

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

<p>MINNESOTA DEPARTMENT OF EDUCATION,</p> <p style="text-align: center;">Plaintiff,</p> <p>v.</p> <p>FEEDING OUR FUTURE; AIMEE BOCK,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">Civil Case No. 62-CV-23-863</p> <p style="text-align: center;">BOCK’S ANSWER, COUNTERCLAIMS, AND JURY DEMAND</p>
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Ms. Bock, on behalf of herself, submits the following Answer, Counterclaims, and Jury Demand.

ANSWER

I. General Denial

MDE’s complaint asserts baseless, knowingly false, inflammatory allegations intended to deflect from MDE’s own judicially established violations of law. MDE misrepresents Feeding Our Future’s prior lawsuit and the federal proceedings. As was established as a matter of law in the prior case, MDE consistently and repeatedly violated federal and state law, and was sanctioned for violating a court order. MDE’s allegations are devoid of facts and instead rely on absurd, counterfactual, conclusory statements. Nothing in MDE’s complain warrants or requires specific responses. Feeding Our Future’s prior lawsuit and the federal proceedings speak for themselves. Bock denies all allegations in MDE’s complaint except for those specifically noted below:

Paragraph 5: Bock admits MDE is “responsible for administering” CACFP and SFSP.

Paragraph 13: Bock admits MDE is “responsible for...overseeing” CACFP and SFSP.

Paragraph 19: Bock admits “responsibility for administering the Federal Child Nutrition Program resides with individual state agencies.”

Paragraph 23: Bock admits that “A state agency must terminate from participation any entity” that it believes engages in fraudulent behavior. Bock further responds that at no point in time did MDE take any steps to allege that Feeding Our Future or Bock did anything wrong, that they violated any requirement of the food program, or that they otherwise did anything improper. Bock further responds that MDE never started or took any steps to terminate FOF or her from the food program.

Paragraph 24: Bock admits “the USDA allowed participation by for-profit restaurants and off-site food distribution...” Bock further responds that there is nothing new about restaurant participation in the food program. Restaurants have long participated in the food program and no restaurant-specific waivers were issued by the USDA for COVID or otherwise.

Paragraph 39: Bock admits that MDE “continued to assert its authority to oversee the Federal Child Nutrition Program” at all stages of the civil litigation. Bock further responds that nothing about the civil litigation hampered, restricted, or otherwise impaired MDE’s authority or its ability to oversee the food program. To the contrary, the civil lawsuit increased MDE’s ability to investigate and enforce the food program. `

II. Defenses and Affirmative Defenses

1. MDE has failed to state a claim upon which relief can be granted.
2. MDE’s claims are barred because the civil lawsuit specifically found that MDE violated federal law and MDE did not appeal that determination.
3. MDE’s claims are barred because it was found that MDE violated a court order.
4. MDE’s claims are barred, in whole or in part, by judicial estoppel.

5. MDE's claims are barred by issue and claim preclusion.
6. MDE's claims are barred by the statute of limitations or statute of response.
7. MDE's claims are barred or reduced by its failure to mitigate.
8. MDE's claims are barred by its own tortious and wrongful conduct.
9. MDE's claims are barred because it is a wrongful, collateral attack on the established rulings of the civil case.
10. Bock reserves the right to assert additional defenses and affirmative defenses as the case progresses.

COUNTERCLAIMS

I. MDE Has a History of Violating the Law.

1. MDE has an established history of violating federal and state law, discriminating against minorities, and abusing its authority in the federal food program.
2. MDE also has a long history of forcing Bock through significant litigation, including numerous administrative appeals, two Minnesota Court of Appeals cases, and at least two civil suits before this one. Notably, MDE has lost every issue in every case, and it has already had half of its claims in this case thrown out.
3. In 2015, Bock was working to get Partners in Nutrition ("PIN") approved as a sponsor for the federal food program. Initially, MDE approved PIN and welcomed it as what it called a much-needed new sponsor. To celebrate, MDE sent PIN a welcome email saying "CONGRATULATIONS!!!!."
4. After MDE approved PIN, MDE asked to see the community organizations PIN planned to work with. PIN complied and sent MDE a list of almost exclusively minority and disadvantaged community organizations. Almost immediately, MDE reversed its decision and

summarily retracted its prior approval. Initially, MDE refused to make a formal decision and refused to allow PIN an appeal.

5. PIN was forced through an administrative process and ultimately a civil lawsuit just to get the right to appeal MDE's refusal to process its application. MDE fought PIN on all issues and forced two appellate cases.

6. Bock, on behalf of PIN, prevailed on all issues in all matters. Through the appellate process, it was proven as a matter of law that MDE violated federal law by refusing to formally process PIN's application to become a sponsor.

7. Bock also prevailed on the merits. Again, through an appellate case, PIN proved that MDE abused its discretion and violated federal law by denying PIN the right to participate as a sponsor of the food program.

8. After establishing MDE's wrongful conduct as a matter of law, PIN filed a civil suit alleging that MDE denied its application only because PIN intended to work with minority communities.

9. Given the strength of PIN's claims and the overwhelming weight of the evidence, MDE settled the case before trial by paying PIN \$450,000, more than its alleged damages.

II. MDE Was Violating FOF's Rights.

10. In 2020, the minority and disadvantaged communities were hit particularly hard by the COVID pandemic and the civil unrest responding to the murder of George Floyd. To address the need, FOF started opening new sites, including some FOF sites located at local restaurants.

11. Initially, MDE took the position that FOF sites could not operate at restaurants. Rather than deny the applications as required by law, MDE went back to its old refrain of simply

refusing to process FOF applications, refusing to issue a denial, and refusing to allow FOF its right to appeal.

12. Eventually, MDE claimed the USDA had issued a “communication” taking the position that nonprofits cannot open sites at restaurants. MDE, however, refused to provide the communication to FOF, and it still refused to deny FOF’s applications or allow it to appeal.

13. With its options exhausted, FOF started the process of filing a civil lawsuit to compel MDE to comply with the federal regulations and issue a formal decision on FOF’s applications and allow FOF its right to appeal.

14. In April 2020, before filing suit, FOF sent a copy of its draft complaint to MDE and asked one final time for MDE to formally deny the applications and allow FOF its right to appeal. In response to the lawsuit, MDE called FOF and said there had been a “misunderstanding;” that nonprofits could operate at restaurants; and that FOF’s applications would be approved. MDE, however, still refused to show the USDA “communication” and it refused to explain why it had suddenly reversed its position.

15. MDE did in fact approve FOF’s sites to operate from April through December 31, 2020.

16. In October 2020, however, MDE again changed its mind again. Without any changes in the law or facts, MDE decided that it no longer wanted FOF sites to operate at restaurants.

17. MDE understood that the only way to terminate the sites before December 31st was to provide a notice of termination, explain the grounds for the termination, and allow FOF to appeal.

18. Once again sticking to its standard refrain of refusing to follow the law, MDE instead went into FOF's applications and changed the end date in the applications themselves to say October 31, 2020. MDE changed the applications above Bock's signature attesting to the truth of the statements in the applications.

19. MDE did not issue a notice of termination, it did not explain the basis for its decision, it did not provide the USDA "communication" it claimed supported its position, and it did not allow FOF the right to appeal.

20. MDE was also refusing to approve or deny a number of applications unrelated to restaurants. In fact, although the federal regulations require MDE to approve or deny applications within 30 days, MDE refused to let a number of sites apply for months, and it refused to process numerous other applications.

21. On November 2, 2020, FOF filed suit against MDE. FOF asked for a court order requiring MDE to access applications and approve or deny them within the federal regulatory time.

22. With its lawsuit, FOF filed a motion for a temporary restraining order asking only that MDE be forced to comply with federal law and approve or deny applications. Because FOF was asking only that MDE follow the law, and because the law requiring MDE to approve or deny applications was already established by the Minnesota Court of Appeals in the PIN case, MDE consented and signed Stipulated Order on December 17, 2020.

23. The stipulated order did not change MDE's legal requirements in any form or fashion. The language in the stipulation was chosen by counsel for MDE because it mirrored the federal regulation. The stipulated order simply made the federal regulations and enforceable court order.

24. MDE, however, still refused to accept or process FOF's applications in violation of federal law, the decision from the court of appeals, and the stipulated court order. Although the district court gave MDE numerous attempts, MDE refused to process FOF's applications. As a result, the trial court held MDE in contempt of court and sanctioned MDE.

25. FOF won every issue in the prior civil lawsuit.

III. MDE Has Sole Responsible for Fraud Detection.

26. The federal food program vests sole responsibility for detecting and preventing fraud with MDE. MDE is a large governmental agency with vast resources including access to the Office of the Attorney General, the Office of Inspector General, and significant experience with risk management and fraud detection and prevention.

27. The federal regulations require MDE to create procedures for the agency to review submitted claims to ensure only valid claims are paid. (*See, e.g.*, 7 C.F.R. § 226.7(k)). MDE must review the claims and determine whether it believes the claims are complete and valid, or whether it finds any information is incomplete, inaccurate, or otherwise not valid. (*Id.*).

28. If MDE finds any claims are incomplete or invalid for any reason, it is required to provide written notice to the institution of the issue within 15 days of the claim being submitted. (*Id.*). MDE must also allow the institution the opportunity to appeal its decision. (*Id.*).

29. Federal regulations also require that MDE make a determination of whether any institution has "knowingly submitted a false or fraudulent claim." (7 C.F.R. § 226.6(c)(5)(ii)(A)). If MDE finds reason to believe a claim is false or fraudulent, it "must": (1) issue a serious deficiency for the submission of false or fraudulent claims; (2) initiate action to terminate the institution's agreement with the agency; (3) decide whether to suspend the agency's participation in the program; (4) if they suspend, the agency must also give notice of its intent to suspend; and

(5) inform the institution of its right to appeal the findings. (*See, e.g.*, 7 C.F.R. § 226.6(c)(3)(iii); (c)(4)(ii); (c)(5)(ii)(A); (c)(5)(ii)(B); (c)(5)(ii)(C); (c)(5)(ii)(E)).

30. Federal regulations are clear that MDE must review claims; MDE must have procedures in place to determine which are “valid claims;” MDE must identify any incomplete or fraudulent claims; MDE must ensure no incomplete or fraudulent claims are paid; and MDE must take action if it finds any claims are incomplete or fraudulent.

IV. MDE Has No Factual Basis for “Concern.”

31. MDE has no factual basis to believe that FOF, much less Bock personally, knew about, participated in, or in any way furthered the submission or payment of fraudulent claims.

32. Throughout FOF’s entire operating history, MDE has never taken any action against FOF or Bock with respect to the submission or suspected submission of a single false or fraudulent claim.

33. MDE has never investigated a single one of FOF’s claims as potentially false or fraudulent. It has never made a determination that a single one of FOF’s claims was false or fraudulent. MDE has never issued a serious deficiency alleging FOF submitted a single false or fraudulent claim. MDE has never initiated any proceedings to terminate FOF or Bock for submitting false or fraudulent claims. MDE has not suspended FOF or Bock for submitting false or fraudulent claims.

34. MDE has also never suggested FOF or Bock had ineffective, inefficient, or simply inadequate policies.

35. Bock repeatedly requested meetings and advice from MDE about the program’s operation during COVID, and best practices. MDE repeatedly declined to meet with Bock or FOF to discuss the policies or operating procedures.

36. During the civil lawsuit, MDE employees testified under oath that they had no reason to believe FOF had submitted any false or fraudulent claims.

37. By way of example, Assistant Commissioner Daron Korte testified in an under oath deposition:

Q. Does MDE, to your knowledge, have any reason to suspect there's been intentional acts of fraud with respect to CACFP or SFSP?

A. No.

(July 29, 2021, Deposition of D. Korte, 15:24-16:3).

Q. ...I want to know specifically and factually, did you have any basis to believe that Feeding Our Future had submitted any fraudulent claims?

A. No.

Q. Did you have any suspicion that perhaps Feeding Our Future may have submitted fraudulent claims?

A. No.

(*Id.* at 125:22-126:14).

Q. At any point in time did you believe there was a fraud risk with the way in which Feeding Our Future was operating its sites?

A. No. Again – again, the concern wasn't about fraud. It was more about meal patten and adherence to – to regulations, ensuring that meal claims were being properly submitted.

Q. Did you think there was fraud risk at any point with the program as it was being operated, generally speaking?

A. Not – not specifically, no.

(*Id.* at 153:19-154:4).

38. Similarly, MDE's Director of Food and Nutrition Services, Monica Herrera, testified under oath:

Q. Was there any concern that Feeding Our Future was engaging in Fraud?

A. No.

(July 30, 2021, Deposition of M. Herrera Depo. 78:14-21).

Q. Okay. So MDE has confidence that there's no indicia of fraud with respect to the East African community or any other particular community that participates in the program, correct?

A. We have seen no evidence of it.

(*Id.* p. 139:17-140:12).

39. MDE never expressed any concerns about the possibility that Bock or FOF were knowingly submitting false, fraudulent, invalid, or incomplete claims. If MDE had such concerns, it violated state and federal law by failing to take any action.

V. MDE Ignored Bock's Concerns About Potential Fraud.

40. Bock worked hard to protect the integrity of the food program, including by holding sites she worked with to a higher standard than required by the federal regulations.

41. As an example, on August 3, 2021, Bock received a request for payment from Brava Café and House of Refuge for a claim she believed to be excessive. Brava Café and House of Refuge were insistent that Bock approve her claim and threatened Bock with litigation if she failed.

42. Bock turned to MDE for help. On August 17th and 18th, she explained to MDE that the claim had been escalated at FOF for further investigation before being approved. As a result of the investigation Bock determined the claim was overstated and likely fraudulent, and asked MDE for guidance.

43. MDE did nothing. FOF then reached out to the Attorney General's office for guidance on how to proceed. Finally on September 2, 2021 at the urging of the AG's office, MDE responded and told Bock that her only responsibility was simply to not submit the claim for payment. MDE told Bock that she did not need to report the issue to MDE or USDA.

44. To the contrary, on August 26th MDE agreed it would expedite House of Refuge's transfer to another sponsor. MDE also allowed and approved millions of dollars in subsequent payment to House of Refuge.

45. Brava Café and House of Refuge have pled guilty to submitting fraudulent claims based almost exclusively on the work Bock did to investigate and deny the inappropriate claim.

46. Notwithstanding MDE's position, Bock worked hard to protect the program. In fact, she had opened active investigations, ceased relationships, or denied partnership with nearly every site and organization that has pled guilty.

47. MDE ignored warnings of other individuals possibly exploiting the food program. Bock identified that Anab Awad who was indicted on Medicaid fraud was participating in the food programs which raised significant red flags. Despite not participating with FOF Bock alerted MDE of her concerns. MDE again did nothing. Anab Awad has since pled guilty.

48. Bock warned MDE that there were concerns about US Halal Foods L.L.C. A vendor registered to Haji Salad's home address, with a similar name to an existing food distributor US Halal Foods Inc. Bock identified concerning invoices and urged MDE to act, instead MDE ignored Bock's warnings and allowed millions of dollars to continue to flow. Without guidance from MDE, FOF was unable to validate invoice from US Halal Foods. As a result, all US Halal Foods invoices were banned from FOF and its sites.

49. On December 14, 2021, Bock terminated Community Enhancement Services and denied all pending claims submitted for reimbursement. FOF's claims process identified that Community Enhancement Services was partnering almost exclusively with businesses located at in the same commercial building. Bock determined this violated the regulations regarding arm's

length transactions.

On Tue, Dec 14, 2021 at 1:28 PM Aimee Bock <aimee@feedingourfuturemn.org> wrote:
Liban,

We have talked to you before about the need for you to use a different vendor. You have been steadfast in your refusal to do so. We met a few months ago to discuss my concerns about the receipts you submitted and told you at that time if our concerns were not resolved we would have no choice but to terminate our agreement. It is a conflict of interest to have a nonprofit at 1516 E. Lake, purchase food from a restaurant at 1516 E. Lake, and the restaurant purchase food from a distributor at 1516 E. Lake. Especially given that you are an owner of that property. The federal regulations have strict rules regarding less than arms lengths transactions. We tried to work with you to come in compliance and you failed to do so.

Again, the termination of our agreement has nothing to do with what anyone said or did. It has to do with the federal food program rules and our responsibility to uphold them.

Best,

Aimee

50. MDE had no interest and made no effort to fulfill its responsibilities to police the program and protect the integrity of the program. MDE specifically told Bock that she had no personal or professional responsibility to detect or report fraudulent claims.

51. MDE was aware that FOF and Bock had disallowed portions of or denied in whole tens of millions of dollars of inappropriate claims.

VI. The Civil Litigation Increased MDE's Oversight.

52. When FOF filed its civil lawsuit against MDE, Bock understood and intended that it would generate significant public attention and would provoke an aggressive response from MDE. Nonetheless, Bock proposed filing a speaking complaint detailing MDE's history of violating federal and state law and its directly accusing MDE of violating the rights of minority communities.

53. Bock understood that MDE would respond to the lawsuit by aggressively using every tool available to it in civil litigation to discredit her and FOF. From her experience with prior litigation against MDE, Bock understood the lawsuit would provoke MDE to exhaustively search for any plausible reason to deny FOF's claims. Bock advocated for the filing of the lawsuit fully understanding the attention and scrutiny it would bring.

54. For example, Bock understood in response to the lawsuit, MDE would be given greater authority to investigate FOF's claims, including: (1) the ability to subpoena documents from third-parties such as vendors and distributors; (2) the ability to gain access to FOF and Bock's emails, text messages, and even handwritten notes; (3) the ability to depose anyone they wanted, including vendors, distributors, sites, and FOF employees; and (4) that MDE would retain experts who would scour FOF's claims in search of any issues it could find.

55. Bock did not just accept the greater attention and scrutiny, she sought it. After FOF filed the lawsuit, Bock sent copies to every state representative in Minnesota and numerous news outlets. Bock also ensured that USDA was made aware of the lawsuit.

56. Bock also specifically invited greater scrutiny. By way of example only, on May 28, 2021, Bock invited MDE and its lawyers to visit any site it wanted: "To help you understand the work that we do and the families we help, Feeding Our Future is inviting each one of you, and any MDE representative willing to spend time meeting the community, to come to one of our sites, see how we operate, and meet our community partners."

57. On December 30, 2021, Bock agreed to produce to MDE all documents in her possession, including her personal, handwritten notes. Bock also noted that FOF had 70-75 banker boxes worth of documents that MDE was welcome to come collect, inspect, and copy at its convenience.

58. Bock also repeatedly offered to make herself available for a deposition at the time and place of MDE's choosing, including MDE's initial request that she be available on December 11th or 14th 2020.

59. Bock has been involved in personal litigation and in years of litigation with MDE. Bock advocated for filing the lawsuit because she wanted greater transparency on the food

program. Bock wanted the public and USDA to understand the claims FOF was submitting and how MDE was responding.

60. Nothing about the lawsuit could be used to hide information or restrict MDE review or scrutiny. At no point in time did FOF use the lawsuit to seek approval of a single application or claim. FOF only wanted MDE to follow the law by processing and approving or denying applications.

VII. MDE Intentionally Misrepresented the Facts and the Law to Federal Authorities.

61. MDE has also repeatedly misrepresented both the facts and the law to federal authorities.

62. Based on information and belief, MDE represented to the federal government that “no food” was being served by FOF sites. MDE has conducted numerous inspections and site visits in which they have seen significant food being distributed. In fact, MDE is aware that crowds at some FOF sites got so large police were called out to do crowd and traffic control to facilitate the distribution of food.

63. Based on information and belief, MDE also misrepresented Bock’s departure from PIN. MDE knows that Bock left PIN because she wanted to ensure greater oversight and stricter adherence to federal requirements. MDE also knows, and has repeatedly put in writing, that PIN staff were repeatedly making false allegations against Bock and FOF.

64. MDE also misrepresented to federal authorities that FOF had lost its tax-exempt status. MDE knew, however, that FOF had simply failed to file its taxes because it had no income. MDE also knew that when the same issue happened to other sponsors, MDE has helped them work with the IRS to update prior tax returns without interruption in their participation in the program.

MDE also knows that hundreds of non-profits have had similar issues, including the Eleventh Judicial District of Minnesota Bar Association.

65. MDE also misrepresented to the federal authorities the substantial evidence in its possession that Bock had purchased a childcare center and had worked for years to acquire the equipment and permitting required.

66. More importantly, on information and belief, MDE has been misrepresenting the law to federal authorities.

67. By way of example only, MDE has told the federal authorities that food vendors including restaurants, stores, and distributors cannot profit from the federal food programs. MDE knows that it is not only appropriate for food vendors to profit, but that it is the norm. Nearly all food vendors in the food program, if not all, are for-profit organizations participating in the food program for a profit. As MDE knows, the federal regulations definition of food vendors explicitly includes “private, for-profit companies.” (7 CFR 225.3(C)); (7 CFR 226.2).

68. On information and belief, MDE has also told the federal authorities that sites were required to take attendance. MDE knows that during the COVID pandemic, the USDA issued a waiver suspending the requirement to take attendance. The USDA said, “Those at-risk programs that do not have children actually in attendance do not need to maintain daily attendance records.” MDE is aware that the Governor’s mandates and public health recommendations closed nearly all of FOF’s sites for in person attendance.

19. Do CACFP at-risk afterschool centers need to maintain daily attendance records?

Through authority granted under the COVID-19 Child Nutrition Response Act (the Act) (H.R. 6201, Title II), FNS waived the requirements to serve CACFP meals in a congregate setting in *COVID-19: Child Nutrition Response #2, Nationwide Waiver to Allow Non-congregate Feeding in the Child Nutrition Programs*. FNS waived the requirements which require at-risk afterschool care centers to serve afterschool meals and snacks in a structured and supervised environment, with an educational or enrichment activity in *COVID-19: Child Nutrition Response #3, Nationwide Waiver of the Activity Requirement in Afterschool Care Child Nutrition Programs*, both dated March 20, 2020. In States that elect to use these waivers, CACFP at-risk afterschool centers only need to maintain daily attendance records for eligible children attending the center, per 7 CFR 226.17a(o)(1) (at-risk afterschool centers may maintain sign-in sheets or, with State agency approval, other methods which result in accurate recording of daily attendance). Those at-risk programs that do not have children actually in attendance do not need to maintain daily attendance records. However, State agencies must have a plan for ensuring that Program operators are able to maintain accountability and program integrity. This includes putting in place processes to ensure that meals are provided for eligible children, and that they do not distribute duplicate meals. At-risk afterschool centers are still required to maintain daily meal counts under this authority.

69. Both orally, and in writing, MDE has told sponsors and sites that they do not need to keep attendance records for meals that are picked up or delivered. MDE has told sponsors and sites that they should start taking attendance as a matter of practice and to determine the system and process that best works for them. MDE recommended this time to practice so sites were prepared for when the USDA's COVID waiver expired, and attendance was again required.

70. MDE knows that attendance records were not required for claims, they were not part of the documentation necessary for payment of claims, and that MDE was telling sites and sponsors to test different attendance programs and systems to start building the habit of attendance records for when the USDA waiver expired.

71. On information and belief, MDE has also misrepresented to the federal authorities the number of people in Minnesota that qualify to receive food in the food programs. MDE knows

that the food program is not just for children, but also includes disabled adults. On April 11, 2020, the USDA released a Questions and Answers memo. The USDA said, “any child age 18 years and younger at the start of the school year, as well as person over 18 with disabilities defined in the regulations, can be served meals and snacks.” MDE also knows that the USDA has a broad a liberal definition of disabled adults that includes 25% of Minnesotan adults.

Waiver #2: Non-Congregate Feeding

11. Under the Non-Congregate waiver, who can be served at sites providing meals?

For open SFSP and SSO sites (must meet area eligibility criteria, i.e., be located in an area where at least 50 percent of the children are from low-income families) and CACFP at-risk sites, any child age 18 years and younger at the start of the school year, as well as persons over 18 with disabilities as defined in the regulations, can be served meals and snacks, all of which can be claimed at the free rate. For schools operating NSLP and SBP; closed enrolled SFSP and SSO sites (located in areas with less than 50 percent of children from low-income families, and at least 50 percent of enrolled children must be free/reduced price eligible); SFSP or SSO camps; CACFP child or adult care centers, outside-school-hours centers, and family day care homes, only meals and snacks served to enrolled children or adult participants may be claimed, at the appropriate rate. In CACFP emergency shelters, meals served to residents 18 years and younger may be claimed at the free rate. See Question 8 for the number and type of meals or snacks that can be claimed for reimbursement under each Program.

72. MDE intentionally misled the federal authorities about Bock, FOF, and the food program generally.

VIII. MDE Intentionally Deleted and Hid Documents From Discovery.

73. When FOF filed its lawsuit, MDE employees deleted large amounts of data and intentionally engaged in deceptive practices to hide its violations of federal and state law from FOF.

74. Government employees have a special obligation to preserve evidence under the law. This is to ensure government transparency and access. Minnesota law requires government

employees to “make and preserve all records necessary to a full and accurate knowledge of their official duties. Minn. Stat. § 15.17, subd. 1.

75. The idea of government transparency was so important that the Minnesota legislature passed a statute called the Minnesota Data Practices Act (“DPA”). The DPA “establishes a presumption that government data are public and accessible by the public for both inspection and copying.” Minn. Stat. § 13.01, subd. 3. Anyone who violates the DPA can be held criminally liable. Minn. Stat. § 13.09(a) (“Any person who willfully violates the provisions of this chapter or any rules adopted under this chapter . . . is guilty of a misdemeanor.”).

76. As part of the prior civil lawsuit, MDE had an obligation to preserve and produce its documents as part of the litigation. FOF sent MDE a litigation hold on November 16, 2020, that instructed MDE employees that they “must not change, delete, discard or destroy any record that is stored electronically . . . Electronic files must be maintained in their original format.” The hold also stated that “If you are not sure whether a record is covered by this hold, you should exercise caution and preserve it.” The hold informed them that it could last “as long as several years.”

77. To hide documents from discovery and from being introduced at trial, MDE intentionally mislabeled documents, misspelled words to prevent their conversations from being found through IT searches, and they intentionally refrained from documenting their decisions.

78. MDE’s instant message system is replete with examples of MDE employees discussing deleting references to FOF in their documents, misspelling words, and using vague document titles and descriptions to hide the documents from FOF.

79. For illustrative purposes, MDE admitted to removing references to FOF in some documents so they would not be detected in an IT search:

In a moment, fwd'ing how E sent out F email just little bit ago. tried to remove F references so may not be an IT hit..... she knows P has ones in these situations..... prox we are starting with "revise" but we should talk about your W situation.....

"Pace, Kendra (MDE)" <Kendra.Pace@state.mn.us>
2021-06-25 20:52:03 +0000

80. MDE employees also talked about avoiding putting their decisions in writing and avoiding using MDE equipment so their actions would be concealed. MDE used what they called “burner phones” and personal emails and cell phones to conduct government business:

Rollinger, Sue (MDE) 10:58 AM:

I am going to leave a message on Laura's voicemail to ask her to call this burner phone

Pace, Kendra (MDE) 11:00 AM:

Perfect! TY!

Rollinger, Sue (MDE) 11:00 AM:

leaving a message right now to call the burner phone .. will keep you posted :-) am hopping off now

Pace, Kendra (MDE) 11:19 AM:

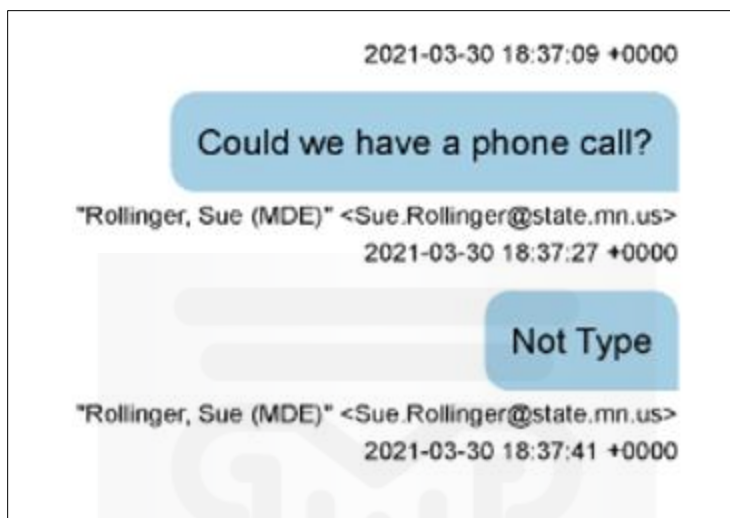
Quick update. CAP Agency, Sue had to leave a VM for our contract there Laura, Sue left her burner phone ph# for call back (2 sites, good news potentially affected). Jenny is doing a FOF site review today and skyped me this Q. I

I forwarded that to home since we cannot use government equipment

"Anderson, Cindy L (MDE)" <cindy.l.anderson@state.mn.us>
2021-06-30 21:57:35 +0000

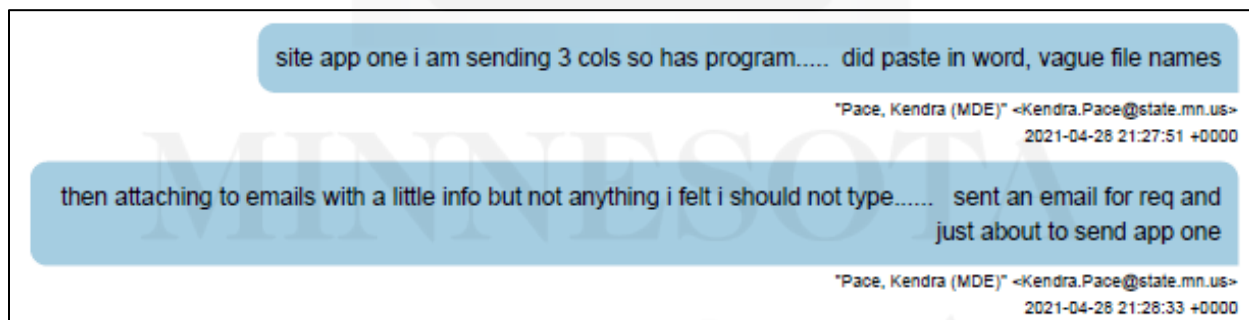
is this a Dont type situation?

"Rollinger, Sue (MDE)" <Sue.Rollinger@state.mn.us>
2021-07-01 17:14:08 +0000

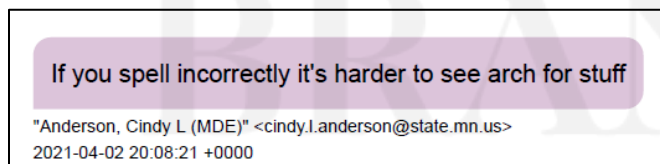


81. MDE also specifically deleted documents relating to FOF:

- Game Plan Document: please note this is a 2nd version. The original version is locked on my computer from when it crashed and IT is currently working to delete the first version.



82. There are also endless examples of MDE employees intentionally misspelling words, adding spaces inappropriately, and otherwise taking affirmative steps to hide their discussions, decisions, and actions:



ahhh great tip omg!!!!!!!!!!!!

"Pace, Kendra (MDE)" <Kendra.Pace@state.mn.us>
2021-04-02 20:08:39 +0000

well as of now, the stoop pais are only on cacfp

"Pace, Kendra (MDE)" <Kendra.Pace@state.mn.us>
2021-04-02 20:44:43 +0000
Edited at 2021-04-02 20:46:04 +0000

huh?

"Anderson, Cindy L (MDE)" <cindy.l.anderson@state.mn.us>
2021-04-02 20:47:11 +0000

Only on cacfp, not sfsp for getting payd

"Pace, Kendra (MDE)" <Kendra.Pace@state.mn.us>
2021-04-02 20:47:58 +0000

maybe I need more cof feeeee? Stoop????????????

"Anderson, Cindy L (MDE)" <cindy.l.anderson@state.mn.us>
2021-04-02 20:49:43 +0000

u crack me up! take out an 0

"Pace, Kendra (MDE)" <Kendra.Pace@state.mn.us>
2021-04-02 20:50:09 +0000

OH!

"Anderson, Cindy L (MDE)" <cindy.l.anderson@state.mn.us>
2021-04-02 20:50:28 +0000

Interesting part i got back too when i asekd: although M W R O gave us additional regalatshun where we might need to stoop pai on all claims.

"Pace, Kendra (MDE)" <Kendra.Pace@state.mn.us>
2021-04-02 20:52:45 +0000

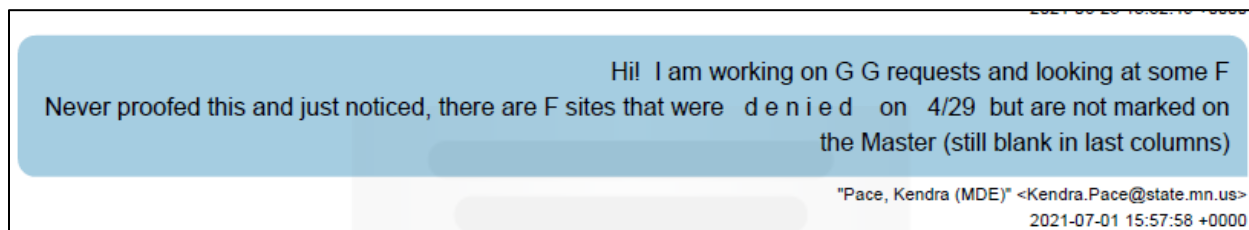
hey did you by chance remove the stoop payes from peanuts 2 sponsor apps?

"Pace, Kendra (MDE)" <Kendra.Pace@state.mn.us>
2021-04-30 19:14:21 +0000

i just looked and they were gone but no notes in the note box.....

"Pace, Kendra (MDE)" <Kendra.Pace@state.mn.us>
2021-04-30 19:14:46 +0000

83. MDE also intentionally referred to FOF as “F” to avoid their discussions and actions being found on document searches:



84. MDE developed a systemwide practice of hiding its documents and decisions by engaging in deceptive practices. MDE’s practice violated state law and their obligations under court orders to produce documents.

COUNT I
INTENTIONAL AND NEGLIGENT
INFLICTION OF EMOTIONAL DISTRESS

85. Bock incorporates by reference all previously pled paragraphs as if fully stated herein.

86. MDE, and individual employees to be named later, intentionally engaged in a pattern and practice of harassing and intimidating Bock to prevent her from working with vulnerable members of the minority community by: (i) refusing to approve PIN when Bock initially applied for it to be a sponsor; (ii) refusing to process or approve FOF applications; (iii) by misrepresenting the law to FOF; (iv) by misrepresenting facts at administrative and judicial proceedings; (v) by hiding the facts through the judicial process; (vi) by refusing to process or approve FOF applications for payment; (viii) by subjecting Bock to a different standard than all other participants in the food program; and by (ix) misrepresenting Bock’s actions to federal authorities in the hopes that they would prosecute her to derail FOF’s civil lawsuit.

87. MDE, and individual employees to be named later, acted knowing their actions were outside of their authority and in violation of federal and state law and knowing that their actions would cause significant harm to Bock.

88. MDE, and individual employees to be named later, acted for the specific purpose of causing Bock emotional distress.

89. The actions of MDE, and individual employees to be named later, caused Bock severe emotional distress.

WHEREFORE, Bock is seeking: (i) a jury verdict that MDE is liable for intentional and negligent infliction of emotional distress; and (ii) all associated damages.

COUNT II
INTENTIONAL INTERFERENCE
WITH A BUSINESS RELATIONSHIP

90. Bock incorporates by reference all previously pled paragraphs as if fully stated herein.

91. MDE knew that Bock had a business relationship with FOF and its community partners.

92. MDE intentionally interfered in those relationships by (i) refusing to approve PIN when Bock initially applied for it to be a sponsor; (ii) refusing to process or approve FOF applications; (iii) by misrepresenting the law to FOF; (iv) by misrepresenting facts at administrative and judicial proceedings; (v) by hiding the facts through the judicial process; (vi) by refusing to process or approve FOF applications for payment; (viii) by subjecting Bock to a different standard than all other participants in the food program; and by (ix) misrepresenting Bock's actions to federal authorities in the hopes that they would prosecute her to derail FOF's civil lawsuit.

WHEREFORE, Bock is seeking: (i) a jury verdict that MDE is liable for tortious interference with business relationships; and (ii) all associated damages.

COUNT III
VIOLATIONS OF THE DATA PRACTICES ACT

93. Bock incorporates by reference all previously pled paragraphs as if fully stated herein.

94. MDE, and individual employees to be named later, intentionally destroyed, manipulated, concealed, and hid documents on which they were conducting government business.

95. MDE, and individual employees to be named later, also used their personal computers and “burner phones” to conduct government business so the information would not be collected or stored on government computers.

96. MDE, and individual employees to be named later, engaged in those deceptive practices to hide their illegal and wrongful conduct against Bock.

WHEREFORE, Bock is seeking: (i) a jury verdict that MDE is liable for violations of the Data Practices Act; and (ii) all associated damages.

COUNT IV
EQUAL ACCESS TO JUSTICE

97. Bock incorporates by reference all previously pled paragraphs as if fully stated herein.

98. MDE’s decisions and actions described above are clearly in violation of federal law and state law.

99. Bock is entitled to all its fees and costs under the Equal Access to Justice Act, Minn. Stat. § 15.471.

WHEREFORE, Bock is seeking its lost revenue, all related damages, costs, and attorneys' fees.

JURY DEMAND

Bock hereby requests a jury on all issues so triable.

Dated: January 31, 2024

AIMEE BOCK

s/ Aimee Bock

Aimee Bock

PRO SE

ACKNOWLEDGEMENT REQUIRED BY MINN. STAT. § 549.211, SUBD.1

The undersigned hereby acknowledges that pursuant to Minn. Stat. § 549.211, subd. 3, sanctions may be imposed if, after notice and a reasonable opportunity to respond, the Court determines that the undersigned has violated the provisions of Minn. Stat. § 549.211, subd. 2.

s/Aimee Bock