for punitive damages, a *prima facie* showing is generally equated to the showing required to avoid a directed verdict. *Swanlund*, 459 N.W.2d at 155; *see also Ulrich v. City of Crosby*, 848 F. Supp. 861, 867 (D. Minn. 1994) (and its progeny).

In Minnesota, the directed-verdict standard requires a court to ask whether, "in light of the *evidence as a whole*, it would be the duty of the trial court to set aside a [plaintiff's verdict] as manifestly contrary to the evidence or to the law." *Am. States Ins. Co. v. Ankrum*, 651 N.W.2d 513, 521 (Minn. App. 2002) (emphasis added). This turns on whether "the evidence is sufficient to present a fact question for the jury's consideration." *Coker v. Jesson*, 831 N.W.2d 483, 489 (Minn. 2013). To determine if a jury question can be presented "the district court must treat as credible all evidence from the [plaintiff] and [must draw] all inferences that may be reasonably drawn from that evidence." *Wall v. Fairview Hosp. & Healthcare Servs.*, 584 N.W.2d 395, 405 (Minn. 1998). In other words, the Court does "not assess the relative credibility or weight of conflicting evidence." *State v. Barker*, 888 N.W.2d 348, 353 (Minn. App. 2016).

Initially, there is a controversy about the application of this standard. Plaintiff argues that, in determining whether a *prima facie* case has been shown, the Court should not consider any of the evidence cited or presented by Defendant. There is federal authority for this proposition. *See, e.g., Nw. Airlines, Inc. v. Am. Airlines, Inc.*, 870 F. Supp. 1499, 1503 (D. Minn. 1994) ("the evidence in support of the motion should be thoroughly examined, without considering evidence submitted in opposition"). But the Court does not find this authority persuasive. It is likely that this federal authority simply derives from a misunderstanding of state authority explaining that courts should not entertain challenges to the weight or credibility of evidence when determining whether a jury question exists. *Id.* (citing *Swanlund*, 459 N.W.2d at 154).

The better reading of the law is that a court must view the record in the light most favorable to the plaintiff, but that the court can consider the entirety of the record. That is the law that applies to a motion for a directed verdict. And this is the best way to fulfill "the purpose of [the statute] to ensure that punitive damages are only pleaded in those cases where such damages are appropriate." *Bougie v. Sibley Manor, Inc.*, 504 N.W.2d 493, 499 (Minn. App. 1993). Trial courts would not be able to serve this gatekeeping function if a plaintiff could falsely make it appear that a defendant consciously disregarded a risk simply by artfully omitting the undisputed fact that the defendant took actions that showed a regard for that risk.

This conclusion is bolstered by the fact that courts have held that it is appropriate to look at the whole record under similar gatekeeping statutes. A trial court determining whether a *prima facie* case has been stated "must accept facts in [the party's] supporting documents as true [and] disregard contrary allegations," *but* may "consider the [opposing] party's supporting documents … to the extent that they explain or provide context." *Welfare of L.L.P.*, 836 N.W.2d 563, 570 (Minn. App. 2013); *Boland v. Murtha*, 800 N.W.2d 179, 183 (Minn. App. 2011) ("to the extent they explain or contextualize the allegations contained in the moving party's affidavits").

Similarly, the Minnesota Supreme Court has said that the punitive-damages standard is "much like a summary-judgment standard." *Leiendecker v. Asian Women United of Minnesota*, 895 N.W.2d 623, 637 (Minn. 2017). And, as a general matter, "courts can deny motions to amend when the additional claims cannot withstand summary judgment." *Ag Servs. of Am., Inc. v. Schroeder*, 693 N.W.2d 227, 235 (Minn. App. 2005); *Voicestream Minneapolis, Inc. v. RPC Properties, Inc.*, 743 N.W.2d 267, 272 (Minn. 2008); *Bebo v. Delander*, 632 N.W.2d 732, 740 (Minn. App. 2001). The summary-judgment standard allows both parties to present evidence,

even as the court's function "is not to decide issues of fact, but solely to determine whether genuine factual issues exist." *DLH, Inc. v. Russ*, 566 N.W.2d 60, 70 (Minn. 1997).

The Court concludes that it may appropriately deny a motion to amend the pleadings to add a claim for punitive damages when, based on all submissions, the claim for punitive damages could not survive a motion for summary judgment. That requires taking the evidence offered by Plaintiff in the light most favorable to his case and drawing all reasonable inferences in his favor. But, contrary to his argument, it does not require ignoring the undisputed facts Defendant has offered in order to place Plaintiff's claims in context. The recitation of facts set forth above has adhered to this interpretation of the *prima facie* evidence standard.

II. Deliberate Disregard

A motion to amend a complaint to add punitive damages "must allege the applicable legal basis under [Minn. Stat. §] 549.20 or other law for awarding punitive damage." Minn. Stat. § 549.191. In this case, Plaintiff relies on the general punitive-damages statute found in Minn. Stat. § 549.20. That statute provides that "[p]unitive damages shall be allowed in civil actions" upon proof by "clear and convincing evidence" that "the acts of the defendant show[ed] deliberate disregard for the rights or safety of others." Minn. Stat. § 549.20, subd. 1(a).[3]

[3] The parties assume, without analysis, that Minn. Stat. § 549.20 applies to this suit, notwithstanding that the accident in this case occurred in South Dakota. A Minnesota court may refrain from a choice-of-law analysis, and apply forum law, if there is no genuine conflict between forum law and the law of the site of the accident. *Davis by Davis v. Outboard Marine Corp.*, 415 N.W.2d 719, 723 (Minn. App. 1987) ("Where there is no true conflict, the law of the forum, in this case Minnesota, is applied."). Like Minnesota, South Dakota has a statute governing punitive damages which merely enacts the common-law rule. S.D.C.L. § 21-3-2; S.D.C.L § 21-1-4.1. As in Minnesota, it permits an award of punitive damages based on a showing of intentional or reckless disregard for the rights of others. *Schuldies v. Millar*, 555 N.W.2d 90, 99 (S.D. 1996); *Kjerstad v. Ravellette Publications, Inc.*, 517 N.W.2d 419, 425 (S.D. 1994); *Dahl v. Sittner*, 474 N.W.2d 897, 902 (S.D. 1991); *Hannahs v. Noah*, 158 N.W.2d 678, 682 (S.D. 1968). At least for purposes of this motion, it is proper to simply apply forum law.