

JAMS ARBITRATION

ALEXANDER R. BALDWIN III AND EL DORADO
PICTURES, INC.,

Claimants,

-AGAINST-

RUST MOVIE PRODUCTIONS LLC AND RYAN SMITH,

Respondents.

JAMS Ref. No. _____

CLAIMANTS' ARBITRATION DEMAND

Claimants Alexander (“Alec”) R. Baldwin III and El Dorado Pictures, Inc., by and through their attorneys, Quinn Emanuel Urquhart & Sullivan, LLP, for their Arbitration Demand against Respondents Rust Movie Productions LLC and Ryan Smith, allege as follows:

NATURE OF THE ACTION

1. On October 21, 2021, an unspeakable tragedy unfolded on a movie set just outside Santa Fe, New Mexico. After a chain of events still not fully understood, an accidental shooting took the life of Halyna Hutchins—a wife, mother, daughter, friend, and extraordinarily talented cinematographer. To make sense of something as senseless as Hutchins’s death is no easy task. But the effort must adhere to the facts. What follows are the facts of what happened, as we know them so far.

2. “Cold gun!” announced Dave Halls, the assistant director of the Western film *Rust*, as he handed a pistol to Alec Baldwin for rehearsal. In industry jargon, with which Baldwin was well familiar after working as an actor for 42 years, that meant the pistol contained either nothing or only “dummy” rounds. “Dummy” rounds have a projectile but no charge; blank rounds have a charge but no projectile. And live ammunition is not permitted on the set at any time. Immediately before the handoff to Baldwin, upon information and belief, Halls had taken the gun off a prop

cart after it had been loaded by the set’s armorer, Hannah Gutierrez Reed, the person responsible for gun safety and managing the operation of firearm-related props on the set. Reed claims to have personally checked all of the rounds to ensure that they weren’t “hot” and then loaded them into the pistol. Halls “later told an investigator that, after [Reed] opened the gun for him to inspect, he did not check all of the rounds as he should have before he handed it to . . . Baldwin[.]”¹

3. Reed purchased the ammunition on the set—which was supposed to consist of only dummy rounds—from Seth Kenney at PDQ Arm and Prop, LLC. According to a lawsuit that Reed filed against Kenney and PDQ, “as suppliers of prop ammunition to the Rust set, [they] sold, distributed, and advertised [the] props as dummy ammunition and not live rounds,” and Reed “relied upon and trusted that [they] would only supply dummy prop ammunition, or blanks, and no live rounds were ever to be on set.”² As Reed further alleges, Kenney and PDQ actually “distributed boxes of ammunition” that “contained a mix of dummy and live ammunition[.]”³ Regardless of the veracity of Reed’s allegations and who is actually at fault (Halls, Reed, Kenney, or some combination of the three), the fact is that on October 21, 2021, the gun used by Baldwin discharged a live round, wounding director Joel Souza and killing cinematographer Halyna Hutchins.

4. At this point, two things are clear: someone is culpable for chambering the live round that led to this horrific tragedy, and it is someone other than Baldwin. Baldwin is an actor. He didn’t announce that the gun was “cold” when it really contained a live round; he didn’t load

¹ *What We Know About the Fatal Shooting on Alec Baldwin’s New Mexico Movie Set*, N.Y. TIMES (Feb. 16, 2022), available at <https://www.nytimes.com/article/alec-baldwin-shooting-investigation.html>.

² *Hannah Gutierrez Reed v. Seth Kenney and PDQ Arm and Prop, LLC*, No. D-202-CV-2022-00217 (Second Judicial District Court, County of Bernalillo, State of New Mexico) (Jan. 12, 2022), Complaint ¶ 58.

³ *Id.* ¶ 126.

the gun; he didn't check the bullets in the gun; he didn't purchase the bullets; he didn't make the bullets and represent that they were dummies; he wasn't in charge of firearm safety on the set; he didn't hire the people who supplied the bullets or checked the gun; and he played no role in managing the movie's props. Each of those jobs was performed by someone else.

5. As he had done throughout his career, Baldwin trusted the other professionals on the set to do their jobs. Until October 21, Baldwin had never been involved in a breach of safety on the set of any movie or film, and he has safely handled firearms and other weapons without incident in at least a dozen films and television projects, including *The Hunt For Red October*, *Miami Blues*, *The Getaway*, *The Shadow*, *Heaven's Prisoners*, *The Juror*, *The Edge*, *Thick as Thieves*, and *Mission Impossible: Fallout*. Baldwin has also found himself on set with a gun pointed at him. He has therefore been trained for decades about gun safety on movie sets, and he received similar training from Reed on the set of *Rust*. He followed the training when this tragedy occurred on October 21.

6. Halyna Hutchins's death is an unthinkable tragedy. Perhaps billions of rounds have been fired from guns on film and television sets over the past 75 years, without incident. Only a few—in the single digits—have resulted in fatal injury. That's because crew members generally do their job to ensure that live rounds don't end up in guns being fired by actors on movie sets. This is a rare instance when the system broke down, and someone should be held legally culpable for the tragic consequences. That person is not Alec Baldwin.

7. Now, as a result of a live round getting to the set, bypassing all of the safety checkpoints, and making its way into the supposedly "cold" pistol given to Baldwin, October 21 has become the worst day in the lives of Hutchins's family. It was a tragedy—a horrible loss of a wife, mother, daughter, friend, and talented cinematographer. It does not diminish that loss to say

that October 21 was also the worst day in Alec Baldwin’s life. That day has and will continue to haunt Baldwin. “Accidental killers often report experiencing symptoms associated with post-traumatic stress disorder: flashbacks, hallucinations, nightmares, and what’s known as ‘moral injury.’”⁴ Yet, as a society, we do not provide the resources or understanding for people going through these tragedies: “[t]here are self-help books written for seemingly every aberration of human experience But there are no self-help books for anyone who has accidentally killed another person. An exhaustive search yielded no research on such people, and nothing in the way of therapeutic protocols, publicly listed support groups, or therapists who specialize in their treatment.”⁵ Instead, we often pile on to the grief they are experiencing and villainize them as murderers, without putting ourselves in their shoes or considering who is truly culpable for the tragedy.⁶

8. Hutchins’s death deserves to be investigated from every angle, not only for the sake of justice but as a means of honoring her as well. However, Hutchins’s legacy cannot properly be recognized when the circumstances of her death are obscured by false allegations—finger pointing by various parties that diverts attention from the most important questions in this case: how did live ammunition get on the set of *Rust*, who put the live bullet in the gun, and why did the experts who were hired to check the gun fail to detect the bullet? The facts make clear that Baldwin is not culpable for these events or failures. Baldwin therefore brings this action to seek indemnification under Section 9 of the Producer Agreement (attached as Exhibit 1).

⁴ Alice Gregory, *The Sorrow and the Shame of the Accidental Killer*, NEW YORKER (Sept. 11, 2017), available at <https://www.newyorker.com/magazine/2017/09/18/the-sorrow-and-the-shame-of-the-accidental-killer>.

⁵ *Id.*

⁶ *Id.*

PARTIES AND ARBITRABILITY

9. Baldwin is an individual and a resident of New York, New York.
10. El Dorado Pictures, Inc. is a California corporation. It is Baldwin's production company and has offices at 160 Varick Street, New York, New York 10013.
11. Rust Movie Productions LLC is a New Mexico limited liability company.
12. Ryan Smith is an individual and, upon information and belief, a resident of California.
13. The Producer Agreement contains an arbitration provision:

Any and all controversies, claims or disputes arising out of or related to this Agreement or the interpretation, performance or breach thereof, including, but not limited to, alleged violations of state or federal statutory or common law rights or duties, and the determination of the scope or applicability of this agreement to arbitrate ("Dispute"), will be resolved according to the following procedures which will constitute the sole dispute resolution mechanism hereunder. If the Parties are unable to resolve any Dispute informally, then such Dispute will be submitted to final and binding arbitration. The arbitration will be initiated and conducted according to either the JAMS Streamlined (for claims equal to or less than \$250,000) or the JAMS Comprehensive (for claims greater than \$250,000) Arbitration Rules and Procedures, except as modified herein, including the Optional Appeal Procedure, at the New York office of JAMS, or its successor ("JAMS") in effect at the time the request for arbitration is made (the "Arbitration Rules"). The arbitration shall be conducted in New York County before a single neutral arbitrator with substantial experience in disputes concerning the U.S. motion picture industry and the exploitation of intellectual property rights, appointed in accordance with the Arbitration Rules. The arbitrator shall follow New York law and the Federal Rules of Evidence in adjudicating the Dispute.

Producer Agreement, Ex. A § 18.

FACTUAL ALLEGATIONS

I. *Rust* Is Conceived

14. In 2018, Baldwin partnered with Souza on a draft script for a Western movie. Baldwin had previously been in talks with Souza to act in one of Souza's prior films, *Crown Vic*, but had been unable to do so because of scheduling conflicts.

15. The Western, *Rust*, tells the story of a young boy who accidentally kills a local rancher and is sentenced to hang in 1880s Kansas. The boy is broken out of prison by his estranged grandfather Harland Rust, an infamous outlaw. The two flee to New Mexico on a dangerous journey through an unforgiving landscape, running from a U.S. Marshal and bounty hunter on their tail and forming a close bond along the way.

16. Although Baldwin was not specifically looking to film a Western, he was attracted to the *Rust* project because it offered an opportunity to work with Souza on something Baldwin had increasingly become interested in—making films in which dialogue takes a back seat to cinematography, films in which the camera tells the story.

17. Baldwin collaborated with Souza on the writing of the *Rust* script and was given a “Story By” credit for his work.

II. Respondents Obtain Financing, Form a Budget, and Hire a Crew

18. Throughout 2019-2021, Baldwin engaged in discussions with Souza and *Rust*'s team of producers, including Respondents, moving *Rust* forward from concept to execution.

19. *Rust* had six credited producers: Ryan Smith, Nathan Klingher, Ryan Winterstern, Matt DelPiano, Anjul Nigam, and Baldwin.

20. Smith, individually and through his production company, Rust Movie Productions LLC, was primarily responsible for *Rust*'s day-to-day operations.

21. Smith and the other producers pitched *Rust* to investors, secured financing, and set the budget for the film.

22. Smith and his associate, Gabrielle Pickle, hired the crew for *Rust*.

23. Baldwin's only involvement in *Rust*'s finances was his forfeiture of his own fees that he gave back to the production to enhance the budget. Baldwin's total compensation package

(starring and producing) was set at \$250,000. However, Baldwin gave back \$100,000, as an “investment,” and he had offered an additional \$37,500 from his fees.

24. On September 13, 2019, Nigam wrote to Baldwin’s office that he was “[c]hecking on the status of the script as I have several financing avenues that are waiting on it.”



25. While the other producers, such as Nigam, handled financing and budget matters for the film, Baldwin was consulted about the creative aspects of *Rust*’s marketing, such as the artwork for the teaser poster and the preparation of a video promotion for Cannes.

From: Sebastien Aussal [REDACTED]
Date: June 15, 2020 at 5:59:29 PM EDT
To: Casey Bader [REDACTED]
Cc: Anjul Nigam [REDACTED]
Subject: RUST - Teaser artwork

Hey Casey

Happy Monday!
Please find here the attached PDF with 5 different versions of the teaser artwork.

We just discussed it extensively with the sales team and for the international distribution, we definitely recommend going with the version page 5 (the last one). We totally changed the treatment image to lean more on the western genre. We hope Alec will like it.

1

In our opinion, the first two pages are OK to use of course but we think INTL buyers won't really recognize Alec enough. We already had a comment going that direction this morning when we asked one of our close buyers.

Let me know your thoughts and once again, thanks a lot for your support and great help in a very busy period for you. This is really much appreciated!

Speak soon, Sebastien

From: Casey Bader [REDACTED]
Sent: Friday, May 15, 2020 4:04 PM
To: Alec Baldwin
Cc: Matt Hoff
Subject: RUST: Video Request for Cannes Market

Please see request from Highland Film Group below for RUST.

A piece to camera recorded by you to greet the distributors that will be interested in the project.

This is just to share your excitement to make the movie, recorded on a smartphone - no special tech required. Neutral background would much appreciated.

Outline: **Would be ideal to receive 3 min of footage to cut a 45 second piece out of it.** Short sentences will have more impact.

1. Introduce yourself and your character in RUST
2. Can you tell us a bit about the story of RUST and how you have been involved?
3. What are you so excited about in this project? What drew you to the production?
4. What do you hope audiences will take away from the film?

On a final note, can you thank the international distributors for their attention and wish them a great Film Market?—
(Please DON'T mention 'Cannes' Market as we may be able to use this piece later this year).

Deadline to receive these elements is Wednesday next week (May 20). I hope it will be doable on your end.

26. Baldwin also worked closely with Souza on casting decisions, reaching out to other actors regarding taking roles in *Rust*.

From: [REDACTED]
Date: Wednesday, July 21, 2021 at 9:31 AM
To: Esther Chang [REDACTED]
Cc: Coleman Lussier (Esther Chang Assistant)
[REDACTED]
Subject: Alec Baldwin for Eric Bana

EXTERNAL

Dear Esther,

If you don't mind, could you kindly forward this to Eric Bana:

Dear Eric,

I am sure that, by now, it has been conveyed to you about our desire (and hope) that you will join us in our film RUST.

I talked frankly with Esther about how I do not have the latitude, myself, to travel with my large family unless it involves an extraordinary opportunity. So I assume you have your family related priorities, as well. Furthermore, our prior set of producers understood the need to present you with an appropriate offer. Our current partners seem unable to get to what I believe is the right number.

Having stated that, I indulged my passion for you in this role a bit further last night and rewatched MUNICH, which I believe is Spielberg's best film and you give one of the top performances by a leading actor of the last 40 years. You made me want to join a righteous cause and ...well...do some things.

I don't expect this to work out. But I want you to know I am a great admirer of your work in film.

All my best to you and stay safe,

Alec

From: Joel Souza [REDACTED]
Sent: Thursday, February 4, 2021 4:48 PM
To: [REDACTED] Matt Hoff
Subject: Rust- Kevin Bacon
Attachments: RUST Script.pdf

Hey Matt

I haven't received any kind of acknowledgment after having sent the script to Bacon's manager yesterday. Wondering if you could reach out to confirm receipt.

Just wanted to make sure I didn't end up in a spam folder or that he didn't look at it because it was an unfamiliar sender and thought it was an unsolicited submission or something. I've Attached the Script file here that I sent him.

Can you let me know? Thanks a lot

Joel

27. As filming neared, Baldwin received information and updates about matters on the ground from other producers, such as the schedule for filming.

28. For example, on August 31, 2021, Baldwin’s office received an email from producer Winterstern regarding filming dates and locations.

On Aug 31, 2021, at 8:51 PM, Ryan Winterstern [REDACTED] wrote:

Per the call earlier, production has reconfirmed to me the shooting dates have been moved to a Wednesday – Sunday schedule. I pushed for an answer on if we’ve received sign off from the locations that Sunday will work, which we haven’t, but no one seems to think that will be an issue as we were given the okay for Saturday already. So, we’re proceeding forward with this new schedule.

Alec’s wrap date is Sunday Oct 31st. Per the new schedule, that day is a split. I’ve discussed with Gabby how we can rectify this in order to make it a day shoot so to have the wrap party that night. The two solutions given were to have the wrap party the weekend earlier (that earlier Monday) or to move scenes from night to day so not to have to shoot splits. We’re still tinkering with everything as more cast comes aboard and Joel is able to see the locations next week as he lands in Sante Fe this weekend.

Let me know if you have any questions.

Ryan

29. When a film’s budget allows, Baldwin usually brings along his own group of professionals with whom he has worked frequently. However, when Baldwin is involved in films with smaller budgets, like *Rust*, he makes every effort to sacrifice some of the ordinary accommodations in his contract to help the budgeting of the film. In these circumstances, he does not have authority to choose the crew or otherwise direct the non-creative aspects of the film.

30. Baldwin’s correspondence regarding *Rust* establishes that he was introduced to crew members shortly before filming began and did not play a role in their hiring.

31. For example, Baldwin was introduced to the head of *Rust*’s makeup department, Stacy Lockhart, just weeks before filming began, on September 24, 2021, via Lockhart’s email contact with Baldwin’s office.

On Sep 24, 2021, at 5:17 PM, Stacy Lockhart [REDACTED] wrote:

Hey Jonah! This is Stacy Lockhart, I am the make up department head on “RUST”, I was also the make up department head on “Super Cell”. Looking forward to working with Alec again! I know the products that he likes, but is there any other information he wants me to have about his look in general for the Rust character?

Thanks so much!

--

Stacy Lockhart
IATSE Makeup Local 798
www.stacylockhartmakeupartst.com

32. Baldwin was introduced to *Rust's* costume designer, Terese Davis, in August 2021.

From: [REDACTED]
Subject: Alec - Costume Designer Call - Saturday 12:00PM ET
Date: August 20, 2021 at 12:10 PM
To: [REDACTED], Terese Davis [REDACTED]
Cc: Gabrielle Pickle [REDACTED], Row Walters [REDACTED], [REDACTED], Ryan Winterstern [REDACTED], Nathan Klingher [REDACTED]

Terese meet Jonah Alec's assistant, Jonah meet Terese our costume Designer,
Jonah will get you schedule for this Saturday to go over Rust costume with Alec.
Jonah I will let you take it from here.

Sincerely,

Ryan Dennett-Smith
Producer/UPM
M: [REDACTED]
E: [REDACTED]

From: Terese Davis [REDACTED]
Sent: Saturday, August 21, 2021 1:15 PM
To: [REDACTED]
Subject: Picture of old timer outlaw for Alec

Hi Jonah,

On our Zoom call this morning Alec asked me to send you this picture and my contact information to give to him.

My email is [REDACTED]
My phone number is [REDACTED]

Please don't hesitate to let me know if there is anything else you need from me. I will be sending you some look boards to give to him as well in the next day or so.

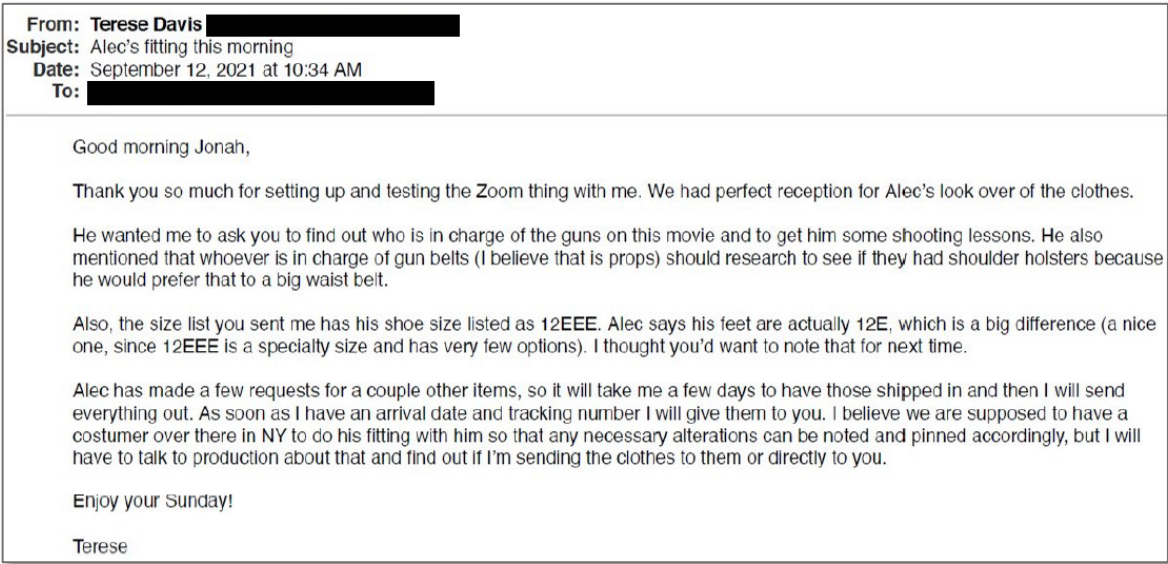
Also, he said he has measurements from his last movie. Would you be able to get those to me as soon as possible? I need to start ordering clothes immediately so I have time to age them before his fitting.

Thank you so much! Have a great rest of your day.

Terese

33. Email correspondence with Davis further shows that Baldwin affirmatively requested gun training by the crew member responsible for firearms on the *Rust* set long before filming began. In a September 12, 2021 email, Davis noted to Baldwin's assistant that "[h]e wanted me to ask you to find out who is in charge of the guns on this movie and to get him some shooting lessons." Upon information and belief, *Rust's* armorer, Reed, had not yet been hired. As Baldwin's request to "find out who is in charge of the guns on this movie" indicates, he was not involved in Reed's hiring and was unaware that the film had not yet hired an armorer. It also

demonstrates that even after 42 years in the film business, Alec Baldwin takes safety seriously and wanted to ensure he received the safety training that was available on the *Rust* set.



III. Baldwin and His Production Company Enter Into a Contract With Respondents

34. On October 6, 2021, Baldwin and his production company, El Dorado Pictures, Inc., entered into the Producer Agreement with Ryan Smith and Rust Movie Productions LLC, which details the parties' expectations and obligations with respect to Baldwin's role in *Rust*.

35. Consistent with Baldwin's involvement to that date, the Producer Agreement emphasizes his and El Dorado Pictures' creative role in the *Rust* production. For example, Section 6 of the contract gives El Dorado Pictures, Inc. a "tie-break on all creative decisions."

36. Further, although Section 6 of the Producer Agreement states that Rust Movie Productions LLC and El Dorado Pictures, Inc. "shall have mutual approval on all business and creative decisions," only Rust Movie Productions LLC "shall have final determination with respect to any creative decision that would result in a material increase in the Budget," indicating that the budget for *Rust* was exclusively within the control of Rust Movie Productions LLC and Smith.

37. In addition, Section 3 of the Producer Agreement provides that Baldwin “may not engage the services of and/or facilities of any third party in connection with [*Rust*] without [Rust Movie Productions LLC’s] prior written consent in each instance,” indicating that Baldwin had no independent authority to make hiring decisions on *Rust*.

38. Finally, Section 9 of the Producer Agreement contains a broad indemnification clause, providing that Rust Movie Productions LLC “shall indemnify, defend, and hold harmless [El Dorado Pictures, Inc.] and [Alec Baldwin] from and against any loss, damage, liability, claim, demand, action, cost and expense (including reasonable outside attorneys’ fees and costs) arising from and/or in connection with (i) [Rust Movie Productions LLC’s] breach of any of its representations, warranties and/or covenants pursuant to this Agreement; (ii) [Rust Movie Productions LLC’s] negligence and/or willful misconduct[;] and/or (iii) the development, financing, production, marketing, distribution and/or exploitation of [*Rust*] and/or any element thereof”

IV. Baldwin Arrives on the *Rust* Set, Receives Gun Safety Training, and Begins Filming

39. On Monday, October 11, 2021, Baldwin arrived on the set of *Rust* at the Bonanza Creek Ranch in Bonanza City, New Mexico, several miles southwest of Santa Fe.

40. The day after he arrived, Baldwin had training with Reed, *Rust*’s armorer. Training lasted around 90 minutes. During the session, Reed reminded Baldwin of gun safety measures he had learned at substantially similar gun trainings throughout his career, such as always putting the gun down immediately once “cut” is called and not to force the gun if it jams.

41. But Reed did not instruct Baldwin to check the gun himself. In fact, she told Baldwin that it was her job to check the gun—not his. Similarly, Baldwin believed, based on prior gun safety training he received on movie sets, that actors should *not* unilaterally check guns for

live ammunition. If actors want to check a gun for their own peace of mind, they should only check the gun with the armorer closely supervising the process. In other words, actors may jointly inspect a gun with the armorer, but never on their own. Baldwin had been told during prior gun safety trainings that a gun must be rechecked and cleared by the armorer if the actor unilaterally checks the gun without the armorer's supervision. Baldwin followed Reed's instructions during the gun safety training and throughout his time on the *Rust* set.

42. Reed also offered Baldwin "cross-draw" training. Cross-draw training is not focused on gun safety, but rather the motion of pulling the gun from the holster. Baldwin has drawn a gun from a holster on the set of a film many times and did not require this training, already being comfortable with the technique. In addition, Baldwin's holster had not yet been properly fitted by the wardrobe department; Baldwin did not need cross-draw training, he needed a holster that fit properly.

43. Soon after arriving on set, Baldwin had dinner with Hutchins, *Rust's* cinematographer or director of photography, and Souza, *Rust's* director. At dinner, they discussed their creative vision for the film. They had a conversation about how to tell the story of *Rust* through the camera, taking advantage of the vast, quiet expanses of desert at their disposal. Indeed, the *Rust* script opens as follows,

"SILENCE... Deafening. Consuming. Vast and empty...

EYES now—

Slate. Unflinching. A raging sea. A roadmap of hardship, toil in every furrow and contraction of the iris. BLINKING now—

—replaced by another pair of EYES. Bottomless. Young. Something we didn't see in the others. A faint glimmer but still there...

Hope.

EXT. KANSAS PLAINS – MORNING

A windmill TURNS. An ancient, crippled giant crucified against an unforgiving sky. Spindle stabbing at a well long since dry...

44. Hutchins, Baldwin, and Souza believed they were on to something special, a cinematic effort highlighting the beautiful environment of New Mexico. They did not discuss safety at that dinner, and at no point did Baldwin discuss gun safety with anyone beyond Reed, Sarah Zachry, Nicole Montoya, and Dave Halls.

45. From the moment Baldwin arrived, the morale on the set and the camaraderie of the crew was apparent. Everyone seemed to be enjoying the experience. *Rust's* filming was proceeding smoothly. The cast and crew had formed a joint belief in the film's promise. As the film's key second assistant director wrote in an email to the cast on October 11, 2021, the day Baldwin arrived on set, "What an incredible first week! Thank you guys all for your incredible patience as we've worked through schedule changes and all the wonderful things that get a movie made. . . . Can't wait for this week!"

From: "T.C. Barrera" [REDACTED]
Subject: RUST - BLUE One Liner and Cast DOODs dated 10.11.21
Date: October 11, 2021 at 6:50:59 PM MDT
To: undisclosed-recipients;;

RUST CAST!

What an incredible first week! Thank you guys all for your incredible patience as we've worked through schedule changes and all the wonderful things that get a movie made.

Please see attached below the BLUE One Liner and Cast DOODs dated 10.11.21.

Please let me know if you have any questions or concerns!

Can't wait for this week!

--

Best,
Tim Barrera - Key 2nd Assistant Director
Cel: [REDACTED]

46. During his time at Bonanza Creek Ranch, Baldwin never personally observed, was informed of, or became aware of any safety issues on *Rust's* set.

47. Late in the day of October 20, as production was wrapping, Baldwin had a brief conversation with Lane Luper, a camera assistant on the *Rust* crew. Luper thanked Baldwin for his support on social media of IATSE (International Alliance of Theatrical Stage Employees), which had been threatening a strike. Baldwin told Luper that if IATSE did indeed go on strike, Screen Actors Guild would strike in solidarity.

48. During their conversation, Luper told Baldwin that the set of *Rust* had “some problems.” The only “problem” that Luper specifically mentioned, however, was his desire for better hotel rooms for his team. Luper never mentioned any issues regarding gun safety.

49. Baldwin asked Luper if he would be on set the following day and said that they could continue to speak about the hotel issue then. Baldwin intended to consider the matter and, if he agreed that different hotel rooms were needed for Luper’s camera crew, was prepared, once again, to pay for them out of his own compensation.

50. However, Luper and his team later decided to quit the *Rust* crew. And, as they did not collect their equipment from the set until the following morning, October 21, the *Rust* production did not have video playback to assist in the filming on October 21.

V. The Events of October 21, 2021

51. On October 21, 2021, the *Rust* cast and crew were preparing to rehearse a scene in the small church at Bonanza Creek Ranch. In the scene, Baldwin’s character, Harland Rust, takes cover in the church after a shootout. The scene involves a close-up view of a firearm—a gun held by Rust that he is required to “cock” before a shootout begins of shotguns “boom[ing] and “Colts exploding.” The scene unfolds as follows, with bracketed ellipses to shorten the script:

INT. CHURCH – SAME

Lucas hauls Rust in. They collapse in a pew. Lucas propping him back up. Rust groaning in pain. Breath labored...

LUCAS

I'm gonna find some help...

RUST

...don't need no damn help...

LUCAS

You're gonna die if I don't. Blood already pooling under the pew...

LUCAS (CONT'D)

...I'll go find someone... just wait here...

EXT. TOWN – SAME

Lucas comes out, goes looking for help. Wood and Bass joined out on the porch now by the LaFontaines and Reed and Miller. Checking weapons, tying down holsters...

[. . .]

INT. CHURCH – SAME

A door opens quietly. Wood and Bass enter. *Colts level.* Rust in a pew up ahead. Back to them. Wood and Bass fanning out...

WOOD

Harland Rust...

He doesn't answer. Doesn't move. Nothing...

WOOD (CONT'D)

Want you to stand up nice and slow, toss any weapons you got...

Rust still. Hand moving almost unnoticeably. Slips a Colt from its holster. Wood advancing slowly...

WOOD (CONT'D)

Jack!...

Reed and Miller come in the front. Rifles up. Fanning slowly...

WOOD (CONT'D)

Ain't no iteration you walk outta this church less'n you stand up slow and toss them guns...

Rust's Colt COCKED quietly now...

[. . .]

INT. CHURCH – SAME

Wood and his Men SPIN. All Rust needs. *Colts EXPLODING.*

52. Before lunch that day, Halyna Hutchins, Joel Souza, and Baldwin convened in the church to discuss how to film an “insert shot” of the gun. This is, essentially, a close-up focused on the gun. When the cast and crew broke for lunch, *Rust's* armorer, Reed, took the gun from Baldwin that he had been holding in rehearsals.

53. Reed relieved Baldwin of the weapon most of the time. At other times, however, due to space limitations on set, Reed was asked to clear the set after checking the weapons. In Reed's absence, Baldwin was relieved of the weapon by Halls, *Rust's* assistant director who also was responsible for handling guns on set.

54. When the cast and crew returned from lunch and resumed preparations for rehearsal inside the church, Baldwin was handed the gun by Halls. While handing the gun to Baldwin, Halls announced to all those in the vicinity, “We have a cold gun on set.”

55. “Cold gun” is a widely accepted and significant term in the film-and-television industry. It refers to a firearm that has no blank rounds, let alone live rounds, loaded into the gun. The announcement of a “cold gun” is meant to assure all present that the gun has just been properly checked for the absence of any ammunition other than “dummy” rounds, which contain no charge, by those responsible for ensuring its safety.

56. Baldwin has no knowledge of what happened to the gun from the time Reed relieved him of it before lunch to the time he was handed the gun declared “cold” by Halls.

57. In accepting the gun and relying on Halls’s representation that the gun was “cold,” Baldwin did as he’d always done and been taught to do throughout his career—all without incident. Specifically, as described above, an actor cannot rule that a gun is safe. That is the responsibility of other people on the set. If actors open their own gun on set to confirm the absence of live ammunition outside of the armorer’s close supervision, that gun should be repossessed by the armorer and cleared again. To Baldwin’s knowledge, several other actors on the *Rust* set followed the same process, relying on an appropriate crew member’s representation that a gun was “cold.”

58. When the cast and crew resumed work after lunch, Hutchins continued to evaluate her camera angle for the scene inside the church.

59. In Baldwin’s extensive experience, the cinematographer or director of photography on a film or television set has significant input into an actor’s performance. While directors bear the greatest responsibility for helping actors shape their performance, cinematographers have a similar responsibility as relates to what is or is not in the composition of the frame. Hutchins therefore directed Baldwin accordingly.

60. Baldwin was sitting in a church pew looking at Hutchins. Baldwin held the gun, which Halls had just announced was safe, in his hand. Hutchins was standing camera right

(Baldwin's left), next to the camera operator, and looking back and forth between Baldwin to her right and the camera operator's monitor to her left. She was trying to determine how best to angle the camera and what movements Baldwin should make for her to capture the cocked gun that the script had called for.

61. Baldwin asked Hutchins what she would like to see to prepare her camera angle for the scene. Baldwin did not perform a "cross-draw" of the gun. He pulled the gun out slowly, without issue, and held it still before Hutchins began giving any directions to him. Hutchins described what she would like Baldwin to do with the placement of the gun, which contained only "dummy rounds," as far as everyone was told. She directed Baldwin to hold the gun higher, to a point where it was directed toward her. She was looking carefully at the monitor and then at Baldwin, and then back again, as she gave these instructions. In giving and following these instructions, Hutchins and Baldwin shared a core, vital belief: that the gun was "cold" and contained no live rounds.

62. Baldwin asked Hutchins whether she wanted to see him cock the gun, as the script required. She responded yes. Baldwin tipped the gun down somewhat so that the lens of the camera would be able to focus on his hand's action on the top of the gun. While performing this action, Baldwin asked Hutchins, "Am I holding it too far down?" and "Do you see that?" Hutchins responded that she could see Baldwin's action from her angle.

63. Baldwin then pulled back the hammer, but not far enough to actually cock the gun. When Baldwin let go of the hammer, the gun went off. As later became known, a live bullet discharged from the gun and struck Hutchins, traveling through her body and striking Souza in the shoulder. Both Hutchins and Souza fell to the ground.

64. Immediately following the discharge, a sense of panic and confusion descended upon the *Rust* set. No one understood what had happened. Baldwin and others on the scene were ordered to leave the set, as medics began to render aid to Hutchins and Souza.

65. Outside the church, Baldwin and others began to talk to each other to try to piece together what had just happened. Baldwin thought Hutchins may have fainted or had a heart attack. He was also confused about why Souza was screaming in pain, unaware that a live bullet had struck him.

66. One individual suggested that a stone might have been lodged in the gun and discharged.

67. Another individual suggested that a live round might have been in the gun, but the idea was quickly dismissed by others as farfetched, as two different crew members—Reed and Halls—were responsible for checking the guns on set to confirm the absence of live ammunition.

68. At this time, *Rust's* script supervisor, Mamie Mitchell, approached Baldwin and said, “You realize you’re not responsible for any of what happened in there, don’t you?” Mitchell is now suing Baldwin.

69. After some time, a helicopter arrived and transported Hutchins to the hospital. Souza was taken to the hospital by ambulance.

70. Law enforcement had also arrived on the scene and began speaking with those who were involved in the incident.

71. Baldwin willingly sat for an interview with the Santa Fe County Sheriff’s Office for nearly two hours, declining their invitation to have a lawyer present because he has nothing to hide. He has continued to cooperate with the Sheriff’s Office and District Attorney in the hope

that they get to the truth of what actually transpired—who brought the live ammunition on the set, who put it in the gun, and why the experts who were hired to check the gun didn't detect the bullet.

72. At the conclusion of his initial interview with the Sheriff's Office, Baldwin's interviewer slid her phone across the table and showed him a photograph of the object that had just been removed from Souza's shoulder at the hospital, a .45 caliber slug.

73. Baldwin recognized the object as a live bullet, and he finally began to comprehend what had transpired on the set of *Rust* that day. He was shocked. In his mind, it was outside the realm of all possibility that a live bullet could have been present on the ranch property or on the prop truck, let alone in the gun itself, a gun declared "cold" by a person with responsibility for checking it. And yet the unthinkable had happened.

74. Souza was treated at the hospital and recovered. Tragically, Hutchins died of her injuries.

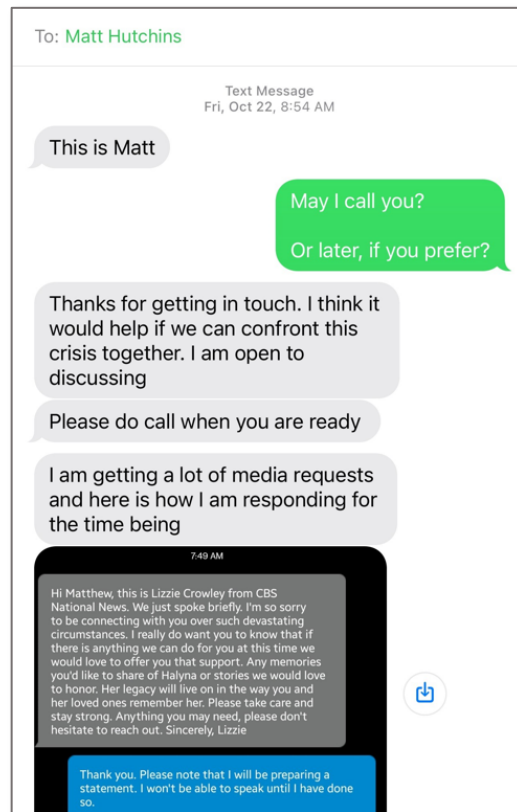
VI. Baldwin's Communications With Hutchins's Husband

75. In the days following the tragedy, Baldwin was in shock and anguish over the events and desperately wished to return home to his family. However, he remained in New Mexico to honor Hutchins at an impromptu memorial and to meet with her husband, Matthew Hutchins, and their son, Andros Hutchins, who traveled from California to New Mexico shortly after her death.

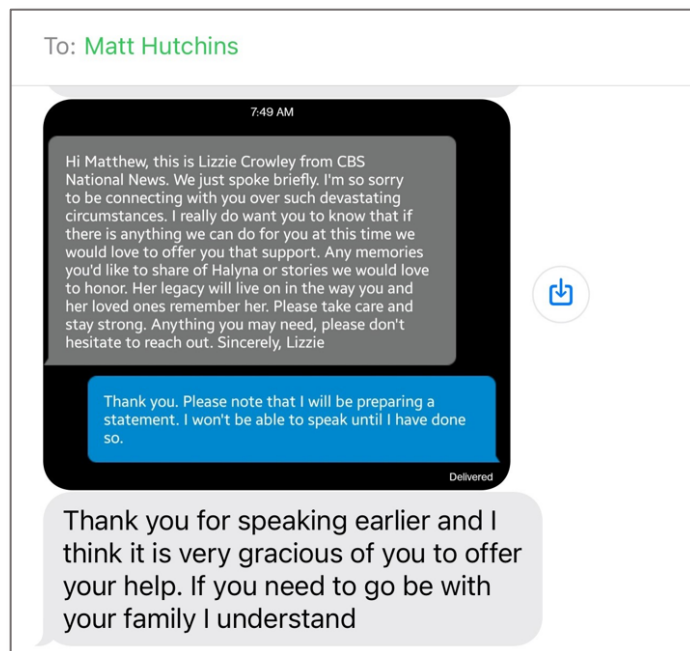
76. The morning of October 22, the day following Halyna Hutchins's death, Baldwin contacted Matthew Hutchins via text message, reaching out to inquire if they may speak.

77. Hutchins responded, "Thanks for getting in touch. I think it would help if we can confront this crisis together. I am open to discussing," and "Please do call when you are ready."

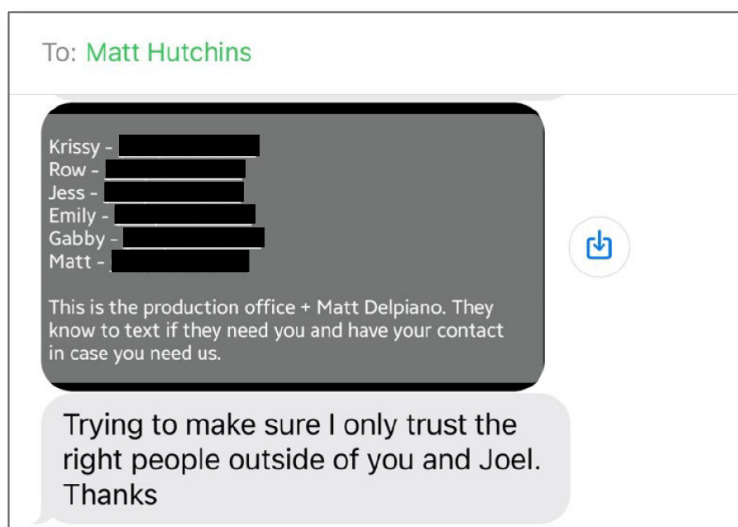
He also let Baldwin know that he was receiving media inquiries, seemingly seeking Baldwin's input on his response.



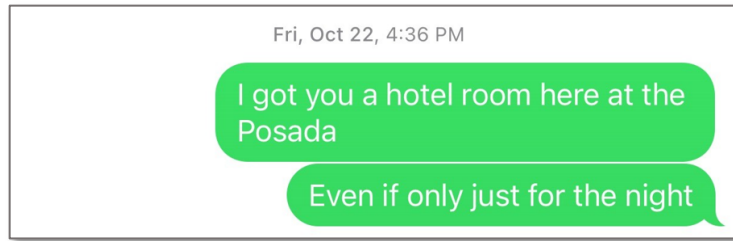
78. Hutchins and Baldwin spoke by phone early in the day on October 22. After that conversation, Hutchins wrote to Baldwin by text message, “Thank you for speaking earlier and I think it is very gracious of you to offer your help.”



79. Hutchins also asked Baldwin about the contact information for the *Rust* production office, writing that he was “[t]rying to make sure I only trust the right people outside of you and Joel.”



80. Later that day, Baldwin arranged hotel accommodations for Hutchins and his son.



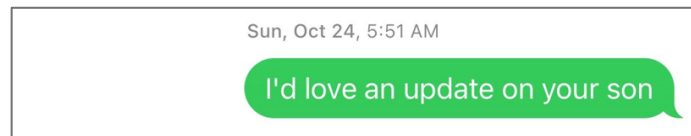
81. The following day, October 23, Baldwin met with Hutchins and his son for breakfast. At this meeting, Hutchins hugged Baldwin and told him, “I guess we’re going to go through this together.”

82. That day, Baldwin also attended and spoke at a memorial service for Halyna Hutchins that was organized by the crew of *Rust*.

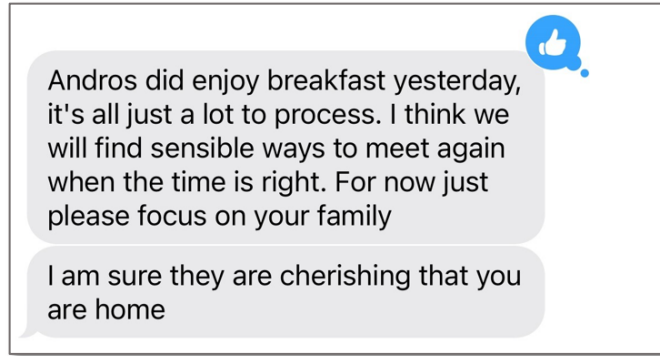
83. Baldwin then flew home to be with his family.

84. Baldwin and Hutchins continued to communicate in text messages and phone calls throughout the month of October 2021, each inquiring as to how the other was doing.

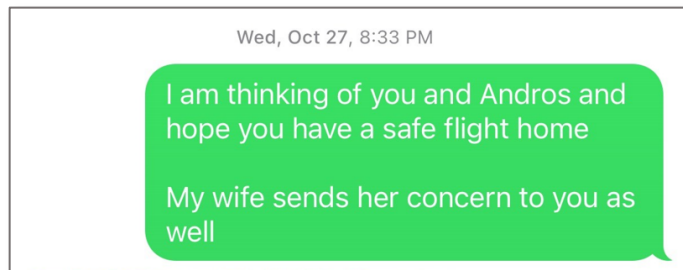
85. On October 24, Baldwin wrote to Hutchins, “I’d love an update on your son.”



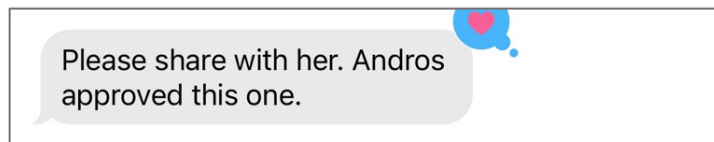
86. Hutchins responded, among other messages, that his son “enjoy[ed] breakfast yesterday” and that “I think we will find sensible ways to meet again when the time is right,” but told Baldwin, “For now just please focus on your family,” stating that “I am sure they are cherishing that you are home.”



87. On October 27, Baldwin wrote to Hutchins, “I am thinking of you and Andros and hope you have a safe flight home.” He added, “My wife sends her concern to you as well.”



88. Hutchins responded with a picture of his son, saying, “Please share with her,” referring to Baldwin’s wife.

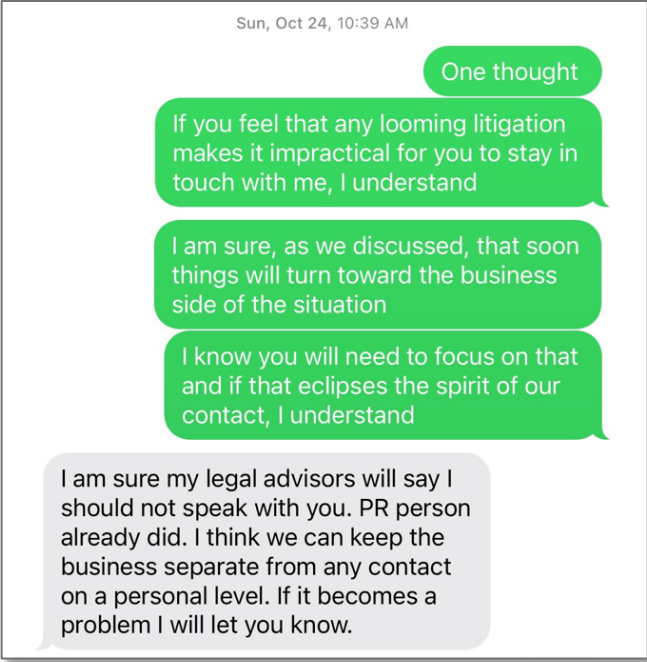


89. On October 29, Baldwin wrote to Hutchins, “Did you make it home?” Hutchins replied, “Yes. How are you doing? I am available if you want to chat.”



90. From the start of their communications, Baldwin repeatedly told Hutchins that he understood if Hutchins could not speak with him on the advice of his lawyers or due to any pending litigation. But Hutchins continuously assured Baldwin that he wished to keep in touch and maintain their relationship, which had become positive and mutually supportive.

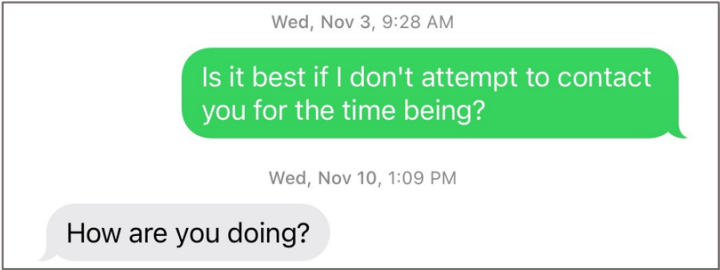
91. For example, on October 24, the day after Baldwin met with Hutchins and his son, Baldwin wrote to Hutchins in a text message, “If you feel that any looming litigation makes it impractical for you to stay in touch with me, I understand.” Baldwin continued, “I am sure, as we discussed, that soon things will turn toward the business side of the situation,” and “I know you will need to focus on that and if that eclipses the spirit of our contact, I understand.”



92. Hutchins never once said to Baldwin that he doubted the veracity of Baldwin’s telling of the events of October 21, 2021, which remained consistent from the first day the two of them spoke.

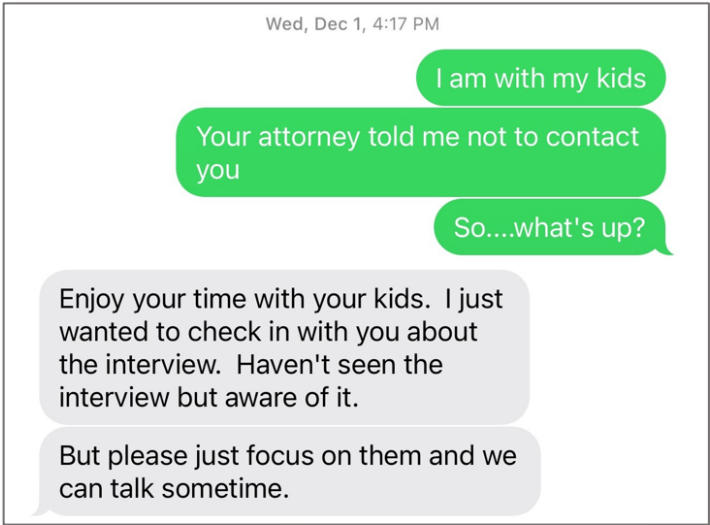
93. Hutchins also never once said to Baldwin that he viewed Baldwin as responsible or culpable for his wife’s death.

94. On November 3, Baldwin asked Hutchins, “Is it best if I don’t attempt to contact you for the time being?” Although Hutchins did not respond directly to Baldwin’s question, a week later, on November 10, he wrote to Baldwin, “How are you doing?” and later called Baldwin.



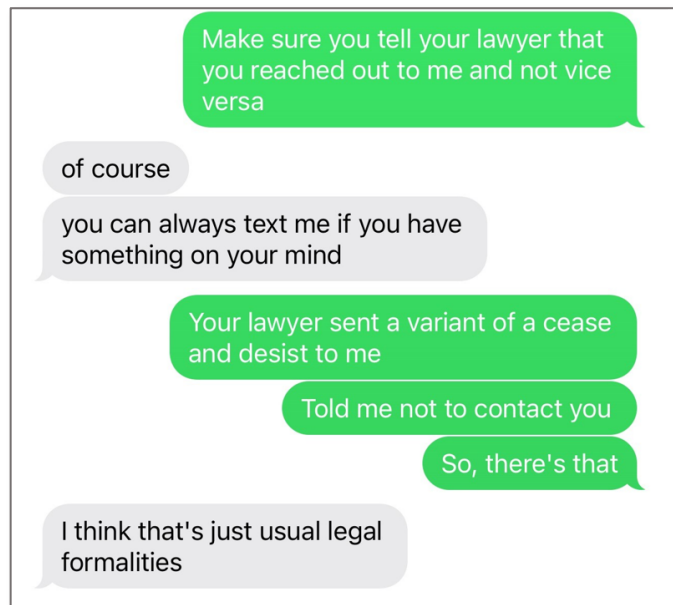
95. On December 1, following a missed call from Hutchins, Baldwin wrote to Hutchins, “Your attorney told me not to contact you,” asking, “So...what’s up?”

96. Hutchins responded, “Enjoy your time with your kids. I just wanted to check in with you about the interview.” Hutchins was referring to an interview between Baldwin and ABC host George Stephanopoulos, which Baldwin had filmed on November 30 and was set to air the next day, December 2. Hutchins wrote, “Haven’t seen the interview but aware of it.” He also wrote, “But please just focus on them and we can talk sometime.”



97. Sensitive about his contact with Hutchins and not wanting to overstep, Baldwin wrote, “Make sure you tell your lawyer that you reached out to me and not vice versa.” Hutchins responded “of course” and “you can always text me if you have something on your mind.”

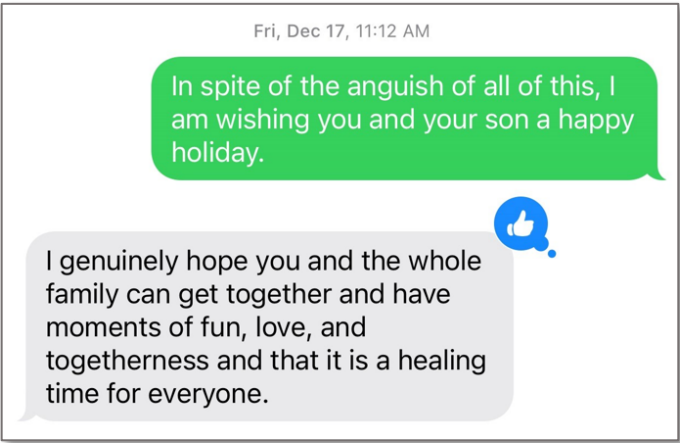
98. Baldwin responded, “Your lawyer sent a variant of a cease and desist to me” and “[t]old me not to contact you,” “[s]o, there’s that.” Hutchins responded, “I think that’s just usual legal formalities.”



99. Baldwin and Hutchins exchanged several additional text messages that day, with Baldwin providing information on his interview airing on ABC the next day and inquiring about Hutchins’s son, and Hutchins providing updates on his son’s well-being.

100. On December 17, over two weeks *after* Baldwin’s interview with Stephanopoulos had aired on ABC, Baldwin sent a text message to Hutchins in light of the upcoming holidays, writing, “In spite of the anguish of all of this, I am wishing you and your son a happy holiday.” Hutchins responded—again, more than two weeks after the interview—stating, “I genuinely hope

you and the whole family can get together and have moments of fun, love, and togetherness and that it is a healing time for everyone.”



VII. Baldwin Attempts to Craft a Proposed Settlement With Hutchins

101. Based on Hutchins’s assurances, Baldwin believed that Hutchins wished to maintain a positive and mutually supportive relationship with him and those involved in *Rust’s* production. To honor Halyna’s legacy and assist Hutchins and their son, Baldwin, and Baldwin alone, took the lead on behalf of the *Rust* producers in designing a proposed settlement to compensate Hutchins and his son for the irreplaceable loss of their wife and mother.

102. As early as November 3, 2021, Baldwin was in touch with the *Rust* producers, coordinating the effort to get the group together to begin discussions of settlement.

103. But the other producers of *Rust*, including Ryan Smith, who hired the crew of the film, did not take any substantial part in creating the proposed settlement or communicating the details to Hutchins.

104. Although Baldwin believed that the business side of the production, particularly Ryan Smith, should be conducting these settlement discussions, Smith and his team did not return Baldwin’s phone calls and chose to do nothing. Therefore, Baldwin took the lead out of his respect for Hutchins and his son and a genuine desire to provide them redress for their loss.

105. The proposed settlement for Hutchins included a component of insurance proceeds. In addition, Baldwin made an exhaustive effort to contact the *Rust* cast in the hope of acquiring their support to finish the film. He did so both with the intent of honoring Halyna's legacy by completing her last work and of compensating Hutchins and his son from the film's profits. Depending on the success of *Rust* upon its completion and release, this additional component of the settlement would likely have equaled millions of dollars.

106. No one who had been involved in *Rust* is eager to return to New Mexico. But Baldwin understood that the cast might be willing to finish the film as a tribute to Halyna. Baldwin, therefore, reached out to the principal cast, Souza, and Matthew Hutchins. Each individual on the cast and crew of the film had been impacted by the tragedy of October 21, 2021. It was only after an enormous input of time and work that Baldwin was able to convince each of the primary actors needed to complete the film and the film's director Souza—who had been injured in that day's events—that finishing *Rust* was an important step in honoring Halyna Hutchins's memory and talent, defining her legacy, and, in turn, providing financial support to her family.

107. There was some urgency regarding the possibility of finishing the film along a specific timeline, as the youngest cast member would soon age out of his role. Baldwin therefore communicated the details of the proposed settlement to Matthew Hutchins in phone calls that took place around January 4 and January 26, 2022.

108. During the first phone call, Hutchins told Baldwin that the proposed settlement sounded "interesting." He did not accept or reject the settlement, but told Baldwin that he would need to think it over after reviewing additional details. On the second phone call, Baldwin recalls, Hutchins sounded less open-minded.

109. On February 14, 2022, Baldwin sent a text message, stating to Hutchins that he had heard Hutchins's attorney intended to hold a press conference the next day. Baldwin expressed his concern that the proposed settlement would be imperiled by the press conference if Hutchins's lawyer attacked Baldwin or anyone else presumed essential to the completion of the film.

VIII. Hutchins Files Suit and Appears on NBC's *Today*

110. Since October 21, Baldwin had offered comfort and support to Matthew Hutchins and his son, as well as constructive input towards a settlement of the case. He has worked extensively to find ways to help Hutchins and his son. It is that same spirit that renders Baldwin reluctant to contradict some of Matthew Hutchins's public statements. Unfortunately, given the nature of Hutchins's accusations against Baldwin, he has no choice.

111. On February 15, 2022, Hutchins's attorney, Brian Panish, held a press conference in Los Angeles announcing the filing of a wrongful death lawsuit against Baldwin, *Rust* production companies and producers, and individuals from its crew.

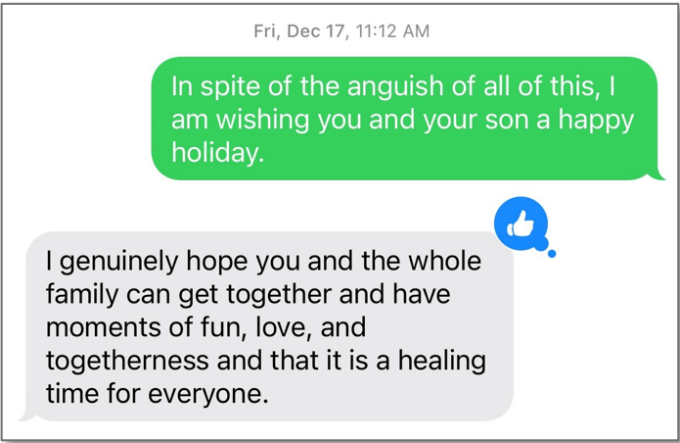
112. During the press conference, Panish played and later publicly released an inflammatory, misleading, and distasteful animated "reenactment" video of the tragedy, including an inaccurate and graphic depiction of Halyna Hutchins's death.

113. That day, Matthew Hutchins, on behalf of himself and his minor son, filed a lawsuit in the First Judicial District Court, County of Santa Fe, State of New Mexico, alleging wrongful death and loss of consortium for the death of Halyna Hutchins.

114. Hutchins's lawsuit contains numerous false allegations against Baldwin.

115. On February 24, 2022, NBC's *Today* aired an interview between Hutchins and Hoda Kotb. During the interview, Hutchins stated that he had "terror" in advance of Baldwin's

interview with George Stephanopoulos and became “so angry” watching the interview. This is in spite of the fact that Hutchins had sent this text two weeks *after* the interview had aired:



116. Moreover, before Hutchins’s appearance on the *Today* show, his interactions with Baldwin had only been polite, collaborative, and, at times, even warm. The Matthew Hutchins that showed up on the *Today* show is someone Baldwin had never met before.

117. When agreeing to complete *Rust*, every person involved spoke of Halyna Hutchins’s flourishing talent and their desire to celebrate her legacy through completion of the film. But plans to complete *Rust* and to channel its proceeds into a fund for Hutchins’s and his son’s benefit have unfortunately broken down as a result of the lawsuit and these public statements.

IX. Reed Files Suit Against the Supplier of the Ammunition That Killed Hutchins

118. Reed recently filed a lawsuit against Seth Kenney and PDQ Arm and Prop, LLC.⁷ In her complaint, Reed alleges that, “[a]s Rust Armorer,” she “was responsible for maintaining and managing operation of firearm related movie props,” and, “[a]s key props assistant, she was

⁷ *Hannah Gutierrez Reed v. Seth Kenney and PDQ Arm and Prop, LLC*, No. D-202-CV-2022-00217 (Second Judicial District Court, County of Bernalillo, State of New Mexico) (Jan. 12, 2022), Complaint.

also responsible for assisting with a multitude of props duties as requested by . . . Zachry and Production.”⁸

119. According to Reed, she and Zachry met with Kenney at PDQ on October 4, 2021, “to collect the necessary dummy and blank ammunition and firearms for Rust.”⁹ “Kenney and his company distributed dummies in boxes with labels affixed that read ‘dummy rounds .45 long or .45 LC’” and “also supplied .44/.40 caliber dummy rounds.”¹⁰

120. Reed admits loading Baldwin’s gun with what she thought were dummy rounds.¹¹ After lunch on October 21, 2021, Reed allegedly “brought the gun to . . . Halls” and “spun the cylinder for Halls and showed him the 6 loaded dummy rounds.”¹² “Halls [then] gave the firearm to . . . Baldwin, calling out ‘cold gun,’ which signified that the firearm was empty or contained only inert dummy ammunition.”¹³

121. After the tragedy had occurred, when Reed first heard the noise from the gun, she alleges that she “said it couldn’t be the gun and she believed it had to be special effects because [she] knew in her mind that the gun was loaded with dummy rounds when she handed it to Halls.”¹⁴

122. “[A]s suppliers of prop ammunition to the Rust set, [Kenney and PDQ] sold, distributed, and advertised [the] props as dummy ammunition and not live rounds,” and Reed alleges that she “relied upon and trusted that [they] would only supply dummy prop ammunition,

⁸ *Id.* ¶ 14.

⁹ *Id.* ¶ 26.

¹⁰ *Id.* ¶ 28.

¹¹ *Id.* ¶¶ 47-49, 57 (“To the best of [Reed’s] knowledge, the gun was now loaded with 6 dummy rounds.”).

¹² *Id.* ¶ 62.

¹³ *Id.* ¶ 70.

¹⁴ *Id.* ¶ 77.

or blanks, and no live rounds were ever to be on set.”¹⁵ As further alleged by Reed, Kenney and PDQ actually “distributed boxes of ammunition” that “contained a mix of dummy and live ammunition.”¹⁶

123. Reed alleges that the Sheriffs found a suspected seven live rounds during their investigation.¹⁷

FIRST COUNT **INDEMNIFICATION**

124. Claimants repeat and reallege each and every allegation contained in the paragraphs above as if fully set forth here.

125. Claimants entered into a valid contract titled Producer Agreement with Rust Movie Productions LLC, represented by its member, Ryan Smith, on October 6, 2021.

126. The Producer Agreement requires Rust Movie Productions LLC to “indemnify, defend, and hold harmless [El Dorado Pictures, Inc.] and [Alec Baldwin] from and against any loss, damage, liability, claim, demand, action, cost and expense (including reasonable outside attorneys’ fees and costs) arising from and/or in connection with (i) [Rust Movie Productions LLC’s] breach of any of its representations, warranties and/or covenants pursuant to this Agreement; (ii) [Rust Movie Productions LLC’s] negligence and/or willful misconduct[;] and/or (iii) the development, financing, production, marketing, distribution and/or exploitation of [*Rust*] and/or any element thereof”

127. Claimants have performed all of their obligations to Respondents under the Producer Agreement.

¹⁵ *Id.* ¶ 58; *see also id.* ¶ 127 (“[Reed] and the entire Rust movie crew relied on the Defendants’ misrepresentation that they provided only dummy ammunition.”).

¹⁶ *Id.* ¶ 126.

¹⁷ *Id.* ¶ 86.

128. Claimants are presently incurring losses, damages, costs, and expenses and face claims that, if resolved against them, will cause Claimants to incur losses that are the direct result of Rust Movie Productions LLC's (i) "breach of any of its representations, warranties and/or covenants pursuant to th[e Producer] Agreement; (ii) . . . negligence and/or willful misconduct[;] and/or (iii) the development, financing, production, marketing, distribution and/or exploitation of [*Rust*] and /or any element thereof."

129. As a result, Claimants are contractually entitled to *immediate* indemnification from Respondents arising out of or connected to the *Rust* litigations and the above subject matter, including all of Claimants' "cost and expense (including reasonable outside attorneys' fees and costs)"

130. As a direct, proximate, and foreseeable result of the foregoing, Claimants have suffered damages and injury.

PRAYER FOR RELIEF

WHEREFORE, Claimants respectfully request judgment against Respondents as follows:

- a. indemnification in an amount to be determined at arbitration, but immediately including all fees and costs that Claimants have incurred and will continue to incur in this matter and the above matters;
- b. compensatory and consequential damages in an amount to be determined at arbitration;
- c. prejudgment interest at the maximum legal rate;
- d. attorneys' fees, costs, and expenses; and
- e. such other and further relief as the Arbitrator may deem just and proper.

Dated: March 11, 2022

Respectfully submitted,

QUINN EMANUEL URQUHART & SULLIVAN, LLP

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