

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

CHERLYN SCHAEFER, a New Mexico
citizen,

Case assigned to Ellenwood, Kathleen McGarry

Plaintiff,

v.

No. D-101-CV-2022-00191

RUST MOVIE PRODUCTIONS, LLC, a New Mexico
limited liability company; HANNAH GUTIERREZ REED,
an individual; SARAH ZACHRY, an individual;
DAVID HALLS, an individual; PDQ ARM & PROP, LLC,
a New Mexico limited liability company; SETH KENNEY,
an individual; BONANZA CREEK FILM LOCATIONS, LLC.,
a New Mexico limited liability company;
BONANZA CREEK RANCH, LLC, a New Mexico limited
liability company, and SHANNON HUGHES, an individual
New Mexico citizen.

Defendants.

ORIGINAL COMPLAINT

Plaintiff Cherlyn Schaefer, by and through her counsel of record, Atkinson, Baker & Rodriguez, P.C. (Justin Rodriguez and Julia McFall) and The Jasso Law Firm (Michael Jasso), hereby brings this action against Defendants Rust Movie Productions, LLC; Hannah Gutierrez Reed; Sarah Zachry; David Halls; PDQ Arm and Prop, LLC; Seth Kenney; Bonanza Creek Film Locations, LLC, Bonanza Creek Ranch, LLC and Shannon Hughes (collectively "Defendants"), and alleges, upon information and belief, as follows:

PARTIES, JURISDICTION, AND VENUE

I. Plaintiff Cherlyn Schaefer, an individual, is New Mexico citizen and a resident of Valencia County.

2. Defendant Rust Movie Productions, LLC (“Rust”), is a New Mexico limited liability company. Rust can be served through its registered agent for service of process, Corporation Service Company, 110 E. Broadway St., Hobbs, NM 88240.

3. Defendant Hannah Gutierrez Reed, an individual, is a citizen of the State of Arizona. Hannah Gutierrez Reed’s legal counsel in the State of New Mexico is attorney Jason Bowles.

4. Defendant Sarah Zachry, an individual, is a citizen of the State of New Mexico.

5. Defendant David Halls, an individual, is a citizen of either the State of California or the State of New Mexico.

6. PDQ Arm & Prop, LLC, is a New Mexico limited liability company.

7. PDQ Arm & Prop, LLC, has a business storefront located at 126 Monroe Street NE, Albuquerque, NM, 87108.

8. PDQ Arm & Prop, LLC is not in good standing with the New Mexico Secretary of State.

9. The registered agent for PDQ Arm & Prop, LLC, Jeremiah Bitsui, resigned on November 16, 2021.

10. Defendant Seth Kenney, an individual, is a resident of the State of Arizona, but, upon information and belief, an individual citizen and domicile of the State of New Mexico.

11. Seth Kenney is the owner and operator of PDQ Arm & Prop, LLC, and is individually liable for its acts and omissions as alleged herein.

12. Defendant Bonanza Creek Film Locations, LLC, is a New Mexico limited liability company. Bonanza Creek Film Locations, LLC, can be served with service of process through its designated member and agent, Richard Hughes at 2321 Candelaria NW, Albuquerque, New

Mexico, 87107. Upon information and belief, at least one of Bonanza Creek Film Locations, LLC's members is a citizen of the State of New Mexico. Consequently, Bonanza Creek Film Locations, LLC is a citizen of the State of New Mexico.

13. Defendant Bonanza Creek Ranch, LLC, is a New Mexico limited liability company. Bonanza Creek Ranch, LLC, can be served with service of process through its designated agent Richard Hughes at 2321 Candelaria NW, Albuquerque, New Mexico, 87107. Upon information and belief, Richard Hughes, a citizen of the State of New Mexico, is an LLC member of Bonanza Creek Ranch, LLC. Consequently, Bonanza Creek Ranch, LLC is a citizen of the State of New Mexico.

14. Defendant Shannon Hughes, an individual, is a citizen of the State of New Mexico.

15. This Court has specific personal jurisdiction over the parties as each of the acts and omissions alleged herein occurred in or about Santa Fe, New Mexico.

16. Venue in this Court is proper pursuant to NMSA 1978, Section 38-3-1(B) (1988), as the offenses that gave rise to this lawsuit occurred in Santa Fe County, New Mexico.

17. Plaintiff and one or more LLC member(s) of Bonanza Creek Ranch, LLC and Bonanza Creek Film Locations, LLC, as well as defendants Shannon Hughes and Sarah Zachry, are all citizens of the State of New Mexico and therefore this case is not removable to Federal court on the basis of 28 U.S.C. 1332 diversity of citizenship. Further, this Complaint does not allege and specifically disclaims any claim or cause of action arising under the Constitution, laws, or treaties of the United States. Therefore, the Federal District Courts of the United States lack subject matter jurisdiction over this matter and the removal of this Complaint to any Federal District Court on the basis of 1331 or 1332 jurisdiction would be improper.

FACTS APPLICABLE TO ALL COUNTS

18. On October 6, 2021, filming of a motion picture called “Rust” commenced at the Bonanza Creek Ranch (property of Defendants Bonanza Creek Ranch, LLC and Bonanza Creek Film Locations, LLC), just outside Santa Fe, New Mexico.

19. Halyna Hutchins was the cinematographer for Rust.

20. Non-party Alexander (“Alec”) Baldwin was an actor and producer for Rust.

21. Defendant David Halls was the Assistant Director for Rust.

22. Defendant Sarah Zachry was the “Property Master” for Rust.

23. Defendant Hannah Gutierrez Reed was the “Armorer” for Rust.

24. Hannah Gutierrez Reed was the “Property Key Assist” for Rust.

25. As “Armorer” Hannah Gutierrez Reed, among others, was responsible for the guns and ammunition located on the set of Rust.

26. Rust was Hannah Gutierrez Reed’s second film as an armorer.

27. Defendant Seth Kenney was identified on production documents as the “Armorer Mentor” for Rust.

28. Seth Kenney was the “Armorer Mentor” for Rust.

29. Defendant Rust Movie Production, LLC, as their employer or principal is responsible for the acts and omissions of non-party Alec Baldwin, as well as for Defendants David Halls, Hannah Gutierrez Reed, Sarah Zachry, and Seth Kenney as alleged herein.

30. At the time of non-party Alec Baldwin’s and the individual Defendants’ acts and omissions as alleged herein, each individual Defendant, as well as non-party Alec Baldwin, was acting within the course and scope of their employment or agency for Defendant Rust Movie Productions, LLC.

31. Defendant Shannon Hughes was the site representative of Bonanza Creek Ranch present during the filming of Rust.

32. Defendants Bonanza Creek Ranch, LLC and Bonanza Creek Film Locations, LLC as her employer and/or principal are responsible for the acts and omissions of Shannon Hughes as alleged herein.

33. At the time of Shannon Hughes' acts and omissions as alleged herein, defendant Shannon Hughes was acting within the course and scope of her employment or agency for Defendants Bonanza Creek Ranch, LLC and Bonanza Creek Film Locations, LLC.

Facts Regarding the Fatal Shooting

34. October 21, 2021, Halyna Hutchins was working with Alec Baldwin in a "church" building at the Bonanza Creek Ranch, rehearsing a camera angle where the actor would point a gun at the camera.

35. As opposed to using a prop gun or his finger, Alec Baldwin used a live firearm to rehearse the scene

36. The gun was a Colt .45 single action colt revolver.

37. During the rehearsal, Halyna Hutchins was struck by a projectile discharged from the revolver.

38. The projectile that discharged from the revolver was a bullet from a live round of ammunition.

39. The live round of ammunition was .45 caliber.

40. Halyna Hutchins was initially treated at the scene for her wounds for approximately 30 minutes.

41. Halyna Hutchins was transported to University of New Mexico Medical Center via Careflight, where she died from her injuries.

42. Before the rehearsal, Defendant Hannah Gutierrez Reed loaded the revolver with the round containing the bullet that killed Halyna Hutchins.

43. Defendant Sarah Zachry assisted Hannah Gutierrez Reed in handling the revolver prior to the rehearsal.

44. Before the rehearsal and after loading the revolver, Hannah Gutierrez Reed transferred custody of the loaded revolver to Defendant David Halls.

45. Hannah Gutierrez Reed placed the loaded revolver on a cart.

46. David Halls retrieved the revolver from the cart.

47. Hannah Gutierrez Reed handed David Halls the loaded revolver.

48. Hannah Gutierrez Reed told David Halls and others that the loaded revolver was a “cold gun.”

49. The loaded revolver was not in fact a “cold gun” when David Halls took custody of it.

50. The phrase “cold gun” means the gun does not contain live rounds of ammunition.

51. The phrase “cold gun” means the gun is empty.

52. The phrase “cold gun” means the gun is either empty or contains “dummy rounds.”

53. A “dummy” round contains no explosive charge.

54. Dummy rounds look like live rounds, except for a small hole in the side of the casing that identifies them as inoperable.

55. In a dummy round, one or more BBs are placed inside in place of the powder.

56. When a dummy round is shaken, the BB(s) makes noise.

57. A live round does not make noise when shaken.

58. David Halls handed non-party Alec Baldwin the gun that killed Halyna Hutchins.

59. David Halls was supposed to check the gun for live ammunition before he handed it to Alec Baldwin.

60. David Halls did not fully check the gun for live ammunition before he handed it to Alec Baldwin.

61. David Halls was fired from a previous film due to his responsibility for gun safety lapses.

62. When David Halls handed Alec Baldwin the gun that killed Halyna Hutchins, he stated: “cold gun.”

63. The loaded revolver was not in fact a “cold gun.”

64. Hannah Gutierrez Reed was supposed to be present at the site when guns were to be used.

65. Hannah Gutierrez Reed was not present during the rehearsal when Alec Baldwin handled the revolver.

66. Non-party Alec Baldwin discharged the gun killing Hannah Gutierrez Reed.

Facts Regarding the Ammunition on the Set of Rust

67. The suppliers of the guns and ammunition on the set of Rust was primarily a film prop business called PDQ Arm & Prop, LLC, however, Seth Kenney and Hannah Gutierrez Reed also acted from time to time as a supplier of guns and ammunition.

68. Seth Kenney owns PDQ Arm & Prop, LLC.

69. Seth Kenney supplied dummy rounds to the set of Rust.

70. Seth Kenney also supplied live ammunition to the set of Rust.

71. Some of the ammunition Seth Kenney supplied to the set of Rust came from another movie set he had worked on.

72. Sometime before Rust began filming, Seth Kenney received “reloaded rounds.”

73. Sometime before Rust began filming, Seth Kenney received “reloaded rounds” from Thell Reed.

74. Thell Reed is Hannah Gutierrez Reed’s father.

75. Reloaded rounds are live rounds that are created using empty casings.

76. In or about August to/or September 2021, Thell Reed worked with Seth Kenney on the set of a different movie.

77. During the production of the other movie there was a training provided to some of the movie’s actors wherein the actors practiced shooting guns with live rounds.

78. Thell Reed brought Seth Kenney an “ammo can” full of live rounds for the training.

79. The live rounds Thell Reed brought Seth Kenney were not factory made rounds.

80. The live rounds Thell Reed brought Seth Kenney were reloaded rounds.

81. The reloaded live rounds of ammunition were made using Starline Brass casings.

82. The ammo can contained 200-300 live rounds.

83. After the production on the other movie ended, Seth Kenney took the ammo can containing the remaining live rounds to New Mexico.

84. Seth Kenney, Hannah Gutierrez Reed and PDQ Arm & Prop, LLC were the suppliers of the ammo on the Rust set.

85. The live rounds in the ammo can were .45 caliber colt ammunition.

86. Thell Reed asked Seth Keeney to return the ammo can containing the live rounds.

87. Seth Kenney retained possession of the live rounds of ammunition.

88. The ammunition Seth Kenney supplied to the set of Rust was branded with the logo “Starline Brass.”
89. The casing to the bullet that struck Halyna Hutchins was branded with the “Starline Brass” logo.
90. The manufacturer Starline Brass does not manufacture live rounds.
91. The round that struck Halyna Hutchins was a reloaded round.
92. Prior to the rehearsal where Halyna Hutchins was shot, Hannah Gutierrez Reed loaded the revolver with dummy rounds and at least one round of live ammunition.
93. The dummy rounds on the set of Rust contained one or more BBs that made a noise when shaken.
94. The dummy rounds of the set of Rust contained a hole in the side of the casing.
95. Hannah Gutierrez Reed knew or should have known how to distinguish a live round from a dummy round.
96. Hannah Gutierrez Reed knew or should have known she was loading a live round of ammunition into the revolver.
97. Hannah Gutierrez Reed should not have loaded a live round of ammunition into the colt revolver.
98. Hannah Gutierrez Reed also supplied some ammunition on the set of Rust.
99. The ammunition Hannah Gutierrez Reed supplied to the set of Rust was branded with the Starline Brass logo.
100. Sarah Zachry knew or should have known how to distinguish a live round from a dummy round or blank.

101. Sarah Zachry knew or should have known the revolver contained a live round of ammunition.

102. David Halls knew or should have known how to distinguish a live round from a dummy round or blank.

103. David Halls knew or should have known the revolver contained a live round of ammunition.

104. After the shooting, Sarah Zachry inspected the box of ammunition used to load the revolver.

105. Sarah Zachry shook the box of ammunition and discovered what she believed to be live rounds because they did not make the noise a dummy round makes when shaken.

106. Police collected ammunition from the set of Rust.

107. The ammunition police collection from the set of Rust included live rounds.

108. Live rounds of ammunition never should have been on the set of Rust.

109. Prior to the shooting, Sarah Zachry and Hannah Reed Gutierrez mixed rounds of ammunition from different boxes together and transported the mixed ammunition loose in fanny packs.

110. PDQ Arm & Prop, LLC, as one of the suppliers of the ammunition used on the set of Rust had the responsibility to manage and control the type of ammunition supplied for use.

111. Seth Kenney as one of the suppliers of the ammunition used on the set of Rust had the responsibility to manage and control the type of ammunition supplied for use.

112. Hannah Gutierrez Reed also as one of the suppliers of the ammunition used on the set of Rust had the responsibility to manage and control the type of ammunition supplied for use.

113. Seth Kenney as the Armorer Mentor on the set of Rust had the responsibility to manage and control the weapons on the set of Rust.

114. Seth Kenney as the Armorer Mentor on the set of Rust had the responsibility to manage and control the ammunition on the set of Rust.

115. Hannah Gutierrez Reed as the Armorer on the set of Rust had the responsibility to manage and control the weapons on the set of Rust.

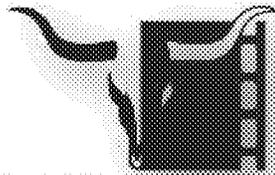
116. Hannah Gutierrez Reed as the Armorer on the set of Rust had the responsibility to manage and control the ammunition on the set of Rust.

117. Hannah Gutierrez Reed as the Armorer on the set of Rust had the responsibility to be present while anyone handled a weapon on the set of Rust.

118. Sarah Zachry as the Property Master on the set of Rust had the responsibility to manage and control the weapons on the set of Rust.

119. Sarah Zachry as the Property Master on the set of Rust had the responsibility to manage and control the ammunition on the set of Rust.

120. Defendant Bonanza Creek Ranch has Rules that all invitees on its premises are required to follow:



Bonanza Creek Ranch, LLC

Ranch Rules

The following rules implemented for Bonanza Creek Ranch, LLC shall be observed at all time while on the premises.

- * Vehicles must be driven on established roads and shall not exceed 15 mph. Any vehicle observed off established roads will be subject to \$100 fine.
- * Parking of vehicles must be limited to designated areas and assigned to each set.
- * Vegetation must not be cut or destroyed without prior authorization from BCR.
- * Smoking is only permitted in designated areas marked by film company.
- * BCR has the right to refuse access onto the property any persons deemed objectionable to management.
- * No off site leisure touring of property. All persons entering the property must remain in areas designated by film company.
- * Animals are not permitted on property except for animals that are part of production or are specifically trained to aid a disabled person. Emotional or companion animals are not allowed on property.
- * Unauthorized alcohol, illegal drugs (including marijuana), explosives, and personal firearms are prohibited.



121. Bonanza Creek Ranch's Rules prohibit invitees to bring firearms onto the premises.

122. Bonanza Creek Ranch's Rules do not prohibit invitees from bringing live ammunition onto the premises.

123. Defendant Shannon Hughes as the site representative for Bonanza Creek Ranch was responsible for enforcing the Ranch's rules.

124. Defendant Shannon Hughes, as the agent and authorized representative of Bonanza Creek Ranch, was physically present at the Ranch the majority of the time Rust was being filmed to ensure that the Ranch's real property was being safely used in compliance with the Ranch's own rules and requirements.

125. Throughout the filming of Rust, Defendant Shannon Hughes routinely objected to Rust Movie Productions, LLC's and its employees' and agents' non-compliance with the Ranch's rules, including driving on non-designated roads and speeding.

126. However, despite the Ranch having specific rules in place regarding firearms, Shannon Hughes never objected to Rust Movie Productions, LLC's and its employees' and agents' obvious non-compliance with the Ranch's firearms rules.

127. In fact, despite her actual knowledge of the prohibited and unsafe use of firearms on the Ranch premises, defendant Shannon Hughes never intervened to stop the dangerous and unsafe events from taking place on the Ranch's real property.

128. At all relevant times, defendant Shannon Hughes was acting as an on-site property manager and site representative of the Ranch and was responsible to keep the Ranch premises safe for use by Plaintiff and others, whether or not a dangerous condition was obvious.

129. Any time weapons are to be used on set on a particular day, production must ensure that a Safety Bulletin regarding gun safety is sent with the Call Sheet.

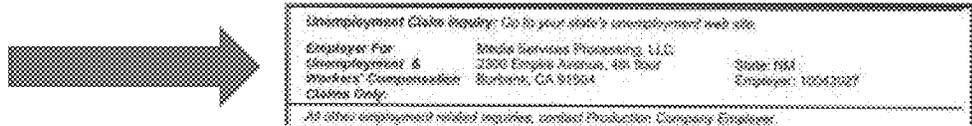
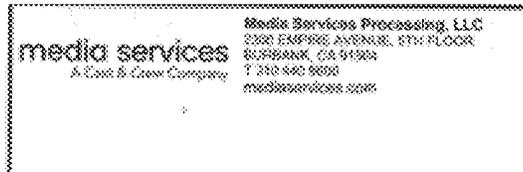
130. No Safety Bulletins were ever sent to the cast and crew of Rust.

131. Without limitation, because live ammunition and firearms were freely permitted on the Ranch during the filming of Rust despite the Ranch's own rules prohibiting the same and common sense, the Ranch premises were not maintained in the use of ordinary care to be kept safe for use by Plaintiff and others.

Facts Regarding Cherlyn Schaefer, Her Injuries, and Damages

132. Plaintiff Cherlyn Schaefer was the key medic on the set of Rust.

133. At the time of the occurrence, Cherlyn Schaefer’s sole employer for purposes of New Mexico Workers’ Compensation Act and Worker’s Compensation exclusivity was Media Services Processing, LLC. Specifically, Defendant Rust Movie Productions, LLC has admitted in writing that it is not the employer or special employer of Plaintiff. Namely, Plaintiff’s pay stubs for work performed on the Rust movie state:



134. Media Services Processing, LLC is the only entity presently providing certain Worker’s Compensation benefits to Plaintiff.

135. Defendant Rust Movie Productions, LLC is not currently and has never provided any Worker’s Compensation benefits to Plaintiff.

136. Media Services Processing, LLC is not a defendant to this lawsuit.

137. Because Media Services Processing, LLC is not a defendant herein, New Mexico Worker’s Compensation exclusivity pursuant to 52-1-9 NMSA does not apply to the allegations of this Complaint.

138. As key medic on the Set of Rust, Cherlyn Schaefer was responsible for ensuring cast and crew stayed hydrated, were protected by sunscreen and bug spray, and providing any minor first aide needed for injuries due to the set locale and animals present.

139. Cherlyn Schafer was responsible for making the order to call for first responders in the event of serious injury.

140. On the afternoon of October 21, 2021, Cherlyn Schaefer was near the church where the rehearsal was transpiring when she heard a gunshot and thereafter frantic calls for a medic came over the radio.

141. Upon entering the church and encountering two gunshot wound patients, Cherlyn Schaefer ordered the call for emergency first responders to include a helicopter.

142. Plaintiff observed firsthand, gun shot injuries to both Halyna Hutchins and Joel Souza.

143. After determining Halyna Hutchins suffered more serious wounds than Joel Souza, Cherlyn Schaefer first provided immediate emergency medical assistance to Halyna Hutchins.

144. Cherlyn Schaefer fought desperately to save Halyna Hutchins' life, putting pressure on her wounds, giving her oxygen, checking her vitals.

145. Despite Cherlyn Schaefer's extensive efforts to stabilize and save the life of Halyna Hutchins, Halyna Hutchins later died of her wounds.

146. The cause of Halyna Hutchins' death was the tragic gun shot fired by non-party Alec Baldwin.

147. Cherlyn Schaefer has suffered tremendous shock, trauma, and severe emotional distress as a result of the actions and inactions of all Defendants.

148. Before working on the Rust production, Cherlyn Schaefer was regularly employed on film sets as a medic.

149. Cherlyn Schaefer's trauma and severe emotional distress has affected all aspects of her life and has medically prevented her from returning to her chosen profession.

150. Without limitation, Plaintiff Cherlyn Schaefer has incurred, and will incur in the future, lost earnings and earning capacity, mental health medical expenses, emotional trauma and suffering, and loss of enjoyment of life.

151. Plaintiff has been medically disqualified from returning to work or any other form of gainful employment since the shooting.

152. Plaintiff is currently under the ongoing medical care and treatment of qualified medical professionals, including therapists and others.

153. Plaintiff Cherlyn Schaefer is entitled to damages.

COUNT I: NEGLIGENCE AND NEGLIGENCE PER SE

Against All Defendants Named Herein

154. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.

155. At all times pertinent hereto, all Defendants owed Plaintiff a duty of ordinary care for the safety of Plaintiff and to avoid and/or prevent an unreasonable risk of injury and owed Plaintiff other duties.

156. For the reasons set forth above, all Defendants breached those duties of care by committing the acts, breaches or omissions alleged herein, including and without limitation, the discharging of a live firearm on the Rust movie set which resulted in actual injury and harm to Plaintiff.

157. As a direct, proximate and reasonably foreseeable result of all the Defendants' acts, omissions, and breaches as alleged herein, the shooting occurred resulting in damages to the Plaintiff.

158. There was a statute in force in this state, at the time of the occurrence of the events herein, which provided that

A. Negligent use of a deadly weapon consists of:

- (1) discharging a firearm into any building or vehicle or so as to knowingly endanger a person or his property;**
- (3) endangering the safety of another by handling or using a firearm or other deadly weapon in a negligent manner; or**
- (4) discharging a firearm within one hundred fifty yards of a dwelling or building, not including abandoned or vacated buildings on public lands during hunting seasons, without the permission of the owner or lessees thereof.**

NMSA 1978 § 30-7-4

159. Defendants conduct as alleged herein, including that of non-party Alec Baldwin, violated this statute.

160. Each Defendants conduct herein constitutes negligence as a matter of law

161. The negligence and negligence per se of each Defendant herein was a cause or continued to the injury to Plaintiff.

162. Defendant Rust Movie Productions, LLC, is vicariously liable for the damages proximately caused to Plaintiff by virtue of the negligent conduct of its agents and employees, including defendants Gutierrez Reed, Sarah Zachry, David Halls and Seth Kenney, as well as non-party Alec Baldwin.

163. Defendants Bonanza Creek Ranch, LLC and Bonanza Creek Film Locations, LLC are vicariously liable for the damages proximately caused to Plaintiff by virtue of the negligent conduct of its agents and employees, including defendant Shannon Hughes.

164. Defendant PDQ Arm & Prop, LLC is vicariously liable for the damages proximately caused to Plaintiff by virtue of the negligent conduct of its agents and employees, including defendant Seth Kenney.

COUNT II: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS

Against Defendants Rust Movie Productions, LLC, and its Individually Named Defendant Employees/Agents Gutierrez Reed, Sarah Zachry, David Halls and Seth Kenney

165. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.

166. Defendant Rust Movie Productions, LLC, and Plaintiff share a special relationship.

167. As alleged herein, the conduct of Rust Movie Productions, LLC, and its Individually Named Defendant Employees/Agents Gutierrez Reed, Sarah Zachry, David Halls and Seth Kenney was extreme and outrageous under the circumstances.

168. Rust Movie Productions, LLC, and its Individually Named Defendant Employees/Agents Gutierrez Reed, Sarah Zachry, David Halls and Seth Kenney acted intentionally or recklessly.

169. As a result of the conduct of Rust Movie Productions, LLC, and its Individually Named Defendant Employees/Agents Gutierrez Reed, Sarah Zachry, David Halls and Seth Kenney, Plaintiff experienced severe emotional distress.

COUNT III: PRIMA FACIE TORT

Against Defendants Rust Movie Productions, LLC, and its Individually Named Defendant Employees/Agents Gutierrez Reed, Sarah Zachry, David Halls and Seth Kenney

170. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.

171. Defendant Rust Movie Productions, LLC, and Plaintiff share a special relationship.

172. Defendant Rust Movie Productions, LLC, and its Individually Named Defendant Employees/Agents Gutierrez Reed, Sarah Zachry, David Halls and Seth Kenney intended to cause Plaintiff harm as alleged herein and in fact succeeded in doing so.

173. Defendant Rust Movie Productions, LLC, and its Individually Named Defendant Employees/Agents Gutierrez Reed, Sarah Zachry, David Halls and Seth Kenney intentionally

allowed a live firearm and live ammunition to be present on the Rust movie set despite it being obviously dangerous, unnecessary, risky and potentially fatal.

174. Defendant Rust Movie Productions, LLC, and its Individually Named Defendant Employees/Agents Gutierrez Reed, Sarah Zachry, David Halls and Seth Kenney intended that their intentional acts and omissions would cause harm to Plaintiff or alternatively, at a minimum, Defendant Rust Movie Productions, LLC, and its Individually Named Defendant Employees/Agents Gutierrez Reed, Sarah Zachry, David Halls and Seth Kenney knew with certainty that their acts and omissions would cause harm Plaintiff.

175. In fact, Defendant Rust Movie Productions, LLC, and its Individually Named Defendant Employees/Agents Gutierrez Reed, Sarah Zachry, David Halls and Seth Kenney were a cause of Plaintiff's harm as alleged herein.

176. Rust Movie Productions, LLC, and its Individually Named Defendant Employees/Agents Gutierrez Reed, Sarah Zachry, David Halls and Seth Kenney conduct was not justifiable under all the circumstances.

COUNT IV: MISREPRESENTATION

Against Defendants Rust Movie Productions, LLC, and its Individually Named Defendant Employees/Agents Gutierrez Reed, Sarah Zachry, David Halls and Seth Kenney

177. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.

178. Defendant Rust Movie Productions, LLC, and Plaintiff share a special relationship.

179. Defendant Rust Movie Productions, LLC, and its Individually Named Defendant Employees/Agents Gutierrez Reed, Sarah Zachry, David Halls and Seth Kenney made one or more material misrepresentations which they intended Plaintiff to rely on and upon which Plaintiff did in fact rely.

180. Defendant Rust Movie Productions, LLC, and its Individually Named Defendant Employees/Agents Gutierrez Reed, Sarah Zachry, David Halls and Seth Kenney material misrepresentations of fact included, without limitation, statements that the subject firearm was a “cold gun” and that live rounds of ammunition were not being used on the movie set.

181. Defendant Rust Movie Productions, LLC, and its Individually Named Defendant Employees/Agents Gutierrez Reed, Sarah Zachry, David Halls and Seth Kenney had no reasonable ground for believing that the statements made to Plaintiff about a “cold gun” and/or use “live” rounds were true. In fact, Rust Movie Productions, LLC, and its Individually Named Defendant Employees/Agents Gutierrez Reed, Sarah Zachry, David Halls and Seth Kenney knew the statements were untrue.

182. As a direct, proximate and reasonably foreseeable result of the Rust Movie Productions, LLC’s, and its Individually Named Defendant Employees/Agents Gutierrez Reed, Sarah Zachry, David Halls and Seth Kenney’s material misrepresentations, the shooting occurred resulting in damages to the Plaintiff.

183. Defendant Rust Movie Productions, LLC, is vicariously liable for the damages proximately caused to Plaintiff by virtue of the negligent misrepresentations of fact of their agents and employees, including Gutierrez Reed, Sarah Zachry, David Halls and Seth Kenney.

COUNT V: PREMISES LIABILITY

Against Defendants Shannon Hughes, Bonanza Creek Film Locations, LLC and Bonanza Creek Ranch, LLC

184. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.

185. Defendants Shannon Hughes, Bonanza Creek Ranch, LLC and Bonanza Creek Film Locations, LLC, owed a duty to use ordinary care to keep the Ranch premises where the Rust movie was being filmed safe for use by visitors like Plaintiff.

186. At the time of the occurrence subject of this Complaint, Plaintiff was a visitor who entered or remained upon the Ranch premises with the express or implied permission of the owner or occupant of the Ranch premises, namely Defendants Bonanza Creek Ranch, LLC and Bonanza Creek Film Locations, LLC.

187. At all relevant times, defendant Shannon Hughes was the property manager and site representative of the Ranch.

188. Defendants Shannon Hughes, Bonanza Creek Ranch, LLC and Bonanza Creek Film Locations, LLC, breached the duty of a premises owner and occupier by allowing the existence of the dangerous condition that caused injury to Plaintiff, namely live firearms and ammunition to be used on the Ranch with little or no oversight and no safety measures in place and in violation of the Ranch's own rules.

189. Defendants Shannon Hughes', Bonanza Creek Ranch, LLC's and Bonanza Creek Film Locations, LLC's failures to prevent other Ranch visitors, including all other defendants herein, from bringing live ammunition and other firearms on the premises where real weapons were being used as props to film a movie presented a hazardous condition that caused injury to Plaintiff.

190. Openly allowing live ammunition and firearms on the Ranch premises foreseeably posed an unreasonable risk of injury.

191. In fact, Defendants Bonanza Creek Ranch, LLC and Bonanza Creek Film Locations, LLC had their own internal rules prohibiting firearms on the Ranch, but defendant Shannon Hughes despite full knowledge of the facts, circumstances and situation, failed to enforce such rules at the time of the shooting.

192. Defendants Shannon Hughes', Bonanza Creek Ranch, LLC's and Bonanza Creek Film Locations, LLC's duty to protect Plaintiff arises from a foreseeable risk that third person, including the other defendants herein, would injure Plaintiff through the presence and use of firearms on the Ranch premises and, therefore as the risk of danger increased, the amount of care to be exercised by Defendants Shannon Hughes, Bonanza Creek Ranch, LLC and Bonanza Creek Film Locations, LLC also increased.

193. The proportionate fault of Defendants Shannon Hughes, Bonanza Creek Ranch, LLC and Bonanza Creek Film Locations, LLC is not reduced by the increasingly wrongful conduct of the other defendants herein.

COUNT VI: CIRCUMSTANTIAL EVIDENCE OF NEGLIGENCE
(RES IPSA LOQUITUR)

Against All Defendants

194. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.

195. All Defendants had the duty to manage and control the hazardous condition of the presence of live ammunition and firearms on the Rust set.

196. The events causing injuries and damages to Plaintiff were of a kind that do not ordinarily occur in the absence of negligence on the part of Defendants.

197. Plaintiff invokes the doctrine of res ipsa loquitur. By reason of the allegations plead herein the jury is permitted to infer each Defendants' negligence.

198. As a direct and proximate result of each Defendants' negligence, Plaintiff sustained injuries and damages for which all Defendants are liable.

COUNT VII: INTENTIONAL SPOILIATION OF EVIDENCE

Against Defendants Rust Movie Productions, LLC, PDO Arm & Prop, LLC, and Seth Kenney

199. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.

200. Following the shooting of live ammunition and the death of Halyna Hutchins on the set of Rust, the known potential for criminal prosecution or civil lawsuits existed.

201. Law enforcement were immediately present at the location of the shooting making clear to everyone involved that criminal or civil litigation was highly likely, if not certain.

202. Defendants Rust Movie Productions, PDQ Arm & Prop, LLC, and Seth Kenney knew of the potential for a lawsuit or at a minimum criminal investigation.

203. Defendant Rust Movie Productions, LLC, in fact, sent its own preservation and litigation hold letter to its employees demanding preservation of evidence and potential evidence.

204. Despite written notice to preserve all potentially relevant evidence, Defendant Seth Kenney and/or PDQ Arm & Prop, LLC intentionally disposed of, destroyed, and/or significantly altered crucial evidence to this lawsuit, including the remaining live ammunition of reloaded rounds in Starline Brass casings that he received from Thell Reed that matched the live ammunition of reloaded rounds in Starline Brass casings he provided to Rust.

205. Defendant Seth Kenney's destruction of evidence was solely intended to disrupt or defeat a potential lawsuit.

206. Rust Movie Productions, LLC, as Seth Kenney's employer and principal, is responsible for his acts to include his intentional destruction of evidence.

207. The lost, destroyed or altered evidence would have been relevant to a material issue in the case.

208. The destruction or alteration of the evidence will impair and may potentially result in Plaintiff's inability to fully prove her case herein.

209. Plaintiff suffered damages as a result of Defendant Seth Kenney's destruction or alteration of evidence.

210. Defendant Rust Movie Productions, LLC is liable for the intentional spoliation of critical evidence by its agent and employee, Defendant Seth Kenney and PDQ Arm & Prop, LLC.

COUNT VIII: NEGLIGENT ENTRUSTMENT OF CHATTEL
Against Defendants Rust Movie Productions, LLC, PDO Arm & Prop, LLC,
Hannah Gutierrez Reed and Seth Kenney

211. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.

212. Defendants Rust Movie Productions, LLC, PDQ Arm & Prop, LLC, Hannah Gutierrez Reed and/or Seth Kenney were the owners or persons in control of the firearm and live ammunition that non-party Alec Baldwin discharged causing Plaintiff's injuries as alleged herein.

213. Defendants Rust Movie Productions, LLC, PDQ Arm & Prop, LLC, Hannah Gutierrez Reed and/or Seth Kenney permitted other unqualified, unsafe and inappropriate people including non-party Alec Baldwin as well as Defendants Hannah Gutierrez Reed (herself), Sarah Zachry, and David Halls to possess and operate the firearm and live ammunition.

214. Defendants Rust Movie Productions, LLC, PDQ Arm & Prop, LLC, Hannah Gutierrez Reed and/or Seth Kenney knew or should have known that non-party Alec Baldwin and Defendants Hannah Gutierrez Reed, Sarah Zachry, and David Halls were likely to use the firearm and live ammunition in such a manner as to create an unreasonable risk of harm to others, including Plaintiff.

215. Non-party Alec Baldwin and Defendants Rust Movie Productions, LLC, Hannah Gutierrez Reed, Sarah Zachry, and David Halls were negligent with respect to the firearm and ammunition.

216. Non-party Alec Baldwin's and Defendants Rust Movie Productions, LLC's, Hannah Gutierrez Reed's, Sarah Zachry's, and David Halls' negligence was a cause of the injury to Plaintiff and is recoverable for negligent entrustment of chattel (firearm and live ammunition). *See Morris v. Giant Four Corners, Inc.*, 2021-NMSC-028.

COUNT IX: NEGLIGENT HIRING, TRAINING AND SUPERVISION
Against Rust Movie Productions, LLC

217. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.

218. Defendant Rust Movie Productions, LLC, was the employer and/or principal of Hannah Gutierrez Reed, Sarah Zachry, David Halls and Seth Kenney.

219. Defendant Rust Movie Productions, LLC knew or should have known that hiring, retaining, or supervising Hannah Gutierrez Reed, Sarah Zachry, David Halls and Seth Kenney in connection with the firearms and live ammunition on the Rust movie set would create an unreasonable risk of injury to a group or class that includes the plaintiff.

220. Defendant Rust Movie Productions, LLC failed to use ordinary care in hiring, retaining, or supervising Hannah Gutierrez Reed, Sarah Zachry, David Halls and Seth Kenney.

221. As alleged herein, Defendant Rust Movie Productions, LLC's negligence in hiring, retaining, or supervising Hannah Gutierrez Reed, Sarah Zachry, David Halls and Seth Kenney was a cause of Plaintiff's injury and damages.

222. Defendants Hannah Gutierrez Reed, Sarah Zachry, David Halls and Seth Kenney were untrained, inexperienced and otherwise unqualified to be given responsibility for live ammunition and firearms on the Rust movie set.

223. Among other things, Defendants Hannah Gutierrez Reed, Sarah Zachry, David Halls and Seth Kenney allowed non-party Alec Baldwin to discharge a live firearm resulting in the tragic death of Halyna Hutchins and severe injuries to Plaintiff.

COUNT X: PRODUCTS LIABILITY AND STRICT PRODUCTS LIABILITY
Against Defendants PDQ Arm & Prop, LLC, Hannah Gutierrez Reed and Seth Kenney

224. Plaintiff incorporates the preceding paragraphs as though fully set forth herein.

225. Defendants, PDQ Arm & Prop, LLC, Hannah Gutierrez Reed and/or Seth Kenney were the suppliers of the Colt firearm and live ammunition (the “Firearm Products”) which is the subject of this lawsuit.

226. As the suppliers of the Firearm Products, Defendants, PDQ Arm & Prop, LLC, Hannah Gutierrez Reed and Seth Kenney had a duty to use ordinary care to avoid a foreseeable risk of injury caused by a condition of the Firearm Products or manner in which it is used. This duty was owed to persons who can reasonably be expected to use the Firearm Products and to persons who can reasonably be expected to be in the vicinity during the use of the Firearm Products, including Plaintiff.

227. As the clear and obvious danger that should have been foreseen here with regard to the Firearm Products increased on the Rust set, so the amount of care required by Defendants, PDQ Arm & Prop, LLC, Hannah Gutierrez Reed and Seth Kenney also increased.

228. As suppliers in the business of putting the Firearm Products on the market, Defendants, PDQ Arm & Prop, LLC, Hannah Gutierrez Reed and Seth Kenney are liable for harm caused by an unreasonable risk of injury resulting from a condition of the Firearm Product or from a manner of its use. Such a risk makes the product defective. This rule applies even though all possible care has been used by Defendants, PDQ Arm & Prop, LLC, Hannah Gutierrez Reed and Seth Kenney in putting the Firearm Products on the market. The liability of Defendants, PDQ

Arm & Prop, LLC, Hannah Gutierrez Reed and Seth Kenney is to persons whom they could have reasonably expected to use the Firearm Products and to persons whom they could have reasonably expected to be in the vicinity during the use of the Firearm Products, including Plaintiff.

229. Defendants, PDQ Arm & Prop, LLC, Hannah Gutierrez Reed and Seth Kenney owed a duty of ordinary care to warn Plaintiff, non-party Alec Baldwin and others of the risk of injury of the Firearm Products, including potential death or injury from a live round of ammunition.

230. Defendants, PDQ Arm & Prop, LLC, Hannah Gutierrez Reed and Seth Kenney owed a duty of ordinary care to provide directions for the safe use of the Firearm Products to Plaintiff, non-party Alec Baldwin and others, as well as to avoid a risk of injury caused by a foreseeable use of a firearm and live ammunition.

231. Defendants, PDQ Arm & Prop, LLC, Hannah Gutierrez Reed and Seth Kenney breached their duties as suppliers of the Firearm Products and are liable and strictly liable to Plaintiff as a result.

232. As a direct, proximate and reasonably foreseeable result of PDQ Arm & Prop, LLC's, Hannah Gutierrez Reed's and Seth Kenney's acts, omissions, and product liability breaches as alleged herein, a live round was discharged from the Firearm Products causing damages to the Plaintiff.

233. Plaintiff is entitled to damages for PDQ Arm & Prop, LLC's, Hannah Gutierrez Reed's and Seth Kenney's products liability and strict products liability as suppliers of the Firearm Products at issue herein, namely the Colt revolver and live ammunition discharged by non-party Alec Baldwin.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests that a Judgment be entered in her favor against Defendants for damages, jointly and severally, of a kind and in amounts to be proven at trial, including for, but not limited to:

- a. Compensatory, actual and special damages in an amount to be proven at trial;
- b. All available damages pursuant to UJI 13-1803, 13-1804, 13-1805, 13-1806, 13-1807, and 13-1807A;
- c. Punitive damages pursuant to UJI 13-1827 and 13-1827A;
- b. Costs and fees associated with this lawsuit;
- c. Interest as provided by law.

Plaintiff also requests that the Court enter Judgment in her favor and for such other and further relief as the Court deems just and proper.

JURY DEMAND

Plaintiff hereby demands a six (6) person jury in the above captioned case.

Dated: February 4, 2022

Respectfully Submitted,

ATKINSON, BAKER & RODRIGUEZ, P.C.

/s/ Justin D. Rodriguez

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