

written decision.

On August 28, 2020, Alice Dodd and Perry Dodd (collectively “the Dodds”) filed a Complaint for Damages and Demand for Jury Trial (“Complaint”) against Hagadone Hospitality Co. d/b/a the Coeur d’Alene Resort, the Hagadone Corporation, Hagadone Realty Inc., Doe Business Entities 1-10, and Doe Entities 1-10. On December 28, 2020, The Dodds filed a Notice of Dismissal of Defendants the Hagadone Corporation and Hagadone Realty, Inc. On June 2, 2021, the Court issued an Order to Dismiss Plaintiff Perry Dodd with Prejudice. Alice Dodd (“Ms. Dodd”) is suing the remaining defendant, Hagadone Hospitality Co. d/b/a the Coeur d’Alene Resort (“Hagadone”), for personal injuries she sustained in defendant Hagadone’s parking garage on her way to dine at a restaurant located on the premises. On December 30, 2020, defendant Hagadone filed its Answer to Complaint for Damages and Demand for Jury Trial. Ms. Dodd “demand[s] a trial by jury of no less than twelve (12) persons on all issues so triable pursuant to Idaho Rule of Civil Procedure 28(b).” Complaint 4. Hagadone requests the same. Answer to Complaint for Damages and Demand for Jury Trial (“Answer”) ¶ 41.

Ms. Dodd is a resident of Grant County, Washington. Hagadone is the “parent company for the Coeur d’Alene Resort”. Answer ¶ 2. On September 1, 2018, The Dodds drove their motorcycle to the Coeur d’Alene Resort to have dinner at Beverly’s, a restaurant owned and operated by Hagadone. Decl. Alice Dodd ¶ 3. The Dodds

jury, and any dispute as to whether the plaintiff was comparatively negligent would be a genuine issue of material fact, precluding summary judgment on the matter. See, e.g., *Brooks v. Wal-Mart Stores, Inc.*, 164 Idaho 22, 31, 423 P.3d 443, 452 (2018) (“While this is certainly a good argument for the jury, such a claim carries little weight at the summary judgment stage.”); *Van Brunt v. Stoddard*, 136 Idaho 681, 690, 39 P.3d 621, 630 (2001) (“Generally, a plaintiff’s conduct affecting his comparative responsibility is a question for the jury.”); *Ball v. City of Blackfoot*, 152 Idaho 673, 676, 273 P.3d 1266, 1269 (2012) (quoting *Harrison v. Taylor*, 115 Idaho 588, 596, 768 P.2d 1321, 1329 (1989)) (internal citation omitted) (“[D]isputes in this area will normally present a jury question under particular facts, *unless reasonable minds could not differ.*”) (emphasis added).

sought to park in the self-parking garage attached to the resort. *Id.* at ¶ 4. Perry Dodd, who was driving the motorcycle, pushed the ticket button, but no ticket was issued, and the gate did not raise. *Id.* at ¶ 5. He turned his motorcycle off “out of courtesy to others behind [them]”. *Id.* A resort employee, who was behind the Dodds, instructed Perry to push the call for help button, which he did. *Id.* at 6-7. The gate opened, and Perry turned his motorcycle back on and drove through the raised gate. *Id.* at ¶ 7. As the Dodds were passing through the gate, it lowered, hitting Ms. Dodd in the neck when she tried to push it away. *Id.* at ¶ 8.

Ms. Dodd alleges that Hagadone had a duty to Ms. Dodd, as an invitee, that Hagadone breached that duty, and that due to “Defendants’ tortious, negligent, and reckless acts or omissions, Plaintiff Alice Dodd was seriously injured.” Complaint ¶¶ 12-13. She seeks damages for:

past and future medical expenses, out-of-pocket expenses, lost wages, loss of consortium and other expenses and damages in excess of \$10,000, the exact amount to be proved at the time of trial. These damages further include physical pain and suffering, diminished ability to function at home and at work, anxiety, depression, frustration, and general upset.

Id. at ¶ 13.

On December 8, 2021, Hagadone filed its Defendant’s Motion for Summary Judgment, Memorandum in Support of Defendant’s Motion for Summary Judgment, and Declaration of Nick Buley in support of its motion. On December 21, 2021, Hagadone filed its Notice of Errata Re Memorandum in Support of Defendant’s Motion for Summary Judgment, correcting portions of the introduction section. On January 18, 2022, Ms. Dodd filed her Plaintiff’s Memorandum in Opposition to Defendant’s Motion for Summary Judgment, Plaintiff’s Statement of Material Facts in Dispute, Declaration of Melanie Baillie, Declaration of Leo Kalikstein, Declaration of Alice Dodd, and

Declaration of Avery Cheeley in support of her memorandum. On January 25, 2022, Hagadone filed a Reply Memorandum in Support of Defendant's Motion for Summary Judgment ("Reply in Supp. of Mot. for Summ. J."), Motion to Strike, Motion to Strike Portions of the Declaration of Avery Cheeley, and Motion to Strike the Declaration of Leo Kalikstein. On January 28, 2022, Ms. Dodd submitted her Plaintiff's Response to Defendant's Motions to Strike Portions of the Declaration of Avery Cheeley and the Declaration of Leo Kalikstein, thereby withdrawing the Kalikstein declaration.

At the February 1, 2022, hearing, the Court: granted Hagadone's Motion to Shorten Time, denied the motion to strike the Declaration of Avery Cheeley, and denied the Motion for Summary Judgment (indicating a written decision was forthcoming). This Opinion only addresses the Motion for Summary Judgment.

II. STANDARD OF REVIEW

Idaho Rule of Civil Procedure 56 governs motions for summary judgment. According to that Rule, summary judgment must be granted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." I.R.C.P. 56(a). A party asserting that there is no genuine dispute as to any material fact, or a party asserting that a genuine dispute exists, must support that assertion by "citing to particular parts of materials in the record" or "showing that the materials cited do not establish the absence or presence of a genuine dispute, or that an adverse party cannot produce admissible evidence to support the fact." *Id.*

If a party fails to properly support an assertion of fact or fails to properly address another party's assertion of fact as required by Rule 56(c), the court may:

- (1) give an opportunity to properly support or address the fact;
- (2) consider the fact undisputed for purposes of the motion;

(3) grant summary judgment if the motion and supporting materials, including the facts considered undisputed, show that the movant is entitled to it; or

(4) issue any other appropriate order.

Id. 56(e).

The burden of proof is on the moving party to demonstrate the absence of a genuine issue of material fact. *Rouse v. Household Fin. Corp.*, 144 Idaho 68, 70, 156 P.3d 569, 571 (2007) (citing *Evans v. Griswold*, 129 Idaho 902, 905, 935 P.2d 165, 168 (1997)). “Such an absence of evidence may be established either by an affirmative showing with the moving party’s own evidence or by a review of all the nonmoving party’s evidence and the contention that such proof of an element is lacking.” *Heath v. Honker’s Mini-Mart, Inc.*, 134 Idaho 711, 712, 8 P.3d 1254, 1255 (Ct. App. 2000) (citing *Dunnick v. Elder*, 126 Idaho 308, 311, 882 P.2d 475, 478 (Ct. App. 1994)). “A material fact is one upon which the outcome of the case may be different.” *Peterson v. Romine*, 131 Idaho 537, 540, 960 P.2d 1266, 1269 (1998).

Once the moving party meets their burden of establishing the absence of a genuine issue of material fact, the burden shifts to the non-moving party to provide specific facts showing there is a genuine issue for trial. *Kiebert v. Goss*, 144 Idaho 225, 228, 159 P.3d 862, 864 (2007) (citing *Hei v. Holzer*, 139 Idaho 81, 85, 73 P.3d 94, 98 (2003)). To do so, the non-moving party “must come forward with evidence by way of affidavit or otherwise that contradicts the evidence submitted by the moving party, and that establishes the existence of a material issue of disputed fact.” *Chandler v. Hayden*, 147 Idaho 765, 769, 215 P.3d 485, 489 (2009) (citing *Kiebert v. Goss*, 144 Idaho 225, 228, 159 P.3d 862, 865 (2007)). “Circumstantial evidence can create a genuine issue of material fact. . . . However, the non-moving party may not rest on a mere scintilla of evidence.” *Shea v. Kevic Corp.*, 156 Idaho 540, 545, 328 P.3d 520,

525 (2014) (quoting *Park West Homes, LLC v. Bamson*, 154 Idaho 678, 682, 302 P.3d 18, 22 (2013)).

In determining whether material issues of fact exist, all allegations of fact in the record and all reasonable inferences from the record are construed in the light most favorable to the party opposing the motion. *City of Kellogg v. Mission Mountain Interests Ltd., Co.*, 135 Idaho 239, 240, 16 P.3d 915, 919 (2000). When a jury is to be the finder of fact, summary judgment is not proper if conflicting inferences could be drawn from the record and reasonable people might reach different conclusions. *State Dep't of Fin. v. Res. Serv. Co., Inc.*, 130 Idaho 877, 880, 950 P.2d 249, 252 (1997).

Edmondson v. Shearer Lumber Prod., 139 Idaho 172, 176, 75 P.3d 733, 737 (2003).

III. ANALYSIS

Hagadone moves for summary judgment because:

there is no genuine dispute of material fact that Defendant is not liable for the damages alleged. Because the Plaintiff wrongfully entered on a motorcycle, she was not invitee [sic] and was owed no duty of care that conceivably was violated. In the alternative, . . . the gate arm functioned normally and properly, and [the Dodds] were responsible for [Ms. Dodd's] injury.²

Mem. in Supp. of Defs.' Mot. for Summ. J. ("Mem. ISO Mot. for Summ. J.") 3.

Specifically, Hagadone makes two primary arguments in its Motion for Summary Judgment: (1) that Hagadone owed no duty to Ms. Dodd because she exceeded the scope of her invitee status and became a trespasser, and the danger was not concealed; and (2) that if Hagadone had a duty, it did not breach it regardless of what status Ms. Dodd had. *Id.* at 11-13.

Ms. Dodd alleges that the following material facts are disputed: (1) "Whether motorcycles were prohibited from entering the parking garage"; (2) "Whether the Plaintiff and her husband were notified by the Defendant that they were prohibited from entering the parking garage on a motorcycle"; (3) "Whether Defendant permitted

² As stated above, although Hagadone appears to raise the issue of contributory negligence, no further mention is made of the issue in its brief, apart from the introductory sections. Therefore,

motorcycles into its parking garage”; (4) “Whether the signage Defendant claims was present at the time Plaintiff was injured is sufficient to establish that Plaintiff was not an invitee upon the Defendant’s premises”; (5) “Whether Defendant monitored who was entering the garage and informing motorcyclists they could not enter”; (6) “Whether Defendant gave a sufficient warning, or any warning at all, about the hazards of entering the garage on a motorcycle”; and (7) “Whether the actions of Plaintiff or her husband contributed to Plaintiff’s injuries.” Pls.’ Statement of Material Facts in Dispute 1-2.

A. There is a genuine issue of material fact regarding whether Hagadone owed a duty to Ms. Dodd as an invitee, licensee, or trespasser.

Hagadone concedes that the Dodds were initially invitees as commercial patrons on its premises. Mem. in Supp. of Mot. for Summ. J. 10-11. However, Hagadone alleges that Ms. Dodd became a trespasser because she exceeded the scope of her invitation by entering the premises on a motorcycle even though motorcycles were not allowed to park on the premises. *Id.* Hagadone alleges that no reasonable jury could find that Ms. Dodd did not exceed the scope of her status as an invitee, thus classifying her as a trespasser to whom no duty was owed. *Id.* at 11. Hagadone also argues that if Ms. Dodd was a licensee no reasonable jury could find that the “risk of a parking garage gate arm striking a person on a motorcycle—particularly under circumstances where the driver waits an inordinate amount of time before attempting to pass through the gate—is both ‘unknown’ and ‘not reasonably discoverable’” because “it is readily apparent that a mechanical traffic control device is [sic] meant to restrict the flow of automobiles could operate in such as way as to impact a person on a motorcycle.” *Id.* Hagadone supports this argument by adding:

the Court will not address this issue at length.

Anyone who has ever been inside a parking garage necessarily understands several key attributes of a gate arm such as this one, including that the arm must pivot up and down to fulfill its purpose of controlling access and that it must be stout enough to withstand an impact with an automobile. Thus, the risk that the gate arm could strike a motorcycle passenger, one who should not have even been there in the first place, is neither hidden nor concealed. No reasonably jury could find otherwise.

Id. at 13. Hagadone argues that they are not conceding that there is a genuine issue of material fact by alleging that Ms. Dodd could be either a licensee or a trespasser because “under either category her claim fails because she cannot show Defendant breached any applicable duty.” Mem. ISO Mot. for Summ. J. 11 n.3.

Ms. Dodd responds that she was an invitee because she “went to Defendant’s place of business to engage Defendant in the line of business it conducts. . . . Plaintiff went to Defendant’s resort to have dinner at Beverly’s, one of the restaurants that Defendant operates at its resort.” Mem. in Opp’n to Defs.’ Mot. for Summ. J. 3. Ms. Dodd further argues that Hagadone may not assert that all motorcycle drivers who enter its premises are trespassers because Hagadone “had no policies to prevent motorcycles from entering the garage” and “motorcycles routinely park in the resort with the knowledge of the Defendant and are not specifically ever prevented or warned not to enter the garage or the consequences of doing so by the Defendant.” *Id.* at 4 (citing Baillie Decl., Ex. 3 at 4, 6; Cheeley Decl.). She also argues that since Hagadone “cannot determine who is requesting to enter the gate from the bell desk where the manual switch is located[, i]f a motorcycle pushes the help button and the Defendant opens the gate for him or her, they are, in fact, inviting the individual upon the premises” as an invitee. *Id.*

To prevail on a negligence action in Idaho, a plaintiff must prove four elements:

“(1) a duty, recognized by law, requiring the defendant to conform to a certain standard of conduct; (2) a breach of that duty; (3) a causal connection between the defendant’s conduct and the resulting injury; and (4) actual loss or damage.”

Griffith v. JumpTime Meridian, LLC, 161 Idaho 913, 915, 393 P.3d 573, 575 (2017) (internal quotations and citation omitted [in original]). In general, “[e]very person has a general duty to use due or ordinary care not to injure others, to avoid injury to others by any agency set in operation by him, and to do his work, render services or use his property as to avoid such injury.” *Stephens v. Stearns*, 106 Idaho 249, 256, 678 P.2d 41, 48 (1984) (internal quotations and citations omitted [in original]). Generally, “[w]hether a duty exists is a question of law over which [an appellate court] exercises free review.” *Cumis Ins. Soc’y, Inc. v. Massey*, 155 Idaho 942, 948, 318 P.3d 932, 938 (2014).

Brooks v. Wal-Mart Stores, Inc., 164 Idaho 22, 27, 423 P.3d 443, 448 (2018).

The duty of a landowner to the person injured on the land turns on the status of the injured person. *Holzheimer v. Johannesen*, 125 Idaho 397, 399, 871 P.2d 814, 816 (1994). The status of the person injured on the land is divided into three categories: invitee, licensee, or trespasser.

Peterson v. Romine, 131 Idaho at 540, 960 P.2d at 1269. A “sliding scale of protection is provided to each.” *Oswald v. Costco Wholesale Corp.*, 167 Idaho 540, 551, 473 P.3d 809, 820 (2020).

An invitee is one who enters upon the premises of another for a purpose connected with the business conducted on the land, or where it can reasonably be said that the visit may confer a business, commercial, monetary or other tangible benefit to the landowner. *Wilson v. Bogert*, 81 Idaho 535, 347 P.2d 341 (1959). A landowner owes an invitee the duty to keep the premises in a reasonably safe condition, or to warn of hidden or concealed dangers. *Bates v. Eastern Idaho Regional Medical Center*, 114 Idaho 252, 253, 755 P.2d 1290, 1291 (1988).

Holzheimer v. Johannesen, 125 Idaho 397, 399-400, 871 P.2d 814, 816-17 (1994).

Invitees are owed the highest duty of care in premises liability, and there are two avenues for a plaintiff to establish that he is an invitee. A plaintiff can either establish that he was on the premises “for a purpose connected with the business conducted on the land,” or that “it can reasonably be said that the visit may confer a business, commercial, monetary or other tangible benefit to the landowner.”

Dupuis v. Eastern Idaho Health Services, Inc., 168 Idaho 648, ___, 485 P.3d 144, 150 (2021) (quotations omitted) (finding hospital visitors to be invitees because their visit was “connected with” the hospital’s business).

A licensee is a visitor who goes upon the premises of another with the consent of

the landowner in pursuit of the visitor's purpose. See *Pintock v. McCoy*, 48 Idaho 227, 281 P. 371 (1929); *Evans v. Park*, 112 Idaho 400, 732 P.2d 369 (Ct. App. 1987). Likewise, a social guest is also a licensee. *Wilson*, 81 Idaho at 545, 347 P.2d at 347. The duty owed to a licensee is narrow. A landowner is only required to share with the licensee knowledge of dangerous conditions or activities on the land. *Evans*, 112 Idaho at 401, 732 P.2d at 370. Additionally, this Court has held that "[t]he fact that a guest may be rendering a minor, incidental service to the host does not change the relationship [between them as a landowner and a licensee]." *Wilson*, 81 Idaho at 545, 347 P.2d at 851; see also *Mooney v. Robinson*, 93 Idaho 676, 471 P.2d 63 (1970).

Holzheimer, 125 Idaho at 399-400, 871 P.2d at 816-17. Trespassers, in contrast, are "those who go 'onto the land without permission, invitation or lawful authority'". *Oswald*, 167 Idaho at 551, 473 P.3d at 820. "[A] landowner has only a duty 'to refrain from willful or wanton acts which might cause injury' to trespassers. *Id.*

While the existence of a duty is ordinarily a question of law (*see supra; Turpen v. Granieri*, 133 Idaho 244, 247, 985 P.2d 669, 672 (1999) (citing *Freeman v. Juker*, 119 Idaho 555, 556, 808 P.2d 1300, 1301 (1991))), the Court is mindful that whether an invitee exceeded the scope of their invitation may be a question of fact for the jury "since the status of the visitor as an invitee may depend upon whether the possessor should have known that the visitor would be led to believe that a particular part of the premises is held open to him." Restatement 2d Torts § 332 cmt. (3)(l); *see also Oswald*, 167 Idaho at 555, 473 P.3d at 824 (citations omitted) ("whether or not the injured individual is trespasser, licensee, or invitee can be a jury question when the underlying facts of the nature of the relationship are disputed. But once those facts are established, the Court assesses the relationship and applied the correct duty.").

Additionally, if Ms. Dodd were found to be a trespasser, the question of whether Hagadone's conduct was willful or wanton is a question of fact for the jury to decide.

O'Guin v. Bingham County, 139 Idaho 9, 14, 72 P.3d 849, 854 (2003) (citing *Trennert v. Coe*, 4 Ill. App. 2d 166, 124 N.E.2d 79 (1955)).

The Court would like to point out that counsel for plaintiff has misstated the law in this regard in both her oral argument for this motion and in one of her briefs. In oral argument, she stated emphatically that the status of a plaintiff is a question for the jury. Similarly, she states in her response to defendant's motion to strike that "the factual issue regarding Plaintiff's status as an invitee, licensee, or trespasser is a factual issue for the jury." Pls.' Resp. to Defs.' Mot. to Strike the Declarations of Avery Cheeley and Leo Kalikstein 6. She cites to *Oswald v. Costco Wholesale Corp.*, 167 Idaho 540, 473 P.3d 809 (2020) to support this assertion. *Id.* However, this is clearly taken out of context, as that case makes clear that a plaintiff's status is a jury question only if "the underlying facts of the nature of the relationship are disputed." Thus, her blanket assertion that the status of a plaintiff will always be a question of fact for the jury is simply incorrect. Nevertheless, as discussed below, the Court finds the facts of this case underlying the nature of the relationship are in dispute, so in this particular case, the plaintiff's status is a question for the jury. Since the Court finds below that the issues of status and breach are questions for the jury, the Court declines to determine at the summary judgment phase what status Ms. Dodd had as a matter of law.

Ms. Dodd argues that if the Court finds she exceeded the scope of her invitation by entering the premises on a motorcycle, she should be classified as an "implied invitee" because she was "lured into Defendant's parking garage for a place to park while eating on its premises, when its agent opened the gate manually for the Plaintiff to enter the garage." *Id.* at 4-5. She also claims that the posted signs were inadequate to put Ms. Dodd on notice that she was considered a trespasser because the signs indicating that motorcycles were prohibited from using the parking garage were obscured and not readily legible. *Id.* at 5. Moreover, a valet employee, who was in line to enter the garage behind the Dodds, informed the Dodds that they should press the

call button to be able to enter the garage. *Id.* at 6. Additionally, an employee of Hagadone has stated that “motorcycles are permitted to enter the parking garage ‘all the time.’” *Id.* at 7.

Hagadone responds that Ms. Dodd:

did not articulate how Defendant lured or induced her to enter its parking garage, other than by noting that Defendant manually opened the gate. She does not contend – and nothing in her filings or the record permits an inference – that the valet who remotely opened the gate knew Plaintiff and her husband were on a motorcycle.

Reply in Supp. of Mot. for Summ. J. 6. It alleges that Ms. Dodd was a trespasser when she entered despite the warning signs (as are all motorcyclists who park in the garage) and that “if Defendant’s opening the gate remotely for Plaintiff – without knowing she was on a motorcycle – constitutes some form of consent, it would make her a licensee rather than a trespasser” and not an invitee. *Id.* at 7. Hagadone further responds, “Defendant’s act of opening the gate *at the request of Plaintiff’s husband* cannot reasonably be framed as ‘luring’ or ‘inducing’ her entry. Nor has Plaintiff presented any evidence whatsoever that the simple act of opening the gate – again, without knowing she was on a motorcycle – somehow constitutes an invitation.” *Id.* (emphasis in original).

“In order for a person injured on private property to be an implied invitee, the property owner must have lured the injured person onto the land.” *Peterson*, 131 Idaho at 541, 960 P.2d at 1270. In *Peterson*, the plaintiff parked in a parking spot that was marked for customers of a specific business, indicating that “Unauthorized Vehicles Will be Towed at Owner’s Expense,” although she was shopping at an adjacent business. 131 Idaho at 539, 960 P.2d at 1268. She tripped in a pothole in the parking lot and sued for her injuries. *Id.* She argued that she was an implied invitee because she had parked in these spots on previous occasions without being towed and because “the

respondents were part of a group of businesses trying to encourage business in downtown Lewiston, and that therefore the respondents were negligent because they failed to keep the parking lot in a reasonably safe condition.” *Id.* at 540-41, 960 P.2d at 1269-70. The Idaho Supreme Court found that she was not an implied invitee because she the signs were readily visible and obvious and she was a trespasser every time she parked in the lot, regardless of whether she had been towed and that her second argument had no merit. *Id.* at 541, 960 P.2d at 1270. The Idaho Supreme Court found that “the Landowners did not induce Peterson to park in their parking lot, and therefore Peterson was a trespasser” in this instance. *Id.*

In contrast, in *Pittman v. Sather*, 68 Idaho 29, 39, 188 P.2d 600, 606 (1947), the Idaho Supreme Court found that members of the public were invited to use an unfinished road because there were no signs or barricades indicating that there was an impending danger. The Court found that, while “under ordinary conditions respondents might be classed as trespassers,” they were “lulled into security in entering thereon by the appearance of the way and the lack of barricades or other warnings. *Id.* (citing *Folkins v. Johnston*, 124 Cal. App. 169, 173, 12 P.2d 153, 155 (1932)). The Idaho Supreme Court found that the plaintiff was an implied invitee because they believed the road was safe to travel on and was open to their vehicle. *Id.*

Here, Ms. Dodd claims that one of Hagadone’s employees lured the Dodds into the parking garage by opening the gate manually for them and allowing them to enter the garage. Mem. in Opp’n to Mot. for Summ. J. 4-5. She argues that this case distinguishes *Peterson* because there were no readily observable signs warning of a danger, nor were there any signs indicating that motorcycles would be towed from the premises. *Id.* at 5. She further argues that “When Plaintiff’s husband pressed the

button for assistance to enter the garage, Defendant gave no warnings of consequences of manually opening the gate, and no admonitions that motorcycles were prohibited from entering the garage. *Id.* at 5 (citing Baillie Decl., Ex. 1, Defendant's Answer to Interrogatory No. 11). Rather, she argues, Defendant allowed her inside the parking garage so that she could park there. *Id.* Finally, she argues that one of Hagadone's valet employees had instructed the Dodds to press the button to ask for help despite seeing that they were on a motorcycle, thus inviting them onto the premises as invitees. *See id.* at 6 (citing Baillie Decl., Ex. 2).

Based on these alleged facts, the Court finds that a reasonable jury could find that Ms. Dodd was an invitee based on these facts because no warning was given that they needed to enter the garage quickly to avoid risk of injury.³ Thus, there are genuine issues of material fact regarding this issue. While there are similarities to *Peterson*, there are also similarities to *Pittman*, and the Court will not rule on the status of Ms. Dodd as a matter of law at this stage in the proceedings.

B. There is a genuine issue of material fact regarding whether Hagadone breached its duty to Ms. Dodd and whether the posted signs are enough to satisfy a duty to warn patrons on motorcycles of danger.

Hagadone's second argument is that no reasonable jury could "find that Defendant breached a duty for failing to implement some alternative system to detect and allow for motorcycles to use the gate" because there were signs clearly indicating to patrons that motorcycles were not allowed in the parking garage. Mem. in Supp. of Mot. for Summ. J. 12-13. Additionally, Hagadone argues that:

"regardless of whether Plaintiff was an invitee, licensee, or trespasser, if Defendant warned of the allegedly dangerous condition, Defendant breached no duty owed to Plaintiff. The posted signage operates as a matter of law to satisfy any burden Defendant may have owed, and it is therefore entitled to summary judgment as a matter of law.

³ See also discussion *infra* regarding the sufficiency of posted signs

Reply Mem. in Supp. of Defs.' Mot. for Summ. J. 11 (emphasis in original).

Ms. Dodd responds that since Hagadone was aware that some of its patrons parked their motorcycles on the premises when visiting its place of business and that the parking gate posed a risk of closing on a motorcycle when opened manually, it had a duty to warn its patrons on motorcycles of the danger. Mem. in Opp'n to Defs.' Mot. for Summ. J. 8-9. Ms. Dodd responds that the signs do not suffice to warn of the danger because they were not clear and prominent. *Id.* at 9. Ms. Dodd further argues that Hagadone cannot claim that they did not know of the danger when they claim in their motion for summary judgment that Ms. Dodd should have known of the risk herself. *Id.* at 11-12.

Whether a defendant breached the standard of care owed to the plaintiff is a question of fact for the jury to decide. *Thomson v. Idaho Ins. Agency, Inc.*, 126 Idaho 527, 530, 887 P.2d 1034, 1037 (1994) ("disputed factual issues exist with respect to the breach of duty issue and whether Keller conducted himself as a reasonable broker would have under like circumstances"); *Hines v. Hines*, 129 Idaho 847, 934 P.2d 20 (1996) (finding that "the district court erred when it determined that no genuine issue of material fact existed regarding William's allegations that Linda owed William a fiduciary duty and that she breached that duty") (emphasis added); *Baccus v. Ameripride Services, Inc.*, 145 Idaho 346, 353, 179 P.3d 309, 316 (2008) (finding that because "Reasonable minds could differ regarding which inferences to draw from the above evidence . . . the question of whether Ameripride breached its duties is a question of fact for the jury and should not have been ruled upon as a matter of law on the motion for summary judgment"). Similarly, whether signs adequately satisfy a duty to warn licensees or trespassers is a question of fact for the jury to decide. See *Huyck v. Hecla*

Min. Co., 101 Idaho 299, 302, 612 P.2d 142, 145 (1980) (Justice Bistline, dissenting).

In *Huyck*, there were Forest Service signs posted on a private road, which gave the appearance to trespassers that the road was public, rather than private. *Id.* Since there were no “no trespassing” signs or other indications that the road was private and there was some evidence that the road was used by the public, Justice Bistline found in his dissent that there was a jury question “as to whether the road reasonably appeared to be a public road.” *Id.*

The Idaho Court of Appeals has found that the question of whether a generic warning sign is enough to meet a duty to warn in the context of a dog bite case is a question for the jury. *Boswell v. Steele*, 158 Idaho 554, 562, 348 P.3d 497, 505 (Ct. App. 2015). The Court finds that these facts also present a jury question because of the reasoning below.

Here, Hagadone has submitted several photographs of the parking garage to show that it has satisfied its duty to warn of danger and to indicate that motorcyclists are not invitees. Exhibit A depicts a photograph of the view one has when entering the parking garage. The photo shows two entry gates and a guard booth. The exit gate, adjacent to the entry gates, has a sign on it with some words and pictorial representations that do not appear to be readily legible upon entry to the garage. Above the entrance is a large sign that clearly reads, “Self Parking Resort Guests” in very large letters. Another sign is clearly legible, which reads, “PLEASE HAVE YOUR PARKING VALIDATED. PARKING PAY STATION LOCATED AT THE ENTRANCE OF THE RESORT. NO CASHIER ON DUTY AT PARKING GARAGE EXIT”, with medium-sized letters. Exhibit B shows a close-up of the sign printed on the back of the exit gate: “AUTOMOBILE TRAFFIC ONLY NO MOTORCYCLES (picture of motorcycle with

a line through it) BICYCLES (picture of a bicycle with a line through it) PEDESTRIANS (picture of a pedestrian being hit in the head by a lowering gate arm). While the sign is *visible* in the photograph in Exhibit A, it is not readily *legible*. Moreover, this sign is on the *back of the exit gate*, rather than on the front of the entrance gate. Exhibit C shows a photograph of the entry gates, slightly closer than Exhibit A, with two circles drawn around small signs on the front of the entrance gate arms. The signs are not legible in the photograph, although Nick Buley wrote in large font superimposed on the photograph, "Automobile Traffic Only". Exhibit D shows a closer photograph of the entrance gate arm, which reads, "AUTOMOBILE TRAFFIC ONLY". The sign is in the center of the gate arm and the font is approximately half the height of the gate arm. Neither party gives dimensions for any of the signs or of the gate arm, thus making it difficult for the Court to determine definitively that a reasonable jury *could not* find that the signs were adequate to indicate that the Dodds were trespassing by entering on their motorcycle. Importantly, the photograph in Exhibit D appears to show at least one motorcycle and a bicycle parked in the parking garage.

The Court finds that, although there were evidently some signs warning that motorcycles were not allowed in the garage, a reasonable jury could differ as to whether the signs shown in Exhibits A and C were adequate since they do appear small and less than obvious in some of the photographs provided by declarant Nick Buley. See Buley Decl., Ex. A, C. While the sign shown in Exhibit B is slightly more conspicuous, a jury could nevertheless find that it is inadequate because it is small, out of the direct line of sight one would expect to look when pressing the ticket or call for help button, and printed on the back of the exit gate, rather than the front of the entrance gate or within direct sight of the ticket buttons. Moreover, the fact that neither party gives any dimensions for any of the signs or of the gate arms makes it difficult for

the Court to determine definitively that a reasonable jury could find that the signs were adequate to indicate that the Dodds were trespassing by entering on their motorcycle. Additionally, Ms. Dodd has testified that she herself did not see any of the signs, and a former employee of Hagadone testified that (a) he drives a motorcycle and parks in the garage; (b) he “did not know there were signs at the entrance of the parking garage that state, ‘Automobile Traffic Only,’ and ‘No Motorcycles’”; (c) he “was not informed of the existence of those signs during [his] employment”; and (d) he was never “instructed to enforce a policy of ‘Automobile Traffic Only’ or ‘No Motorcycles’” while employed by Hagadone. Dodd Decl. 2 ¶ 9; Cheeley Decl. ¶¶ 9-10. A reasonable jury could likely determine that the signs were not adequate to give notice of the impending danger or to put motorcyclists on notice that they were no longer invitees. A reasonable jury could also determine that Hagadone rescinded its no-motorcycle policy by allowing motorcycles to park “in the parking garage on Defendant’s premises frequently, on multiple occasions, especially during the warmer months of the year when the weather was nice”, Cheeley Decl. ¶ 7, and because the photograph submitted into evidence by defendant Hagadone appears to show a motorcycle parked in the garage.

Because reasonable minds could differ, it is for the jury to decide whether a motorcyclists could reasonably believe that they could park in the garage as invitees, and, if not, whether the signs posted were enough to adequately warn a licensee or trespasser that the gate may suddenly close on a motorcyclist when an employee let them enter by pushing the button manually. There are also genuine issues of material fact pertaining to breach, and the Motion for Summary Judgment must be denied.

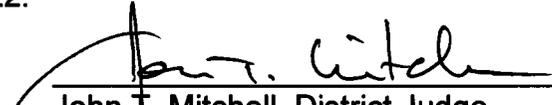
IV. CONCLUSION AND ORDER.

For the foregoing reasons, there are genuine issue of material fact which exist, and defendant Hagadone Hospitality Co.’s motion for summary judgment must be

denied.

IT IS HEREBY ORDERED defendant's Motion for Summary Judgment is
DENIED.

Entered this 28th day of February, 2022.


John T. Mitchell, District Judge

Certificate of Service

I certify that on the 28th day of February, 2022, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

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