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STATE OF MINNESOTA DISTRICT COURT

COUNTY OF WADENA SEVENTH JUDICIAL DISTRICT

PERSONAL INJURY

Macy Wynn,

Plaintiff,

v.

Moment in Time Dance Company, LLC,

Defendant.

Court File No.: 80-CV-26-78

Plaintiff's Memorandum of Law in Response to Defendant's Motion for Summary Judgment

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Introduction

Defendant asks the Court to decide both liability and damages based on a few lines of testimony from Ms. Wynn's deposition. On liability, Defendant takes Ms. Wynn's general acknowledgment that a dance maneuver "might not go right" and asks the Court to treat it as conclusive proof that she voluntarily assumed the risk of her injury. On damages, Defendant takes Ms. Wynn's answers to defense counsel's questions about her condition at the time of the deposition and treats them as a complete bar to all future harm.

Defendant's approach fails as a matter of law. Implied primary assumption of risk is reserved for a few historically recognized activities, and the Minnesota Supreme Court has directed lower courts not to extend it beyond those limited settings. An instructor-led dance rehearsal involving minor students falls outside the doctrine's

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limited reach. Minnesota has never recognized implied primary assumption of risk in a case like this, and Defendant identifies no decision from here or anywhere else in the country applying the doctrine to dance instruction or rehearsal. Even if the doctrine could extend that far, the facts of this case do not fit it—much less establish every required element as a matter of law.

Defendant's request to eliminate future damages likewise depends on viewing selected testimony in isolation and misapplying the law. The jury must be permitted to evaluate future harm from the complete evidentiary record, including medical evidence, treatment records, and testimony from Ms. Wynn, her family, and other witnesses. Defendant's future damages argument requires the Court to disregard all context, commonsense, contrary evidence, and the other sources of proof the jury is entitled to consider. It also asks the Court to ignore its own Scheduling Order. To the extent that the issue of future damages requires any rulings by the Court, those rulings can be more appropriately made as a motion in limine or *Frye-Mack* motion after discovery has closed.

The Court should deny Defendant's motion in its entirety and allow the jury to decide liability and damages under the applicable law and on the complete evidence presented at trial.

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Documents Comprising the Record

1. All documents submitted by Defendant in support of its motion.

2. The Declaration of Colin Peterson and the following exhibits: Plaintiff's Answers to Defendant's Interrogatories (Exhibit A); Defendant's Answers to Plaintiff's First Set of Interrogatories (Exhibit B); Defendant's Rule 26.01(a) Initial Disclosures (Exhibit C); Defendant's Responses to Plaintiff's Requests for Production and Parent Contract (Exhibit D); excerpts from the depositions of Jamie Hahn (Exhibit E), Michaela Nelson (Exhibit F), and Madison Horn (Exhibit G); the Stipulated Scheduling Order (Exhibit H); excerpts from Defendant's website (Exhibit I); and medical records containing the MRI and follow-up imaging reports (Exhibit J).

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Material Facts

This case arises from an instructor-led group dance rehearsal. Ms. Wynn was a student dancer practicing a coordinated dance maneuver with several other student dancers under the direction and supervision of Defendant's adult instructors. During that rehearsal, Ms. Wynn suffered a spinal injury—two compression fractures with traumatic bone bruising across four vertebrae—and needed to be airlifted to Children's Hospital. Plaintiff alleges that Defendant's inadequate instruction, supervision, and safety precautions exposed Ms. Wynn to an unreasonable risk of injury during the maneuver. See Compl. ¶¶ 18–23.

1. *Defendant's adult instructors directed a dance rehearsal involving a group of minor students.*

On December 12, 2024, 17-year-old Ms. Wynn attended the final rehearsal before Defendant's winter recital. Macy Wynn Dep. 79:23–80:3, 83:14–24. All of the dancers were minors. Defendant's employees Michaela Nelson and Jamie Hahn led the rehearsal and were the only adults in the studio. Nelson Dep. 15:7–16:4.

Defendant's owner and the group's regular instructor, Madison Horn, did not attend the rehearsal because of a personal conflict. Nelson and Hahn filled in to lead the rehearsal. Macy Wynn Dep. 80:3–9; Hahn Dep. 16:20–17:10; Nelson Dep. 22:21–24:5. Neither had taught the maneuver before. Horn Dep. 68:14–24, 72:1–22.

Nelson was the main instructor, but it was her first time instructing the group, and she learned the maneuver by having the students show it to her. Nelson Dep. 10:5–

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11:10, 13:14–15:5. Hahn had not seen the group perform it before that day. Hahn Dep. 31:12–19, 38:2–4.

Nevertheless, Hahn and Nelson were the adults responsible for the rehearsal. Both agreed that an instructor had responsibility for the students' safety and for stopping them from performing a maneuver that was not safe. Nelson Dep. 25:1–26:17; Hahn Dep. 25:5–26:4, 52:1–8.

2. Defendant designed the coordinated maneuver and assigned each student's role.

Horn introduced the maneuver in preparation for the December recital. She told the students that she had an idea she wanted to try, placed the dancers in their positions, and assigned Ms. Wynn her role. Macy Wynn Dep. 69:17–70:4. Ms. Wynn would walk up the backs of other dancers, turn with another dancer's assistance, and fall backward "onto the arms of four dancers in a trust fall." The four catchers would then rotate Ms. Wynn back onto her feet. Def.'s Answers to Pl.'s First Set of Interrogs. No. 7, at 3 (Mar. 24, 2026) ("Def.'s Interrog. Answers").

Horn selected Ms. Wynn's position and the four students who would catch her. Horn Dep. 165:2–25. Horn initially proposed that Ms. Wynn walk up the other dancers' backs and fall backward into the catchers' arms. After some students suggested adding a backflip, Horn approved that change and retained the decision whether the resulting maneuver was safe enough to include in the recital. Macy Wynn Dep. 73:4–15; Horn Dep. 163:1–23, 165:19–25.

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The maneuver was new and difficult. Horn introduced it no more than two weeks before the injury and possibly only a few days beforehand. Macy Wynn Dep. 72:12–23. Ms. Wynn described it as harder and more complex than the group's ordinary choreography. *Id.* at 75:16–76:4.

3. *Defendant's instructors directed the maneuver at full speed despite a missing catcher.*

One of the four designated catchers, Danica Pederson, was absent from the December 12 rehearsal. Macy Wynn Dep. 83:3–13; Horn Dep. 68:1–24. No one replaced her. Macy Wynn Dep. 83:25–84:16; Horn Dep. 167:13–24. Her absence left what Ms. Wynn described as an "open hole" in the formation. Macy Wynn Dep. 84:4–16.

The students raised the issue before attempting the maneuver. They asked how they were supposed to perform it with a catcher missing and whether they should omit it until Danica returned. Nelson and Hahn told them, "nope, let's try it like this." Macy Wynn Dep. 86:6–19.

The students first practiced the maneuver slowly with safety mats in place. Macy Wynn Dep. 86:20–25; Nelson Dep. 26:19–29:1. The instructors then removed the mats and directed the students to attempt the maneuver at the speed of the music. Nelson Dep. 28:17–29:17, 38:16–39:13. That was the first time this group had attempted the maneuver at full speed with a catcher missing. Macy Wynn Dep. 87:2–9; Horn Dep. 166:17–21.

> I was like are we still going to do this, because we're missing a person. And they said yes, let's try it. And my instructors

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> — as my instructors, I was listening to them and did it anyways.

Macy Wynn Dep. 96:1–9.

During the full-speed attempt, Ms. Wynn slipped through the arms of the students assigned to receive her and landed near the base of her neck. Nelson Dep. 37:3–38:15.

4. *The fall fractured two vertebrae and caused traumatic injury across four levels of Ms. Wynn's upper spine.*

Ms. Wynn initially experienced severe pain and could not feel her extremities. When her mother arrived, Ms. Wynn was facedown, crying, and unable to move. Emergency responders placed her in a cervical collar, secured her to a backboard, and transported her to Astera Health. She was then airlifted to Children's Hospital. Peterson Decl. Ex. J, Medical Records at CH000001TL. At Children's, providers documented lightheadedness, dizziness, head pain, neck pain, back pain, left pelvic pain, and "funny sensations to her lower extremities bilaterally." *Id.*

An MRI confirmed the seriousness of the injury. It showed posttraumatic marrow edema and bone contusions from T1 through T4, with compression fractures at T3 and T4. Follow-up radiographs again identified the fractures. *Id.* At CH000006TL. The fall injured four levels of Ms. Wynn's upper spine and fractured two vertebrae.

Ms. Wynn began regaining sensation the next day and was eventually able to walk. She was discharged in a wheelchair with activity restrictions and instructions to follow up with pediatric neurosurgery. *Id*. at CH000007TL.

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Ms. Wynn has made a substantial recovery, but she continues to experience neck pain, back pain, and migraines. Peterson Decl. Ex. A, Pl.'s Answers to Def.'s Interrogs. No. 16, at 5 (Mar. 9, 2026). Alicia Wynn testified that Ms. Wynn experiences migraines and pain at the location of the compression fractures. Alicia Wynn Dep. 81:1–82:24. Ms. Wynn also missed out on her senior dance season and testified that the incident was understandably quite scary and traumatizing. Macy Wynn Dep. 64:15–65:9.

Defendant asks the Court to hold that Ms. Wynn "impliedly" assumed the risk because she acknowledged during her deposition that, from "living life and being on the earth for 17 years," she understood that a flip might not go perfectly. Def.'s Mem. at 8; Macy Wynn Dep. 113:8–18. Defendant also asks the Court to eliminate all future damages based on selected testimony concerning Ms. Wynn's condition at the time of her deposition. Def.'s Mem. at 10.

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Summary Judgment Standard

Summary judgment is proper only when the record shows no genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Minn. R. Civ. P. 56.01. The Court does not decide disputed facts and must view the evidence and all reasonable inferences in Ms. Wynn's favor. *DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997); *Grondahl v. Bulluck*, 318 N.W.2d 240, 242 (Minn. 1982).

Whether a plaintiff knew and appreciated a particular risk ordinarily presents a jury question when the evidence conflicts or permits different inferences. *Ganser v. Erickson*, 156 N.W.2d 224, 226 (Minn. 1968); *Rausch v. Julius B. Nelson & Sons, Inc.*, 276 Minn. 12, 21, 149 N.W.2d 1, 7 (1967). Assumption of risk becomes a question of law only when the evidence is conclusive and reasonable people can draw but one conclusion. *Schroeder v. Jesco, Inc.*, 296 Minn. 447, 451, 209 N.W.2d 414, 417 (1973).

A motion seeking to eliminate a category of damages is governed by the same summary judgment standard. The Court does not weigh competing evidence or decide what damages Plaintiff ultimately will prove. It asks only whether, viewing the record and reasonable inferences in Plaintiff's favor, a genuine factual dispute exists as to whether the claimed harm is recoverable. *See DLH,* 566 N.W.2d at 70–71. When the evidence permits competing conclusions concerning the existence or likely duration of future harm, the issue belongs to the jury.

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Argument

I. Implied Primary Assumption of Risk Does Not Apply to an Instructor-Led Dance Rehearsal

The Minnesota Supreme Court laid out the current framework for assumption of risk in *Soderberg v. Anderson*, 922 N.W.2d 200 (Minn. 2019). There are two types of assumption of risk: primary and secondary. Secondary assumption of risk is an affirmative defense and an aspect of comparative fault. *Id.* at 204. By contrast, primary assumption of risk "is not a defense and applies only in limited circumstances." *Id.* Unlike secondary assumption of risk, it completely bars the plaintiff's claim by negating the defendant's duty of care. *Id.* at 204–05. It arises only when the parties voluntarily enter a relationship in which the plaintiff assumes well-known, incidental risks. *Id.* at 205 (quoting *Bjerke v. Johnson*, 742 N.W.2d 660, 669 (Minn. 2007)).

Within primary assumption of risk, consent may be express or implied. Express primary assumption of risk applies when the plaintiff explicitly manifests consent to relieve the defendant of its duties. The familiar example is a signed liability waiver. See *Armstrong v. Mailand*, 284 N.W.2d 343, 351 (Minn. 1979). The question is not merely whether the plaintiff chose an activity that involved risk. It is whether the plaintiff consented to relieve the defendant of a duty to use reasonable care. Defendant does not ask the Court to enforce any participation waiver here, so express primary assumption of risk is inapplicable. Defendant instead asks the Court to find that Ms. Wynn gave that consent by implication.

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That is the rarest and most extreme form of the doctrine. Implied primary assumption of risk has been applied almost exclusively in "cases involving patrons of inherently dangerous sporting events." *Wagner v. Thomas J. Obert Enters.*, 396 N.W.2d 223, 226 (Minn. 1986). Minnesota's cases involve spectators exposed to flying baseballs, golf balls, or hockey pucks and skaters encountering ordinary falls or collisions. See *Soderberg*, 922 N.W.2d at 205–08. "A finding of primary assumption of the risk is a rare thing in Minnesota." *Renswick v. Wenzel*, 819 N.W.2d 198, 205 (Minn. App. 2012), review denied (Minn. Oct. 16, 2012).

Soderberg confirms that the historical list is not an invitation to create new categories of activities to which implied primary assumption of risk applies. There, the Court was asked either to extend implied primary assumption of risk to downhill skiing and snowboarding or to abolish the doctrine altogether. 922 N.W.2d 200, 209-210 (Minn. 2019). The Court declined to abolish the doctrine, but it was "loathe to extend" it to another activity. *Id.* at 209. Emphasizing that assumption of risk "is not favored, and should be limited rather than extended," the Court also recognized that "the nationwide trend has been toward the abolition or limitation of the common-law doctrine of implied primary assumption of risk." *Id.* The Court retained only a "limited" role for the doctrine in the sports to which it had already been applied. *Id.* at 210.

Minnesota has analyzed implied primary assumption of risk for more than a century. Never in that time has an appellate court applied it to anything close to an instructor-led dance rehearsal involving minor students. Defendant asks this Court to do what *Soderberg* says lower courts should not do: create a new no-duty rule for a new

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activity. Applying implied primary assumption of risk here would be directly contrary to the Supreme Court's direction that the doctrine be limited rather than extended. The Court should deny Defendant's motion on that ground alone.

II. Even If the Doctrine Could Apply, a Rational Jury Could Conclude That Ms. Wynn Did Not Assume the Risk at Issue

Primary assumption of risk requires a "manifestation of consent, express or implied, to relieve the defendant of a duty." *Armstrong v. Mailand*, 284 N.W.2d 343, 351 (Minn. 1979). The plaintiff must know and appreciate the particular risk and voluntarily choose to encounter it. *Ganser*, 156 N.W.2d at 226; *Rausch*, 149 N.W.2d at 7.

Defendant cannot satisfy that standard by defining the risk broadly as "something might not go right." Ms. Wynn understood that a dance maneuver might not go exactly as planned. But the critical legal question is whether she consented to relieve Defendant of its duty to exercise reasonable care. A general human awareness that things may not always work out perfectly does not constitute the requisite consent to apply the extraordinary doctrine of implied primary assumption of risk.

The context is also critically important. This is not a situation where an adult is trying out a new activity that they know might be dangerous. Ms. Wynn was a minor. She was participating in a supervised rehearsal. She was following the directions of Defendant's adult instructors. When the students asked to omit the maneuver because a designated catcher was missing, the instructors told them to proceed. Defendant's theory would require the Court to hold, as a matter of law, that a minor student assumes the risk of harm by following her adult coaches' directions—or should

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disregard those directions to protect herself. At minimum, reasonable jurors could conclude otherwise.

Even in activities where primary assumption of risk applies, a participant assumes only the ordinary risks inherent in the activity. The doctrine does not eliminate a defendant's duty concerning risks created or increased by its own negligence. *Wagner v. Thomas J. Obert Enters.*, 396 N.W.2d 223, 226 (Minn. 1986); *Aldes v. Saint Paul Ball Club, Inc.*, 88 N.W.2d 94, 97 (Minn. 1958).

The evidentiary record—viewed in the light most favorable to Plaintiff—demonstrates that Defendant increased the danger by placing two substitutes who had never taught the maneuver in charge, proceeding without one of four designated catchers, removing the mats, and directing the students to perform at full speed after they asked to omit the maneuver. At minimum, a jury must decide whether Ms. Wynn encountered an ordinary risk of a properly conducted maneuver or a different risk created or increased by Defendant.

Implied primary assumption of risk does not apply to this activity. Even if it could, the evidence would permit a jury to find that Ms. Wynn neither assumed the specific risk presented by the rehearsal as conducted nor consented to relieve Defendant of its duty concerning dangers created or increased by its own instruction and supervision. Defendant's request for summary judgment should be denied.

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III. Defendant Is Not Entitled to Partial Summary Judgment on Future Damages

Defendant argues that Ms. Wynn's deposition testimony "disqualifies any claim for future special or general damages." Def.'s Mem. at 10. That argument collapses two distinct categories of damages—future medical expenses and future non-economic harm—that are governed by different standards.

A. Defendant conflates future medical expenses with future non-economic damages.

Future medical expenses and future bodily and mental harm are separate categories of damages. CIVJIG 91.30 governs future medical expenses. To recover those expenses, a plaintiff must establish that future treatment is reasonably certain to be necessary and provide a basis for determining its cost. *Lamont v. Independent School District No. 395*, 154 N.W.2d 188, 192 (Minn. 1967); *Lind v. Slowinski*, 450 N.W.2d 353, 358 (Minn. App. 1990); *Kwapien v. Starr*, 400 N.W.2d 179, 184 (Minn. App. 1987).

CIVJIG 91.25 separately governs future bodily and mental harm. That category includes future pain, disability, disfigurement, embarrassment, and emotional distress. 4A Minn. Prac., Jury Instr. Guides—Civil CIVJIG 91.25. The jury may award damages for any such harm that is reasonably certain to occur. *Id.* In deciding whether future harm is reasonably certain, the jury considers the type, extent, and severity of the injury; how painful it is; the treatment involved; how long the harm is likely to last; and any other relevant evidence. *Id.* Plaintiff must prove those damages by the greater weight of the evidence. See id. CIVJIG 90.15.

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Defendant's cases therefore address only future medical expenses under CIVJIG 91.30. They provide no basis for eliminating future pain, disability, disfigurement, embarrassment, or emotional distress under CIVJIG 91.25.

B. Defendant relies on selected deposition answers while disregarding all other evidence in the record.

Defendant's assertion that Ms. Wynn's testimony "disqualifies" all future special and general damages depends on selected answers from a deposition conducted by Defendant's counsel. The record is, of course, much broader. In sworn interrogatory answers, Ms. Wynn stated that she had not fully recovered and continued to experience neck pain, back pain, and migraines. Peterson Decl. Ex. A, Pl.'s Answers to Def.'s Interrogs. No. 16, at 5 (Mar. 9, 2026). Her mother, Alicia Wynn, testified that her daughter continued to experience migraines and pain at the locations of her compression fractures, that the migraines had increased in frequency and intensity, and that Ms. Wynn's primary-care provider continued to follow them. Alicia Wynn Dep. 81:1–82:24.

Ms. Wynn also testified that she continued to experience emotional distress. She lost her senior dance season, which was very important to her, described the injury as scary and traumatizing, and explained its emotional effect on her family. Macy Wynn Dep. 64:15–65:9.

The Court of Appeals in its decision *Renswick v. Wenzel* held that expert testimony is not required to prove future non-economic damages. Although the plaintiff's orthopedic surgeon declined to offer an opinion on future pain, the court held

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that her testimony of continuing wrist pain was sufficient. *Id.* at 204–05. Expert testimony is not the only means of proving future damages; evidence that the plaintiff has not fully recovered may also suffice. *Id.* at 205 (citing *Pagett v. N. Elec. Supply Co.*, 167 N.W.2d 58, 65 (Minn. 1969)). Here, continuing pain and migraines, Alicia Wynn's corroborating testimony, emotional distress, and objective spinal injuries present a jury question.

C. Future medical expenses should be addressed after expert discovery.

Ms. Wynn's condition on the date of her deposition is not a medical prognosis. The objective record shows traumatic injury across four levels of her upper spine and compression fractures at T3 and T4. An appropriately qualified expert may conclude that those injuries make future treatment reasonably certain even if she then had no symptoms or treatment plans. The issue depends on expert evidence that is not yet due—not on Ms. Wynn's subjective assessment on a single day.

Plaintiff's expert disclosures are due September 30, 2026, and Defendant's are due November 30, 2026. Peterson Decl. Ex. H, Stipulated Scheduling Order ¶¶ 2–3 (Apr. 1, 2026).

Defendant may challenge the evidentiary foundation after expert discovery. Eliminating future medical expenses now would decide the issue before the required evidence is due.

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Conclusion

Implied primary assumption of risk does not apply to this case. The Court should deny Defendant's motion and send the case to the jury, where it belongs.

Tyroler Leonard Injury Law

Dated: August 28, 2026

By: _____

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