

MARJORIE J. WALSH
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Plaintiffs 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.

CASE NO. 1CCV-24-0000003

**PLAINTIFFS' OBJECTION TO
EVIDENCE AND MOTION TO STRIKE
THE EXPERT REPORTS OF BRAD M.
WONG, P.E., AND TO PRECLUDE
RELIANCE THEREON IN SUPPORT OF
DEFENDANT'S MOTIONS FOR
SUMMARY JUDGMENT [DKT. 152 AND
DKT. 158]**

Trial Date: June 29, 2026

Judge: Honorable Shirley M. Kawamura

**PLAINTIFFS' OBJECTION TO EVIDENCE AND MOTION TO STRIKE THE EXPERT
REPORTS OF BRAD M. WONG, P.E., AND TO PRECLUDE RELIANCE THEREON IN
SUPPORT OF DEFENDANT'S MOTIONS FOR SUMMARY JUDGMENT [DKT. 152
AND DKT. 158]**

I. INTRODUCTION

Plaintiffs Marjorie J. Walsh and Craig W. Walsh respectfully object to, and move to strike, the expert reports of Brad M. Wong, P.E., upon which Defendant MMI Realty Services, Inc. relies in support of its Motion for Summary Judgment [Dkt. 152] and its Motion for

Summary Judgment on Any Claims Based on the ADA, Honolulu Building Code, NFSI, IPMC and/or ASTM [Dkt. 158]. Mr. Wong has produced three reports in this matter — a preliminary report dated August 5, 2024; a supplemental report dated September 12, 2024; and a second supplemental report dated March 30, 2026. None of these reports is sworn. Mr. Wong has submitted no affidavit or declaration in this action, and he has not been deposed. Defendant's motions therefore rest, as to every proposition that depends on Mr. Wong, upon unsworn documents that are not competent evidence on summary judgment.

II. THE GOVERNING RULE

Hawai'i Rules of Civil Procedure Rule 56(e) requires that documentation submitted in connection with a motion for summary judgment be sworn to or certified. The Hawai'i Supreme Court has applied this requirement categorically: "Hawai'i appellate courts have interpreted this provision to require documentation submitted in support of a summary judgment motion to be properly sworn to or to be certified. Documents that are plainly inadmissible in evidence and are unsworn, not properly sworn to, and/or uncertified cannot be considered upon a summary judgment motion." *Pioneer Mill Co. v. Dow*, 90 Hawai'i 289, 297, 978 P.2d 727, 735 (1999). An affidavit or document consisting of inadmissible hearsay cannot serve as a basis for awarding or denying summary judgment. *Hawaii Cmty. Fed. Credit Union v. Keka*, 94 Hawai'i 213, 221, 11 P.3d 1, 9 (2000); *GE Capital Hawaii, Inc. v. Miguel*, 92 Hawai'i 236, 242, 990 P.2d 134, 140 (App. 1999).

The Pioneer Mill court rejected precisely the cure Defendant's counsel might attempt here. The Supreme Court held that "unless counsel wishes to relinquish his or her role as advocate and become a witness in the case, an affidavit of counsel swearing to the truth and accuracy of exhibits does not authenticate exhibits not sworn to or uncertified by the preparer or custodian of those exhibits." *Pioneer Mill*, 90 Hawai'i at 297, 978 P.2d at 735. The court was emphatic that this requirement is not a mere technicality: "Some may argue that this court's

requirement that counsel comply with HRCF Rule 56(e) is the equivalent of form over substance. However, we believe that HRCF Rule 56(e) provides substance through form. It is the only way that a circuit court, amidst all of its other duties, can efficiently and uniformly insure that summary judgment is granted or not granted based upon evidence that will be admissible at trial." *Id.*

The principle applies with particular force to expert reports. In *Ralston v. Yim*, 129 Hawai'i 46, 292 P.3d 1276 (2013), the proponent of an expert opinion submitted an unauthenticated report by the expert, and the opposing party correctly asserted that, absent a sworn expert affidavit as required under HRCF Rule 56, the report could not be relied upon. An unsworn, unauthenticated expert report is not competent evidence to support or defeat summary judgment.

III. MR. WONG'S REPORTS ARE UNSWORN AND CANNOT SUPPORT SUMMARY JUDGMENT

Each of Mr. Wong's three reports is signed but unsworn. No accompanying affidavit or declaration of Mr. Wong — sworn, or subscribed as true under penalty of perjury — appears anywhere in the record of this action. Mr. Wong has not been deposed; no notice of any deposition of Mr. Wong was served on Plaintiffs, and Plaintiffs have never received or seen any sworn testimony of Mr. Wong. Defendant's counsel cannot supply the oath: counsel has no personal knowledge of Mr. Wong's opinions, methodology, or factual bases, and under Pioneer Mill counsel cannot authenticate Mr. Wong's reports without relinquishing the role of advocate and becoming a witness. 90 Hawai'i at 297, 978 P.2d at 735.

Because every proposition in Defendant's motions that depends on Mr. Wong — including the "accessible route" opinion and each opinion concerning the standards at issue in Dkt. 158 and the conditions at issue in Dkt. 152 — rests exclusively on these unsworn reports,

that material may not be considered. HRCP Rule 56(e); *Pioneer Mill*, 90 Hawai'i at 297, 978 P.2d at 735; *Ralston*, 129 Hawai'i 46.

IV. WITHOUT ADMISSIBLE EXPERT EVIDENCE, DEFENDANT HAS NOT MET ITS INITIAL BURDEN AS MOVANT

The defect is not merely evidentiary housekeeping; it is dispositive of Defendant's motions. As the movant, Defendant bears the initial burden of production and "cannot support its initial burden of production by pointing solely to the non-moving party's lack of evidence if discovery has not concluded." *Ralston v. Yim*, 129 Hawai'i 46, 292 P.3d 1276 (2013). A summary judgment movant satisfies its initial burden only by "producing admissible evidence to show there [is] no genuine issue of material fact," or by showing the non-moving party cannot carry its burden of proof at trial. *Id.* (citing *French v. Hawaii Pizza Hut, Inc.*, 105 Hawai'i 462, 470–72, 99 P.3d 1046, 1054–56 (2004)). Where the movant's showing on the points at issue consists solely of inadmissible, unsworn expert reports, the movant has not produced admissible evidence and has not met its initial burden; the burden never shifts to Plaintiffs, irrespective of Plaintiffs' submissions. The motions therefore fail on their own terms as to every issue dependent on Mr. Wong.

V. THE OBJECTION IS TIMELY AND PROPERLY BEFORE THE COURT

This objection is filed in advance of the May 26, 2026 hearing on both motions, affording the Court and Defendant full opportunity to address it. The admissibility of the evidence offered in support of a motion for summary judgment is a threshold question the Court must resolve in any event: a court cannot grant summary judgment upon evidence it cannot consider. *Pioneer Mill*, 90 Hawai'i at 297, 978 P.2d at 735. The objection is therefore properly before the Court whether raised by separate paper or at the hearing. To the extent Defendant now attempts to cure the defect by belatedly submitting a sworn declaration of Mr. Wong, Plaintiffs respectfully submit that any such submission — offered only after Plaintiffs identified the defect and on the

eve of the hearing — is untimely and prejudicial, and that the Court in its discretion may decline to consider it; at minimum, any late cure would warrant a corresponding opportunity for Plaintiffs to respond and, if necessary, to conduct the expert discovery of which Plaintiffs have to date had no occasion to avail themselves.

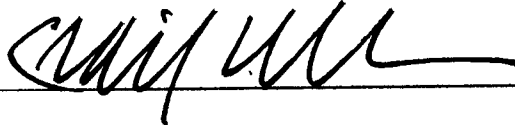
VI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court (1) sustain Plaintiffs' objection to the expert reports of Brad M. Wong, P.E.; (2) strike those reports and preclude reliance upon them in support of Defendant's Motions for Summary Judgment [Dkt. 152 and Dkt. 158]; and (3) grant such further relief as is just.

DATED: Honolulu, Hawai'i, May 19th, 2026.



MARJORIE J. WALSH, Plaintiff Pro Se



CRAIG W. WALSH, Plaintiff Pro Se

MARJORIE J. WALSH
CRAIG W. WALSH
350 Ward Avenue, Suite 106-8
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Plaintiffs Pro Se

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DKT 158]**

Trial Date: June 29, 2026

Judge: Honorable Shirley M. Kawamura

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Because every proposition in Defendant's motions that depends on Mr. Wong — including the "accessible route" opinion and each opinion concerning the standards at issue in Dkt. 158 and the conditions at issue in Dkt. 152 — rests exclusively on these unsworn reports, that material may not be considered. HRCF Rule 56(e); *Pioneer Mill*, 90 Hawai'i at 297, 978 P.2d at 735; *Ralston*, 129 Hawai'i 46.

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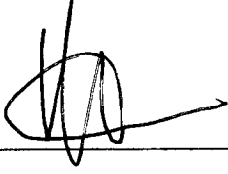
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VI. CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request that the Court (1) sustain Plaintiffs' objection to the expert reports of Brad M. Wong, P.E.; (2) strike those reports and preclude reliance upon them in support of Defendant's Motions for Summary Judgment [Dkt. 152 and Dkt. 158]; and (3) grant such further relief as is just.

DATED: Honolulu, Hawai'i, May 20th, 2026.

A handwritten signature in black ink, appearing to be 'Marjorie J. Walsh', written above a horizontal line.

MARJORIE J. WALSH, Plaintiff Pro Se

A handwritten signature in black ink, appearing to be 'Craig W. Walsh', written above a horizontal line.

CRAIG W. WALSH, Plaintiff Pro Se

MARJORIE J. WALSH
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Telephone: (802) 359-2718
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Plaintiffs Pro Se

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MARJORIE J. WALSH
CRAIG W. WALSH,
Plaintiffs,

vs.

MMI REALTY SERVICES INC.,
Defendant.

CASE NO. 1CCV-24-0000003

NOTICE OF HEARING OF MOTION

Trial Date: June 29, 2026

Judge: Honorable Shirley M. Kawamura

NOTICE OF HEARING OF MOTION

TO: RANDALL Y. KAYA, ESQ.

Attorney for Defendant MMI Realty Services, Inc.

NOTICE IS HEREBY GIVEN that the attached “PLAINTIFFS’ OBJECTION TO EVIDENCE AND MOTION TO STRIKE THE EXPERT REPORTS OF BRAD M. WONG, AND TO PRECLUDE RELIANCE THEREON IN SUPPORT OF DEFENDANT’S MOTIONS FOR SUMMARY JUDGMENT [DKT. 152 AND DKT. 158]” 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 Hawai‘i located at Kaahumanu Hale, 777 Punchbowl Street, Fourth Floor, Honolulu, Hawai‘i on Tuesday, June 16, 2026 at 11:00 a.m., or as soon thereafter as the matter can be heard.

DATED: Honolulu, Hawai‘i, May 20th, 2026.



MARJORIE J. WALSH, Plaintiff Pro Se



CRAIG W. WALSH, Plaintiff Pro Se

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CRAIG W. WALSH
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Plaintiffs Pro Se

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CASE NO. 1CCV-24-0000003

CERTIFICATE OF SERVICE

Trial Date: June 29, 2026

Judge: Honorable Shirley M. Kawamura

CERTIFICATE OF SERVICE

The undersigned hereby certify that on May 20, 2026, a true and correct copy of the foregoing PLAINTIFFS' OBJECTION TO EVIDENCE AND MOTION TO STRIKE THE EXPERT REPORTS OF BRAD M. WONG AND TO PRECLUDE RELIANCE THEREON IN SUPPORT OF DEFENDANT'S MOTIONS FOR SUMMARY JUDGMENT [DKT. 152 AND DKT. 158], together with the accompanying NOTICE OF HEARING, was duly served upon the following party at the address indicated, by the means indicated:

RANDALL Y. KAYA, ESQ.

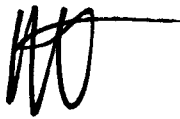
1100 Ward Avenue, Suite 500

Honolulu, Hawaii 96814

Attorney for Defendant MMI Realty Services, Inc.

Method of service: By electronic service through the Judiciary Electronic Filing and Service System (JEFS) pursuant to Rule 6 of the Hawai'i Electronic Filing and Service Rules.

DATED: Honolulu, Hawai'i, May 20, 2026.



MARJORIE J. WALSH, Plaintiff Pro Se



CRAIG W. WALSH, Plaintiff Pro Se