

STATE OF MINNESOTA

DISTRICT COURT

COUNTY OF HENNEPIN

FOURTH JUDICIAL DISTRICT
CASE TYPE: OTHER CIVIL

Philando Castile Relief Foundation, and
Valerie Castile as Personal Representative
of the Estate of Philando Castile,

Court File No.

Plaintiffs,

VERIFIED COMPLAINT

v.

Louis Hunter d/b/a Trio Plant-Based,

JURY TRIAL DEMANDED

Defendant.

INTRODUCTION

1. Plaintiffs Philando Castile Relief Foundation (the “Foundation”) and Valerie Castile as personal representative of the Estate of Philando Castile (the “Estate”) bring this action to stop Defendant Louis Hunter from misleading the public and benefiting from it.

2. The Foundation is an organized and legal charity founded after Philando’s death in 2016 by his mother Valerie Castile and the Castile family.

3. Philando Castile worked for St. Paul public schools for more than fifteen years providing food nutrition services to students. Known to them as “Mr. Phil,” Philando remembered every student’s name, allergies, and pin number, and when he encountered a student who could not afford lunch, Philando often paid for it out of his own pocket.

4. The Foundation owns United States Trademark Registration No. 5,429,529 for the PHILANDO CASTILE RELIEF FOUNDATION service mark, covering charitable fundraising services.

5. The Foundation is well-known in Minnesota and the United States for honoring Philando's legacy of kindness and generosity through charitable fundraising services. For example, the Foundation raises money to erase lunch debt at public schools and influences policy changes related to police and gun violence.

6. Louis Hunter is a Minneapolis-area restaurateur claiming an affiliation with Philando Castile. Mr. Hunter is not blood-related to Philando or affiliated with the Foundation. Yet, to raise money for his restaurant Trio Plant-Based ("Trio") and his own charitable fundraising services, Hunter is promoting a GoFundMe page and claiming an affiliation with Philando Castile, the Castile family, and the Foundation.

7. Specifically, Hunter is falsely claiming to local, national, and global media that he is Philando Castile's cousin.

8. Through its attorneys, the Foundation sent Hunter three letters, dated June 30, 2020, August 11, 2020, and September 4, 2020, respectively, requesting that Hunter:

- a. cease and desist using Philando Castile's name for fundraising and commercial purposes to promote his restaurant;
- b. provide written confirmation of his agreement to drop Philando Castile's name for fundraising and commercial purposes to promote his restaurant;
- c. contact each member of the media with whom he interviewed;
- d. request that each author or editor remove the article or all Philando references within it; and
- e. donate 50% of GoFundMe proceeds raised using the affiliation with Philando Castile to the Foundation.

9. To date, Hunter has neither provided a written response to any of Plaintiffs' cease-and-desist letters nor complied with any of Plaintiffs' verbal or written requests.

10. Rather, Hunter continues to raise money for his restaurant through GoFundMe and other means, and he continues to falsely claim affiliation with Philando Castile as (his cousin) for fundraising and commercial purposes to promote his restaurant. On October 12, 2020, at 10:30 AM cst, after receiving three cease-and-desist letters, Hunter appeared on NBC's Today Show , and during an introduction video, he again misrepresented that he is Philando Castile "cousin."

11. Hunter's false and misleading statements are a willful and intentional attempt to confuse the public, including but not limited to consumers, members of the media, donors, potential donors, and patrons into believing that Hunter and/or Trio are affiliated with or sponsored by Plaintiffs or that Plaintiffs authorize his services.

12. Hunter is not affiliated with Plaintiffs, and Plaintiffs do not sponsor or endorse Hunter's charitable fundraising services.

13. Plaintiffs have other adequate remedy at law. They therefore bring this Complaint for state publicity rights violations, false advertising, consumer fraud, deceptive trade practices, state and federal service-mark infringement, and state service-mark dilution, seek injunctive and monetary relief, and request their costs and reasonable attorneys' fees.

PARTIES

14. Plaintiff Philando Castile Relief Foundation is a Minnesota non-profit corporation with its principal place of business at 5638 102nd Court North, Brooklyn Park, Minnesota 55443. The Foundation provides charitable fundraising services, including, for example, donating meals, assisting families, and supporting police and gun violence reform.

15. Plaintiff Valerie Castile is the Personal Representative of the Estate of Philando Castile. She is also Philando Castile's mother.

16. Upon information and belief, Defendant Louis Hunter is an individual who does business as Trio Plant-Based, resides in Minneapolis, Minnesota, and is a Minnesota citizen. Hunter provides restaurant services and charitable fundraising services.

JURISDICTION & VENUE

17. This Court has subject matter jurisdiction over this matter.

18. This Court has personal jurisdiction over Hunter.

19. Venue is proper in this district under Minn. Stat. § 542.09 because a substantial part of the events giving rise to this lawsuit occurred in Hennepin County and, upon information and belief, Hunter resides in Hennepin County.

FACTS

A. The Philando Castile Relief Foundation

20. The Foundation arose from the tragic and public loss of Philando Castile, who passed away after being shot by a St. Anthony police officer during a traffic stop in July 2016. Philando's mother Valerie Castile is the Foundation's CEO and president; his sister Allysza Castile is the vice president; his uncle Clarence Castile is the director; and his uncle Tracy Castile is the treasurer.

21. Valerie Castile is the rightful owner of the Estate.

22. To honor Philando's legacy of generosity and kindness, the Foundation provides charitable fundraising services to help victims who have been affected by gun violence and police violence. The Foundation's goal and mission is to lend a helping hand

and provide relief to those in grief. Its purpose is to provide immediate assistance to parents who are experiencing loss of a loved one from gun violence.

23. The Foundation's services include preparing meals, providing funeral attire, counseling grieving families, and supporting victims of gun and police violence.

24. The Foundation also fundraises for other social causes, including erasing lunch debt for Minneapolis and St. Paul public schools. In May 2019, for instance, the Foundation donated \$11,000 to District 287, which services vulnerable children.

25. Keeping Ms. Castile's promise to not let Philando become just another statistic, the Foundation also raises awareness of police violence and gun violence and lobbies for systematic change. For example, Ms. Castile and the Foundation advocated for significant changes to Minnesota's driver's manual, and in June 2020, the Minnesota Department of Public Safety adopted the proposed changes.

B. The Mark

26. The Foundation owns the valid and subsisting United States Trademark Registration No. 5,429,529 for the PHILANDO CASTILE RELIEF FOUNDATION Mark (the "Mark") for charitable fundraising services. Attached as **Exhibit NN** is the Mark's registration certificate, which issued on March 20, 2018.

27. The Foundation has continuously used the Mark throughout Minnesota and in commerce throughout the United States since December 31, 2016, for the providing, marketing, and promoting of charitable fundraising services.

28. Because of its widespread, continuous, and exclusive use of the Mark to identify its charitable fundraising services and the Foundation as their source, the Foundation owns valid and subsisting federal statutory and common law rights to the Mark.

29. The Foundation's Mark is distinctive to both the consuming public and the Foundation's trade.

30. The Foundation has expended substantial time, money, and resources marketing, advertising, and promoting the charitable fundraising services provided under the Mark, including through social media platforms, crowdfunding websites, news articles, and interviews, among others.

31. The Foundation provides the charitable fundraising services under the Mark in a variety of trade channels, including social media, articles, interviews, videos, crowdfunding platforms, fundraisers, emails, and phone calls, among others.

32. The Foundation offers its charitable fundraising services under its Mark to local, national, and global consumers who are interested in donating to causes honoring Philando Castile and racial justice reform, including raising awareness about police violence and gun violence and helping families who are grieving the loss of a loved one.

33. Because of the Foundation's expenditures and efforts, the Mark has come to signify the high quality of the charitable fundraising services designated by the Mark and acquired incalculable distinction, reputation, and goodwill belonging exclusively to the Foundation. For its extraordinary efforts in providing charitable fundraising services, the Foundation has received the following awards, among others:

- a. NEA 2020 Human and Civil Rights Award;

- b. ACLU Room & Board Torchbearer Award; and
 - c. 2020 Strong Buffalo Award.
 - d. 2020 Facing Race Award (Valerie Castile)
 - e.
34. The Foundation's Mark and the charitable fundraising services offered under

it have also garnered significant unsolicited media coverage. Within the last two years alone, the Mark has been featured in the following media, true and correct copies of which are attached as **Exhibits A – Y**:

- a. *Facing Race Awards*, Saint Paul & Minnesota Foundation (October 6, 2020);
- b. *Driving while Black: ABC News analysis of traffic stops reveals racial disparities in several US cities*, ABC (September 9, 2020);
- c. *Remembering Philando Castile, four years later: 'We got strength in numbers now'*, Star Tribune (July 6, 2020);
- d. *Philando Castile's mother shares pain, hopes for the future four years after his death*, ABC Eyewitness News, KSTP 5 (July 6, 2020);
- e. *Four years after Philando Castile's death, Minnesota updates state's driver's manual for legal gun owners*, CBS Minnesota, WCCO (July 6, 2020);
- f. *It's been four years since Philando Castile died. His mother thinks about him 'every breathing day'*, Pioneer Press (July 5, 2020);
- g. *He was Philando Castile's friend. Now he's running for office*, The New York Times (July 5, 2020);
- h. *Stacey Abrams and Philando Castile Relief Foundation among distinguished NEA honorees* (June 25, 2020);
- i. Vice News Tonight (June 4, 2020) (Interview with Valerie Castile), <https://youtu.be/dsJlXDQruks>;

- j. *For mother of Philando Castile, George Floyd's death a nightmare revisited*, Star Tribune (June 4, 2020);
- k. *Minnesota's political, faith, community leaders plead for an end to riots*, Star Tribune (May 30, 2020);
- l. *Valerie Castile keeps Philando's legacy alive*, Minnesota Spokesman-Recorder (June 5, 2019);
- m. *Philando Castile's Mother Wipes Out School Lunch Debt, Continuing Son's Legacy*, NPR: The Salt, What's On Your Plate (May 7, 2019)
- n. *Justine Damond settlement has unsettling side*, Star Tribune (May 4, 2019);
- o. *Philando Castile's mother helps pay lunch debt at Robbinsdale Cooper High: Valerie Castile sent \$8,000 from the foundation that bears her late son's name*, Star Tribune (May 3, 2019);
- p. *Valerie Castile and John Choi create guidelines to reduce officer-involved shootings*, Star Tribune (Mar. 19, 2019);
- q. *Philando Castile's Mother, Ramsey Co. Attorney Develop Crisis Tool Kit*, CBS Minnesota, WCCO 4 (Mar. 18, 2019);
- r. *Mother of Philando Castile Brings Hopeful Message to D.C. Students*, The Washington Informer (Oct. 24, 2018);
- s. *Philando Castile's family two years after deadly shooting: Understanding may never come for Philando Castile's mother, Valerie Castile. But peace is plenty*, KARE11 News (July 6, 2018);
- t. *A student remembers her school's 'lunch man,' Philando Castile*, MPR News (July 6, 2018);
- u. *Falcon Heights to honor Philando Castile this weekend*, Minnesota Spokesman Report (July 6, 2018);
- v. *Castile exhibit at Mia intersects art and activism*, Minnesota Spokesman-Recorder (July 3, 2018);
- w. *2018 Philando Castile Memorial Scholarship Recipient, Central Honors Philando*, Saint Paul Central High School Foundation;

- x. *Philando Castile exhibit at Minneapolis Institute of Art embraces beauty and trauma*, Star Tribune (June 19, 2018);
 - y. *Charity Honoring Philando Castile Pays All Lunch Debts In St. Paul School System*, NPR (Mar. 5, 2018).
35. An online archive of pre-2018 media covering the Mark and the Foundation's services is available at <http://www.philandocastilefoundation.org/news-archive.html>.
36. Because of its distinctiveness and widespread use and promotion throughout Minnesota and the United States, the Foundation's Mark is a famous trademark within the meaning of Minn. Stat. § 333.285(a) and became famous prior to the acts of Hunter alleged in this Verified Complaint.

C. Louis Hunter, his 2016 Arrest, and his 2017 False Statements

37. Louis Hunter and Philando Castile are not cousins. They were not friends. Hunter's only connection to the Castile family is that Hunter's great aunt married Philando's grandfather. Philando and Hunter are not related by blood.

38. In the last 20 years, Ms. Castile can only remember seeing Hunter between five and ten times.

39. After Philando's death, his mother Valerie told the Castile family and Philando's close friends to stay peaceful and cautioned them against appearing at any violent protests, especially on interstate highway 94.

40. Louis Hunter, being unrelated to Philando by blood and disconnected from his social circles, did not get the message. In July 2016, Hunter appeared at a protest on I-94 that later turned violent. During the protest, Hunter allegedly threw rocks, debris, and Molotov cocktails at police officers.

41. The State of Minnesota charged Hunter with two counts of felony riot.

42. After being charged, Hunter spoke publicly about his innocence, appeared at various events to raise money in defense of his criminal case, and started using the Mark in commerce without the Foundation's consent.

43. Specifically, Hunter promoted charitable fundraising services by telling the public and the media that he is "Philando Castile's cousin" (the "Infringing Mark").

44. At no time did the Foundation or the Castile family endorse, support, or fund Hunter's defense of his criminal case. The Castile family did not appear at any of his events or court proceedings.

45. On August 2, 2017, the State dropped Hunter's charges and dismissed his case. The same day, the Associated Press published an article reporting in the opening line that "[f]elony riot charges ha[d] been dropped against a cousin of Philando Castile"

46. Hunter's misleading statements promoting his charitable fundraising services prompted the Foundation to send, through its attorneys, a September 27, 2017 cease-and-desist letter requesting that Hunter stop using the Infringing Mark to raise money.

47. At that time, Hunter had a business partner, Sarah Woodcock, who was helping start and fund Hunter's restaurant. Ms. Castile contacted Ms. Woodcock and informed her of Hunter's misleading statements.

48. For reasons not known to the Foundation, Ms. Woodcock later exited the business partnership. Upon information and belief, Hunter is now the only individual involved with the Trio restaurant.

D. Louis Hunter's 2020 Infringing and Misleading Activities

49. After George Floyd's tragic and public death in May 2020, Hunter started using the Infringing Mark for charitable fundraising services. Specifically, Hunter started telling people and the media, again, that he is Philando Castile's cousin.

50. Hunter has marketed, advertised, and promoted his charitable fundraising services under the Infringing Mark through the same channels as the Foundation, including social media, internet, articles, interviews, phone calls, fundraisers, and others.

51. For example, Hunter is actively operating a GoFundMe page to solicit funds for charitable fundraising services and to support Trio Plant-Based, <https://www.gofundme.com/f/h6prz-help-trio-blackowned-thrive-in-minneapolis>.

52. Hunter has raised more than \$179,000 on GoFundMe and otherwise.

53. Originally, the fundraiser did not include a disclaimer. Attached as **Exhibit OO** is a true and correct copy of the GoFundMe website as of June 3, 2020. Sometime after June 3, 2020, Hunter placed the following disclaimer on the GoFundMe page:

DISCLAIMER: This fundraiser is NOT associated with the Philando Castile (or Castile family) case. This fund is for Louis Hunter Plant-Based. If you would like to contribute funds to the Castile Family please contact the family.

54. The disclaimer does not say that Louis Hunter is not Philando Castile's cousin or not related to the Castile family. Attached as **Exhibit PP** is a true and correct copy of the GoFundMe website displaying to disclaimer as of October 13, 2020.

55. Hunter also offers and sells charitable fundraising services under the Infringing Mark to the same relevant consumers as the Foundation, including for example,

local, national, and global consumers who are interested in supporting Philando Castile and racial justice reform.

56. Hunter is using the Infringing Mark to raise money for charitable fundraising services and to financially support the Trio restaurant. Representative examples of Hunter's infringing uses, attached as **Exhibit Z – LL**, include:

- z. On March 29, 2020, the Minnesota Spokesman-Recorder published the article *Black Business Spotlight: Trio Plant-Based*, quoting Hunter as saying: "Two and a half years ago I lost my cousin, Philando Castile."
- aa. On May 29, 2020, Bon Appetit published an article quoting Hunter as saying: "Castile was my cousin." The article contains a link to Hunter's GoFundMe page.
- bb. On June 1, 2020, VegNews posted an article announcing in the headline that "Philando Castile's Cousin Hands Out 300 Free Vegan Meals During Minneapolis Protests." The article contains a link to Hunter's GoFundMe page.
- cc. The same day, The Beet published an article titled, "7 Black-Owned Vegan Businesses to Support Now, And Everyday." The first business is Trio Plant-Based. The article explains that Hunter was arrested in 2016 after a protest "for his cousin, Philando Castile." The article contains a link to donate to Hunter's GoFundMe page.
- dd. On June 3, 2020, Delish.com posted an article titled: "Philando Castile's Cousin, A Restaurant Owner, Donated Hundreds Of Meals In Minneapolis" It states: "To learn more about Trio Plant-Based, their menu offerings, and ways to donate or buy gift cards, check out Trio's website and social channels."
- ee. On June 5, 2020, a California radio station KCRW published a pre-recorded interview about Philando's "cousin" Louis Hunter.
- ff. On June 6, 2020, News Break posted an article stating "Minneapolis-based restaurant owner Louis Hunter lost his cousin, Philando Castile, at the hands of a police officer. . . . To support Trio, donate through the restaurant's GoFundMe."

- gg. On June 9, 2020, Eater Twin Cities published an article recommending restaurants, including Trio Plant-Based. The article states that Hunter founded the restaurant “after being charged with protesting his cousin Philando Castile’s killing by Falcon Height’s police.” The article contains a link to Hunter’s GoFundMe page.
- hh. On June 12, 2020, NowThis posted a video to Facebook and other social media outlets referencing Hunter as Philando Castile’s cousin:



The painting in the video was commissioned by Hunter. It was not created from a real photograph of the two standing next to each other.

- ii. On June 29, 2020 Insight News announced that PETA had named Trio Plant-Based one of the best vegan restaurants in the nation. The second line of the announcement states that “[t]he cousin of Philando Castile has been covered by prestigious food publications in the country such *Delsih*, *Bon Appetit*, and *VegNews*.”
- jj. On July 1, 2020, A Heaping Side of Comfort posted a podcast episode on its website, explaining that it was “honored to present this most special of interviews with Louis Hunter, cousin of Philando Castile and chef/owner of Trio Plant-Based located in Minneapolis.” <https://aheapingsideofcomfort.com/ep08america-lets-talk-about-racethe-louis-hunter-interview/>

- kk. On July 13, 2020, Business Insider posted an article about how Hunter is fighting for Blacks Lives Matter and raising money on GoFundMe. Hunter is quoted saying that if donors “are doing this because I’m Philando’s cousin or anything, please circle that money to his mom. . . . But if it’s for us, we thank you in advance.”
- ll. On July 15, 2020, Urban Matter posted an article recommending Trio Plant-Based and stating that Hunter protested after an officer killed “his cousin, Philando Castile.

E. The Foundation’s Efforts to Enforce Its Trademark Rights

57. Concerned that the public and potential donors might be confused as to Hunter’s affiliation with the Foundation and the Castile family, Valerie Castile contacted Hunter by telephone on June 2, 2020. Ms. Castile advised Hunter of the Foundation’s federal trademark rights in the Philando Castile mark and asked that he stop telling people that he is Philando’s cousin when raising money. During that June 2, 2020 conversation, Hunter said: “Fuck Philando.”

58. On June 30, 2020, the Foundation’s attorneys sent a cease and desist letter to Hunter objecting to Hunter’s use of the Infringing Mark. The Foundation specifically asked Hunter to: (1) cease and desist using Philando Castile’s name; (2) provide written confirmation of the same; (3) contact each member of the media with whom he interviewed; (4) request that each author or editor remove the article or all Philando references within it; and (5) donate 50% of the GoFundMe proceeds to the Foundation

59. The Foundation sent follow-up letters to Hunter on August 11, 2020, and September 4, 2020, reiterating its demands in the June 30, 2020 letter. Attached as **Exhibit MM** are true and correct copies of the Foundation’s September 27, 2017, June 30, 2020, August 11, 2020, and September 4, 2020 cease-and-desist letters to Hunter.

60. To date, the Foundation has received no written response to its cease and desist letters and, after a reasonable inquiry, has discovered no evidence confirming that Hunter has complied with the demands in the cease-and-desist letters.

61. Meanwhile, articles, interviews, videos, and other content relaying Hunter's false statements now abound. And the headlines are often misleading. Instead of saying Hunter or Trio, headlines say, for example: "Philando Castile's Cousin, a Restaurant Owner, Donated Hundreds of Meals in Minneapolis."

62. Hunter's infringing acts as alleged in this Verified Complaint have caused and are likely to cause confusion, mistake, and deception among the relevant consuming public, including potential donors, as to the source or origin of the Hunter's charitable fundraising services and have and are likely to deceive them into believing, mistakenly, that Hunter's charitable fundraising services originate from, are associated or affiliated with, or otherwise authorized by the Foundation. Hunter's alleged acts of violence against the police, cause harm to the goodwill and reputation of the Foundation and Estate, which could cause the Foundation or Estate to lose potential donations or grant money.

63. Because Plaintiffs and the Mark are well known for charitable fundraising services, like raising money to eliminate lunch debt and influencing driver safety policy, relevant consumers who may have donated directly to the Foundation are likely to instead donate to Hunter under a pretense that they are supporting Plaintiffs or the Castile Family.

64. Hunter's acts are willful with the deliberate intent to trade on the goodwill of the Foundation's Mark, cause confusion and deception in the marketplace, and divert potential sales of the Foundation's charitable fundraising services to Hunter.

65. Hunter is knowingly and willfully misleading the public for his own benefit. The Foundation alerted Hunter to its trademark rights as early as September 2017 and as recently as September 4, 2020. Yet, Hunter continues to use the Infringing Mark to raise money for charitable fundraising services and his restaurant. On September 11, 2020, BBC published an article about Hunter stating that, in 2016, Hunter “was facing 20 years in jail on felony rioting charges after participating in a Black Lives Matter protest following the death of his cousin, Philando Castile.” And on October 12, 2020, Hunter appeared on NBC’s Today Show  TODAY, and during an introduction video, he said that “Philando Castile” was his “cousin.” Attached as Exhibit QQ is a true and correct copy of webpage displaying the video.

F. Actual Confusion

66. Upon information and belief, Hunter’s infringing acts have caused actual confusion.

67. After the Minnesota Spokesman Reporter published its March 29, 2020 article quoting Hunter as saying he lost his “cousin, Philando Castile,” a user commented:

Lynn Davis April 2, 2020 at 4:02 pm

Great article. Philando Castile fed the babies at the school he worked. Now his cousin is in the food business of healthy eating.

68. On October 2, 2020, a GoFundMe user donated \$60 to Hunter’s fundraising campaign, explaining that she “was delighted to see an article about Louis and Trio on the BBC website.”



Kim T donated **\$60**

I left Mpls back in 2017 and was delighted to see an article about Louis and Trio on the BBC Website. I feel terrible that you inherited another's debt but elated that you haven't given up. Keep going, keep thriving!

69. Hunter's acts are causing, and unless restrained, will continue to cause damage and immediate irreparable harm to Plaintiffs and their valuable reputation and goodwill with the consuming public for which Plaintiffs have no adequate legal remedy.

CAUSES OF ACTION

Count One (Right of Publicity)

70. Plaintiffs incorporate the above allegations.

71. The right of publicity limits the public use of a person's name, likeness and/or identity for commercial purposes and prevents another from using a celebrity's name, image or likeness in connection with a product, thereby creating a false and misleading impression that the celebrity is endorsing a product or service.

72. Philando Castile owned a right of publicity during his lifetime.

73. In his death, a common law right of publicity is owned by the Estate.

74. Plaintiffs have not authorized Hunter's use of the name, image and likeness of Philando Castile.

75. Hunter has used Philando's identity to promote and sell his charitable fundraising services and restaurant services by telling people he is Philando's cousin and related to the Castile family. Hunter has acted deliberately for his own gain at the expense of the Estate and Foundation.

76. Hunter violated the Plaintiffs' right of publicity of Philando Castile.

Count Two
(False Advertising—Minn. Stat. § 325F.67)

77. Plaintiffs incorporate the above allegations.

78. Minnesota’s Private Attorney General Statute allows any person injured by a violation of the laws provided under Minn. Stat. § 8.31, subd. 1, to “bring a civil action and recover damages, together with costs and disbursements, including costs of investigation and reasonable attorney’s fees, and receive other equitable relief as determined by the court.” Minn. Stat. § 8.31, subd. 3a.

79. Minn. Stat. § 8.31, subd. 1, provides Minn. Stat. § 325F.67, which states:

Any person . . . who, with intent to sell . . . service . . . or anything offered by such person . . . , directly or indirectly, to the public, for sale or distribution, or with intent to increase the consumption thereof, or to induce the public in any manner to enter into any obligation relating thereto, . . . makes, publishes, disseminates, circulates, or places before the public, or causes, directly or indirectly, to be made, published, disseminated, circulated, or placed before the public, in this state, in a newspaper or other publication, or in the form of a book, notice, handbill, poster, bill, label, price tag, circular, pamphlet, program, or letter, or over any radio or television station, or in any other way, an advertisement of any sort regarding merchandise, securities, service, or anything so offered to the public, for use, consumption, purchase, or sale, which advertisement contains any material assertion, representation, or statement of fact which is untrue, deceptive, or misleading, shall, whether or not pecuniary or other specific damage to any person occurs as a direct result thereof, be guilty of a misdemeanor, and any such act is declared to be a public nuisance and may be enjoined as such.

80. As illustrated in paragraph 56, Hunter has placed before the public false and misleading statements that he is “Philando Castile’s cousin.” These statements have appeared in countless articles, interviews, videos, and other media in Minnesota, the United States, and around the world. Hunter intentionally made these false statements to confuse

the public into supporting his charitable fundraising services and restaurant. Hunter's false statements violate Minn. Stat. § 325F.67.

81. Hunter is using these false and misleading statements to offer his charitable fundraising and restaurant services through social media platforms, crowdfunding websites, and local, national, and global media content. He is offering his program to the public at large. Plaintiffs cause of action benefits the public.

82. Plaintiffs are entitled under Minn. Stat. § 8.31, subd. 3a, to their investigation costs, reasonable attorneys' fees, and any other equitable relief deemed appropriate.

Count Three
(Consumer Fraud—Minn. Stat. § 325F.69)

83. Plaintiffs incorporate the above allegations.

84. Minnesota's Private Attorney General Statute, Minn. Stat. § 8.31, subd. 3a, allows any person injured by a violation of Minn. Stat. § 325F.69 to recover for investigation costs, reasonable attorneys' fees, and other equitable relief.

85. Minn. Stat. § 325F.69 provides:

The act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is enjoined as provided in section 325F.70.

86. "Merchandise" includes "services." Minn. Stat. § 325F.68, subd. 1.

87. "Sale" is defined as "any sale offer for sale, or attempt to sell any merchandise for any consideration." Minn. Stat. § 325F.68, subd. 4.

88. Hunter's has made false or misleading statements that he is "Philando Castile's cousin" to induce people to rely on his connection to the Foundation and the Castile family and donate to his various causes. Hunter's false or misleading statements violate Minn. Stat. § 325F.67.

89. Plaintiffs are entitled to injunctive relief under Minn. Stat. § 325F.70, subd. 1, and their investigation costs, reasonable attorneys' fees, and any other equitable relief deemed appropriate under Minn. Stat. § 8.31, subd. 3a.

Count Four
(Minnesota Uniform Deceptive Trade Practices—Minn. Stat. § 325D.44)

90. Plaintiffs incorporate the above allegations.

91. A person engages in a deceptive trade practice under the Minnesota Uniform Deceptive Trade Practices Act, Minn. Stat. § 325D.44, subd. 1, if the person:

(2) causes likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of goods or services;

(3) causes likelihood of confusion or of misunderstanding as to affiliation, connection, or association with, or certification by, another; . . .

(5) represents that goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have or that a person has a sponsorship, approval, status, affiliation, or connection that the person does not have; . . .

(8) disparages the goods, services, or business of another by false or misleading representation of fact; . . . or

(13) engages in any other conduct which similarly creates a likelihood of confusion or of misunderstanding.

92. Hunter's continued use of the Infringing Mark to raise money for charitable fundraising services and other services causes a likelihood of confusion or of misunderstanding as to the source, sponsorship, approval, or certification of Hunter's services. Hunter is continuing to use the Infringing Mark knowing that such use is deceptive.

93. Hunter's actions violate the above subsections of Minn. Stat. § 325D.44, subd. 1, including but not limited subsection 3 and 5.

94. Plaintiffs are entitled to injunctive relief under Minn. Stat. § 325D.45, subd. 1, and their costs and attorneys' fees under Minn. Stat. § 325D.45, subd. 2.

Count Five

(Minnesota Service-Mark Infringement—Minn. Stat. § 333.28(a))

95. Plaintiffs incorporate the above allegations.

96. A person is liable for service-mark infringement if they use without consent any mark on or in connection with rendering of services . . . or advertising of any . . . services, which mark is identical to or so similar to the registered mark as to be likely to cause confusion or mistake . . . as to the source or origin of the . . . services.

Minn. Stat. § 333.28(a).

97. The Foundation has a protectable registered service-mark.

98. Hunter has committed the foregoing acts of infringement with full knowledge of the Foundation's prior rights in the Mark, and the Foundation has not authorized Hunter to use the Mark. Hunter is using "Philando Castile's cousin" to cause confusion as to the source or origin of his charitable fundraising services and restaurant services. Hunter's use of "Philando Castile's cousin" and other similar phrases have

caused actual confusion between the affiliation between Hunter and Philando Castile. Hunter is liable for service-mark infringement under Minn. Stat. § 333.28(a).

99. Under Minn. Stat. § 333.29, subd. 1, Plaintiffs are entitled to award of all of Hunter's profits derived from his wrongful use of the Mark and for all damages Plaintiffs have suffered because of Hunter's wrongful use of the Mark.

100. Hunter has committed such acts in bad faith and with knowledge that his statements are false and misleading and with the intent to trade on Plaintiffs' goodwill.

101. Plaintiffs are entitled to treble damages under Minn. Stat. § 333.29, subd. 1.

Count Six
(Federal Service-Mark Infringement—15 U.S.C. § 1114(1))

102. Plaintiffs incorporate the above allegations.

103. Under Section 32(1) of the Lanham Act, a person is liable if the person uses, without consent of the registrant, “any reproduction, counterfeit, copy, or colorable imitation of a registered mark in connection with the sale, offering for sale, distribution, or advertising of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive.” 15 U.S.C. § 1114(1).

104. Hunter does not have authorization from the Foundation to use the Foundation's Mark. Hunter's unauthorized use in commerce of the Infringing Mark as alleged herein is likely to deceive consumers as to the origin, source, sponsorship, or affiliation of Hunter's services, and is likely to cause consumers to believe, contrary to fact, that Hunter's services are sold, authorized, endorsed, or sponsored by the Foundation, or

that Hunter is in some way affiliated with or sponsored by the Foundation. Hunter's conduct constitutes trademark infringement under 15 U.S.C. § 1114(1).

105. Hunter's conduct is causing immediate and irreparable harm and injury to the Foundation, and to its goodwill and reputation, and will continue to both damage the Foundation and confuse the public unless enjoined by this court. Plaintiffs have no adequate remedy at law.

106. Plaintiffs are entitled to, among other relief, injunctive relief and an award of actual damages, Hunter's profits, enhanced damages and profits, reasonable attorneys' fees, and costs of the action, together with prejudgment and post-judgment interest.

Count Seven
(Minnesota Service Mark Dilution—Minn. Stat. § 333.285)

107. Plaintiffs incorporate the above allegations.

108. The Foundation's Mark is famous and distinctive to the Minnesota public under Minn. Stat. § 333.285(a). The Mark is well known to consumers in Minnesota; the Foundation has used and promoted the Mark in Minnesota since December 31, 2016; and the Foundation has promoted the Mark on social media, television, and other media.

109. Hunter has willfully intended to trade on the Foundation's reputation by using the Infringing Mark to establish that he is Philando Castile's Cousin.

110. The Foundation is entitled to injunctive relief under Minn. Stat. § 333.285(b) and any other relief as deemed appropriate under Chapter 333 of Minnesota Statutes.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs demand a Judgment in their favor, as follows:

1. For preliminary and permanent injunctive relief enjoining Hunter, his employees, agents, officers, directors, attorneys, successors, affiliates, subsidiaries, and assigns, and all of those in active concert and participation with any of the foregoing persons and entities who receive actual notice of the Court's order by personal service or otherwise from:

- a. Saying "Philando Castile's cousin" or in any other way claiming that he is Philando Castile's cousin or related to the Castile family;
- b. distributing, providing, selling, marketing, advertising, promoting, or authorizing any third party to distribute, provide, sell, market, advertise or promote, Hunter's goods or services bearing the mark "Philando Castile" or any other mark that is a counterfeit, copy, simulation, confusingly similar variation, or colorable imitation of the Foundation's Mark;
- c. engaging in any activity that infringes the Foundation's rights in its Mark;
- d. engaging in any activity constituting unfair competition with the Foundation;
- e. engaging in any activity that is likely to dilute the distinctiveness of the Foundation's trademarks;
- f. making or displaying any statement, representation, or depiction that is likely to lead the public or the trade to believe that (i) Hunter's goods and services are in any manner approved, endorsed, licensed, sponsored, authorized, or franchised by or associated, affiliated, or otherwise connected with the Foundation, or (ii) the Foundation's goods and services are in any manner approved, endorsed, licensed, sponsored, authorized, or franchised by or associated, affiliated, or otherwise connected with Hunter;
- g. using or authorizing any third party to use for any business, goods, and services any false description, false representation, or false designation of origin, or any marks, names, words, symbols, devices, or trade dress that falsely associate such business, goods and/or services with the Foundation or tend to do so;

that is a counterfeit, copy, simulation, confusingly similar variation, or colorable imitation of the Foundation's Mark, and to immediately remove them from public access and view.

4. Directing that Hunter recall and deliver up for destruction or other disposition all goods, packaging, advertisements, signs, displays, and related materials incorporating or bearing the Infringing Marks or any other mark that is a counterfeit, copy, confusingly similar variation, or colorable imitation of the Foundation's Mark.

5. Awarding the Foundation an amount up to three times the amount of its actual damages, in accordance 15 U.S.C. § 1117(a) and Minnesota law.

6. Directing that Hunter account to and pay over to the Foundation all profits realized by its wrongful acts under 15 U.S.C. § 1117(a)) and Minnesota law, enhanced as appropriate to compensate the Foundation for the damages caused thereby.

7. Awarding Plaintiffs exemplary damages as the Court finds appropriate to deter any future willful infringement.

8. Declaring that this is an exceptional case pursuant to Section 35(a) of the Lanham Act and Minnesota law and awarding Plaintiffs' costs and reasonable attorneys' fees.

9. Awarding Plaintiffs' interest, including prejudgment and post-judgment interest, on the foregoing sums.

10. Awarding such other and further relief as the Court deems just and proper.

Dated: October 15, 2020

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ACKNOWLEDGMENT

The undersigned acknowledges that sanctions may be imposed pursuant to Minn. Stat. § 549.211, subd. 3.

/s/O. Joseph Balthazor Jr.

O. Joseph Balthazor Jr. (#0399093)