

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF RAMSEY

SECOND JUDICIAL DISTRICT

Case Type: OTHER CIVIL

State of Minnesota, by its Attorney General,
Keith Ellison,

Court File No. _____

Plaintiff,

COMPLAINT

vs.

Pamela Fergus, a/k/a Philando Feeds the
Children,

Defendant.

The State of Minnesota, by its Attorney General, Keith Ellison, for its Complaint against Pamela Fergus, a/k/a Philando Feeds the Children, states and alleges as follows:

INTRODUCTION

1. Philando Castile worked as a nutrition supervisor at J.J. Hill Montessori Magnet School in Saint Paul, where he was beloved by students and paid out of his own pocket to help children who could not afford to buy lunch. Mr. Castile, a Black man, was killed by a police officer during a traffic stop in Falcon Heights in July 2016. In addition to spurring a national conversation about race, social justice, and police violence, the tragedy spurred an outpouring of support for charitable fundraisers honoring Mr. Castile's legacy.

2. Pamela Fergus, a local college professor, purported to lead one such charitable fundraiser titled "Philando Feeds the Children." Through a crowdfunding platform, Fergus urged donors to "help Philando continue to feed his kids" by giving money to pay down student's lunch debts in Mr. Castile's name to honor his legacy. Fergus promised that "every dollar" donated would help relieve the lunch debts of elementary school students.

3. Fergus, however, broke her promise to donors and misused the charitable assets entrusted to her. Out of the more than \$200,000 she collected for student lunch debt—and put into her personal checking account—less than half went toward paying down student lunch debts as Fergus promised.

4. The State of Minnesota, by its Attorney General, Keith Ellison (“State” or “AGO”) brings this action against Pamela Fergus, a/k/a Philando Feeds the Children, to remediate Fergus’s misuse of charitable assets and enforce Minnesota’s charitable trust and charitable solicitation laws.

PARTIES

5. Keith Ellison, the Attorney General of the State of Minnesota, is authorized under Minnesota Statutes chapter 8, the Minnesota Charitable Solicitation Act, Minn. Stat. §§ 309.50–.61, the Minnesota Supervision of Charitable Trusts and Trustees Act, Minn. Stat. §§ 501B.33–.45, and common law authority, including as *parens patriae*, to bring this action to enforce Minnesota’s laws, vindicate the state’s sovereign and quasi-sovereign interests, and remediate all harm arising out of—and seek full relief for—violations of Minnesota’s laws.

6. Pamela Fergus is a natural person who solicited charitable contributions under the name “Philando Feeds the Children” (“PFC”). Fergus created and maintained exclusive control over the PFC crowdfunding webpage, directed donors to send donations by check to her home address, and had sole control over the personal checking account into which PFC contributions were deposited. Fergus’s last known address is in Saint Paul, Minnesota.

JURISDICTION

7. This Court has subject-matter jurisdiction over this action under Minnesota Statutes sections 8.01, 8.31, 309.57, 484.01, 501B.41, and common law.

8. This Court has personal jurisdiction over Fergus because she resides in Minnesota and has committed acts in Minnesota causing injury to the Minnesota public in violation of Minnesota law.

VENUE

9. Venue is proper in Ramsey County under Minnesota Statutes section 542.09 because the cause of action arose, in part, in Ramsey County, Fergus resides in Ramsey County, and Fergus's unlawful acts have harmed Ramsey County residents, among others.

FACTUAL BACKGROUND

I. THE ATTORNEY GENERAL SUPERVISES AND REGULATES CHARITABLE TRUSTS AND CHARITABLE FUNDRAISING IN MINNESOTA.

10. Attorney General Keith Ellison is the "chief law officer of the state." *State ex rel. Hatch v. Am. Family Mut. Ins. Co.*, 609 N.W.2d 1, 3 (Minn. Ct. App. 2000) (citation omitted). As part of this role, the Attorney General has express statutory authority to regulate and supervise charitable interests in Minnesota.

11. Specifically, the Supervision of Charitable Trusts and Trustees Act, Minn. Stat. §§ 501B.33–.45, codifies and supplements longstanding common law recognizing the Attorney General's authority over the "supervision, administration and enforcement of charitable trusts." Minn. Stat. § 501B.34.

12. Similarly, the Attorney General enforces the Charitable Solicitation Act, Minn. Stat. §§ 309.50–.61, which regulates charitable fundraising in Minnesota. *See* Minn. Stat. §§ 309.533, -.57.

13. The Attorney General's authority, however, goes beyond express statutory enforcement authority. The Attorney General also has longstanding common-law power to act for

the benefit of the public as a representative of the sovereign under the *parens patriae* doctrine. *State ex rel. Hatch v. Cross Country Bank, Inc.*, 703 N.W.2d 562, 569 (Minn. Ct. App. 2005).

14. The Attorney General’s authority is particularly well-established with respect to charitable trusts. Because the beneficiaries of charitable trusts “are usually some or all of the members of a large shifting class of the public,” the Attorney General has the “exclusive power to begin proceedings to enforce charitable trusts” as the “responsible state officer who will act in the public interest rather than for personal motives.” *Longcor v. City of Red Wing*, 289 N.W. 570, 574 (Minn. 1940).

II. THE RISE OF CROWDFUNDING.

15. Crowdfunding refers to soliciting or collecting donations from a large number of people.

16. Websites such as GoFundMe and Facebook, among others, are popular platforms used for crowdfunding campaigns. These platforms encourage individuals to share campaigns through social media, which can allow certain crowdfunding campaigns to “go viral” and gain additional exposure.

17. Crowdfunding websites typically charge a percentage-based fee for each donation.

18. In recent years, crowdfunding has become an increasingly popular way to raise money. Between March 1 and August 31, 2020, GoFundMe donors gave over \$625 million for relief efforts related to the COVID-19 pandemic—such as buying personal protective equipment for frontline workers or providing school supplies for students transitioning to remote learning.¹

¹ GoFundMe, *Inspire Hope: The GoFundMe 2020 Giving Report* (Dec. 2020), <https://perma.cc/8H24-UM4B>.

In the six months after George Floyd's death, donors gave approximately \$3 million in donations via GoFundMe to fundraisers focused on social justice and equity issues.²

19. Not all crowdfunding is covered by Minnesota's laws regulating charities. For example, when a person raises money to help a specific person pay her medical bills, that is not a charitable purpose as defined by Minnesota law, and this type of fundraising is not covered by Minnesota's charitable solicitation laws.

20. Nonetheless, crowdfunding has become a common way for individuals to support charitable causes—or causes that help the greater good—instead of a specific person. Some charitable crowdfunding efforts might ask for donations for particular charities, while others might raise money for more general charitable causes. This type of fundraising, in contrast, is regulated by the AGO and is subject to Minnesota's charitable solicitation laws.

21. Most people who raise money by crowdfunding and by other means are doing so because they are generous and want to help people. But crowdfunding for charitable causes has potential pitfalls, including the misuse of money, a deficiency of formal financial controls, platforms' deduction of fees from donations, and a lack of transparency into organizers' use of the funds raised. Because of these challenges, crowdfunding presents an ever-increasing enforcement focus by the AGO and other regulators.

II. PAMELA FERGUS BREACHED CHARITABLE TRUST.

A. People Who Hold Money for Charitable Purposes Are Charitable Trustees.

22. Those who raise money for charitable purposes—such as paying off lunch debts of children in need—assume a set of important legal duties.

² *Id.*

23. Under Minnesota law, causes such as reducing students' school lunch debts or feeding children in need are "charitable purpose[s]." *See* Minn. Stat. § 501B.35, subd. 2 (defining "charitable purpose" as "an actual or purported charitable, philanthropic, religious, social service, educational, eleemosynary, or other public use or purpose").

24. When someone is entrusted with money given for a charitable purpose, a charitable trust is formed under the law. *See id.* at subd. 3. A person who has control or responsibility of property held for a charitable purpose is a charitable trustee. *Id.* at subd. 4.

25. No formal legal structure is required to establish a "charitable trust"—merely being entrusted with charitable assets is sufficient to form a charitable trust.

26. As discussed further below, charitable trustees are legally required to protect and preserve charitable assets, ensuring that the uses of charitable assets are consistent with donor intent.

B. Through PFC, Fergus Solicited Charitable Contributions and Formed a Charitable Trust.

27. Fergus is a part-time faculty member at a community college and a university in the Twin Cities. She has regularly taught a course entitled Introduction to Diversity and Ethics in Psychology. The class encourages students to critically examine the role of race and racism in different societal contexts.

28. As part of her Introduction to Diversity and Ethics in Psychology course, Fergus required her students to participate in a semester-long service-learning project. In August 2017, after speaking with her students about the killing of Mr. Castile, Fergus created the PFC crowdfunding campaign as one such service-learning project because of the racial and social justice issues implicated by Mr. Castile's death. The crowdfunding effort originally set a goal of

raising \$5,000 to pay off the lunch debts of students at J.J. Hill Montessori, the elementary school where Mr. Castile had worked. Sections of the crowdfunding page are shown below:

The screenshot shows the YouCaring website interface. At the top, the YouCaring logo is on the left, and navigation links for 'Create a Fundraiser', 'Browse', and 'More' are on the right, along with a search bar. Below the navigation, the breadcrumb trail reads 'Home > Education & Schools > Philando Feeds the Children'. The main content area features a large illustration of a man (Philando Castile) standing behind four children who are sitting at a table eating lunch. To the right of the illustration, the fundraiser title 'Philando Feeds the Children' is displayed, followed by the description 'For: All public schools- St paul and beyond Saint Paul, MN' and the organizer 'Organizer: Pamela Fergus'. The fundraising progress is shown as '\$90,252 of \$999,999 goal' with a progress bar and the text 'Raised by 2,476 donors'. Below this is a red 'DONATE NOW' button. A handwritten note with an arrow points to a blue 'Share on f' button, stating 'Every Share Can Raise \$37'. Below the illustration and fundraising details is a section titled 'The Story' with the following text:

In memory of Philando Castile, this site is collecting donations to pay off elementary school kids' lunch debt. The J.J. Hill school is several thousand dollars short. Some kids get free lunch, but many kids come from families with incomes slightly above the cut off. They get behind in payments, and need our help.

Philando was "Mr. Phil" to the students at J.J. Hill. He supervised their food program and interacted with the kids every day. He knew their names and their diets. He LOVED his job!

Philando's death affected every one of those kids. This fund hopes to provide the kids with a lasting connection to Mr. Phil.

Please help Philando continue to feed his kids.

29. Fergus raised charitable funds as an individual, rather than setting up PFC as a separate legal entity. Fergus never incorporated Philando Feeds the Children as a nonprofit

corporation or any other type of legal entity, nor did she obtain tax-exempt status for PFC from federal or state authorities.

30. When setting up the crowdfunding account for PFC, Fergus listed herself as the organizer and directed online donations to be automatically deposited into her personal bank account at U.S. Bank (account number ending in 1476). Fergus had sole control over this bank account.

31. Fergus also sought contributions to PFC via check. On the PFC crowdfunding page, she invited donors to send checks directly to her home mailing address.

32. Accordingly, Fergus created a charitable trust under Minnesota law through her PFC fundraising efforts. Further, when Fergus acquired assets intended for a charitable purpose, she became a charitable trustee and assumed significant legal duties.

C. Fergus Held PFC Funds in Trust for the Charitable Purpose of Relieving Student Lunch Debt.

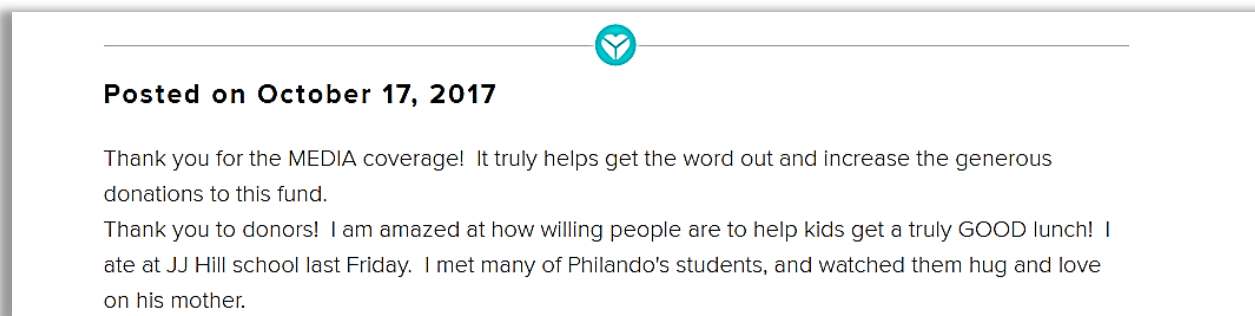
33. PFC's stated purpose was to "pay off elementary school kids' lunch debt" in memory of Philando Castile. Fergus asked donors to "[p]lease help Philando continue to feed his kids."

34. The PFC message resonated in both Minnesota and nationwide, and the campaign quickly surpassed its original fundraising goal. By October 2017, donors had generously contributed over \$90,000.

35. Fergus's fundraising efforts gained national media attention, and news reports frequently highlighted her as the organizer of the fundraiser. In October 2017, a newspaper quoted Fergus stating, "We actually have enough money now to pay off all of the schools in the St. Paul public school district. . . . So all of the grade schools, all of the middle schools and all of the high schools. Plus more. I mean, we're still making money." The article went on to quote Fergus

declaring, “I don’t think there’s an end in sight. I want a million dollars in that account. . . . That’s my goal. I want a million dollars.”³

36. Fergus expressed gratitude about the media coverage on the PFC crowdfunding page. She also thanked donors and emphasized how PFC contributions were providing meals to students at J.J. Hill:



37. As described further below, according to sworn declarations from numerous PFC donors, those who donated to PFC believed that the money would solely go toward relieving student lunch debts.

38. After the fall 2017 semester ended and the students in Fergus’s course completed their class service project, Fergus nonetheless continued to solicit donations. Fergus kept the PFC webpage active, even though she “never imagined” that PFC would be “anything more than a project for this semester. . . .”⁴ Throughout spring 2018, donors continued to make contributions through the PFC crowdfunding page, and Fergus continued to receive weekly deposits of PFC charitable contributions into her personal bank account.

³ Sarah Larimer, *Philando Castile was shot by a police officer. An effort to pay kids’ lunch debt now carries his name*, WASH. POST, Oct. 19, 2017, <https://perma.cc/M6LN-7JDC>.

⁴ *Id.*

39. During the PFC fundraiser, Fergus wrote updates emphasizing that funds would be used to pay down student lunch debts. For example, in an April 2018 update, Fergus wrote on the PFC crowdfunding page: “[E]very dollar donated will pay for food. [Y]our donations eliminate the accruing debt for kids who need help.” To illustrate:

SO THANKFUL to those donating and promoting this site! I will be meeting with SPPS nutrition folks again soon, to find out what happens next. Please know that every dollar donated will pay for food. your donations eliminate the accruing debt for kids who need help. All the while, the district is trying to get the families into govt programs to help with lunch payments.

40. Donors continued to give generously to PFC. As of May 1, 2018—the last date for which an internet archive of the now-deleted site is available—the PFC crowdfunding page reported donations totaling \$207,826, as follows:



D. Fergus Failed to Use Charitable Donations to PFC for the Intended Purpose of Paying Down Student Lunch Debt.

41. As discussed above, Fergus had a legal duty pursuant to Minnesota law to hold PFC funds in trust for the sole purpose of reducing student lunch debts.

42. Based on records from the payment processor for the PFC crowdfunding site, after accounting for fees and all other deductions, a total of \$200,774 in charitable funds was deposited into Fergus's personal bank account between September 1, 2017 and May 14, 2018.

43. According to Saint Paul Public Schools ("SPPS"), Fergus wrote a total of three checks from the PFC proceeds to the district: (1) a check for \$10,000 on October 13, 2017; (2) a check for \$35,035.99 on February 27, 2018; and (3) a check for \$35,000 on August 13, 2018.

44. Thus, out of the total \$200,774 in PFC funds that went into Fergus's personal bank account, Fergus donated \$80,035.99 to SPPS for the purpose of helping relieve lunch debts for local elementary school students.

45. In January 2020, Valerie Castile, the mother of Philando Castile, reported concerns about the PFC fundraiser to the AGO. Specifically, Ms. Castile expressed concern that Fergus may have diverted funds raised in her son's name for an improper purpose.

46. Throughout 2020, the AGO repeatedly attempted to obtain information from Fergus about the charitable funds entrusted to Fergus.

47. First, in January 2020, the AGO sent Fergus a letter request seeking voluntary information regarding the amount of charitable funds raised and the use of these funds. In March 2020, Fergus sent an email in which she stated that the total amount raised from the PFC campaign in 2017 was \$79,535, and that it was not the higher amount announced in the media because of "administrative fees charged by the funding sites" and "bad donations that didn't clear."

48. In that same email, Fergus claimed that she stopped raising money in Philando Castile's name at the "start of the next semester," i.e., January 2018. Payment processor records show, however, that the PFC fundraising site remained active into May 2018.

49. Fergus told the AGO that she passed on all PFC donations to SPPS but admitted she had not kept a financial accounting. She stated that money from the fundraiser was deposited into her personal checking account. When asked if she would sign a consent form to give the AGO access to records of the bank account where PFC donations were deposited, Fergus refused.

50. After Fergus refused to provide records on a voluntary basis, in May 2020, the AGO issued a Civil Investigative Demand (“CID”) to Fergus pursuant to the State’s investigative authority under Minnesota Statutes sections 8.31, 309.533, 309.54, and 501B.40. The CID included interrogatories about contributions to the PFC campaign, costs associated with the campaign, dates when the campaign was active, and uses of the donated funds. The CID also requested the production of certain documents that would substantiate the amounts raised and amounts disbursed.

51. In response to the CID, Fergus provided the following: (1) screen shots of bank account statements from the limited time period of September–December 2017, and (2) messages from the director of SPPS Nutrition Services. The correspondence Fergus forwarded from the director indicated that Fergus wrote three checks to SPPS totaling \$80,042.99. Fergus did not respond fully to any of the document requests and did not answer a single interrogatory.

52. On June 29, 2020, Fergus sent the AGO an email in which she stated she found “some of the bank records.” Fergus admitted to the AGO for the first time that she received the last payment from the PFC fundraiser in mid-May 2018. She stated she was requesting additional bank records, and claimed that “[t]he requested records will show the transfers and requests of all the funds, eventually, that went to SPPS, other charity sites, grocery cards, groceries, etc.” Fergus never provided those records. Regardless, Fergus never indicated on her fundraising page that

donations might go to “other charity sites, grocery cards, groceries, etc.”—rather than to SPPS to pay down the lunch debts of elementary school students.

53. Fergus never gave the AGO the additional bank records referenced in her June 2020 email, nor did she provide any additional detail about how the funds were disbursed. After Fergus retained an attorney, the AGO sent correspondence to him on August 24, September 18, and October 26, 2020, but received no reply to any of these attempts to facilitate a full response to the AGO’s CID.

54. In December 2020, the AGO brought a motion to compel compliance with the CID in Ramsey County District Court. Prior to the motion hearing, Fergus responded to the CID by invoking her Fifth Amendment right against self-incrimination in response to each and every interrogatory and document request in the State’s CID.

55. Specifically, Fergus invoked the Fifth Amendment in response to questions asking how much PFC raised (“Identify all contributions you received from the PFC campaign . . .”), when she stopped raising the money for PFC (“Identify the date on which you stopped raising funds via the PFC campaign. . .”), and what she did with the money (“Identify all transfers you made of the money from the PFC campaign. . .”). See *Baxter v. Palmigiano*, 425 U.S. 308, 320 (1976); *Wartnick v. Moss & Barnett*, 490 N.W.2d 108, 111 (Minn. 1992) (stating that in Minnesota, a jury may draw an adverse inference against a party invoking the Fifth Amendment in a civil case).

56. After Fergus invoked the Fifth Amendment in her response to the CID, the AGO elected to withdraw its motion to compel compliance with the CID and to proceed with this law enforcement action.

57. In summary, although members of the public donated at least \$200,774 to the PFC fundraiser, SPPS received just \$80,035.99 to pay down students' lunch debts. Fergus refused to explain what happened to the remaining \$120,738 that went into her personal bank account. Instead, she lied about the amount of money she raised, refused to provide the records demanded by the AGO, and invoked her Fifth Amendment right against criminal self-incrimination.

58. The "failure of a trustee to . . . administer and manage property held for charitable purposes in accordance with law or consistent with fiduciary obligations constitutes a breach of trust." Minn. Stat. § 501B.41, subd. 6.

59. Fergus's failure to properly use assets held in trust for charitable purposes violated Minnesota Statutes section 501B.41.

E. Fergus Failed to Properly Manage Charitable Assets.

60. As a charitable trustee, Fergus had a fiduciary duty to properly administer, manage, and account for charitable assets in accordance with the law or consistent with fiduciary obligations. A trustee has a common law fiduciary duty to keep "clear, distinct, and accurate accounts." *Smith v. Tolversen*, 252 N.W. 423, 425 (Minn. 1934). The trustee has the burden of proof to show that his or her "actions conformed to the standard of this duty." *Id.*

61. Accordingly, Fergus has the burden of showing she kept clear and accurate accounting records regarding PFC.

62. Fergus failed to properly account for such assets. Fergus admitted to the AGO that she kept no records regarding PFC. Further, Fergus comingled charitable assets with her personal assets.

63. Fergus produced no books and records to the AGO, either voluntarily or in response to the CID. In response to the AGO's document requests contained in the CID, Fergus invoked her Fifth Amendment right against self-incrimination. Fergus's inability to produce full, accurate

records constitutes additional evidence that Fergus failed to properly manage and account for charitable assets.

64. Fergus's failure to properly manage trust property, including by keeping clear, distinct, and accurate accounts regarding PFC, constituted a breach of trust under Minn. Stat. § 501B.41, subd. 6.

III. PAMELA FERGUS DECEPTIVELY SOLICITED CHARITABLE CONTRIBUTIONS.

65. Under Minnesota law, it is unlawful to use “any fraud, false pretense, false promise, misrepresentation, misleading statement” or any other deceptive practice “with the intent that others should rely thereon” in connection with any charitable solicitation. Minn. Stat. § 309.55, subd. 5. The definition of “charitable organization” includes “any person who engages in or purports to engage in solicitation for a charitable purpose.” Minn. Stat. § 309.50, subd. 4. The statutory definition of “person” expressly includes “individuals” and unincorporated “groups.” Minn. Stat. § 309.50, subd. 2.

66. As shown in detail above, Fergus told donors she would use all funds to pay down lunch debts for elementary school students and then failed to do so. On the PFC crowdfunding webpage, she told donors that “this site is collecting donations to pay off elementary school kids’ lunch debt” and “your donations eliminate accruing debt for kids who need help.” While at least \$200,774 in PFC proceeds went into Fergus’s checking account, she only gave \$80,035.99 to SPPS for the purposes of relieving student lunch debts. Accordingly, Fergus’s promise to donors that all funds would be used to pay down lunch debts was deceptive.

67. While not necessary for a claim to be actionable under Minnesota Statutes section 309.55, Fergus’s deception was effective with donors. Donors to PFC—including many donors from Minnesota—gave money based on their belief that donations to PFC would help public

school children purchase school lunch or pay down lunch debt and further Mr. Castile's legacy. Below are illustrative, non-exclusive examples of several such donors.

A.K.

68. A.K. of Plymouth, along with his wife, donated \$1,000 to PFC in September 2017. To A.K., Philando Castile's death was a "shocking tragedy" which left him "feeling a range of emotions." He stated, "I read that Philando Castile had worked in a school nutrition program, so when my wife and I heard about a fundraiser to help with student lunch debt, we wanted to help."

69. According to A.K., the PFC crowdfunding site said that "donations would be used to pay down student lunch debt." Hunger and poverty relief are important causes to A.K. and his family.

70. A.K. stated that if the money he donated to PFC did not go to pay down student lunch debts, it would be a "gross abuse of trust" because it is wrong to capitalize on a tragedy for personal benefit.

L.L.

71. L.L. lives in Prior Lake, where he owns a business that has been in his family since 1950. He donated \$300 to PFC in September 2017 because it "sounded like a good cause" and he wanted to help.

72. Based on what he read on the PFC crowdfunding page, it was clear to L.L. that the money was supposed to help pay off the lunch debts of Saint Paul kids.

73. L.L. says he would not be okay with his donation going somewhere else than where it was supposed to go. He testified that any such diversion "would essentially be taking money from kids, which is pretty low in my opinion."

H.P.

74. H.P. of Saint Paul gave \$215 to PFC in December 2017. H.P.'s son and daughter-in-law attended Saint Paul Public Schools when they were growing up.

75. The PFC donation was something H.P. and her family "decided to do for Christmas to honor Philando Castile's life."

76. H.P. understood that the donations would be used to pay for student lunches at Saint Paul Public Schools, and possibly other local school systems.

77. H.P. says she believed the fundraiser was a good way to continue Philando's mission to make sure Saint Paul kids had enough to eat.

E.D.

78. E.D. of Saint Paul donated to PFC in October 2017. She donated because she wanted to do something to help after hearing what happened to Philando Castile. She believed that giving money to support local kids in Mr. Castile's memory "seemed like a small way I could do something positive after a tragedy."

79. To E.D., the PFC crowdfunding website was clear that the money was supposed to help pay off the lunch debts of Saint Paul kids. E.D. would be disappointed if her donation did not go toward paying down the lunch debts of local public school students.

E.R.

80. E.R. is a university professor residing in Ramsey County, Minnesota. In late August 2017, she donated \$100 to PFC after hearing about the fundraiser on Minnesota Public Radio.

81. According to E.R., the crowdfunding site said that the money would go to help pay off the lunch debts of students in the local area.

82. E.R. believes it is important for charitable donations to go toward the cause that is promised. Therefore, she would be disappointed if her donation did not go toward helping students with their lunch debts.

K.F.

83. K.F. is an emergency room physician residing in Minneapolis. On or around September 1, 2017, she donated \$100 to PFC after hearing about the crowdfunding campaign on Facebook.

84. K.F. recalls that the PFC crowdfunding page said donations would go to help pay off the lunch debts of the students at the Saint Paul school where Philando Castile had worked. She remembered reading that Mr. Castile had often paid for children's lunches at the school where he worked, so the fundraiser seemed "like a way to continue to help the same kids he had helped."

85. K.F. testified that if the money did not actually go to pay down local students' lunch debts, she would feel "deceived and upset."

86. Fergus' deceptive solicitation of charitable contributions violated Minnesota Statutes section 309.55, subdivision 5.

IV. PAMELA FERGUS FAILED TO MAINTAIN BOOKS AND RECORDS FOR PFC.

87. In addition to her duty to adequately account for charitable assets as a charitable trustee, under the Charitable Solicitation Act, Minn. Stat. §§ 309.50–.61, Fergus was required to keep "accurate and detailed books and records" including records "pertaining to all money or other property collected from residents of this state and to the disbursement of such money or property." Minn. Stat. § 309.54.

88. Further, Fergus was required to ensure that such "books and records" were "open to inspection at all reasonable times" by the AGO. Minn. Stat. § 309.54, subd. 2.

89. Fergus failed to maintain the books and records required by statute.

90. Fergus admitted to the AGO that she kept no records regarding PFC.

91. Additionally, Fergus produced no books and records to the AGO, either voluntarily or in response to the CID. After promising to provide certain bank records to the AGO, Fergus never provided records evidencing the whereabouts of the unaccounted-for \$120,738.

92. Finally, in response to the AGO's document requests contained in the AGO's CID, Fergus invoked her Fifth Amendment Right against self-incrimination.

93. Fergus's failure to maintain books and records violated Minnesota Statutes section 309.54.

V. PAMELA FERGUS FAILED TO REGISTER WITH THE AGO.

94. Under the Minnesota Charitable Solicitation Act, the definition of "charitable organization" includes "any person who engages in or purports to engage in solicitation for a charitable purpose." Minn. Stat. § 309.50, subd. 4. The definition of "person" expressly includes "individuals" and unincorporated "groups." *Id.* subd. 2. Thus, a person soliciting charitable contributions in Minnesota does not need to be an organization, nonprofit, or 501(c)(3) tax-exempt entity to be subject to these registration laws.

95. "Charitable organizations" are subject to registration, which requires them to file financial and other information with the AGO. Minn. Stat. §§ 309.52, 309.53.

96. As discussed above, Fergus solicited more than \$200,000 between fall 2017 and spring 2018. The amount Fergus solicited required registration with the AGO. *See* Minn. Stat. § 309.52 (requiring a "charitable organization whose total contributions received during any accounting year are in excess of \$25,000" to register with the AGO, unless otherwise exempt).

97. The Minnesota Charitable Solicitation Act allows certain charitable organizations an exemption from registration. Fergus had no exemption from the registration requirements of

the Minnesota Charitable Solicitation Act, yet she never registered as a soliciting charitable organization with the AGO.

98. Fergus' failure to register with the AGO violated Minnesota Statutes sections 309.52 and 309.53.

COUNT I
BREACH OF CHARITABLE TRUST

99. The State re-alleges all prior paragraphs of this Complaint.

100. Minnesota Statutes section 501B.35, subdivision 2, defines "charitable purpose" as "an actual or purported charitable, philanthropic, religious, social service, educational, eleemosynary, or other public use or purpose."

101. Minnesota Statutes section 501B.35, subdivision 3, defines "charitable trust" as "a fiduciary relationship with respect to property that arises as a result of a manifestation of an intention to create it, and that subjects the person by whom the property is held to equitable duties to deal with the property for a charitable purpose."

102. Minnesota Statutes section 501B.35, subdivision 4, defines "trustee" as "a person or group of persons either in an individual or a joint capacity, or a director, officer, or other agent of an association, foundation, trustee corporation, corporation, or other legal entity who is vested with the control or responsibility of administering property held for a charitable purpose."

103. Minnesota Statutes section 501B.41, subdivision 6, provides that "[t]he failure of a trustee to . . . administer and manage property held for charitable purposes in accordance with law or consistent with fiduciary obligations constitutes a breach of trust."

104. As a charitable trustee, Fergus had certain fiduciary obligations, including the duty of loyalty, the duty of good faith, the duty of care, and the duty to account. *See, e.g., In re*

Revocable Tr. of Margolis, 731 N.W.2d 539, 546 (Minn. Ct. App. 2007); *In re Comstock's Will*, 17 N.W.2d 656, 661 (Minn. 1945).

105. Fergus explicitly manifested an intention that contributions to PFC were to be used for a charitable purpose by stating on the crowdfunding webpage that donations would be used to relieve elementary school children's lunch debts.

106. Further, donors to PFC have testified that they believed their contributions would help pay off school lunch debts or otherwise support school children's lunches—further manifesting an intention that PFC contributions would be held for a particular charitable purpose.

107. By failing to ensure all PFC assets were used to support the charitable purpose for which they were given—namely, paying down the lunch debts of local students—Fergus breached her fiduciary duty of care and good faith.

108. By misusing charitable funds for her personal benefit, Fergus breached her fiduciary duty of loyalty.

109. Fergus's failure to properly manage trust property, including by keeping clear, distinct, and accurate accounts regarding PFC, was a breach of her fiduciary duty of care.

110. Fergus's conduct and actions—including her failure to manage charitable funds in accordance with the law and consistent with her fiduciary duties—constituted multiple, separate violations of Minnesota Statutes section 501B.41 and breached her common law fiduciary duties.

COUNT II

DECEPTIVE SOLICITATION OF CHARITABLE CONTRIBUTIONS

111. The State re-alleges all prior paragraphs of this Complaint.

112. Minnesota Statutes section 309.55, subdivision 5, states in part as follows:

No charitable organization and no person acting on behalf of a charitable organization shall use or employ any fraud, false pretense, false promise, misrepresentation, misleading statement, misleading name, mark or

identification, or deceptive practice, method or device, with the intent that others should rely thereon in connection with any charitable solicitation[.]

113. Minnesota Statutes section 309.50, subdivision 4, defines “charitable organization,” in part, as “any person who engages in or purports to engage in solicitation for a charitable purpose.”

114. Minnesota Statutes section 309.50, subdivision 3, defines “charitable purpose” as “any charitable, benevolent, philanthropic, patriotic, religious, social service, welfare, educational, eleemosynary, cultural, artistic, or public interest purpose, either actual or purported.”

115. Minnesota Statutes section 309.50, subdivision 10, states in part as follows:

“Solicit” and “solicitation” mean the request directly or indirectly for any contribution, regardless of which party initiates communication, on the plea or representation that such contribution will or may be used for any charitable purpose, and include any of the following methods of securing contributions:

(1) oral or written request;

116. Minnesota Statutes section 309.50, subdivision 5, states in part as follows:

“Contribution” means the promise or grant of any money or property of any kind or value, including the promise to pay, or payment for merchandise or rights of any other description when representation is made by or on behalf of the seller or solicitor that the whole or any part of the price will be applied to a charitable purpose.

117. From August 26, 2017, to May 8, 2018, Fergus acted as a “charitable organization” as defined by Minnesota Statutes section 309.50, subdivision 4, because she purported to engage in solicitation of contributions for a charitable purpose.

118. Fergus repeatedly violated Minnesota Statutes section 309.55, subdivision 5, by, in connection with charitable solicitations in Minnesota, engaging in false, deceptive, and misleading conduct, practices, actions, and representations with the intent that others rely thereon as described in this Complaint, including by representing, among other things, that “every dollar” of the

\$200,774 in charitable contributions she held in trust would “pay for food” and that “donations eliminate accruing debt for kids who need help,” when the evidence indicates that only \$80,035.99 actually went toward paying down the school lunch debts of children.

119. Fergus also failed to disclose material facts about the PFC fundraiser, thereby further deceiving potential donors. Special circumstances existed that triggered a duty on the part of Fergus to disclose all material facts to potential donors that she solicited. Fergus had special knowledge—which donors did not have at the time they were solicited—that all contributions were being funneled to her personal bank account, and that she was keeping no record of funds raised and dispersed. The nature and quality of the representations that Fergus made to potential donors about PFC, including that “every dollar” would be used to eliminate accruing debt for children in need, were so incomplete that by failing to disclose the way in which funds were being managed, Fergus did not say enough to prevent the representations she did make to potential donors from being deceptive and misleading. By holding herself out as a charity, Fergus knew or had reason to know that potential donors would place their trust and confidence in her and rely on her to inform them of material facts relating to their potential donation.

120. Due to the false, deceptive, and misleading conduct, practices, actions, representations, and omissions described in this Complaint, Minnesota residents and others throughout the nation donated to the PFC campaign when they otherwise would not have done so, thereby causing these donors harm and unlawfully enriching Fergus.

121. Fergus’s conduct, practices, actions, and representations described in this Complaint constitute multiple, separate violations of Minnesota Statutes section 309.55.

COUNT III
FAILURE TO MAINTAIN PROPER RECORDS AS A SOLICITING CHARITABLE
ORGANIZATION

122. The State re-alleges all prior paragraphs of this Complaint.

123. At all relevant times, Pamela Fergus was a “charitable organization” that solicited contributions in Minnesota. See Minn. Stat. § 309.50, subds. 4, 5, 10.

124. The Charitable Solicitation Act requires charitable organizations to keep “accurate and detailed books and records” including records “pertaining to all money or other property collected from residents of this state and to the disbursement of such money or property.” Minn. Stat. § 309.54. All such books and records “shall be open to inspection at all reasonable times by the attorney general.” *Id.*, subd. 2.

125. Fergus did not keep accurate and detailed books and records pertaining to the PFC fundraiser.

126. Further, Fergus failed to ensure that all such books and records were open to inspection at all reasonable times to the AGO.

127. Fergus’s conduct, practices, and actions—and failure to act when she was required to do so—described above constitute multiple, separate violations of Minnesota Statutes section 309.54.

COUNT IV UNREGISTERED SOLICITATION OF CHARITABLE CONTRIBUTIONS

128. The State re-alleges all prior paragraphs of this Complaint.

129. Minnesota Statutes section 309.50, subdivision 4, provides as follows:

“Charitable organization” means any person who engages in or purports to engage in solicitation for a charitable purpose and includes a chapter, branch, area office or similar affiliate or any person soliciting contributions within the state for a parent charitable organization, but does not include an organization whose primary purpose is supporting or opposing any candidate for elective office, or influencing the nomination for election or the election of any candidate for elective office.

130. Minnesota Statutes section 309.52, subdivision 1, provides that “No charitable organization . . . shall solicit contributions from persons in this state by any means whatsoever

unless, prior to any solicitation, there shall be on file with the attorney general upon forms provided by the attorney general, a registration statement.”

131. Minnesota Statutes section 309.53, subdivision 1, provides as follows:

Every charitable organization that is required to file or that files a registration statement pursuant to section 309.52 shall file an annual report with the attorney general upon forms provided by the attorney general or on forms identical thereto on or before July 15 of each year if its books are kept on a calendar year basis, or on or before the 15th day of the seventh month following the close of its fiscal year if its books are kept on a fiscal year basis. For cause shown the attorney general may extend the time for filing the annual report for a period not to exceed four months.

132. Minnesota Statutes section 309.52, subdivision 7, provides as follows:

In no event shall the registration of a charitable organization continue in effect after the date such organization should have filed, but has failed to file an annual report, including the payment of all required fees, in accordance with the requirements of section 309.53, and such organization, if in default under such section, shall not be eligible to file a new registration statement until it shall have filed the required annual report with the attorney general.

133. Thus, according to this statutory definition, at all relevant times, Pamela Fergus was a “charitable organization” that solicited contributions in Minnesota.

134. Notwithstanding the requirement that Fergus register as a charitable organization with the AGO and file an annual report thereafter, she never filed a registration statement or an annual report.

135. Fergus’s conduct, practices, and actions—and failure to act when she was required to do so—described above constitute multiple, separate violations of Minnesota Statutes sections 309.52 and 309.53.

RELIEF

WHEREFORE, Plaintiff State of Minnesota, by its Attorney General, Keith Ellison, respectfully asks this Court to enter judgment against Defendant Pamela Fergus awarding the

following relief:

1. Declaring that Fergus's acts and omissions as described in this Complaint constitute multiple, separate violations of Minnesota Statutes sections 309.52, 309.53, 309.54, 309.55, and 501B.41;
2. Enjoining Fergus from engaging in the unlawful acts and omissions described in this Complaint or in any other way violating Minnesota Statutes sections 309.52, 309.53, 309.54, 309.55, and 501B.41;
3. Requiring Fergus to undertake remedial actions to address the unlawful acts and omissions described in this Complaint;
4. Awarding monetary relief, including restitution, disgorgement, and all other available legal and equitable monetary remedies, pursuant to Minnesota Statutes sections 8.31, 309.57, 501B.41, and Minnesota common law, including the *parens patriae* doctrine, and the general equitable powers of this Court, as necessary to remedy the harm and injury from Fergus's acts and omissions described in this Complaint;
5. Awarding civil penalties pursuant to Minnesota Statutes sections 8.31 and 309.57 for each separate violation of Minnesota law;
6. Awarding the State its attorneys' fees, litigation costs, and costs of investigation as authorized by Minnesota Statutes sections 8.31, 309.57, and 501B.43; and
7. Granting such further relief as provided for by law or equity, or as the Court deems appropriate and just.

Dated: June 3, 2021

Respectfully submitted,

KEITH ELLISON
Attorney General

State of Minnesota

JAMES W. CANADAY
Deputy Attorney General

/s/Lindsey W. Lee

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ATTORNEYS FOR STATE OF MINNESOTA

**MINN. STAT. § 549.211
ACKNOWLEDGMENT**

The party on whose behalf the attached document is served acknowledges through its undersigned counsel that sanctions, including reasonable attorney fees and other expenses, may be awarded to the opposite party or parties pursuant to Minn. Stat. § 549.211 (2020).

Dated: June 3, 2021

/s/Lindsey W. Lee
LINDSEY W. LEE
Assistant Attorney General