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**UNITED STATES DISTRICT COURT**  
**DISTRICT OF NEVADA**

Lucinda Ortiz,  
Plaintiff

v.

Bodega Latina Corporation, dba El Super,  
Defendant

Case No.: 2:18-cv-01012-JAD-NJK

**Order Granting Motions for  
Summary Judgment; Judgment**

[ECF Nos. 27, 28]

In this premises-liability action, Lucinda Ortiz claims that she was injured when she slipped on cherries in the produce section of an El Super grocery store.<sup>1</sup> The store moves for summary judgment on both of Ortiz's claims.<sup>2</sup> Because the store has demonstrated that summary judgment is proper, I grant its motions, enter summary judgment in its favor, and close this case.

**Background**

Ortiz asserts two claims in this removed action: (1) negligence/premises liability and (2) negligent hiring/supervision.<sup>3</sup> Her attorney has withdrawn, and she is proceeding pro se.<sup>4</sup> In two separate motions for partial summary judgment, El Super moves for summary judgment on both of Ortiz's claims.<sup>5</sup> Ortiz's response to those motions was due October 7, 2019.<sup>6</sup> She filed nothing, leaving both motions unopposed.

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<sup>1</sup> ECF No. 1-2.

<sup>2</sup> ECF Nos. 27, 28.

<sup>3</sup> ECF No. 1-2.

<sup>4</sup> ECF No. 39 (minutes).

<sup>5</sup> ECF Nos. 27, 28.

<sup>6</sup> See ECF No. 34 (setting response date at 10 days after ruling on counsel's motion to withdraw); ECF No. 39 (minutes reflecting court's order granting motion to withdraw on 9/27/19).

1 **Discussion**

2 Summary judgment is appropriate when the pleadings and admissible evidence “show  
3 there is no genuine issue as to any material fact and that the movant is entitled to judgment as a  
4 matter of law.”<sup>1</sup> When considering summary judgment, the court views all facts and draws all  
5 inferences in the light most favorable to the nonmoving party.<sup>2</sup> If reasonable minds could differ  
6 on material facts, summary judgment is inappropriate because its purpose is to avoid unnecessary  
7 trials when the facts are undisputed, and the case must then proceed to the trier of fact.<sup>3</sup>

8 If the moving party satisfies Rule 56 of the Federal Rules of Civil Procedure by  
9 demonstrating the absence of any genuine issue of material fact, the burden shifts to the party  
10 resisting summary judgment to “set forth specific facts showing that there is a genuine issue for  
11 trial.”<sup>4</sup> “To defeat summary judgment, the nonmoving party must produce evidence of a genuine  
12 dispute of material fact that could satisfy its burden at trial.”<sup>5</sup> The failure to oppose a motion for  
13 summary judgment does not permit the court to enter summary judgment by default, but the lack  
14 of a response is not without consequences.<sup>7</sup> As Rule 56(e) explains, “If a party fails . . . to  
15 properly address another party’s assertion of fact . . . the court may . . . consider the fact  
16 undisputed for purposes of the motion” and “grant summary judgment if the motion and

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20 <sup>1</sup> See *Celotex Corp. v. Catrett*, 477 U.S. 317, 330 (1986) (citing Fed. R. Civ. P. 56(c)).

21 <sup>2</sup> *Kaiser Cement Corp. v. Fishbach & Moore, Inc.*, 793 F.2d 1100, 1103 (9th Cir. 1986).

22 <sup>3</sup> *Warren v. City of Carlsbad*, 58 F.3d 439, 441 (9th Cir. 1995); see also *Nw. Motorcycle Ass’n v. U.S. Dep’t of Agric.*, 18 F.3d 1468, 1471 (9th Cir. 1994).

23 <sup>4</sup> *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 256 (1986); *Celotex*, 477 U.S. at 323.

<sup>5</sup> *Sonner v. Schwabe N. Am., Inc.*, 911 F.3d 989, 992 (9th Cir. 2018).

<sup>7</sup> *Heinemann v. Satterberg*, 731 F.3d 914, 917 (9th Cir. 2013).

1 supporting materials—including the facts considered undisputed—show that the movant is  
2 entitled to it . . . .”<sup>8</sup>

3 Applying these standards, El Super has demonstrated that it is entitled to summary  
4 judgment on both of Ortiz’s claims. Summary judgment on a negligence claim is appropriate  
5 when a party “negate[s] at least one of the elements of negligence.”<sup>9</sup> The elements are: “(1) the  
6 existence of a duty of care, (2) breach of that duty, (3) legal causation, and (4) damages.”<sup>10</sup> The  
7 Nevada Supreme Court explained in *Sprague v. Lucky Stores, Inc.* that “[t]he owner or occupant  
8 of property is not an insurer of the safety of a person on the premises, and in the absence of  
9 negligence, no liability lies.”<sup>11</sup> “An accident occurring on the premises does not of itself  
10 establish negligence.”<sup>12</sup> An owner or occupant of property is liable for injuries sustained in a  
11 slip-and-fall accident if it caused, knew about, or should have known about the hazard that  
12 caused the injury and failed to remedy it.<sup>13</sup>

13 Ortiz’s negligence claim fails for lack of evidence that El Super caused, knew about, or  
14 should have known about the floor produce that Ortiz claims she slipped on. El Super has  
15 demonstrated that the record is devoid of evidence that El Super employees caused the condition  
16 or had any reason to know about it. Ortiz’s failure to respond to the motion at all leaves her  
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20 <sup>8</sup> Fed. R. Civ. P. 56(e)(2) & (3); *Heinemann*, 731 F.3d at 917.

21 <sup>9</sup> *Foster v. Costco Wholesale Corp.*, 291 P.3d 150, 153 (Nev. 2012).

22 <sup>10</sup> *Sanchez ex rel. Sanchez v. Wal-Mart Stores, Inc.*, 221 P.3d 1276, 1280 (Nev. 2009).

23 <sup>11</sup> *Sprague v. Lucky Stores, Inc.*, 849 P.2d 320, 322 (Nev. 1993).

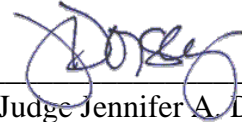
<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 322–23.



1 IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that defendant's motions  
2 for partial summary judgment [ECF Nos. 27, 28] are GRANTED.

3 JUDGMENT is HEREBY ENTERED in favor of the defendant and against the plaintiff.  
4 The Clerk of Court is directed to CLOSE THIS CASE.



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U.S. District Judge Jennifer A. Dorsey  
Dated: December 23, 2019

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