

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

<p>FEEDING OUR FUTURE,</p> <p>Plaintiff,</p> <p>v.</p> <p>MINNESOTA DEPARTMENT OF EDUCATION and DARON KORTE (officially)</p> <p>Defendants.</p>	<p>Civil Case No. 62-CV-20-5492</p> <p>FOURTH AMENDED COMPLAINT AND JURY DEMAND</p>
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1. Thousands of qualified children in low-income and minority communities are going without desperately needed federal food programs because MDE consistently engaged in discriminatory practices that make it disproportionately harder for minority communities to participate in CACFP and SFSP. For example, MDE has refused to accept or process Feeding Our Future's applications; it has created administrative and procedural hurdles for its applications; it has imposed unsupported restrictions on its ability to expand; it has wrongfully withheld federal funding; issued baseless findings of serious deficiency and proposed termination; and has taken retaliatory action against Feeding Our Future and its Executive Director.

2. Feeding Our Future is one of the largest independent sponsors of federal food programs in Minnesota. It currently has numerous applications pending to bring millions of dollars in federal funds to feed thousands of Minnesota's most vulnerable children. Despite federal regulations requiring MDE to process applications within 30 days, MDE has let many of Feeding

Our Future's applications languish in just the first step of the application process for over 60 days and counting.

3. Feeding Our Future brings this action to compel MDE to comply with the federal law and process its applications and claims so it can help feed low-income and minority children that have been disproportionately impacted by a global pandemic and widespread social unrest.

THE PARTIES

4. Feeding Our Future is a non-profit organization based in Minneapolis. It is dedicated to making federally funded food programs accessible to low-income and minority communities in Minnesota.

5. The Department of Education is a state agency responsible for administering the federal food programs in Minnesota.

6. Daron Korte is an Assistant Commissioner of the Minnesota Department of Education.

JURISDICTION AND VENUE

7. This Court has jurisdiction over this action under Minn. Stat. § 555.02, which allows district courts to determine “any question of construction or validity arising under ... statute, ordinance, [or] contract.” Declaratory judgments against administrative agencies are appropriate when, like here, quasi-legislative action of the agency is challenged. *See, e.g., Anderson v. County of Lyon*, 784 N.W.2d 77, 81-82 (Minn. App. 2010).

8. This Court also has jurisdiction because Plaintiff either has no administrative remedies available to it, the Defendant has precluded administrative remedies, the administrative remedies require an appeal to the district court, the administrative remedies are exhausted, or the

administrative remedies are inadequate. *See, e.g., Builders Ass'n of Minn. v. City of St. Paul*, 819 N.W.2d 172, 177 (Minn. App. 2012).

9. Venue is appropriate because Defendant resides in Ramsey County and committed the acts in question in Ramsey and Hennepin Counties. *See* Minn. Stat. § 542 *et. seq.*

GENERAL ALLEGATIONS

I. The USDA's Food Service Programs

8. In 1968 the Legislature adopted the National School Lunch Act to provide “nutritious foods that contribute to the wellness, healthy growth, and development of young children, and the health and wellness of older adults and chronically impaired persons.” 7 C.F.R. § 226.1

9. There are two major components to the USDA's food service programs, the Child and Adult Care Food Program (“CACFP”) and the Summer Food Service Program (“SFSP”). Those two programs work in tandem to ensure low-income children are provided free, nutritious meals year-round. CACFP provides meals after school, and SFSP provides meals when schools are not in session.

10. Both programs function in effectively the same way. A non-profit organization applies to the state agency to become an approved sponsor. Once approved, the sponsor enters a contract with the state agency to provide CACFP or SFSP services. The sponsors run the programs and ensure compliance with all federal regulations. The sponsors work with low-income communities to identify sites where children can receive free meals in a safe and supervised environment such as schools, parks, community centers, clinics, apartment complexes, or other community gathering places.

11. Both programs are entirely funded by the USDA and administered by state agencies. In Minnesota, the programs are run by the Department of Education. The Minnesota Legislature has not adopted any laws governing CACFP or SFSP and MDE has not promulgated any rules. The only applicable requirements are in the federal law and regulations.

II. Feeding Our Future

12. Feeding Our Future is a non-profit organization that was formed in November 2016 to help low-income and minority communities that have been traditionally underrepresented participate in CACFP and SFSP funding.

13. Feeding Our Future applied to MDE and was approved to be a sponsor of CACFP and SFSP programs.

14. On July 2018, Feeding Our Future and MDE executed a contract whereby Feeding Our Future agreed to provide CACFP and SFSP services, and MDE agreed to comply with all federal regulations and provide applicable funds and commodities necessary to help it serve low-income communities.

15. Feeding Our Future is the largest independent CACFP and SFSP sponsor in Minnesota. It provides federally funded meals to over 30,000 children a day and brings in millions of dollars of federal funds every month to the State.

16. Feeding Our Future has 15 full-time staff and 45 part-time staff. Its full-time staff members are deeply rooted and connected to the communities they serve and collectively speak 10 languages.

17. The communities Feeding Our Future serves were hit hard by COVID-19 and social unrest resulting from the death of George Floyd. As a result, most schools, restaurants, childcare

providers, and religious organizations suddenly and indefinitely closed, turning what MDE described as a “nutrition gap” into an “urban food desert.”

III. The Impacts of the Pandemic and Social Protests.

18. Minneapolis has long had a pronounced disparity in nutritional foods available to children in low-income and minority communities. MDE has described the issue as a “nutrition gap” and MDE Commissioner Ricker has noted: “Nutrition is one key to academic success.”

19. According to MDE, over 80% of eligible children in low-income and minority communities do not have access to SFSP food services. To help combat the issue, on February 1, 2020, MDE issued a press release encouraging more organizations to become sponsors of SFSP and CFCP programs. MDE explained: “There are many low-income areas in Minnesota underserved and in need of a sponsor to operate a summer feeding site, especially in Greater Minneapolis.”¹

20. In March 2020, the disparity grew greater as low-income and minority communities were hit particularly hard by the global COVID-19 pandemic. In response to the pandemic, schools, community centers, religious organizations, and neighborhood centers were forced to close. The impacts of the pandemic were devastating and universal but were particularly pronounced in low-income and minority communities. Food shortages become food crises for the most vulnerable in the community.

21. In May 2020, the streets of Minnesota erupted in protest in reaction to the death of George Floyd. Businesses, grocery stores, and restaurants in low-income communities were looted, burned, and destroyed.

¹ <https://m.austindailyherald.com/2020/02/minnesota-department-of-education-seeks-sponsors-for-summer-food-service-program/>

22. As one person who works for the Lake Street Council put it: “Our largest grocery stores are also gone. Right now, our community, we live in a food desert, which happened overnight.”² Similar comments and concerns were echoed by numerous community leaders.³

23. The impacts of the pandemic and social protests and their disproportionate effect on minority communities cannot be overstated.

24. In response to the exceptional circumstances of the public health emergency, the Legislature passed the Families First Coronavirus Response Act (“FFCRA”). Under that authority, the USDA established nationwide waivers of federal regulatory requirements to increase participation in CACFP and SFSP.

25. For example, the USDA extended the summer program through June 2021; it allowed meals to be reimbursed before applications were approved; it reduced requirements for the locations of meal sites; it allowed meals to be taken home by parents instead of eaten on site by the children; it no longer required sites to provide enrichment activities; and a host of others.

26. The Legislature and USDA have been clear that the priority is increasing desperately need access to food through CACFP and SFSP.

IV. MDE Refuses to Allow Feeding Our Future to Apply for Additional Sites.

27. MDE has consistently refused to allow Feeding Our Future to submit applications to open new meal sites. Since September 8, 2020, Feeding Our Future has submitted 51

² Marketplace, June 4, 2020, available at <https://www.marketplace.org/2020/06/04/neighborhoods-where-stores-were-destroyed-become-food-deserts-overnight/>

³ See The Circle, July 6, 2020, available at <http://thecirclenews.org/cover-story/covid-protests-bring-food-shortages-and-community-support/>;

applications to open new meal sites in low-income and minority communities. Without explanation, MDE has refused to take even the first step on 41 of its applications and refused to process another 10.

28. Under federal law, “MDE is charged by the regulations to establish an application process and approve or disapprove applications based upon the standards articulated in the federal regulations.” *In re Partners in Nutrition*, 896 N.W.2d 564, 571 (Minn. App. 2017).

29. The federal regulations require MDE to process applications and inform the applicant of its decision in writing within 30 days. 7 C.F.R. 226(b)(3).

30. On May 27, 2020, MDE reported to the USDA that it was experiencing a high demand of applicants to participate in SFSP and requested that the mandatory 30-day deadline to respond to applications be extended to 45 days.

31. On June 23, 2020, the USDA responded that it would allow MDE 45 days to respond to SFSP applications it received by July 31, 2020. MDE did not request, and was not given, an extension of the 30-day deadline for CACFP applications.⁴

32. USDA’s extension of the 30-day deadline has long expired and is not applicable to any of Feeding Our Future’s pending applications.

33. In an attempt to circumvent the rules, MDE has created a two-step application process. First, before MDE allows a sponsor to submit an application for a new meal site, it requires the sponsor to apply for a “site ID.” Without a site ID, sponsors cannot access MDE’s electronic platform to submit an application. An application for a site ID must include substantial information, including a site ID request form; a signed agreement between the sponsor and the

⁴ It is not clear what authority USDA relied on to extend the federal regulatory requirement. Regardless, the waiver ended on July 31, 2020, and has no application here.

site; a completed check list showing that the site is ready to operate; staff training records; and an area eligibility map, among others. Once MDE issues a site ID, it then allows the sponsor to move to step two and submit the actual application to participate in the food program.

34. The Minnesota Court of Appeals has already chastised MDE for creating a two-step application process in violation of federal regulations. *See, In re Partners in Nutrition*, 896 N.W.2d 564, 571 (Minn. App. 2017) (noting that nothing in the federal regulations allow MDE to create a multi-step application process or impose requirements not based on federal regulations).

35. Since September 8, 2020, Feeding Our Future has submitted over 50 applications for new CACFP and SFSP meal sites. MDE has kept 41 applications in step one for up to 73 days and counting.

36. The chart below shows the applications Feeding Our Future has submitted for site IDs without response from MDE.

	Site Name	Date Site ID Requested	Number of Days Pending as of 11.23.20
1	K' Dollar Grocery	9.8.20	76 Days
2	Sister's Grill	9.8.20	76 Days
3	ASA Limited	9.8.20	76 Days
4	Brava Restaurant	9.8.20	76 Days
5	Baraka Allah	9.14.20	70 Days
6	Bright Horizons	9.14.20	70 Days
7	M5 Café	9.14.20	70 Days
8	Wacan Restaurant	9.15.20	69 Days
9	Olive Management	9.16.20	68 Days
10	Muna Halal	9.16.20	68 Days
11	Brava Café	9.16.20	68 Days
12	Lake Street Kitchen	9.17.20	67 Days
13	Tabuuk Catering	9.17.20	67 Days
14	Great Lakes	9.25.20	60 Days
15	Los Ranchos Mercado	9.25.20	60 Days
16	Gold Finger	9.25.20	60 Days
17	Barwago Restaurant	9.30.20	54 Days
18	Multiple Community Services	10.6.20	48 Days
19	Shamsia Hope	10.12.20	42 Days

20	Haji's Kitchen	10.13.20	41 Days
21	Dakota Station	10.13.20	41 Days
22	Southcross	10.13.20	41 Days
23	Bukhari Center	10.16.20	38 Days
24	Al-Israa Academy	10.16.20	38 Days
25	Khalid Binv Walid	10.16.20	38 Days
26	Iqra Center	10.16.20	38 Days
27	Omar Binu Khidaab	10.16.20	38 Days
28	Nurul Huda Islamic Center	10.16.20	38 Days
29	Nurul Iman Institute	10.16.20	38 Days
30	Karmel Learning Center	10.16.20	38 Days
31	Mercy Center	10.16.20	38 Days
32	Midwest Youth & Cultural Network	10.16.20	38 Days
33	Tawhid Islamic Center	10.16.20	38 Days
34	Salaama Education and Community Center	10.16.20	38 Days
35	Stigma Free – Mankato	10.19.20	35 Days
36	Stigma Free – Willmar	10.19.20	35 Days
37	Confederation of Somali in Minnesota	10.22.20	32 Days
38	Al Hikma	10.22.20	32 Days
39	Iman Cultural Center	10.22.20	32 Days
40	Rahman Center	10.22.20	32 Days
41	Hilltop	10.22.20	32 Days

37. MDE has no right to require Feeding Our Future, or any other sponsor, to request a site ID before allowing it to submit an application. MDE's application process creates additional hurdles, delays, and burdens to sponsors that are not allowed under federal law.

38. In addition to the 41 sites above, MDE has allowed Feeding Our Future to submit applications for 10 sites without as part of step 2 of its application process on another 10 sites:

	Site Name	Date Site ID Requested	Step 2 Submitted	Total Duration
42	Bright Horizon Therapy	9.28.20	11.4.20	56 Days
43	Twin Lakes Center	10.6.20	11.4.20	48 Days
44	All Star Academy	10.6.20	11.11.20	48 Days
45	Hope Center	10.6.20	11.4.20	48 Days
46	Nawal Restaurant	4.28.20	10.9.20	45 Days
47	Somali American Community	10.12.20	11.11.20	42 Days
48	Action For East African community	10.13.20	11.9.20	41 Days
49	Ibn Nabawi	10.16.20	11.10.20	38 Days
50	Darul Quba Center	10.16.20	11.10.20	38 Days
51	UCYEC Enrichment Center	10.16.20	11.9.20	38 Days

39. In total, Feeding Our Future has 47 applications that have been pending for over 30 days without response from MDE.

40. Each meal site represents tens-of-thousands of meals to hundreds of needy children who continue to go without healthy and nutritious meals during a global pandemic.

41. MDE's delays are particularly hard to understand in the cases of Bukhari Center, Al-Israa Academy, Khalid BIny Walid, Igra Center, Omar Binu Khidaab, Nurual Huda Islamic Center, Nurual Iman Institute, Karmel Learning Center, UCYEC Center, Ibn Nabawi, Darul Quba Center, and Hope Center. Those 12 meal sites were previously approved to work with a different sponsor. MDE has already reviewed and approved their participation. The sponsor they were working with, however, closed and asked Feeding Our Future to absorb its locations. Their approval should take minutes, not weeks and in no circumstances longer than the federally mandated review period.

V. MDE Unilaterally and Covertly Terminated Some Meal Sites

42. Between April 13 and April 23, 2020, Feeding Our Future contacted MDE to submit applications for 8 different locations to participate as meal sites in CACFP's afterschool program: Afro Deli, Evergreen Grocery and Deli, Safari Restaurant, Nawal Restaurant, Minnesota Coffee, Sambusa King, Shafi'i Tutoring and Homework Help, and Sombosa Restaurant.

43. Each of the sites is an upstanding business with deep connections to the community. For example, Abdirahman Kahin, the owner of Afro Deli, was invited by President Obama to attend his final State of the Union address. In his speech, President Obama commended Mr. Kahin for his dedication to the community, creation of jobs, and contribution to the economy.

44. MDE initially refused to provide Feeding Our Future site IDs to submit applications for any of these sites. MDE offered no explanation of about why it was refusing to allow Feeding Our Future to apply for these sites to be added.

45. After exhaustive discussions with MDE, April 28, 2020, Feeding Our Future sent MDE a draft complaint and litigation hold. Feeding Our Future advised MDE that if the sites were still not approved by April 30, it would file the action. On April 29th at 5:31pm MDE relented and represented that all 8 sites would be given site IDs and their applications would be approved without delay.

46. MDE declined to provide any explanation of why it initially refused to allow Feeding Our Future to apply for those meal sites, or why it changed its mind.

47. Soon after, Feeding Our Future also submitted applications to open meal sites at Dur Dur Restaurant; Lido Restaurant; Maashaa'allah, and S&S Catering. Those applicants, along with the 8 listed above, were all accepted and approved through December 31, 2020.

48. On or around October 15, 2020, without discussing it with Feeding Our Future, MDE unilaterally changed the applications for five of those sites to end their participation on October 31, 2020. MDE did not issue any formal decision or explain its actions.

49. By changing Feeding Our Future's applications, MDE argued that the timeframe of the sites' participation in the program had simply expired under the terms of the application.

50. MDE knew that if it wanted to terminate the meal sites, it was required by federal law to send written notice explaining the basis of its decision, the factual support, and notice of Feeding Our Future's right to appeal the decision. *See* 7 C.F.R 225.13.

51. MDE intentionally avoided terminating Feeding Our Future's sites to deprive Feeding Our Future of its right to appeal.

52. MDE unilaterally manipulated the applications of: Dur Dur Restaurant; Lido Restaurant; S&S Catering; Safari Restaurant; Evergreen Grocery and Deli; and Maashaa'allah to end Feeding Our Future's ability to use those meals sites starting November 1, 2020. Feeding Our Future was using those meal sites to provide over 750,000 meals and snacks in October alone.

53. MDE has provided no explanation for its decision to manipulate Feeding Our Future's applications, and it has not allowed Feeding Our Future to pursue any appeal or reconsideration.

VI. MDE Proposed The Termination of Feeding Our Future And Aimee Bock

54. On January 15, 2021, MDE issued a letter alleging Feeding Our Future was seriously deficient because its 501(c)(3) status had been revoked by the IRS; it submitted a false information to MDE by verifying that it was compliant with all federal regulations; and it had failed to file a single audit with the Federal Audit Clearinghouse.

55. On information and belief, MDE's finding of serious deficiency was disproportionately aggressive and departed from MDE's prior practice.

56. Feeding Our Future believes the evidence will show that MDE issued the serious deficiency for improper, retaliatory purposes and with the knowledge, intent, or purpose that it would cause Feeding Our Future and Ms. Bock damages and limit the participation of the minority communities in the federal food program.

57. Although Feeding Our Future established that it never lost its 501(c)(3) status, MDE nonetheless issued a notice of proposed termination and disqualification of CACFP Sponsorship for Feeding Our Future and Ms. Bock on March 29, 2021.

58. Again, MDE's issued the proposed termination in violation of its prior practices; in retaliation for Feeding Our Future's lawsuit; and for the specific purpose of preventing or limiting Feeding Our Future's ability to help minority businesses participate in federal food programs.

VII. MDE Declares Feeding Our Future Seriously Deficient, Withholds Funds, and Refuses to Accept to Process Applications.

59. On March 31, 2021, MDE issued a second notice of serious deficiency against Feeding Our Future. MDE made five allegations: (1) that Feeding Our Future failed to file its audit with the Federal Audit Clearinghouse; (2)

60. MDE's claim of serious deficiency was based on five allegations: (1) although Feeding Our Future timely conducted and produced an independent audit of its 2019 financials, its auditor failed to file that audit on the federal audit clearinghouse website; (2) Feeding Our Future did not update its "budget worksheet;" (3) Feeding Our Future's applications for new site locations included too many typos; (4) Feeding Our Future has been too slow to hire an accountant; and (5) MDE alleges that it received four complaints about Feeding Our Future that it purports to be currently investigating.

61. In its serious deficiency letter, MDE said that it would not accept new applications or process any currently pending applications for Feeding Our Future. MDE's position was in direct contradiction of this Court's December 22, 2020, order and federal law.

62. MDE's letter also declared that MDE was issuing a stop payment notice until such time as Feeding Our Future could "validate" its claims.

63. MDE's decision to stop all payments was a violation of federal law and MDE's past practices.

64. MDE did not assert any allegations that a single one of Feeding Our Future's claims was invalid, incomplete, inappropriate, inaccurate, or in any way defective.

65. MDE decision to issue the serious deficiency, stop payment, and to refuse to process or accept applications is in violation of MDE's past practices and federal regulations; in retaliation for Feeding Our Future's lawsuit; and was done with the intent and knowledge that it would limit or impact the ability of minority organizations to participate in the federal food program.

VIII. MDE Inappropriately Denied Site Applications and Misrepresented Facts During Administrative Appeals to Support its Denials.

66. MDE also inappropriately denied Feeding Our Future's site applications and then misrepresented the facts during Feeding Our Future's administrative appeals.

67. For example, on April 29, 2021, MDE wrongfully denied 144 site ID requests under the pretense that Feeding Our Future was under a "serious deficiency." MDE's denial violated federal regulations, federal policy, and MDE past practices and was done in bad faith.

68. MDE similarly denied 15 of Feeding Our Future's SFSP applications on June 25, 2021, and made material misrepresentations about those facts to the administrative review panel and the Court of Appeals.

69. For example, MDE represented that it did not know Feeding Our Future was distributed meals prepared by restaurants at their own restaurants. MDE also falsely claimed that it had not reviewed Feeding Our Future's contracts with its vendors. Based on those misrepresentations, MDE denied many of Feeding Our Future's sites.

70. MDE also falsely represented that it was contacted by the Minneapolis Parks and Recreation Board, and that the Board represented that Feeding Our Future had no right to use its parks to participate in the food program because it had an exclusivity agreement with the Minneapolis Public Schools. Those statements were all categorically false and yet MDE relied on them to support its decision.

71. MDE also violated federal regulations and policy by failing to tell Feeding Our Future it was suddenly interpreting the regulations to preclude for-profit vendors from donating their space to distribute their own meals and not providing Feeding Our Future any technical assistance to bring its sites into compliance with MDE's new interpretation. MDE also violated federal regulations by refusing to accept Feeding Our Future's sites even after Feeding Our Future agreed to comply with MDE's new interpretation.

72. Similarly, MDE issued more site and claim denials on December 3, 2021. Again, MDE's denials violated federal law and MDE past practices.

COUNT I
DECLARATORY JUDGMENT

73. Feeding Our Future incorporates by reference all previously pled paragraphs as if fully stated herein.

74. A number of disputes exist between the parties:

- a. Whether MDE can continue to enforce a preapplication process that requires sponsors to submit a request for a "site ID" before being allowed to submit an application for a new CACFP or SFSP meal site;
- b. Whether MDE must comply with 7 C.F.R. 226(b)(3) by responding to applications in writing within 30 days;
- c. Whether MDE is required to accept applications for the sites identified above that are waiting to receive site IDs;
- d. Whether the sites Feeding Our Future has submitted requests for site IDs or formal applications qualify as sites under CACFP and SFSP;
- e. Whether MDE can create a new claim validation process and impose it on Feeding Our Future;

- f. Whether MDE can require Feeding Our Future to comply with a new claim validation process when MDE has not asserted any allegations that Feeding Our Future's claims were in any way defective or deficient;
 - g. Whether MDE can refuse to accept or process applications in violation of the Court's order; and
 - h. Whether MDE can issue a stop payment without any allegations that Feeding Our Future's claims were in any way incomplete or inaccurate.
75. A determination of these issues will terminate the controversy between the parties.
76. Feeding Our Future has a practical interest in the resolution of these disputes and it will affect its ability to fulfill its mission of providing healthy and nutritious meals to need children in low-income communities that have been disproportionately impacted by the global pandemic and social unrest.

WHEREFORE, Feeding Our Future seeks a declaratory judgment that MDE does not have the right to enforce a preapplication process; that MDE must comply with 7 C.F.R 226(b)(3) and all other federal regulations; that MDE is required to accept the applications for all sites awaiting site IDs; that MDE must approve all site applications currently pending; that MDE must process and pay all claims; that MDE cannot create a new claim validation process without going through the formal rulemaking; among others. Feeding Our Future is also seeking all costs, fees, and damages associated with MDE's wrongful actions.

COUNT II
INJUNCTIVE RELIEF

77. Feeding Our Future incorporates by reference all previously pled paragraphs as if fully stated herein.

78. MDE has precluded Feeding Our Future from any administrative remedies by refusing to take any action on the pending applications and by issuing a serious deficiency that cannot be appealed.

79. Feeding Our Future has no adequate alternative remedies available under the law.

80. Feeding Our Future has been and continues to be irreparably harmed by MDE's refusal to accept and process applications and refusal to pay claims due. Every day that goes by hundreds of the state's most vulnerable children are going without much needed meals and food during a global pandemic.

81. Feeding Our Future asks for an immediate injunction requiring MDE to dispose of its preapplication process; immediately accept all pending applications; approve all pending applications; end its validation process; and pay all outstanding claims.

WHEREFORE, Feeding Our Future is seeking injunctive relief precluding MDE from continuing to enforce its preapplication process; requiring MDE to comply with all federal requirements; requiring MDE to approve the applications for each pending site; end its validation process; and pay all outstanding claims. Feeding Our Future is also seeking all costs, fees, and damages associated with this action.

COUNT III
WRIT OF MANDAMUS

82. Feeding Our Future incorporates by reference all previously pled paragraphs as if fully stated herein.

83. MDE has a clear duty imposed by law to accept and process applications for meal sites for the CACFP and SFSP programs. Despite this requirement, MDE is refusing to accept applications; it is imposing a preapplication process; depriving Feeding Our Future the right to

distribute food to children in need; refusing to accept and process applications; and refusing to pay Feeding Our Future's claims.

84. MDE has unjustifiably refused to accept or process the applications of dozens of meal sites, all of which qualify under the CACFP and SFSP programs.

85. MDE has also unjustifiably refused to process or pay outstanding claims and has inappropriately created a new claims validation process and applied it just to sponsors serving the minority community.

86. Feeding Our Future has been, and continues to be, harmed by MDE's actions.

WHEREFORE, Feeding Our Future requests that the Court enter a Writ requiring MDE to end its preapplication process; accept all pending applications; grant all pending applications from Feeding Our Future; end its claim validation process; and pay all outstanding claims. Feeding Our Future is also seeking all costs, fees, and damages associated with MDE's refusal to enter a final order.

COUNT IV
BREACH OF CONTRACT

87. Feeding Our Future incorporates by reference all previously pled paragraphs as if fully stated herein.

88. On July 27, 2018, and June 30, 2020, MDE and Feeding Our Future executed contracts for Feeding Our Future to provide CACFP and SFSP services to low-income and minority communities.

89. Under the explicit terms of the agreement, MDE promised to "provide applicable funds and commodities in accordance with federal statutes and program regulations cited in this agreement and additional program directives and guidance issued by MDE and USDA."

90. MDE breached that contract by, among other things, failing to accept Feeding Our Future's applications for additional meal sites; unilaterally terminating sites; creating additional and unnecessary hurdles for Feeding Our Future's applications and administration of CACFP and SFSP; refusing to accept or process applications; creating a new claim validation process; refusing to pay Feeding Our Future's claims; taking too long to process Feeding Our Future's applications; inappropriately denying Feeding Our Future's site ID requests and applications; misrepresenting the facts during the administrative hearings and on appeal to the Court of Appeals; failing to provide technical assistance to help Feeding Our Future understand MDE's changing interpretation of the federal regulations; issuing baseless and unsupported serious deficiencies and notices of termination; and refusing to process and timely pay Feeding Our Future's claims.

91. MDE's breach of contract caused Feeding Our Future substantial and ongoing damages. MDE's refusal to process meal sites and unilateral termination of other sites has caused Feeding Our Future to lose millions of dollars in federal funding, damaged its reputation in the community, and has prevented Feeding Our Future from working with additional sites.

WHEREFORE, Feeding Our Future is seeking: (i) a jury verdict that MDE breached its contract with Feeding Our Future; (ii) all associated damages, including lost federal funding, lost productivity, lost business opportunities, damages to its reputation in the community; interest on delayed payments; and consequential damages; and (iii) the legal costs, fees, and other damages associated with MDE's breach.

COUNT V
TORTIOUS INTERFERENCE WITH CONTRACTS

92. Feeding Our Future incorporates by reference all previously pled paragraphs as if fully stated herein.

93. Feeding Our Future has contracts with the meal sites and catering companies to provide food to in low-income communities.

94. MDE is aware of Feeding Our Future's contractual relationships with third parties and requires them as part of the first step of the application process.

95. MDE intentionally interfered with those contractual relationships to deprive Feeding Our Future of the benefits of those contracts by refusing to accept or process their applications; creating administrative and procedural hurdles; refusing to pay Feeding Our Future's claims; taking too long to process Feeding Our Future's applications; inappropriately denying Feeding Our Future's site ID requests and applications; misrepresenting the facts during the administrative hearings and on appeal to the Court of Appeals; failing to provide technical assistance to help Feeding Our Future understand MDE's changing interpretation of the federal regulations; issuing baseless and unsupported serious deficiencies and notices of termination; and refusing to process and timely pay Feeding Our Future's claims.

WHEREFORE, Feeding Our Future is seeking: (i) a jury verdict that MDE tortuously interfered with its contracts; (ii) its direct and consequential damages; and (iii) the costs, fees, and damages associated with MDE's actions.

COUNT VI
MINNESOTA HUMAN RIGHTS ACT

96. Feeding Our Future incorporates by reference all other paragraphs in this Complaint as if fully stated herein.

97. Feeding Our Future caters to members of a protected group of racial minorities and foreign nationals.

98. Feeding Our Future sought and qualifies for funding through CACFP and SFSP that was made available to all qualified members of the public.

99. MDE denied Feeding Our Future the right to apply for additional meal sites despite qualifying; it created additional administrative and procedural hurdles; and it refused to pay Feeding Our Future's claims.

100. MDE denied Feeding Our Future and their sites CACFP and SFSP funding based on their race, national origin, color, and religion.

101. MDE continues to give CACFP and SFSP funding to other businesses no more qualified than Feeding Our Future.

102. MDE intentionally and wrongfully refuses to do business with Feeding Our Future and the community it serves by discriminating in the basic terms, conditions, and performance of its duties because of Feeding Our Future's race, national origin, color, and religion.

103. After Feeding Our Future filed its lawsuit against MDE, and asserted claims under the Minnesota Human Rights Act, MDE began retaliating against Feeding Our Future.

104. MDE's retaliatory conduct included refusing to accept or process Feeding Our Future's applications; creating administrative and procedural hurdles; refusing to pay Feeding Our Future's claims; taking too long to process Feeding Our Future's applications; inappropriately denying Feeding Our Future's site ID requests and applications; misrepresenting the facts during the administrative hearings and on appeal to the Court of Appeals; failing to provide technical assistance to help Feeding Our Future understand MDE's changing interpretation of the federal regulations; issuing baseless and unsupported serious deficiencies and notices of termination; and refusing to process and timely pay Feeding Our Future's claims.

105. These actions were done as retaliation for Feeding Our Future filing its claims, and in an effort to intimidate and harass Feeding Our Future.

106. The Minnesota Human Rights Act prohibits retaliation against anyone who proceeds with a Minnesota Human Rights Act claim.

107. As a result of MDE's discriminatory practices and its retaliatory conduct, Feeding Our Future has suffered and continues to suffer substantial damages.

WHEREFORE, Feeding Our Future is seeking its lost revenue, all related damages, costs, and attorneys' fees, and the imposition of a civil penalty.

COUNT VII
FEDERAL AND STATE PROCEDURAL AND SUBSTANTIVE DUE PROCESS

108. Feeding Our Future incorporates by reference all other paragraphs in this Complaint as if fully stated herein.

109. Feeding Our Future exclusively services members of a protected class of minorities based on race, religion, and national origin.

110. MDE knew that Feeding Our Future exclusively services members of a protected class.

111. MDE intentionally harmed Feeding Our Future by subjecting it to additional procedural hurdles in violation of federal regulations; refusing to accept and process applications; and refusing to pay Feeding Our Future's claims.

112. MDE treated other organizations that serve different communities differently by not accepting and processing their applications; not creating additional hurdles; not approving qualified meal sites; and not paying Feeding Our Future's claims.

WHEREFORE, Feeding Our Future is seeking its lost revenue, all related and consequential damages, costs, and attorneys' fees.

COUNT VIII
EQUAL ACCESS TO JUSTICE

113. Feeding Our Future incorporates by reference all other paragraphs in this Complaint as if fully stated herein.

114. MDE's decisions and actions are clearly in violation of federal law and the Minnesota Court of Appeals' ruling in *In re Partners in Nutrition*, 896 N.W.2d 564, 571 (Minn. App. 2017).

115. Feeding Our Future is entitled to all its fees and costs under the Equal Access to Justice Act, Minn. Stat. § 15.471.

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

COUNT XII
DEFAMATION
(MDE AND KORTE)

116. Feeding Our Future incorporates by reference all other paragraphs in this Complaint as if fully stated herein.

117. In MDE's March 31, 2021, notice of serious deficiency MDE explained did not make a single allegation about Feeding Our Future's summer program.

118. Nonetheless, the letter stated: "Also as a result of this serious deficiency your Summer Food Program (SFSP) application for Program year 2022 will be denied as per 7 CFR 225.6(b)(9) and 7 CFR 225.11(c)."

119. On April 28, 2021, the Pioneer Press published an article titled: "Despite fraud concerns, MN won't limit free summer meals for kids." (available at <https://www.twincities.com/2021/04/28/despite-fraud-concerns-mn-wont-limit-free-summer-meals-for-kids/>).

120. In the article, the Pioneer Press explains that MDE initially decided to limit participation in the summer food program to public schools. The article quotes Mr. Korte for explaining that decision was made to: “ensure the integrity of the program.”

121. The article goes on to explain that Mr. Korte and MDE were concerned that they were not able to monitor the sites during the pandemic. The article says that Mr. Korte referred to this as “a fraud risk.”

122. The article goes on to say that Mr. Korte provided a list of the “largest providers” for summer, which consisted of 8 sites, all of which focus on the minority community. The article also specifically identifies Feeding Our Future by name as the sponsor of 3 of the sites (although Feeding Our Future is actually the sponsor of 6 of the sites).

123. The article explicitly states that MDE has concerns about possible fraud, and makes very clear that its concerns are directed at the 8 identified sites and Feeding Our Future.

124. MDE’s statements are false. MDE’s statement that it had fraud concerns are at odds with its March 31, 2021, letter.

125. MDE’s statements and implications that Feeding Our Future or any of its community partners did anything inappropriate or fraudulent is false.

126. MDE’s public statements that it had fraud concerns about Feeding Our Future and its sites is substantially harmful to Feeding Our Future. Fraud is a tort and crime of moral turpitude and is defamatory per se.

127. Mr. Korte was acting in his official capacity when he made public comments to the media about Feeding Our Future and its community partners.

WHEREFORE, Feeding Our Future is seeking its damages, reputational harm, mental distress, lost revenue, all related damages, costs, and attorneys’ fees.

COUNT XIII
THEFT, CONVERSION
(MDE)

128. Feeding Our Future incorporates by reference all other paragraphs in this Complaint as if fully stated herein.

129. On October 16, 2021, MDE staff Jenny Butcher and Camille Jones visited two Feeding Our Future sites in their official capacity. Neither was wearing any state issued identification in violation of federal regulations and MDE policy.

130. Ms. Butcher took a bag of groceries from United Youth of Minneapolis that included sufficient produce to feed three children seven meals and seven snacks.

131. As a state representative, Ms. Butcher understood that she did not qualify as a recipient of the meal, and that by taking it she was depriving Feeding Our Future and its site of \$103.32 in reimbursements from the USDA.

132. Ms. Butcher took the food with the intent of depriving Feeding Our Future and United Youth of Minneapolis of its food and knowing it would deprive them of the right to reimbursement for \$103.32 in food.

WHEREFORE, Feeding Our Future seeks \$103.32 in damages as well as all related costs and attorneys' fees.

JURY DEMAND

Feeding Our Future hereby request a jury on all issues so triable.

Dated January 11, 2022

MARTIN HILD, PA

sl Rhyddid Watkins

Ll. Rhyddid Watkins, Atty. No. 0390514

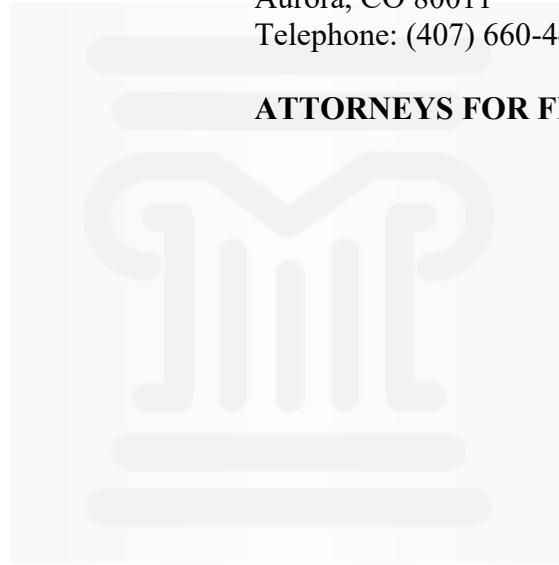
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