

STATE OF MINNESOTA
COUNTY OF RAMSEY

DISTRICT COURT
SECOND JUDICIAL DISTRICT

Case Type: OTHER CIVIL

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

Court File No. 62-CV-21-3178
Hon. Patrick C. Diamond

Plaintiff,

CONSENT JUDGMENT AND ORDER

vs.

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

Defendant.

WHEREAS, Plaintiff State of Minnesota, by its Attorney General, Keith Ellison (“State”), served and filed a Complaint against Pamela Fergus, a/k/a Philando Feeds the Children, (“Fergus”) in this matter on June 3, 2021 (“Complaint”);

WHEREAS, the State alleged that Fergus violated Minnesota Statutes section 501B.41 and breached her common law fiduciary duties by, among other things, misusing at least \$120,738 in charitable assets;

WHEREAS the State alleged that Fergus engaged in deceptive solicitation of charitable contributions in violation of Minnesota Statutes section 309.55 by, among other things, representing that every dollar raised as part of the Philando Feeds the Children Fundraiser would go to the charitable purpose of paying down students’ lunch debts and failing to do so;

WHEREAS the State alleged that Fergus failed to keep books and records in violation of Minnesota Statutes section 309.54;

WHEREAS the State alleged that Fergus failed to register with the Minnesota Attorney General’s Office as a soliciting charity as required by Minnesota Statutes sections 309.52 and

309.53;

WHEREAS, Fergus answered the State’s lawsuit on June 25, 2021, in which she generally denied the State’s allegations against her; and

WHEREAS, the State and Fergus desire to resolve fully the claims set forth in the Complaint by this Consent Judgment and Order (“Consent Judgment”).

NOW, THEREFORE, the State and Fergus hereby agree to entry of an order with the following terms and conditions:

INJUNCTIVE RELIEF

1. Fergus shall not hereinafter, whether directly, indirectly, individually, representatively, or through or in combination with any other person or entity, engage in any activity that results in having any control or responsibility for property held for a charitable purpose, or from otherwise acting as a charitable trustee as the term is defined in Minnesota Statutes section 501B.35.

MONETARY PAYMENT

2. Fergus is liable for and shall execute a Confession of Judgment for one hundred and twenty thousand dollars (\$120,000). Fergus shall pay one hundred and twenty thousand dollars (\$120,000) to the State under Minnesota Statutes sections 8.31, 309.57, and 501B.41 according to the following schedule:

- (a) Four hundred dollars (\$400) on or before June 1, 2022, and then on or before the first day of each month for 20 additional months; and
 - (b) One hundred eleven thousand six hundred dollars (\$111,600) on or before March 3, 2024.
3. The State shall have the option to distribute monies it receives pursuant to this

Consent Judgment in an equitable manner under applicable law, including in the form of restitution. Monies the State receives pursuant to this Consent Judgment may be used according to applicable law, including but not limited to settlement administration expenses or payment to a settlement administrator. Any monies received pursuant to this Consent Judgment that are not distributed as restitution or used for settlement administration expenses shall be deposited into the State General Fund.

4. The monies to be paid under Paragraph 2 shall be sent payable to the “Minnesota Attorney General’s Office” at the following address: Lindsey Lee, Assistant Attorney General, Minnesota Attorney General’s Office, 445 Minnesota Street, Suite 1200, St. Paul, Minnesota 55101.

5. If Fergus does not comply with the payment requirements contained in Paragraph 2, Fergus consents to and authorizes the State, *ex parte* and at any time, to file with the court administrator the Confession of Judgment signed in relation to this Consent Judgment pursuant to Minnesota Statutes section 548.22, thereby rendering Fergus immediately liable for the entire payment amount referenced in Paragraph 2, minus any amounts already paid by Fergus to the State pursuant to this Consent Judgment. Fergus consents to the Court Administrator or Clerk of Court entering the Confession of Judgment forthwith without any additional notice or other action.

GENERAL TERMS

6. This Consent Judgment constitutes neither an admission nor denial of the allegations set forth in the Complaint.

7. In consideration of the stipulated relief, the sufficiency of which is acknowledged, the State, upon approval of the Consent Judgment by the Court, hereby fully and completely releases Fergus of any and all claims of the State under Minnesota Statutes chapter 309 and chapter 501B arising out of the allegations in the State’s Complaint in the above-captioned action, up to

and including the date of the Court's approval of the Consent Judgment. The State through its Consent Judgment will not settle, release, or resolve any claim against Fergus by any person or entity not party to the Consent Judgment, or by any other person or entity involving any private causes of action, claims, or remedies, including but not limited to private causes of action, claims, or remedies provided for under Minnesota Statutes section 8.31. The release will not apply in any way to claims of any other Minnesota state agency, department, official, or division, including but not limited to the Minnesota Department of Revenue.

8. Through this Consent Judgment, the parties take no position as to any claims or defenses that may or may not be available to Fergus in any litigation brought by any party other than the State relating to the facts alleged in the State's Complaint in the above-captioned action.

9. The claims, remedies, and relief provided for in this Consent Judgment are in addition to all other claims, remedies, and relief available to the State of Minnesota or the Minnesota Attorney General.

10. Fergus shall not state or imply, directly or indirectly, that the State of Minnesota or the Minnesota Attorney General have approved of, condoned, or agree with any conduct, actions, or inactions by Fergus.

11. Nothing in this Consent Judgment shall relieve Fergus of her obligations to comply with all applicable Minnesota and federal laws and regulations, and court or administrative orders and directives.

12. If this Consent Judgment is violated, Fergus agrees that any statute of limitations, statute of repose, or other time-related defense applicable to the subject matters of the operative Complaint in this action or this Consent Judgment, and any claims arising out of or relating thereto, are retroactively tolled from and after the date of this Consent Judgment.

13. In any subsequent civil litigation related to this Consent Judgment by or on behalf of the State, including a nondischargeability complaint or other proceeding to enforce the State's rights to any payment or monetary judgment under this Consent Judgment in bankruptcy court, the facts alleged in the Complaint shall and will be taken as true without the need for any further proof, evidence, or other showing.

14. The facts alleged in the Complaint establish all elements necessary to sustain an action by the State pursuant to 11 U.S.C. § 523(a)(2)(A), 11 U.S.C. § 523(a)(4), and/or 11 U.S.C. § 523(a)(7), and this Consent Judgment will have collateral estoppel and/or res judicata effects for such purposes. Fergus further agrees that the entirety of the award of restitution, disgorgement, and/or civil penalties under this Consent Judgment is nondischargeable debt under these statutes and waives any right to contest or otherwise dispute the matter.

15. Fergus has been fully advised by her counsel before entering into the Consent Judgment.

16. This Consent Judgment may be executed in counterparts, each of which constitutes an original, and all of which shall constitute one and the same agreement. This Consent Judgment may be executed by facsimile or electronic copy in any image format.

17. This Consent Judgment constitutes the full and complete terms of the agreement entered into by Fergus and the State.

18. Service of notices or other documents required or permitted by this Consent Judgment shall be served on the following persons, or any person subsequently designated to receive such notices, by mail and email at the addresses identified below:

Lindsey Lee, Assistant Attorney General
Office of the Minnesota Attorney General
445 Minnesota Street, Suite 1200

St. Paul, Minnesota 55101
lindsey.lee@ag.state.mn.us

Mohamed Sabur, Assistant Attorney General
Office of the Minnesota Attorney General
445 Minnesota Street, Suite 1200
St. Paul, Minnesota 55101
mohamed.sabur@ag.state.mn.us

Mackenzie Guptil, Esq.
1639 Main Street North
Pine City, Minnesota 55063
macguptil@gmail.com

19. The failure of a party to exercise any rights under this Consent Judgment shall not be deemed to be a waiver of any right or any future rights.

20. This Consent Judgment, including any issues relating to interpretation or enforcement, shall be governed by the laws of the State of Minnesota.

21. Nothing in this Consent Judgment shall be construed to limit the jurisdiction, power, or authority of the State of Minnesota or the Minnesota Attorney General, except as expressly set forth herein with regard to Fergus.

22. The State shall have all powers specified by Minnesota Statutes sections 8.31, 309.533, 309.54, and 501B.40, and all other authority otherwise available to it for purposes of investigating any suspected violations of this Consent Judgment.

23. Each of the parties participated in the drafting of this Consent Judgment and agree that the Consent Judgment's terms may not be construed against or in favor of any of the parties by virtue of draftsmanship.

24. Each signatory hereto shall perform such further acts and execute and deliver such further documents as may reasonably be necessary to carry out this Consent Judgment, including that Fergus shall promptly comply with any reasonable request from the State for information

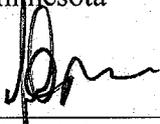
regarding verification of Fergus's compliance with this Consent Judgment.

25. The State may file this Consent Judgment with the Court without further notice to Fergus, and the Court may approve and enter this Consent Judgment without further proceedings.

26. The Court shall retain jurisdiction of this matter for purposes of enforcing this Consent Judgment, notwithstanding any judgment that may be entered dismissing this proceeding with prejudice or otherwise. All signatories hereto further consent to the jurisdiction of the Court for the purposes of enforcing this Consent Judgment. The State may move the Court, as appropriate, to enforce or interpret the provisions of this Consent Judgment, or to maintain an action for other relief as it determines is proper for the enforcement of this Consent Judgment. The parties agree that, in any such motion or action brought by the State, the Court shall have authority to award all appropriate legal and equitable relief, including but not limited to specific performance.

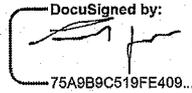
KEITH ELLISON
Attorney General
State of Minnesota

Dated: 3/25/2022

By: 
Mohamed H. Sabur
Assistant Attorney General

PAMELA FERGUS, individually

Dated: 3/24/2022

By: 
Pamela Fergus

ORDER

Having reviewed the terms of the foregoing Consent Judgment, which is incorporated herein by reference, and which the Court finds reasonable and appropriate, it is SO ORDERED.

Date: _____

Honorable Patrick Diamond
Judge of District Court

THERE BEING NO REASON FOR DELAY, LET JUDGMENT BE ENTERED IMMEDIATELY.