

**SUPREME COURT OF THE STATE OF NEW YORK**

**COUNTY OF [County Name]**

**[Plaintiff Name],**

Plaintiff,

-against-

**[Defendant Name],**

Defendant.

Index No.: [Index Number]

**NOTICE OF MOTION TO DISMISS PURSUANT TO CPLR 3211(a)(7)**

**PLEASE TAKE NOTICE**, that upon the Summons and Complaint dated [Date], the undersigned attorney for the Defendant, [Defendant Name], will move this Court at a Motion Term of this Court to be held at [Court Address], on [Date] at [Time], or as soon thereafter as counsel can be heard, for an order dismissing the Complaint filed herein, pursuant to CPLR 3211(a)(7), on the ground that the Complaint fails to state a cause of action, together with such other and further relief as to this Court may seem just and proper.

**GROUND FOR DISMISSAL**

The Complaint fails to state a cause of action for negligence against the Defendant because the Plaintiff has not adequately alleged the essential elements of a negligence claim under New York law.

● **Failure to Plead a Breach of Duty:**

- The Complaint alleges that the Defendant owed a duty to maintain a safe premises. While business owners do owe a duty to invitees, the Complaint does not sufficiently articulate facts demonstrating a breach of that duty by the Defendant. A mere allegation of a slip and fall due to a spill is insufficient.
- To establish a breach of duty in a slip-and-fall case, the Plaintiff must demonstrate that the Defendant either created the dangerous condition, had actual notice of it, or had constructive notice of it. \* *Rovello v. Orofino Realty Co.*\*, 40 N.Y.2d 633 (1976).
- "Constructive notice requires that the defect be visible and apparent and exist

for a sufficient length of time prior to the accident to permit defendant's employees to discover and remedy it." \* Gordon v. American Museum of Natural History\*, 67 N.Y.2d 836, 837 (1986).

- The Complaint fails to plead facts establishing that the Defendant had actual or constructive notice of the spilled olive oil.
- **Failure to Plead Causation:**
  - The Complaint must demonstrate a direct causal connection between the Defendant's alleged negligence and the Plaintiff's injuries. \* Bolta v. Equities Holding Corp.\*, 58 A.D.3d 446 (1st Dep't 2009).
  - The Complaint alleges the Plaintiff slipped and fell but does not provide sufficient factual allegations to link the Defendant's actions or inactions directly to that slip and fall. The Complaint lacks the specificity needed to establish proximate cause.

## **CONCLUSION**

For the foregoing reasons, the Complaint fails to state a cause of action for negligence. The Defendant respectfully requests that this Court grant this motion to dismiss the Complaint in its entirety, with costs and disbursements to the Defendant.

**Dated:** [Date]

[Attorney Name]

[Attorney Address]

[Attorney Phone Number]

[Attorney Email]

Attorney for Defendant

[Defendant Name]

**TO:**

[Plaintiff Attorney Name]

[Plaintiff Attorney Address]