



IN THE CIRCUIT COURT OF THE THIRTEENTH JUDICIAL CIRCUIT
IN AND FOR HILLSBOROUGH COUNTY, STATE OF FLORIDA
CIVIL DIVISION

PLAINTIFF

vs.

CASE NO.: 07-007928
DIVISION: F

DEFENDANT.

PLAINTIFF'S THIRD AMENDED COMPLAINT

COMES NOW the Plaintiff, by and through her undersigned attorney, and sues Defendants, and alleges:

General Allegations

1. This is an action for damages that exceeds Fifteen Thousand Dollars (\$15,000.00), exclusive of interest, costs and attorney's fees.
2. Plaintiff, was a resident of Hernando County, Florida.
3. Defendant, owns and operates the (the Mall) located at 8021 Citrus Park Town Center, Tampa, Hillsborough County, Florida. DEFENDANT was in possession of the premises and or had the right to control the premises with regard to unsafe conditions such as foreign substances on the floor.
4. Defendant, MENCIO INVESTMENTS d/b/a NUTTY BAVARIAN OF TAMPA, is a Florida corporation that leased space in the Mall, with an address of 7840 Citrus Park Town

Center Mall, Tampa, FL 33625. Hale does not have a complete copy of the lease. However, upon information and belief, MENCIO was in possession of the premises and or had the right to control the premises with regard to unsafe conditions such as foreign substances on the floor.

5. Defendant, TNB, INC. is a corporation organized under the laws of the state of Florida that contracted with MENCIO. Hale does not have a complete copy of the contract. However, upon information and belief, TNB was in possession of the premises and or had the right to control the premises with regard to unsafe conditions such as foreign substances on the floor.

6. Defendant, IPC INTERNATIONAL CORPORATION, is a foreign corporation doing business in the state of Florida and contracted with DEFENDANT, L.L.C. to provide security and safety services at the mall. Hale does not have a complete copy of the contract. However, upon information and belief, IPC was in possession of the premises and or had the right to control the premises with regard to unsafe conditions such as foreign substances on the floor. At a minimum IPC was required to do the following:

- Provide a secure and safe environment for all DEFENDANT... customers and visitors;

- Undertake patrols of the Shopping Center... to identify and deter...safety risks;

- Use best efforts to achieve reduced incidence of public liability accident claims;

- Notify janitors of any observed wet and dry spills;

7. Defendant, MILLARD INVESTMENT SERVICES, INC. f/k/a is a foreign corporation doing business in the state of Florida and contracted with DEFENDANT, L.L.C. to provide cleaning services at the mall. Hale does not have a complete copy of the contract. However, upon information and belief, MILLARD was in possession of the premises and or had

the right to control the premises with regard to unsafe conditions such as foreign substances on the floor. At a minimum MILLARD was required to do the following:

continually and diligently patrol and observe the maintenance are including especially... the walking surfaces of the Center, in order to detect and remove any ...debris spills or other hazardous conditions;

Maintain a radio communication link with Manager and Manager's security personnel; Place "Wet Floor" signs or take such other precautions as will warn persons in the area of hazardous conditions;

Immediately remove, mop or otherwise restore the affected area to a neat, safe and clean condition;

Have the primary obligation to guard against any hazard to person or property.

8. On or about October 8, 2004, Plaintiff was a business invitee at the Mall.

9. As Plaintiff was walking across the mall area in front of the NUTTY

BAVARIAN OF TAMPA kiosk, she slipped and fell in a puddle of liquid.

10. Upon information and belief, the puddle of liquid originated from the NUTTY

BAVARIAN OF TAMPA kiosk.

Count I- Negligent Maintenance Against Defendant DEFENDANT, L.L.C. f/k/a DEFENDANT Corporation, Inc. d/b/a DEFENDANT Citrus Park

11. Plaintiff adopts and re-alleges paragraphs one (1) through ten (10) above.

12. Defendant, DEFENDANT, L.L.C. f/k/a DEFENDANT CORPORATION, INC.

d/b/a DEFENDANT CITRUS PARK, had a duty to maintain the premises in a reasonably safe condition, free from dangerous conditions.

13. The puddle of liquid acted as a dangerous condition on the premises and was in that condition for enough time so that Defendant, DEFENDANT, L.L.C. f/k/a DEFENDANT CORPORATION, INC. d/b/a DEFENDANT CITRUS PARK, knew or should have known of the dangerous condition.

14. Defendant, DEFENDANT, L.L.C. f/k/a DEFENDANT CORPORATION, INC. d/b/a DEFENDANT CITRUS PARK, was negligent and breached the above-described duty including, but not limited to the following ways:

- a. failing to ensure the area was dry and free of liquid on the floor;
- b. failing to ensure the floor in the area did not have a slippery surface;
- c. failing to timely inspect the area; and
- d. failing to timely clean the area.

15. As a direct and proximate result of Defendant, DEFENDANT, L.L.C. f/k/a DEFENDANT CORPORATION, INC. d/b/a DEFENDANT CITRUS PARK'S negligence, Plaintiff fell, suffered bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings, loss of ability to earn money, aggravation of a previously existing condition. The losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

WHEREFORE, Plaintiff, PLAINTIFF, demands judgment for costs and damages against Defendant, DEFENDANT, L.L.C. f/k/a DEFENDANT CORPORATION, INC. d/b/a DEFENDANT CITRUS PARK, and demands a trial by jury on all issues so triable.

Count II- Negligent Failure to Warn Against Defendant DEFENDANT, L.L.C. f/k/a DEFENDANT Corporation, Inc. d/b/a DEFENDANT Citrus Park

16. Plaintiff adopts and re-alleges paragraphs one (1) through ten (10) above.

17. Defendant, DEFENDANT, L.L.C. f/k/a DEFENDANT CORPORATION, INC. d/b/a DEFENDANT CITRUS PARK, had a duty to warn of dangerous conditions.

18. Defendant, DEFENDANT, L.L.C. f/k/a DEFENDANT CORPORATION, INC. d/b/a DEFENDANT CITRUS PARK, was negligent and breached the above described duty including but not limited to the following ways:

- a. failing to warn of the liquid on the ground; and
- b. failing to warn of the slippery surface.

19. As a direct and proximate result of Defendant, DEFENDANT, L.L.C. f/k/a DEFENDANT CORPORATION, INC. d/b/a DEFENDANT CITRUS PARK'S, negligence, Plaintiff fell, suffered bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings, loss of ability to earn money, aggravation of a previously existing condition. The losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

WHEREFORE, Plaintiff, PLAINTIFF, demands judgment for costs and damages against Defendant, DEFENDANT, L.L.C. f/k/a DEFENDANT CORPORATION, INC. d/b/a DEFENDANT CITRUS PARK, and demands a trial by jury on all issues so triable.

Count III- Negligent Mode of Operation Against Defendant DEFENDANT, L.L.C. f/k/a DEFENDANT Corporation, Inc. d/b/a DEFENDANT Citrus Park

20. Plaintiff adopts and re-alleges paragraphs one (1) through ten (10) above.

21. Defendant, DEFENDANT, L.L.C. f/k/a DEFENDANT CORPORATION, INC. d/b/a DEFENDANT CITRUS PARK, had a duty to use reasonable care in its mode of operation of its business premises.

22. Defendant, DEFENDANT, L.L.C. f/k/a DEFENDANT CORPORATION, INC. d/b/a DEFENDANT CITRUS PARK, was negligent and breached the above described duty including, but not limited to the following ways:

- a. failing to have any system in place to regularly inspect and maintain the floors of the common area in the mall;
- b. failing to have a sufficient system in place to regularly inspect and maintain the floors in front of the Nutty Bavarian that takes into count the volume of traffic and likelihood of spilled liquid on the floor in the area where PLAINTIFF fell.
- c. failing to follow a system to regularly inspect the floors of the traffic area in the mall;

23. As a direct and proximate result of Defendant, DEFENDANT, L.L.C. f/k/a DEFENDANT CORPORATION, INC. d/b/a DEFENDANT CITRUS PARK'S, negligence, Plaintiff fell, suffered bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings, loss of ability to earn money, aggravation of a previously existing condition. The losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

WHEREFORE, Plaintiff, PLAINTIFF, demands judgment for costs and damages against Defendant, DEFENDANT, L.L.C. f/k/a DEFENDANT CORPORATION, INC. d/b/a DEFENDANT CITRUS PARK, and demands a trial by jury on all issues so triable.

Count IV- Negligent Maintenance Against Defendant TNB, Inc.

24. Plaintiff adopts and re-alleges paragraphs one (1) through ten (10) above.

25. Defendant, TNB, INC., had a duty to maintain the premises in a reasonably safe condition, free from dangerous conditions.

26. The puddle of liquid acted as a dangerous condition on the premises and was in that condition for enough time so that Defendant, TNB, INC., knew or should have known of the dangerous conditions.

27. Defendant, TNB, INC, was negligent and breached the above-described duty including, but not limited to the following ways:

- a. failing to ensure the area was dry and free of liquid on the floor;
- b. failing to ensure the floor in the area did not have a slippery surface;
- c. failing to timely inspect the area; and
- d. failing to timely clean the area.

28. As a direct and proximate result of Defendant, TNB, INC'S negligence, Plaintiff fell, suffered bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings, loss of ability to earn money, aggravation of a previously existing condition. The losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

WHEREFORE, Plaintiff, PLAINTIFF, demands judgment for costs and damages against Defendant, TNB, Inc., and demands a trial by jury on all issues so triable.

Count V- Negligent Failure to Warn Against Defendant TNB, Inc.

29. Plaintiff adopts and re-alleges paragraphs one (1) through ten (10) above.

30. Defendant, TNB, INC., had a duty to warn of dangerous conditions.

31. Defendant, TNB, INC., was negligent and breached the above described duty including but not limited to the following ways:

- a. failing to warn of the liquid on the ground; and
- b. failing to warn of the slippery surface.

32. As a direct and proximate result of Defendant, TNB, INC'S, negligence, Plaintiff fell, suffered bodily injury and resulting pain and suffering, disability, disfigurement, mental

anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings, loss of ability to earn money, aggravation of a previously existing condition. The losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

WHEREFORE, Plaintiff, PLAINTIFF, demands judgment for costs and damages against Defendant, TNB, INC., and demands a trial by jury on all issues so triable.

Count VI- Negligent Mode of Operation Against Defendant TNB, Inc.

33. Plaintiff adopts and re-alleges paragraphs one (1) through ten (10) above.

34. Defendant, TNB, INC., had a duty to use reasonable care in its mode of operation of its business premises.

35. Defendant, TNB, INC., was negligent and breached the above described duty including but not limited the following ways:

- a. failing to have any system in place to regularly inspect and maintain the floors of the common area in the mall;
- b. failing to have a sufficient system in place to regularly inspect and maintain the floors in front of the Nutty Bavarian that takes into count the volume of traffic and likelihood of spilled liquid on the floor in the area where PLAINTIFF fell.
- c. failing to follow a system to regularly inspect the floors of the traffic area in the mall;

36. As a direct and proximate result of Defendant, TNB, INC'S negligence, Plaintiff fell, suffered bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings, loss of ability to earn money, aggravation of a previously existing condition. The losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

WHEREFORE, Plaintiff, PLAINTIFF, demands judgment for costs and damages against Defendant, TNB, INC, and demands a trial by jury on all issues so triable.

Count VII- Apparent Agency Against TNB, Inc.

37. Plaintiff adopts and re-alleges paragraphs one (1) through ten (10) above. Defendant TNB, INC. held itself out in such a way that the general public and in particular PLAINTIFF concluded that Defendant, NUTTY BAVARIAN OF CITRUS PARK was its apparent agent.

38. Plaintiff, PLAINTIFF relied in part on representations made as a result of her viewing of the Defendant, NUTTY BAVARIAN OF CITRUS PARK kiosk and other similar kiosk's in other malls for her belief that the Defendant, MENCIO INVESTMENT CORPORATION d/b/a NUTTY BAVARIAN OF TAMPA was acting as the apparent agent of TNB, INC.

39. Defendant TNB, INC. is vicariously liable for the actions of its apparent agent Defendant, MENCIO INVESTMENT CORPORATION d/b/a NUTTY BAVARIAN OF TAMPA.

40. As a direct and proximate result of Defendant, TNB, Inc's actions, Plaintiff fell, suffered bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings, loss of ability to earn money, aggravation of a previously existing condition. The losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

WHEREFORE, Plaintiff, PLAINTIFF, demands judgment for costs and damages against Defendant, TNB, INC, and demands a trial by jury on all issues so triable.

Count VIII- Negligent Maintenance Against Defendant Mencio Investment Corporation d/b/a Nutty Bavarian of Tampa

41. Plaintiff adopts and re-alleges paragraphs one (1) through ten (10) above.

42. Defendant, MENCIO INVESTMENT CORPORATION d/b/a NUTTY BAVARIAN OF TAMPA had a duty to maintain the premises in a reasonably safe condition, free from dangerous conditions.

43. The puddle of liquid acted as dangerous conditions on the premises and was in that condition for enough time so that Defendant, MENCIO INVESTMENT CORPORATION d/b/a NUTTY BAVARIAN OF TAMPA, knew or should have known of the dangerous conditions.

44. Defendant, MENCIO INVESTMENT CORPORATION d/b/a NUTTY BAVARIAN OF TAMPA, was negligent and breached the above-described duty including, but not limited to the following ways:

- a. failing to ensure the area was dry and free of liquid on the floor;
- b. failing to ensure the floor in the area did not have a slippery surface;
- c. failing to timely inspect the area; and
- d. failing to timely clean the area.

45. As a direct and proximate result of Defendant, MENCIO INVESTMENT CORPORATION d/b/a NUTTY BAVARIAN OF TAMPA'S negligence, Plaintiff fell, suffered bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings, loss of ability to earn money, aggravation of a previously existing condition. The losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

WHEREFORE, Plaintiff, PLAINTIFF, demands judgment for costs and damages against Defendant, MENCIO INVESTMENT CORPORATION d/b/a NUTTY BAVARIAN OF TAMPA, and demands a trial by jury on all issues so triable.

Count IX- Negligent Failure to Warn Against Defendant Mencio Investment Corporation d/b/a Nutty Bavarian of Tampa

46. Plaintiff adopts and re-alleges paragraphs one (1) through ten (10) above.

47. Defendant, MENCIO INVESTMENT CORPORATION d/b/a NUTTY BAVARIAN OF TAMPA, had a duty to warn of dangerous conditions.

48. Defendant, MENCIO INVESTMENT CORPORATION d/b/a NUTTY BAVARIAN OF TAMPA, was negligent and breached the above described duty including but not limited to the following ways:

- a. failing to warn of the liquid on the ground; and
- b. failing to warn of the slippery surface.

49. As a direct and proximate result of Defendant, MENCIO INVESTMENT CORPORATION d/b/a NUTTY BAVARIAN OF TAMPA'S, negligence, Plaintiff fell, suffered bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings, loss of ability to earn money, aggravation of a previously existing condition. The losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

WHEREFORE, Plaintiff, PLAINTIFF, demands judgment for costs and damages against Defendant, MENCIO INVESTMENT CORPORATION d/b/a NUTTY BAVARIAN OF TAMPA, and demands a trial by jury on all issues so triable.

Count X- Negligent Mode of Operation Against Defendant Mencio Investment Corporation
d/b/a/ Nutty Bavarian of Tampa

50. Plaintiff adopts and re-alleges paragraphs one (1) through ten (10) above.

51. Defendant, MENCIO INVESTMENT CORPORATION d/b/a NUTTY BAVARIAN OF TAMPA, had a duty to use reasonable care in its mode of operation of its business premises.

52. Defendant, MENCIO INVESTMENT CORPORATION d/b/a NUTTY BAVARIAN OF TAMPA, was negligent and breached the above described duty including, but not limited to the following ways:

- a. failing to have any system in place to regularly inspect and maintain the floors of the common area in the mall;
- b. failing to have a sufficient system in place to regularly inspect and maintain the floors in front of the Nutty Bavarian that takes into count the volume of traffic and likelihood of spilled liquid on the floor in the area where PLAINTIFF fell.
- c. failing to follow a system to regularly inspect the floors of the traffic area in the mall;

53. As a direct and proximate result of Defendant, MENCIO INVESTMENT CORPORATION d/b/a NUTTY BAVARIAN OF TAMPA'S, negligence, Plaintiff fell, suffered bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings, loss of ability to earn money, aggravation of a previously existing condition. The losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

WHEREFORE, Plaintiff, PLAINTIFF, demands judgment for costs and damages against Defendant, MENCIO INVESTMENT CORPORATION d/b/a NUTTY BAVARIAN OF TAMPA, and demands a trial by jury on all issues so triable.

Count XI- Negligent Maintenance Against Defendant IPC International Corporation

54. Plaintiff adopts and re-alleges paragraphs one (1) through ten (10) above.

55. Defendant, IPC INTERNATIONAL CORPORATION, had a duty to maintain the premises in a reasonably safe condition, free from dangerous conditions.

56. The puddle of liquid acted as a dangerous condition on the premises and was in that condition for enough time so that Defendant, IPC INTERNATIONAL CORPORATION, knew or should have known of the dangerous condition.

57. Defendant, IPC INTERNATIONAL CORPORATION, was negligent and breached the above-described duty including, but not limited to the following ways:

- a. failing to ensure the area was dry and free of liquid on the floor;
- b. failing to ensure the floor in the area did not have a slippery surface;
- c. failing to timely inspect the area; and
- d. failing to timely clean the area.

58. As a direct and proximate result of Defendant, IPC INTERNATIONAL CORPORATION'S negligence, Plaintiff fell, suffered bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings, loss of ability to earn money, aggravation of a previously existing condition. The losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

WHEREFORE, Plaintiff, PLAINTIFF, demands judgment for costs and damages against Defendant, IPC INTERNATIONAL CORPORATION, and demands a trial by jury on all issues so triable.

Count XII- Negligent Failure to Warn Against Defendant IPC International Corporation

59. Plaintiff adopts and re-alleges paragraphs one (1) through ten (10) above.

60. Defendant, IPC INTERNATIONAL CORPORATION, had a duty to warn of dangerous conditions.

61. Defendant, IPC INTERNATIONAL CORPORATION, was negligent and breached the above described duty including but not limited to the following ways:

- a. failing to warn of the liquid on the ground; and
- b. failing to warn of the slippery surface.

62. As a direct and proximate result of Defendant, IPC INTERNATIONAL CORPORATION'S, negligence, Plaintiff fell, suffered bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings, loss of ability to earn money, aggravation of a previously existing condition. The losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

WHEREFORE, Plaintiff, PLAINTIFF, demands judgment for costs and damages against Defendant, IPC INTERNATIONAL CORPORATION, and demands a trial by jury on all issues so triable.

Count XIII- Negligent Mode of Operation Against Defendant IPC International Corporation

63. Plaintiff adopts and re-alleges paragraphs one (1) through ten (10) above.

64. Defendant, IPC INTERNATIONAL CORPORATION, had a duty to use reasonable care in its mode of operation of its business premises.

65. Defendant, IPC INTERNATIONAL CORPORATION, was negligent and breached the above described duty including, but not limited to the following ways:

- a. failing to have any system in place to regularly inspect and maintain the floors of the common area in the mall;
- b. failing to have a sufficient system in place to regularly inspect and maintain the floors in front of the Nutty Bavarian that takes into count the volume of traffic and likelihood of spilled liquid on the floor in the area where PLAINTIFF fell.
- c. failing to follow a system to regularly inspect the floors of the traffic area in the mall;

66. As a direct and proximate result of Defendant, IPC INTERNATIONAL CORPORATION'S, negligence, Plaintiff fell, suffered bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings, loss of ability to earn money, aggravation of a previously existing condition. The losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

WHEREFORE, Plaintiff, PLAINTIFF, demands judgment for costs and damages against Defendant, IPC INTERNATIONAL CORPORATION, and demands a trial by jury on all issues so triable.

Count XIV- Negligent Maintenance Against Defendant Millard Mall Services, L.L.C.

67. Plaintiff adopts and re-alleges paragraphs one (1) through ten (10) above.

68. Defendant, had a duty to maintain the premises in a reasonably safe condition, free from dangerous conditions.

69. The puddle of liquid acted as a dangerous condition on the premises and was in that condition for enough time so that Defendant, knew or should have known of the dangerous condition.

70. Defendant, was negligent and breached the above-described duty including, but not limited to the following ways:

- a. failing to ensure the area was dry and free of liquid on the floor;
- b. failing to ensure the floor in the area did not have a slippery surface;
- c. failing to timely inspect the area; and
- d. failing to timely clean the area.

71. As a direct and proximate result of Defendant, MILLARD MALL SERVICES, L.L.C.'S negligence, Plaintiff fell, suffered bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings, loss of ability to earn money, aggravation of a previously existing condition. The losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

WHEREFORE, Plaintiff, PLAINTIFF, demands judgment for costs and damages against Defendant, and demands a trial by jury on all issues so triable.

Count XV- Negligent Failure to Warn Against Defendant Millard Mall Services, L.L.C.

72. Plaintiff adopts and re-alleges paragraphs one (1) through ten (10) above.

73. Defendant, had a duty to warn of dangerous conditions.

74. Defendant, was negligent and breached the above described duty including but not limited to the following ways:

- a. failing to warn of the liquid on the ground; and

- b. failing to warn of the slippery surface.

75. As a direct and proximate result of Defendant, MILLARD MALL SERVICES, L.L.C.'S, negligence, Plaintiff fell, suffered bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and treatment, loss of earnings, loss of ability to earn money, aggravation of a previously existing condition. The losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

WHEREFORE, Plaintiff, PLAINTIFF, demands judgment for costs and damages against Defendant, and demands a trial by jury on all issues so triable.

Count XVI- Negligent Mode of Operation Against Defendant Millard Mall Services, L.L.C.

76. Plaintiff adopts and re-alleges paragraphs one (1) through ten (10) above.

77. Defendant, had a duty to use reasonable care in its mode of operation of its business premises.

78. Defendant, was negligent and breached the above described duty including, but not limited to the following ways:

- a. failing to have any system in place to regularly inspect and maintain the floors of the common area in the mall;
- b. failing to have a sufficient system in place to regularly inspect and maintain the floors in front of the Nutty Bavarian that takes into count the volume of traffic and likelihood of spilled liquid on the floor in the area where PLAINTIFF fell.
- c. failing to follow a system to regularly inspect the floors of the traffic area in the mall;

79. As a direct and proximate result of Defendant, negligence, Plaintiff fell, suffered bodily injury and resulting pain and suffering, disability, disfigurement, mental anguish, loss of capacity for the enjoyment of life, expense of hospitalization, medical and nursing care and

treatment, loss of earnings, loss of ability to earn money, aggravation of a previously existing condition. The losses are either permanent or continuing and Plaintiff will suffer the losses in the future.

WHEREFORE, Plaintiff, demands judgment for costs and damages against Defendant, and demands a trial by jury on all issues so triable.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the above has been sent by U.S. Mail this ____ day of October, 2008, to:

Scott Distasio, Esquire
Florida Bar No. 843652
DISTASIO LAW FIRM
2107 West Cass Street
Suite A
Tampa, Florida 33606
813/259-0022 Phone
813/259-0033 Fax
Attorney for Plaintiff