STATE OF IDAHO)
County of KOOTENAI)ss

FILED 11/21/23

AT 11:43 O'Clock A M
CLERK OF DISTRICT COURT

Deputy

IN THE DISTRICT COURT OF THE FIRST JUDICIAL DISTRICT OF THE STATE OF IDAHO IN AND FOR THE COUNTY OF KOOTENAI

JEN HARTLEY, a single women,

Plaintiff,

vs.

JEREMY BORGES and JANE DOE BORGES, husband and wife and the marital community composed thereof.

Defendants.

Case No. **CV28-22-3067**

MEMORANDUM DECISION DENYING DEFENDANT'S MOTION FOR SUMMARY JUDGMENT, DENYING PLAINTIFF'S MOTION FOR ORDER TO CONTINUE TRIAL, AND GRANTING PLAINTIFF'S MOTION FOR ATTORNEY FEES AND COSTS

I. PROCEDURAL HISTORY AND FACTUAL BACKGROUND.

This matter is before the Court on the defendant's, JEREMY BORGES ("Borges"), Motion for Summary Judgment. Additionally in front of the Court today is the Plaintiff's, JEN HARTLEY ("Hartley") partially stipulated to Motion to Continue Trial. Further the plaintiff has an outstanding Motion for Attorney Fees and Costs, to which the defendant has objected.

Hartley filed a Complaint in this matter on May 26, 2022. In her Complaint, Hartley alleges both negligence on the part of Borges and strict liability under Idaho Code § 25-2810. Compl. 2, ¶¶ III, II. On June 22, 2022, Borges filed his Answer.

On October 7, 2022, Hartley filed a Motion to Compel. Hartley's Motion to Compel was heard and granted by this Court on November 1, 2022. Over one year later, on November 7, 2023, Hartley filed a Memorandum of Attorney Fees and Costs,

Declaration of Aaron Crary, and Affidavit of Aaron Cray in Support of Attorney Fees and Costs. There was not a Notice of Hearing submitted for this Motion.

On December 7, 2022, the parties filed a Stipulation to Amend Answer, and on December 19, 2022, Borges filed his First Amended Answer and request for Jury Trial. Thereafter, Borges filed a Second Motion to Amend Answer on May 10, 2023, "to allow him to amend his Answer to include [Michael] Rude as a possible liable party." Borges filed this Second Amended Answer on May 10, 2023. To date, Hartley has not filed suit against Michael Rude.

On October 18, 2023, Borges filed a Motion for Summary Judgment, supporting Declaration of Katie Merrill, and a separate Statement of Facts. On November 6, 2023, Hartley filed her Response to Motion for Summary Judgment. On November 14, 2023, Borges filed his Reply In Support of Motion for Summary Judgment.

On October 27, 2023, Hartley filed a Motion for Order to Continue Trial Date. Borges filed a Limited Stipulation to this Motion on November 6, 2023. On November 14, 2023, Hartley filed her Reply to Motion for Order to Continue Trial Date.

The facts of Borges' Motion for Summary Judgment were undisputed by Hartley, who did not summit any fact section in her Reponses to Defendant's Motion for Summary Judgment, nor did she summit any separate statement of fact. Thus, for purposes of this Motion for Summary Judgment, the facts are as follows:

> This incident took place on April 16, 2022, during a gathering at Plaintiff's brother's home in Athol, Idaho. Defendant's Statement of Facts ("DSF") ¶ 1. Plaintiff's brother is Matthew Rude. *Id.* Defendant Jeremy Borges has resided in Athol, Idaho, for many years, and has been friends with Plaintiff and her family for many years. DSF ¶¶ 2, 6, 8. Jeremy has two dogs that accompany him many places – heelers Rocky and Lexi. DSF ¶¶ 3-5, 7. The dog at issue in this case is Lexi.
>
> Prior to April 16, 2022, Jeremy had taken Lexi to Matt's house multiple times. DSF ¶¶ 9-10. Matt had never had any issues with Lexi

> coming to his house. She was familiar there and he had never seen the dog display aggressive behaviors. DSF ¶¶ 10-13.
>
> Jen and her daughter both played with Lexi throughout the evening and did not observe any vicious or aggressive tendencies. DSF ¶¶ 14-17. Katelin noted that she observed Lexi the heeler nipping playfully at other dogs present. DSF ¶ 17.
>
> Jen was bit at approximately 10:00 p.m. DSF ¶ 18. The specific circumstances of the bite incident are the subject of dispute and are not at issue in this motion. Defendant's motion focuses on the lack of notice of vicious or dangerous tendencies prior to the bite incident.

Def.'s Mot. for Summ. J. and Mem. in Supp. 2. The "specific circumstances" surrounding the bite that are disputed by the parties include if Lexi was being aggressive during the barbeque, if Borges was aware of Lexi's behavior, and if there was provocation by Hartley prior to the bite.

Thus, while labeled as a Motion for Summary Judgment, Hartley's motion is really a Motion for Partial Summary Judgment.

The matter came for hearing in front of this Court on November 21, 2023. Thereafter, the Court announced its decision. This Memorandum Decision and Order is to further clarify the decision's set forth on the record.

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. Barnson*, 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

Borges files his Motion for Summary Judgment arguing that Hartley's claims fail as a matter of law because there is no evidence that Lexi had displayed vicious or dangerous tendencies prior to the incident, and additionally, Borges argues for a dismissal Hartley's strict liability claim because he asserts there is no cause of action for strict liability provided for in Idaho Code § 25-2810. Def.'s Mot. for Summ. J. and Mem. in Supp. 1. In response, Hartley claims that Borges argues with overruled case law related to Idaho Code § 25-2810, and that there is a genuine issue of material fact related to the dog's prior aggression that precludes summary judgment, because there is evidence of the vicious and dangerous tendencies of Lexi. Pl.'s Resp. to Mot. for Summ. J. 2.

While this Court disagrees with the plaintiff's legal assertions, as discussed below, the Court agrees with plaintiff's claim that there are issues of material fact that preclude summary judgment. Thus, defendant's Motion for Summary Judgment is denied.

A. Defendant's Motion for Summary Judgment as it Relates to the Plaintiff's Negligence Claim is Denied because there is a Dispute of Material Fact Precluding Judgment.

1. The Relevant Subsection of Idaho Code § 25-2810 was not affected by the 2019 Amendment, as argued by Plaintiff.

In the plaintiff's response pleading, Hartley argues that in 2019, the Idaho legislature enacted the provision in Idaho Code § 25-2810 regarding civil liability. *See* Pl.'s Resp. to Def.'s Mot. for Summ. J. 3-6, ¶ A. However, the subsection referenced provided in 2016 that:

> (10) Any dog that physically attacks, wounds, bites or otherwise injures any person who is not trespassing, when such dog is not physically provoked or otherwise justified pursuant to subsection (3) of this section or as set forth in section 25-2808, Idaho Code, subjects either its owner or any person who has accepted responsibility as the possessor, harborer or custodian of the dog, or both, to civil liability for the injuries caused by the dog. A prior determination that a dog is dangerous or at-risk, or subject to any court order imposing restrictions or requirements pursuant to the provisions of this section, shall not be a prerequisite to civil liability for injuries caused by the dog.

Idaho Code Ann. § 25-2810; S.L. 2016, ch. 285, § 4, eff. March 30, 2016. In comparison, the current relevant subsection of Idaho Code § 25-2810 provides:

> (11) Any dog that physically attacks, wounds, bites or otherwise injures any person who is not trespassing, when such dog is not physically provoked or otherwise justified pursuant to subsection (5) of this section or as set forth in section 25 -2808, Idaho Code, subjects either its owner or any person who has accepted responsibility as the possessor, harborer, or custodian of the dog, or both, to civil liability for the injuries caused by the dog. A prior determination that a dog is dangerous or at

> risk, or subject to any court order imposing restrictions or requirements pursuant to the provisions of this section, shall not be a prerequisite to civil liability for injuries caused by the dog.

Idaho Code Ann. § 25-2810. These nearly identical sections differ only with the internal subsection referenced.

In the plaintiff's briefing on the matter, she emphasizes the last line of the subsection: "**A prior determination that a dog is dangerous or at risk, or subject to any court order imposing restrictions or requirements pursuant to the provisions of this section, shall not be a prerequisite to civil liability for injuries caused by the dog.**" Pl.'s Resp. to Def.'s Mot. for Summ. J. 3. (emphasis in original). However, as pointed out before, this emphasized sentence is also present in the 2016 version of Idaho Code § 25-2810.

To accentuate the point, the plaintiff compares this case to *State v. Wenk*, 533 P.3d 1016, 1019 (Ct. App. 2023). The Court in *Wenk* discussed the criminal liability under Idaho Code § 25-2810, more specifically subsection (7), after the defendant was issued a citation for maintaining an at-risk dog. 533 P.3d at 1017–18. This is in comparison to the matter at hand which discusses the civil liability under subsection (11).

The fact that *Wenk* discusses only the criminal liability of Idaho Code § 25-2810, and not the civil liability, is emphasized by the Court in the conclusion: "Idaho Code Section 25-2810 does not require a prior court order declaring the dog dangerous or at-risk as a prerequisite to criminal liability." *Id.*, 533 P.3d at 1020–21. (emphasis added). (*See also* "Wenk asserts that a previous court order declaring a dog dangerous or at-risk is a condition precedent to imposing criminal liability under I.C. § 25-2810 and that imposing criminal liability without a previous court order renders the statute an unlawful

strict liability crime." *Id.* at 533 P. 3d 1018 (emphasis added); ". . . a person commits the crime of maintaining a dangerous or at-risk dog if. . ." *Id.* at 533 P.3d 1019 (emphasis added); "The citation filed in this case charged Wenk with a violation of I.C. § 25-2810 based on an at-risk dog." *Id.* (emphasis added)). This Court finds the *Wenk* case is not applicable in this matter.

In the plaintiff's briefing, she also alleges that the defendant, "has cited to a handful of cases that were decided before Idaho Code § 25-2810 took effect to argue there should be a prior at-risk determination." Pl.'s Resp. to Mot. for Summ. J. 5. As discussed above, the plaintiff is incorrect in her assertion that Idaho Code § 25-2810 was enacted in 2019. Thus, this argument is unavailing.

2. There are Genuine Issues of Material Fact that Precludes Granting Defendant's Motion for Summary Judgment related to Plaintiff's Negligence Claim.

As the defendant acknowledges in his Motion for Summary Judgment, there are still disputed facts related to the situation surrounding the bite. These disputed facts include if Borges was told prior to the incident that Lexi was displaying dangerous tenancies. This is a genuine issue of material fact because without this knowledge, Borges cannot be held liable. As such, this is a genuine issue of material fact that precludes a motion for summary judgment regarding liability.

Defendant's Motion for Summary Judgment as it relates to the Plaintiff's negligence claim is denied.

B. Defendant's Motion for Summary Judgment as it Relates to the Plaintiff's claim for Strict Liability is denied because there is a Dispute of Material Fact.

1. While not labeled as such, for purposes of determination of liability, Idaho Code § 25-2810 provides for a cause of action for Strict Liability.

The parties argue what the correct analysis for liability is under Idaho Code § 25-2801. In part, the plaintiff argues for strict liability in her complaint, but pivots to negligence per se in her response to defendant's Motion for Summary Judgment. Pl.'s Resp. to Mot. for Summ. J. 3. In comparison, the defendant argues that neither negligence per se or strict liability is applicable under Idaho Code § 25-2801. Def.'s Mot. for Summ. J. 5.

The Idaho Supreme Court has discussed this issue:

> In *Boswell*, the Idaho Supreme Court "adopted a rule that an owner of a domesticated animal will be liable for injuries it causes if the owner had prior knowledge, or should have known, of the animal's dangerous propensity. It is the elements of the cause of action that are significant, not a label of strict liability or negligence." *Boswell*, 158 Idaho at 561, 348 P.3d at 504 (discussing *McClain v. Lewiston Interstate Fair & Racing Ass'n*, 17 Idaho 63, 104 P. 1015 (1909)). The Idaho Supreme Court recently confirmed the elements of liability for domestic animals set forth in *Boswell*:
>
> > In the context of liability for domestic animals, duty is governed by "a rule of law lacking the ordinary care scienter requirement of negligence when owners of domestic animals know of vicious tendencies. In cases where a domestic animal is not trespassing, the owner of the animal is *liable* for injuries caused if the owner knew or should have known of the animal's vicious or dangerous tendencies."

Bright v. Maznik, 162 Idaho 311, 315, 396 P.3d 1193, 1197 (2017) (quoting *Boswell*, 158 Idaho at 560, 348 P.3d at 503) (emphasis added). The *Boswell* Court, a year after *Bright*, stated, quoting to *McClain v. Lewiston Interstate Fair & Racing Association*, 17 Idaho 63, 79, 104 P. 1015, 1020 (1909), that:

> If domestic animals, such as oxen and horses, injure anyone, in person or property, *if they are rightfully in the place where they do the mischief*, the owner of such animals is not liable for such injury, unless he knew that they were accustomed to do mischief. And in suits for such injuries, such knowledge must be alleged, and proved. For unless the owner knew that

> the beast was vicious, he is not liable. If the owner had such knowledge he is liable.

Boswell v. Steele, 164 Idaho 208, 211, 428 P.3d 218, 221 (2018). *See also Braese v. Stinker Stores, Inc.*, 157 Idaho 443, 337 P.3d 602 (2014), wherein the Idaho Supreme Court stated that "an owner is liable for injuries caused by a domesticated animal where the owner knew or should have known of the animal's vicious or dangerous propensity." *Id.* at 157 Idaho at 446, 337 P.3d at 605.

Thus, while no binding court has called the standard "strict liability," it is clear from Idaho case law that an equivalent of strict liability is applicable here. This is consistent with the Idaho Court of Appeal's determination of the issue:

> We do not think it necessary to adopt that label [of strict liability]. It is sufficient to say that the Idaho Supreme Court has adopted a rule that an owner of a domesticated animal will be liable for injuries it causes if the owner had prior knowledge, or should have known, of the animal's dangerous propensity. It is the elements of the cause of action that are significant, not a label of strict liability or negligence.

Boswell v. Steele, 158 Idaho 554, 561, 348 P.3d 497, 504 (Ct. App. 2015).

Finally, this interpretation is consistent with the applicable footnote of *State v. Wenk*:

> . . . "under common law, all dogs, regardless of breed or size, are presumed to be harmless domestic animals." . . . this presumption "can be overcome by evidence of a known vicious or dangerous propensity of the particular dog." 4 Am. Jur. 2d *Animals* § 76 (2018). "The owner or keeper of a dog who knows of any vicious or dangerous propensity of the dog is required to use reasonable care in those circumstances to prevent the animal from causing injury." *Id.* Moreover, "the owner of a dog is expected to use reasonable care to prevent injury that might result from natural propensities of dogs." *Id.* To the extent necessary, the Idaho Dangerous and At-Risk Dogs Act is consistent with the common law.

Wenk, 533 P.3d at 1020, n.4. (citing to *Braese v. Stinker Stores, Inc.*, 157 Idaho 443, 445, 337 P.3d 602, 604 (2014) and 4 Am. Jur. 2d *Animals* § 75 (2007)).

Thus, the question presented to the Court to determine liability is if the owner had prior knowledge or should have had prior knowledge of the domesticated animal's dangerous propensity. If the owner had prior knowledge, or should have had prior knowledge, the owner is civilly liable.

2. There are Genuine Issues of Material Fact that Precludes Granting Defendant's Motion for Summary Judgment related to Plaintiff's Strict Liability Claim.

As discussed above, there is a genuine issue of material fact that precludes granting the Defendant's Motion for Summary Judgment. In the context of the Plaintiff's claim for strict liability, this disputed fact precludes determination on the required knowledge requirement.

All allegations and reasonable inferences in the record are to be constructed in the light most favorable to Hartley as the non-moving party. *Edmondson*, 139 Idaho at 176, 75 P.3d at 737. Borges holds the burden of showing an absence of genuine issue of material fact. *Kiebert,* 144 Idaho at 228, 159 P.3d at 864. Borges has not met this burden. In his Statement of Facts in Support of Motion for Summary Judgment, Borges provides that:

10. Lexi had been to Matt's house multiple times. *Rude Dep.* at 9:13-15, 13:2-4; *Borges Dep.* at 17:18-18:6.
11. Matt has never had any issues with Lexi coming to his house, and she was familiar there. *Rude Dep.* 13:2-11.
12. Matt has never seen Lexi display aggressive behaviors and did not have any concerns about her being at his house on the day of the incident. *Rude Dep.* at 17:8-23.
13. Matt has never had to ask Jeremy to take Lexi home or have her leave the property. *Rude Dep.* at 20:14-15.
14. Jen interacted with the dogs at the gathering repeatedly and did not observe any aggressive or violent tendencies from Lexi. *Hartley Dep.*

at 26:2-15, 26:19-27:1.

15. Jen liked Lexi and during the conversation with Jeremy wanted to purchase the dog. *Hartley Dep.* 27:7-12, 27:19-20; *Borges Dep.* 46:2-47:3.
16. Katelin Hartley also interacted regularly with the dogs, playing with them. *K.Hartley Dep.* at 17:21-23.

Def.'s SOF in Supp. of Mot. for Summ. J. 2, ¶¶ 10-16. None of the alleged facts provide for Borges' knowledge of the "aggressive behaviors;" instead, focusing on the knowledge of the third parties or the plaintiff. Hartley, on the other hand, provides:

> Greg Ford, neutral witness present at the barbecue the night of the incident, witnessed multiple instances of vicious, aggressive, biting behavior from the Defendant's dog, Lexi. Greg testified that, prior to the night of the barbecue, Lexi would always growl and snarl at anybody who tried to touch her. At the barbecue, prior to the bite, Greg witnessed Lexi being aggressive towards other dogs. Also prior to the dog bite, Greg witnessed Lexi bite his own dog, causing his dog to yelp. When this happened, Greg informed the Defendant, Mr. Borges, of the bite, reiterating that Lexi was being aggressive and inappropriate. In response, Mr. Borges told Greg to kick Lexi if she was misbehaving. After that, Greg witnessed Lexi being aggressive towards other dogs throughout the night.
>
> Mr. Borges also confirmed Lexi's prior dangerous tendencies. Mr. Borges testified that his dog "nipped" Plaintiffs face with his mouth, cutting her face and causing an open bleeding wound. Mr. Borges testified that it's common for his dogs to nip. Mr. Borges testified that it wouldn't have been uncommon for Lexi to nip the night of the barbecue. Mr. Borges testified that Lexi has nipped in the past. In fact, just days after the dog bite, Mr. Borges' son stated to Matt Rude and Mr. Borges that in the past Lexi would bite if she felt scared or was hurt.

Pl.'s Resp. to Mot. for Summ. J. (citing to Decl. of Aaron Crary) (internal citations omitted). All allegations and reasonable inferences in the record are to be constructed in the light most favorable to Hartley as the non-moving party. *Edmondson*, 139 Idaho at 176, 75 P.3d at 737. Borges holds the burden of showing an absence of genuine issue of material fact. *Kiebert,* 144 Idaho at 228, 159 P.3d at 864. Borges has not met this burden. With such, there is a genuine issue of material fact that precludes summary judgment, and the motion is denied.

IV. ATTORNEY FEES ON PLAINTIFF'S MOTION TO COMPEL

On October 7, 2022, plaintiff filed a Motion and Memorandum to Compel Discovery and Production. Defendant represented himself at that time, and did not respond. On November 1, 2022, this Court heard oral argument on this motion, at the conclusion of which, this Court granted plaintiff's Motion to Compel, ordered defendant to respond to discovery, and awarded plaintiff attorney fees against defendant for bringing the Motion. On November 7, 2023, a year and a week after the Court awarded attorney fees, plaintiff finally filed a Memorandum of Costs and Attorney Fees, and an Affidavit of Aaron Crary in Support of Attorney Fees. This Court notes there is no time limit on the filing of a Memorandum of Costs and Fees. Defendant's argument the memorandum is untimely (Resp. and Obj. to Amount of Attorney Fees, 1, n.1) is without merit. When plaintiff filed her memorandum and affidavit, no notice of hearing was filed. Defendant has objected to this lack of hearing. *Id.* at 1. The Court finds a hearing is not required. I.R.C.P. 54(d)(5), (e)(5) and (6), I.R.C.P. 7(b)(3)(A). The Court finds plaintiff complied with the time requirements of I.R.C.P. 7(b)(3)(A), and the Court finds defendant untimely filed their Response and Objection to Amount of Attorney Fees on November 17, 2023, but no prejudice was demonstrated by plaintiff. The matter of attorney fees is at issue. For the reasons stated on the record, the Court reduces plaintiff's required amount of $2,665.00 to $1,260.00.

V. PLAINTIFF'S MOTION FOR ORDER TO CONTINUE TRAIL DATE IS DENIED.

On October 27, 2023, plaintiff filed a Motion to Continue Trial Date (currently set for March 11, 2024), and a Declaration of Jen Hartley. On November 6, 2023, defendant filed their Response and Limited Stipulation to Continue. On November 14,

2023, plaintiff field Plaintiff's Reply to Motion for Order to Continue Trial Date and Declaration of Aaron Crary in Support of Continuance Reply.

Plaintiff claims that nineteen months after the dog bite, she does not know the extent of her injury. Decl. or Jen Hartley 1, ¶ 3; 2 ¶¶ 4, 5. The permanency of any injury is subject to expert testimony, if properly disclosed and foundation is provided for such opinion.

The trial in this case was originally scheduled to begin on April 10, 2023. This was set for the date at the plaintiff's request. Less than three months before that date, the parties filed a stipulation to continue the trial until the fall of 2023. The Court granted such, and scheduled trial to begin on September 3, 2023. On June 5, 2023, three months before the new trial date, the parties again filed a stipulation to continue trial to March 11, 2024, which the Court granted. Thus, the trial has already been continued two times. This Court finds no valid reason exists for a third continuance. Plaintiff's Motion for Order to Continue Trial Date is denied.

VI. CONCLUSION AND ORDER.

For the foregoing reasons,

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

IT IS FURTHER ORDERED, Plaintiff's Motion for Order to Continue Trial Date is **DENEID.**

IT IS FURTHER ORDERED, Plaintiff's Motion for Attorney Fees is **GRANTED** in the amount of $1,260.00.

Entered this 21st day of November, 2023.

John T. Mitchell, District Judge

Certificate of Service

I certify that on the 21 day of November, 2023, a true copy of the foregoing was mailed postage prepaid or was sent by interoffice mail or facsimile to each of the following:

Lawyer	email	Lawyer	email
Kent Neil Doll, Jr. Katie L. Merrill *Attorneys for Defendant*	kdoll@thekndlawfirm.com katie@thekndlawfirm.com	Aaron A. Crary *Attorney for Plaintiff*	acrary@ccdlaw.com

for
Jeanne Clausen, Deputy Clerk