

RICHARDS & MOSKOWITZ PLC

William A. Richards (013381)
Savanna J. Wright (037806)
Robert E. Niska (037184)
1850 N. Central Avenue, Suite 2010
Phoenix, Arizona 85004
Phone: (602) 595-7800
brichards@rmazlaw.com
swright@rmazlaw.com
bniska@rmazlaw.com
*Attorneys for Defendants,
Counterclaimants, and
Third-Party Plaintiffs*

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

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

Plaintiff,

v.

STATE OF ARIZONA; LINDSEY A.
PERRY, Auditor General of the State of
Arizona,

Defendants.

STATE OF ARIZONA; LINDSEY A.
PERRY, Auditor General of the State of
Arizona,

Counterclaimants,

v.

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

Counterclaim
Defendant.

Case No. CV2024-032742

THIRD-PARTY COMPLAINT

(Assigned to the Honorable Dewain
Fox)

1 STATE OF ARIZONA; LINDSEY A.
2 PERRY, Auditor General of the State of
3 Arizona,

3 Third-Party Plaintiffs,

4 v.

5 MARIA ACUNA and JOHN DOE ACUNA,
6 a married couple; GLORIA PATRICIA
7 IBARRA and JOHN DOE IBARRA, a
8 married couple; SUSAN GONZALES and
9 JOHN DOE GONZALES, a married couple;
10 JENNIFER ST. JOHN and JOHN DOE ST.
11 JOHN, a married couple; JOHN MAYNARD
12 and JANE DOE MAYNARD, a married
13 couple; RUDY MOLERA and JANE DOE
14 MOLERA, a married couple; MANUEL
15 RUIZ and JANE DOE RUIZ, a married
16 couple; BRUCE BRACKER and JANE DOE
17 BRACKER, a married couple; JESUS
18 VALDEZ and JANE DOE VALDEZ, a
19 married couple; MAURICIO CHAVEZ and
20 JANE DOE CHAVEZ, a married couple;
21 THE BOARD OF SUPERVISORS OF
22 SANTA CRUZ COUNTY, a body politic in
23 the State of Arizona; LUIS CARLOS
24 DAVIS, an individual; JOHN FANNING, an
25 individual; RITA SETO and JOHN DOE
26 SETO, a married couple; JOHN AND JANE
27 DOES 1-20, individuals; and BLUE
28 CORPORATIONS 1-30, corporate entities,

Third-Party
Defendants.

24 The State of Arizona and Lindsey A. Perry, as Auditor General of the State of Arizona
25 (collectively, the "State" or "Third-Party Plaintiff"), for their Third-Party Complaint against
26 Third-Party Defendants (1) Maria Acuna and John Doe Acuna, a married couple; (2) Gloria
27 Patricia Ibarra and John Doe Ibarra, a married couple; (3) Susan Gonzales and John Doe Gonzales,
28 a married couple; (4) Jennifer St. John and John Doe St. John, a married couple; (5) John Maynard

1 and Jane Doe Maynard, a married couple; (6) Rudy Molera and Jane Doe Molera, a married
2 couple; (7) Manuel Ruiz and Jane Doe Ruiz, a married couple; (8) Bruce Bracker and Jane Doe
3 Bracker, a married couple; (9) Jesus Valdez and Jane Doe Valdez, a married couple; (10) Mauricio
4 Chavez and Jane Doe Chavez, a married couple; (11) the Board of Supervisors of Santa Cruz
5 County; (12) Luis Carlos Davis, an individual; (13) John Fanning, an individual; (14) Rita Seto
6 and John Doe Seto, a married couple; (15) John and Jane Does 1-20; and (16) Blue Corporations
7 1-30, hereby allege as follows.

8 This Third-Party Complaint is filed in advance of the deadline for a responsive pleading
9 and filing of third-party complaints in this matter solely to ensure that the claims alleged herein
10 are filed by or before the earliest possible date that could be the deadline for filing any of the
11 claims alleged herein under any applicable statute of limitation for such claims. The filing of the
12 Third-Party Complaint is not intended to waive, limit, or indicate any lack of confidence in the
13 pending arguments for dismissal of the claims in the Complaint in the State's Motion to Dismiss.
14 The State intends to further explain and address the early filing of these matters with the Court at
15 the upcoming scheduling conference.

16 In addition to the foregoing, the State hereby advises the Court and Plaintiff Santa Cruz
17 County that the State has additional claims it may assert in this matter against other third-party
18 defendants—including without limitation: (1) Elizabeth Gutfahr and David Gutfahr, a married
19 couple; (2) Davian Gutfahr and Ana Gutfahr, a married couple; (3) Ashley Moreno (a/k/a Ashley
20 Wilson-Moreno and/or Ashley Wilson) and John Doe Moreno, a married couple; (4) Rio Rico
21 Consulting LLC, a limited liability company; (5) Double D Cattle Company of Santa Cruz County
22 LLC, a limited liability company; (6) Gutfahr Land & Cattle Company, LLC, a limited liability
23 company; (7) Padilla Corriente Cattle, LLP, a limited liability partnership; (8) Rio Agua Fria,
24 LLC, a limited liability company; (9) Casa Vista Mar, LLC, a limited liability company; (10) Rio
25 Rico Real Estate and Construction, an Arizona corporation; (11) Southwest Underground
26 Services, an Arizona corporation; and (12) Santa Cruz Civil Constructors and Engineering, LLC,
27 a limited liability company—in accordance with the procedures for filing third-party claims set
28 forth in Rule 14, Ariz. R. Civ. P. Nothing herein limits, waives or impairs any right or ability of

1 the State to timely file such additional third-party claims or third-party complaints in this matter
2 in the event the pending Motion to Dismiss is denied and the State is required to file a responsive
3 pleading regarding any of the claims pending against the State in this matter.

4 **PARTIES AND JURISDICTION**

5 1. Third-Party Plaintiff State of Arizona (“Arizona”) is a sovereign political entity of
6 the United States of America.

7 2. Third-Party Plaintiff Lindsey A. Perry is the appointed Auditor General of the State
8 of Arizona (the “Auditor General”).

9 3. Santa Cruz County is a political subdivision of the State of Arizona, which operates
10 under the supervision and authority of its Board of Supervisors. Current and former members of
11 the County Board of Supervisors are named herein as Third-Party Defendants. The Board of
12 Supervisors and Santa Cruz County are referred to herein collectively as the “County”.

13 4. Maria Acuna is an individual who, upon information and belief, resides in Santa
14 Cruz County. She is sued in her personal or individual capacity as an individual who facilitated
15 and was unjustly enriched by Elizabeth Gutfahr’s (“Gutfahr” or “Elizabeth Gutfahr”) theft of
16 public monies in the custody of Santa Cruz County (“Public Funds” or “Funds” or “Stolen
17 Funds”). She is also sued in her official capacity as the former Chief Deputy Treasurer for Santa
18 Cruz County. On information and belief, John Doe Acuna is the fictitious name of an individual
19 who is married to Maria Acuna, and, at all times material to the allegations in this Complaint,
20 Maria Acuna acted on behalf of and for the benefit of her marital community, making her marital
21 community liable for the claims alleged and relief sought herein.

22 5. Gloria Patricia Ibarra is an individual who, upon information and belief, resides in
23 Santa Cruz County. She is sued in her personal or individual capacity as an individual who was
24 unjustly enriched by Elizabeth Gutfahr’s theft of Public Funds. She is also sued in her official
25 capacity as the former Senior Secretary for Santa Cruz County. On information and belief, John
26 Doe Ibarra is the fictitious name of an individual who is married to Gloria Patricia Ibarra, and, at
27 all times material to the allegations in this Complaint, Gloria Patricia Ibarra acted on behalf of and
28 for the benefit of her marital community, making her marital community liable for the claims

1 alleged and relief sought herein.

2 6. Susan Gonzales is an individual who, upon information and belief, resides in Santa
3 Cruz County. She is sued in her personal or individual capacity as an individual who was unjustly
4 enriched by Elizabeth Gutfahr's theft of Public Funds. She is also sued in her official capacity as
5 a tax clerk for Santa Cruz County. On information and belief, John Doe Gonzales is the fictitious
6 name of an individual who is married to Susan Gonzales, and, at all times material to the
7 allegations in this Complaint, Susan Gonzales acted on behalf of and for the benefit of her marital
8 community, making her marital community liable for the claims alleged and relief sought herein.

9 7. Jennifer St. John is an individual who, upon information and belief, resides in Santa
10 Cruz County. She is sued in her personal or individual capacity and in her official capacity as the
11 Former Administrative Service Department Director and County Manager for Santa Cruz County.
12 The Board of Supervisors relied on Ms. St. John to monitor the County's day-to-day operations
13 and communicate any actual, suspect, or alleged fraud. On information and belief, John Doe St.
14 John is the fictitious name of an individual who is married to Jennifer St. John, and, at all times
15 material to the allegations in this Complaint, Jennifer St. John acted on behalf of and for the benefit
16 of her marital community, making her marital community liable for the claims alleged and relief
17 sought herein.

18 8. John Maynard is an individual who, upon information and belief, resides in Santa
19 Cruz County. He is sued in his personal or individual capacity and in his official capacity as a
20 former Board of Supervisors Member for Santa Cruz County. Upon information and belief, Jane
21 Doe Maynard is the fictitious name of an individual who is married to John Maynard, and, at all
22 times material to the allegations in this Complaint, John Maynard acted on behalf of and for the
23 benefit of his marital community, making his marital community liable for the claims alleged and
24 relief sought herein.

25 9. Rudy Molera is an individual who, upon information and belief, resides in Santa
26 Cruz County. He is sued in his personal or individual capacity and in his official capacity as a
27 current Board of Supervisors Member for Santa Cruz County. On information and belief, Jane
28 Doe Molera is the fictitious name of an individual who is married to Rudy Molera, and, at all

1 times material to the allegations in this Complaint, Rudy Molera acted on behalf of and for the
2 benefit of his marital community, making his marital community liable for the claims alleged and
3 relief sought herein.

4 10. Manuel Ruiz is an individual who, upon information and belief, resides in Santa
5 Cruz County. He is sued in his personal or individual capacity and in his official capacity as a
6 former Board of Supervisors Member for Santa Cruz County. On information and belief, Jane
7 Doe Ruiz is the fictitious name of an individual who is married to Manuel Ruiz, and, at all times
8 material to the allegations in this Complaint, Manuel Ruiz acted on behalf of and for the benefit
9 of his marital community, making his marital community liable for the claims alleged and relief
10 sought herein.

11 11. Bruce Bracker is an individual who, upon information and belief, resides in Santa
12 Cruz County. He is sued in his personal or individual capacity and in his official capacity as a
13 former Board of Supervisors Member for Santa Cruz County. On information and belief, Jane
14 Doe Bracker is the fictitious name of an individual who is married to Bruce Bracker, and, at all
15 times material to the allegations in this Complaint, Bruce Bracker acted on behalf of and for the
16 benefit of his marital community, making his marital community liable for the claims alleged and
17 relief sought herein.

18 12. Luis Carlos Davis is an individual who, upon information and belief, resides in
19 Santa Cruz County. He is sued in his official capacity only as a current Board of Supervisors
20 Member for Santa Cruz County.

21 13. John Fanning is an individual who, upon information and belief, resides in Santa
22 Cruz County. He is sued in his official capacity only as a current Board of Supervisors Member
23 for Santa Cruz County.

24 14. Mr. Maynard, Mr. Molera, Mr. Ruiz, Mr. Bracker, Mr. Fanning, and Mr. Davis are
25 referred to collectively herein as the "Board" or the "individual Board members".

26 15. Jesus Valdez is an individual who, upon information and belief, resides in Santa
27 Cruz County. He is sued in his personal or individual capacity and in his official capacity as a
28 former County Manager for Santa Cruz County. On information and belief, Jane Doe Valdez is

1 the fictitious name of an individual who is married to Jesus Valdez, and, at all times material to
2 the allegations in this Complaint, Jesus Valdez acted on behalf of and for the benefit of his marital
3 community, making his marital community liable for the claims alleged and relief sought herein.

4 16. Mauricio Chavez is an individual who, upon information and belief, resides in Santa
5 Cruz County. He is sued in his personal or individual capacity and in his official capacity as a
6 former Administrative Services Department Director and Deputy County Manager for Santa Cruz
7 County. On information and belief, Jane Doe Chavez is the fictitious name of an individual who
8 is married to Mauricio Chavez, and, at all times material to the allegations in this Complaint,
9 Mauricio Chavez acted on behalf of and for the benefit of his marital community, making his
10 marital community liable for the claims alleged and relief sought herein.

11 17. Rita Seto is, on information and belief, a resident of Maricopa County, Arizona, and
12 was, at all times material to the allegations in this Complaint involving her, a contracted agent of
13 Santa Cruz County who provided services and communications regarding development and
14 completion of financial statements of Santa Cruz County. She is sued in her official capacity, as
15 a contracted agent of Santa Cruz County, and in her personal or individual capacity. On
16 information and belief, John Doe Seto is the fictitious name of an individual who is married to
17 Rita Seto, and, at all times material to the allegations in this Complaint, Rita Seto acted on behalf
18 of and for the benefit of her marital community, making her marital community liable for the
19 claims alleged and relief sought herein.

20 18. John and Jane Does 1-20 are currently unknown individuals that caused harm to the
21 State through their negligent, intentional, or otherwise tortious conduct, including without
22 limitation their failure to identify, detect, expose, report, stop, prevent, or mitigate the
23 misappropriation of public funds or use of false, incomplete or misleading records or reporting by
24 Gutfahr, and/or who facilitated, encouraged, or conspired with Elizabeth Gutfahr and/or aided and
25 abetted Elizabeth Gutfahr's fraudulent, wrongful, illegal and actionable conduct as described
26 below.

27 19. Blue Corporations 1-30 are currently unknown corporations, limited liability
28 companies, partnerships, limited or general partnerships, and/or other corporate or business

1 entities that caused harm to the State through their negligent, intentional, or otherwise tortious
2 conduct, including without limitation their failure to identify, detect, expose, report, stop, prevent,
3 or mitigate the misappropriation of public funds or use of false, incomplete or misleading records
4 or reporting by Gutfahr, and/or who facilitated, encouraged, or conspired with Elizabeth Gutfahr
5 and/or aided and abetted Elizabeth Gutfahr's fraudulent, wrongful, illegal and actionable conduct
6 as described below.

7 20. The actions or omissions of Third-Party Defendants out of which the following
8 claims arise, as described herein, occurred within the State of Arizona. This Court has jurisdiction
9 over the parties and the subject matter of this action pursuant to A.R.S. § 12-123.

10 21. Venue over the claims pled herein is proper under A.R.S. § 12-401(17) because the
11 Third-Party Plaintiff is the State of Arizona.

12 **GENERAL ALLEGATIONS**

13 22. Pursuant to A.R.S. § 11-501(A) and (C), at all times relevant to the claims stated
14 herein, Arizona county treasurers were required to report, monthly and annually, accounts of
15 collection, custody, and disbursement of public revenue to the county board of supervisors, and
16 to post those reports (the "Treasurer's Report") on the treasurer's website. These duties have
17 applied, at all relevant times, to the Santa Cruz County Treasurer (hereafter, the "County
18 Treasurer") and the Board.

19 23. Particularly, at all times relevant to the claims stated herein, Arizona state law
20 required the County Treasurer to prepare the monthly reports "under oath" and annual reports,
21 including accurate calculations and statements of the monies received by the County and from
22 whom they were received, reporting the monies spent or distributed from county accounts and to
23 whom they were disbursed including the remaining balances on hand at relevant reporting times.
24 A.R.S. § 11-501(A).

25 24. At all times relevant to the claims stated herein, Arizona state law also required the
26 County Treasurer to provide ending balances—via the monthly Treasurer's Report pursuant to
27 Gutfahr's preference—to the county school superintendent's office and to each agency and
28 department that has cash on deposit with the County Treasurer. A.R.S. § 15-996. On information

1 and belief, at times relevant to the claims in this Complaint, some ten (10) separate districts,
2 agencies, departments of political subdivisions had cash on deposit with the County Treasurer,
3 including: (1) Nogales Unified School District No. 1; (2) Patagonia Elementary School District
4 No. 6; (3) Patagonia Union High School District No. 20; (4) Santa Cruz Elementary School
5 District No. 28; (5) Santa Cruz Valley Unified School District No. 35; (6) Sonoita Elementary
6 School District No. 25; (7) Nogales Suburban Fire District; (8) Rio Rico Medical and Fire District;
7 (9) Tubac Fire District; and (10) Sonoita-Elgin Fire District; (11) Town of Patagonia; (12) Nogales
8 Animal Control; (13) Unorganized Territory; (14) Santa Cruz County Jail District; (15) Santa
9 Cruz County Flood Control District; (16) Santa Cruz County Provisional Community College
10 District; (17) Santa Cruz County District #99.

11 25. At all times relevant to the claims stated herein, the County Treasurer was required
12 to submit the Treasurer's Report for the preceding month to the Board of Supervisors. A.R.S. §
13 11-501.

14 26. At all times relevant to the claims stated herein, the Board had a duty to supervise
15 the County Treasurer. Pursuant to A.R.S. § 11-251(1), a county board of supervisors is authorized
16 to "[s]upervise the official conduct of all county officers . . . charged with assessing, collecting,
17 safekeeping, managing or disbursing the public revenues," "see that the officers faithfully perform
18 their duties," and "when necessary, require the officers to renew their official bonds, make reports
19 and present their books and accounts for inspection."

20 27. Pursuant to A.R.S. § 11-251(10), at all times relevant to the claims stated herein, the
21 Board, in exercising their supervisory responsibilities, had the authority to "[e]xamine and exhibit
22 the accounts and performance of all officers having the care, management, collection or
23 disbursement of monies belonging to the county or appropriated by law or otherwise for the use
24 and benefit of the county."

25 28. To allow execution of those duties, A.R.S. § 11-498 provided at relevant times that
26 "[t]he books, accounts and vouchers of the treasurer shall at all times be subject to inspection and
27 examination by . . . the board of supervisors."

28 29. Indeed, at all times relevant to the claims stated herein, the Board had the authority

1 and responsibility to “[d]o and perform all other acts and things necessary to the full discharge of
2 its duties as the legislative authority of the county government,” pursuant to A.R.S. § 11-251(30).
3 “The powers of a county shall be exercised only by the board of supervisors or by agents and
4 officers acting under its authority and authority of law,” including the power to “[d]etermine the
5 budgets of all elected and appointed county officers enumerated under section 11-401 by action
6 of the board of supervisors.” A.R.S. § 11-201(A)(1), (6).

7 30. Under A.R.S. § 11-664(A), the Board could, at all times relevant to the claims stated
8 herein, suspend the County Treasurer or other officials, officers, employees, agents, or contractors
9 of the County, including the Chief Deputy Treasurer, the County Managers, the Deputy County
10 Managers, the Chief Financial Officer, the Senior Secretary, and the Tax Clerks (all of whom are
11 collectively referred to hereafter as the County “officials”), for “defalcation or neglect of duty.”
12 The Board could, at the same time, also request that the Santa Cruz County Attorney (the “County
13 Attorney”) conduct an investigation related to a potential suspension of the County Treasurer
14 pursuant to A.R.S. § 11-664(B) , and the Board could also otherwise conduct or arrange for the
15 investigation of other County officials (as defined above) for misconduct or wrongful conduct or
16 violation of their duties or responsibilities, including those duties or responsibilities associated
17 with the protection of public funds from misappropriation, misreporting or misuse.

18 31. Pursuant to A.R.S. § 11-253(A), at all times relevant to the claims stated herein, the
19 Board had the authority to “require any county officer to make reports under oath on any matter
20 connected with the duties of his office” and to remove an officer, including a County Treasurer,
21 who “neglects or refuses to make the report.”

22 **I. THEFT OF PUBLIC FUNDS BY THE SANTA CRUZ COUNTY TREASURER.**

23 32. Elizabeth Gutfahr was elected and served as Santa Cruz County Treasurer from
24 2013 until she resigned in April 2024, after the County notified her of its intention to consider
25 suspending her as the County Treasurer due to irregular and suspicious financial activities. As
26 Treasurer, Gutfahr was a county officer pursuant to A.R.S. § 11-401(A)(3) and her duties included
27 those prescribed under A.R.S. § 11-491, *et seq.*

28 33. As County Treasurer, Gutfahr was responsible for “keep[ing] all money belonging

1850 N. Central Avenue, Suite 2010
Phoenix, AZ 85004
Telephone 602-595-7800

1 to the state, or to the county, in [her] possession until disbursed according to law” pursuant to
2 A.R.S. § 11-491, including overseeing the collection of taxes and safeguarding Public Funds for
3 the use and benefit of County entities, including school and fire districts. Gutfahr was required to
4 transmit “money in the county treasury belonging to the state or collected for it” to the state
5 treasury as provided by law. A.R.S. § 11-502.

6 34. Under A.R.S. § 11-491, Gutfahr was prohibited from “plac[ing] [money belonging
7 to the state or county] in the possession of any person to be used for any purpose, or lend, or in
8 any manner use, or permit any person to use, such money except as provided by law.”

9 35. Under A.R.S. § 11-492, Gutfahr was required to “apportion and apply [all public
10 monies] to the several special and general funds as provided by law.”

11 36. Under A.R.S. § 11-493(1)-(2), Gutfahr was required to “safely keep” the Public
12 Funds and “keep an account of the receipt and expenditure of the monies.”

13 37. Under A.R.S. § 11-493(1), Gutfahr could “[r]eceive all monies of the county, and
14 other monies directed by law to be paid to the county treasurer.”

15 38. The Board issued warrants and Gutfahr was responsible for “deposit[ing] all paid
16 warrants issued by the board of supervisors with the clerk of the board.” A.R.S. § 11-501(B).

17 39. And, pursuant to A.R.S. § 11-493(4), Gutfahr was responsible for “[d]isburs[ing]
18 the county monies” as authorized by the Board or as otherwise authorized by law.”

19 40. A.R.S. § 35-301, asserts in part, that Gutfahr—who is responsible for receiving,
20 safekeeping, or disbursing public money—is guilty of a class 4 felony if she uses the money for
21 her own or another’s use without authority of the law or if she deposits it in a bank except for
22 safekeeping purposes.

23 41. Public money as defined in A.R.S. § 35-302, includes bonds and other evidences of
24 indebtedness and money belonging to, received by, or held by state, county, district, city, or town
25 officers in their official capacity.

26 42. In other words, Gutfahr was responsible for receiving, recording, safeguarding,
27 investing, and distributing Public Funds.

28 43. With the exception of limited accounts for specific entities that are subject to

1 specific instruction for investment by the State Treasurer, all monies received by the County
2 Treasurer's Office were combined and held in pooled accounts.

3 44. In her role, Gutfahr maintained the County's JP Morgan Chase bank accounts and
4 was a signer for the same.

5 45. This included a checking account (the "Chase Checking Account"), and a money
6 market savings account (the "Chase Savings Account") (collectively, the "County Accounts").

7 46. Meanwhile, Gutfahr controlled various checking accounts related to business
8 entities she maintained, including Rio Rico Consulting, LLC and Rio Rico Real Estate and
9 Consulting, LLC (the "Gutfahr Accounts") through Wells Fargo Bank and BMO Harris ("BMO").

10 47. The Gutfahr Accounts were managed by Gutfahr as the organizer.

11 48. From around March 2014 through March 2024, Gutfahr wired Public Funds in 187
12 unauthorized transfers from the County Accounts to the Gutfahr Accounts.

13 49. These fraudulent transfers of Public Funds to the Gutfahr Accounts increased over
14 time and ultimately amounted to approximately \$38 million.

15 50. Gutfahr went to great lengths to further her scheme, and even fraudulently subverted
16 the two-step approval process for wire transfers by obtaining Acuna's assigned multifactor token
17 authentication device and bank login to initiate wire transfers.

18 51. Pursuant to A.R.S. § 11-493, each wire transfer from the County Treasurer's
19 Office's checking and money market savings accounts required authorization, including from a
20 person designated by the Board. Upon information and belief, the authorization was Acuna's.

21 52. Although both Gutfahr and Acuna had their own respective passwords and
22 multifactor token authentication devices, Acuna knowingly shared—and was convinced by
23 Gutfahr to share—her respective password and multifactor token with Gutfahr thereby bypassing
24 this internal control process.

25 53. Gutfahr had a duty not to share her passwords and multifactor token authentication
26 devices with anyone else. Gutfahr also had a duty to ensure that Acuna did not share her own
27 passwords and multifactor token authentication devices with anyone.

28 54. Acuna had a duty not to share her passwords and multifactor token authentication

1 devices with anyone else, and a duty not to use Gutfahr's passwords and multifactor token
2 authentication devices.

3 55. Gutfahr told Acuna that the transfers were to a Wells Fargo investment account that
4 offered a more favorable interest rate.

5 56. But none of Gutfahr's business entities performed services for the County, and there
6 was no legitimate reason for the transfers.

7 57. To hide her fraudulent scheme, Gutfahr inflated cash reconciliation balances to
8 conceal diminishing balances that were a result of her embezzlement.

9 58. Gutfahr initiated the wire transfers that generally occurred approximately 1 to 5
10 times every month except for June and July when no transfers were made.

11 59. Gutfahr falsified cash reconciliation reports by falsely noting that certain payments
12 for expenses had not been recorded on the general ledger, even though the payments had indeed
13 been recorded on the general ledger.

14 60. Upon information and belief, the Board received Gutfahr's cash reconciliation
15 reports during their meetings. However, the Board's agendas and minutes do not reflect that the
16 Board reviewed these cash reconciliation reports. Upon information and belief, the Board would
17 approve these reports without reviewing them, despite the Board's supervisory authority over the
18 Treasurer, allowing Gutfahr's actions to go undetected.

19 61. Gutfahr went as far as to falsify cash reconciliation reports by noting that the County
20 had a UBS Financial Services, Inc. ("UBS") investment account with certain balances as of June
21 30 for 2021 to 2023.

22 62. Gutfahr created false UBS statements noting these false investment balances to hide
23 the fact that she had embezzled millions.

24 63. Gutfahr used these millions of dollars in Public Funds for her own personal benefit
25 and made extravagant purchases with the same.

26 64. Upon information and belief, Gutfahr provided some County Treasurer's Office
27 employees with loans and gifts using the stolen Public Funds.

28 65. Maria Acuna received a \$6,000.00 "loan" for a new air conditioner from Gutfahr.

1 Ms. Acuna also received, for her sister's use, a car that she valued at \$3,000.00 from Gutfahr.

2 66. Beginning in 2019 or 2020, Gutfahr also began paying for Ms. Acuna's personal
3 cell phone bills.

4 67. Gutfahr also occasionally paid personal bills for Gloria Patricia Ibarra. Gutfahr had
5 given Ms. Ibarra's children \$100.00 on their birthdays and gave Ms. Ibarra \$1,500.00 on her own
6 birthday.

7 68. Similarly, Susan Gonzales received a "generous" gift from Gutfahr for her son's
8 wedding gift. Gutfahr also let Ms. Gonzales' daughter get married at one of Gutfahr's ranches.
9 Ms. Gonzales and Gutfahr also traveled together for a long weekend stay in San Carlos, Mexico.

10 69. Gutfahr also attempted to have a personal relationship with the UBS financial
11 advisor who handled some of the County Treasurer's Office investments. Specifically, in February
12 2023, Gutfahr offered the UBS financial advisor one of her family's homes to stay in.

13 70. Upon information and belief, the monies Gutfahr embezzled included Public Funds
14 in an amount to be proven at trial.

15 **II. THE FAILURE(S) TO DETECT THE EMBEZZLEMENT AND IMPLEMENT**
16 **INTERNAL CONTROLS.**

17 71. Pursuant to A.R.S. § 11-501(A), Gutfahr was required to submit a monthly
18 Treasurer's Report to the Board. On information and belief, the Board members knew or should
19 have known that Gutfahr had this duty, and that it was an important part of the controls and
20 accountability required by state law for the protection of public funds made available to the
21 County. On information and belief, the Board members knew or should have known that the
22 expectation of this monthly reporting requirement was that the Board members would ensure the
23 review of the reports for accuracy, completeness, and compliance with appropriate standards for
24 accounting for and reporting of public funds in the control of the County, and the Board members
25 knew or should have known that their responsibility for review of the reporting was part of the
26 accountability process by which the Treasurer's activities and reports could be assessed for
27 completeness and accuracy and the public funds in the control of the County would be protected
28 from misappropriation, misuse, or inaccurate or insufficient reporting or preservation.

1 72. Gutfahr did not provide her Treasurer's Reports to the Board. Rather, upon
2 information and belief, the county clerk of the board/elections director received the Treasurer's
3 Report from the County Treasurer's Office, who acknowledged receipt and returned the
4 Treasurer's Report to the County Treasurer's Office without making a copy and giving it to the
5 Board. On information and belief, the Board members knew, at all relevant times, that they were
6 not receiving or reviewing the Treasurer's Reports and that they were not, therefore, complying
7 with their duties and responsibilities to ensure the protection and accurate accounting for all public
8 funds under the control of the County.

9 73. The process provided in A.R.S. § 11-501(A) was not followed, and Gutfahr's work
10 went unreviewed as a result.

11 74. Upon information and belief, Gutfahr fabricated a story to Acuna that she was
12 transferring monies to a Wells Fargo investment account to acquire a more favorable interest rate.

13 75. Upon information and belief, Acuna is responsible for recording the County
14 Treasurer's Office checking account outgoing wire transactions in the County Treasurer's
15 accounting system.

16 76. On one occasion, Acuna questioned Gutfahr about a wire transfer. Acuna asked
17 Gutfahr about a November 2021 \$225,000.00 wire transfer from the County Treasurer's Office
18 checking account. Gutfahr told Acuna that she mistakenly transferred the money out of the County
19 Treasurer's checking account instead of from the County Treasurer's money market savings
20 account to the supposed Wells Fargo account, but Gutfahr promised to return the funds.

21 77. Acuna followed up with Gutfahr only once because the money had not yet been
22 returned.

23 78. Upon information and belief, Acuna failed to record the transaction in the County
24 Treasurer's accounting system, and the \$225,000.00 was never returned to the County Treasurer's
25 Office checking account.

26 79. Gutfahr fabricated at least 121 Treasurer's Reports since March 2014, by not
27 properly recording the unauthorized wire transfer amounts to her Wells Fargo and BMO accounts,
28 thereby understating disbursements, and overstating balances.

1 80. Since March 2017, at least seventy-six (76) monthly cash reconciliation reports
2 provided to the Board and/or the County finance department had false individual bank and
3 investment statement amounts, false monthly Treasurer's Report amounts, and/or false
4 reconciling adjustment amounts.

5 81. The County's finance department and other entities that had cash on deposit with
6 the County Treasurer's Office received Gutfahr's falsified Treasurer's Reports.

7 82. No one at the County Treasurer's Office truthfully reconciled the Treasurer's
8 Reports to bank statements, allowing Gutfahr's actions to go undetected.

9 83. The County permitted the County Treasurer's Office to use an inadequate
10 accounting system that failed to automatically capture or record Gutfahr's unauthorized wire
11 transfers at any time. The County Treasurer's accounting system also automatically deleted data
12 and detailed transactions at the end of each month.

13 84. County management and information technology ("IT") staff acknowledged that the
14 County Treasurer's accounting system has control deficiencies and is outdated.

15 85. Since fiscal year 2009, the Auditor General has reported that the County has
16 inadequate internal controls over its financial information system or IT systems.

17 86. Pursuant to the Uniform Accounting Manual for Arizona County Treasurers and
18 Arizona statutes, the County Treasurer's Office is responsible for establishing and maintaining
19 effective internal controls to ensure it maintains an accurate and uniform system of accounting, is
20 compliant with generally accepted accounting principles, adheres to various Arizona statutory
21 requirements, and provides the County's auditors accurate information on a timely basis.

22 87. Pursuant to A.R.S. § 11-493, a county treasurer must receive all public monies and
23 maintain separate accounts for amounts received and paid out on separate funds or specific
24 appropriations, in addition to maintaining one general or cash account for all receipts and
25 disbursements.

26 88. In fiscal years 2009 through 2017, the Auditor General reported that the Treasurer's
27 Office did not properly apportion interest to County Funds and other entities.

28 89. Each time, the Auditor General provided detailed explanations to the County for

1 recommended improvements to their internal control systems, including: “The County should
2 develop and implement policies and procedures to help ensure that deposits and investments are
3 adequately safeguarded, promote overall operating efficiency and effectiveness, and ensure
4 compliance with laws and regulations.”

5 90. For several consecutive years, the Auditor General reported that the County lacked
6 comprehensive internal control policies and procedures regarding interest earnings. The County
7 continuously failed to timely implement recommended changes.

8 91. Acuna acknowledged that the County’s checking and money market saving
9 accounts did not match bank statements and that the investment account information was
10 sometimes missing from Gutfahr’s monthly reconciliations, but stated she did not know why.

11 92. The Board failed to perform a proper review of Gutfahr’s cash reconciliation and
12 Treasurer’s Reports.

13 93. Additionally, because the Auditor General lacks the authority to independently
14 obtain detailed County Treasurer’s Office financial information directly from a financial
15 institutional, Gutfahr and County staff were responsible for facilitating and obtaining the financial
16 information from its financial institutions.

17 94. In fiscal year 2022, the Auditor General coordinated with Gutfahr to receive the
18 UBS investment statement, later discovered to be a fictitious document. Upon information and
19 belief, Gutfahr used a fake UBS ShareFile account of “ubsfinancial” associated with a deceptive
20 ubsfinancialplanning.com” domain name to electronically send the Auditor General UBS
21 financial statements.

22 95. In accordance with the American Institute of Certified Public Accountants
23 (“AICPA”) U.S. Auditing Standards, AU-C Sections 580.10-12, the Auditor General receives
24 annual statements from County management acknowledging they have the responsibility for their
25 financial statements along with the design, implementation, and maintenance of internal controls
26 relevant to the preparation of the financial statements that are free from material misstatement,
27 whether due to fraud or error.

28 96. The County, subject to the Single Audit Act Amendments of 1996, may also be

1 audited by independent auditors other than the Auditor General.

2 97. The County hired an independent outside financial consultant, Ms. Rita Seto, to
3 assist in compiling financial reports for the County.

4 98. Ms. Seto failed to detect Gutfahr's fraudulent reports and documents.

5 99. The County holds the primary responsibility for the prevention and detection of
6 fraud.

7 100. AICPA (Clarified) [AU-C] Section 240, Considerations of Fraud in a Financial
8 Statement Audit, Responsibility for the Prevention and Detection of Fraud, paragraph .04, states:
9 "The primary responsibility for the prevention and detection of fraud rests with both those charged
10 with governance of the entity and management."

11 **III. THE AUDITOR GENERAL PERFORMS A POSTAUDIT BASED ON THE**
12 **INFORMATION PROVIDED BY THE COUNTY.**

13 101. Pursuant to A.R.S. § 41-1278, *et seq.*, the Auditor General has the authority to
14 perform postaudits of agencies and counties.

15 102. Under A.R.S. § 41-1279.01, the Auditor General is part of the legislative branch and
16 serves at the pleasure of the Legislature.

17 103. Title 41, chapter 7, article 10.2 ("Postaudit of Counties, Community College
18 Districts and School Districts") provides that counties are to supply the Auditor General with the
19 material(s) needed for an annual postaudit.

20 104. Under A.R.S. § 41-1279.04, the Auditor General shall have access to employees
21 and the authority to examine any and all books, accounts, reports, vouchers, correspondence files
22 and other records, bank accounts, criminal history record information, monies, and other property
23 of any state agency, board, commission, department, institution, program, advisory counsel or
24 committee or political subdivision of this state.

25 105. The County and the Auditor General entered into various agreements related to the
26 Auditor General's annual audits including multiple General Representation Letters, Engagement
27 Terms and Conditions, and Fraud Representation Letters (collectively, the "Agreements").

28 106. Every year, the County would sign a General Representation Letter detailing the

1 County’s responsibilities and averments related to, among other things, the County’s financial
2 statements, designing, implementing and maintaining internal control, accurately recording
3 transactions in the accounting records and financial statements, detection and disclosure of fraud
4 or suspected fraud to the Auditor General, tracking and monitoring the audit findings and
5 recommendations, and otherwise related to the County’s responsibilities pertaining to the audit.

6 107. The General Representation Letter begins with the County attesting that they are
7 “responsible for the fair presentation in the financial statements of financial position and the
8 respective changes in financial position and cash flows, where applicable, with each opinion unit
9 described above in conformity with [U.S. generally accepted accounting principles].”

10 108. Within the General Representation Letter, the County further attests that it has
11 “fulfilled” its responsibilities and has fairly prepared and presented the financial statements in
12 accordance with U.S. generally accepted accounting principles.

13 109. From 2018 through 2023, Mauricio A. Chavez—the former Director of Finance and
14 Administrative Services with the Deputy County Manager—signed each of the General
15 Representation Letters.

16 110. From 2018 through 2023, Mr. Chavez attested to the County’s “responsibility for
17 the design, implementation, and maintenance of internal control relevant to preparing and fairly
18 presenting financial statements that are free from material misstatement, whether due to fraud or
19 error.”

20 111. Mr. Chavez also confirmed in the General Representation Letters that the County is
21 responsible for the “design, implementation, and maintenance of internal control to prevent and
22 detect fraud.”

23 112. The County also attests in the General Representation Letters that it is responsible
24 for adjusting the financial statements to correct material misstatements.

25 113. Mr. Chavez attested each year that the County either had no knowledge of any fraud
26 or suspected fraud or that the County had disclosed any information it was aware of in relation to
27 fraud or suspected fraud.

28 114. The Auditor General similarly sent the County an Engagement Terms and

1 Conditions statement each year from 2018 through 2023.

2 115. The Engagement Terms and Conditions explained the Auditor General’s “objective
3 of the audit of the County’s financial statements, which management prepared with the oversight
4 of those charged with governance,” is to provide an opinion whether the County’s financial
5 statements are presented fairly and in conformity with U.S. generally accepted accounting
6 standards.

7 116. Within the Engagement Terms and Conditions, the Auditor General details that the
8 audit of the County will be performed in accordance with U.S. generally accepted auditing
9 standards [GAAS]. “Those standards required that [the Auditor General] plan and perform the
10 audit to obtain reasonable, rather than absolute, assurance about whether the reporting County’s
11 financial statements are free of material misstatement.”

12 117. The Auditor General also explained that “[b]ecause of an audit’s inherent
13 limitations, together with the inherent limitations of internal control, an unavoidable risk exists
14 that some material misstatements may not be detected even though the audit is properly planned
15 and performed in accordance with GAAS.”

16 118. However, the Auditor General “will communicate significant matters that may arise
17 during the financial statement audit, including internal control weaknesses.”

18 119. The Engagement Terms and Conditions lists the responsibilities of County
19 Management and/or those charged with governance regarding the County’s financial statements,
20 including but not limited to:

- 21 ■ Preparing and fairly presenting the County’s financial statements;
- 22 ■ Correcting material misstatements in the financial statements;
- 23 ■ Designing and implementing controls to prevent and detect fraud, and
24 to prepare and present financial statements that are free from material
misstatement and fraud;
- 25 ■ Safeguarding County’s assets;
- 26 ■ Reviewing and ensuring the accuracy of the County’s financial
27 statements;
- 28 ■ Designating personnel to oversee the nonaudit services provided; and

- Ensuring all management responsibilities are completed.

120. The Engagement Terms and Conditions stated that the Auditor General would conduct its audits “on the basis that management and, where appropriate, those charged with governance, acknowledge and understand that they are responsible for: . . . Following up and taking corrective action on audit findings in accordance with Uniform Guidance, which includes preparing the County’s responsible officials’ views concerning the findings, conclusions, and recommendations, a corrective action plan, and a summary schedule of prior audit findings.”

121. Mr. Chavez similarly signed the Engagement Terms and Conditions each year from 2018-2023 avowing to the above listed responsibilities and obligations.

122. The County also made various representations related to potential fraud and various fraud risk factors at the County in response to Fraud Representation Letters conveyed by the Auditor General’s Office to the County via email and/or letter.

123. The Board admitted to the Auditor General that it was unsure of the Treasurer Report’s purpose and had not actually seen the February 2024 cash reconciliation Report until the Auditor General emailed a copy.

124. Had anyone from the County reviewed Gutfahr’s monthly cash reconciliation reports, they would have noticed the irregularities and discovered Gutfahr’s actions.

125. Although investment account balances characteristically fluctuate from month to month, Gutfahr’s monthly cash reconciliation reports show that from August 2017 through January 2019, over a fourteen (14) month period, the UBS Investment statement balance did not fluctuate and remained unchanged at exactly \$16,204,072.45, which was also a false amount.

126. Moreover, for July 2018, no UBS investment account information was included at all in Gutfahr’s cash reconciliation report. However, in her August 2018 cash reconciliation report, Gutfahr reported the same \$16,204,072.45 balance had returned.

127. Notably, the UBS account balance was actually \$0 for most of the timeframe between August 2017 and January 2019, because Gutfahr transferred the entire \$16,204,072.45 balance to the County Treasurer’s Office checking account in January 2018.

128. Additionally, reconciliation amounts were even reused from one month to another.

1 For example, both the February 2021 and February 2022 cash reconciliation Reports included the
2 exact same balances with \$6,021,352.32 in the checking account, \$35,023,251.31 in the money
3 market savings account, and \$9,143,450.70 in the State Treasurer Local Government Investment
4 Pool. All these amounts were false.

5 129. Furthermore, Mr. Chavez informed the Auditor General that prior to April 2024, he
6 had not seen the County Treasurer’s monthly cash reconciliation reports and if the monthly
7 County departmental reports submitted to the Board came to the finance department, they would
8 have been filed and retained only for recordkeeping purposes.

9 130. Upon information and belief, the Board did not examine or inspect Gutfahr’s
10 accounts, books, or reports, did not implement the internal controls recommended by the Auditor
11 General in its audit reports, did not ensure information provided by the Treasurer for the financial
12 statements was free from material misstatements, did not ensure the Treasurer’s Reports and cash
13 reconciliation reports were accurate, did not appropriately oversee the Treasurer’s budget (despite
14 approving it), did not request the County Attorney conduct an investigation into Gutfahr, and did
15 not otherwise take reasonable action to supervise Gutfahr and detect her wrongful acts.

16 131. On May 19, 2020, the Auditor General emailed Mr. Chavez and Ms. St. John
17 requesting the County provide certain representations to assist in identifying fraud risk factors.

18 132. On May 21, 2020, Ms. St. John spoke with Auditor General staff and informed the
19 staff that the risk the financial statements are materially misstated due to fraud is “low to non-
20 existent.”

21 133. Ms. St. John explained that she is not aware of any actual, suspected, or alleged
22 fraud affecting the County and is not aware of any violations of State or Federal laws, regulations,
23 or provisions of contracts or grant agreements.

24 134. If Ms. St. John became alerted to the possibility of fraud, she was required to
25 communicate immediately to the Board of Supervisors, the County Attorney’s Office, and the
26 Auditor General’s Office.

27 135. Ms. St. John explained that the County has “numerous internal controls in place to
28 prevent and deter fraud from occurring.” Ms. St. John also affirmed that the “County utilizes

1 internal controls and safeguards to identify inconsistencies that alert staff to potential fraud.”

2 136. On June 18, 2021, the Auditor General emailed Ms. St. John again requesting the
3 County provide certain representations to assist in identifying fraud risk factors.

4 137. On March 2, 2022, Ms. St. John spoke to Auditor General staff informing the staff
5 that the risk the financial statements are materially misstated due to fraud is “low to non-existent.”

6 138. Ms. St. John again explained that the County has numerous internal controls in place
7 to prevent and deter fraud, and the controls are in place every day and with every transaction.

8 139. On June 22, 2022, the Auditor General emailed Mr. Chavez and Ms. St. John
9 requesting the County provide certain representations to assist in identifying fraud risk factors.

10 140. On February 13, 2023, the Auditor General emailed Mr. Chavez and Mr. Bracker
11 requesting the County provide certain representations to assist in identifying fraud risk factors.

12 141. In response, Mr. Bracker spoke with Auditor General staff on February 15, 2023.
13 Mr. Bracker informed the Auditor General that the “Board relies on the County Manager Jennifer
14 St. John to monitor the County’s day-to-day operations and communicate any actual, suspected,
15 or alleged fraud to the Board.”

16 142. Mr. Bracker also informed the Auditor General that the “Board relies on the County
17 Manager and other department heads to develop and implement effective internal controls.”

18 143. On November 19, 2023, the Auditor General emailed Mr. Valdez requesting the
19 County provide certain representations to assist in identifying fraud risk factors.

20 144. On March 12, 2024, Mr. Valdez responded to the Auditor General email stating that
21 there is no fraud or violations of law “to my knowledge.”

22 **IV. THE DISCOVERY OF THE EMBEZZLEMENT.**

23 145. On April 3, 2024, JP Morgan Chase Bank (“Chase”), the County’s servicing bank,
24 notified the County that its anti-money laundering team flagged the County Treasurer’s Office
25 money market savings account due to multiple outgoing wire transfers to two business bank
26 accounts connected to Gutfahr—the Wells Fargo and BMO business bank accounts.

27 146. Specifically, Chase reported that twelve (12) wire transfers totaling \$4,550,000.00
28 had been deposited in the Gutfahr Accounts.

1 147. The following day on April 4, 2024, the County removed the County Treasurer's
2 Office authorized signatories from all County Treasurer's Office bank accounts and replaced them
3 with the County Manager and Board of Supervisors chairman.

4 148. On April 18, 2024, the Board accepted Gutfahr's resignation after it had notified
5 Gutfahr of its decision to suspend her due to irregular and suspicious financial activities.

6 **COUNT I**
7 **NEGLIGENCE**

8 **(The Board of Supervisors, The Board of Supervisors Members—John Maynard, Rudy**
9 **Molera, Manuel Ruiz, Bruce Bracker, Luis Carlos Davis (official capacity only), John**
10 **Fanning (official capacity only)**

11 149. The State and Auditor General hereby replead and incorporate by reference all of
12 the above allegations as though fully set forth herein.

13 150. The County "is a body politic and corporate, possessing all the powers expressly
14 provided in the constitution or laws of this state and such powers as are necessarily implied
15 therefrom." A.R.S. § 11-202(A).

16 151. The powers of the County are "exercised only by the board of supervisors or by
17 agents and officers acting under its authority and authority of law." A.R.S. § 11-201(A)(1)-(6).

18 152. As the governing body of the County, the Board has a duty to "[d]o and perform all
19 other acts and things necessary to the full discharge of its duties as the legislative authority of the
20 county government." A.R.S. § 11-251(30).

21 153. Gutfahr was an officer of the County charged with assessing, collecting,
22 safekeeping, managing and/or disbursing public revenues. A.R.S. §§ 11-401(A)(3), -491, *et seq.*

23 154. Gutfahr's statutory duties included, but were not limited to, the duty to "keep all
24 money belonging to the state, or to the county, in [her] possession until disbursed according to
25 law" and "not place [money belonging to the state or county] in the possession of any person to
26 be used for any purpose, or lend, or in any manner use, or permit any person to use, such money
27 except as provided by law" (A.R.S. § 11-491), "apportion and apply [all public monies] to the
28 several special and general funds as provided by law" (A.R.S. § 11-492), "[r]eceive all monies of
the county, and other monies directed by law to be paid to the county treasurer" (A.R.S. § 11-

1 493(1)), “safely keep the monies and apply and pay the monies out, rendering account thereof as
2 required by law” (A.R.S. § 11-493(1)), “[k]eep an account of the receipt and expenditure of the
3 monies [paid to the county treasurer]” (A.R.S. § 11-493(2)), “[k]eep the county treasurer’s books
4 or electronic books so that the amount received and paid out on account of separate funds or
5 specific appropriations are exhibited in separate and distinct accounts, and the whole receipts and
6 expenditures shown in one general or cash account” (A.R.S. § 11-493(3)), “[d]isburse the county
7 monies” as authorized by the Board or as otherwise authorized by law” (A.R.S. § 11-493(4)),
8 “deposit all paid warrants issued by the board of supervisors with the clerk of the board” (A.R.S.
9 § 11-501(B)), and transmit “money in the county treasury belonging to the state or collected for
10 it” to the state treasury as provided by law (A.R.S. § 11-502). *See* A.R.S. § 11-491, *et seq.*

11 155. On information and belief, the County, including through its Board of Supervisors,
12 knew of all the duties Gutfahr had as Treasurer, including those outlined in the allegations
13 above.

14 156. As the governing body of the County, the Board, its individual Board members, and
15 by extension the County itself, had a duty to ensure Gutfahr faithfully, completely, accurately and
16 truthfully complied with all her duties as treasurer, including without limitation those identified
17 or arising under A.R.S. § 11-491, *et seq.*

18 157. As the governing body of the County, the Board, and by extension the County itself,
19 had a duty to “[s]upervise the official conduct of all county officers . . . charged with assessing,
20 collecting, safekeeping, managing or disbursing the public revenues,” “see that the officers
21 faithfully perform their duties,” and “when necessary, require the officers to . . . make reports and
22 present their books and accounts for inspection.” A.R.S. § 11-251(1); *see also* A.R.S. § 11-253(A).
23 This duty included, without limitation, the duty to supervise Gutfahr, as well as all the other
24 County officials (including, without limitation, Acuna, Chavez, St. John, Valdez, Ibarra, and the
25 County’s contracted agent, Seto), and to ensure that they all faithfully, completely, accurately and
26 truthfully complied with their respective duties, including without limitation, their duties to ensure
27 that the reports, calculations, bookkeeping, transaction detail or entries, accounting, accounts, and
28 other data or material regarding the finances, funds, revenues, financial distributions or payments,

1 balances, investments, assets, funds, or accounts of the County or those other political
2 subdivisions or entities whose funds were entrusted to the County and its officials were accurate,
3 complete, and truthful.

4 158. As the governing body of the County, the Board, and by extension the County itself,
5 knew or should have known that Gutfahr had a duty to “report accounts of collection, custody and
6 disbursement of public revenue to the county board of supervisors on the fifteenth day of each
7 month,” which reports were to include “the amount of monies or other property received, the
8 sources from which the monies or property derived, the amount of payments or disbursements and
9 to whom, with the amount remaining on hand,” and to “make a full report to the board annually.”
10 A.R.S. § 11-501(A), (C).

11 159. The County and the Board knew or should have known that the State, Auditor
12 General, and taxpayers of Arizona and of the County relied on the County and the Board, as the
13 governing body of the County, to review and ensure the accuracy and completeness of the reports
14 or financial statements that the Treasurer’s Office, County officials, and the County’s consultant
15 provided to the Auditor General for its annual audits.

16 160. Upon information and belief, the Board approved Gutfahr’s cash reconciliation
17 reports during their meetings without reviewing them. That failure to review constituted negligent
18 action and a violation of the County’s, Board’s and individual Board members’ duties as outlined
19 above.

20 161. Upon information and belief, and as alleged in further detail above, the County,
21 through its Board members, failed to receive and/or review Gutfahr’s Treasurer’s Reports,
22 knowing that this failure violated a responsibility and procedure designed to protect the public
23 funds in the control or custody of the County from misappropriation, misuse, theft or fraud. That
24 failure to receive or review the Treasurer’s Reports constituted negligent action and a violation of
25 the County’s, Board’s and Board member’ duties as outlined above.

26 162. As the governing body of the County, the Board, the individual Board members,
27 and by extension the County itself, had a duty to “[e]xamine and exhibit the accounts and
28 performance of all officers having the care, management, collection or disbursement of monies

1 belonging to the county or appropriated by law or otherwise for the use and benefit of the county,”
2 which included a duty to review the monthly and annual reports Gutfahr was required by statute
3 to provide. A.R.S. § 11-251(10); *see also* A.R.S. §§ 11-498, -501(A), -501(C). The County,
4 through its Board members, failed to carry out the foregoing duties, which constituted negligent
5 conduct.

6 163. As the governing body of the County, the Board, the individual Board members,
7 and by extension the County itself, had a duty to “[d]etermine the budgets of all elected and
8 appointed county officers enumerated under section 11-401.” A.R.S. § 11-201(A)(6). On
9 information and belief, the County, including through its Board members, failed to carry out the
10 foregoing duties, which constituted negligent conduct.

11 164. As the governing body of the County, the Board, the individual Board members,
12 and by extension the County itself, had the duty to “suspend the . . . county treasurer for defalcation
13 or neglect of duty” in connection with her misappropriation of public funds, creation of false,
14 untruthful and inaccurate records, operation of a deceptive scheme and practices, and other
15 wrongful conduct, using the authorities provided in A.R.S. § 11-664(A). The County and the
16 Board members had similar duties to suspend any other County officials whose conduct resulted
17 in, contributed to, facilitated, or failed to prevent or detect the wrongful or illegal conduct of
18 Gutfahr in connection with the misappropriation of public funds and the false, inaccurate,
19 incomplete or misleading reporting of financial, balance, transactions or accounting details by
20 Gutfahr. The County, Board and individual Board members failed to carry out the foregoing
21 duties, which constituted negligent conduct by the County, the Board, and the individual Board
22 members.

23 165. As the governing body of the County, the Board, the individual Board members,
24 and by extension the County itself, had the duty, prior to suspending Gutfahr, to request and/or
25 direct an investigation of Gutfahr’s actions regarding misappropriation of funds, misreporting of
26 County financial information, and violation of her duties as Treasurer, as well as regarding all
27 other failures or misconduct of County Board members and other County officials who failed to
28 perform their duties or responsibilities and thereby contributed to, caused, facilitated, or failed to

1 prevent or detect the wrongful misappropriation and use of public funds engaged in by Gutfahr,
2 or the false, fraudulent, incomplete or misleading reporting by Gutfahr regarding funds in the
3 custody or control of the County. The County, Board and individual Board members failed to
4 carry out the foregoing duties, which constituted negligent conduct.

5 166. As the governing body of the County, the Board, the individual Board members,
6 and by extension the County itself, had the duty to remove Gutfahr from office in connection with
7 her misappropriation of public funds, creation of false, untruthful and inaccurate records,
8 operation of a deceptive scheme and practices, and other wrongful conduct, using the authorities
9 provided under A.R.S. § 11-253(A). The Board, and the individual Board members, and by
10 extension the County itself, also had a duty to remove any other County officials from office in
11 connection with any conduct by them, including as described in the allegations herein, that
12 resulted in, allowed, facilitated, or failed to prevent or detect the misappropriation of funds by
13 Gutfahr or any false, fraudulent, incomplete or misleading reporting or accounting created or
14 supplied by her to cover up her misappropriation of funds. The County, Board, and individual
15 Board members failed to carry out the foregoing duties, which constituted negligent conduct.

16 167. As the governing body of the County, the individual Board members, and by
17 extension the County itself, had a duty to use reasonable care when carrying out supervision of
18 Gutfahr and all other County officials to ensure that Gutfahr and all such officials faithfully,
19 legally, accurately, completely and truthfully performed their duties, including without limitation
20 Gutfahr's duties as treasurer such as those duties existing pursuant to A.R.S. § 11-491, *et seq.*, the
21 other officials duties to review and analyze or investigate Gutfahr's records, reports or accounting
22 documents, or as otherwise outlined above. The County and its Board members failed to carry out
23 the foregoing duties, which constituted negligent conduct.

24 168. As the governing body of the County, the Board, the individual Board members,
25 and by extension the County itself, knew or should have known that Gutfahr and Acuna were
26 susceptible to misconduct and was not competent to fulfill their statutory duties as Treasurer and
27 Chief Deputy Treasurer. The Board, and by extension the County itself, knew or should have
28 known that Gutfahr failed to submit the statutorily required Treasurer's Reports to the Board for

1 review and/or that Gutfahr had falsified her reports. The Board members' failures to act on their
2 knowledge and protect the County, State and their taxpayers from loss of public funds by
3 suspension, termination and other appropriate legal action against Gutfahr and those conspiring
4 with or aiding or abetting her in her theft of public funds, falsification of public records, and other
5 wrongful conduct constituted negligent conduct.

6 169. As the governing body of the County, the Board, the individual Board members,
7 and by extension the County itself, had a duty to take corrective action on the Auditor General's
8 audit findings in each of its annual audit reports and implement a full corrective action plan. The
9 Board members failed to carry out the foregoing duties, which constituted negligent conduct.

10 170. As the governing body of the County, the Board, and by extension the County itself,
11 had a duty to implement internal controls necessary to prevent and detect fraud, including
12 specifically the fraud and misappropriation of public funds practiced by Gutfahr, as well as the
13 false, fraudulent, incomplete and misleading records or reports created, presented or used by
14 Gutfahr. The County and its Board members failed to carry out the foregoing duties, which
15 constituted negligent conduct.

16 171. As the governing body of the County, the Board, the individual Board members,
17 and by extension the County itself, had a duty to correct the County's inadequate and outdated
18 accounting system that lacked sufficient internal controls, and to instead create, develop, and fully
19 implement internal controls that would meet applicable standards and facilitate the detection,
20 prevention and resolution of fraudulent conduct like that Gutfahr engaged in. The County and its
21 Board members failed to carry out the foregoing duties, which constituted negligent conduct.

22 172. As a matter of public policy and based on their special relationship, the County and
23 the Board owed the State, Auditor General, and the taxpayers whose interests the State represents
24 a duty to use reasonable care to avoid injury to the State, Auditor General, and the taxpayers. The
25 Board members failed to carry out the foregoing duty, which constituted negligent conduct.

26 173. The State, Auditor General, and taxpayers are within the class of persons intended
27 to be protected by A.R.S. § 11-251(1) and other state law requiring the County, the Board, and
28 the individual Board members, as the governing body of the County, to supervise Gutfahr,

1 including through examining and inspecting Gutfahr's books, records and accounts (A.R.S. §§
2 11-251(10), -498), receiving and reviewing Gutfahr's statutorily-required reports connected with
3 the performance of her duties and/or the auditing process (A.R.S. §§ 11-253(A), -495(C), -501(A),
4 -501(C)), determining Gutfahr's budget (A.R.S. § 201(A)(6)), otherwise investigating Gutfahr's
5 performance (A.R.S. §§ 11-664(B); *see also* -251(10)), and suspending or removing her from
6 office for failure to perform her statutory duties and for engaging in illegal, wrongful and harmful
7 conduct (A.R.S. §§ 11-664(A), -253(A)). *See also* A.R.S. § 11-491, *et seq.* The harm suffered by
8 the State, Auditor General, and the taxpayers whose interests the State represents is the risk that
9 such statutes sought to protect against.

10 174. Pursuant to public policy and their special relationship with the County, its Board
11 and the individual Board members, the State, Auditor General, and the taxpayers whose interests
12 the State represents were entitled to rely on the accuracy and completeness of the Treasurer's
13 Reports, cash reconciliation reports, and other reports and information provided by the Treasurer's
14 Office, County officials, and the County's consultant to the Auditor General as the basis for its
15 audits, which reports and information the Board and its members, and therefore the County, had
16 a duty to ensure Gutfahr prepared faithfully, accurately, completely and truthfully in accordance
17 with her duties as treasurer. A.R.S. §§ 11-251(1), -491, *et seq.*, -501(A), (C).

18 175. Pursuant to public policy and their special relationship, the State, Auditor General,
19 and the taxpayers whose interests the State represents were entitled to rely on the County, the
20 Board, as the governing body of the County, and the individual Board members to carry out their
21 legal and statutory duties to supervise Gutfahr (A.R.S. § 11-251(1)), which supervisory duties
22 included the County and Board's duties to examine and inspect Gutfahr's books and accounts
23 (A.R.S. §§ 11-251(10), -498), to review Gutfahr's reports (A.R.S. §§ 11-253(A), -495(C), -
24 501(A), (C)), approve or deny Gutfahr's budget requests (A.R.S. § 201(A)(6)), to otherwise
25 investigate Gutfahr's performance (A.R.S. §§ 11-664(B), -251(10)), and to suspend or remove her
26 from office for failure to perform her legal and statutory duties, and for her illegal, wrongful,
27 harmful, untruthful, fraudulent, and deceptive actions as described in the foregoing allegations
28 (A.R.S. §§ 11-664(A), -253(A)). The County and its Board and individual Board members failed

1 to carry out the foregoing duties, which constituted negligent conduct.

2 176. As the governing body of the County, the Board, the individual Board members,
3 and by extension the County itself, had a duty to take necessary measures to prevent tortious
4 conduct by Gutfahr or the other County officials (as defined herein) charged with assessing,
5 collecting, safekeeping, managing, or disbursing the public revenues. A.R.S. § 11-251(1). The
6 County and its individual Board members failed to take the required measures, which constituted
7 negligent conduct.

8 177. As the governing body of the County, the Board, the individual Board members,
9 and by extension the County itself, had a duty and/or assumed a duty to make accurate and
10 complete representations in, and otherwise comply with the terms of, the Agreements. The
11 County, its employees and agents, and the individual Board members failed to perform these
12 duties as described in the foregoing allegations, which constituted negligent conduct.

13 178. Pursuant to public policy and their special relationship, the State, Auditor General,
14 and the taxpayers whose interests the State represents were entitled to rely on the representations
15 made, and performance of the duties created or assumed, by the County, County officials, and/or
16 the Board in or through the Agreements.

17 179. The representations made and duties assumed by the County, County officials,
18 and/or the Board and its members in the Agreements—which the State, Auditor General, and
19 taxpayers were entitled to rely upon—include, but are not limited to, representations that the
20 County, County officials, and/or the Board, as the governing body for the County, had: (i)
21 reviewed and ensured the accuracy of the County’s financial statements; (ii) prepared and fairly
22 presented the County’s financial statements in accordance with U.S. generally accepted
23 accounting principles; (iii) fairly and accurately presented the financial position of the County in
24 its financial statements; (iv) designed, implemented, and maintained internal controls relevant to
25 preparing and fairly presenting the County’s financial statements free from material misstatement
26 (whether due to fraud or error); (v) designed, implemented, and maintained internal controls to
27 prevent and detect fraud; (vi) corrected material misstatements in the financial statements; and
28 (vii) safeguarded the Public Funds.

1 180. As the governing body of the County, the Board, the individual Board members,
2 and by extension the County itself, breached their duty and failed to use reasonable care,
3 including, but not limited to, by failing to supervise Gutfahr and failing to supervise the other
4 County officials whose conduct resulted in, contributed to, facilitated, or failed to prevent or detect
5 Gutfahr's wrongful and illegal conduct, failing to ensure that Gutfahr faithfully, accurately,
6 completely, and truthfully performed her statutory duties, failing to examine and inspect Gutfahr's
7 books and accounts, failing to require submission of and/or review of Gutfahr's statutorily-
8 required reports connected with the performance of her duties and/or the auditing process, failing
9 to ensure the accuracy and completeness of Gutfahr's reports (including but not limited to
10 Gutfahr's Treasurer's Reports and cash reconciliation reports), failing to ensure the financial
11 statements or other reports provided by the Treasurer's Office, County officials, and the County's
12 consultant to the Auditor General for its annual audits were free from material misstatements,
13 failing to address the audit recommendations of the Auditor General in its annual audit reports
14 (e.g., failing to ensure that an adequate accounting system and internal control policies and
15 procedures were implemented, including those necessary to prevent and detect fraud), failing to
16 investigate Gutfahr's wrongful and illegal conduct, and otherwise failing to detect Gutfahr's
17 illegal or wrongful acts and to suspend or remove Gutfahr from office, or take other corrective
18 actions that would have prevented or mitigated harms caused by Gutfahr.

19 181. It was foreseeable that the harm suffered by the State and its taxpayers would result
20 from the acts or omissions of the County, County officials, and the Board and individual Board
21 members constituting negligent conduct.

22 182. The acts or omissions of the Board as the governing body of the County, and by
23 extension the County itself, were not only negligent but grossly negligent. Given the opportunities
24 the County and its Board had to review and investigate the financial records of the County, to
25 assess and investigate the activities of Gutfahr or those operating under her supervision, to comply
26 with recommendations of the Auditor General in connection with the annual audits of the County
27 Treasurer, and to supervise and investigate the compliance by all County officials with their
28 responsibilities for protection, proper accounting for, and proper use of public funds, the

1 negligence described herein on the part of the County, the Board and the individual Board
2 members constitutes gross negligence.

3 183. The negligence and/or gross negligence of the Board as the governing body of the
4 County, and by extension the County itself, set forth in detail above have directly and proximately
5 caused the State harm, including damages in an amount to be proven at trial. Therefore, the State
6 is entitled to recover from the County, its Board and the individual Board members, its
7 compensatory, actual, incidental, consequential and other damages, including those arising from
8 or related to its right to indemnification and contribution from the County, the Board or the
9 individual Board members

10 **COUNT II**
11 **NEGLIGENT SUPERVISION**

12 **(The Board of Supervisors, The Board of Supervisors Members—John Maynard, Rudy**
13 **Molera, Manuel Ruiz, Bruce Bracker, Luis Carlos Davis, John Fanning)**

14 184. The State and Auditor General hereby replead and incorporate by reference all of
15 the above allegations as though fully set forth herein.

16 185. The County “is a body politic and corporate, possessing all the powers expressly
17 provided in the constitution or laws of this state and such powers as are necessarily implied
18 therefrom.” A.R.S. § 11-202(A).

19 186. The powers of the County are “exercised only by the board of supervisors or by
20 agents and officers acting under its authority and authority of law.” A.R.S. § 11-201(A)(1)-(6).

21 187. As the governing body of the County, the Board, the members of the Board, and by
22 extension the County itself, has a duty to “[d]o and perform all other acts and things necessary to
23 the full discharge of its duties as the legislative authority of the county government.” A.R.S. § 11-
24 251(30).

25 188. Gutfahr was an officer of the County charged with assessing, collecting,
26 safekeeping, managing and/or disbursing public revenues. A.R.S. §§ 11-401(A)(3), -491, *et seq.*

27 189. Gutfahr’s statutory duties included, but were not limited to, the duty to “keep all
28 money belonging to the state, or to the county, in [her] possession until disbursed according to
law” and “not place [money belonging to the state or county] in the possession of any person to

1 be used for any purpose, or lend, or in any manner use, or permit any person to use, such money
2 except as provided by law” (A.R.S. § 11-491), “apportion and apply [all public monies] to the
3 several special and general funds as provided by law” (A.R.S. § 11-492), “[r]eceive all monies of
4 the county, and other monies directed by law to be paid to the county treasurer” (A.R.S. § 11-
5 493(1)), “safely keep the monies and apply and pay the monies out, rendering account thereof as
6 required by law” (A.R.S. § 11-493(1)), “[k]eep an account of the receipt and expenditure of the
7 monies [paid to the county treasurer]” (A.R.S. § 11-493(2)), “[k]eep the county treasurer’s books
8 or electronic books so that the amount received and paid out on account of separate funds or
9 specific appropriations are exhibited in separate and distinct accounts, and the whole receipts and
10 expenditures shown in one general or cash account” (A.R.S. § 11-493(3)), “[d]isburse the county
11 monies” as authorized by the Board or as otherwise authorized by law” (A.R.S. § 11-493(4)),
12 “deposit all paid warrants issued by the board of supervisors with the clerk of the board” (A.R.S.
13 § 11-501(B)), and transmit “money in the county treasury belonging to the state or collected for
14 it” to the state treasury as provided by law (A.R.S. § 11-502). *See* A.R.S. § 11-491, *et seq.*

15 190. As the governing body of the County, the Board, the individual Board members,
16 and by extension the County itself, had a duty to ensure Gutfahr complied with her duties as
17 treasurer under A.R.S. § 11-491, *et seq.*

18 191. As the governing body of the County, the Board, the individual Board members,
19 and by extension the County itself, had a duty to supervise County employees, officials, agents
20 and contractors, including but not limited to, the County Managers, Deputy County Managers, the
21 Chief Financial Officer, the Treasurer, the Chief Deputy Treasurer, the Senior Secretary, and the
22 Tax Clerks (all of whom are collectively referred to hereafter as County “officials”), and to ensure
23 that all such officials complied with their legal obligations, responsibilities and duties, as well as
24 any and all job responsibilities or duties assigned to them.

25 192. Gutfahr committed a series of wrongful and tortious acts, including as set forth in
26 the allegations above.

27 193. Other County officials, including without limitation Acuna, Chavez, St. John,
28 Valdez and Seto, committed wrongful and tortious acts as set forth herein.

1 194. As the governing body of the County, the Board, the individual Board members,
2 and by extension the County itself, had duties to “[s]upervise the official conduct of all county
3 officers . . . charged with assessing, collecting, safekeeping, managing or disbursing the public
4 revenues,” “see that the officers faithfully perform their duties,” and “when necessary, require the
5 officers to . . . make reports and present their books and accounts for inspection.” A.R.S. § 11-
6 251(1); *see also* A.R.S. § 11-253(A).

7 195. As the governing body of the County, the Board, the individual Board members,
8 and by extension the County itself, knew or should have known that Gutfahr had a duty to “report
9 accounts of collection, custody and disbursement of public revenue to the county board of
10 supervisors on the fifteenth day of each month,” which reports were to include “the amount of
11 monies or other property received, the sources from which the monies or property derived, the
12 amount of payments or disbursements and to whom, with the amount remaining on hand,” and to
13 “make a full report to the board annually.” A.R.S. § 11-501(A), (C).

14 196. The County and the Board and its members knew or should have known that the
15 State, Auditor General, and taxpayers relied on the County and the Board, as the governing body
16 of the County, to review and ensure the accuracy and completeness of the reports or financial
17 statements that the Treasurer’s Office, County officials, and the County’s consultant provided to
18 the Auditor General for its annual audits.

19 197. Upon information and belief, the County, through its Board members, approved
20 Gutfahr’s cash reconciliation reports during their meetings without reviewing them. The County’s
21 conduct, through the actions of its Board members constituted a violation of the duties outlined
22 above and negligent failure to supervise Treasurer Gutfahr and her department, as well as a
23 negligent failure to supervise the officials, officers, employees, agents, and contractors of the
24 County whose conduct or violations of duties, as outlined herein, allowed, facilitated, caused,
25 contributed to, failed to detect or prevent, or failed to remedy the wrongful, illegal, false,
26 fraudulent, inaccurate or misleading conduct of Gutfahr, including without limitation her
27 misappropriation and unlawful use of public funds and her use of inaccurate or false documents
28 or reports to perpetuate her scheme to misappropriate public funds.

1 198. Upon information and belief, the County through its Board members failed to
2 receive and/or review Gutfahr's Treasurer's Reports. The County's, Board's, and individual
3 Board members' conduct constituted a violation of the duties outlined above and negligent failure
4 to supervise Treasurer Gutfahr and her department, as well as a negligent failure to supervise the
5 officials, officers, employees, agents, and contractors of the County whose conduct or violations
6 of duties, as outlined herein, allowed, facilitated, caused, contributed to, failed to detect or prevent,
7 or failed to remedy the wrongful, illegal, false, fraudulent, inaccurate or misleading conduct of
8 Gutfahr, including without limitation her misappropriation and unlawful use of public funds and
9 her use of inaccurate or false documents or reports to perpetuate her scheme to misappropriate
10 public funds.

11 199. As the governing body of the County, the Board, the individual Board members,
12 and by extension the County itself, had a duty to "[e]xamine and exhibit the accounts and
13 performance of all officers having the care, management, collection or disbursement of monies
14 belonging to the county or appropriated by law or otherwise for the use and benefit of the county,"
15 which included a duty to review the monthly and annual reports Gutfahr was required by statute
16 to provide. A.R.S. § 11-251(10); *see also* A.R.S. §§ 11-498, -501(A), (C). The County's, Board's
17 and individual Board members' conduct constituted a violation of these duties through the actions
18 and omissions outlined above and constituted negligent failure to supervise Treasurer Gutfahr and
19 her department, as well as a negligent failure to supervise the officials, officers, employees, agents,
20 and contractors of the County whose conduct or violations of duties, as outlined herein, allowed,
21 facilitated, caused, contributed to, failed to detect or prevent, or failed to remedy the wrongful,
22 illegal, false, fraudulent, inaccurate or misleading conduct of Gutfahr, including without limitation
23 her misappropriation and unlawful use of public funds and her use of inaccurate or false
24 documents or reports to perpetuate her scheme to misappropriate public funds.

25 200. As the governing body of the County, the Board, the individual Board members,
26 and by extension the County itself, had a duty to "[d]etermine the budgets of all elected and
27 appointed county officers enumerated under section 11-401." A.R.S. § 11-201(A)(6). The Board
28 members' conduct in failing to examine or investigate the financial records or transactions of

1 Gutfahr and the department and County activities overseen by her constituted a violation by the
2 County and its Board members of the duties outlined above and negligent failure to supervise
3 Treasurer Gutfahr and her department, as well as a negligent failure to supervise the officials,
4 officers, employees, agents, and contractors of the County whose conduct or violations of duties,
5 as outlined herein, allowed, facilitated, caused, contributed to, failed to detect or prevent, or failed
6 to remedy the wrongful, illegal, false, fraudulent, inaccurate or misleading conduct of Gutfahr,
7 including without limitation her misappropriation and unlawful use of public funds and her use of
8 inaccurate or false documents or reports to perpetuate her scheme to misappropriate public funds.

9 201. As the governing body of the County, the Board, the individual Board members,
10 and by extension the County itself, had the duty to “suspend the . . . county treasurer for defalcation
11 or neglect of duty” in connection with her inaccurate, incomplete, false and misleading reporting,
12 her misappropriation of public funds, and her other wrongful conduct as outlined above, using the
13 Board’s authorities under A.R.S. § 11-664(A). The County’s, Board’s and individual Board
14 members’ conduct, as outlined herein, constituted a violation by the County and its Board
15 members of the duties outlined above and negligent failure to supervise Treasurer Gutfahr and her
16 department, as well as a negligent failure to supervise the officials, officers, employees, agents,
17 and contractors of the County whose conduct or violations of duties, as outlined herein, allowed,
18 facilitated, caused, contributed to, failed to detect or prevent, or failed to remedy the wrongful,
19 illegal, false, fraudulent, inaccurate or misleading conduct of Gutfahr, including without limitation
20 her misappropriation and unlawful use of public funds and her use of inaccurate or false
21 documents or reports to perpetuate her scheme to misappropriate public funds.

22 202. As the governing body of the County, the Board, the individual Board members,
23 and by extension the County itself, had the duty, prior to suspending Gutfahr, to conduct a full
24 and accurate investigation into Gutfahr’s activities that would have uncovered, exposed, and
25 prevented her wrongful and deceptive accounting and reporting practices, and her wrongful and
26 illegal diversion of public funds, using the authorities provided to the County and its Board by
27 law. Board members’ failure to do so constituted a violation of the duties outlined above and
28 negligent failure to supervise Treasurer Gutfahr and her department, as well as a negligent failure

1 to supervise the officials, officers, employees, agents, and contractors of the County whose
2 conduct or violations of duties, as outlined herein, allowed, facilitated, caused, contributed to,
3 failed to detect or prevent, or failed to remedy the wrongful, illegal, false, fraudulent, inaccurate
4 or misleading conduct of Gutfahr, including without limitation her misappropriation and unlawful
5 use of public funds and her use of inaccurate or false documents or reports to perpetuate her
6 scheme to misappropriate public funds.

7 203. As the governing body of the County, the Board, the individual Board members,
8 and by extension the County itself, had the duty to utilize their authority, including without
9 limitation that authority provided under A.R.S. § 11-253(A), and remove Gutfahr from office and
10 authority in connection with her illegal, unlawful, wrongful, fraudulent, deceptive, misleading,
11 and otherwise wrongful conduct as outlined above, and to remove any other County officials,
12 officers, employees, agents or contractors from office or official authority or responsibility in
13 connection with any negligence or other wrongful conduct and failures of duties on their part that
14 allowed, contributed to, caused, facilitated, contributed to, or failed to detect, expose or prevent
15 the losses caused by Gutfahr's misappropriation of funds or false, misleading or incomplete
16 reporting of financial information or transactions. The County and its Board members' conduct
17 constituted a violation of this duty and negligent failure to supervise Treasurer Gutfahr and her
18 department, as well as a negligent failure to supervise the officials, officers, employees, agents,
19 and contractors of the County whose conduct or violations of duties, as outlined herein, allowed,
20 facilitated, caused, contributed to, failed to detect or prevent, or failed to remedy the wrongful,
21 illegal, false, fraudulent, inaccurate or misleading conduct of Gutfahr, including without limitation
22 her misappropriation and unlawful use of public funds and her use of inaccurate or false
23 documents or reports to perpetuate her scheme to misappropriate public funds.

24 204. As the governing body of the County, the Board, the individual Board members,
25 and by extension the County itself, had a duty to use reasonable care when carrying out its
26 supervision of Gutfahr and all other County officials to ensure that Gutfahr faithfully, completely,
27 accurately and truthfully performed her duties as treasurer, including, but not limited to, those
28 duties pursuant to A.R.S. § 11-491, *et seq.* The Board members' conduct as outlined above

1 constituted a violation of this duty and a negligent failure to supervise Treasurer Gutfahr and her
2 department, as well as a negligent failure to supervise the officials, officers, employees, agents,
3 and contractors of the County whose conduct or violations of duties, as outlined herein, allowed,
4 facilitated, caused, contributed to, failed to detect or prevent, or failed to remedy the wrongful,
5 illegal, false, fraudulent, inaccurate or misleading conduct of Gutfahr, including without limitation
6 her misappropriation and unlawful use of public funds and her use of inaccurate or false
7 documents or reports to perpetuate her scheme to misappropriate public funds.

8 205. On information and belief, when Gutfahr was elected County Treasurer, a chief
9 deputy treasurer was already in place, and Gutfahr initially allowed this individual to continue in
10 the position.

11 206. Also, on information and belief, Gutfahr appointed a new chief deputy treasurer,
12 Acuna, who was subsequently approved for the position under a waiver to a hiring freeze by the
13 Board of Supervisors in February 2014.

14 207. On information and belief, Acuna was not sufficiently qualified for the
15 responsibilities of the chief deputy treasurer, and Acuna understood that Gutfahr did not like that
16 the previous chief deputy treasurer wanted to be in control of all the processes in the department.

17 208. On information and belief, the County, through its Board members and other
18 employees and officials had the opportunity to take, but failed to take, basic supervisory actions
19 that would have uncovered or recognized facts, including the foregoing facts, that indicated that
20 Gutfahr was taking actions and exercising through employee communication and interactions
21 steps to ensure that her fraudulent scheme to illegally misappropriate public funds from the
22 County accounts and wrongfully cover-up that activity would be facilitated and not exposed.

23 209. As the governing body of the County, the Board, the individual Board members,
24 and by extension the County itself, knew or should have known that Gutfahr and Acuna were
25 susceptible to misconduct and were not competent to fulfill their statutory duties as Treasurer and
26 Chief Deputy Treasurer. The Board, and by extension the County itself, knew or should have
27 known that Gutfahr failed to submit the statutorily required reports to the Board for review and/or
28 that Gutfahr had falsified her reports. On information and belief, the County, through its Board

1 and otherwise, had the opportunity and authority to determine that Acuna had behaved
2 inappropriately and wrongfully and aided or facilitated the wrongful conduct of Gutfahr, and, on
3 information and belief, that other County officials, including without limitation, the Board
4 members, the County Managers, Deputy County Managers, the Chief Financial Officer, the
5 Treasurer, the Chief Deputy Treasurer, the Senior Secretary, and the Tax Clerks had failed to
6 perform their duties or responsibilities in connection with protection of, accounting for, reporting
7 about, approval of, or monitoring of public funds received, held, disbursed, paid, distributed,
8 invested or managed by the County, and that such failures or violations of duties had resulted in,
9 facilitated, allowed or aided the misappropriation of public funds by Gutfahr, the false reporting
10 by Gutfahr regarding public funds, or the cover-up by Gutfahr of her wrongful and illegal conduct.
11 The Board members' actions allowing Treasurer Gutfahr and Deputy Treasurer Acuna, as well as
12 the other County officials to violate their obligations without detection or consequence constituted
13 a negligent failure to supervise all such persons.

14 210. As the governing body of the County, the Board, the individual Board members,
15 and by extension the County itself, had a duty to take corrective action on the Auditor General's
16 audit findings in each of its annual audit reports and implement a corrective action plan.

17 211. As the governing body of the County, the Board, the individual Board members,
18 and by extension the County itself, had a duty to implement internal controls necessary to prevent
19 and detect fraud. The Board members' actions failing to create, implement and maintain such
20 controls allowed Treasurer Gutfahr to violate her duties and obligations, to misappropriate and
21 misuse public funds, and to falsely report and cover-up her wrongful and illegal conduct without
22 detection or consequence, which constituted negligent failure to supervise Gutfahr and the other
23 County officials whose own negligence or misconduct is alleged herein.

24 212. As the governing body of the County, the Board, the individual Board members,
25 and by extension the County itself, had a duty to correct its inadequate and outdated accounting
26 system that lacked sufficient internal controls. The Board members' failure to do so constituted
27 and contributed to their negligent failure to supervise Elizabeth Gutfahr, and their negligent failure
28 to supervise the other County officials whose own negligence or misconduct is alleged herein.

1 213. As a matter of public policy and based on their special relationship, the County and
2 the Board and its individual Board members owed the State, Auditor General, and the taxpayers
3 whose interests the State represents a duty to use reasonable care to avoid injury to the State,
4 Auditor General, and the taxpayers. The Board members' failure to use reasonable care and
5 supervision over Elizabeth Gutfahr or the other County officials as outlined above resulted in the
6 failure to detect, deter, prevent, end and mitigate Gutfahr's theft of Public Funds and constituted
7 negligent failure to supervise Gutfahr and the other County officials.

8 214. The State, Auditor General, and taxpayers are within the class of persons to be
9 protected by A.R.S. § 11-251(1) requiring the County and the Board, as the governing body of the
10 County, to supervise Gutfahr and the other County officials outlined above, which supervisory
11 duties included the duty to examine and inspect Gutfahr's books and accounts (A.R.S. §§ 11-
12 251(10), -498), receive and review Gutfahr's statutorily-required reports connected with the
13 performance of her duties and/or the auditing process (A.R.S. §§ 11-253(A), -495(C), -501(A),
14 (C)), determine Gutfahr's budget (A.R.S. § 201(A)(6)), otherwise investigate Gutfahr's
15 performance or the other County officials performance (A.R.S. § 11-664(B); *see also* -251(10)),
16 and suspend or remove Gutfahr or other County officials from office for failure to perform duties
17 or responsibilities (A.R.S. §§ 11-664(A), -253(A)). *See also* A.R.S. § 11-491, *et seq.* The harm
18 suffered by the State, Auditor General, and the taxpayers whose interests the State represents is
19 the risk that such statutes sought to protect against.

20 215. Pursuant to public policy and their special relationship, the State, Auditor General,
21 and the taxpayers whose interests the State represents were entitled to rely on the accuracy and
22 completeness of the Treasurer's Reports, cash reconciliation reports, and other reports and
23 information provided by the Treasurer's Office, County officials, and the County's consultant to
24 the Auditor General as the basis for its audits, which reports and information the Board and County
25 had a duty to ensure Gutfahr prepared in accordance with her duties as treasurer, and that the
26 County's consultant, Ms. Seto, prepared and presented accurately and in accordance with state
27 law. A.R.S. §§ 11-251(1), -491, *et seq.*, -501(A), (C).

28 216. Pursuant to public policy and their special relationship, the State, Auditor General,

1 and the taxpayers whose interests the State represents were entitled to rely on the County and the
2 Board, as the governing body of the County, to carry out their statutory duties to supervise Gutfahr
3 (A.R.S. § 11-251(1)) and other County officials outlined above, which supervisory duties included
4 the County and Board's duties to examine and inspect Gutfahr's books and accounts (A.R.S. §§
5 11-251(10), -498), review Gutfahr's reports (A.R.S. §§ 11-253(A), -495(C), -501(A), (C)),
6 approve or deny Gutfahr's budget requests (A.R.S. § 201(A)(6)), otherwise investigate Gutfahr's
7 performance and the performance of the other County officials outlined above (A.R.S. §§ 11-
8 664(B), -251(10)), and suspend or remove Gutfahr or other County officials failing to perform
9 their duties or responsibilities from office (A.R.S. §§ 11-664(A), -253(A)).

10 217. As the governing body of the County, the Board, the individual Board members,
11 and by extension the County itself, had a duty to take necessary measures to prevent tortious
12 conduct by Gutfahr or other County officials such as those outlined above charged with assessing,
13 collecting, safekeeping, managing, reporting on, accounting for, or disbursing the public revenues.
14 A.R.S. § 11-251(1). The Board members' failure to comply with that duty constitutes negligent
15 failure to supervise Elizabeth Gutfahr and the other County officials who failed to perform their
16 duties to ensure the protection, accurate reporting of, and exposure of dangers to or misuses of the
17 Public Funds as outlined herein.

18 218. As the governing body of the County, the Board, the individual Board members,
19 and by extension the County itself, had a duty and/or assumed a duty to make accurate and
20 complete representations in, and otherwise comply with the terms of, the Agreements. The Board
21 members' failure to comply with that duty constitutes negligent and wrongful conduct injurious
22 to the State and Auditor General.

23 219. Pursuant to public policy and their special relationship, the State, Auditor General,
24 and the taxpayers whose interests the State represents were entitled to rely on the representations
25 made, and the duties assumed, by the County, County officials, and/or the Board in the
26 Agreements.

27 220. The representations made and duties assumed by the County and/or the Board in the
28 Agreements—which the State, Auditor General, and taxpayers were entitled to rely upon—

1 include, but are not limited to, representations that the County and/or the Board, as the governing
2 body for the County, had (i) reviewed and ensured the accuracy of the County's financial
3 statements; (ii) prepared and fairly presented the County's financial statements in accordance with
4 U.S. generally accepted accounting principles; (iii) fairly and accurately presented the financial
5 position of the County in its financial statements; (iv) designed, implemented, and maintained
6 internal controls relevant to preparing and fairly presenting the County's financial statements free
7 from material misstatement (whether due to fraud or error); (v) designed, implemented, and
8 maintained internal controls to prevent and detect fraud; (vi) corrected material misstatements in
9 the financial statements; and (vii) safeguarded the Public Funds.

10 221. As the governing body of the County, the Board, the individual Board members,
11 and by extension the County itself, breached its duty and failed to use reasonable care, including
12 but not limited to, by failing to supervise Gutfahr, failing to ensure that Gutfahr faithfully
13 performed her statutory duties, failing to examine and inspect Gutfahr's books and accounts, fai
14 ling to require submission of and/or review Gutfahr's statutorily-required reports connected with
15 the performance of her duties and/or the auditing process, failing to ensure the accuracy and
16 completeness of Gutfahr's reports (including but not limited to Gutfahr's Treasurer's Reports and
17 cash reconciliation reports), failing to ensure the financial statements or other reports provided by
18 the Treasurer's Office, County officials, and the County's consultant to the Auditor General for
19 its annual audits were free from material misstatements, failing to address the audit
20 recommendations of the Auditor General in its annual audit reports (e.g., failing to ensure that an
21 adequate accounting system and internal control policies and procedures were implemented,
22 including those necessary to prevent and detect fraud), failing to investigate Gutfahr's
23 performance, and otherwise failing to detect Gutfahr's wrongful acts and to suspend or remove
24 Gutfahr from office.

25 222. As the governing body of the County, the Board, and by extension the County itself,
26 had a reason, an opportunity, and the authority to act to prevent harm to the State and its taxpayers
27 by complying with their duties as outlined immediately above and otherwise in this pleading.

28 223. The Board, and by extension the County, failed to adequately discharge and perform

1 its duty to supervise Gutfahr and the other County officials, and, thereby, caused harm to the State
2 and its taxpayers.

3 224. It was foreseeable that the harm suffered by the State and its taxpayers would result
4 from the acts or omissions of the County, County officials, and the Board.

5 225. The acts or omissions of the Board as the governing body of the County, the
6 individual Board members, and by extension the County itself, were not only negligent but grossly
7 negligent. Given the opportunities the County and its Board members had to review and
8 investigate the financial records of the County, to assess and investigate the activities of Gutfahr
9 or those operating under her supervision, to comply with recommendations of the Auditor General
10 in connection with the annual audits of the County Treasurer, and to supervise and investigate the
11 compliance by all County officials with their responsibilities for protection, proper accounting
12 for, and proper use of public funds, the negligence described herein on the part of the County, the
13 Board and the individual Board members constitutes gross negligence.

14 226. The negligence and/or gross negligence of the Board and individual Board members
15 as the governing body of the County, and by extension the County itself, set forth in detail above
16 have directly and proximately caused the State harm, including damages in an amount to be
17 proven at trial. Therefore, the State is entitled to recover from the County, its Board and the
18 individual Board members, its compensatory, actual, incidental, consequential and other damages,
19 including those arising from or related to its right to indemnification and contribution from the
20 County, the Board or the individual Board members.

21 **COUNT III**
22 **NEGLIGENCE PER SE**

23 **(The Board of Supervisors, The Board of Supervisors Members—John Maynard, Rudy**
24 **Molera, Manuel Ruiz, Bruce Bracker, Luis Carlos Davis, John Fanning)**

25 227. The State and Auditor General hereby replead and incorporate by reference all of
26 the above allegations as though fully set forth herein.

27 228. The County “is a body politic and corporate, possessing all the powers expressly
28 provided in the constitution or laws of this state and such powers as are necessarily implied
therefrom.” A.R.S. § 11-202(A).

1850 N. Central Avenue, Suite 2010
Phoenix, AZ 85004
Telephone 602-595-7800

1 229. The powers of the County are “exercised only by the board of supervisors or by
2 agents and officers acting under its authority and authority of law.” A.R.S. § 11-201(A)(1)-(6).

3 230. As the governing body of the County, the Board has a duty to “[d]o and perform all
4 other acts and things necessary to the full discharge of its duties as the legislative authority of the
5 county government.” A.R.S. § 11-251(30).

6 231. Gutfahr was an officer of the County charged with assessing, collecting,
7 safekeeping, managing and/or disbursing public revenues. A.R.S. §§ 11-401(A)(3), -491, *et seq.*

8 232. Gutfahr’s statutory duties included, but were not limited to, the duty to “keep all
9 money belonging to the state, or to the county, in [her] possession until disbursed according to
10 law” and “not place [money belonging to the state or county] in the possession of any person to
11 be used for any purpose, or lend, or in any manner use, or permit any person to use, such money
12 except as provided by law” (A.R.S. § 11-491), “apportion and apply [all public monies] to the
13 several special and general funds as provided by law” (A.R.S. § 11-492), “[r]eceive all monies of
14 the county, and other monies directed by law to be paid to the county treasurer” (A.R.S. § 11-
15 493(1)), “safely keep the monies and apply and pay the monies out, rendering account thereof as
16 required by law” (A.R.S. § 11-493(1)), “[k]eep an account of the receipt and expenditure of the
17 monies [paid to the county treasurer]” (A.R.S. § 11-493(2)), “[k]eep the county treasurer’s books
18 or electronic books so that the amount received and paid out on account of separate funds or
19 specific appropriations are exhibited in separate and distinct accounts, and the whole receipts and
20 expenditures shown in one general or cash account” (A.R.S. § 11-493(3)), “[d]isburse the county
21 monies” as authorized by the Board or as otherwise authorized by law” (A.R.S. § 11-493(4)),
22 “deposit all paid warrants issued by the board of supervisors with the clerk of the board” (A.R.S.
23 § 11-501(B)), and transmit “money in the county treasury belonging to the state or collected for
24 it” to the state treasury as provided by law (A.R.S. § 11-502). *See* A.R.S. §§ 11-491, *et seq.*

25 233. As the governing body of the County, the Board, and by extension the County itself,
26 had a duty to ensure Gutfahr complied with her duties as treasurer under A.R.S. § 11-491, *et seq.*,
27 and that all other County officials (as defined above) complied with their respective duties and
28 responsibilities that involved or contributed to the protection, preservation, and accurate

1 accounting for all Public Funds, as well as to the detection of fraud or misappropriation in
2 connection with any Public Funds.

3 234. As the governing body of the County, the Board, the individual Board members,
4 and by extension the County itself, had a duty to “[s]upervise the official conduct of all county
5 officers . . . charged with assessing, collecting, safekeeping, managing or disbursing the public
6 revenues,” “see that the officers faithfully perform their duties,” and “when necessary, require the
7 officers to . . . make reports and present their books and accounts for inspection.” A.R.S. § 11-
8 251(1); *see also* A.R.S. § 11-253(A).

9 235. As the governing body of the County, the Board, the individual Board members,
10 and by extension the County itself, knew or should have known that Gutfahr had a duty to “report
11 accounts of collection, custody and disbursement of public revenue to the county board of
12 supervisors on the fifteenth day of each month,” which reports were to include “the amount of
13 monies or other property received, the sources from which the monies or property derived, the
14 amount of payments or disbursements and to whom, with the amount remaining on hand,” and to
15 “make a full report to the board annually.” A.R.S. § 11-501(A), (C).

16 236. The County, Board and the individual Board members knew or should have known
17 that the State, Auditor General, and taxpayers relied on the County and the Board, as the governing
18 body of the County, to review and ensure the accuracy and completeness of the reports or financial
19 statements that the Treasurer’s Office, County officials, and the County’s consultant provided to
20 the Auditor General for its annual audits.

21 237. Upon information and belief, the Board approved Gutfahr’s cash reconciliation
22 reports during their meetings without reviewing them.

23 238. Upon information and belief, the Board failed to receive and/or review Gutfahr’s
24 Treasurer’s Reports.

25 239. As the governing body of the County, the Board, the individual Board members,
26 and by extension the County itself, had a duty to “[e]xamine and exhibit the accounts and
27 performance of all officers having the care, management, collection or disbursement of monies
28 belonging to the county or appropriated by law or otherwise for the use and benefit of the county,”

1 which included a duty to review the monthly and annual reports Gutfahr was required by statute
2 to provide. A.R.S. § 11-251(10); *see also* A.R.S. §§ 11-498, -501(A), (C).

3 240. As the governing body of the County, the Board, the individual Board members,
4 and by extension the County itself, had a duty to “[d]etermine the budgets of all elected and
5 appointed county officers enumerated under section 11-401.” A.R.S. § 11-201(A)(6).

6 241. As the governing body of the County, the Board, the individual Board members,
7 and by extension the County itself, had the duty to “suspend the . . . county treasurer for defalcation
8 or neglect of duty.” A.R.S. § 11-664(A).

9 242. As the governing body of the County, the Board, the individual Board members,
10 and by extension the County itself, had the duty and authority to conduct an investigation into
11 Gutfahr’s activities and the performance of all other County officials whose conduct or failures to
12 comply with their duties or responsibilities may have contributed to, facilitated, allowed or failed
13 to detect Gutfahr’s wrongful or illegal conduct. A.R.S. § 11-664(B).

14 243. As the governing body of the County, the Board, the individual Board members and
15 by extension the County itself, had the duty to remove Gutfahr and any other County official
16 violating their duties or responsibilities from office. A.R.S. § 11-253(A).

17 244. As the governing body of the County, the Board, the individual Board members,
18 and by extension the County itself, had a duty to use reasonable care when carrying out its
19 supervision of Gutfahr and all other County officials to ensure that Gutfahr and such other officials
20 faithfully, accurately and completely performed all of their duties, including but not limited to,
21 those duties pursuant to A.R.S. § 11-491, *et seq.*

22 245. As the governing body of the County, the Board, the individual Board members,
23 and by extension the County itself, had a duty to take corrective action on the Auditor General’s
24 audit findings in each of its annual audit reports and implement a corrective action plan.

25 246. As the governing body of the County, the Board, the individual Board members,
26 and by extension the County itself, had a duty to implement internal controls necessary to prevent
27 and detect fraud and misuse or misreporting of public funds, including to prevent and detect the
28 type of wrongful and illegal conduct Gutfahr participated in.

1 247. As the governing body of the County, the Board, the individual Board members,
2 and by extension the County itself, had a duty to correct the County's inadequate and outdated
3 accounting system that lacked sufficient internal controls.

4 248. As a matter of public policy and based on their special relationship, the County and
5 the Board and its individual Board members owed the State, Auditor General, and the taxpayers
6 whose interests the State represents a duty to use reasonable care to avoid injury to the State,
7 Auditor General, and the taxpayers.

8 249. The purpose of A.R.S. § 11-251(1) is to protect a class of persons, which includes
9 the State, Auditor General, and its taxpayers, and the specific interest at issue from the type of
10 harm that occurred and against the particular action that caused the harm.

11 250. The State, Auditor General, and taxpayers are within the class of persons to be
12 protected by A.R.S. § 11-251(1) requiring the County and the Board, as the governing body of the
13 County, to supervise Gutfahr and all other County officials, which supervisory duties included the
14 duty to examine and inspect Gutfahr's books and accounts (A.R.S. §§ 11-251(10), -498), receive
15 and review Gutfahr's statutorily-required reports connected with the performance of her duties
16 and/or the auditing process (A.R.S. §§ 11-253(A), -495(C), -501(A), (C)), determine Gutfahr's
17 budget (A.R.S. § 201(A)(6)), otherwise investigate Gutfahr's performance or the performance of
18 any other County officials as outlined above (A.R.S. § 11-664(B), and suspend or remove Gutfahr
19 or other County officials from office for failure to perform their statutory or other duties or
20 responsibilities (A.R.S. §§ 11-664(A), -253(A)). *See also* A.R.S. § 11-491, *et seq.* The harm
21 suffered by the State, Auditor General, and the taxpayers whose interests the State represents is
22 the risk that such statutes sought to protect against.

23 251. Pursuant to public policy and their special relationship, the State, Auditor General,
24 and the taxpayers whose interests the State represents were entitled to rely on the accuracy and
25 completeness of the Treasurer's Reports, cash reconciliation reports, and other reports and
26 information provided by the Treasurer's Office, County officials, and the County's consultant to
27 the Auditor General as the basis for its audits, which reports and information the Board and County
28 had a duty to ensure Gutfahr, County officials, and the County's consultant prepared in accordance

1850 N. Central Avenue, Suite 2010
Phoenix, AZ 85004
Telephone 602-595-7800

1 with her duties as treasurer. A.R.S. §§ 11-251(1), -491, *et seq.*, -501(A), (C).

2 252. Pursuant to public policy and their special relationship, the State, Auditor General,
3 and the taxpayers whose interests the State represents were entitled to rely on the County and the
4 Board, as the governing body of the County, to carry out its statutory duties to supervise Gutfahr
5 and other County officials as outlined herein (A.R.S. § 11-251(1)), which supervisory duties
6 included the County and Board's duties to examine and inspect Gutfahr's books and accounts
7 (A.R.S. §§ 11-251(10), -498), review Gutfahr's reports (A.R.S. §§ 11-253(A), -495(C), -501(A),
8 (C)), approve or deny Gutfahr's budget requests (A.R.S. § 201(A)(6)), otherwise investigate
9 Gutfahr's performance and the performance of other County officials (A.R.S. §§ 11-664(B), -
10 251(10)), and suspend or remove Gufahr or other County officials from office for failure to
11 perform their statutory or other duties and responsibilities (A.R.S. §§ 11-664(A), -253(A)).

12 253. As the governing body of the County, the Board, the individual Board members,
13 and by extension the County itself, had a duty to take necessary measures to prevent tortious
14 conduct by Gutfahr or others charged with assessing, collecting, safekeeping, managing or
15 disbursing the public revenues. A.R.S. § 11-251(1).

16 254. As the governing body of the County, the Board, the individual Board members,
17 and by extension the County itself, had a duty and/or assumed a duty to make accurate and
18 complete representations in, and otherwise comply with the terms of, the Agreements.

19 255. Pursuant to public policy and their special relationship, the State, Auditor General,
20 and the taxpayers whose interests the State represents were entitled to rely on the representations
21 made, and the duties assumed, by the County, County officials, and/or Board in the Agreements.

22 256. The representations made and duties assumed by the County, County officials,
23 and/or the Board in the Agreements—which the State, Auditor General, and taxpayers were
24 entitled to rely upon— include, but are not limited to, representations that the County, County
25 officials, and/or the Board, as the governing body for the County, had (i) reviewed and ensured
26 the accuracy of the County's financial statements; (ii) prepared and fairly presented the County's
27 financial statements in accordance with U.S. generally accepted accounting principles; (iii) fairly
28 and accurately presented the financial position of the County in its financial statements; (iv)

1 designed, implemented, and maintained internal controls relevant to preparing and fairly
2 presenting the County's financial statements free from material misstatement (whether due to
3 fraud or error); (v) designed, implemented, and maintained internal controls to prevent and detect
4 fraud; (vi) corrected material misstatements in the financial statements; and (vii) safeguarded the
5 Public Funds.

6 257. As the governing body of the County, the Board, the individual Board members,
7 and by extension the County itself, breached their duty and failed to use reasonable care, including
8 but not limited to, by failing to supervise Gutfahr and/or the other County officials whose conduct
9 or violations of their duties or responsibilities contributed to, allowed, facilitated or failed to
10 prevent or detect Gutfahr's wrongful or illegal conduct, failing to ensure that Gutfahr faithfully,
11 accurately and completely performed her statutory duties, failing to examine and inspect Gutfahr's
12 books and accounts, failing to require submission of and/or review Gutfahr's statutorily-required
13 reports connected with the performance of her duties and/or the auditing process, failing to ensure
14 the accuracy and completeness of Gutfahr's reports (including but not limited to Gutfahr's
15 Treasurer's Reports and cash reconciliation reports), failing to ensure the financial statements or
16 other reports provided by the Treasurer's Office, County officials, and the County's consultant to
17 the Auditor General for its annual audits were free from material misstatements, failing to address
18 the audit recommendations of the Auditor General in its annual audit reports (e.g., failing to ensure
19 that an adequate accounting system and internal control policies and procedures were
20 implemented, including those necessary to prevent and detect fraud), failing to investigate
21 Gutfahr's performance and the performance of the other County officials referenced above, and
22 otherwise failing to detect Gutfahr's or other County officials' wrongful acts and to suspend or
23 remove Gutfahr or such other County officials from office.

24 258. It was foreseeable that the harm suffered by the State and its taxpayers would result
25 from the acts or omissions of the County, County officials, and the Board.

26 259. The knowing violation by the Board, as the governing body for the County, and by
27 extension violation by the County itself, of A.R.S. §§ 11-251(1), -251(10), -498, -253(A), -495(C),
28 -501(A), -501(C), -201(A)(6), -664(B), -664(A), -253(A), among other statutes, is the legal and

1 proximate cause of injury to the State, Auditor General, and the taxpayers whose interests the
2 State represents.

3 260. The acts or omissions of the Board, as the governing body of the County, and by
4 extension the County itself, were not only negligent but grossly negligent. Given the opportunities
5 the County and its Board members had to review and investigate the financial records of the
6 County, to assess and investigate the activities of Gutfahr or those operating under her supervision,
7 to comply with recommendations of the Auditor General in connection with the annual audits of
8 the County Treasurer, and to supervise and investigate the compliance by all County officials with
9 their responsibilities for protection, proper accounting for, and proper use of public funds, the
10 negligence described herein on the part of the County, the Board and the individual Board
11 members constitutes gross negligence.

12 261. The negligence per se and/or gross negligence per se of the Board and individual
13 Board members as the governing body of the County, and by extension the County itself, set forth
14 in detail above have directly and proximately caused the State harm, including damages in an
15 amount to be proven at trial. Therefore, the State is entitled to recover from the County, its Board
16 and the individual Board members, its compensatory, actual, incidental, consequential and other
17 damages, including those arising from or related to its right to indemnification and contribution
18 from the County, the Board or the individual Board members

19 **COUNT IV**
20 **UNJUST ENRICHMENT**
21 **(Acuna, Ibarra, Gonzales)**

22 262. The State and the Auditor General hereby replead and incorporate by reference all
23 of the above allegations as though fully set forth herein.

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

28 264. Restitution is an available remedy is an unjust enrichment claim. *See Span v.*

1 *Maricopa Cnty. Treasurer*, 246 Ariz. 222, 227, ¶¶ 15-16 (App. 2019).

2 265. Upon information and belief, Acuna, Ibarra, and Gonzales were all enriched by
3 Gutfahr's theft, including by receiving direct payment of stolen Public Funds or the proceeds
4 thereof and by enjoying, respectively, a vehicle, cell phone, payment of personal bills, an air
5 conditioner, and more that were paid for with stolen Public Funds.

6 266. The State was impoverished as a result of the benefits conferred on Third-arty
7 Defendants Acuna, Ibarra and Gonzales.

8 267. There is no justification for Acuna, Ibarra, and Gonzales' enrichment at the State
9 and Auditor General's expense, or conversely, for the State and the Auditor General's resultant
10 impoverishment. Their enrichment, coming at the expense of public funds, was unjust, unfair, and
11 inequitable.

12 268. The State lacks an adequate remedy at law.

13 269. As a result, the State was damaged in an amount to be determined at trial. Therefore,
14 the State is entitled to recover its damages, including the disgorgement of all unjust benefits
15 obtained by the Third-Party Defendants Acuna, Ibarra and Gonzales, and those arising from its
16 right to indemnification and contribution.

17 **COUNT V**
18 **NEGLIGENCE**
19 **(Acuna, Chavez, St. John, Valdez)**

20 270. The State and the Auditor General hereby replead and incorporate by reference all
21 of the above allegations as though fully set forth herein.

22 271. Upon information and belief, Acuna had a duty to approve or otherwise monitor the
23 Treasurer's bank transactions, including those transactions for which she was given bank
24 credentials as part of a two-step approval process.

25 272. Acuna had a duty to comply with the internal control policies and procedures of the
26 County Treasurer's Office, including by keeping her bank credentials confidential and not sharing
27 her password or token authentication device with the Treasurer.

28 273. Acuna had a duty to accurately record the County Treasurer's Office checking

1 account transactions in the County Treasurer accounting system and to follow-up with the
2 Treasurer about any questionable transactions, including but not limited to Gutfahr's unaccounted
3 for \$225,000.00 transfer that Acuna became aware of and which was never returned to the County
4 Treasurer's Office checking account.

5 274. Upon information and belief, as part of Acuna's responsibility for properly
6 recording checking account transactions, Acuna had a duty to ensure the County checking account
7 entries matched the bank statements.

8 275. Acuna breached her duty by failing to exercise reasonable care in carrying out her
9 duties and responsibilities as Chief Deputy Treasurer, including by failing to protect her password
10 and token authentication device, failing to comply with internal control policies and procedures
11 of the County Treasurer's Office, failing to record all transactions in the County Treasurer's
12 accounting system, failing to ensure the County checking account entries matched the bank
13 statements, and by failing to follow-up with Gutfahr about any questionable transactions,
14 including the unaccounted for \$225,000.00 wire transfer Gutfahr made, which was never returned
15 to the County Treasurer's Office checking account.

16 276. Chavez had a duty to ensure the County accurately represented to the State those
17 facts and its knowledge and findings regarding financial matters to which he attested in the
18 General Representation Letters and Engagement Terms and Conditions statements executed by
19 him during the time period relevant to Gutfahr's misappropriations of public funds, including
20 without limitation, those statements he executed from 2018 through 2023, and Chavez had a
21 further duty to ensure that the County fully complied with the duties and responsibilities attested
22 to and affirmed by him in the General Representation Letters and Engagement Terms and
23 Conditions statements he executed during the time period relevant to Gutfahr's misappropriations
24 of public funds, including without limitation, those Chavez executed from 2018 through 2023.

25 277. The duties to which Chavez attested included but were not limited to ensuring the
26 County had appropriately designed, implemented, and maintained controls to prevent and detect
27 fraud, and to prepare and present financial statements free from material misstatement and fraud;
28 adjusting the financial statements to correct any material misstatements; preparing and fairly

1 presenting the County's financial statements; safeguarding the County's assets; reviewing and
2 ensuring the accuracy of the County's financial statements; designating personnel to oversee the
3 nonaudit services provided by the Auditor General; and ensuring all management responsibilities
4 are completed.

5 278. Chavez breached his duty by failing to exercise reasonable care by ensuring the
6 County had appropriately performed its duties and responsibilities stated in the General
7 Representation Letter and Terms and Conditions statements executed by him, and by failing to
8 ensure that the representations made to the State through those statements were fully accurate and
9 truthful and within his knowledge and confirmation.

10 279. St. John, as the County Manager, was responsible for the day-to-day operation of
11 the County. St. John supervised the work of appointed department directors and was responsible
12 for the appointment of non-elected directors.

13 280. Prior to conducting the County audit, the Auditor General sent a Fraud
14 Representation Letter to St. John requesting information and representations to assist the Auditor
15 General in identifying fraud risk factors. St. John was responsible for responding to these
16 inquiries.

17 281. St. John had a duty to the State to ensure that the information and responses she
18 provided to the State in response to the Fraud Representation Letter and the Auditor General's
19 inquiries were accurate, complete, truthful and reliable.

20 282. St. John had a duty to the State to ensure that the County and Gutfahr complied with
21 the responsibilities to which she attested in the Fraud Representation Letters from 2020 through
22 2023

23 283. St. John breached her duty to the State by failing to exercise reasonable care in
24 ensuring the County, and Gutfahr, had appropriately performed their duties and responsibilities
25 stated in her responses to the Fraud Representation Letters. St. John further breached her duty to
26 the State by providing the State inaccurate and misleading information regarding County financial
27 matters and records, including without limitation fraud risk matters, as more fully alleged
28 hereinabove.

1 284. Valdez, as the current County Manager, is responsible for the day-to-day operation
2 of the County. Valdez supervises the work of appointed department directors and is responsible
3 for the appointment of non-elected directors.

4 285. Prior to conducting the County audit in 2024, the Auditor General sent a Fraud
5 Representation Letter to Valdez requesting information and representations to assist the Auditor
6 General in identifying fraud risk factors. Valdez was responsible for responding to these inquiries.

7 286. Valdez had a duty to the State to ensure that the information and responses he
8 provided to the State in response to the Fraud Representation Letter and the Auditor General's
9 inquiries were accurate, complete, truthful and reliable.

10 287. Valdez had a duty to the State to ensure that the County and Gutfahr complied with
11 the responsibilities to which he attested in the Fraud Representation Letter for 2024.

12 288. On information and belief, Valdez breached his duty to the State by failing to
13 exercise reasonable care in ensuring the County, and Gutfahr, had appropriately performed their
14 duties and responsibilities stated in her responses to the Fraud Representation Letters. Valdez
15 further breached his duty to the State by, on information and belief, providing the State inaccurate
16 and misleading information regarding County financial matters and records, including without
17 limitation fraud risk matters.

18 289. The violations and breaches of the duties of the Third-Party Defendants Chavez, St.
19 John and Valdez described above mislead the State and prevented the Auditor General's staff
20 from understanding the truth about the County's financial condition and records during periods in
21 which Gutfahr was misappropriating funds and using false or misleading or incomplete records
22 or reporting to cover-up her wrongful and illegal conduct. These breaches of duty constitute
23 negligent conduct, and that negligence is the direct, actual and proximate cause of economic harm
24 and damages to the State.

25 290. As a result, the State has been damaged in an amount to be proven at trial. Therefore,
26 the State is entitled to recover its damages, including those arising from its right to indemnification
27 and contribution, against Third-Party Defendants Chavez, St. John and Valdez.

28

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

COUNT VI
AIDING & ABETTING FRAUD
(Acuna)

291. The State and the Auditor General hereby replead and incorporate by reference all of the above allegations as though fully set forth herein.

292. Upon information and belief, Acuna was aware of Gutfahr's scheme to commit the tortious and fraudulent acts as alleged in this Complaint.

293. Upon information and belief, Acuna intentionally provided aid and assistance to Gutfahr's fraud scheme by, among other things, providing necessary documentation, and usernames and passwords, and not recording Gutfahr's \$225,000 wire transfer.

294. Upon information and belief, Acuna intentionally provided aid and assistance to Gutfahr's scheme by, among other things, hiding Gutfahr's scheme from the State and the Auditor General and others.

295. The actions of Acuna caused injury to the State.

296. Upon information and belief, Acuna assisted and/or encouraged Gutfahr in achieving the tortious conduct alleged in this Complaint, including but not limited to fraud and embezzlement.

297. Acuna should have known that her actions and/or conduct constituted tortious acts.

298. As a direct, proximate and foreseeable result of Acuna's conduct, the State has suffered damages in an amount to be determined at trial, including those arising from its right to indemnification and contribution.

COUNT VII
NEGLIGENCE
(Seto)

299. The State and the Auditor General hereby replead and incorporate by reference all of the above allegations as though fully set forth herein.

300. Pursuant to Seto's contractual agency relationship with the County, Seto had a duty to use reasonable care when assisting Gutfahr or other County officials with preparing financial statements and cash reconciliation reports and otherwise participating in the pre-audit cash reconciliation process and preparing documents or reports relied upon by the Auditor General in

1 the annual County audit process. That duty included, without limitation, a duty of reasonable care
2 in ensuring that the financial statements, cash reconciliation reports, and backup records or
3 information provided to the Auditor General's staff were accurate, complete and not misleading.

4 301. Upon information and belief, Seto breached her duty by failing to properly
5 scrutinize the cash outstanding daily warrants in the cash reconciliation reports, failing to confirm
6 whether the actual cash totals on the bank and investment statements matched the County's
7 general ledger and Treasurer's Reports, failing to highlight for the Auditor General Gutfahr's use
8 of fabricated UBS Investment Account statements as part of the cash reconciliation process, and
9 failure to discover and highlight for the Auditor General other practices of Gutfahr designed to
10 hide or cover-up her misappropriation of public funds, and otherwise failing to ensure the financial
11 reports provided by the County to the Auditor General were accurate and complete.

12 302. As a direct, actual and proximate result of Seto's breach of duty and negligence, the
13 State has been economically damaged in an amount to be proven at trial. Therefore, the State is
14 entitled to recover from Seto its damages, including those arising from or in connection with its
15 right to indemnification and contribution.

16 **PRAYER FOR RELIEF**

17 **WHEREFORE**, the State and the Auditor General request that the Court enter judgment in favor
18 of the State and the Auditor General and against the Third-Party Defendants:

- 19 A. Awarding to the State and Auditor General, and against the Third-Party Defendants,
20 all of State's and Auditor General's damages, including all compensatory, actual,
21 incidental or consequential damages, in an amount to be proven at trial;
- 22 B. Awarding the State and Auditor General their reasonable attorneys' fees pursuant to
23 A.R.S. § 12-348, or any other applicable statute or principle of law.
- 24 C. Awarding the State and Auditor General their reasonable costs pursuant to A.R.S. §
25 12-341;
- 26 D. Awarding the State and Auditor General pre-judgment and post-judgment interest
27 from the earliest dates and at the highest rates allowed by law; and
- 28 E. Awarding the State and Auditor General all such other and further relief that the

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Court may deem just and proper.

RESPECTFULLY SUBMITTED this 3rd day of April, 2025.

RICHARDS & MOSKOWITZ PLC

/s/ William A. Richards

William A. Richards

Savanna J. Wright

Robert E. Niska

1850 N. Central Avenue, Suite 2010

Phoenix, Arizona 85004

*Attorneys for Defendants, Counterclaimants, and
Third-Party Plaintiffs*

1 ORIGINAL of the foregoing e-filed this
2 3rd day of April, 2025 via AZTurboCourt.

3 COPY of the foregoing e-mailed this
4 3rd day of April, 2025, to:

5 Courtney L. Henson
6 **SNELL & WILMER L.L.P.**
7 One South Church Ave., Suite 1500
8 Tucson, Arizona 85701
9 chenson@swlaw.com

8 Adam E. Lang
9 Matt Jarvey
10 Ian R. Joyce
11 **SNELL & WILMER L.L.P.**
12 One East Washington St., Suite 2700
13 Phoenix, Arizona 85004
14 alang@swlaw.com
15 mjarvey@swlaw.com
16 ijoyce@swlaw.com
17 *Attorneys for Plaintiff*

18
19
20
21
22
23
24
25
26
27
28

15 /s/ Kate Hofland