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B. Disputed Facts

The parties dispute whether Mr. Olmos should have noticed the spill when he walked through the area at 12:01:04 and how apparent the spill was.

III. PROCEDURAL BACKGROUND

Plaintiff filed her initial complaint in state court on September 9, 2016. ECF No. 1. Defendant petitioned for removal on April 6, 2017. ECF No. 1. On November 7, 2017, Defendant filed two Motions for Summary Judgment, arguing that Plaintiff can show no genuine dispute as to (1) breach of duty and (2) causation of damages.

IV. LEGAL STANDARD

Summary judgment is appropriate when the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show “that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *accord Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). When considering the propriety of summary judgment, the court views all facts and draws all inferences in the light most favorable to the nonmoving party. *Gonzalez v. City of Anaheim*, 747 F.3d 789, 793 (9th Cir. 2014). If the movant has carried its burden, the non-moving party “must do more than simply show that there is some metaphysical doubt as to the material facts. . . . Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no genuine issue for trial.” *Scott v. Harris*, 550 U.S. 372, 380 (2007) (citation and internal quotation marks omitted) (alteration in original).

V. DISCUSSION

a. Breach of Duty

Under Nevada law, a plaintiff must prove four elements to show negligence in a slip-and-fall matter: (1) the defendant owed a duty to the plaintiff to exercise due care; (2) the defendant breached the duty; (3) the breach was the actual and the proximate cause of the plaintiff’s injury;

1 and (4) the plaintiff was damaged. Joynt v. California Hotel & Casino, 835 P.2d 799, 801 (Nev.
2 1992). “[A] business owner owes its patrons a duty to keep the premises in a reasonably safe
3 condition for use.” Sprague v. Lucky Stores, Inc., 849 P.2d 320, 322 (Nev. 1993). A business
4 owner will be liable for breaching its duty to patrons if the business owner, or his or her agents,
5 cause a foreign substance to spill on the floor. Id. But if any other person causes the foreign
6 substance to spill on the floor, the business can only be liable if it had actual or constructive notice
7 of the foreign substance and did not remedy it. Id. at 322–23.

8 “[Q]uestions of negligence and proximate cause are generally questions of fact” that
9 become questions of law “only when the evidence will support no other inference.” Joynt, 835
10 P.2d at 801 (citation omitted). Thus, “courts are reluctant to grant summary judgment in
11 negligence cases because foreseeability, duty, proximate cause, and reasonableness usually are
12 questions of fact for the jury.” Lee v. GNLV Corp., 22 P.3d 209, 212 (Nev. 2001) (citation
13 omitted).

14 A genuine dispute remains in this case as to whether Defendant had constructive
15 knowledge of the spill. It is undisputed that Mr. Olmos walked through the area of the spill 16
16 seconds before Plaintiff walked through the area, slipped, and fell. It is further undisputed that
17 Mr. Olmos neither caused nor actually noticed the spill. A jury must decide whether Mr. Olmos
18 should have seen the spill or whether it was reasonable for him not to notice it. The Court therefore
19 denies summary judgment on this ground.

20 **b. Causation of Damages**

21 Under Federal Rule of Civil Procedure 26(a), a party must provide timely notice of the
22 identity of any witnesses it may use at trial. For witnesses who are not required to provide a written
23 report, the party must additionally disclose “(i) the subject matter on which the witness is expected
24 to present evidence under Federal Rule of Evidence 702, 703, or 705; and (ii) a summary of the
25 facts and opinions to which the witness is expected to testify.” Fed. R. Civ. P. 26(a)(2)(C).

26 Defendant argues that Plaintiff’s timely notice identifying four witnesses was insufficiently
27 detailed to meet the requirements under the Federal Rules and that without this expert testimony,
28 Plaintiff can raise no evidence of causation of damages. The Court finds that Plaintiff’s disclosures

1 in this case provided adequate notice under Rule 26. The Court therefore denies summary
2 judgment on this ground but would entertain a motion by Defendant requesting that Plaintiff
3 provide a more comprehensive disclosure prior to trial.

4
5 **IV. CONCLUSION**

6 **IT IS ORDERED** that Defendant's Motion for Summary Judgment re Breach (ECF No.
7 15) and Defendant's Motion for Summary Judgment re Damages (ECF No. 16) are **DENIED**.

8
9 DATED: September 24, 2018.

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RICHARD F. BOULWARE, II
13 **UNITED STATES DISTRICT JUDGE**