

# Snell & Wilmer

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August 19, 2024

**VIA E-MAIL, HAND DELIVERY, & CERTIFIED MAIL RETURN RECEIPT  
REQUESTED**

Hon. Kris Mayes  
Office of the Attorney General  
400 W. Congress,  
South Building, Suite 315  
Tucson, Arizona 85701

Lindsey A. Perry  
Arizona Auditor General  
2910 N. 44th St., Ste. 410  
Phoenix, AZ 85018-7271

**Re: Notice of Claim Pursuant to A.R.S. § 12-821.01**

Dear Attorney General Mayes and Auditor General Perry,

Snell & Wilmer represents Santa Cruz County (the “County”). This letter serves as a formal A.R.S. § 12-821.01 Notice of Claim by the County against the State of Arizona.<sup>1</sup>

In particular, the County has claims against the State stemming from negligent audits prepared by the Arizona Auditor General from 2014 through 2024. These negligent audits failed to uncover an egregious embezzlement scheme by former County Treasurer Elizabeth Gutfahr, which caused the County to incur around \$40 million in real damages. The County intends to file a complaint against the State to recover these real damages and its attorneys’ fees. However, pursuant to A.R.S. § 12-821.01(A), the County is willing to settle its claims for a sum-certain amount of **\$45,000,000**.<sup>2</sup> The facts and law supporting this Notice of Claim are set forth below.

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<sup>1</sup> The County is not subject to the notice of claim requirement because it is not a “person.” See A.R.S. § 12-821.01. This notice is being submitted purely to avoid waiver, unnecessary legal expenses, and/or potential delays in satisfying the County’s claims.

<sup>2</sup> This proposed settlement amount is higher than the amount Gutfahr stole because the County has incurred substantial costs in retrieving the stolen funds, including fees for financial consultants, attorneys, and more.

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## Facts

The details of Gutfahr's theft are laid out in a complaint recently filed by the County against Gutfahr in Pima County Superior Court, case number CV2024-4525. That Complaint is attached as Exhibit A. Rather than repeating the County's allegations verbatim here, the County incorporates the complaint by reference and will summarize key factual allegations below — with additional facts, not included in the Complaint, relevant to the County's claims against the State.

### **I. The Auditor General Has Consistently Failed to Audit County Finances In Accordance With Generally Accepted Government Accounting Standards.**

The Arizona Auditor General is appointed by the Joint Legislative Budget Committee. A.R.S. § 41-1279.01. It is required to audit county finances on a yearly basis. A.R.S. § 41-1279.21(A)(1). These "audits shall be conducted in accordance with generally accepted governmental auditing standards and, accordingly, shall include tests of the accounting records and other auditing procedures as may be considered necessary under the circumstances." A.R.S. *Id.*

On information and belief, the Auditor General's annual audits of county treasurers' departments have fallen below "generally accepted auditing standards" for many years. For instance, in reviewing county treasurer's offices, the Auditor General consistently only reviews financial statements from the specific month that the county's fiscal year ends (in Santa Cruz's case, June). *See* Ex. A at ¶ 51. The Auditor General does not randomly sample treasurer financial documents as part of its yearly county audits. In comparison, however, the County understands that in auditing county *financial* departments (which are separate from treasurers' offices), the Auditor General conducts a far more comprehensive review, which includes a random sample of documents from several different months.

The County also understands that the Auditor General's yearly audits are far less detailed than in previous years. Prior to 2020, the Auditor General's office would physically travel to county offices, shadow employees for an entire day, and conduct a full comprehensive audit. Now, the Auditor General does not travel to county offices, only evaluates a limited field of financial documents, and routinely focuses on irrelevant or non-material details in conducting those audits. This approach and scope of review does not meet the required standard of conduct.

Several treasurer's offices around the state have complained to the Auditor General about its yearly county audits. The County understands that several county treasurer's offices have specifically warned the Auditor General about its practice of only auditing fiscal year-end financial statements and have advised the Auditor General that this practice may lead to fraud. Further, on information and belief, the Coconino County Treasurer's Office has asked the Auditor General to randomly select several months of financial documents to audit, rather than just the fiscal year-end

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statements. Despite these complaints, however, the Auditor General has not applied the correct standards of conduct or met its statutory fiduciary duties.

## **II. The Auditor General Failed to Uncover Decades-Long Fraud Committed by County Treasurer Elizabeth Gutfahr.**

Gutfahr served as Santa Cruz County Treasurer from 2012 until she resigned in spring 2024. *See* Ex. A at ¶ 27. During her time, she had control over certain bank accounts holding funds from the County and other County entities, like school districts. Ex. A at ¶¶ 31, 35. Beginning around 2014, Gutfahr began to wire large payments, ultimately totaling approximately \$39,472,100 of County funds to two business entities she controlled: Rio Rico Consulting LLC and Rio Rico Real Consulting LLC.<sup>3</sup> *Id.* at ¶¶ 40-41. Neither Rio Rico Consulting LLC or Rio Rico Real Consulting LLC were or are approved County vendors, meaning that all of these transactions were unauthorized. *See id.* at ¶¶ 44-45.

Gutfahr was able to evade detection in three main ways. First, because she was aware that the Auditor General only evaluates the County's June year-end-financial statements during yearly audits, she strategically never wired any monies to the Rio Rico entities during the months of June or July. *See id.* at ¶¶ 51-54. Second, Gutfahr routinely overstated the amount of "daily warrants outstanding" on financial reports she submitted to the County's third-party reconciliation consultant. *See id.* at ¶¶ 55-60. Third, beginning around 2021, Gutfahr fabricated bank statements containing false balance and contact information. *See id.* at ¶¶ 61-101.

The Auditor General audited the County's finances every year from 2014 through 2024. After each audit, the Auditor General produced detailed reports to the County's Board of Supervisors, which were also published online.<sup>4</sup> The Auditor General's yearly reports never indicated that money was being embezzled from the Treasurer's bank accounts and routinely misstated the actual amount of the County's assets.

There is evidence that during the Auditor General's yearly audits, it specifically asked about data that should have revealed Gutfahr's theft if reasonable and appropriate steps had been taken. For instance, during the 2020 yearly audit the Auditor General's office specifically requested documentation supporting the high amounts of unreconciled "daily warrants" in the Treasurer's June 2019 financial reports. *See* Ex. B. Despite noticing the high "daily warrants" amount, however, the Auditor General apparently failed to secure appropriate supporting evidence

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<sup>3</sup> On information and belief, Rio Rico Real Consulting LLC is an alter ego of Rio Rico Consulting LLC.

<sup>4</sup> These reviews are available at [https://www.azauditor.gov/reports-publications/counties?field\\_counties\\_target\\_id=1081&field\\_audit\\_type\\_target\\_id=1000&field\\_date\\_value\\_1=&sort\\_by=field\\_date\\_value&sort\\_order=DESC](https://www.azauditor.gov/reports-publications/counties?field_counties_target_id=1081&field_audit_type_target_id=1000&field_date_value_1=&sort_by=field_date_value&sort_order=DESC)

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and failed to realize that Gutfahr was using the daily warrants line-item to cover up a large-scale embezzlement scheme.

Because the Auditor General failed to uncover Gutfahr's theft, the County did not become aware of the embezzlement until April 2024, when it was contacted by Chase Bank in connection with suspicious transactions initiated by Gutfahr to the Rio Rico entities. *See id.* at ¶¶ 102-108. The County immediately investigated the issue, including by contracting with a forensic accountancy firm and by consulting with Coconino County Treasurer Sarah Benatar. As part of her consultation, Treasurer Benatar visited the County on several occasions; on the first trip she immediately noticed that the County Treasurer's office was not complying with standard practices and procedures (e.g., by not authoring accurate reports; failing to timely reconcile bank statements; and by relying on screenshots of bank statements rather than original documents). On information and belief, the Auditor General would have noticed similar problems had it appropriately audited the County's finances.

The County sued Gutfahr for fraud (among other things) on August 1, 2024. *See Ex. A.*

### **Legal Basis for Relief**

Based on the above, the County has claims for negligence/gross negligence and/or negligent misrepresentation against the State.<sup>5</sup>

First, to establish negligence, a party must show duty, breach, causation, and damages. *Noriega v. Town of Miami*, 243 Ariz. 320, 326 (App. 2017).

Here, the Auditor General has a duty to audit County finances in accordance with "generally accepted governmental auditing standards." *See* A.R.S. § 41-1279.21(A)(1); *see also Hydroculture, Inc. v. Coopers & Lybrand*, 174 Ariz. 277, 281 (App. 1992) (accountants owe a duty of care to their clients to comply with "accepted professional standards"). The "generally accepted governmental auditing standards" ("GAGAS", aka the "yellow book") are published by

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<sup>5</sup> Because A.R.S. § 41-1279.21(A)(1) imposes a duty of care on the Auditor General to conduct audits in accordance with "generally accepted governmental auditing standards," the State is not entitled to absolute or qualified immunity in connection with these claims. *See de la Cruz v. State*, 192 Ariz. 122 (1998) (holding that where a statute creates an independent duty of care on a public employee, the statute overrides the absolute and qualified immunity provisions in A.R.S. §§ 12-821.01 and 12-821.02); *see also Pima County v. State*, 174 Ariz. 402, 405 (1992) (State not absolutely immune from lawsuit stemming from Auditor General overcharging a county for AHCCCS payments). Even if qualified immunity did apply, the Auditor General's actions were grossly negligent and/or intentional, as discussed *infra*.

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the Government Accountability Office. See <https://gaoinnovations.gov/yellowbook/>. Chapter 6 of the GAGAS — “Standards for Financial Audits” — incorporates by reference the American Institute of Certified Public Accountants’ (“AICPA”) statements on auditing standards (“SAS”) in their entirety. See GAGAS § 6.01.

The Auditor General breached its duty because it failed to conduct its yearly county audits in accordance with GAGAS, SAS, or any other generally accepted governmental auditing standard by among other things: (1) limiting the audit sample in a predictable way to only include year-end financial statements for every fiscal year, rather than by reviewing a random sample; (2) failing to gather, review, and/or authenticate documents supporting the financial statements provided by Gutfahr; (3) failing to conduct on-site evaluations during the audit period; (4) conducting lower quality audits on the County’s treasurer department than it did on the County’s financial department; (5) failing to understand the true role of the Treasurer and the potential areas for fraud; (6) ignoring complaints from other county treasurers about the A.G.’s process in conducting yearly audits; and (7) by failing to discover Gutfahr’s embezzlement.

The Auditor General’s breach caused the County to suffer at least \$40,711,766.22 in damages, plus additional costs and expenses to recover those lost funds.

In failing to comply with general accepted government auditing standards, the Auditor General also acted in a grossly negligent and/or willful manner, and is therefore also liable for gross negligence. See *McBride v. California Bd. of Accountancy*, 130 Cal.App.4th 518, 529 (2005) (evidence sufficiently showed accountants were grossly negligent where audit failed to test for compliance with investment laws and regulations, failed to follow SAS, and failed to discover that town accountant’s investing strategy was highly risky); *Noriega v. Town of Miami*, 243 Ariz. 320, 328 (App. 2017) (sufficient evidence to show gross negligence where a Town was aware that individual had made death threats against a victim, had issues with drug abuse, and a criminal history, but failed to arrest individual before he shot the victim).

Second, “the gravamen of auditor negligence is negligent misrepresentation” as set forth in Section 552 of the Restatement (second) Torts. *Standard Chartered PLC v. Price Waterhouse*, 190 Ariz. 6, 29 (App. 1996). Under Section 552, individuals that “suppl[y] false information for the guidance of others” are “subject to liability for pecuniary loss caused by them by their justifiable reliance upon the information, if [the individual] fails to exercise reasonable care or competence in obtaining or communicating the information.” Put succinctly, the crux of an auditor negligence claim is that an auditor provided incorrect information to its client by failing to exercise “reasonable care.”

Here, because the Auditor General failed to show “reasonable care” or meeting its statutory duties in conducting its yearly audits of County finances, it made materially false statements in its yearly audit reports to the County Board of Supervisors. These misrepresentations caused the

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County damage. Therefore, the State and Auditor General are additional liable for negligent misrepresentation.

### Damages & Sum Certain Settlement Amount

As stated, from at least 2014 through 2024, Gutfahr wired at least \$39,412,100 of county funds (encompassing around 200 unique transactions) from the Treasurer's bank accounts to the Rio Rico entities. In between the filing of the Complaint and this notice of claim, the County determined approximately \$759,729 of these monies were returned to the County, but that there was an additional unauthorized \$60,000 payment to Gutfahr. This makes the total sum of Gutfahr's theft at least \$38,712,371. Because these funds were located in a pooled savings account, the County also lost approximately \$1,346,711 in interest that would have been generated but for Gutfahr's theft. This brings the County's financial damages to approximately \$40,059,082. The County has also incurred additional fees and costs in uncovering Gutfahr's theft and in recovering the stolen funds, all of which would not have been necessary if the Auditor General met its fiduciary duties.

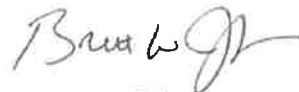
In accordance with A.R.S. § 12-821.01, the County is therefore willing to settle its claims against the State for a sum certain of **\$45 million**. This offer shall remain open for sixty (60) days following service of this Notice of Claim. *See* A.R.S. § 12-821.01(E).

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If you have any questions, feel free to contact me at (602) 382-6312 or at [bwjohnson@swlaw.com](mailto:bwjohnson@swlaw.com).

Very truly yours,

Snell & Wilmer



Brett W. Johnson

# **EXHIBIT A**

# **EXHIBIT A**

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA  
IN AND FOR THE COUNTY OF PIMA

SANTA CRUZ COUNTY, a body politic in  
the State of Arizona,

Plaintiff,

v.

ELIZABETH GUTFAHR, an individual;  
DAVID GUTFAHR, an individual;  
DAVIAN GUTFAHR, an individual; RIO  
RICO CONSULTING LLC, a limited  
liability corporation; DOUBLE D CATTLE  
COMPANY LLC; DOUBLE D CATTLE  
COMPANY OF SANTA CRUZ COUNTY  
LLC, a limited liability corporation;  
RANCHO SAN CAYETANO LLC, a  
limited liability corporation; GUTFAHR  
LAND & CATTLE COMPANY, LLC, a  
limited liability corporation; PADILLA  
CORRIENTE CATTLE, LLP; a limited  
liability partnership; RIO AGUA FRIA,  
LLC; a limited liability corporation; JOHN  
AND JANE DOES I-X, individuals; JOHN  
DOE CORPORATE ENTITIES I-X,  
corporate entities,

Defendants.

No.

**VERIFIED COMPLAINT**

**(Tier 3)**

**Jury Trial Demanded**



1 Plaintiff Santa Cruz County files this Complaint against Defendants Elizabeth  
2 Gutfahr, David Gutfahr, Davian Gutfahr, Rio Rico Consulting LLC, Double D Cattle  
3 Company LLC, Double D Cattle Company Of Santa Cruz County LLC, Rancho San  
4 Cayetano LLC, Gutfahr Land & Cattle Company, LLC, Corriente Cattle, LLP, Rio Agua  
5 Fria, LLC, John and Jane Does I-X, and John Doe Corporate Entities I-X, and alleges as  
6 follows:

### 7 INTRODUCTION

8 1. This case concerns an egregious breach of the public trust. From  
9 approximately 2014 through March 2024, former Santa Cruz County Treasurer Elizabeth  
10 Gutfahr embezzled at least \$39 million from the County and its taxpayers. This money  
11 came almost entirely from the County's savings account, which was supposed to generate  
12 interest on behalf of all County-affiliated entities, like school districts, County  
13 departments, and others. Instead, these funds were surreptitiously wired by Gutfahr to  
14 corporate entities and bank accounts she controls.

15 2. Gutfahr was able to evade detection for so long through accounting tricks  
16 and outright fabrications. Among other things, the County has identified at least five  
17 doctored "investment statements" submitted by Gutfahr to auditors. And Gutfahr routinely  
18 overstated the County's "daily outstanding warrants" — i.e., money that has been paid but  
19 not yet posted — in order to cover up the wire transfers to herself.

20 3. The sum of it all is this: for more than a decade, Gutfahr used County funds  
21 as her own personal piggy-bank to fund an opulent and extravagant lifestyle —  
22 purchasing several ranches, vehicles, and more.

23 4. In April 2024, the County became aware of Gutfahr's actions and promptly  
24 alerted the Federal Bureau of Investigation, which has opened a criminal investigation  
25 into Gutfahr. After the house of cards collapsed and it was clear that she had finally been  
26 caught, Gutfahr resigned as Treasurer.

27 5. Accordingly, the County now brings this action to reclaim the money that  
28 Gutfahr wrongfully took, as well as its attorneys' fees and costs. Because Gutfahr's

1 actions were so outrageous, the County also seeks treble damages under Arizona's Anti-  
2 Racketeering Statute, A.R.S. § 12-2301 *et seq*, and punitive damages. Consistent with  
3 Rule 9(b), Arizona Rules of Procedure, Exhibit A to this Complaint lists each fraudulent  
4 transaction initiated by Gutfahr that the County has uncovered to date.

### 5 PARTIES

6 6. Plaintiff Santa Cruz County ("the County") is a body politic in the State of  
7 Arizona.

8 7. Defendant Elizabeth Gutfahr ("Gutfahr" or "Elizabeth Gutfahr") is an  
9 individual who, on information and belief, resides in Santa Cruz County and in Pima  
10 County, and is married to Defendant David Gutfahr. She was formerly the Santa Cruz  
11 County Treasurer. During her time as Treasurer, she embezzled, stole, and/or otherwise  
12 misappropriated at least \$39,412,100.00 from the County by diverting County funds to  
13 Defendant Rio Rico Consulting, LLC, an entity for which she is the sole member,  
14 manager, and statutory agent. Gutfahr is named as a defendant in her personal capacity  
15 and as a member of the Gutfahr marital community.

16 8. Defendant David Gutfahr is an individual who, on information and belief,  
17 resides in Santa Cruz County and in Pima County, and is married to Elizabeth Gutfahr.  
18 David Gutfahr is named in his personal capacity and as a member of the Gutfahr marital  
19 community.

20 9. Defendant Davian Gutfahr is an individual who, on information and belief,  
21 resides in Santa Cruz County and is the son of Elizabeth and David Gutfahr. He is named  
22 in his personal capacity.

23 10. Defendant Rio Rico Consulting, LLC is an Arizona limited liability  
24 corporation headquartered at 12678 N. Yellow Bird Road, Oro Valley, Arizona, 85755.  
25 On information and belief, Elizabeth Gutfahr is the sole member and manager of Rio Rico  
26 Consulting, LLC. On information and belief, Gutfahr illegally wired Rio Rico Consulting,  
27 LLC and/or affiliated entities at least \$39,412,100 in County funds.

28 11. Defendant Double D Cattle Company, LLC ("Double D Cattle Co.") is an

1 Arizona limited liability company headquartered in Tumacacori, Arizona. On information  
2 and belief, Double D Cattle Co. owns assets that were purchased with misappropriated  
3 County funds.

4 12. Defendant Double D Cattle Company of Santa Cruz County LLC, (“Double  
5 D Cattle Co. of Santa Cruz”) is an Arizona limited liability company headquartered at  
6 1144 Avenida Seville, Rio Rico, Arizona, 85648. Elizabeth Gutfahr and Davian Gutfahr  
7 are the only two members of Double D Cattle Co. On information and belief, Davian  
8 Gutfahr is Elizabeth Gutfahr’s son. On information and belief, Double D Cattle Co. of  
9 Santa Cruz owns assets that were purchased with misappropriated County funds.

10 13. Defendant Rancho San Cayetano LLC (“Rancho San Cayetano”) is an  
11 Arizona limited liability company headquartered at 1144 Avenida Seville, Rio Rico,  
12 Arizona 85648. Elizabeth Gutfahr is Rancho San Cayetano’s statutory agent. Davian  
13 Gutfahr, and on information and belief, Elizabeth Gutfahr, are the two members of  
14 Rancho San Cayetano. On information and belief, Rancho San Cayetano facilitated or  
15 otherwise aided and abetted Gutfahr’s fraudulent scheme.

16 14. Defendant Gutfahr Land & Cattle Company, LLC (“Gutfahr Land & Cattle  
17 Co.”) is an Arizona limited liability company headquartered at 31 Santa Gertrudis Lane,  
18 Tumacacori, Arizona 85640. Elizabeth Gutfahr and Davian Gutfahr are the only two  
19 members of Gutfahr Land & Cattle Co. Documents referencing Gutfahr Land & Cattle  
20 Co. were found in Gutfahr’s office after she vacated the office of Treasurer.

21 15. Defendant Padilla Corriente Cattle LLP is an Arizona limited liability  
22 partnership headquartered at 4001 N. 3rd St., Suite 118, Phoenix Arizona 85012.  
23 Elizabeth Gutfahr and David Gutfahr are two of the three general partners of Padilla  
24 Corriente Cattle.

25 16. Defendant Rio Agua Fria, LLC, is an Arizona limited liability corporation  
26 headquartered at 556 Camino Kansas, Rio Rico, Arizona 85648. Elizabeth, David, and  
27 Davian Gutfahr are the sole general partners of Rio Agua Fria.

28 17. John and Jane Does I-X are currently unknown individuals that conspired

1 with and/or aided and abetted Elizabeth Gutfahr’s fraudulent actions described below.

2 18. John Doe Corporate Entities I-X are currently unknown corporations,  
3 limited liability corporations, limited liability partnerships, and other corporate entities  
4 that illegally received County funds and/or conspired with or aided and abetted Elizabeth  
5 Gutfahr’s fraudulent actions described below.

6 **JURISDICTION AND VENUE**

7 19. Jurisdiction is proper in this Court under A.R.S. § 12-123.

8 20. Venue is proper in this Court under A.R.S. § 12-401(7), and (9). In  
9 particular, defendant Rio Rico Consulting LLC — which received most, if not all, of the  
10 illegally misappropriate funds — is headquartered in Pima County, Elizabeth and David  
11 Gutfahr maintain a residence in Pima County, and many of the actions giving rise to the  
12 County’s claims occurred in Pima County.

13 **DAMAGE TIER**

14 21. Tier 3 discovery is appropriate under Rule 26.2(b)(3), Ariz. R. Civ. P.  
15 because the County claims damages of more than \$300,000 and this action is logistically  
16 and legally complex.

17 **ALLEGATIONS**

18 **I. Background**

19 **A. Gutfahr’s Real Estate Career Before Becoming County Treasurer.**

20 22. The County Treasurer’s office is an elected position. Prior to Gutfahr  
21 running for County Treasurer, she worked in real estate in Santa Cruz County.

22 23. The Arizona Department of Real Estate identified Gutfahr as having a self-  
23 employed broker’s license number SE103651000 issued on December 18, 2008.

24 24. According to Arizona Department of Real Estate records, Gutfahr’s real  
25 estate broker’s license was associated with an employer d/b/a “Rio Rico Consulting &  
26 Real Estate.” “Rio Rico Consulting & Real Estate” is not registered with the Arizona  
27 Corporation Commission. Gutfahr incorporated Defendant Rio Rico Consulting, LLC in  
28 January 2024.

1           25.     Gutfahr also had ownership or other interests in other corporate defendants  
2 Double D Cattle Co., Double D Cattle Co. of Santa Cruz, Gutfahr Land & Cattle Co.,  
3 Rancho San Cayetano, Padilla Corriente Cattle, and Rio Agua Fria.

4           26.     Elizabeth and David Gutfahr have a history of tax liens filed against them.  
5 The first lien was filed in 2011 for \$11,665, which was later released. On information and  
6 belief, the Gutfahrs had a second lien filed against them in around 2012 or 2013. And in  
7 2015 a lien was filed for \$160,848.00 and was released in 2017.

8           27.     Around this time, Elizabeth Gutfahr ran for Santa Cruz County Treasurer  
9 and won a narrow three-way primary in August 2012 and the general election in  
10 November 2012. She was re-elected in in 2016 and 2020, and, prior to the events  
11 described in this Complaint, was running unopposed in the upcoming 2024 election.

12           28.     While investigation is ongoing, the County has not yet identified funds  
13 stolen in 2013. Based on currently available financial records, the first time Gutfahr  
14 transferred County funds to Rio Rico Consulting was in 2014.

15           **B.     Brief Overview of the Role of Treasurer and County Funds**

16           29.     To understand how Gutfahr was able to embezzle over \$39 million from the  
17 County, a brief discussion of the Treasurer's Duties and the County's financial accounts is  
18 necessary.

19           30.     County Treasurers are required to "safely keep" all "monies of the county,  
20 and other monies directed by law to be paid to the county treasurer." A.R.S. § 11-493(1).  
21 And they have a responsibility to "[k]eep an account of the receipt and expenditure of the  
22 monies in books or electronic books" and "disburse" county monies only as "provided by  
23 law." A.R.S. § 11-493(2), (4). In effect, the Treasurer acts as the bank for the County and  
24 county entities, such as school districts and fire districts.

25           31.     The County currently holds its funds, and the funds of county-entities like  
26 school districts, within four bank and investment accounts: (1) an investment account with  
27 the Local Government Investment Pool; (2) a Chase Bank Operating Account ending in  
28 #2669 (the "Operating Account"); (3) a Chase Bank Savings Account ending in #6320

1 (the “Savings Account”); and (4) a UBS investment account ending in #60 (the “UBS  
2 Investment Account”).<sup>1</sup> The vast majority of the monies stolen by Gutfahr were taken  
3 from the Savings Account. The UBS Investment Account is associated with Gutfahr’s  
4 fraudulent activity because it was used as a tool in her scheme to cover up the theft.

5 32. The Operating Account is used for day-to-day transactions, like payroll and  
6 expenses.

7 33. The Savings Account holds funds that are not needed for day-to-day  
8 expenses. The primary purpose of this account is to pool these funds and generate interest.  
9 The interest generated by the account is then allocated by the Treasurer’s office to each  
10 entity that has funds in the account based on the share of funds in the account at the time  
11 interest is earned.

12 34. The UBS Investment Account was opened by Gutfahr in 2021. Ms. Gutfahr  
13 claimed that this account was used to generate additional interest on savings. In reality,  
14 however, as described below, Gutfahr opened this account for the purpose of generating  
15 fraudulent investment statements to cover up her embezzlement scheme once the total  
16 amount of stolen funds became too large to hide in other ways.

17 35. For all times relevant to this Complaint, the only County department that  
18 had access to these bank and investment accounts was the County Treasurer’s office. Even  
19 within the Treasurer’s office, access to the accounts was limited to a small handful of  
20 employees.

21 36. In addition to maintaining County funds, the Treasurer’s office is required to  
22 submit so-called “Treasurer’s Reports” to the County Board of Supervisors every month.  
23 *See* A.R.S. § 11-501.

24  
25  
26  
27  
28 <sup>1</sup> Santa Cruz previously had a UBS investment account number ending in #90. This  
account was closed in 2018.

1 37. Gutfahr, as Treasurer, was also responsible for the “cash reconciliation”<sup>2</sup>  
2 of the bank and investment accounts by comparing the figures in the County’s general  
3 ledger (reflected in the Treasurer’s Monthly Reports) and the balances reflected in the  
4 County’s bank and investment statements during a given time period.

5 38. Gutfahr would prepare the cash reconciliations at least annually as part of  
6 the audit process. During times relevant to this Complaint a third-party consultant assisted  
7 the County with collecting documents as part of the cash reconciliation process.

8 **II. Gutfahr Wired Over \$39 Million Dollars of County Funds to Entities She**  
9 **Controls, Without Authorization.**

10 39. Rather than upholding her duty to “safely keep” all County monies and to  
11 only disburse those monies “as provided by law,” A.R.S. § 11-493(1)-(4), Gutfahr  
12 regularly wired County monies from the Savings and Operating Account to “Rio Rico  
13 Consulting” and/or “Rio Rico Real Consulting.”

14 40. On information and belief, the wires to “Rio Rico Real Consulting” were  
15 made to the same bank account as the wires made to Rio Rico Consulting and, ultimately,  
16 Rio Rico Consulting received the funds.

17 41. Gutfahr owns or otherwise controls both Rio Rico Consulting and Rio Rico  
18 Real Consulting.

19 42. The wires to Rio Rico Consulting ranged from \$25,000 to \$2,950,000 per  
20 transaction. *See Ex. A.* To date, the County has identified 181 unique illegal transactions  
21 spanning from March 2014 through March 2024. *See id.*

22 43. The County believes that Gutfahr wired at least **\$39,412,100.00** of County  
23 funds to Rio Rico Consulting and/or Rio Rico Real Consulting. *See id.* Of that amount,  
24 \$39,187,100 was wired from the Savings Account and \$225,000 was wired from the  
25

26 <sup>2</sup> In layman’s terms, a cash reconciliation is the process of comparing an entity’s general  
27 ledger against other external accounts, like bank statements, to ensure the balances line  
28 up. For instance, if the general ledger reflects that an entity has a \$100 balance at fiscal  
year-end June 30, then as part of the cash reconciliation process, the Treasurer was  
responsible to confirm that the entity had \$100 in the bank account statements as of June  
30.

1 Operating Account. *See id.*

2 44. For all times relevant to this Complaint, Rio Rico Consulting and Rio Rico  
3 Real Consulting were not approved County vendors.

4 45. None of the payments that Gutfahr made to Rio Rico Consulting and/or Rio  
5 Rico Real Consulting were approved by the Santa Cruz Board of Supervisors or any other  
6 County entity.

7 46. On information and belief, Gutfahr was able to perpetrate her crimes  
8 through overt agreements with David Gutfahr, Davian Gutfahr, Rio Rico Consulting LL,  
9 Double D Cattle Co., Double D Cattle Co. of Santa Cruz, Rancho San Cayetano, Gutfahr  
10 Land & Cattle Co., Padilla Corriente Cattle LLP, Rio Agua Fria, LLC, and other currently  
11 unknown individuals and entities. In other words, these parties all aided and abetted  
12 Gutfahr's fraudulent actions.

13 **III. Gutfahr Evades Detection by Exploiting Her Knowledge of the State Audit**  
14 **Process, Misrepresenting "Daily Warrants" and By Fabricating Documents.**

15 47. The funds embezzled by Gutfahr created a gap between the entity balances  
16 reported in the general ledger and the actual balances in the bank and investment  
17 accounts. This created a large gap in the cash reconciliation process.

18 48. Notwithstanding this gap, Gutfahr was able to avoid detection by employing  
19 three main strategies: (1) strategically only wiring funds from August through May (i.e.,  
20 she did not wire funds in June); (2) misrepresenting the total outstanding "daily warrants"  
21 in finance reports; and (3) fabricating investment statements.

22 **A. Gutfahr Avoids Auditor General Scrutiny By Only Wiring Monies**  
23 **From August to May.**

24 49. The State Auditor General is required to audit county finances on a yearly  
25 basis. *See* A.R.S. § 41-1279.21(A)(1).

26 50. The County's fiscal year ends on June 30 each year.

27 51. On information and belief, during its yearly audits the Auditor General only  
28 reviews the fiscal year-end financial statements to verify account balances. As a practical



1 matter, this means that during its yearly audit of The County the Auditor General only  
2 reviewed the June year-end financial statements from the preceding year.

3 52. As County Treasurer, Gutfahr was aware of this practice.

4 53. Accordingly, Gutfahr strategically never wired monies to Rio Rico  
5 Consulting or Rio Rico Real Consulting during the month of June or July.

6 54. As such, the Auditor General did not identify wires to Rio Rico Consulting  
7 in the statements it was provided.

8 **B. Gutfahr Exploits the Reconciliation Process by Misreporting “Daily  
9 Warrants.”**

10 55. The second way that Gutfahr was able to evade detection was by  
11 misreporting the “daily warrants” line-item on reports she submitted as part of the  
12 reconciliation process.

13 56. On information and belief, the County’s general ledger did not include  
14 Gutfahr’s wire transaction to Rio Rico Consulting. As such, the total net balance reflected  
15 on the Treasurer’s Report did not reflect the overall balance of the County’s bank and  
16 investment accounts.

17 57. In order to fill the gap of the missing funds, Gutfahr would misreport the  
18 “daily warrants” line-item in the cash reconciliation reports.

19 58. A “warrant” is effectively an invoice or expense of a County entity.

20 59. It appears that from at least fiscal year-end 2018 through 2023, when  
21 reporting the County balances to the third party consultant for the cash reconciliation  
22 reports, Gutfahr would claim that “daily warrants” that cleared in the bank accounts but  
23 not posted in the general ledgers were much higher than they actually were. This allowed  
24 Gutfahr to “balance” the Treasurer’s Report with the actual cash totals reflected in the  
25 bank and investment statements, and fill the gap in declining account balances.

26 60. That Gutfahr was using the “daily warrants” line-item to cover up her wires  
27 to Rio Rico Consulting LLC is illustrated by the chart below, which shows that from  
28 FY2014 to FY2023, the reported daily outstanding warrants reported in the audit cash

1 reconciliation ballooned beginning in FY2018.

<b>Fiscal Year</b>	<b>Daily Warrants Cleared in June but Not posted to General Ledger until July</b>
FY2014	\$1,274,612
FY2015	\$925,491
FY2016	\$120,200
FY2017	\$317,958
FY2018	\$4,615,230
FY2019	\$5,595,667
FY2020	\$8,775,638
FY2021	\$2,908,556
FY2022	\$4,322,125
FY2023	\$1,503,896

16 **C. As the Scale of Her Theft Grew, Gutfahr Resorted to Fabricating**  
17 **Investment Statements.**

18 61. Because Gutfahr was wiring funds to Rio Rico for her personal benefit  
19 without the transactions being recorded in the general ledger, Gutfahr reported in the  
20 annual cash reconciliation reports that the County's bank accounts had much more money  
21 in them than they actually did, as illustrated in the chart below:<sup>3</sup>

<b>Fiscal Year</b>	<b>Balance Reported by Gutfahr</b>	<b>Actual Balance</b>	<b>Total Difference Between Gutfahr Reports and Actual Balance</b>
FY2014	\$51,884,090	\$51,632,990	(\$251,100)

27 <sup>3</sup> This Chart is for illustration purposes and is not intended to be a true cash reconciliation.  
28 The actual reported balance, actual balance, and difference between the two may slightly vary.