I would say that Koko Head side
8 then. Maybe not the first one but the second and the
9 third one. But it really caught my attention which
10 I've never seen before. I don't care how many times
11 you say I've been to the Kahala Mall. I never looked
12 at the storm drains there.

13 The surrounding concrete around the storm
14 drain is really deteriorated. So I looked at that
15 and of course again, as I've said, my priority is to
16 get my injured wife to the hospital to get help. I
17 mean, we didn't know at this point that she had
18 broken her femur but we did know at this point she
19 was in real pain. And I looked at that and I thought
20 this is, in my opinion, likely culprit.

21 **Q And again, that's an uneducated opinion,**
22 **right?**

23 **A** Well, I'm not an uneducated man.

24 **Q But you're not an expert?**

25 **A** I'm not an expert in that narrow field, no.

1 **Q Okay. And did you take any photographs of**
2 **what you saw?**

3 **A** No. As I've explained, my wife was in pain
4 and my priority was to get her to the hospital as
5 quickly as I could. I did take pictures not the day
6 after but the following day when I came to Kahala
7 Mall and went into the management office.

8 **Q And we've been going -- I assume those are**
9 **part of the photographs that you --**

10 **A** They are. All those photographs as
11 Marjorie explained it, it's called metadata. They're
12 all meta tagged with the date and time they were
13 taken.

14 **Q Okay. Now, we're going to stop here, and**
15 **I'm going to explain to you what we're going to do.**
16 **Rather than renumber exhibits, we're going to use**
17 **some of the same exhibits from your wife's**
18 **deposition.**

19 **A** Okay.

20 **Q Okay. There will be two additional**
21 **exhibits. They are your Answers to Interrogatories,**
22 **and I think a portion of what was produced in that**
23 **Dropbox.**

24 **A** Okay. The only reason I withheld that from
25 your wife's deposition so we're clear is because it

1 appears to be emails between yourself and someone
2 else, okay. And your wife is not copied on them so I
3 would assume that those are questions I need for you.

4 **Q Okay. Now with that having been said -- by**
5 **the way, are you the person that trans -- that put**
6 **together the Dropbox and sent me the information?**

7 **A** Yup.

8 (Exhibit 6 was marked for
9 identification.)

10 (Exhibit 7 was marked for
11 identification.)

12 (Exhibit 8 was marked for
13 identification.)

14 BY MR. KAYA:

15 **Q Yes, okay. So first question I'm going to**
16 **ask you is take a look at the materials that I'm**
17 **going to give you. It's Exhibits 6, 7, 8. Let's**
18 **see, 4, 4-A -- strike that. Three, 4, 4-A, 5, 6, 7,**
19 **8, okay. And we're going to have this other marked**
20 **as exhibit -- is it nine? And the last one is, just**
21 **so we're clear, the last exhibit will be Exhibit 9**
22 **and that relates to the emails that appears you were**
23 **corresponding with different people. Okay.**

24 **A** All right.

25 **Q And just so we're clear because I'm going**

1 to ask you to review this stuff is the question
2 that's going to be pending is this all of the
3 materials you sent by the Dropbox, okay. So that's
4 going to be the question.

5 **A** Right. So I don't know here what I sent by
6 Dropbox or not. So if you want to know how this was
7 sent to you specifically whether it was sent by the
8 Dropbox or not, I can't do that. I'd have to look at
9 the Dropbox.

10 **Q Okay. Well, I don't know how you're going**
11 **to do that because all I have is your email and the**
12 **materials that were printed from that Dropbox. So**
13 **anyway, let's make this --**

14 **A** So in other words, you know the answer to
15 the question.

16 **Q Well, I want you to acknowledge that --**

17 **A** I can't acknowledge whether I sent it to
18 you by Dropbox or by email without looking at the
19 Dropbox. That seems to make perfect sense to me.

20 **Q Well, it doesn't make any sense to me so**
21 **anyway --**

22 **A** I'm sorry.

23 **Q Let's mark this.**

24 **A** You're just interested in the method that
25 was used to send it to you?

1 Q No, I want to know whether this is all of
2 the materials you sent.

3 A I can tell you that, but I can't tell
4 you -- and I know you want me to tell you this but
5 I'm telling you I cannot tell you whether I sent it
6 to you by Dropbox or email. I would have to look at
7 the Dropbox to tell you.

8 Q Well, just so you --

9 A Is that important?

10 Q Well, so you're clear, sir, Exhibit 3 --

11 A Right.

12 Q Is the email with the Dropbox link.

13 A Okay.

14 Q Okay. So --

15 A So wait, sorry to interrupt, so that means
16 that by definition exhibit, whatever you're holding
17 up there, was not sent to you by Dropbox.

18 Q Well, Exhibit 3 contained the Dropbox link.

19 A Right. So my only point for -- and I'm
20 doing this only for illustration -- is that I can
21 tell you, therefore, with certainty that Exhibit 3
22 was not sent to you by Dropbox but by email.

23 Q And I would agree with that.

24 A Okay.

25 Q Okay.

1 A As to the other things, I can't tell you
2 with no amount of wishing that I'm going to tell you
3 is going to make it true whether it was sent by
4 Dropbox or not without looking at the Dropbox.

5 Q Well, then my question to you then is it's
6 going to be so you're clear --

7 A Yes.

8 Q Okay. Is whether A, this is all the
9 materials that you sent via the Dropbox. And if
10 you're going to tell me I can't tell you that, that's
11 fine.

12 A I can't tell you that.

13 Q However, my next question will be is there
14 anything else that you recall sending. Okay?

15 A I can't tell you that either. So I
16 can't -- both of those questions I can't answer.

17 Q Then we're going to go through this
18 exercise and have your testimony.

19 A Okay.

20 Q So we can have this marked as Exhibit 9.
21 (Exhibit 9 was marked for
22 identification.)

23 BY MR. KAYA:

24 Q We'll take a short break and have him
25 review it and then we can go through -- you can tell

1 me what your actual testimony is. Okay? Off.

2 (Recess from 3:03 p.m. to 3:09 p.m.)

3 BY MR. KAYA:

4 Q Let's go back on the record. Now, remember
5 what the two pending questions were, sir?

6 A Yes.

7 Q Okay. So first question is that all you
8 sent?

9 A I don't know.

10 Q Okay. Do you know if any -- if -- if
11 there's anything missing?

12 A I don't know. That's the same answer to
13 essentially the same question.

14 Q Do you have any -- the next question is do
15 you have anything else that you wanted to send in
16 connection with the production of documents?

17 A No.

18 Q Okay. So let's talk about the photos
19 because that's the whole reason I went through this
20 with you.

21 A Okay. By the way, the Hawaii Pacific
22 Health, you said somebody put the page numbers on the
23 bottom. I just wanted to add I know who put the page
24 numbers on the bottom and that's Hawaii Pacific
25 Health.

1 Q That's fine.

2 A This was one single file which you kindly
3 printed out that we got from Hawaii Pacific Health,
4 just so you know where the page numbers came from.

5 Q Okay. I mean, that's fine but let's go
6 through the pictures. Now, I want you to tell me and
7 maybe we can use these yellow markies because then
8 we're going to number the pages. Which pages were
9 taken -- which photographs were taken of the drain
10 the day after as you've indicated?

11 A I can't tell you that.

12 Q You can't tell me --

13 A I can tell you if I looked at the metadata
14 of the images. I can give you the exact dates and
15 times, but not just from looking at them.

16 Q Okay.

17 A If you want that, I'm happy to send it to
18 you.

19 Q With regard -- well, unfortunately how
20 would that come? In other words, is it attached to
21 the photograph or --

22 A Right. So I assume -- I don't know for
23 sure -- but I'm guessing that these were from the
24 Dropbox, right, because that would have been the way
25 to send the images to you.

1 Q Correct?

2 A So the images in the Dropbox, if you open
3 them with the right software, you would be able to
4 read what's called the meta tags or metadata. So
5 that would show you the camera, it would show you the
6 date, and it would show you time and it would even
7 show you the -- it's called the geo coding, the exact
8 location where it was taken.

9 So, in other words, if I've given you,
10 which I did not, if I had given you a thick file like
11 this of printed-out images, how could you tell where
12 it was taken, you absolutely cannot. But by sending
13 them to you by Dropbox, all you'd have to do would be
14 to open them in -- I mean, there's many, many types
15 of software that will read it.

16 One is Photo Shop which is what I use. It
17 would just open this and you would look for the tag
18 that says metadata and it would give you all the
19 details about this. It tells you the exposure and
20 the lens and everything else. So if you wanted to
21 know, for example, I mean, I could tell you that I
22 took this picture with Marjorie because I remember
23 taking it.

24 If I looked on my phone or in Photo Shop,
25 I'd be able to tell you exactly what time I took it,

1 and I believe there's some -- I mean, I don't need it
2 because I'm not a lawyer, but I believe that there's
3 software that will print it and at the bottom will
4 print the metadata.

5 So if I open -- if I open this image in
6 Photo Shop, I will see this, right. But if I look up
7 in the menu and where it says metadata and if I click
8 on that, then over in the right-hand side of the
9 Photo Shop screen, all the detail about the image
10 will appear. I mean, I can show you on if you want
11 to see on a picture.

12 Q No, you know, that's fine. I don't want to
13 spend too much time. I'm just trying to figure out
14 how I can get this -- I guess I'll have to send it to
15 someone else.

16 A Okay. Or if you don't want to spend the
17 money on Photo Shop, they are -- if you just look for
18 software to read metadata on images, there's tons of
19 probably free ones available. There's a lot of
20 information in the modern era about digital photos
21 that's stored as data within the photo that you can't
22 see because it's not in the picture itself. But it's
23 in the file that contains the picture.

24 Q Okay. Well, I appreciate that, sir. And
25 rather than waste time going through picture by

1 it would have the geo location of Palolo Gardens,
2 et cetera.

3 Q Okay.

4 A So you have that information.

5 Q Okay. So are you going to have to resend
6 this to me or is the Dropbox still valid because I
7 can --

8 A As far as I know. I haven't canceled it.

9 Q I can ask someone to take a look at it.

10 A As far as I know, the Dropbox is still
11 there.

12 Q Okay.

13 A I haven't closed it.

14 Q I think some of them are on, like, timers.

15 A No, I didn't set it up with a timer.

16 Q Okay. So?

17 A If it's not there, it's easy enough to
18 restore.

19 Q I can ask someone. This is how -- our
20 software prints, reads and prints stuff. I can ask
21 someone else.

22 A Right. And that -- your software, I guess,
23 is designed to print it, right. But if you want to
24 know the details of where it was taken and the time
25 and whatnot, you would have to look at the metadata

1 picture --

2 A Yeah.

3 Q -- we'll try and figure it out that way.

4 A Okay. And if you can't, I mean, I can
5 easily -- I can easily index them and send you the
6 metadata from each.

7 Q Let's talk about Exhibit 9 then, okay.

8 These appear to be emails that you sent to somebody
9 at HMDP?

10 A I'm at HMDP.

11 Q Okay. It's from Chase Day?

12 A Yeah, it's from my daughter.

13 Q Okay. And your daughter -- well, strike
14 that. I thought Mrs. Walsh said that there were no
15 kids. So is this --

16 A Marjorie and I do not have kids.

17 Q Okay.

18 A But I have a daughter from my first
19 marriage.

20 Q Okay. So this is your daughter from your
21 first marriage?

22 A Correct.

23 Q Okay. And where is she located?

24 A Ballarat.

25 MS. WALSH: B-A-L-L-A-R-A-T.

1 BY MR. KAYA:

2 Q And where is that?

3 A It's in Victoria, Australia.

4 Q So this is you telling your daughter --
5 well, the first pages are you telling your daughter
6 what happened and things like that, right. You're
7 explaining the incident to your daughter?

8 A As I recall, the interrogatory you want all
9 emails about this. So we use something called Global
10 Relay to archive all of our messages. So this -- all
11 this header and audit information is from Global
12 Relay.

13 Q Okay.

14 A And so I simply told Global Relay to print
15 out any messages that mention Kahala Mall.

16 Q And the next couple of pages appear to be
17 emails with Brian Mick at the Department of Health.
18 Is that right?

19 A Yes.

20 Q And so that would be starting with a page
21 that says November 13, 2023, Global Relay archive
22 imported and the last page of that series would be
23 the page with your signature or not signature but
24 your name anyway in green print; is that right?

25 A Yes.

1 A Correct.

2 Q -- who is the insurance adjustor for my --
3 assigned to this claim; is that correct?

4 A Correct, per your employer, yes.

5 Q Now, the last one looks like it's the last
6 two pages between you and Jim Koshiba of Koshiba Law,
7 right?

8 A Correct.

9 Q I believe that's when you served --

10 A Yes.

11 Q -- the Complaint on MMI; is that right?

12 A Correct.

13 Q Okay. Are you aware of any other emails
14 that you may have pertaining to this case that were
15 not produced?

16 A No, as of the -- as of the date of sending
17 this, this would have been all. As to whether there
18 would be ones later than this, then there would be
19 more. This is a snapshot in time.

20 Q As of January --

21 A Whatever it is.

22 Q 2020 --

23 A Whatever --

24 Q -- correct? Okay, now, are you the person
25 that obtained Exhibit 6?

1 Q Okay. Because the next page after that
2 appears to be another set of emails?

3 A Yup.

4 Q To a Michael Arakaki, correct?

5 A Yes.

6 Q And I don't see a real response to this.
7 Did he ever respond?

8 A I don't know. I told Global Relay give me
9 everything -- well, whatever you asked for in your
10 interrogatory I used that as this -- I think this is
11 mini discovery. I used that as a search in Global
12 Relay. I can go back and look. I can search under
13 his name.

14 Q It looks like you sent pictures in an FOIA
15 request, right?

16 A Correct.

17 Q Okay. And then the next series of
18 documents appear to be something Global Relay
19 January 3, 2024, and it seems to be emails between
20 you and Lisa Kinoshita; is that right?

21 A Yes. Again, Global Relay is just the
22 archive readers. Those are not two Global Relay.
23 They're archived by Global Relay.

24 Q Okay. And these are the series of emails
25 between you and your wife and Ms. Kinoshita --

1 A When you say the person who obtained --

2 Q Was --

3 A Marjorie. I mean, I can't get Marjorie's
4 medical records. Marjorie would have done that. I
5 think I probably spoke to the people at the medical
6 records department.

7 Q And you -- well, the records were sent to
8 your wife?

9 A Yes, by secured email by Straub.

10 Q And in producing these, did your wife send
11 it to us or is it something that you assisted in?

12 A Well, if it was sent by the Dropbox, she
13 would have opened the secure mail, right, because I
14 can't open it and she would have sent me the file,
15 which I would have put in the Dropbox.

16 Q Okay.

17 A We have a shared Dropbox account. So she
18 could have done it but I -- since I was putting the
19 things together, I would have done it.

20 Q With regard to the medical bills, again, is
21 that something that was sent to your wife and she had
22 to send to you, how did that work?

23 A Well, you make it sound like a company.
24 Right, Marj and I, our desks are five feet apart, so
25 we tend to scan everything, so if it comes as I'm

1 thinking those bills did in the mail, they would go
2 to Marjorie. And then Marjorie would give them to me
3 and I would scan them.

4 Q Okay.

5 A Again, Marjorie has access to the scanning
6 systems, but I tend to be the one that does the
7 scanning. She does the cooking as she told you.

8 Q This is eight, nine as exhibits. Let's
9 talk about your wife's statement now. I think the
10 statement mentions you doing certain things. I guess
11 including that's talking to Mr. Mick, correct?

12 A Yes.

13 Q So are you the person that was in contact
14 with Mr. Mick?

15 A Yes, I know Mr. Mick because we talked
16 about service dog issues and whatnot.

17 Q Okay.

18 A And he's helped me with some things.

19 Q And just so we're clear, Mr. Mick in the
20 statement is spelled M-Y-C-K but his actual name is
21 M-I-C-K?

22 A I think it's M-Y-C-K, but I couldn't be
23 certain.

24 Q And the reason I ask that is because in
25 the?

1 A What does his email say?

2 Q Mick, M-I-C-K.

3 A Okay.

4 Q In the email, yeah, it's to Mr. Mick so
5 that's why I asked that question. So anyway,
6 whatever the email is is his -- the correct spelling
7 of his name?

8 A I'm going to guess he knows how to spell
9 his own name.

10 Q Okay. Brian Mick.

11 A Okay.

12 Q So the correct spelling is M-I-C-K.

13 A I apologize to Mr. Mick. I assume he gets
14 his name misspelled all the time.

15 Q And let's see, who took the measurements
16 that are in your wife's statement which is Exhibit 5?

17 A Marjorie did.

18 Q Okay. So -- and these were done on
19 November 9?

20 A That's right.

21 Q Okay. So I guess three months after the --
22 less than three months she was taking measurements at
23 Kahala Mall?

24 A Yup.

25 Q Okay. And did you folks stop traffic in

1 order to do that? How were you doing that?

2 A We waited till there was no traffic.

3 Q Okay.

4 A You've been to Kahala Mall with us with
5 Mr. Ortiz. I mean, it's not -- it's not that
6 difficult to stand there without having to stop
7 traffic.

8 Q And as I -- maybe I didn't tell you, but I
9 grew up in Kahala.

10 A Right, so did I.

11 Q So I'm familiar with the mall. Now, I see
12 some commentary in her statement.

13 Did you have any input in writing any of
14 the paragraphs in this statement?

15 A As Marjorie explained, it was sort of a
16 joint effort.

17 Q Okay. So it's a joint effort, but it's
18 something that's labeled as her statement?

19 A Yes.

20 Q Okay.

21 A Much like having a paralegal write some of
22 the work, but it's ultimately the responsibility of
23 the attorney signing it. I was her scribe.

24 Q I don't know of anyone that actually does
25 that but maybe there are.

1 A In big firms.

2 Q Again, I don't know of anybody that does
3 that, but maybe there are. Anyway, I don't know of
4 anybody that actually admits they do.

5 A Yeah, I suspect a lot of people.

6 Q Now, with regard to the Complaint, was this
7 a joint effort also?

8 A Yes.

9 Q Okay. So I think the Complaint kind of
10 parrots the statement, Marjorie's statement.

11 A It's more or less cut and pasted in there.

12 Q And again, so this is something that is --
13 this meaning -- let me be clear. It's getting late
14 in the day. I'm getting tired.

15 So Exhibit 1 is something that contains
16 essentially the same material as Exhibit 5, correct?

17 A Correct.

18 Q Okay. And as far as the division of labor
19 for each, it would have been what your wife mentioned
20 previously. In other words, she did some research,
21 you may have been doing some calling and emailing?

22 A Yes, she hates the phone. I hate it less.
23 She's an excellent Internet researcher.

24 Q Have either of you obtained a written
25 report from a professional as to any defects with

1 this particular storm drain?

2 A I prefer not to answer that.

3 Q Well, that you need to answer.

4 A We haven't received it as of yet.

5 Q Have you retained an expert?

6 A We haven't formally retained an expert yet.

7 Q So is there an expert report that's going
8 to be presented in arbitration?

9 A I don't know.

10 Q Well, that is not a response that you're
11 going to be allowed to do so.

12 A Well, that's the response you get.

13 Q Okay. So you're saying that -- I don't
14 want to paraphrase you, so please let's just do
15 question and answer.

16 Number one, you have not retained an expert
17 at this point?

18 A Correct.

19 Q Okay. Therefore, you don't have an expert,
20 correct?

21 A Correct.

22 Q Okay. Is it your intention to retain an
23 expert?

24 A Possibly.

25 Q So anyway sitting here as of today, you do

1 back to normal for sixish sort of months. And your
2 comment, for example, about measuring the drains, I
3 mean, she could do certain things and she might be
4 able to do something today but then not tomorrow or
5 she might have three days when she was totally
6 miserable and wouldn't get out of bed.

7 So there were good days, there were bad
8 days, there were things she could do or couldn't do
9 and it seemed the recovery was not sort of a linear
10 curve upwards but more of a sort of signed curve with
11 some days that were good and some days that were bad.

12 Q Okay. Now, again, I don't mean to pry but
13 you have this claim as a loss of consortium claim.

14 A I understand.

15 Q And so the first question is how has she
16 been unable to provide companionship to you?

17 A Well, I mean, if we talk about just the
18 obvious, I mean, if she spends two or three days in
19 bed, that's the lack of companionship to begin with.
20 And there had been times when she's just been --
21 while not in bed, she's almost been like the walking
22 dead. She will sort of sit at her computer. She
23 loves reading the British newspapers and she would
24 sit and read British papers and then she would go to
25 bed.

1 not have an expert report, correct?

2 A You just asked that and I answered it.

3 Q So the answer is no?

4 A Correct, for the second time.

5 Q Describe to me your wife's physical
6 condition in the week prior to the incident?

7 A Fine. She's remarkably healthy.

8 Q And what kind of chores did she undertake
9 in the week before?

10 A The ones she described. She's -- she does
11 the cooking, the cleaning, the tidying, the
12 vacuuming. If I'm not -- I'm not as much of a
13 morning person as her. She'll walk the dog in the
14 morning.

15 Q And --

16 A She does the shopping, baking. She's a
17 great baker.

18 Q And after the incident, after say September
19 of 2023, okay, so that's after the surgery?

20 A Yes.

21 Q Did she resume any of these chores?

22 A None, zero. She was miserable.

23 Q When did she resume chores?

24 A Oh, it took months and months. I mean, it
25 was a gradual process, but I wouldn't say she was

1 So we hardly went out. I mean, we hardly
2 left the apartment. So I'm not talking about going
3 out having a good time at dinner. I'm just talking
4 physically going out. Lack of affection. I mean,
5 you know, pretty miserable for us.

6 Q And how long did that persist?

7 A Oh, months and months and months.

8 Q More than the six or seven months?

9 A Again, it was gradual. The lack of
10 intimacy probably was more than six or seven months.
11 Remember, she had a large painful incision, you know,
12 on the side of her leg. So even -- never mind all
13 the metal and parts and healing going on inside even
14 just the physical healing of this big incision plus
15 the lack of mobility of her legs. So, you know, I
16 mean, pretty bad.

17 Q And how long did that persist?

18 A It was certainly all of 2023 and going into
19 sort of 2024. But again, I would say back to normal
20 sort of a year later maybe August, September 2024.

21 Q You've heard her testify there are no plans
22 for further treatment; is that right?

23 A Yeah, barring any problems. She's told,
24 we're told that these metal hip replacements last a
25 good number of years, and we're both 75; so it sounds

1 like she will expire before the warranty period.

2 **Q** Now, are you aware of any liens?

3 **A** There are no liens.

4 **Q** Did some -- did the insurers, the health
5 insurers anyway, say that they're not going to pursue
6 a lien?

7 **A** Have you ever known them to say that, yeah,
8 no, they said nothing. And there is one weird thing
9 about this and that's this strange \$5,000 policy. I
10 think you showed Marjorie the letter about that
11 earlier today. So is her name Ms. Kinoshita, the
12 First Insurance lady. So there was -- there is
13 deductibles for Marjorie's treatment because in 2023,
14 our insurance was with HMSA.

15 So I'm guessing that there was somewhere in
16 the vicinity of six to \$700 of deductibles that we
17 owe, Marjorie owes over and above what HMSA already
18 paid. So I asked, before this claim was filed, I
19 asked her to pay those. And she explained that and I
20 don't know if this is correct or not but this is what
21 she said. To pay those, I had to go back or Marjorie
22 had to go back. I did it on her behalf to the Straub
23 billing claim's department and effectively undo the
24 claims that they filed -- the whole of the claims
25 that they filed with HMSA for the bills that had the

1 **A** Right.

2 **Q** So I have, you know, that would be my only
3 comment about that I have no idea how that works,
4 okay.

5 **A** But one -- but to editorialize, one would
6 hope, since we're sitting in a First Insurance office
7 and dealing with the same thing, that there would be
8 some joined up thinking in insurance company but
9 apparently one would hope about joined up thinking
10 doesn't necessarily mean it, so...

11 **Q** Yeah, that's not the way I understand it
12 works.

13 **A** Okay.

14 **Q** Which is why I have no comment on any
15 med-pay issue because that's not really part of my
16 kuleana.

17 **A** But the only reason I brought it up is
18 because it did involve telling the insurance
19 companies about this. Now, whether it's registered
20 with them or not, I don't know.

21 **Q** Now, going through, I guess, Exhibit 5, we
22 talked about --

23 **A** Excuse me, what time is it, sorry? We need
24 to either come to a conclusion soonish or I need to
25 have another break.

1 deductible which was primarily the hospitalization
2 and I think maybe the emergency room was billed
3 separately but essentially the deductible related to
4 those sort of two, three days.

5 And that created sort of confusion on the
6 HM -- on the Hawaii Pacific Health bills and whatnot.
7 But in any event, I don't know whatever happened
8 because we never got the payment for the deductible.

9 **Q** Okay. Well, let me --

10 **A** So what I'm saying to answer your question
11 is that it appears -- we told HMSA and Hawaii Pacific
12 Health and, in fact, you can see the medical records
13 where it was no secret that Marjorie fell, right. So
14 whether HMSA didn't realize that, that there was a
15 claim, didn't act. I mean, I don't know. We've
16 heard nothing from them.

17 **Q** Okay. So with regard to the lien anyway?

18 **A** Right.

19 **Q** Your response is you've not heard anyone
20 assert one; is that correct?

21 **A** Correct. But I've also not heard anyone
22 say we're not going to assert one.

23 **Q** And with respect to the other information
24 you just furnished, that deals with what I believe is
25 called a med-pay policy, which I'm not involved with.

1 **Q** Yeah, I think this is the last -- no, this
2 is -- well, why don't you take a quick break
3 because -- yeah, take a break quick.

4 **A** While we're still on the record, okay, I
5 just wanted to make the comment you talked about
6 today we didn't know the temperature in this room, so
7 here's a room thermometer. And even though we've
8 been sitting in this room now all day, it's still
9 67 degrees and it hasn't changed since we got here.
10 So just to let you know, you said we didn't know the
11 temperature in the room and we do know the
12 temperature in the room now and it's cold still.
13 Okay, all right.

14 **Q** That's fine. I have no way of disputing
15 one way or the other. I have no idea what the
16 temperature is.

17 **A** There's a thermometer. You can look at it.
18 Thank you. Ten minutes?

19 **MR. KAYA:** That's fine.

20 Recess from 3:38 p.m. to 3:50 p.m.)

21 **BY MR. KAYA:**

22 **Q** Looking at Exhibit 5 again, paragraph 35.

23 **A** Yes.

24 **Q** Okay. You were the person that was told
25 that the storm drain is not covered by the building

1 code, right?

2 A Correct.

3 Q So that's what planning and permitting told
4 you?

5 A Yes.

6 Q Okay. And with regard to paragraph 39, you
7 were the person corresponding with Mr. Mick.

8 A Mr. M-I-C-K, Mick.

9 Q Yes. Although it's spelled M-Y-C-K.

10 A I'm the person.

11 Q Okay. And once again, what he explained is
12 the ADA would apply if the grates were located within
13 or part of an accessible route and that it didn't
14 appear the -- in other words, the flared portions of
15 the raised crosswalks are not typically part of the
16 accessible route. That's what was told to you?

17 A But with two points. First of all,
18 Mr. Mick is at the Department of Health. He's not an
19 ADA expert. He's knowledgeable in the ADA. He's not
20 a federal government employee. He doesn't work for
21 the ADA people. And he says typically not part of an
22 accessible route. He made the point in here, I
23 think, that it's not really clear what is the
24 accessible route in this parking lot. So that's a
25 direct quotation from his email. I think you have

1 A No.

2 Q Well, take a look at it before you say
3 that. Okay? So you had an opportunity to look at
4 it, sir?

5 A Yes.

6 Q Okay. Do you need to make any changes or
7 corrections?

8 A No.

9 Q No, okay. Is that your signature on the
10 last page of this exhibit?

11 A Yes.

12 Q It appears you signed this one February 28,
13 2024?

14 A Correct.

15 Q Okay. Now, I want you to turn your
16 attention to page -- okay, No. 12, page 11, question
17 12.

18 A Yup.

19 Q Okay. My understanding is that, you know,
20 you're talking about being depressed as a result of
21 the things you itemized in question -- in response to
22 question 10. Is that what you're saying?

23 A Yes.

24 Q Okay. But with respect to any depression,
25 you're not seeing anyone for that, right?

1 his email on the other file. But you know, not
2 typically does not mean not.

3 Q Well, I understand that that's your
4 interpretation.

5 A Correct, but that's what it says on its
6 face.

7 Q And do you know of any ADA provision that
8 says it would be part of the accessible route?

9 A I don't want to say now. We're researching
10 that.

11 Q So as of today, you don't know?

12 A As of today I'm uncertain.

13 Q Okay. Now, let's talk exhibit -- what will
14 be Exhibit 10.

15 (Exhibit 10 was marked for
16 identification.)

17 THE WITNESS: Want this back?

18 BY MR. KAYA:

19 Q Yes. This is your Answers to
20 Interrogatories. I just have a few questions about
21 it.

22 A Okay.

23 Q So again, why don't you take a quick look
24 at it. The first question is always going to be do
25 you need to make any changes or corrections?

1 A No.

2 Q You've not seen any professional?

3 A Other than my PCP.

4 Q Okay. Because question 14 says, "List any
5 and all medical or health care expenses you incurred
6 as a result."

7 So if you've seen a physician for your
8 supposed depression, you should list it some -- you
9 should have listed something but you put none.

10 A Yes, because I would have been seeing the
11 PCP for other things as well. I have no direct
12 expenses. I haven't gone off to see a psychiatrist
13 or other mental health professional.

14 Q So when you say senior PCP, you would have
15 been saying -- telling your PCP I feel depressed?

16 A As well as other things if I was there,
17 yeah.

18 Q And there's been no treatment for that,
19 right?

20 A He did prescribe some medicine and I never
21 bothered to take it. I think I took one pill that
22 made me feel funny.

23 Q So are you making a claim for depression
24 resulting in some kind of physical manifestation or
25 not?

1 A No.

2 Q Let me go through my notes. How many
3 active lawsuits are you engaged in at this point in
4 time, sir?

5 A Two.

6 Q Two. And what would they be?

7 A This one and Reddit.

8 Q Okay. What about the claim against Palolo
9 Gardens?

10 A All settled.

11 Q That's settled?

12 A Yup.

13 Q And it settled as of when?

14 A Oh, I don't know.

15 Q It's my understanding is you're set for a
16 pretrial conference.

17 A We are? No, we're not.

18 Q I stand corrected. You're correct. I
19 misread the next -- the next date. I apologize.
20 Okay.

21 A I think it still shows on -- is it called
22 JABS? I think it still shows it's an active case,
23 but it was the defendant's attorney who undertook the
24 responsibility of tidying it up and closing it up in
25 the system. So they paid me, we signed releases and

1 A Yes.

2 Q Who will advise you folks when the
3 transcript is completed, and I guess they'll furnish
4 you some kind of correction sheet. Okay?

5 A Yup.

6 Q With that having been said, I think we're
7 done.

8 Do you need them to put anything on the
9 record with regard to their address and contact
10 information?

11 THE REPORTER: Yeah, if you could give
12 me your address, your mailing address.

13 THE WITNESS: 350 Ward Avenue, No.
14 106-8, 96814.

15 MR. KAYA: Let's make sure we have
16 everything.

17 (Deposition concluded at 4:00 p.m.)
18
19
20
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25

1 we've exchanged hand shakes and inky signatures on
2 pieces of paper quite a while ago.

3 Q Okay. And I agree. It looks like I made a
4 mistake in reading the date.

5 A Okay.

6 Q So --

7 A I think the one thing they didn't do
8 possibly, which is why it might be showing as active,
9 is do whatever buttons they needed to press with
10 respect to the court.

11 Q Okay. So you have this one and a claim
12 against Reddit?

13 A Yes.

14 Q And I don't really want to get into that
15 claim, so at this point, I don't have anymore
16 questions.

17 Now, as with your wife, you have an
18 opportunity to review, make changes, corrections. If
19 there are any substantive changes as you heard me
20 explain to your wife, those can be commented upon
21 and/or you can be questioned about. I'm assuming you
22 folks are going to take your opportunity to review
23 and make any changes. And for that, you're going to
24 have to furnish your contact information to the court
25 reporter.

1 WITNESS CERTIFICATE

2 I, CRAIG W. WALSH, do hereby certify that
3 I have read the foregoing typewritten pages 1 through
4 76, inclusive, and corrections, if any, were noted by
5 me, and that same is now a true and correct
6 transcript of my testimony.
7

8 DATED this _____ day of _____, 2025.
9
10
11

12 CRAIG WALSH
13

14 Signed before me this _____ day of _____, 2025.
15
16
17
18
19
20
21
22

Deposition of CRAIG W. WALSH

23 Case: MARJORIE J. WALSH vs. MMI REALTY SERVICES, INC.
Civil No.: ICCV-24-0000003

24 Deposition Dated: January 20, 2025

Taken By: Myrla R. Romero
25

1 CERTIFICATE

2 STATE OF HAWAII)

3) SS:

4 CITY AND COUNTY OF HONOLULU)

5 I, MYRLA R. ROMERO, do hereby certify:

6
7 That on Monday, January 20, 2025, at
8 2:10 p.m., appeared before me CRAIG WALSH, whose
9 76-page deposition is contained herein; that prior to
10 being examined CRAIG WALSH, was by me duly sworn or
11 affirmed pursuant to Act 110 of the 2010 Session of
12 the Hawaii State Legislature; that the deposition was
13 taken down by me in machine shorthand and was
14 thereafter reduced to typewritten form under my
15 supervision; that the foregoing represents, to the
16 best of my ability, a true and correct transcript of
17 the proceedings had in the foregoing matter; that
18 pursuant to Rule 30(e) of the Hawaii Rules of Civil
19 Procedure, a request for an opportunity to review and
20 make changes to this transcript were made by the
21 deponent or a party prior to the completion of the
22 deposition.

23 I further certify that I am not an attorney
24 for any of the parties hereto, nor in any way
25 concerned with the cause.

26 Dated this 2nd day of February, 2025 in
27 Honolulu, Hawaii.

28 MYRLA R. ROMERO, CSR NO. 397
29 Notary Public, State of Hawaii

C E R T I F I C A T E

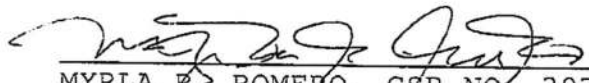
STATE OF HAWAII)
CITY AND COUNTY OF HONOLULU) SS:

I, MYRLA R. ROMERO, do hereby certify:

That on Monday, January 20, 2025, at 2:10 p.m., appeared before me CRAIG WALSH, whose 76-page deposition is contained herein; that prior to being examined CRAIG WALSH, was by me duly sworn or affirmed pursuant to Act 110 of the 2010 Session of the Hawaii State Legislature; that the deposition was taken down by me in machine shorthand and was thereafter reduced to typewritten form under my supervision; that the foregoing represents, to the best of my ability, a true and correct transcript of the proceedings had in the foregoing matter; that pursuant to Rule 30(e) of the Hawaii Rules of Civil Procedure, a request for an opportunity to review and make changes to this transcript were made by the deponent or a party prior to the completion of the deposition.

I further certify that I am not an attorney for any of the parties hereto, nor in any way concerned with the cause.

Dated this 2nd day of February, 2025 in Honolulu, Hawaii.


MYRLA R. ROMERO, CSR NO. 397
Notary Public, State of Hawaii

WITNESS CORRECTION SHEET

CASE: WALSH VS. MMI REALTY SERVICES, INC.; CIVIL NO. 1CCV-24-0000003

DEPOSITION OF CRAIG WALSH (PRO SE), TAKEN ON 1-20-25.

PAGE	LINE	CORRECTION	REASON

(If additional space is needed, attach a blank sheet)

Signature of Deponent: _____ Date: _____
=====

CERTIFICATE

- ☐ Please be advised that the deponent signed and/or made corrections to the deposition within 30 days of notification.
- ☒ Please be advised that 30 days have expired and the deponent has failed to read and sign the deposition.
- ☐ Please be advised that signature and/or corrections were received and are **not being filed** with the transcript because:
 - ☐ the deponent failed to sign and/or make corrections within 30 days after notification that the transcript was available for review.
 - ☐ a request for an opportunity to review the transcript was **not** made by the deponent or a party before completion of the deposition.
- ☐ Please be advised that the above-named case is going to trial and/or hearing and the deponent has **not** had 30 days to read and sign the deposition before the filing of this transcript with the Court.

DATED: 3-17-25, HONOLULU, HAWAII.

Fam! K...
SER. NO. 179

Ralph Rosenberg by d.y.
Ralph Rosenberg Court Reporters, Inc.
1001 Bishop Street, Suite 2460, Honolulu, HI 96813
Phone: (808) 524-2090 Fax: (808) 524-2596

EXHIBIT "G"

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Bong J. Walsh

05 August 2024

Randall Y. Kaya, Esq.
Law Offices of Leslie R. Kop
Suite 500
1100 Ward Avenue
Honolulu, HI 96814

Re: Walsh v MMI Realty Services
Our File No. 20240171

Dear Mr. Kaya:

In accordance with your request, a preliminary analysis was performed on the 16 August 2023 incident involving Ms. Marjorie Walsh at the Kahala Mall. To perform this analysis, the following information was provided and reviewed:

- 1) Complaint and Summons; Personal Injury and Loss of Consortium
- 2) Plaintiff Majorie J. Walsh's Answers to Defendant's First Interrogatories
- 3) Plaintiff Craig W. Walsh's Answers to Defendant's First Interrogatories
- 4) Statement of Marjorie Walsh (dated 15 November 2023)
- 5) Plaintiffs Marjorie J. Walsh's and Craig W. Walsh's Request to Remove from Court Annexed Arbitration Program, Declaration of Plaintiffs *Pro Se*, Exhibits "A" to "E", Certificate of Service

In addition, a site inspection was performed on 11 April 2024 where photographs and measurements were taken.

Background

The subject incident occurred at the parking lot of Kahala Mall on the roadway fronting Whole Foods Market. On 16 August 2023 at approximately 1628 hours, Ms. Walsh exited her vehicle at a stop sign and reportedly tripped and fell on or near a storm drain.

EXHIBIT "G"

Analysis/Discussion

The area of the subject incident is located on the vehicular travel way between Whole Foods Market/Mall entrance and the mauka side parking structure. In the location there is a stop sign for each direction of vehicular travel (entering and exiting) along with a raised crosswalk extending from the pedestrian walkway of the parking structure to the walkway at Whole Foods Market/Mall entrance. The area is shown in the photograph below.



In the direction towards American Savings Bank, there is a stop bar approximately 13 feet 1 inch from the raised marked crosswalk. Between the stop bar and raised crosswalk there is a storm drain that is approximately 30 inches square in a 1 ½ inch frame (border). This storm drain is located approximately 63 inches from the raised crosswalk. The curb is painted red on both sides of the roadway. On the far side of the crosswalk, there is a ramp on the mauka parking garage walkway that leads to an accessible stall across the parking aisle.

Marjorie Walsh provided a 26-page notarized statement describing the subject incident.

According to her statement, many times in the past, her husband, Craig, would drop her off prior to finding a place to park or drive around the parking lot until she was done shopping (Paragraph 7).

On the date of the incident, Mr. Walsh “fully stopped just shy of the pedestrian crosswalk so [Ms. Walsh] would be near the crosswalk but our car would not block other pedestrians” (Paragraph 11). Ms. Walsh exited on the passenger side. She stated she “stepped out of the car, closed the door and turned to walk behind the car. I promptly tripped on the storm grating or its decaying surround and fell. I fell towards the car and the crosswalk, with my left hand (which I used to stop my fall) going beneath the car” (Paragraph 15).

Ms. Walsh stated she had exited at this location many times before (Paragraph 17).

It is inconclusive as to the cause of Ms. Walsh’s fall.

Ms. Walsh stated in paragraph 15 that she “tripped on the storm grating or its decayed surround and fell.” Even though she comments about the spacing of the grate bars and its lack of compliance with ADA standards, she does not state within any certainty the tripping mechanism of her fall. Ms. Walsh does not describe in any detail how the condition of the grate bars or “its decayed surround” were a causative factor in her fall.

Ms. Walsh description of her fall is inconsistent with her direction of travel.

As previously mentioned, Ms. Walsh stated she exited the vehicle and turned to walk behind the car, but when she fell, she stated she fell towards the car and the crosswalk with her left hand going beneath the vehicle. Exiting the passenger side and proceeding to the rear of the vehicle would put her traveling away from the crosswalk with her right (not left) side towards the passenger side of the vehicle.

The subject area where Ms. Walsh fell was not required to meet ADA guidelines/standards.

The area where Ms. Walsh was dropped off, which is the area between the stop sign and the raised marked crosswalk, is not part of the accessible route required by ADA. The raised marked crosswalk and ramps leading to the accessible (handicap) stall in the mauka parking structure would be part of the accessible route to the walkway fronting Whole Foods Market and the Mall entrance.

Bryan Myck from the State of Hawaii Disability and Communication Access Board confirmed to Mr. Walsh in an email that any grate openings requirements would only apply to grates that are located within (emphasis added) an accessible route. It was stated “[t]he grate shown in the picture is the flared portion of the raised crosswalk and the flared portion of raised crosswalk are typically not part of the accessible route. The striped area of the crosswalks are typically the extents of the accessible portion” (Paragraph 39). The main purpose of the flare is to provide a ramp for vehicular traffic to traverse over the raised crosswalk as opposed to pedestrian travel.

Since the subject area where Ms. Walsh elected to exit her vehicle (between the stop sign and the crosswalk) was not part of an accessible route, the storm drain was not required to be in compliance with ADA standards.

Conclusions

Based on my preliminary analysis, I have reached the following opinions:

- It is inconclusive as to the cause of Ms. Walsh's fall.
- Ms. Walsh description of her fall is inconsistent with her direction of travel.
- The subject area where Ms. Walsh fell was not required to conform with ADA standards/guidelines.

These findings and opinions are based on information provided to date. If additional information or material is reviewed, supplemental opinions may be formed.

If you have any questions, or if I can be of further assistance, please do not hesitate to call.

Sincerely,

A handwritten signature in black ink, appearing to read 'Brad M. Wong', with a stylized flourish extending to the right.

Brad M. Wong, P.E.

EXHIBIT “H”

Boster, Kobayashi & Associates, Inc.
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12 September 2024

Randall Y. Kaya, Esq.
Law Offices of Leslie R. Kop
Suite 500
1100 Ward Avenue
Honolulu, HI 96814

Re: Walsh v MMI Realty Services
Our File No. 20240171

Dear Mr. Kaya:

In accordance with your request, this report is being prepared to supplement my 05 August 2024 report.

Analysis/Discussion

In the Statement of Majorie Walsh, she cites numerous codes and standards in regard to the storm drain. This report is to address the cited codes and standards.

Paragraph 35 – Ms. Walsh and her husband were “informed storm drains are not covered by the building code” according to the Department of Planning and Permitting at the City and County of Honolulu. I would agree that since the subject storm drain was not covered by the building code, no building code was violated.

Paragraph 37 – Ms. Walsh discussed “Rules Relating to Storm Drainage Standards”, but cited inlets at a gutter (i.e., part of a curb), which the subject storm drain is not.

Paragraphs 38-40 – Ms. Walsh discusses that the subject storm drain has openings that are in violation of the 2010 ADA Standards for Accessible Design. A representative of the State of Hawaii Disability and Communication Access Board stated the following:

“For ADA, the opening requirement (ADAAG 302.3) would apply to grates that are located within (or part of) and accessible route. The grate shown in the picture is at the flared

EXHIBIT "H"

portion of the raised crosswalk and the flared portions of raised crosswalks are typically not part of the accessible route. The striped area of crosswalks are typically the extents of the accessible portion.”

Ms. Walsh then states “For the reasons above, I believe that *all* the parking lot at near [sic] Whole Foods at Kahala Mall should be considered “an accessible route.”

The storm drain is 63 inches from the closest portion of the marked crosswalk and is not part of the flare (i.e., ramp for the elevated crosswalk). I agree with the State of Hawaii Disability and Communication Access Board that the storm drain is not part of the accessible route required within the parking lot and therefore not subjected to ADA regulations. There is no requirement that the entire parking lot needs to conform with ADA regulations.

Paragraph 42 – The National Floor Safety Institute standard, NFSI B101.9-2020 is a voluntary standard with no evidence it has been adopted or recommended by any authoritative body in the State of Hawaii regarding building maintenance or inspection compliance. I have not reviewed any materials or evidence indicating this voluntary standard was used or should have been used by Kahala Mall.

Paragraph 43 – The International Property Maintenance Code (IPMC) 2021 is not a code that has been adopted by the State of Hawaii.

Conclusions

As stated in my 05 August 2024 report, the subject area where Ms. Walsh fell was not required to conform with ADA standards/guidelines. The area was outside the designed and marked area of the accessible route from the parking lot to the mall entrance. The other codes or standards cited by Ms. Walsh are either not applicable or voluntary standards. Additionally, these codes or standards and not adopted by the State of Hawaii or Kahala Mall.

These findings and opinions are based on information provided to date. If additional information or material is reviewed, supplemental opinions may be formed.

If you have any questions, or if I can be of further assistance, please do not hesitate to call.

Sincerely,

A handwritten signature in black ink, appearing to read 'Brad M. Wong', with a stylized flourish at the end.

Brad M. Wong, P.E.

EXHIBIT “I”

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Bong J. Walsh

30 March 2026

Randall Y. Kaya, Esq.
Law Offices of Leslie R. Kop
Suite 500
1100 Ward Avenue
Honolulu, HI 96814

Re: Walsh v MMI Realty Services
Our File No. 20240171

Dear Mr. Kaya:

In accordance with your request, this report is being prepared to supplement my reports of 05 August 2024 and 12 September 2024. I have been provided with the following additional information:

- 1) Deposition of Craig W. Walsh
- 2) Deposition of Marjorie J. Walsh
- 3) Plaintiff Marjorie J. Walsh and Craig W. Walsh's Arbitration Pre-Hearing Statement; Exhibits A-K; Certificate of Service
- 4) Video "Reconstruction of Marjorie Walsh's Trip and Fall in the Kahala Mall parking lot, August 16, 2023
- 5) Video "Kahala Mall Feb 3 2025"
- 6) Video "Kahala Mall Feb 5 2025"
- 7) Video "Kahala Mall Jan 3 2025"
- 8) Plaintiff's Email re: Global Relay 2 (9 pages)
- 9) Plaintiff's Email re: Global Relay 3 (6 pages)

In addition, a supplemental site inspection was performed on 03 December 2025.

Analysis/Discussion

Within the Arbitration Pre-Hearing Statement, the Walsh's contend the subject storm drain was required to meet ADA guidelines and standards. My previous reports opine that the subject storm

EXHIBIT "I"

drain was not subject to ADA guidelines and standards because the subject storm drain is not part of the accessible route as defined by ADA.

According to *The U.S. Access Board Technical Guide: Accessible Routes*, it explains “the scoping and technical requirements for accessible routes in the ADA Standards.”

Section 206.2.1 of the ADA Standards states the following:

At least one accessible route must be provided within the site to accessible facilities entrances from these site arrival points, where provided:

- accessible parking and accessible passenger loading zones
- public streets and sidewalks
- each public transportation stop

The area where the subject drain is located does not fall within any of the 3 “site arrival points”. The accessible parking spot is located beyond the crosswalk and in the next aisle of the parking structure. The subject grate would not be a part of the accessible route for the designated accessible parking stall. There is no accessible passenger loading zone in the area. The subject area is not part of the public street or sidewalk. There is no public transportation stop (e.g., bus stop) in the subject location.

The elevated crosswalk is the accessible route from the sidewalk/entrance of Kahala Mall to the parking structure and the accessible stall in the parking structure. The elevated crosswalk is beyond the posted stop sign and marked stop bar. It provides better visibility of the crosswalk for approaching vehicles as well as eliminates the need for curb ramps on the sidewalks of Kahala Mall and the parking structure.

There is no technical basis or standard to support the conclusion that the subject grate was part of an accessible route and subject to ADA Standards.

ASTM F1637-95 is also referenced in the arbitration pre-hearing statement and “is frequently cited as a standard specification...including OSHA.” Based on my review, ASTM F1637-95 is not any part of the OSHA standards/regulations.

ASTM F1637-95 is a voluntary standard that is not adopted by any municipality including includes the City and County of Honolulu where the Kahala Mall is located. Without this ASTM standard being mandatory (e.g., part of the process of permitting and review for construction, or previous complaints or accident history), the ASTM standard is not relevant in the evaluation of the subject grate.

The video showing the 16 August 2023 “reconstruction” of Ms. Walsh’s incident shows the location of where Mr. Walsh reportedly stopped to let Ms. Walsh exit the vehicle. A screen shot from the video is shown below.



Based on this location, Mr. Walsh stopped his vehicle on the sloped portion leading to the crosswalk with the front of his vehicle at or just past the front edge of the crosswalk. The front of his vehicle was 13 feet past the painted stop bar. The vehicle would have been biased to the left of the center of the lane by approximately 2 feet (i.e., much closer to the lane divider line than the painted red curb). At this location, when Ms. Walsh opened her passenger, there are no visibility obstructions for her to see where she decided to step. With the vehicle stopped and no other potential vehicles coming from the right side of the vehicle, Ms. Walsh wouldn't have been distracted by other potential hazards for her not to see where she was stepping. There is also no indication that there were any other visibility obstructions, such as the sun, which would have obscured or prevented her from seeing the grate and avoid it if she thought the grate was a hazard.

The "reconstruction" shows Ms. Walsh's feet movements when exiting the vehicle and is shown in the following still images from the video.

Ms. Walsh initially steps on the 2nd to 5th grate bars closest to the crosswalk.

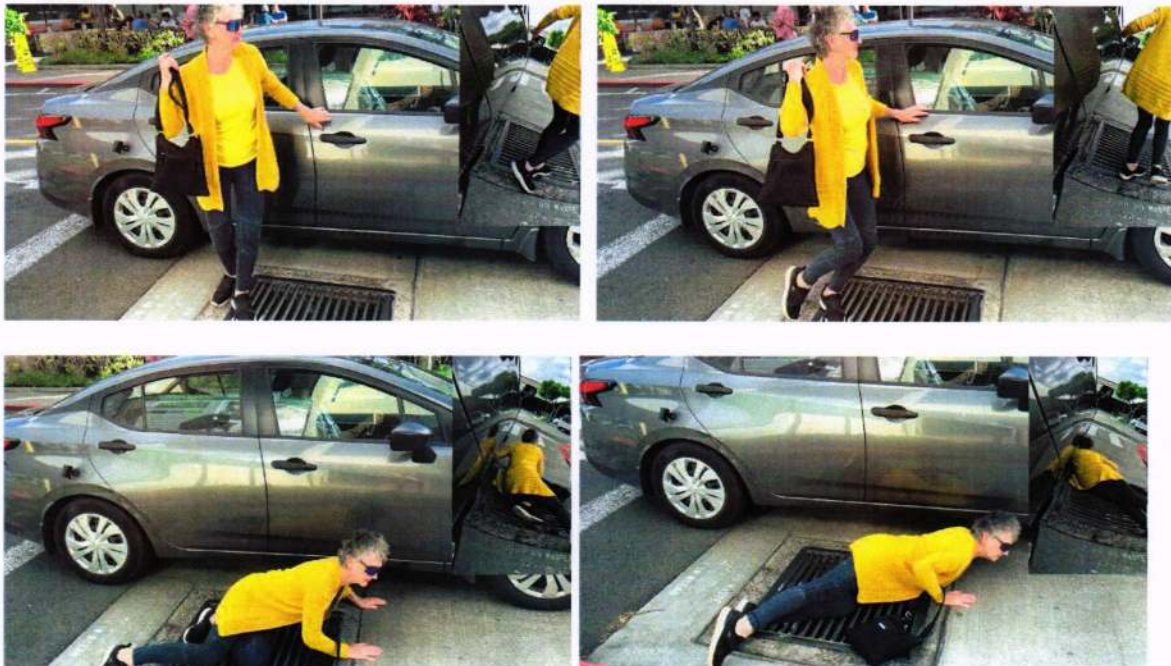


She then takes an approximately 25 inch horizontal/lateral step to her right with her right foot to step on the concrete rim around the grate followed by her left foot being placed next to her right foot and on the edge of the grate.



This elongated step to the right is unnatural and appears to purposefully avoid the rest of the grate so that her right foot is completely off the grate.

She then does a slight pivot step to the left with her left foot and “re-enacts” the “fall”.



The “reconstruction” only appears to show her loss of balance being allegedly caused by the grate. When asked in her deposition of 20 January 2025 about the cause of her trip, the answer was the following starting at Page 50, Line 17:

Q: Okay. And when you say you tripped, what caused you to trip?

A: Well, I don't – I don't know exactly. But when I went back to look at it, there's a gap. There's two of the bars are wider than the rest of the bars, and all the concrete surrounding the grating has deteriorated. So it could have been either catching my foot in the bar on the uneven surround.

Q: Okay. Well, do you know which?

A: No.

The concrete area where Ms. Walsh purposefully stepped in the "reconstruction" showed no signs of deterioration to cause her to lose balance. With Ms. Walsh's left foot pivoted to the left and angled across the bars, there is less probability that a foot would get entrapped within the spacing of the grate bars because her foot would be perpendicular.

Ms. Walsh's final position of her body on the ground – prone with her left hand underneath the vehicle and her legs outward and angled away from the vehicle – is not consistent with the physics of a fall occurring from her left foot allegedly getting caught in the grate spacing and causing a loss of balance.

If her left foot lost balance due to it getting entrapped in the grate spacing, her left foot would have been parallel to the grate spacing and she would be facing away from the side of the vehicle (i.e., her back would be towards the passenger side of the vehicle). A loss of balance to her left would most likely result in an impact to her left side as opposed to falling "face forward" as shown in her "reconstruction". Also, her feet would not have been projected outward away from the vehicle and rearward from the area of her left foot – she would have fallen more forward towards the front of the vehicle.

As previously mentioned, the more Ms. Walsh is turned to the left and facing forward towards the vehicle at the time of her loss of balance, the less likely her loss of balance was caused by the grate or the surrounding concrete.

Based on my review and analysis, the "reconstruction" is not based on reasonable engineering probability.

Conclusions

Based on my review and analysis, my opinions are as follows:

- 1) The subject area where Ms. Walsh reportedly fell is not part of the ADA accessible route nor was it required to be ADA accessible.
- 2) ASTM F1637-95 is a voluntary standard not adopted by any municipality including the City and County of Honolulu and would not have been reasonably known to Kahala Mall.
- 3) The "reconstruction" of Ms. Walsh's fall is not based on reasonable engineering certainty.

These findings and opinions are based on information provided to date. If additional information or material is reviewed, supplemental opinions may be formed.

If you have any questions, or if I can be of further assistance, please do not hesitate to call.

Sincerely,

A handwritten signature in black ink, appearing to be "Brad M. Wong", with a stylized flourish at the end.

Brad M. Wong, P.E.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

MARJORIE J. WALSH	)	CIVIL NO. 1CCV-24-0000003
CRAIG W. WALSH,	)	
	)	NOTICE OF HEARING OF MOTION
Plaintiffs,	)	
	)	
vs.	)	
	)	
MMI REALTY SERVICES INC.	)	
	)	
Defendant.	)	
	)	

NOTICE OF HEARING OF MOTION

TO: MARJORIE J. WALSH
CRAIG W. WALSH
350 Ward Avenue, #106-8
Honolulu, Hawaii 96814

(Plaintiffs, *Pro Se*)

NOTICE IS HEREBY GIVEN that the attached “DEFENDANT MMI REALTY SERVICES INC.’S **MOTION FOR SUMMARY JUDGMENT AGAINST PLAINTIFFS’ CLAIMS**” shall come on for hearing in-person before the Honorable Shirley M. Kawamura, Judge of the above-entitled court, in Courtroom 12 of the Circuit Court of the First Circuit, State of Hawaii located at Kaahumanu Hale, 777 Punchbowl Street, Fourth Floor, Honolulu Hawaii on ***Tuesday, May 26, 2026 at 9:00 a.m.***, or as soon thereafter as the matter can be heard.

DATED: Honolulu, Hawaii, May 6, 2026.

/s/Randall Y. Kaya

RANDALL Y. KAYA
Attorney for Defendant
MMI REALTY SERVICES INC.

IN THE CIRCUIT COURT OF THE FIRST CIRCUIT

STATE OF HAWAII

MARJORIE J. WALSH	)	CIVIL NO. 1CCV-24-0000003
CRAIG W. WALSH,	)	
	)	CERTIFICATE OF SERVICE
Plaintiffs,	)	
	)	
vs.	)	
	)	
MMI REALTY SERVICES INC.	)	
	)	
Defendant.	)	
_____	)	

CERTIFICATE OF SERVICE

I hereby certify that a copy of foregoing was duly mailed via the U.S. Postal Service on May 6, 2026 to the following:

MARJORIE J. WALSH
CRAIG W. WALSH
350 Ward Avenue, #106-8
Honolulu, Hawaii 96814

(Plaintiffs, *Pro Se*)

DATED: Honolulu, Hawaii, May 6, 2026.

/s/Randall Y. Kaya
RANDALL Y. KAYA
Attorney for Defendant
MMI REALTY SERVICES INC.