STATE OF MINNESOTA | DISTRICT COURT

COUNTY OF RAMSEY | SECOND JUDICIAL DISTRICT

CASE TYPE: Other Civil

Energy Policy Advocates,

Plaintiff,

v.

Keith Ellison, in his official capacity as Attorney General, Office of the Attorney General,

Defendant.

Court File No: 62-CV-19-5899
Judge: _____

PLAINTIFF'S MEMORANDUM OF LAW ON DATA CLASSIFICATION AND SUPPORTING MOTION TO COMPEL PRODUCTION

Plaintiff Energy Policy Advocates ("EPA") respectfully submits this memorandum of law supporting its motion to classify data withheld by Defendant Keith Ellison and his office ("OAG") as public and subject to disclosure pursuant to the Minnesota Government Data Practices Act ("MGDPA").

RELEVANT FACTS

This motion is somewhat unusual in that Defendant OAG has all the documents relevant to this dispute in its possession, and EPA has to rely on OAG's descriptions of those documents. Of course, the Court possesses those documents *in camera* and can evaluate OAG's descriptions. EPA thus respectfully requests that the Court identify any document descriptions that the Court deems inadequate to allow EPA to fairly evaluate in terms of the requirements of the MGDPA, and allow EPA an additional opportunity to analyze a re-worked description, if necessary.

In the meantime, EPA believes it is valuable to provide the Court information as to how this lawsuit came to exist, including the common facts that link OAG with other state attorneys general offices and EPA's requests to other state attorneys general offices which have provided

EPA documents that suggest that the Defendant has more publicly available data than it has disclosed. Other state attorneys general offices, which are of course subject to their own public record laws, have produced public records of the same character, and perhaps even the same records, that EPA believes OAG is classifying as non-public in this case.

I. THE BLOOMBERG NYU PROGRAM WAS CREATED TO REDIRECT STATE ATTORNEYS GENERAL TO FOCUS ON CLIMATE CHANGE AND ENVIRONMENTAL LITIGATION.

In approximately 2017, Bloomberg Philanthropies or Bloomberg Family Foundation, Inc., a charity organized by former Mayor of New York City and former 2020 candidate for the Democrat Party nomination of President, Michael Bloomberg, contributed $5.6 million to the New York University School of Law to create a State Energy & Environmental Impact Center providing legal support, privately-funded lawyers, and public relations support to state attorneys general for the purpose of advancing lawsuits related to environmental and climate change litigation (the "Bloomberg NYU Program" or "SEEIC").[1] As reported by the New York Post as recently as February 18, 2020, the Bloomberg NYU Program has embedded special assistant attorneys general (SAAGs) in Washington, D.C., Delaware, Connecticut, Illinois, Massachusetts, Maryland, Minnesota, New Mexico, New York, and Oregon.[2] Washington State's Office of Attorney General previously had an embedded SAAG.

According to one email obtained from the Michigan Office of Attorney General, which uses the descriptor, "the IC" for the Bloomberg NYU Program:

- The IC funds the salaries of 17 Law Fellows who serve as SAAGs in their respective states. State AGs recruit and select their own Law Fellows. (Although the program is completely transparent and ethical, it may engender backlash).

[1] http://www.nyu.edu/about/news-publications/news/2017/august/nyu-law-launches-new-center-to-support-state-attorneys-general-i.html (last visited April 13, 2020).
[2] https://nypost.com/2020/02/18/bloomberg-program-reportedly-put-lawyers-in-ag-offices-to-advance-climate-change-agenda/ (last visited April 13, 2020).

- The IC has a pro bono program providing assistance to states on energy and environmental issues from the Impact Center's own staff of attorneys. The IC pays all costs associated with its services. Five states have a formal agreement (attached) with the Impact Center for pro bono services – NY, MA, MD, MN and WA.

- The IC serves as a clearinghouse for all AG actions including litigation, rule-making, federal notices, and notice and comment opportunities. The information posted on its website is always current.

- The IC assists in coordinating multi-state actions in concert with Mike Myers from the NY AGs [sic] office who hosts bi-weekly multi-state calls ([MI OAG's] Neil Gordon participates in the calls). It also sponsors periodic networking opportunities in D.C. for state AAGs and publishes a bi-weekly newsletter on energy and environmental issues.[3]

Aff. of Christopher Horner, April 15, 2020, Ex. O.

II. MINNESOTA HAS BLOOMBERG NYU PROGRAM EMBEDDED SPECIAL ASSISTANT ATTORNEYS GENERAL, WHICH VIOLATES CONFLICT OF INTEREST LAWS APPLICABLE TO STATE EMPLOYEES.

Important here, Pete Surdo, now a SAAG at the OAG, posted on his personal LinkedIn profile that he had left Robins Kaplan for the Bloomberg NYU Program and would be "embedded with the Minnesota Attorney General's Office as an Environmental Litigator and Special Assistant Attorney General." Horner Aff. Ex. G. While a SAAG, Surdo has appeared on behalf of Minnesota in at least the following cases:

- *California v. Trump*, No. 19-960 (RDM), District of District of Columbia, *see* 2020 WL 1643858;

- *California by and through Brown v. EPA*, No. 18-1114, District of District of Columbia, *see* 940 F.3d 1342;

- *New York v. Wheeler*, No. 20-1022, D. C. Cir. 2020;

- *California v. Wheeler*, No. 19-1239, D. C. Cir. 2019;

[3] June 12, 2019 Email from Special Assistant Attorney General Skip Pruss to Attorney General Dana Nessel, Deputy Attorney General Kelly Keenan, Subject: NYU Law School State Energy and Environment Impact Center.

- *Leppink v. Water Gremlin Co.*, No. 62-CV-19-7606 (Ramsey County);
- *California v. Chao*, No. 19-CV-2826, D.D.C. 2019;
- *New York, et al. v. EPA*, D.C. Cir. No. 19-1165.

Dickey Aff. ¶ 2.

These cases, other than the Water Gremlin case, appear to be multistate challenges to administrative decisions by the federal executive branch related to climate change or environmental policies. Surdo has been continually involved in these cases since he was "embedded" as SAAG through the Bloomberg NYU Program. Dickey Aff. ¶ 3.

Public records obtained from other attorneys general indicate that OAG subsequently engaged the Bloomberg NYU Program for another "embed," Leigh Currie. These records also reflect that Ms. Currie is involved in energy and environmental cases on behalf of Minnesota. Horner Aff. Exs. Q & R.

Thus, the Bloomberg NYU Program actually is, right now, embedding privately hired and compensated attorneys in the Minnesota OAG as SAAGs for purposes of climate change and environmental litigation, making this matter one of substantial and ongoing importance to Minnesotans. This is particularly true given that Minnesota law prohibits the following:

> Employees in the executive branch in the course of or relations to their official duties shall not directly or indirectly receive or agree to receive any payment of expense, compensation, gift, reward, gratuity, favor, service or promise of future employment or other future benefit from any source, except the state for any activity related to the duties of the employee unless otherwise provided by law.

Minn. Stat. § 43A.38, Subd. 2. Plaintiff is not aware of a provision of Minn. Stat. ch. 8 (applicable to the OAG) that allows payment by an outside source for work for the OAG.

Further:

> An employee in the executive branch shall not use confidential information to further the employee's private interest.

Minn. Stat. § 43A.38, Subd. 3. And:

> The following actions by an employee in the executive branch shall be deemed a conflict of interest and subject to procedures regarding resolution of the conflicts, section 43A.39 or disciplinary action as appropriate:
>
> (1) use or attempted use of the employee's official position to secure benefits, privileges, exemptions or advantages for . . . an organization with which the employee is associated which are different from those available to the general public;
>
> (2) acceptance of other employment or contractual relationship that will affect the employee's independence of judgment in the exercise of official duties.

Minn. Stat. § 43A.38, Subd. 5.

Given the structure of the Bloomberg NYU Program and Minnesota's statutory code of ethics, EPA believes that the Minnesota SAAG arrangement with the Bloomberg NYU Program likely violates state law. It is inarguable, however, that the public has a strong interest in seeing the records illuminating this relationship. It is also inarguable that, whether or not related to those same statutory restrictions, OAG is an outlier in its unwillingness to disclose information when compared to other state attorneys general.

III. THE SPECIFIC INFORMATION OF THE KIND REQUESTED HERE HAS BEEN DISCLOSED BY OTHER STATES' ATTORNEYS GENERAL WITH BLOOMBERG/NYU INVOLVEMENT LIKE MINNESOTA'S.

A. EPA's December 20, 2018 Request to OAG.

On December 20, 2018, EPA requested that OAG provide copies of certain emails sent to or from Deputy Attorney General Karen Olson that also were sent to or from, or which mention certain outside parties, including (a) the lead plaintiffs' law firm recruiting litigants and attorneys general to litigate against or investigate energy companies in the name of "climate change" (Sher Edling); (b) a political trade group; and (c) an employee of the Massachusetts Attorney General's Office named Mike Firestone who, records show, is coordinating recruitment of attorneys

general offices to embed privately hired attorneys as "Special Assistant Attorneys General" to pursue issues of concern to the major political donor funding the operation (Mike Firestone). Horner Aff. Ex. A (EPA Dec. 20, 2018 MGDPA request).

The request specifically asks for:

> [C]opies of all electronic or hard-copy correspondence as described below, and its *accompanying information,[] including also any attachments*:
>
> a) sent to or from **Karen Olson** (including also copying, whether as cc: or bcc:), which *also*
>
> b) contain any of the following, anywhere in the correspondence of which it is a part, whether in the To or From, cc: and/or bcc: fields, the Subject field, and/or the email body or body of the thread or in any attachment thereto: i) SherEdling, ii) Sher Edling, iii) DAGA, iv) @democraticags.org, v) alama@naag.org, and/or vi) Mike.Firestone@state.ma.us.

Horner Aff. Ex. A (emphasis in original).

On January 4**,** 2019, OAG replied to that request, claiming that no described records exist containing certain terms directly related to the political trade group ("DAGA," "@democraticags.org," or "Alama@naag.org"), and the remainder of the requested data (related to Sher Edling or Mike Firestone) are exempt under "a number of legal privileges, including the attorney work product, the attorney-client, and the deliberative process privileges". Horner Aff. Ex. C (OAG Response to Dec. 20, 2018 Request).

B. EPA's December 26, 2018 Request to OAG.

On December 26, 2018, EPA also requested OAG provide copies of certain Karen Olson correspondences containing the terms googlegroups.com, Google Doc(s), Sharepoint, Dropbox, and box.com, and/or @ucsusa.org. Horner Aff. Ex. B (EPA Dec. 26, 2018 MGDPA request).

The request specifically asks for:

> [C]opies of all electronic or hard-copy correspondence as described below, and its *accompanying information, including also any attachments*:
>
> a) sent to or from **Karen Olson** (including also copying, whether as cc: or bcc:), which *also*
>
> b) contain *any* of the following, anywhere in the correspondence of which it is a part, whether in the To or From, cc: and/or bcc: fields, the Subject field, and/or the email body or body of the thread or in any attachment thereto: i) @Googlegroups.com, ii) "Google doc" (including also in "Google Docs", iii) @ucsusa.org, iv) Dropbox, v) box.com (including as used in any url containing box.com), and/or vi) SharePoint.

Horner Aff. Ex. B (emphasis in original).

On January 4, 2019, OAG replied to this request asserting the same privileges and stating that, based on its interpretation of EPA's request and *given OAG's review of EPA's website* (in lieu of contacting EPA), OAG had no responsive data and, in the event its interpretation regarding EPA's intent was incorrect, OAG nonetheless had no responsive data *that it deems public information*. Horner Aff. Ex. D (OAG Response to Dec. 26, 2018 Request).

C. Public Records and Requests Made to Other Involved State AG Offices Have Resulted in More Substantial Response Than the OAG Provided Here.

Public records show that "Google groups" (discussion groups in which all parties are copied by emailing one address, e.g., ExxonKnew@googlegroups.com, ClimateLaw@googlegroups.com) including public employees are routinely created for the purpose of discussing the above-mentioned climate change and environment-related litigation campaigns. Horner Aff. ¶ 7 & Exs. F & G. Public records also show that @ucsusa.org is the email domain of a pressure group that both originally organized the recruitment of AGs to investigate energy companies on various grounds tied to climate change, briefed them prior to a March 2016 Manhattan press conference announcing such investigations, and also hosted a

"secret" briefing[4] for OAGs and "prospective funders"[5] to consider "potential state causes of action against major carbon producers".[6] One participant wrote one such funder from that meeting to describe the discussion as one "about going after climate denialism [sic]—along with a bunch of state and local prosecutors nationwide."[7] Horner Aff. Exs. H-L.

In addition, EPA and others have sent public record requests to other states' attorneys general offices, which have disclosed substantially more than Minnesota's OAG. These states include Michigan, Illinois, Virginia, Maryland, New York, Oregon, Washington, Massachusetts, and Vermont. Horner Aff. ¶ 10.

Related to the December 20, 2018 Request

NAAG Requests

EPA's similar requests for certain described correspondence with @naag.org have yielded public record productions from several offices. For example, May 6, 2019 and October 30, 2019 requests to Washington's OAG for certain correspondence with or mentioning a rival

[4] "I will be showing this Monday at a secret meeting at Harvard that I'll tell you about next time we chat. very [sic] exciting!" April 22, 2016, email from Oregon State University Professor Philip Mote to unknown party, Subject: [REDACTED], and "I'm actually also planning to show this in a secret meeting next Monday-will tell you sometime." April 20, 2016, Philip Mote email to unknown party, Subject: [REDACTED]. Both obtained from Oregon State University on March 29, 2018, in response to January 9, 2018 Public Records Act request. Horner Aff. Ex. I.

[5] "We will have as small number of climate science colleagues, as well as prospective funders, at the meeting." March 14, 2016, email from Union of Concerned Scientists' Peter Frumhoff to Mote; Subject: invitation to Harvard University-UCS convening. Horner Aff. Ex. J.

[6] "Confidential Review Draft-20 March 2016, Potential State Causes of Action Against Major Carbon Producers: Scientific, Legal, and Historical Perspectives." Obtained in Energy & Environment Legal Institute v. Attorney General, Superior Court of the State of Vermont, 349-16-9 Wnc, December 6, 2017. Horner Aff. Ex. K.

[7] "Hi Dan, Thought you would like to hear that Harvard's enviro clinic, UCLA Emmett Institute, and the Union of Concerned Scientists are talking together today about going after climate denialism [sic]—along with a bunch of state and local prosecutors nationwide. Good discussion." April 25, 2016 email from UCLA Law School's Cara Horowitz to Harvard and UCLA center funder Dan Emmett, Subject: See, e.g., https://climatelitigationwatch.org/on-the-subject-of-recruiting-law-enforcement-email-affirms-origin-of-prosecutorial-abuses/. This email was sent from the event. Horner Aff. Ex. L.

tort lawyer (of the firm working with OAG) named Matt Pawa, and with twood@naag.org and jmanning@naag.org, respectively, revealed NAAG's involvement in distributing activists' requests to investigate Exxon to certain "Energy & Environment Bureau Chiefs." Horner Aff. ¶ 11.

Mike Firestone and Bloomberg NYU Program Correspondence

In response to a February 6, 2019 request, the Massachusetts Attorney General released 300-plus pages of Chief of Staff Mike Firestone's correspondence about the NYU Bloomberg project and the Massachusetts Attorney General's application to participate. Horner Aff. ¶ 13. Firestone is widely known across state attorneys general as having been the coordinator for state AGs of the Bloomberg NYU Program. Horner Aff. ¶ 13. If Massachusetts released intraoffice information related to the Bloomberg NYU Project, as well as correspondence with the SEEIC, there is no reason why Minnesota would not release communications with outside offices related to the same.

In addition, an April 3, 2019 request to the Maryland Office of the Attorney General for correspondence of Attorney General Frosh and certain staff to, from, and copying NYU employees led to the release of, for example, emails between Attorney General Frosh and Connecticut Attorney General Tong discussing and sharing Maryland's application to participate in the program. Horner Aff. ¶ 13; *see also* Horner Aff. Ex. O (Michigan Department of the Attorney General email describing SEEIC's offer and relationships).

The willingness of other states to release correspondence between other offices stands in sharp contrast to Minnesota's unwillingness to share any part of any correspondence.

Related to the December 26, 2018 Request

Dropbox/Google Groups

EPA submitted an Access to Public Records Request to the Rhode Island Attorney General on January 24, 2020 for correspondence using @googlegroups.com and @dropbox.com, among other terms, dated over a period of time similar to that covered by EPA's December 26, 2018 request to OAG, and received 155 pages of responsive documents on March 6, 2020. Horner Aff. ¶ 14. EPA submitted an identical request to the Vermont Attorney General January 24, 2020 and received 134 pages on February 14, 2020. Horner Aff. ¶ 15.

Union of Concerned Scientists (UCSUSA)

EPA, and other requesters whose work EPA is familiar with, have received volumes of records from, for example, the Massachusetts and Vermont Offices of Attorney General, UCLA and Oregon law schools, and Virginia's George Mason University related to the Union of Concerned Scientists and its role in coordinating recruiting for attorney general investigations of energy companies, and briefing OAGs in pursuit of the same objective. Horner Aff. ¶¶ 8, 16.

As the Court can see, these state attorneys general and other public institutions covered by their respective open records laws have produced data of the same class as that responsive to EPA's requests here that OAG has withheld. Other attorneys general have produced records documenting that OAG has been in communication with other state AGs based on the same NYU Bloomberg Program. Horner Aff. ¶ 18 & Exs. M-O. Thus, it appears that OAG has not been forthcoming with its responses to EPA's MGDPA requests.

IV. OAG FAILED TO PERFORM THE DROPBOX SEARCH REQUESTED IN THE DECEMBER 26, 2018 REQUEST.

In discovery, OAG informed EPA that it had not performed the requested search for documents with the word "Dropbox" in them. Dickey Aff. ¶ 4. OAG indicates that it has now

performed that search, but OAG's failure to perform the Dropbox search indicates that it may not have been taking its DPA responsibilities seriously enough to reflect compliance with the law in response to EPA's requests. EPA argues that this is supported by OAG's categorical denials of requested data, as an outlier standing in stark contrast to the practice of other attorneys general.

V. SPECIFIC REASONS FOR THE SEARCH TERMS USED IN THESE REQUESTS.

At first glance, one might wonder why the specific search terms in EPA's requests have relevance to the information it seeks related to the Bloomberg NYU Program. These terms are important.

Although a requester's motive and identity are not considerations in enforcing open records laws, EPA notes that the specific search terms in its requests are relevant to the information EPA seeks related to the Bloomberg NYU Program for several reasons. The out-of-state tort law firm named in EPA's December 20, 2018 request is recruiting governmental plaintiffs to pursue "climate" litigation. Horner Aff. ¶ 19. This pitch comes on the heels of a now infamous plea by the aforementioned "climate nuisance" tort lawyer, Matt Pawa, that, "State attorneys general can also subpoena documents, raising the possibility that a single sympathetic state attorney general might have substantial success in bringing key internal documents to light."[8] Subsequent to this plea, numerous attorneys general recruited by this attorney did in fact initiate investigations, and the same offices have brought in the privately hired attorneys described, *supra*, to pursue those investigations and other, similar work, including to support "climate nuisance" litigation as *amici curiae*. Horner Aff. ¶ 19.

[8] Horner Aff. Ex. N, Climate Accountability Institute, *Establishing Accountability for Climate Change Damages: Lessons from Tobacco Control* (Oct. 2012), at p 11 (Summary of the "Workshop on Climate Accountability, Public Opinion, and Legal Strategies") (Last viewed April 15, 2020) (available at http://www.climateaccountability.org/pdf/Climate%20Accountability%20Rpt%20Oct12.pdf).

The general public interest in transparency in the work of their elected, constitutional officers and offices is heightened concerning the possible use of state power to advance private interests. Similarly, the public has a great interest in how public office, particularly law enforcement, is used in combination with private interests.

In addition, the Minnesota Attorney General, as the chief legal officer of the State of Minnesota, is the only attorney who can represent the State in legal proceedings except in two very rare circumstances: if (i) the governor, attorney general, and chief justice of the Minnesota Supreme Court agree in writing to employ additional attorneys; or (ii) the governor decides that the attorney general is interested adversely to the state. Otherwise, "[t]he attorney general shall act as the attorney for all state officers and all boards or commissions created by law in all matters pertaining to their official duties." Minn. Stat. § 8.06.[9]

Thus, EPA brought this suit to discover items of particular public interest and importance related to how public offices—particularly law enforcement and state constitutional offices—are now being used in combination with private interests. In addition, the documents sought are highly relevant to a broader investigation into the manner in which the Bloomberg NYU Program, tort law firms, and activists who are coordinating this effort are impacting state attorneys general decisions and operations across the country. The Minnesota OAG's response to EPA's request, compared to other states' responses, indicated to EPA that OAG had more than it was revealing to EPA. Consequently, EPA was compelled to bring this suit under the MGDPA.

VI. THE ATTORNEY GENERAL'S CATEGORIZATION OF THE RESPONSIVE DOCUMENTS.

In its memorandum related to data classification and the Declaration of Oliver Larson,

[9] Dickey Aff. Ex. 1. Even if he wanted to, former Governor Tim Pawlenty could not fire then-Attorney General Mike Hatch despite substantial acrimony between their respective offices, http://news.minnesota.publicradio.org/features/2003/08/01_mccalluml_pawlentyhatch/.

OAG categorizes its responses to EPA's two data requests at issue.

Out of the 145 documents related to the December 20, 2018 request, the Court need only analyze the 80 documents that are non-privileged but not produced, and the privilege log descriptions of the 13 documents allegedly privileged and not produced. Categories 1-4 relate to non-privileged and not produced documents for the December 20, 2018 request. Categories 5 and 6 are allegedly privileged and described in paragraph 11 of the Larson Declaration.

Out of the 154 documents related to the December 26, 2018 request, the Court need only analyze the 6 non-privileged but not produced documents, the 5 "non-responsive" and not produced documents, and the privilege log descriptions of the 37 allegedly privileged and not produced documents. Categories 7-9 relate to non-privileged and not produced documents for the December 26, 2018 request. Categories 10-14 relate to the allegedly privileged and not produced documents, which are described on pages 6 and 7 of OAG's memorandum and paragraph 16 of the Larson Declaration. Categories 15-18 relate to the Dropbox search that was not performed before this lawsuit was filed.

ARGUMENT AND AUTHORITIES

I. THE MINNESOTA GOVERNMENT DATA PRACTICES ACT EXPRESSLY PRESUMES THAT GOVERNMENT DATA ARE PUBLIC.

In defining its scope, the MGDPA expressly states:

> This chapter regulates the collection, creation, storage, maintenance, dissemination, and access to government data in government entities. It establishes a presumption that government data are public and are accessible by the public for both inspection and copying unless there is federal law, a state statute, or a temporary classification of data that provides that certain data are not public.

Minn. Stat. § 13.01, Subd. 3 ("Scope"). The Legislature first enacted this "presumption that government data are public" in 1979. *See* Act of June 5, 1979, ch. 328, § 7, 1979 Minn. Laws

910, 911. The Legislature enacted this presumption based on "considerable input from the Minnesota media community," including then-editor of the Pioneer Press, the late John Finnegan. Donald A. Gemberling, *Minnesota Government Data Practices Act: History & General Operation*, in GOVERNMENT LIABILITY 241, 243 (Minn. CLE Cmte. ed., 1981), https://bit.ly/2xXb2O1. The Minnesota media "argued strongly" that "data classification ought to be solely a legislative prerogative" and that the Legislature needed to adopt a broad express presumption that all government data are public. *Id.* at 251.

The Minnesota media advocated for a presumption of access because of its experience with government agencies exploiting judicial and legislative developments in data classification to hide government data. This experience included the *Kottschade v. Lundberg*, 160 N.W.2d 135 (Minn. 1968) case, which "[m]any agencies" cited "to argue that information sought by the media and the public did not constitute an official record." Gemberling at 252. It also included the Legislature's passage of the 1975 data-privacy statute, which agencies cited to "routinely deny[] access to what had [previously] been public records." *Id.* at 249.

Interestingly, the final enactment of this presumption reflected a bargain between the Minnesota Senate and House. "The [Minnesota] Senate agreed to accept the House's presumption of openness in governmental data handling. In return, the House agreed to accept provisions which classified a variety of data or types of data as either private or confidential." *Id.* at 254.

Because there is a presumption of publicity in the MGDPA, it is OAG's burden to overcome that presumption by proving that an individual statutory provision applies to the data sought to except it from disclosure.

II. THE MGDPA'S DATA CLASSIFICATION SCHEME.

Under the MGDPA, with the exception of overarching federal authority, data classification belongs to the Legislature alone. *See* Minn. Stat. §§ 13.01, subd. 3; 13.03, subd. 1. The Legislature holds final control over the two non-federal ways in which government data may be denied classification as "public": by state statute and by temporary classification. *See* Minn. Stat. §§ 13.03, subd. 1; 13.06. In this case, OAG has not identified any temporary classification under which the data at issue are protected from public disclosure, so statute alone applies here. *See* OAG Mem. at 8-9 (listing statutes purported to apply).

"Public" data are generally unrestricted and may be accessed by anyone, while "private" and "nonpublic" data are generally accessible only to the subjects of the data. *Id.* § 13.02, subds. 9, 12, 14, 15. "Confidential" and "protected nonpublic" data cannot be accessed by anyone except the government entity maintaining the data (or by any other entity granted access by the Legislature). *Id.* § 13.02, subds. 3, 13. These "classifications" are the only classifications for government data that exist under Minnesota law, since Minnesota's data-classification scheme is entirely a creature of the MGDPA.

III. THE ATTORNEY GENERAL MUST PRODUCE THE WITHHELD DATA.

In this case, OAG has cited four statutory provisions pursuant to which it claims that data are exempt from disclosure under the MGDPA: Minn. Stat. §§ 13.65,13.39, 13.393, and 13.03,[10] subd. 1. None of these provisions protect the data described by OAG, and OAG must, therefore, produce that data to Plaintiff. Plaintiff analyzes these statutes *seriatim*.

[10] EPA addresses the proper interpretation of § 13.03 in detail *supra*.

A. Minn. Stat. § 13.65 Only Covers "Data on Individuals," and the Attorney General's Categories Indicate That No Withheld Data Is "Data on Individuals" Under That Section and Section 13.02, Subd. 5.

OAG correctly states that section 13.65 classifies as private any "***data on individuals***" that includes "communications and noninvestigative files regarding administrative or policy matters which do not evidence final public actions." OAG Mem. at 9-10 (quoting Minn. Stat. §13.65, subd. 1(b) (emphasis added). OAG goes on to say that "the Court will see [that] . . . the bulk of the data identified in response to plaintiff's data requests consists of communications on policy issues on which the Office took no action (public or otherwise)." *Id.* at 10. OAG does not, however, specifically state that the data is "data on individuals" protected by that statute. *See id.*

Instead, OAG bluntly claims that "all of [OAG's] policy and administrative communication are classified as private." OAG Mem. at 12. This sweeping assertion is belied by the use of "data on individuals" in this section, which is an essential term for purposes of interpreting section 13.65 because "data on individuals" is specifically defined by Minn. Stat. § 13.02, subd. 5: "'Data on individuals' means all government data in which any individual is or can be identified as the subject of that data, unless the appearance of the name or other identifying data can be clearly demonstrated to be only incidental to the data and the data are not accessed by the name or other identifying data of any individual." To satisfy Section 13.65, then, data must be ***both*** "data on individuals" and satisfy one of the subcategories listed.

OAG cannot write out the phrase "data on individuals" or claim that the subcategories transform the data they describe into "private" data. To do so would write out "data on individuals" from the statute—and that is exactly what OAG attempts to do when stating that "all of [OAG's] policy and administrative communication are classified as ***private***." OAG Mem. at 12 (emphasis added). As noted above, "private" has its own meaning under the MGDPA, and

"data on individuals" has another. When interpreting a statute, the Court must assume that the Legislature did not use a word it has specifically defined to mean another that it has specifically defined in a different manner. Minn. Stat. § 645.08(1) ("technical words and phrases and such others as have acquired a special meaning, or are defined in this chapter, are construed according to such special meaning or their definition").

Thus, for data to be protected from production under Section 13.65, they must both be "data on individuals" and satisfy a subcategory listed under the relevant subdivision. Related to "data on individuals," while an individual "subject" alone means any data on a person appearing within that data, *Burks v. Met. Council*, 884 N.W.2d 338, 341-42 (Minn. 2016), data on individuals is "incidental" related to an individual subject if it is "incidental to the factual focus of the inquiry" and not obtaining "private or confidential information" concerning the subject. *See Edina Educ. Ass'n v. Board of Educ. of ISD 273*, 562 N.W.2d 306, 311-12 (Minn. Ct. App. 1997) (holding that no Tennessen warning needed to be provided to an individual who was only incidentally identified by government data). Thus, just because a datum has a person's name in it and was handled by OAG does not transform it into protected data under Section 13.65.

OAG lists some of the categories of data to which it claims section 13.65 applies: Categories 1-4, 7, 8, and 15. Categories 1-4, again, refer to data that are responsive to the December 20, 2018 request asking for information about i) SherEdling, ii) Sher Edling, iii) DAGA, iv) @democraticags.org, v) alama@naag.org, and/or vi) Mike.Firestone@state.ma.us. Categories 7, 8, and 15 refer to data than are responsive to the December 26, 2018 request asking for information about i) @Googlegroups.com, ii) "Google doc" (including also in "Google Docs", iii) @ucsusa.org, iv) Dropbox, v) box.com (including as used in any url containing box.com), and/or vi) SharePoint. A review of OAG's descriptions reveals that Section 13.65

does not apply to any of the listed categories.

1. Categories 1 and 2.

OAG identifies responsive documents under Category 1 as: "communications concerning a request that the Office oppose an appointment of a particular individual" to FERC. OAG Mem. at 10. First, these data are not communications *on that person* so much as they are communications related to OAG's opposition to that person on policy grounds. The person is a subject of the data, but is only incidental and only relevant for his or her policy preferences that OAG may or may not disagree with. Further, the data on the potential FERC appointed were not retrieved by OAG's search for that appointee; rather, they were obtained by searching for the terms noted above. That person is only an incidental subject of the data, so Section 13.65 does not apply.

The same analysis applies the data categorized by OAG as Category 2 related to the appointment of an individual to the EPA.

2. Categories 3, 4, 7, 8, and 15.

The plain language of Categories 3, 4, 7, 8, and 15 indicates that they are not "data on individuals" at all, as they do not identify any person as being the "subject" of that data. Category 3 relates to a comment letter on the Paris Climate Accord. Larson Decl. ¶ 9. Category 4 relates to a comment letter opposing a federal legislative subpoena. *Id.* Category 7 relates to administrative practices for handling use of file sharing services. Larson Decl. ¶ 15. Category 8 relates to an energy independence executive order. *Id.* Category 15 relates to administrative practices related to file sharing. Larson Decl. ¶ 20. If OAG cannot even state that the data relates to an individual, then it cannot fall under the protections of Section 13.65. Communications about comment letters concerning the Paris Accord, opposition to a federal legislative subpoena,

administrative practices for handling use of file sharing services, and an executive order signed by President Trump, are not data on individuals. Section 13.65 does not apply to these categories.

B. Section 13.39 Does Not Apply Because None of the Categorized Data Exists or Was Collected for the Purpose of a "Pending Civil Legal Action."

OAG accurately quotes section 13.39, subdivision 1. A few portions of that statute are particularly important in relation to OAG's data classifications at issue here:

> [D]ata collected by a government entity as part of an ***active*** investigation ***undertaken for the purpose of the commencement or defense of a pending civil legal action***, or which are retained in anticipation of a pending civil legal action, are classified as protected nonpublic data pursuant to section 13.02, subdivision 13, in the case of data not on individuals and confidential pursuant to section 13.02, subdivision 3, in the case of data on individuals.

(emphasis added). The Minnesota Court of Appeals has explained the meaning of the phrase, "undertaken for the purpose of the commencement or defense of a pending civil legal action." *Star Tribune v. Minnesota Twins P'ship*, 659 N.W.2d 287, 298 (Minn. Ct. App. 2003) (explaining Minn. Stat. § 13.39). In *Star Tribune*, the Court of Appeals held that a "pending civil action" does *not* relate to an action that has already been commenced. *Id.* ("Thus, the CD-ROM was not collected for the purpose of the commencement or in anticipation of a pending civil action because the civil action had already commenced."). That court noted that the purpose of this provision is to "prevent government agencies from being disadvantaged in litigation by having to prematurely disclose their investigative work product to opposing parties and the public." *Id.*

In addition, OAG fails to mention subdivision 3 of section 13.39, which states: "Inactive civil investigative data are public, unless the release of the data would jeopardize another pending civil legal action, and except for those portions of a civil investigative file that are

classified as not public data by this chapter or other law." "Civil investigative data become inactive if the government decides not to pursue a civil action, the time to file a civil action has expired, or the rights of appeal of either party in the civil action have been exhausted or expired." *In re GlaxoSmithKline plc*, 732 N.W.2d 257, 265 (Minn. 2007).

OAG also cites to subdivision 1(d) of section 13.65, but the above analysis of section 13.65 applies in equal force to this subdivision, as OAG again fails to show that the data is "data on individuals."

OAG lists the categories of data to which it claims section 13.39 applies: Categories 6, 10-14, 16, and 17. Category 6, again, refers to data that are responsive to the December 20, 2018 request asking for information about i) SherEdling, ii) Sher Edling, iii) DAGA, iv) @democraticags.org, v) alama@naag.org, and/or vi) Mike.Firestone@state.ma.us. Categories 10-14, 16, and 17 refer to data than are responsive to the December 26, 2018 request asking for information about i) @Googlegroups.com, ii) "Google doc" (including also in "Google Docs", iii) @ucsusa.org, iv) Dropbox, v) box.com (including as used in any url containing box.com), and/or vi) SharePoint. A review of OAG's descriptions reveals that Section 13.39 does not apply to any of the listed categories.

1. Categories 11, 12, 13, and 14 Relate to Already-Commenced Actions.

The documents OAG has identified as responsive to EPA's requests in Categories 11-14 are not protected by section 13.39 because they relate to already-commenced litigation, not pending litigation. Again, the Court of Appeals, in a published decision, held that information related to an already-started civil action was not collected or maintained "for the purpose of the commencement or in anticipation of a pending civil action." *Star Tribune*, 659 N.W.2d at 298.

Categories 11-14 relate to actions started in 2009, 2015, 2002, and 2007, respectively.

OAG Mem. at 13; Dickey Aff. Exs. 2-3. Because they have already begun, they are not "pending." *Star Tribune*, 659 N.W.2d at 298. In addition, two of the cases cited are closed: *In re DRAM Antitrust Litigation* and *In re TFT-LCD (Flat Panel) Antitrust Litigation.* Dickey Aff. Exs. 2-3. Pursuant to subdivision 3 of section 13.39, which states: "Inactive civil investigative data are public, unless the release of the data would jeopardize another pending civil legal action." OAG has not identified another pending civil action to which the data in Categories 13 and 14 would relate, so they are public data because the cases are closed or "inactive." OAG admits that some of the data relate only to "inactive civil legal actions." *Id.* at 14. None of the documents in Categories 11-14 are protected by section 13.39.

2. Category 6 Does Not Describe a Pending Civil Legal Action.

Category 6, which EPA addresses in more detail related to privilege claims below, describes "multi-state litigation around federal rule changes on auto and ozone emissions." OAG Mem. at 13. The Larson Declaration further describes these documents as

> communications by other non-Minnesota attorney generals with the Office concerning existing or proposed multi-state litigation challenging rule changes on auto and ozone emissions. The Office shares a common interest with the other attorneys generals in reviewing federal rule changes on these issues, and where appropriate, bringing litigation to challenge such rule changes.

Keeping the focus on section 13.39 for now, OAG fails to identify any matter that is "pending" to which these communications might relate. As for the "existing" matters, these are not "pending" under section 13.39, so they are not protected under that provision. As for the "proposed" matters, it is not clear if these actions are set to begin in the near future, are far off, or have been removed from consideration. It is also not clear whether the OAG is interested in pursuing these actions—so they could easily be inactive. It is unclear whether the rule changes at issue are in place, have been proposed, have been rejected, or modified. OAG simply has not

provided enough information for EPA or the Court to fairly evaluate this category in light of section 13.39, other than the documents that are not protected by virtue of the action already beginning and thus not being "pending."

Therefore, the Court should rule that OAG must produce these documents because OAG has failed to carry its burden to show that section 13.39 applies. Alternatively, the Court should require OAG to add detail so that EPA can identify whether the rule changes described in Category 6 could be the subject of a pending civil action and whether the OAG's documents relate to a pending action or to an inactive or already-started action.

3. Category 10 Appears to Relate to Inactive Civil Investigative Data.

OAG identifies the documents in Category 10 as related to a *potential* amicus brief to the U.S. Supreme Court in *Coachella Valley Water District, et al. v Agua Caliente Band of Cahuilla Indians*. OAG Mem. at 13. The key word in that Category appears to be "potential." The Larson Declaration notes that the OAG did not join the amicus brief. Larson Decl. ¶ 16. In that case, Coachella Valley Water District filed a petition for *certiorari* to the U.S. Supreme Court in 2017. Dickey Aff. Ex. 4. The petition for a writ was denied on November 27, 2017. *Id.* The amicus brief that OAG considered and declined to join was filed more than a year before the request to which Category 10 relates was made on December 26, 2018. The documents described by Category 10 are not related to a pending civil legal action and are thus not protected under section 13.39.

4. OAG Does Not Provide Enough Information to Analyze Categories 16 and 17.

Because the key issue in determining whether section 13.39 protects documents is whether they relate to a "pending civil legal action," and that is determined based on the timing of the action and whether it is still ongoing, OAG needs to provide that information for EPA to

be able to fairly evaluate Categories 16 and 17. Absent that information, OAG cannot carry its burden to show that the data are protected under section 13.39.

At the same time, if the Court can see from the *in camera* documents that these actions are no longer ongoing or had already begun at the time of the communications, the Court should rule that section 13.39 does not protect the documents and compel production. The same is true for criminal investigative data referred to by OAG in footnote 5. Minn. Stat. § 13.82, subd. 7 ("Inactive investigative data are public unless the release of the data would jeopardize another ongoing investigation or would reveal the identity of individuals protected under subdivision 17."). If OAG is seriously arguing that section 13.82 applies, it must identify the manner in which it applies to make even a prima facie case for application.

If the Court believes that the documents in Categories 16 and 17 it sees *in camera* may be protected by section 13.39, it should order OAG to provide clarifying information so that EPA can more precisely analyze these documents.

C. OAG Has Not Provided Sufficient Information to Show the Attorney-Client Privilege Attaches, and the Documents Identified by OAG as Privileged Are Either Not Privileged or Not Within the Work Product Doctrine As It Applies to OAG.

Minn. Stat. § 13.393 simply provides that OAG is subject to the same professional standards applicable to all attorneys when "acting in a professional capacity for a government entity." Thus, it applies the attorney-client privilege and work-product doctrines where OAG is "acting in a professional capacity for a government entity." *Id.* However, "a bare claim of privilege" will not suffice. *See Benson v. ISD 273*, No. 27-CV-19-14679, 2020 WL 958722, at *6 (Minn. Dist. Ct. Jan. 17, 2020). Important as well, "[T]he party resisting disclosure bears the burden of presenting facts to establish the privilege's existence. . . . [A] court should decide, as a threshold matter, whether the contested document embodies a communication in which legal

advice is sought or rendered." *City Pages v. State*, 655 N.W.2d 839, 845 (Minn. Ct. App. 2003) (quoting *Kobluk v. Univ. of Minn.*, 574 N.W.2d 436 (Minn. 1998)) (alterations in original). Attorney-client privilege attaches to a communication as follows:

> An attorney cannot, without the consent of the attorney's client, be examined as to any communication made by the client to the attorney or the attorney's advice given thereon in the course of professional duty; nor can any employee of the attorney be examined as to the communication or advice, without the client's consent.

Minn. Stat. § 595.02, subd. 1(b).

Finally, the undersigned is not aware of any Minnesota state court that has applied a "common-interest exception" to save a party from waiver of attorney-client privilege by communicating across parties, or to confer attorney-client privilege or work product protection on OAG because it was communicating with another AG about litigation that the other AG was involved in. No case citing Minn. Stat. § 13.393 contemplates such a broad privilege.

As for the work-product doctrine, the provisions of Minn. R. Civ. P. 26.02(d) apply. Pursuant to that doctrine, "materials prepared in anticipation of litigation that do not contain opinions, conclusions, legal theories, or mental impressions of counsel are not work product." *City Pages*, 655 N.W.2d at 845-46 (quoting *Dennie v. Metro. Med. Ctr.*, 387 N.W.2d 401, 406 (Minn. 1986)).

Finally, and importantly,

> There is nothing in the Hickman case which extends the work product principle to preclude discovery of a lawyer's memorandum, prepared during a prior case, in a subsequent action between different parties.

Hanover Shoe, Inc. v. United Shoe Mach. Corp., 207 F. Supp. 407, 410 (M.D. Pa. 1962) (citing *Hickman v. Taylor*, 329 U.S. 495 (1947)) (as cited in 35 A.L.R.3d 412 (Originally published in 1971)). Under the same reasoning, the work product doctrine does not apply to OAG materials

unless the protection is sought in an ongoing case in which OAG is involved as a litigant.

OAG claims here that Categories 6, 10-14, 16, and 17 are subject to either the attorney-client privilege or work-product doctrine under section 13.393. Category 6, again, refers to data that are responsive to the December 20, 2018 request asking for information about i) SherEdling, ii) Sher Edling, iii) DAGA, iv) @democraticags.org, v) alama@naag.org, and/or vi) Mike.Firestone@state.ma.us. Categories 10-14, 16, and 17 refer to data than are responsive to the December 26, 2018 request asking for information about i) @Googlegroups.com, ii) "Google doc" (including also in "Google Docs", iii) @ucsusa.org, iv) Dropbox, v) box.com (including as used in any url containing box.com), and/or vi) SharePoint. A review of OAG's descriptions reveals that Section 13.393 does not apply to any of the listed categories.

1. OAG Does Not Provide Enough Facts to Establish the Existence of Privilege for Category 6, and the Information Provided Does Not Indicate a Basis for Privilege.

With regard to Category 6 related to "existing or proposed multi-state litigation challenging rule changes on auto and ozone emissions," OAG fails to support the existence of privilege with facts adequate to identify it. For Category 6, there is no indication that any "client" of OAG made a request for advice or opinion, or that OAG provided advice or opinion to a "client." Larson Decl. ¶ 11. It is hard to imagine how another state's AG would be OAG's "client" in the first place, as OAG has no duty to provide advice to other states. *See* Minn. Stat. § 8.01 ("The attorney general shall appear for the state in all causes . . . ."). OAG states that there is "existing or proposed" multi-state litigation that is the subject of these documents. *Id.* However, there is no indication as to OAG's role in any such litigation and how it was providing or would be providing advice to a client or receiving information from a client in any such litigation. The attorney-client privilege does not apply.

Neither does the work-product doctrine appear to apply. OAG has not identified any protective order that would relate to the communications in Category 6. OAG has not identified any "work product" at all; it only states that there is existing or proposed litigation. OAG does not state whether OAG is involved in the litigation representing Minnesota. OAG does not state whether the litigation has been proposed and then initiated, proposed and then dropped, and so on. OAG does not even give an inkling as to the subject of the purported work product conversations so that they can be fairly analyzed.

OAG cannot just shield any conversations it has with another state's AG because they might discuss the theoretical potential for or existence of a lawsuit. OAG has failed to carry its burden to show that the attorney-client privilege or work-product doctrine applies, and thus this Court should require disclosure of the documents in Category 6.

2. Category 10 Relates to an Inactive Request for Amicus Participation, So No Privilege Can Apply.

Category 10 relates to an amicus request related to a U.S. Supreme Court petition that was denied in 2017. Larson Aff. ¶ 16; Dickey Aff. Ex. 4. OAG did not write any such brief. *Id.* OAG did not provide much more than that description. There is no indication that any advice was provided or that a Minnesota agency asked for it. There is no indication as to the role OAG had in any of these communications. There is no indication that OAG's mental impressions, opinions, conclusions, or legal theories were discussed. In addition, because the matter is no longer active and was not active at the time of EPA's request, there is no "work product" to protect. *Hanover Shoe, Inc. v. United Shoe Mach. Corp.*, 207 F. Supp. 407, 410 (M.D. Pa. 1962) ("There is nothing in the Hickman case which extends the work product principle to preclude discovery of a lawyer's memorandum, prepared during a prior case, in a subsequent action

between different parties."). Category 10 is protected by neither the attorney-client privilege nor the work-product doctrine.

3. Category 11 Does Not Involve Privileged or Work Product Communications.

Category 11 only concerns "communications between this Office and vendors assisting it with document and privilege review in the matter *Jensen v. Minnesota Department of Human Services*." Larson Decl. ¶ 16. OAG does not state the topic of any of the conversations and whether they included the provision of advice to a client or information from a client. Additionally, OAG states that the litigation "concern*ed*" mental health treatment. *Id.* (emphasis added). If the litigation has ended, the work product privilege cannot apply. OAG has not provided enough information to claim privilege or work product protection, and the information provided indicates that neither apply.

4. There Is No Description of Client Advice or the Type of Mental Impressions Covered by Category 12.

OAG describes Category 12 as simply "internal communications" related to an ongoing case. This is a bare assertion of privilege. OAG has failed to show that any privilege or work product protection might attach to Category 12.

5. Categories 13 and 14 Relate to Closed Cases and Do Not Identify Any Information to Which Privilege Could Attach.

First, for cases that have already closed, such as those listed in Categories 13 and 14, the work product doctrine does not apply. *Hanover Shoe, Inc. v. United Shoe Mach. Corp.*, 207 F. Supp. 407, 410 (M.D. Pa. 1962) ("There is nothing in the Hickman case which extends the work product principle to preclude discovery of a lawyer's memorandum, prepared during a prior case, in a subsequent action between different parties."). Second, the description provided by OAG only describes the communications as "internal and multi-state communications concerning this

Office's representation of the State," and "concern[ing] applications for attorneys' fees submitted by the participating states." Larson Decl. ¶ 16. Nothing in this description indicates that there is a client requesting advice, or that advice is being given. Third, the communications are admittedly "multi-state"—because there is no privilege concerning communications across state attorneys general, the attorney-client privilege would not apply to Categories 13-14. OAG has failed to carry its burden to establish privilege for these documents as well.

6. Category 16 Only Identifies "Discovery in Fraud Investigations" As a Reason for Privilege.

Simply put, the fact that documents relate to discovery does not make them privileged. In fact, it appears that the communications in Category 16 only relate to conversations about a target of investigation, not communications with a client-agency. Larson Decl. ¶ 20. In addition, there is no indication that these investigations are ongoing, so the work product protection would not apply. OAG has failed to carry its burden to show that Category 16 is protected from disclosure.

7. Category 17, Like Category 16, Involves Discussions of Discovery, Not Client Communications.

Again, the fact that documents relate to discovery does not make them privileged. Again, the discussions identified by OAG do not appear to be with a client. Larson Decl. ¶ 20. And again, there is no indication that these investigations are ongoing, so the work product protection would not apply. Finally, there is no privilege related to statements to non-clients from other states, so the description of these documents as "multi-state" means that those portions of the documents are not privileged. OAG has failed to carry its burden to show that Category 17 is protected from disclosure.

8. Category 5 Is Not Protected.

OAG claims that Category 5 is protected by attorney-client privilege and the work-product doctrine. OAG Mem. at 15. Category 5 includes legal analysis of the jurisdiction of FERC and an appointee's impact on the resolution of issues under FERC's jurisdiction. *Id.*; Larson Decl. ¶ 11. This information might be work product if it related to an ongoing case, but it would not be privileged in any circumstance unless it was provided to a client. OAG states that it was not provided to anyone outside OAG. Larson Decl. ¶ 11. However, this information is not work product protected in this case because the OAG did not join the FERC letter, as OAG notes. Larson Decl. ¶¶ 9, 11. Thus, because the work product principle does not "preclude discovery of a lawyer's memorandum, prepared during a prior case, in a subsequent action between different parties," the work product exception does not apply to Category 5. OAG has failed to carry its burden to establish privilege or work product protection.

IV. EPA DOES NOT CHALLENGE THE NON-PRODUCTION OF CATEGORY 9 OR 18.

As OAG correctly points out, EPA does not desire production of Category 18. In addition, based on OAG's description of Category 9 on pages 15-16 of its memorandum, EPA does not desire production of those documents.

CONCLUSION

OAG's construction of the various statutes it claims protection under should give the Court pause. OAG would essentially turn any document that an attorney in its office looked at, other than the metadata requested in discovery in this case, into a non-public document shielded from public disclosure. The presumption of the MGDPA is one of access, however, and OAG has an obligation to fairly and openly disclose documents that do not fall within an exception to the MGDPA's presumption of disclosure. OAG has failed to do that, and EPA thus asks this

Court to compel the production of the documents identified by OAG and award EPA its reasonable costs and attorney fees incurred in this action under Minn. Stat. § 13.08, subd. 4.

HELLMUTH & JOHNSON

Date: April 15, 2020 By: /s/ James V. F. Dickey

James V. F. Dickey, ID No. 393613
8050 West 78th Street
Edina, Minnesota 55439
Telephone: 952-941-4005
Fax: 952-941-2337
jdickey@hjlawfirm.com

ATTORNEYS FOR PLAINTIFFS

ACKNOWLEDGEMENT

The undersigned hereby acknowledges that costs, disbursements, and reasonable attorney and witness fees may be awarded pursuant to Minn. Stat. § 549.211, subd. 2, to the party against whom the allegations in this pleading are asserted.

Dated: April 15, 2020 By: /s/ James V. F. Dickey
James V. F. Dickey, #393613