4. On October 8, 2021, counsel for both parties appeared before the Court via Zoom to present their clients' positions on Plaintiffs' Motion for Leave to File an Amended Complaint and Add a Party.

5. After hearing the parties' arguments on the Motion for Leave, the Court makes the following conclusions of law.

    a. Rule 15 of Minnesota's Rules of Civil Procedure provides that a party may amend a pleading by leave of the Court. Minn. R. Civ. P. 15.01. Minnesota courts often allow parties to amend their pleadings so long as there is no prejudice to the nonmoving party. See *Voicestream Minneapolis, Inc. v. RPC Properties, Inc.*, 743 N.W.2d 267, 272 (Minn. 2008); and *Fabio v. Bellomo*, 504 N.W.2d 758, 761 (Minn. 1993).

    b. A party's motion to amend should be granted when justice so requires, yet that right is not absolute. Minn. R. Civ. P. 15.01. Even in the absence of prejudice, a court may deny a motion to amend a pleading if the amendment would have no useful purpose, such as if an amended claim is not viable or would not withstand a motion for summary judgment. See *Hunter v. Anchor Bank, N.A.*, 842 N.W.2d 10, 18 (Minn. Ct. App. 2013); *Bridgewater Tel. Co. v. City of Monticello*, 765 N.W.2d 905, 915 (Minn.App.2009); *Voicestream*, 743 N.W.2d 267, 272. Denial of a motion to amend is proper when the moving party fails to establish evidence in support of its claims. *Bib Audio-Video Products v. Herold Marketing Associates, Inc.*, 517 N.W.2d 68 (Minn. Ct. App. 1994).

    c. The facts before the Court do not provide enough evidence to support statements in 53(f), 53(g) and in Plaintiff's proposed amended complaint.

Defamation claims can only succeed if they are based upon false statements. *Stuempges v. Parke, Davis & Co.*, 297 N.W.2d 252, 255 (Minn. 1980). If the statement is true in substance, inaccuracies of expression or detail are immaterial." *Jadwin v. Mpls. Star & Tribune Co.*, 390 N.W.2d 437, 441 (Minn.App.1986). Plaintiffs claim that because the statements under scrutiny could be interpreted to be false, these statements would survive a summary judgment motion and should be permissible in an amended pleading. Yet statements found in 53(f), 53(g) and 99 of Plaintiff's proposed amended complaint are substantially true. Plaintiff has not provided evidence to support a reasonable interpretation that these statements are false or contain falsities. Therefore, these three statements cannot survive a motion for summary judgment and accordingly cannot be allowed in an amended pleading.

d. Minnesota law has recognized absolute privilege for judicial-proceeding communications since 1954 in *Matthis v. Kennedy*. *Matthis v. Kennedy*, 67 N.W.2d 413, 419 (Minn. 1954). The Minnesota Supreme Court held that "[d]efamatory matter published in the course of a judicial proceeding before a court of competent jurisdiction by a party or … attorney is absolutely privileged if it is related to the subject matter of the proceeding." *Id*. This Minnesota Supreme Court holding was further supported by the Restatement of Torts through this quotation: "[a] party to a private litigation ... is absolutely privileged to publish false and defamatory matter of another in communications preliminary to a proposed judicial proceeding, or in the institution of or during the course and as part of a judicial proceeding in which

[the party] participates, if the matter has some relation thereto." Restatement of (First) Torts § 587 (1938).

e. The facts before the Court also indicate that statement in 54(b) of Plaintiff's proposed amended complaint is protected by absolute privilege. This statement was made by Defendant Sean Stevenson in response to a notice of claim and demand letter from Plaintiff Marie Stevenson's prior attorney. This statement falls within the absolute privilege established by the Minnesota Supreme Court in Matthis v. Kennedy, and accordingly cannot be allowed in Plaintiff's proposed amended complaint.

f. Plaintiffs' Motion for Leave to File an Amended Complaint is granted in part. Defendants have demonstrated that the contested statements found in 53(f), 53(g) and 99 of Plaintiffs' proposed amended complaint would not survive a motion for summary judgment, despite Plaintiffs' assertions in both their Memorandum and Reply Memorandum. Truth is an absolute defense to a defamation claims, and Plaintiffs have not demonstrated the falsity of these additional statements. *Stuempges v. Parke, Davis & Co.*, 297 N.W.2d 252, 255 (Minn. 1980). Therefore, these three contested statements must be stricken from Plaintiffs' proposed amended complaint. Further, statement 54(b) of Plaintiff's proposed amended complaint is privileged and cannot give rise to a claim. The remainder of Plaintiffs' proposed amended complaint, including Plaintiffs' new claim for civil conspiracy, are permissible.

g. Minnesota Rule of Civil Procedure 20.01 provides the requirements for adding a defendant to an existing action. Minn. R. Civ. P. 20.01. Rule 20.01 states that "[a]ll persons may be joined in one action as defendants if there is