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Attorneys for Plaintiff Santa Cruz County

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.

FILED
Gary L. Harrison
CLERK, SUPERIOR COURT
8/1/2024 7:31:19 PM
BY: ALAN WALKER /s/
DEPUTY
Case No. C20244535
HON. WAYNE E. YEHLING

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

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

PARTIES

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

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

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

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

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

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.

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

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

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

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

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

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

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

31. The County currently holds its funds, and the funds of county-entities like school districts, within four bank and investment accounts: (1) an investment account with the Local Government Investment Pool; (2) a Chase Bank Operating Account ending in #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").¹ 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
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26
27
28 ¹ Santa Cruz previously had a UBS investment account number ending in #90. This
account was closed in 2018.

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

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

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

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

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

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

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

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

² In layman’s terms, a cash reconciliation is the process of comparing an entity’s general ledger against other external accounts, like bank statements, to ensure the balances line 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

reconciliation ballooned beginning in FY2018.

Fiscal Year	Daily Warrants Cleared in June but Not posted to General Ledger until July
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

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

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

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

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

FY2015	\$51,068,402	\$50,214,302	(\$854,100)
FY2016	\$46,187,755	\$44,403,655	(\$1,784,100)
FY2017	\$50,868,992	\$47,869,892	(\$2,999,100)
FY2018	\$52,071,228	\$46,972,128	(\$5,099,100)
FY2019	\$49,903,393	\$41,693,293	(\$8,214,100)
FY2020	\$71,393,638	\$47,869,892	(\$12,494,100)
FY2021	\$86,276,911	\$68,194,811	(\$18,082,100)
FY2022	\$91,784,334	\$47,869,892	(\$22,322,100)
FY2023	\$115,911,464	\$86,639,364	(\$29,272,100) ⁴

62. As the tables above illustrate, the scale of Gutfahr's theft grew substantially beginning around FY2021.

63. Thus, she was no longer able to paper-over the Rio Rico wires merely by falsely reporting daily outstanding warrant reconciliation numbers. As such, she began to outright fabricate investment statements in order to evade detection. Although the County is still investigating these fabricated statements, the County has identified at least five such documents created by Gutfahr from FY2021 through FY2023.

1. The First Fabricated Statement

64. It appears that in or around October or November of 2021, Gutfahr provided the third-party consultant, as part of the audit cash reconciliation process, a statement for the UBS Investment Account purporting to show an account balance of \$14 million in June 2021 (the "First Fabricated Statement"). A copy of the First Fabricated Statement is attached as Exhibit B.

65. However, according to actual investment statements provided by UBS, the UBS Investment Account was not opened by Gutfahr until October 2021; more than 3 months *after* June 2021. *See* Ex. C (real 2021 investment statement from UBS). Gutfahr

⁴ This was the loss amount through fiscal year-end 2023, but there was substantial additional loss through the first quarter of FY2024.

1 subsequently transferred \$14 million from the County Operating Account to the UBS
2 Investment Account.

3 66. Although the manner in which Gutfahr was able to produce the First
4 Fabricated Document is still unclear, it seems she used the *real* UBS statement from
5 October 2021 showing an account balance of \$14 million to create the back-dated, fake,
6 First Fabricated Document showing an account balance of \$14 million in June.

7 67. Gutfahr was able to pull this off, it seems, because she did not actually
8 supply the third-party consultant with investment statements from the UBS Investment
9 Account until after Gutfahr received the legitimate UBS investment statements.

10 68. In addition to the fake "account balance" information on the First Fabricated
11 Statement, a visual inspection of the Statement reveals that many other aspects of it have
12 been doctored.

13 69. First, the First Fabricated Statement states that the address for "UBS
14 Financial Services Inc." is "Post Office Box 37, Tumacacori, Arizona 85640." Ex. B.

15 70. Post Office Box 37, Tumacacori, Arizona 85640 is listed as the statutory
16 agent "mailing address" for Rio Rico Consulting, LLC, Double D Cattle Co., and Gutfahr
17 Land and Cattle Co. in the Arizona Corporation Commission's database.

18 71. The actual address for UBS Financial Inc. is 2575 E. Camelback Road,
19 Suite 900, Phoenix AZ. *Compare* Ex. B with Ex. C.

20 72. Second, The First Fabricated Statement states that the financial advisor
21 assigned to the UBS Investment Account is "Murray, Scott" with a phone number of
22 "602-218-2897." Ex. B.

23 73. In reality, in 2021 the UBS financial advisor assigned to the UBS
24 Investment Account was "Murray/Murray" with a phone number of "602-597-5100/800-
25 247-1754." *Compare* Ex. B with Ex. C.

26 **2. The Remaining Fabricated Statements.**

27 74. In both FY2022 and FY2023, Gutfahr provided *two* UBS investment
28 statements to the third-party consultant as part of the audit cash reconciliation process,

1 purporting to show the balances of two separate UBS investment accounts.

2 75. However, according to actual investment statements provided by UBS, only
3 one of these investment statements had an accurate balance, while the other investment
4 statement was completely fabricated.

5 76. But even the “real” investment statements were doctored such that the
6 contact information listed on the investment statements was inaccurate.

7 77. As such, from FY2022-2023, Gutfahr provided the County with at least four
8 fabricated statements, in addition to the First Fabricated Statement.

9 **i. The Second Fabricated Statement**

10 78. The Second Fabricated Statement was provided by Gutfahr to the third-party
11 consultant around June 2022. A copy of the Second Fabricated Document is attached as
12 Exhibit D.

13 79. The Second Fabricated Document reflected the actual balance of the UBS
14 Investment Account as of June, 2022.

15 80. However, the Second Fabricated Document: (1) inaccurately claims it was
16 issued by “UBS Financial” rather than “UBS Financial Inc.”; (2) inaccurately lists “UBS
17 Financial’s” address as “Post Office Box 37, Tumacacori, Arizona 85640;” and (3)
18 inaccurately claims the phone number for the UBS financial advisor affiliated with the
19 account is “520-221-3739.” *Compare* Ex. D with Ex. E (real June 2022 investment
20 statement from UBS).

21 81. On information and belief, the phone number 520-221-3739 is used by an
22 individual named Ashley Wilson.

23 82. On information and belief, Ashley Wilson was or is employed as a ranch
24 manager by Rancho San Cayetano during the time period that Gutfahr served as Rancho
25 San Cayetano’s statutory agent.

26 83. It appears that Gutfahr created the Second Fabricated Document to ensure
27 that any auditor contacted Gutfahr, Wilson, and/or other Gutfahr agents, instead of UBS,
28 to confirm the information rather than UBS (i.e., by using the “520-221-3739” phone

number rather than 602-957-5100).

ii. The Third Fabricated Statement

84. The Third Fabricated Statement was also submitted by Gutfahr to the third-party consultant in June 2022. A copy of the Third Fabricated Statement is attached as Exhibit F.

85. The Third Fabricated Statement claims that the County has a UBS investment account with a balance of "\$17,200,000." Ex. F.

86. On information and belief, however, no account affiliated with Gutfahr or the County had a balance of \$17,200,000 in June 2022. Accordingly, the account information on the Third Fabricated Statement is entirely fake.

87. Moreover, the Third Fabricated Document: (1) inaccurately claims it was issued by "UBS Financial" rather than "UBS Financial Inc."; (2) inaccurately lists "UBS Financial's" address as "Post Office Box 37, Tumacacori, Arizona 85640;" and (3) inaccurately claims the phone number for the UBS financial advisor affiliated with the account is "520-221-3739." *Compare Ex. F with Ex. E.*

iii. The Fourth Fabricated Statement

88. The Fourth Fabricated Statement was submitted by Gutfahr to the third-party consultant in June 2023. A copy of the Fourth Fabricated Statement is attached as Exhibit G.

89. The Fourth Fabricated Statement accurately reported the UBS Investment Account balance as \$14,037,140.54.

90. However, the Fourth Fabricated Statement was doctored in at least three ways.

91. First, the Fourth Fabricated Statement falsely claimed that UBS Financial Services, Inc. was located at "1085 San Tropez Court Rio Rico AZ 85648." *Compare Ex. G with Ex. H* (real 2023 investment statement from UBS).

92. On information and belief, 1085 San Tropez Court, Rio Rico, Arizona is monitored by Gutfahr or her agents.

1 93. Second, the Fourth Fabricated Statement falsely states that the financial
2 advisor affiliated with the UBS Investment Account is “Ashley Wilson-Moreno.” Ex. G.

3 94. On information and belief, “Ashley Wilson-Moreno” is the same Ashley
4 Wilson who uses the phone number 520-221-3739 and who previously worked for
5 Rancho San Cayetano.

6 95. In reality, the financial advisor associated with the UBS Investment Account
7 in June 2023 was “Biltmore Financial Group.” *Compare* Ex. G with Ex. H.

8 96. Third, the Fourth Fabricated Document falsely listed the “financial advisor”
9 phone number as “602-218-2897.” Ex. G.

10 97. In reality, “Biltmore Financial Group’s” listed phone number was 602-957-
11 5100/800-247-1754. *See* Ex. H

12 **iv. The Fifth Fabricated Document**

13 98. The Fifth Fabricated Statement was submitted by Gutfahr to the third-party
14 consultant in June 2023. A copy of the Fifth Fabricated Statement is attached as Exhibit I.

15 99. The Fifth Fabricated Statement claimed that, as of June 2023, the County
16 had a UBS investment account with a of “\$26,561,200.” Ex. I.

17 100. On information and belief, however, no account affiliated with Gutfahr or
18 the County had a balance of \$26,561,200 in June 2023. Accordingly, the account
19 information in the Fifth Fabricated Statement is entirely fake.

20 101. Moreover, and like the Fourth Fabricated Document, the Fifth Fabricated
21 Document also: (1) inaccurately lists UBS Financial Services, Inc.’s address as “1085 San
22 Tropaz Court Rio Rico AZ 85648-1689;” (2) inaccurately claims that the financial advisor
23 affiliated with the account is “Ashley Wilson-Moreno” instead of Biltmore Financial
24 Group and (3) states that Ms. Moreno can be contacted at 602-218-2897, instead of
25 listing Biltmore’s phone number of 602-957-5100. Ex. I.

26 **IV. Discovery of Plot**

27 102. Due to Gutfahr’s efforts to evade detection, The County was not aware of
28 her actions until around April 3, 2024.

103. On or around that day, County Manager Mauricio Chavez was contacted by Chase Bank regarding suspicious transfers on the Savings Account.

104. Mr. Chavez initially told Chase Bank to contact Gutfahr, as she was the acting County Treasurer.

105. However, Chase stated that they had contacted Mr. Chavez specifically because the suspicious transfers involved Gutfahr.

106. In particular, and as detailed above, Chase's anti-money laundering team had flagged certain wire transfers made from the Savings Account to entities owned by Gutfahr — e.g., Rio Rico Consulting, LLC and Rio Rico Real Consulting.

107. After being made aware of these transactions, Santa Cruz promptly began to investigate.

108. Santa Cruz also promptly notified the F.B.I. of the transactions and is cooperating with the F.B.I.'s investigation into Gutfahr.

V. Total Real Damages

109. As mentioned, the County has performed a preliminary forensic audit of Gutfahr's fraudulent transactions.

110. As of the filing of this Complaint, the County has identified \$39,412,100.00 in illegal wires initiated by Gutfahr to Rio Rico Consulting and/or Rio Rico Real Consulting. *See* Ex. A.

111. Because at least \$39,187,100 of these misappropriated funds were located in the Savings Account, had they not been stolen by Gutfahr those funds would have generated interest.

112. The County currently believes it has suffered \$1,349,666.22 in lost interest as a result of Gutfahr's actions.

113. In total, then, the County suffered at least \$40,761,766.22 in real damages.

COUNT I

Fraud

114. The County incorporates all prior allegations.

115. To prove fraud, a plaintiff must show: “(1) a representation, (2) its falsity, (3) its materiality, (4) the speaker's knowledge of its falsity or ignorance of its truth, (5) the speaker's intent that the information should be acted upon by the hearer and in a manner reasonably contemplated, (6) the hearer's ignorance of the information's falsity, (7) the hearer's reliance on its truth, (8) the hearer's right to rely thereon, and (9) the hearer's consequent and proximate injury.” *Taeger v. Catholic Family and Cmty. Servs.* 196 Ariz. 285, 294 ¶ 28 (App. 1999).

116. A party may recover punitive damages in a fraud case where the defendant “either consciously sought to damage the [victim]” or acted “intentionally, knowing that its conduct was likely to cause unjustified, significant damage to the victim,” or acted in such an outrageous or intolerable manner that an “evil mind” may be inferred. *Dawson v. Withycombe*, 216 Ariz. 84, 112 ¶ 96 (App. 2007) (quotation omitted).

117. Gutfahr made dozens of material, false, representations to the County, including by claiming that the daily warrants on County accounts were higher than they actually were and by doctoring bank statements submitted as part of internal audits.

118. In making these misrepresentations, Gutfahr was aware that they were false and intended that these misrepresentations would make the County believe its accounts were balanced when in reality they were not. Gutfahr also intentionally made these misrepresentations to cover up her own theft and embezzlement of County funds.

119. The County was not and could not have been aware of the falsity of Gutfahr's statements.

120. The County reasonably relied on Gutfahr's misrepresentations.

121. The County was entitled to rely on Gutfahr's misrepresentations, given that at the time she was the elected County Treasurer responsible for the County's funds and maintaining its books and records.

122. The County suffered at least \$40,761,766.22 in real damages as a result of Gutfahr's actions.

123. Gutfahr either consciously sought to damage the County, or acted

1 intentionally knowing harm would result to the County, or otherwise acted with an “evil
2 mind.” Accordingly, punitive damages are warranted.

3 124. All Defendants conspired in support of Gutfhar’s actions described above
4 and are therefore equally liable for fraud.

5 **COUNT II**

6 **Conversion**

7 125. The County incorporates all prior allegations.

8 126. “Arizona has adopted the following definition of conversion, which is in the
9 Restatement (Second) of Torts § 222A(1) (1965): ‘Conversion is an intentional exercise of
10 dominion or control over a chattel which so seriously interferes with the right of another
11 to control it that the actor may justly be required to pay the other the full value of the
12 chattel.’” *Miller v. Hehlen*, 209 Ariz. 462, 472 ¶ 34 (App. 2005).

13 127. “[M]oney can be the subject of a conversion provided that it can be
14 described, identified or segregated, and an obligation to treat it in a specific manner is
15 established.” *Autoville, Inc. v. Friedman*, 20 Ariz.App. 89, 91 (1973).

16 128. Punitive damages are allowed in an action for conversion “where the
17 conduct of the wrongdoer is wanton, reckless or shows spite or ill will.” *Cnty. Escrow*
18 *Serv. v. Janes*, 121 Ariz. 511, 513 (App. 1979).

19 129. Gutfahr has asserted dominion or control over, at least, \$39,412,100 of
20 County funds.

21 130. These funds can be described, identified, or segregated. And Gutfahr had an
22 obligation not to appropriate those funds for her own use.

23 131. Gutfahr acted in a wanton or reckless matter, or showed spite or ill will.
24 Accordingly, punitive damages are appropriate.

25 132. All Defendants conspired in support of Gutfhar’s actions described above
26 and are therefore equally liable for conversion.

27 ///

28 ///

COUNT III

Civil Conspiracy

133. The County incorporates all prior allegations.

134. “For a civil conspiracy to occur two or more people must agree to accomplish an unlawful purpose or to accomplish a lawful object by unlawful means, causing damages.” *Wells Fargo Bank v. Ariz. Laborers*, 201 Ariz. 474, 498 ¶ 99 (2002) (quotation omitted).

135. Punitive damages are available for civil conspiracy “if the wrong done is aggravated by a heightened degree of mens rea, such as evil motive, actual malice, willfulness, deliberate violence, or oppression.” CJS Conspiracy § 47.

136. Gutfahr conspired with Rio Rico Consulting, LLC, Rio Rico Real Consulting, Rancho San Cayetano, Double D Cattle Co., Gutfahr Land & Cattle Co., Ashley Wilson, and/or other individuals, and/or other entities to unlawfully embezzle, steal, or otherwise misappropriate County funds.

137. Gutfahr and her co-conspirators committed various torts against the County, including fraud, conversion, and breach of fiduciary duty.

138. All of the actions described above constitute separate, actionable, “overt acts” in furtherance of the conspiracy.

139. As a result of this conspiracy, the County suffered damages.

140. Gutfahr and her co-conspirators acted with an evil motive, actual malice, or were willful in their conduct. As such, punitive damages are appropriate.

COUNT IV

Racketeering (Pursuant to A.R.S. § 12-2301 *et seq.*)

141. The County incorporates all prior allegations.

142. “Racketeering” is any act that: (1) “is chargeable or indictable under the laws of the state or country in which the act occurred” ; (2) “that would be punishable by imprisonment for more than one year under the laws of this state” and (3) involves, among other things, forgery, theft, “[a]sserting false claims, including false claims through fraud

1 or arson,” or “a scheme or artifice to defraud” A.R.S. § 13-2301(D)(4)(iv)-(v), (xv), (xx).
2 An act can constitute “racketeering” “regardless of whether the act is charged or indicted.”
3 A.R.S. § 13-2301(D)(4).

4 143. “A person who sustains reasonably foreseeable injury to his person,
5 business or property by a pattern of racketeering activity ... may file an action in superior
6 court for the recovery of up to treble damages and the costs of the suit, including
7 reasonable attorney fees for trial and appellate representation.” A.R.S. § 13-2314.04(A).

8 144. Gutfahr’s actions described above are chargeable or indictable under, among
9 other statutes: A.R.S. §§ 35-301 (illegal use of public monies); 13-1802
10 (theft/embezzlement); 13-2002 (forgery); and 13-3210 (criminal fraud).

11 145. If convicted under A.R.S. § 13-1802 or A.R.S. § 13-2310, Gutfahr would be
12 guilty of a class 2 felony. *See* A.R.S. § 13-1802(G) (theft of property with a value of
13 \$25,000 or more is a class 2 felony); A.R.S. § 13-2310(A) (any person convicted of
14 fraudulent schemes or artifices is guilty of a class 2 felony). Even with mitigating
15 circumstances, which would not apply here, the minimum sentence for a Class 2 felony is
16 3 years for a first time offender. *See* A.R.S. § 13-702(D).

17 146. If convicted under A.R.S. § 13-2002 or A.R.S. § 35-301, Gutfahr would be
18 guilty of a class 4 felony. A.R.S. § 13-2002(C); A.R.S. § 35-301(A). The sentence time
19 for a class 4 felony ranges from 1 year to 3.75 years. A.R.S. § 13-702(D).

20 147. Gutfahr’s actions involved a pattern of forgery, theft, asserting false claims,
21 and a scheme or artifice to defraud.

22 148. The County suffered reasonably foreseeable injury as a result of Gutfahr’s
23 actions.

24 149. Accordingly, the County is entitled to recover treble damages of
25 \$122,285,298.66 plus its attorneys’ fees and costs.

26 150. All Defendants conspired in support of Gutfhar’s actions described above
27 and are therefore equally liable for racketeering.
28

COUNT V

Racketeering (Pursuant to 18 U.S.C. § 1961 *et seq.*)

151. The County incorporates all prior allegations.

152. A plaintiff may bring a private civil action for violations of the Federal Racketeering Influenced and Corrupt Organizations Act ("RICO"). 18 U.S.C. § 1946(c).

153. To state a RICO claim, a plaintiff must show that the defendants: (1) engaged in conduct; (2) of an enterprise; (3) through a pattern of; (4) racketeering activity. 18 U.S.C. § 1962(c); *Sedima, S.P.R.L. v. Imrex Co., Inc.*, 473 U.S. 479, 496 (1985).

154. An "enterprise" includes "any individual, partnership, corporation, association, or other legal entity, and any union or group of individuals associated in fact although not a legal entity."

155. Under RICO, "racketeering activity" includes any act which is indictable under, among other things, 18 U.S.C. §§ 1341 and 1343 (mail fraud and wire fraud).

156. A person injured by a violation of the RICO statute "shall recover threefold the damages he sustains and the cost of the suit, including a reasonable attorney's fees..." 18 U.S.C. § 1964(c).

157. Gutfahr, David Gutfahr, Davian Gutfahr, Rio Rico Consulting, LLC, Rancho San Cayetano, and all other defendants are associated in fact and therefore consist of an "enterprise."

158. This enterprise engaged in a pattern of conduct that is indictable under 18 U.S.C. §§ 1341 and 1343.

159. The County suffered injuries resulting from the Defendants' unlawful enterprise.

160. Accordingly, the County is entitled to recover treble damages of \$122,285,298.66 plus its attorneys' fees and costs.

161. All Defendants conspired in support of Gutfhar's actions described above and are therefore equally liable for this RICO violation.

COUNT VI

Breach of Fiduciary Duty

162. The County incorporates all prior allegations.

163. To prevail on a claim for breach of fiduciary duty, a plaintiff must show that the defendant owed the plaintiff a fiduciary duty, the defendant breached that duty, and resulting damages. *See e.g., John E. Shaffer Ent. v. City of Yuma*, 183 Ariz. 428, 432 (App. 1995); Rest. (Second) Torts § 874.

164. “[U]nder Arizona law, punitive damages are properly awarded for breach of fiduciary duty where the defendant’s conduct reaches the requisite level of culpability.” *Rhue v. Dawson*, 173 Ariz. 220, 232 (App. 1992).

165. Moreover, “courts will impose constructive trusts if there has been a breach of fiduciary duty.” *Turley v. Ethington*, 213 Ariz. 640, 644 ¶ 9 (App. 2006)

166. As the elected County Treasurer, Gutfahr had a duty to, among other things, “safely keep” all monies of the County, accurately keep the County’s books and records, and to only disburse County monies “as provided by law.” A.R.S. § 11-493.

167. Gutfahr breach those duties.

168. As a result of Gutfahr’s actions, the County suffered at least \$40,761,766.22 in real damages.

169. Gutfahr’s acted in a wonton or reckless matter, or showed spite or ill will. Accordingly, punitive damages are appropriate.

170. Further, Gutfahr used County funds to acquire assets she has no lawful right to keep. Therefore, a constructive trust is an appropriate additional remedy.

171. All Defendants conspired in support of Gutfhar’s actions described above and are therefore equally liable for breach of fiduciary duty.

COUNT VII

Illegal Payment of Public Monies

172. The County incorporates all prior allegations.

173. If a county officer “without authority of law, orders or causes any public

monies to be paid,” the county officer and “party in whose favor the order is made are jointly and severally liable for the monies with interest at the legal rate, and twenty percent additional on the principal amount.” A.R.S. § 11-641(A).

174. The County is authorized to bring a claim to recover the illegal payment of monies. *See* A.R.S. § 11-641(C).

175. As County Treasurer, Gutfahr caused approximately \$39,412,100 to be paid to Rio Rico Consulting LLC and Rio Rico Real Consulting, and/or other individuals and/or other entities.

176. These transactions were made without authority of law.

177. Accordingly, the County is entitled to \$39,412,100 plus interest at the legal rate and additional damages of \$7,282,420 (representing 20% of the principal amount).

COUNT VIII

Negligent Misrepresentation (Alternative Claim)

178. The County incorporates all prior allegations.

179. In the event Gutfahr and the other Defendants are not found liable under Counts I – VII (and they will be), they are alternatively liable under a theory of negligent misrepresentation.

180. In Arizona, negligent misrepresentation claims are governed by Restatement (Second) of Torts § 552 which states: “One who, in the course of his business, profession or employment, or in any other transaction in which he has a pecuniary interest, supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon the information, if he fails to exercise reasonable care or competence in obtaining or communicating the information” Rest. (Second) Torts § 552; *see also Standard Chartered PLC v. Price Waterhouse*, 190 Ariz. 6, 29 (App. 1996).

181. In a negligent misrepresentation claim, a party may recover all damages “necessary to compensate the plaintiff for the pecuniary loss ... including ... pecuniary loss suffered otherwise as a consequence of the plaintiff’s reliance on the

misrepresentation.” Rest. (Second) Torts § 552B.

182. In the course of her business as the County Treasurer, Gutfahr supplied false information to the County regarding the County’s business transactions.

183. The County reasonably relied on the information provided by Gutfahr.

184. In providing false information to the County, Gutfahr failed to exercise reasonable care.

185. Because it relied on Gutfahr’s false representations, Santa Cruz suffered at least \$40,761,766.22 in real damages.

186. Accordingly, the County is entitled to receive at least \$40,761,766.22 in compensation from Gutfahr.

187. All Defendants conspired in support of Gutfhar’s actions described above and are therefore equally liable for negligent misrepresentation.

COUNT IX

Unjust Enrichment (Alternative Claim)

188. The County incorporates all prior allegations.

189. In the event Gutfahr and the other Defendants are not found liable under Counts I-VIII (and they will be), they are alternatively liable under a theory of unjust enrichment.

190. “To establish a claim for unjust enrichment, a party must show: (1) an enrichment; (2) an impoverishment; (3) a connection between the enrichment and the impoverishment; (4) the absence of a justification for the enrichment and the impoverishment; and (5) the absence of a legal remedy.” *Trustmark Ins. Co. v. Bank One, Ariz., NA*, 202 Ariz. 535, 541 ¶ 31 (App. 2002).

191. Restitution is an available remedy is an unjust enrichment claim. *See Span v. Maricopa Cnty. Treasurer*, 246 Ariz. 222, 227 ¶¶ 15-16 (App. 2019).

192. Gutfahr enriched herself with County funds.

193. Gutfhar’s actions directly caused an impoverishment in the the County’s coffers.

194. There is no justification for Gutfahr's actions.

195. In the event that Gutfahr and the other Defendants somehow evade liability under Counts I-VIII, there is no legal remedy to rectify Gutfahr's actions.

196. According, the County is entitled to receive at least \$40,761,766.22 in compensation from Gutfahr.

197. Gutfahr acted in a wonton or reckless matter, or showed spite or ill will. Accordingly, punitive damages are appropriate.

198. All Defendants conspired in support of Gutfahr's actions described above and are therefore equally liable for negligent misrepresentation.

PRAYER FOR RELIEF

WHEREFORE, the County requests the following relief:

A. An order awarding the County its total real damages proven at trial, to be at least \$40,761,766.22.

B. An order awarding the County punitive damages.

C. An order trebling the County's damages pursuant to A.R.S. § 12 -2314.04 and 18 U.S.C. §1964(c), to be at least \$122,285,298.66.

D. An order awarding Santa Cruz additional damages totaling 20% of the total principle amount illegal paid by Gutfahr, pursuant to A.R.S. § 11-641(C).

E. An order creating a constructive trust over all assets Gutfahr purchased with County funds.

F. In the alternative, restitution of the total amount of damages proven at trial, to be at least \$40,761,766.22.

G. An order awarding Santa Cruz its reasonable attorneys' fees pursuant to A.R.S. § 13-2314.04, 18 U.S.C. § 1964(c), and any other applicable law.

H. An order awarding Santa Cruz its reasonable costs pursuant to A.R.S. § 13-2314.04, A.R.S. § 12-341, and any other applicable law.

I. For such other and further relief that the Court may deem proper.

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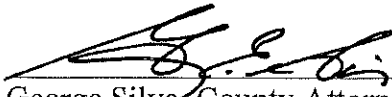
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VERIFICATION

STATE OF ARIZONA)
) ss.
COUNTY OF SANTA CRUZ)

I verify under penalty of perjury and pursuant to A.R.S. § 13-2314.04 that the foregoing is true and correct.

Executed on August 1, 2024.



George Silva, County Attorney
On behalf of Santa Cruz County