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

ROSS ADDIEGO,
DORAN CURTIN, and
REESE PRICE,

Plaintiffs,

No. D-0101-CV-2023-00427
Judge Bryan Biedschied

v.

ALEXANDER R. BALDWIN III, an individual; RUST MOVIE PRODUCTIONS, LLC, a New Mexico limited liability company; and EL DORADO PICTURES, a California corporation.

Defendants.

DEFENDANTS ALEXANDER R. BALDWIN III'S AND EL DORADO PICTURES, INC.'S MOTION TO DISMISS

Alexander R. Baldwin III and El Dorado Pictures, Inc., by and through their counsel, Luke Nikas and Robert M. Schwartz of Quinn, Emanuel, Urquhart & Sullivan, LLP and Jeff Ray and Brian P. Brack of Ray | Pena | McChristian, P.C. hereby submit this Motion to Dismiss and as grounds therefore, state:

INTRODUCTION

On October 21, 2021, an unthinkable accident occurred on the New Mexico set of a western film titled *Rust*. A crew member responsible for firearm safety handed actor Alec Baldwin a revolver that everyone on set believed to be a "cold gun." As the director and cinematographer were directing Baldwin, the gun went off. It discharged a live round that injured the director, Joel Souza, and resulted in the death of the cinematographer, Halyna Hutchins. Plaintiffs were members of *Rust*'s crew and witnesses to this incident. Nothing came in contact with them. None

sustained a physical injury. Based solely on their presence, they claim to have suffered mental anguish. The issue raised here is whether Plaintiffs can recover against the Baldwin Defendants for their alleged distress. They cannot.

Plaintiffs have not alleged, and cannot allege, an agency relationship between the Baldwin Defendants and those who armed or were responsible for the gun. Plaintiffs' negligence claims fail because they have not alleged that the Baldwin Defendants owed them a legal duty and because the injuries were unforeseeable as a matter of law. Plaintiffs' claim for infliction of emotional distress fails to plead facts to establish extreme and outrageous conduct, or intent, by the Baldwin Defendants, especially where gun safety was the responsibility of others.

The Court should grant the Baldwin Defendants' motion without leave to amend.

ALLEGATIONS OF THE COMPLAINT

The complaint alleges as follows. Alec Baldwin was one of *Rust*'s lead actors and one of its six producers. Ryan Smith was the primary producer, with overall responsibility for the movie. Compl. ¶¶ 13, 15, 23. Under his authority were line producer Gabrielle Pickle, unit production manager Katherine Walters, and first assistant director David Halls, who was also the safety coordinator. *Id.* ¶¶ 24, 26, 44. Pickle was also responsible for hiring and supervising the crew. *Id.* ¶ 24. Sarah Zachry was the property master and supervised Hannah Gutierrez-Reed, the film's armorer, responsible for weapons and ammunition. *Id.* ¶ 35. Plaintiffs worked as a dolly operator, costumer, and key grip. *Id.* ¶¶ 4-6.

Baldwin's authority was limited. *Id.* ¶¶ 11-15. His rights arose under a contract between Rust Movie Productions, LLC—the company that produced the movie, which Baldwin neither

owned nor formed—and El Dorado (*id.* ¶ 14), his "loan-out" company. *See* Nikas Decl. Ex. 1.[1] Baldwin had limited authority to offer creative input on script changes and casting. *Id.* Ex. 1 § 6. But he was prohibited from hiring anyone or contracting for any facilities. *Id.* § 3. And his right to participate with Rust Movie Productions in making decisions was subject to a tie-breaker that gave Rust Productions control over all creative decisions that would affect the cost of making the movie. *Id.* § 6.

On January 19, 2023, New Mexico's First Judicial District Attorney and a special prosecutor charged Baldwin with involuntary manslaughter related to the accident on the *Rust* set. *See State v. Baldwin*, No. D-0101-CR-202300039, Criminal Information. The special prosecutor resigned from the case after a challenge to the constitutionality of her service. On March 29, 2023, the District Attorney then withdrew from the case and appointed two special prosecutors to take over. On April 21, 2023, the prosecutors dismissed the charges against Baldwin in light of "new facts" that "demand[ed] further investigation and forensic analysis." *See id.*, Nolle Prosequi.

LEGAL STANDARD

"Dismissal is proper under Rule 1–012(B)(6) NMRA 2002 when the law does not support the claim under the facts presented." *Stoneking v. Bank of Am., N.A.*, 2002-NMCA-042, ¶ 4. Although the factual allegations of the complaint are assumed to be true on a Rule 1-012(B)(6)

[1] Plaintiffs have incorporated the contract into the Complaint by reference. *See* Compl. ¶¶ 12-15 ("Producer Agreement provided for 'mutual approval on all business and creative decisions.'"). Although New Mexico courts have "not fully vetted" the issue of incorporation by reference of documents at the motion to dismiss stage, *Tunis v. Country Club Ests. Homeowners Ass'n, Inc.*, 2014-NMCA-025, ¶ 46 (Sutin, J., dissenting), they turn to the interpretation of similar federal rules for guidance. *Doe v. Roman Catholic Diocese of Boise, Inc.*, 1996-NMCA-057, ¶ 5, 121 N.M. 738. Where a plaintiff incorporates a document into a pleading by reference, federal courts will consider the content of that document in ruling on a motion to dismiss. *Anderson Living Trust v. WPX Energy Production, LLC*, 27 F. Supp. 3d 1188 (D.N.M. 2014) (on motion to dismiss, court may consider "documents that the complaint incorporates by reference").

motion, courts need not accept a complaint's conclusions of law or "unwarranted deductions of fact." *Schmidt v. Tavenner's Towing & Recovery, LLC*, 2019-NMCA-050, ¶ 5 (quotation and citation omitted). "The motion to dismiss … admits facts well pleaded, but not legal conclusions deduced … by the pleader." *First Nat. Bank of Santa Fe v. Ruebush*, 1956-NMSC-104, ¶ 3.

ARGUMENT

I. PLAINTIFFS FAIL TO PLEAD THE NECESSARY AGENCY RELATIONSHIP

Each of Plaintiffs' claims is based on the legal theory that Baldwin and El Dorado are responsible, under agency principles, for the conduct of the crew members on set whose acts or omissions played some role in causing the loaded gun to be placed in Baldwin's hands. Compl. ¶¶ 19-22. This includes crew members Gabrielle Pickle, Katherine Walters, Hannah Gutierrez-Reed, Sarah Zachry, and David Halls, who were responsible for gun safety and arming, or who knew of allegedly unsafe conditions on the set (the "Firearms-Related Crew Members"). *Id.* However, the complaint does not establish a basis for treating them as the Baldwin Defendants' agents.

The party asserting an agency relationship bears the burden of pleading it. *See Corona v. Corona*, 2014-NMCA-071, ¶ 22. A plaintiff must specify "some manner" by which Baldwin: (1) "indicated that the agent is to act for him," and (2) "that the agent so acts or agrees to act on his behalf and subject to his control." *Totah Drilling Co. v. Abraham*, 1958-NMSC-102, ¶ 19. Plaintiffs fall short of alleging either. They allege no more than the conclusion that these persons were Baldwin's agents by reason of his "statements, acts or conduct." Compl. ¶¶ 20 & 22. That is insufficient. *See First Nat. Bank of Santa Fe v. Ruebush*, 1956-NMSC-104, ¶ 3 ("The motion to dismiss … admits facts well pleaded, but not legal conclusions deduced … by the pleader.")

Plaintiffs allege no statement by Baldwin to anyone that the Firearms-Related Crew

Members were his agents. Nor could they legitimately amend to add that allegation, as he never said such a thing. Similarly, the Complaint alleges no facts that Baldwin's "acts" or "conduct" could have caused anyone to think that the Firearms-Related Crew Members were acting as his agents. Baldwin's mere act of appearing on set cannot—standing alone—be sufficient to create an agency relationship with everyone there. Further, Plaintiffs allege no facts that the Firearm-Related Defendants "so acted" or "agreed to act" as Baldwin's agents—because it never happened.

As a fallback, Plaintiffs allege that an agency relationship arose between Baldwin and every crew member under Baldwin's Producing Contract with Rust Productions. Compl. ¶ 12 (citing Ex. 1 § 6). The Complaint alleges that Baldwin had the right to hire crew members and control their work, *id.* ¶¶ 11, 24, 27, which supposedly made them his agents. Because that is a legal conclusion, the Court can address the legal sufficiency of these allegations at the pleading stage. *Ruebush*, 1956-NMSC-104, ¶ 3.

On its face, the Contract did ***not*** give Baldwin the right to hire or control crew members. And it did ***not*** create a "joint venture" with Rust Productions, such that the Baldwin Defendants became derivatively liable for the acts of the crew. To begin, Plaintiffs omit mention of Section 3, which refutes Plaintiffs' gloss on the Contract and states: "Services. Artist may ***not*** engage the services of and/or facilities of any third party in connection with the Picture without Production Company's prior written consent in each instance...." Ex. 1, § 3. Section 6 (emphasis added). Plaintiffs also misleadingly omitted the italicized text and the text that follows it, which further refutes Plaintiffs' legal conclusion:

> Lender and Production Company shall have mutual approval on all business and creative decisions, with Lender holding tie-break on all creative decisions, provided that *Production Company shall have final determination with respect to any creative decision that would result in a material increase in the Budget*; provided that Production Company shall have the right (to be exercised in its sole discretion) to adapt, modify, rearrange, change, modify, fictionalize, add to or take from the Screenplay, and to combine the same with any other literary or musical work.

Nikas Decl. Ex. 1, § 6.

Similarly, on its face the Producing Contract lacks the requisite elements necessary to create a joint venture. A joint venture requires "a community of interest in the performance of a common purpose, a joint proprietary interest in the subject matter, a mutual right to control, a right to share in the profits, and a duty to share in any losses which may be sustained." *Hansler v. Bass*, 1987-NMCA-106 ¶ 12. But the Producing Contract imposed none of these responsibilities.

It did not grant the Baldwin Defendants any "community interest or proprietary interest" in the *Rust* film. Compl. ¶ 12. It granted Baldwin no share of the profits or responsibility for any losses. Instead, Rust Productions owned the film, *id.* Ex. 1, § 8.

Second, as noted above, the contract granted Baldwin no "mutual right to control" the film's production. Compl. ¶ 12. Although he had the right to give ***input*** into creative and business decisions, the contract vested control with Rust Movie Productions and prevented Baldwin from making any decision that would affect the budget. Nikas Decl. Ex. 1 § 6. This is not a relationship with "a right of equal or joint control and direction." *Fullerton v. Kaune*, 1963-NMSC-078, ¶ 8 (dismissing complaint where element of joint control was not adequately alleged). Where these elements are lacking, the Court can decide as a matter of law that no joint venture existed. *Cooper v. Curry*, 1978-NMCA-104, ¶ 22 (rejecting imposition of a joint venture where there is no proprietary interest in the business, no mutual right to control, or no sharing of profits or losses.

II. PLAINTIFFS FAIL TO STATE A CLAIM FOR NEGLIGENCE AND NEGLIGENCE PER SE

Plaintiffs' first and second claims are for negligence and negligence per se. To state a claim, Plaintiffs must allege that the Baldwin Defendants owed Plaintiffs a duty of care and breached it, causing damages to Plaintiffs. Here, the Complaint alleges that the Baldwin Defendants owed Plaintiffs 25 affirmative duties relating to: (a) ensuring the safety of the set and

weapons used, Compl. ¶¶ 94a-g, m, n, q, t-y and 99, (b) managing the set, *id.* ¶¶ 94d, g, h, j, k, l, p, r, s and 99, and (c) training others to do the same, *id.* ¶¶ 94i, 94o, 99. The Complaint is not clear as to the basis for imposing these duties on the Baldwin Defendants, although Plaintiffs suggest they arise merely from the agency relationship they allege the Baldwin Defendants had with crew members. *Id.* ¶¶ 94-99.

The Court can resolve these claims in the Baldwin Defendants' favor at the pleading stage. Whether the Baldwin Defendants owed Plaintiffs a duty of care on the *Rust* set, and whether their actions were the proximate cause of Plaintiffs' injuries can be decided here, as a matter of law. *Solon v. WEK Drilling Co.*, 1992-NMSC-023, ¶ 17 ("whether the defendant owes a duty to the plaintiff is a question of law"); *Rodriguez v. Del Sol Shopping Ctr. Assocs., L.P.*, 2014-NMSC-014, ¶ 24 (courts can determine, as a matter of law, that defendant "did not legally cause the damages alleged in the case"). Both duty and causation are missing, which defeats Plaintiffs' cause of action for negligence and negligence per se.

A. Public Policy Does Not Support The Establishment Of A Duty

Policy determines duty, *Rodriguez*, 2014-NMSC-014, ¶ 1, and policy for these purposes is derived from "reliable indicators of 'community moral norms.'" *Davis v. Bd. of Cnty. Comm'rs of Dona Ana Cnty.*, 1999-NMCA-110, ¶ 14 (quoting *Sanchez v. San Juan Concrete Co.*, 1997–NMCA–068, ¶ 12) (noting that courts "look to general legal propositions we may infer from legal precedent within our own state and from other jurisdictions, and we look as well to any relevant statutes, learned articles, or other reliable indicators of 'community moral norms and policy views" for guidance on issues of policy).

That policy does not support imposition of a duty of firearm care on the Baldwin Defendants here. The Complaint alleges that Baldwin relied on the experts on set to ensure the gun was safe ("cold gun"). Plaintiffs seek to impose an additional duty on Baldwin, who is not a professional armorer,

to have inspected the gun to confirm what the experts and persons charged with firearm safety were responsible to do. But the very industry safety standards that Plaintiffs cite throughout their Complaint as governing conduct on the set, *see* Compl. ¶ 30 (alleging that "safety bulletins" document safety protocols "adopted as industry standards to protect everyone on a film set where operable firearms are present"), state that neither Baldwin as the actor nor El Dorado as his personal services company had a duty to ensure gun safety. To the contrary: Each member of the production must follow these industry procedures, which for safety reasons, place responsibility for weapons on the individuals with the expertise to ensure they are used properly: the property master and/or designated weapons handler. *See* Compl. ¶ 32 (citing *Safety Bulletin #1: Recommendations for Safety with Firearms and Use of "Blank Ammunition"*, Industry Wide Safety Committee, available at https://www.csatf.org/wp-content/uploads/2018/05/01FIREARMS.pdf).

Indeed, the Complaint places these gun safety duties on others, namely, the armorer, who, in line with the industry bulletin, was the designated weapons handler on the set. *See* Compl. ¶ 54 ("As the armorer for Rust, Gutierrez Reed was responsible for maintaining, storing, and securing the revolver and any ammunition while not in use in addition to supervising its handling by cast members."); *id.* ¶ 57 ("Industry safety standards required that Gutierrez Reed reexamine the revolver after removing it from storage and bringing it to set after lunch. She chose not to.").

Further, where the legislature has not established a duty, courts should be wary of declaring new, unannounced standards of care, especially after the fact. *Torres v. State*, 1995-NMSC-025, ¶ 10 ("With deference always to constitutional principles, it is the particular domain of the legislature, as the voice of the people, to make public policy.") No New Mexico statute or decision supports Plaintiffs' attempt to impose ultimate responsibility for gun safety on an actor who was

handed a gun by the on-set, industry experts—*i.e.*, those who are exclusively responsible for gun safety on set under the governing industry standards—and told that it was safe.

B. It Was Not Foreseeable That A Live Bullet Would Be On Set

The risk that both crew members responsible for gun safety would fail to do their jobs ***and*** that a round of live ammunition would be in the chamber of the prop gun they handed to Baldwin thereby causing anguish to crew members on set is, as a matter of law, too remote and unforeseeable to impose liability on the Baldwin Defendants. Although proximate cause is traditionally a question of fact for the jury, Courts can determine as a matter of law that a defendant's conduct was not the proximate cause of a plaintiff's injuries. *F & T Co. v. Woods*, 1979-NMSC-030, ¶¶ 2, 11, 15 (holding plaintiff failed to establish proximate cause as a matter of law in a negligent hiring claim against employer whose employee attacked plaintiff in her home three days after delivering a television there, even though employer allegedly knew of employee's dangerous propensities). In practice, the question boils down to "whether the injury to [plaintiff] was a foreseeable result of [defendant's] breach." *Calkins v. Cox Ests.*, 1990-NMSC-044, ¶ 5. This is one of those cases where there is no proximate cause as a matter of law.

To begin, Plaintiffs' allegations make it unreasonable for Baldwin to have foreseen that he would be handed a prop gun loaded with live ammunition and that Plaintiffs, who were present but not even in the "line of fire," would be injured by its firing. According to the Complaint, live ammunition is "never" supposed to be used on set, and the Complaint fails to allege any facts indicating that the Baldwin Defendants had reason to believe otherwise. Compl. ¶ 35. The industry standards that govern movie sets likewise "prohibit the presence of live ammunition … anywhere on a movie set." *Id.* ¶ 30. The filming location "also forbade the presence of live ammunition on its property." *Id.* Even if Baldwin was aware of "unscripted firearms discharges" of *blank* ammunition (he was not), that would not have made it foreseeable that the armorer would

hand him a prop gun with *live* ammunition. Without foreseeability, there is no causation. Without causation, there is no negligence.[2]

III. PLAINTIFFS' CLAIM FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS FAILS

To state a claim for intentional infliction of emotional distress, the plaintiff must allege that: "(1) the conduct in question was extreme and outrageous; (2) the conduct of the defendant was intentional or in reckless disregard of the plaintiff; (3) the plaintiff's mental distress was extreme and severe; and (4) there is a causal connection between the defendant's conduct and the claimant's mental distress." *Trujillo v. N. Rio Arriba Elec. Co-op, Inc.*, 2002-NMSC-004, ¶ 25. "[L]iability does not flow from every act that succeed[s] in causing even severe emotional distress." *Padwa v. Hadley*, 1999-NMCA-067, ¶ 12. Rather, conduct is considered extreme and outrageous when it is "beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Andrews v. Stallings*, 1995-NMCA-015, ¶¶ 50, 56 (affirming dismissal where alleged statements "could hardly be 'beyond all possible bounds of decency' and 'utterly intolerable in a civilized community'").

Plaintiffs have not satisfied these requirements. Although the Complaint alleges that "the conduct of Defendants, and their agents, Gutierrez-Reed, Zachry, Halls, and Baldwin, was extreme and outrageous under the circumstances," Compl. ¶ 121, that is a mere legal conclusion that fails to state what ***Baldwin*** did that was "extreme and outrageous." *Ruebush*, 1956-NMSC-104, ¶ 3 ("legal conclusions deduced … by the pleader" are disregarded at a motion to dismiss). Plaintiffs allege that, on the set of a "gun-heavy" "western film," during a "close-up insert shot of Defendant Baldwin's hand and the revolver he would be holding," the prop gun (unbeknownst to Baldwin)

---

[2] Plaintiffs claim for negligence per se also fails: without negligence, there is no negligence per se. *Garcia v. Rodey, Dickason, Sloan, Akin & Robb, P.A.*, 1988-NMSC-014, ¶ 21 ("Negligence per se … is a method of proving negligence where a cause of action already exists.").

contained a live round of ammunition, even though "industry safety standards required that Gutierrez Reed [(the armorer)] reexamine the revolver after removing it from storage," and that Baldwin pulled the trigger (he did not). Compl. ¶¶ 24, 25, 55, 57, 64. Baldwin's conduct is "hardly … beyond all possible bounds of decency." *Andrews*, 1995-NMCA-015, ¶ 56.

Plaintiffs also failed to allege any *facts* that Baldwin acted with "utter indifference to the consequences" or "deliberate disregard of a high degree of probability that the emotional distress w[ould] follow." *Baldonado v. El Paso Nat. Gas Co.*, 2008-NMSC-005, ¶ 37. The allegation that "Defendants" acted "recklessly," Compl. ¶ 122, is again a mere legal conclusion.

IV. PLAINTIFFS' DEMAND FOR PUNITIVE DAMAGES FAILS

Because the purpose of punitive damages "is to punish the wrongdoer and to deter … others in a similar position from such misconduct in the future," liability for punitive damages arises out of the wrongdoer's "culpable mental state, and the wrongdoer's conduct must rise to a willful, wanton, malicious, reckless, oppressive, or fraudulent level." *Behrens v. Gateway Ct., LLC*, 2013-NMCA-097, ¶ 20 (citation omitted). As previously discussed, Plaintiffs provide only conclusory allegations of liability through (non-existent) agency relationships, and fail to plead any actual recklessness or misconduct on the part of Baldwin Defendants. *Dawson v. Wilheit*, 1987-NMCA-056, ¶ 8 (dismissing punitive damages where negligence insufficiently pled).

V. BECAUSE AMENDMENT IS FUTILE, THE COURT SHOULD DENY LEAVE TO AMEND

The Court should deny leave to amend where "the insufficiency or futility of the pleading is apparent on its face" such that "granting the motion [to amend] would serve no purpose." *Stinson v. Berry*, 1997-NMCA-076, ¶ 9. Here, Plaintiffs' cannot establish the duty, recklessness, or extreme conduct required for their claims. Because "the insufficiency or futility of the pleading is apparent on its face[,]" the Court should deny leave to amend. *Stinson*, 1997-NMCA-076, ¶ 9.

CONCLUSION

For foregoing reasons, the Court should dismiss the Complaint without leave to amend.

Date: May 5, 2023

Respectfully submitted,

By: _____

Luke Nikas (*pro hac vice* pending)
QUINN EMANUEL URQUHART & SULLIVAN, LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010
Telephone: (212) 849-7000
Email: lukenikas@quinnemanuel.com

Robert M. Schwartz (*pro hac vice* pending)
QUINN EMANUEL URQUHART & SULLIVAN, LLP
865 S. Figueroa Street, 10th Floor
Los Angeles, California 90017
Telephone: (213) 443-3000
Email: robertschwartz@quinnemanuel.com

By: */s/ Brian Brack*

Jeff Ray
Brian Brack
Ray | Peña | McChristian, PC
6501 Americas Parkway N.E., Suite 820
Albuquerque, NM 87110
Telephone: (505) 855-6000
Email: jray@raylaw.com
Email: bbrack@raylaw.com
Attorneys for Defendants Alexander R. Baldwin III and El Dorado Pictures

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on all counsel of record through the Odyssey E-Serve system on May 5, 2023.

/s/ Brian Brack
Brian Brack

DECLARATION

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

ROSS ADDIEGO,
DORAN CURTIN, and
REESE PRICE,

Plaintiffs,

No. D-0101-CV-2023-00427
Judge Bryan Biedschied

v.

ALEXANDER R. BALDWIN III, an individual; RUST MOVIE PRODUCTIONS, LLC, a New Mexico limited liability company; and EL DORADO PICTURES, a California corporation.

Defendants.

DECLARATION OF LUKE NIKAS

1. My name is Luke Nikas. I am counsel for defendant Alexander Rae Baldwin III.

2. A true and correct copy of the October 6, 2021 Producer Agreement between Baldwin, El Dorado Pictures, Inc. and Rust Movie Productions, LLC is attached hereto as Exhibit 1.

3. I declare under penalty of perjury that the foregoing is true and correct.

Dated: May 5, 2023

Luke Nikas

EXHIBIT 1

RUST MOVIE PRODUCTIONS LLC

Date: October 6, 2021

El Dorado Pictures, Inc.
Attn: Alec Baldwin, President
[redacted]

Re: Rust, Producer Agreement

Dear Mr. Baldwin:

This letter, together with the attached Exhibits "A" and "B," each of which by this reference are incorporated herein as if fully set forth herein, shall confirm the agreement between El Dorado Pictures, Inc. ("Lender") furnishing the services of Alec Baldwin ("Artist"), on the one hand, and Rust Movie Productions LLC, a New Mexico limited liability company ("Production Company") and Corporate Capital Holdings, LLC, a Wyoming limited liability company ("Owner"), on the other hand, whereby Production Company engages Lender to cause Artist to render those services customarily rendered by a producer in connection with production of the motion picture tentatively entitled "Rust" (the "Picture").

1. Compensation. Provided that Artist is not terminated for uncured material default of this Agreement, Production Company agrees to pay the following:

    a. Fixed Compensation: Production Company shall pay Lender, on a pay-and-play basis, as (except as otherwise set forth below) full and complete compensation for the services of Artist and for all rights granted to Production Company, a producer's fee of [redacted] to be paid in full on or before [redacted].

2. Term.
    a. Start Date: [redacted].
    b. End Date: [redacted].

3. Services. Artist may not engage the services of and/or facilities of any third party in connection with the Picture without Production Company's prior written consent in each instance. Lender shall cause Artist to render all pre-production, production, and post-production services reasonably requested by Production Company and customarily rendered by individual Producers in the motion picture industry. Such producing services shall be rendered on a non-exclusive basis. Artist further agrees to perform Artist's services and comply with Artist's obligations promptly, faithfully, conscientiously, and to the full extent of Artist's talents, capabilities, whenever reasonably required by Production Company during the term, and at such other times as are provided herein, and in accordance with Production Company' reasonable instructions and directions in all

[redacted]

matters, including those involving artistic taste and judgment, subject to the terms and conditions of this Agreement.

4. Credit. Provided Artist is not terminated for uncured, material default of this Agreement, , Artist shall be accorded the following credits on screen and in paid advertising (subject to the distributor's standard exceptions and exclusions), such credits shall be tied to all other producer/production company/executive producer credits, including without limitation, artwork/one sheets and ancillaries (such as home video packaging):

a. [redacted]

b. [redacted]

c. [redacted]

d. [redacted]

e. Additional Credits: [redacted]

5. Credit Approvals. Production Company and Lender shall have mutual approval on all credits, subject to the following:
   a. The following credits are pre-approved:

[redacted]

b. The above pre-approved credits shall appear in the main titles, whether situated at the opening or end of the Picture and, subject to distributor's customary exclusions, in all paid and excluded advertising.

6. Creative Control/Business Control. Lender and Production Company shall have mutual approval on all business and creative decisions, with Lender holding tie-break on all creative decisions, provided that Production Company shall have final determination with respect to any creative decision that would result in a material increase in the Budget; provided that Production Company shall have the right (to be exercised in its sole discretion) to adapt, modify, rearrange, change, modify, fictionalize, add to or take from the Screenplay, and to combine the same with any other literary or musical work.

7. Abandonment/Attachment. Production Company shall have the right, in its sole discretion, to suspend, postpone and/or abandon the production of the Picture at any time.

8. Ownership. Production Company shall own all of the results and proceeds of Artist's services in connection with the Picture in perpetuity. Artist grants to Production Company the irrevocable right to use Artist's name, approved likeness, approved photograph, approved voice, approved biography, and any and all other material or artistic, musical, or literary works that Artist may create pursuant to this Agreement and which are included in the final version of the Picture, in, and in connection with the exhibition, broadcast, distribution, exploitation, marketing, and turning to account of the Picture, by any means or devices now known or hereafter invented, throughout the universe in perpetuity. It is expressly agreed and understood that Production Company shall be the sole and exclusive owner of the Picture and all of the results and proceeds of Artist's contributions hereunder.

9. Indemnification.

[redacted]

10. Subsequent/Derivative Productions. Lender shall be perpetually attached as a producer [redacted] on any and all subsequent and/or derivative productions of the Picture, [redacted]

    Lender's Federal ID # [redacted]

11. Errors & Omissions. [redacted]

12. DVD/Blu-ray/Soundtrack. [redacted]

13. Premiere/Festival Screenings: [redacted]

14. Expenses. [redacted]

[redacted]

Very truly yours,

RUST MOVIE PRODUCTIONS LLC
Corporate Capital Holdings, LLC, Manager

By: _____
Ryan Smith, Member

CORPORATE CAPITAL HOLDINGS,LLC

By: _____
Ryan Smith, Member

AGREED TO AND ACCEPTED:
El Dorado Pictures, Inc.

By: 
Alec Baldwin, President

EXHIBIT A

STANDARD TERMS AND CONDITIONS

These Standard Terms and Conditions, and shall constitute a part of that certain agreement ("Underlying Agreement"), dated as of October 6, 2021, between Rust Movie Productions LLC ("Production Company") and Corporate Capital Holdings, LLC ("Owner") on the one hand, and El Dorado Pictures Inc. ("Lender") for the services of Alec Baldwin ("Artist") on the other hand, in connection with the theatrical motion picture tentatively entitled RUST (the "Picture"). For purposes hereof, Production Company and Owner shall be collectively referred to herein as Production Company. These Standard Terms and Conditions shall be deemed fully incorporated in such Underlying Agreement, and these Standard Terms and Conditions and such Underlying Agreement shall hereinafter be collectively referred to as the "Agreement." All terms used in these Standard Terms and Conditions shall, unless expressly provided to the contrary herein, have the same respective meanings as set forth in the Underlying Agreement. Unless expressly provided to the contrary herein, to the extent that any provision of these Standard Terms and Conditions conflicts with any provision of the Underlying Agreement, the Underlying Agreement shall control.

1. Force Majeure.

A. Suspension. [redacted]

[redacted]

[redacted]

B. Termination.

I. Production Company's Termination Right. If an Event of Force Majeure continues for a period [redacted] Production Company shall have the right to terminate this Agreement upon written notice thereof to Lender. If the Event of Force Majeure [redacted] cannot be cured reasonably within the aforementioned time period, then Production Company shall have the right to terminate this Agreement at any time upon written notice to Artist. Lender/Artist may not be terminated pursuant to this provision unless all producers, director and cast terminated. [redacted]

II. Artist's Termination Right. If a suspension predicated on an Event of Force Majeure [redacted] continues for a period [redacted] Artist may give Production Company written notice of Artist's desire to terminate this Agreement, and unless Production Company terminates such suspension within [redacted] after its receipt of such notice, this Agreement shall terminate.

2. Default. If Artist fails or refuses to render, perform, and/or complete to Production Company any material services required by Production Company hereunder within the applicable period agreed, or Artist otherwise fails or refuses to perform or comply with any of the material terms or conditions hereof or any other agreement entered into with Production Company (other than by reason of either Artist's "Disability" as described in Paragraph 3 below or an Event of Force Majeure) ("Default"), then:

A. Suspension. [redacted]

[redacted]

[redacted]

B. Termination. [redacted]

3. Disability. If Artist shall be unable to render fully any of his/her services hereunder due to death or any sickness, mental and/or physical disability or legal disability ("Disability"):

A. Suspension. [redacted]

B. Termination. [redacted]

4. Effect of Suspension. [redacted]

5. Effect of Termination. [redacted]

[redacted]

[redacted]

6. Notices and Payments. [redacted]

A. To Lender/Artist. [redacted]

B. To Production Company/Owner. [redacted]

7. Breach.

A. Survival. [redacted]

[redacted]

[redacted]

B. Production Company's Remedies. [redacted]

C. Artist's Remedies. [redacted]

D. Waiver. [redacted]

E. Production Company's Breach. [redacted]

8. Publicity. [redacted]

[redacted]

[redacted]

9. Commitments to Others. Artists shall have no right to or authority to and shall not employ any person in any capacity, nor contract for the purchase or rental of any article or material, nor make any commitment, agreement or obligation whereby Production Company shall be required to pay any monies or other consideration, without Production Company's prior written consent in each instance.

10. Right to Withhold. [redacted]

11. Representations and Warranties/Indemnities/Insurance Coverage.

A. Representations, Warranties and Indemnities. [redacted]

B. Insurance Coverage. [redacted]

12. Employee Insurance. [redacted].

13. Supervision and Control. Artist shall, throughout the Term, promptly and faithfully comply with all reasonable instructions, reasonable directions, reasonable requests, reasonable rules and reasonable regulations made or issued by Production Company, and shall perform Artist's services conscientiously and to the full limit of Artist's ability at all times, when and wherever required or desired by Production Company and as instructed by Production Company in all matters, including those involving artistic taste and judgment, and with due regard to the prompt, efficient and economical production of the Picture. In no event shall Artist, without Production Company's prior written consent, engage the services and/or facilities of any third party in connection with the Picture.

14. Results and Proceeds. [redacted]

[redacted]

[redacted]

A. [redacted]

B. Artist acknowledges that, insofar as Artist is concerned, Production Company shall be the sole and exclusive owner of the Picture, and shall have the right in perpetuity to distribute and exhibit the Picture and all or any part of the results and proceeds of Artist's services under this Agreement, [redacted]

C. [redacted]

15. Warranty of Originality. [redacted]

[redacted]

[redacted]

16. Credit. Production Company's obligation to accord credit to Artist is and shall be subject to:

A. [redacted]

B. [redacted]

C. [redacted]

i. [redacted]

ii. [redacted]

[redacted]

[redacted]

17. Paragraph Headings. The headings of the paragraphs hereof are for convenience only, and they shall not be of any effect in construing the contents of the respective paragraphs.

18. Miscellaneous. [redacted]

[redacted]

[redacted]

[redacted]

EXHIBIT B
INDUCEMENT LETTER

October 6, 2021

RUST MOVIE PRODUCTIONS LLC
[redacted]

Artist: El Dorado Pictures Inc. ("Lender") f/s/o Alec Baldwin ("Artist")
Picture: "Rust"

Gentlemen:

Reference is made to the agreement, dated as of October 6, 2021 (the "Agreement"), between El Dorado Pictures Inc. ("Lender") for the services of Alec Baldwin ("Artist") and Rust Movie Productions, LLC ("Production Company") in connection with the motion picture entitled "Rust" (the "Picture").

As an inducement to you to enter into the agreement and as a material part of the consideration to you for so doing, I hereby represent, warrant and agree as follows:

1. I have heretofore entered into an agreement (the "Employment Agreement") with Lender [redacted].

2. I am familiar with all of the terms, covenants, and conditions of the agreement and consent to its execution. [redacted]

3. [redacted]

4. [redacted]

5. [redacted]

[redacted]

6. [redacted]

7. [redacted]

8. [redacted]

9. The work I perform will be at your direction and control [redacted]

10. [redacted] my name and likeness or the results and proceeds of my services under the Agreement.

11. [redacted]

Very truly yours,

Alec Baldwin

[redacted]

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

ROSS ADDIEGO, DORAN CURTIN,
and REESE PRICE,

Plaintiffs,

v. Case No. D-101-CV-2023-00427

ALEXANDER BALDWIN III, an individual; RUST MOVIE PRODUCTIONS, LLC, a New Mexico limited liability company; and EL DORADO PICTURES, a California corporation,

Defendants.

PLAINTIFFS' RESPONSE TO DEFENDANTS ALEXANDER BALDWIN, III'S AND EL DORADO PICTURES, INC.'S MOTION TO DISMISS

COME NOW Plaintiffs Ross Addiego, Doran Curtin, and Reese Price, by and through their counsel of record, Vigil Law Firm, P.A., and hereby respond to Defendants Alexander Baldwin, III and El Dorado Pictures, Inc.'s Motion to Dismiss.[1] For the reasons below, Defendants' Motion is without merit and should be denied in its entirety.

Preliminary Statement

Defendants' Motion should be denied because it incorrectly summarizes Plaintiffs' claims. First, Defendants object to Plaintiffs' "agency" allegations, even though some of Plaintiffs claims against Defendant Baldwin are not dependent on any agency relationship. Second, Defendants claim that Plaintiffs are attempting to hold Defendant Baldwin liable pursuant to a "new" standard of care. But Defendant Baldwin owed Plaintiffs the well-established duty of ordinary care which included ensuring safety on the movie set over which he had control. Third, Defendants' assertion

[1] Defendant Rust Movie Productions, LLC has been served but has not filed a responsive pleading or joined in this pleading.

that Defendant Baldwin's conduct—of firing a loaded gun towards a crowd of crew members feet away—was not extreme and outrageous, or reckless enough to be actionable should be rejected outright. Therefore, by all accounts—and as pleaded in Plaintiffs' complaint—Defendant Baldwin and each of the Defendants involved in the joint venture of the *Rust* production were responsible for firearm and set safety and failed in their responsibility.

Background

Plaintiffs assert negligence and intentional infliction of emotional distress claims against Defendants Baldwin, Rust Movie Productions, LLC ("Rust") and El Dorado Pictures, Inc. ("El Dorado"). Plaintiffs allege, in part, that Defendants were negligent and reckless in their (1) failure to follow industry safety rules; (2) failure to budget more money for safety when the film required the use of firearms and explosives; (3) failure to respond to reports of multiple, unscripted weapons discharges and misfirings; and (4) rushing an inexperienced crew and understaffed production to finish filming the gun-heavy western in just 21 days. Complaint, ¶¶ 2-3. Defendant Baldwin served "as a producer, lead actor, and contributing writer" for Rust and as an agent of El Dorado. Plaintiffs allege that "Defendant Baldwin was acting in his capacity in each of these roles *on behalf of himself*, Defendant El Dorado Pictures, and Defendant Rust Movie Productions, LLC during the production of the film *Rust*." *Id.*, ¶ 8 (emphasis added). Plaintiffs also allege that Defendant Baldwin entered into a joint venture with Rust and El Dorado. *Id.*, ¶¶ 11-14.

The Complaint describes the production in detail as it relates to Defendants' negligent acts and omissions. For example, Plaintiffs allege Defendants made dangerous cost cutting decisions in their contracting and scheduling practices that threatened the crew's safety. *Id.*, ¶¶ 23-39. Plaintiffs also allege that Defendants had notice of safety breaches on the set including complaints about the handling of firearms. *Id.*, ¶¶ 40-51. According to the Complaint, an FBI investigation found, among other things, that the revolver could not have been fired without the trigger being

pulled, and live ammunition was scattered throughout the film set. *Id.*, ¶¶ 85-86. Plaintiffs also detail law enforcement's investigation and findings—all of which support Plaintiffs' sought relief for compensatory and punitive damages.

Argument

I. THE COMPLAINT'S ALLEGATIONS MUST BE ACCEPTED AS TRUE

A motion to dismiss under Rule 1-012(B)(6), NMRA, "tests the legal sufficiency of the complaint" by asking whether the complaint alleges facts sufficient to establish the elements of the claims asserted. *See Envtl. Improvement Div. of N.M. Health & Evn't Dep't v. Aguayo*, 1983-NMSC-027, ¶ 10. The Court must "accept all well-pleaded factual allegations in the complaint as true and resolve all doubts in favor of sufficiency of the complaint." *Delfino v. Griffo*, 2011-NMSC-015, ¶ 9 (citation omitted). "A motion to dismiss should be granted only when it appears that the plaintiff is not entitled to recover under any facts provable under the complaint." *Kirkpatrick,* 1992-NMSC-070, ¶ 6. In their Motion, Defendants ignore the salient allegations of Plaintiffs' Complaint that support each claim against all Defendants, including Defendant Baldwin.[2]

II. PLAINTIFFS' CLAIMS AGAINST DEFENDANT BALDWIN ARE NOT SOLELY DEPENDENT ON AN AGENCY RELATIONSHIP

Contrary to Defendants' initial argument that "[e]ach of Plaintiffs' claims is based on the legal theory that Defendants Baldwin and El Dorado are responsible, *under agency principles*, for the conduct of the crew," Plaintiffs have claims against Defendant Baldwin based on *his* negligent and reckless conduct. Defendants want to blame this tragedy exclusively on others like Hannah Gutierrez-Reed, Gabrielle Pickle, Katherine Walters, Sarah Zachary, and David Halls. But

[2] Although the Motion is brought on behalf of Defendants Baldwin and El Dorado, the majority, if not all, of the arguments presented address Plaintiffs' claims against Defendant Baldwin.

Defendants cannot escape liability because Plaintiffs have sufficiently alleged that Defendants Baldwin and El Dorado are responsible directly *and* under agency principles.

Defendant Baldwin had multiple roles within the production of *Rust*—producer, contributing writer, lead actor, and "owner, director, officer, managing member, employee, agent, or apparent agent of El Dorado." Complaint, ¶ 8. As just one example of Defendant Baldwin's direct responsibility, Plaintiffs allege Defendant Baldwin failed to properly acknowledge the importance of and participate in firearm training and rehearsal. Paragraphs 37 and 38 of the Complaint:

> 37. Industry protocols detail the armorer's responsibilities. One of those responsibilities is to "ensure a sufficient amount of time is allotted for training and rehearsal."
>
> 38. Defendant Baldwin was scheduled for only 90 minutes of shooting and firearms safety training at Bonanza Creek Ranch on October 12, 2021. He chose to spend most of the allotted time speaking on his cell phone. This limited training time did not comport with industry protocols or safety standards.

Beyond his own discrete actions, Defendant Baldwin also participated in a joint venture with Rust and El Dorado in which they pooled their money, skill, and knowledge to make, sell, distribute, and market *Rust*, and "had a mutual right to control the undertaking." *Id.*, ¶ 11. Defendants attach a heavily redacted Production Agreement to their motion, confirming this allegation. The Agreement notes that El Dorado ("Lender") *and* Defendant Baldwin ("Artist") "shall have *mutual approval on all business* and creative decisions, with Lender holding tie-break *on all creative decisions*." Motion, Exhibit 1, ¶ 6 (emphasis added). To that extent, the Complaint describes Defendants' dangerous business decisions, including but not limited to (1) contracting Ms. Pickle and Ms. Walters even though their previous cost-cutting decisions resulted in safety complaints and litigation; (2) allotting only 21 days to shoot the film; (3) contracting Mr. Halls as the assistant director in charge of scheduling and maintaining safety and order on set despite

Defendants' awareness of his history of creating unsafe conditions on movie sets; (4) failing to ensure gun safety; and (5) failing to contract an experienced firearms coordinator or gun safety expert. Complaint, ¶¶ 23-39. The prioritization of the cheap, quick production of *Rust* motivated Defendants to make negligent and reckless business decisions, which resulted in Defendant Baldwin discharging live ammunition from a functional revolver inside the small church set. *See* Complaint, ¶¶ 40-84.

Further, to the extent Plaintiffs' claims against Defendant Baldwin and others are based on vicarious liability, agency was properly pleaded. *See* Complaint, ¶¶ 22. Defendants assert that Plaintiffs did not allege "any statement" attributed to Defendant Baldwin that the "Firearms-Related Crew Members" were his agents. But such statements are not required to adequately plead agency. Here, Plaintiffs allege that: an apparent agency relationship existed between Defendants and the "Firearms-Related Crew Members;" Defendants' "statements, acts, or conduct" led Plaintiffs to "reasonably believe" that they were each other's' agents; Plaintiffs "justifiably relied" on Defendants' representations in their dealings with them; and Defendant Baldwin and the Firearms-Related Crew Members were acting within the scope of their apparent agency at the time Plaintiffs suffered their injuries. These elements track apparent agency law. *See* UJI 13-408, NMRA.

In addition, Defendants' reliance on the Production Agreement's terms to dispute the allegations is improper at this stage. Defendants argue Plaintiffs have incorporated the Production Agreement into their complaint by reference. In making this argument they concede that New Mexico courts have not adopted incorporation by reference but suggest that this court do so because federal courts have. In support of this argument, Defendants rely on a dissent in *Tunis v. County Club Ests. Homeowners Ass'n, Inc.*, 2014-NMCA-025, ¶ 46 (Sutin, J., dissenting). But this is a dissent. And even still it only provides that it is acceptable for federal courts when faced with

motions to dismiss to "consider matters of *public record* when such matters are referenced in the plaintiff's pleadings." *Id.* (emphasis added). This dissent limits incorporation to public records such as documents from prior state court adjudications, and judicial files and records. *Id.* This court should not incorporate and consider the Production Agreement at this stage because New Mexico courts have not adopted incorporation by reference, and even the dissent referencing incorporation limits it to public records. Beyond this, the Production Agreement attached to Defendants' motion is almost completely redacted and an unredacted copy is currently inaccessible to Plaintiffs or the public.

Still, if the Court considers the Production Agreement as evidence outside the pleadings, the agreement does not support Defendants' contention. Despite the clear language of the agreement quoted above, the provision that the "Production Company shall have final determination with respect to any *creative decision* that would result in a material increase in the budget" is meaningless. Plaintiffs' claims are *not* based on "creative decisions," but on Defendants' failure to act to maintain a safe environment on the set of *Rust* free from the risk of injury by the discharge of live ammunition fired from a functioning revolver. Further, this Court cannot determine from the nearly completely redacted copy of the Production Agreement whether the Agreement expressly addresses Defendants' full monetary and experiential relationships.[3] But even if the Agreement did not, joint venture agreements do not have to be in writing under New Mexico law and instead may be established based on the joint venturers' conduct. *See Quirico v. Lopez,* 1987-NMSC-070, ¶¶ 9-10 (concluding that the absence of "express agreement" was not fatal to a determination that the transaction was a joint venture). Defendants fail to appreciate that the Production Agreement is but one document alleged to evidence the joint venture relationship

[3] Plaintiffs will conduct discovery in order to obtain an unredacted copy of the Production Agreement and the Inducement Letter, which may very well establish Defendants' written joint venture agreement.

between Defendants. So, attacking it does not undermine all other allegations supporting the existence of a joint venture. Therefore, Plaintiffs' joint venture and agency allegations are well pleaded and should not be dismissed.

III. PLAINTIFFS HAVE SUFFICIENTLY PLEADED NEGLIGENCE AND NEGLIGENCE PER SE

Defendant Baldwin was not just "an actor" on the set of *Rust*. Plaintiffs have set forth facts reflecting his deep involvement with the production as a producer and a showrunner. So, Defendant Baldwin owed Plaintiffs a duty of care to ensure a safe working environment, both personally and as an executive. Notwithstanding these allegations, Defendants inexplicably contend that Defendant Baldwin did not have a duty to comply with widely accepted industry standards for safe use of firearms, and owed no duty to Plaintiffs because others on set were tasked with managing the firearms. Whether others were similarly responsible to enforce and follow safety procedures does not negate Plaintiffs' allegations against Defendant Baldwin. Defendant Baldwin seeks to distance himself from the actions of the film's armorer, but Plaintiffs have alleged that *his* conduct in ignoring safety complaints, contracting inexperienced crew members, and not allocating sufficient time and money for gun safety protocols was a breach of his duty of care.

Defendants' assertion that Plaintiffs are attempting to assert a "new" and "unannounced" standard of care relevant to Defendant Baldwin's misconduct is false. In New Mexico, every person has a duty to exercise ordinary care for the safety of others. *Bober v. New Mexico State Fair,* 1991-NMSC-031, ¶ 17, 808 P.2d 614 (internal citation omitted). Defendant Baldwin owed Plaintiffs a duty of ordinary care. "'Ordinary care' is that care which a reasonably prudent person would use in the conduct of the person's own affairs." UJI 13-1603 NMRA. "As the risk of danger that should reasonably be foreseen increases, the amount of care required also increases." *Id.*

The decision to use operational firearms on a gun-heavy movie set on 17 of the 21 scheduled film days, involved a high risk of danger. Comp. ¶ 33. Defendants owed an increased level of care for the safety of others on set as a result. Subsumed within this duty of ordinary care, Defendants owed the many duties enumerated in the complaint including, but not limited to: participating in firearms trainings; safely operating firearms; complying with industry firearm standards; responding to and mitigating unintentional firearms discharges; contracting experienced firearm handlers; managing a safe set where functional firearms were in use; avoiding the discharge of any deadly weapon on a film set; and complying with New Mexico law. Comp. ¶¶ 95-99.

Defendants' foreseeability argument also fails. Defendants state that it was not foreseeable to Defendant Baldwin that the armorer would hand him a gun with a live round. But "[f]oreseeability does not require that the particular consequence should have been anticipated, but rather that some general harm or consequence be foreseeable." *Spencer v. Health Force, Inc.*, 2005-NMSC-002, ¶ 23, 107 P.3d 504 (internal citation and quotation marks omitted). Some general harm or consequence was foreseeable on a gun-heavy movie set where: untrained persons were obligated to use operable firearms; daily safety meetings were not regularly held; multiple unscripted discharges occurred and were not appropriately responded to; and seven crewmembers resigned citing safety concerns. All this before Defendant Baldwin accepted a firearm from someone he was not supposed to, put his finger on the trigger and pulled it while aiming at crewmembers who were mere feet away. The question on *Rust*'s set was not would someone be injured? The question was, when would they be?

Also "[f]oreseeability and breach are questions that a jury considers when it decides whether a defendant acted reasonably under the circumstances of a case that or legally caused injury to a particular plaintiff." *Rodriguez v. Del Sol Shopping Ctr. Assoc., LP,* 2014-NMSC-014,

¶ 4. Here, the jury should be left to consider foreseeability and more specifically whether Defendant Baldwin acted unreasonably under the circumstances.[4]

IV. PLAINTIFFS' INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS CLAIM IS ALSO ADEQUATELY PLEADED

Plaintiffs' complaint sufficiently alleges that Defendant Baldwin's conduct was extreme and outrageous. *See Trujillo v. Northern Rio Arriba Elec. Co-op, Inc.*, 131 N.M. 607, 616 (N.M. 2001) (Extreme and outrageous conduct is that which is "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community."). Plaintiffs have also sufficiently alleged that Defendant Baldwin was reckless. *See Baldonado v. El Paso Nat. Gas Co.*, 2008-NMSC-005, ¶ 22, 143 N.M. 288 (Intentional infliction of emotional distress "requires a showing of reckless *or* intentional conduct on Defendant's part." (emphasis added)). Recklessness is the "intentional doing of an act with utter indifference to the consequences." *Id.* at ¶ 37.

Plaintiffs dedicate over 60 paragraphs detailing the many safety violations which occurred on the *Rust* set which Defendants controlled. Comp. ¶¶ 23-84. Plaintiffs allege this was a gun-heavy production and yet Defendant Baldwin did not attend his scheduled firearm safety training. Comp. ¶ 88. Instead, he was distracted and talking on his cellphone. *Id.* This was extreme, outrageous, and reckless. Then multiple unscripted weapons discharges occurred on set, and Defendant Baldwin did not act to address the dangerous situations or otherwise direct his agents to cure these issues. Comp. ¶ 89. This persistence to complete filming without delay was extreme, outrageous, and reckless. Next, multiple crewmembers resigned citing safety concerns.

[4] Defendants claim that because there is no negligence, there can be no negligence per se. For reasons explained above, negligence exists and so this argument attacking Plaintiffs' negligence per se claims also fails. Plaintiffs' allegations that Defendants' conduct violated the New Mexico Negligent Use of a Deadly Weapon statute, NMSA 1978 § 30-7-4, are also well-pled.

Comp. ¶ 89. Defendant Baldwin did not delay production to properly address this new shortfall, and he did not responsively schedule any safety meetings or rehearsals. *Id.* Defendant Baldwin then intentionally accepted a revolver from someone other than the armorer in violation of industry rules. Comp. ¶ 66. He did not request that anyone verify or show the revolver's safety before accepting it. *Id.* This whole exchange was extreme, outrageous, and reckless. Then, without supervision or a call for a proper rehearsal, Defendant Baldwin intentionally began to practice his draw with the loaded revolver. Comp. ¶ 70. He drew the revolver multiple times and pointed it at crewmembers standing merely feet away. Comp. ¶ 71. He then cocked the hammer of the revolver with the trigger pulled and fired it towards the crew in violation of industry safety standards. Comp. ¶¶ 31 & 75. The FBI later investigated the revolver and concluded that the revolver "could not be made to fire without pull of the trigger." Comp. ¶ ¶ 85-86. So, Defendant Baldwin pulled the trigger—that was extreme, outrageous, and reckless.

Failing to participate in firearm training and then handling operable firearms, ignoring unscripted discharges and crewmember resignations over safety concerns, repeatedly violating industry standards, placing one's finger on the trigger of an operable firearm, pointing that firearm at crew members mere feet away, and firing that deadly weapon all go beyond any possible bounds of decency. Accepting these factual allegations as true, Plaintiffs' complaint sufficiently alleges Plaintiffs' claims for intentional infliction of emotional distress.

Conclusion

WHEREFORE, for the reasons set forth above, Plaintiffs ask the Court to deny Defendants' Motion to Dismiss in its entirety. In the event the Court is inclined to grant the motion as to one or all claims, Plaintiffs request that the Court grant them leave to amend the Complaint, and for any other relief that the Court deems just and proper.

Respectfully submitted,

VIGIL LAW FIRM, P.A.

/s/ Jacob G. Vigil
Jacob G. Vigil, Esq.
Alexandra Cervantes
2014 Central Avenue SW
Albuquerque, NM 87104
Phone: (505) 243-1706
Fax: (505) 842-1848
jake@zlaws.com
alexandra@zlaws.com

Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on May 19, 2023, the foregoing pleading was filed electronically through the New Mexico Odyssey e-file and serve system providing service to all counsel of record.

/s/ Jacob G. Vigil, Esq.
Jacob G. Vigil, Esq.

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

ROSS ADDIEGO,
DORAN CURTIN, and
REESE PRICE,

Plaintiffs,

No. D-101-CV-2023-00427
Judge Bryan Biedschied

v.

ALEXANDER R. BALDWIN III, an individual; RUST MOVIE PRODUCTIONS, LLC, a New Mexico limited liability company; and EL DORADO PICTURES, a California corporation.

Defendants.

DEFENDANTS ALEXANDER R. BALDWIN III AND EL DORADO PICTURES, INC.'S REPLY IN SUPPORT OF THEIR MOTION TO DISMISS

Alexander R. Baldwin III and El Dorado Pictures, Inc. (together, "Baldwin Defendants"), by and through their counsel, Luke Nikas and Robert M. Schwartz of Quinn, Emanuel, Urquhart & Sullivan, LLP and Jeff Ray and Brian P. Brack of Ray | Pena | McChristian, P.C., hereby submit this Reply in Support of Their Motion to Dismiss and as grounds therefore, state:

PRELIMINARY STATEMENT

The Baldwin Defendants moved to dismiss Plaintiffs' claims on numerous deficiencies, citing state and federal authority. In response, Plaintiffs do not even attempt to distinguish any of the cases. Instead, relying on only a handful of inapposite and irrelevant decisions, Plaintiffs assert that their boilerplate allegations and legal conclusions suffice. But on a motion to dismiss, courts do not credit a complaint's conclusions of law or unwarranted factual deductions. For that reason, among others, the Court should grant Baldwin Defendants' motion to dismiss.

As explained below, Plaintiffs have not properly alleged, and cannot allege, an agency or joint-venture relationship between Baldwin Defendants and other crew members—those who armed the gun and who were responsible for monitoring it and the ammunition on set. Accordingly, all of Plaintiffs' claims that depend on an agency or joint-venture relationship fail. Plaintiffs' negligence claims also fail because Baldwin Defendants did not owe Plaintiffs a legal duty and the injuries were unforeseeable as a matter of law. Plaintiffs' claim for intentional infliction of emotional distress fails because Plaintiffs do not plead facts to establish Baldwin Defendants' extreme and outrageous conduct. Finally, Plaintiffs have conceded that they cannot assert a claim for punitive damages. That necessitates the dismissal with prejudice.

ARGUMENT

I. PLAINTIFFS FAIL TO PLEAD AN AGENCY OR JOINT-VENTURE RELATIONSHIP

Plaintiffs argue that their claims against Baldwin Defendants "are not solely dependent on an agency relationship"; they are also based on "[Baldwin's] negligent and reckless conduct." (Resp. 3.) But the allegations underlying Plaintiffs' claims—even those related to the allegedly "negligent and reckless conduct"—hinge on there being an agency or joint-venture relationship between Baldwin and other crew members. Because Plaintiffs have not adequately plead such a relationship, their agency and joint-venture-based claims are deficient as a matter of law.[1]

Plaintiffs cannot dispute that their claims depend on their agency and joint-venture allegations. (*See* Compl. ¶¶ 8 (noting Baldwin's status as "agent"), 11 ("As members of a joint venture, each Defendant is responsible for the wrongful conduct of the others."), 12 ("The

[1] As discussed below and in the Baldwin Defendants' opening brief, Plaintiffs' direct claims fail for numerous other reasons, including the fact that the Producing Contract lacks the requisite elements necessary to create a joint venture, and that the contract granted Baldwin no mutual right to control the film's production. (*See* Baldwin Defendants' Motion to Dismiss ("Mot."), 5.)

Producer Agreement also documented Defendants' engagement in a joint venture for the development, financing, production, marketing, and/or distribution of *Rust*."), 19-22 (discussing apparent agency and alleging "Baldwin, Ryan Smith, Gabrielle Pickle, Katherine Walters, Hannah-Gutierrez Reed, Sarah Zachry, and David Halls were acting within the scope of apparent agency of Defendants"), 93 ("Defendants had a duty to ensure their agents performed their duties with reasonable care and diligence for Plaintiffs' safety."), 95 ("Defendants had a duty to exercise reasonable care in contracting and managing their agent Hannah Gutierrez Reed."), 96 ("Defendants had a duty to exercise reasonable care in contracting and managing agent Sarah Zachry."), 97 ("Defendants had a duty to exercise reasonable care in contracting and managing agent David Halls."), 98 ("Defendants—either individually or through their owners, management, employees, or agents—breached the duties described above."); *see also id.* ¶¶ 106, 110-11, 115-16, 121-24.)

That is fatal to Plaintiffs' claims because they have not adequately pled either an agency relationship or the existence of a joint venture. *See, e.g.*, *Corona v. Corona*, 2014-NMCA-071, ¶ 22 (the party asserting an agency relationship bears the burden of pleading it). Accordingly, all claims that depend upon establishment of an agency or joint-venture relationship fail.

A. Agency

The Baldwin Defendants' opening brief explained that Plaintiffs' claim of agency is deficient because they have not alleged "some manner" by which either Baldwin or El Dorado: (1) "indicated that the agent is to act for him [or it]," and (2) "that the agent so acts or agrees to act on his [or its] behalf and subject to his [or its] control." *Totah Drilling Co. v. Abraham*, 1958-NMSC-102, ¶ 19. Unable to rebut this argument or distinguish Baldwin Defendants' authority, Plaintiffs did not even address *Totah*.

Instead, Plaintiffs argue the following:

> Plaintiffs allege that: an apparent agency relationship existed between Defendants and the "Firearms-Related Crew Members"; Defendants' "statements, acts, or conduct" led Plaintiffs to "reasonably believe" that they were each other's agents; Plaintiffs "justifiably relied" on Defendants' representations in their dealings with them; and Defendant Baldwin and the Firearms-Related Crew Members were acting within the scope of their apparent agency at the time Plaintiffs suffered their injuries. These elements track apparent agency law. *See* UJI 13-408, NMRA.

(Resp. 5.)

In other words, Plaintiffs admit that their allegations are just boilerplate conclusions that merely parrot the jury instructions, which is insufficient to meet their burden. *See, e.g.*, *Anderson v. State*, 518 P.3d 503, 516 (N.M. 2022) (affirming dismissal because the court will not consider boilerplate allegations); *State v. Gillihan*, 85 N.M. 514, 516 (N.M. 1973) ("There must be adequate allegations to support any conclusory statement; it is insufficient to allege that threats and coercion occurred and nothing more."); *Salazar v. City of Albuquerque*, 2013 WL 5554185, at *42 (D.N.M. Aug. 20, 2013) (not considering "allegations [that] do no more than recite the elements of the cause of action"); *Gutierrez v. Cobos*, 2014 WL 12684475, at *22 (D.N.M. Sep. 23, 2014) (not considering boilerplate allegations sua sponte and denying leave to amend because "[t]he Court cannot act as Plaintiffs' advocate and has no obligation to conjure up unpleaded allegations"); *Nat. Bank of Santa Fe v. Ruebush*, 1956-NMSC-104, ¶ 3.

B. Joint Venture

Plaintiffs likewise fail to adequately plead the existence of a joint venture between Baldwin, El Dorado, and Rust Pictures. None of Plaintiffs' arguments to the contrary holds water.

Plaintiffs contend that "the Production Agreement is but one document alleged to evidence the joint venture relationship between Defendants" and "attacking it does not undermine all other allegations supporting the existence of a joint venture." (Resp. 6-7.) But the only other allegations merely regurgitate the elements to establish a joint venture (*see, e.g.*, Compl. ¶ 11), which, as discussed above, is insufficient as a matter of law.

Next, Plaintiffs attempt to downplay the importance of section 6 of the Production Agreement, which makes clear that the Baldwin Defendants lack control over the aspects of the Rust production relevant here. Plaintiffs contend that their "claims are *not* based on [Baldwin's] 'creative decisions.'" (Resp. 6 (emphasis in original).) Yet, to the extent that Baldwin and El Dorado had contractual responsibility over any decisions on set, those decisions were limited to creative decisions and only those with no budgetary implications. (*See* Mot., Ex. 1 § 6.[2]) On the other hand, Rust Productions—not the Baldwin Defendants, had *sole discretion* over all other aspects of the production, including any decision that involved spending money, materially limiting and subordinating Baldwin and El Dorado's decision-making power. (*Id.*) Plaintiffs also ignore Section 3 of the Production Agreement, which explicitly *prevents* either Baldwin or El Dorado from hiring crew without prior written consent from Rust Pictures. (Ex. 1 § 3.)

Accordingly, the relationship between Baldwin, El Dorado, and Rust Pictures is not with "a right of equal or joint control and direction." *Fullerton v. Kaune*, 1963-NMSC-078, ¶ 8 (dismissing complaint where element of joint control was not adequately alleged); *see also Hansler v. Bass*, 1987-NMCA-106, ¶ 29 (A joint venture requires "a community of interest in the performance of a common purpose, a joint proprietary interest in the subject matter, a mutual right to control, a right to share in the profits, and a duty to share in any losses which may be sustained.") (citation omitted). Where the necessary elements are lacking, as here, the Court can decide as a

[2] Plaintiffs are wrong in arguing that the Court cannot consider the Production Agreement. The issue remains unresolved in New Mexico state courts and, as a result, the Court is permitted to turn to the interpretation of similar federal rules for guidance. *See, e.g.*, *Doe v. Roman Catholic Diocese of Boise, Inc.*, 1996-NMCA-057, ¶ 5. And federal courts routinely consider such documents. *See, e.g.*, *Anderson Living Trust v. WPX Energy Production, LLC*, 27 F. Supp. 3d 1188, 1210 (D.N.M. 2014) (on motion to dismiss court may consider "documents that the complaint incorporates by reference"). Plaintiffs' suggestion that the Production Agreement as redacted is "currently inaccessible to Plaintiffs or the public" is curious given that Plaintiffs were able to quote from the contract verbatim. (*See* Compl. ¶ 12.) Regardless, Baldwin Defendants remain willing to produce an un-redacted copy of the Production Agreement under seal for the convenience of the Court.

matter of law that no joint venture existed. *See, e.g.*, *Cooper v. Curry*, 1978-NMCA-104, ¶ 22 (rejecting imposition of a joint venture where there is no proprietary interest in the business, no mutual right to control, and no sharing of profits or losses).[3]

II. PLAINTIFFS' NEGLIGENCE CLAIMS FAIL

Plaintiffs argue that Baldwin owed them a duty of care because "[he] was not just 'an actor' on the set of *Rust*"—he supposedly also had "deep involvement with the production as a producer and showrunner." (Resp. 7.) Plaintiffs are wrong, again.

First, to the extent that Plaintiffs claim Baldwin's direct conduct breached a duty of care, they fail to allege the conduct Baldwin had to perform, how he breached it, and how it caused any harm to Plaintiffs. The allegations in the complaint—"ignoring safety complaints" sent to Rust Productions, "contracting inexperienced crew members," and "not allocating sufficient time and money for gun safety protocols"—are all responsibilities of those in charge of budgetary and scheduling decisions. (*Id.*) Baldwin had no control over any of those. (*See* Mot., Ex. 1 §§ 3, 6.) By relying only on conduct outside of Baldwin's control, Plaintiffs concede that Baldwin had no responsibility for the events underlying their claims.

Second, by failing to address Baldwin Defendants' policy arguments—that the policy considerations here do not support a heightened duty of care—Plaintiffs have conceded the point. *See, e.g.*, *Bruker v. Moses*, 2003 WL 27384994, at *3 (D.N.M. Aug. 20, 2003) ("Plaintiff tacitly conceded the point by not briefing the matter."). Significantly, the safety standards cited in Plaintiffs' complaint (*see, e.g.*, Compl. ¶ 30 (alleging that "safety bulletins" document safety

[3] Relying on *Quirico v. Lopez,* 1987-NMSC-070, Plaintiffs argue that an express agreement is not necessary for a joint venture. (Resp. 6-7.) But that case concerned whether, when an express agreement exists satisfying all other elements of a joint venture, the absence of a shared-losses clause is fatal to the finding that a joint venture exists. Here, however, the Production Agreement fails to satisfy *any* element of a joint venture, rendering *Quirico* inapplicable.

protocols "adopted as industry standards to protect everyone on a film set where operable firearms are present")), and which Plaintiffs again cite in their response (*see, e.g.*, Resp. 7-8), state that neither Baldwin (as an actor) nor El Dorado (as his personal services company) had a duty to ensure gun safety on the set. Instead, responsibility for handling weapons is placed on the individuals with the expertise to ensure they are used properly: the property master or designated weapons handler. (*See* Compl. ¶ 32 (citing *Safety Bulletin #1: Recommendations for Safety with Firearms and Use of "Blank Ammunition,"* Industry Wide Safety Committee, available at https://www.csatf.org/wp-content/uploads/ 2018/05/01FIREARMS.pdf).) Insisting now that Baldwin Defendants, who were hired as creative talent and who, like Plaintiffs and many others on set, reasonably relied on the expertise of the Firearms-Related Crew Members, should be liable for an "ordinary standard of care" that includes managing firearms and firearms protocol on set flies in the face of industry expectations, common sense, and the law.

Third, the Court cannot allow Plaintiffs to import a duty of care where one does not exist. (Resp. 7-8.) No New Mexico statute or decision supports Plaintiffs' attempt to impose responsibility for gun safety on an actor who was handed a gun by the on-set industry experts and told that it was unloaded. Where the legislature has not established a duty, as here, courts should not declare new, unannounced standards of care, especially after the fact. *See, e.g.*, *Torres v. State*, 1995-NMSC-025, ¶ 10 ("With deference always to constitutional principles, it is the particular domain of the legislature, as the voice of the people, to make public policy.").

Finally, contrary to Plaintiffs' arguments (Resp. 8-9) and as the Baldwin Defendants explained in their opening brief, as a matter of law it was not foreseeable that a live bullet would end up in the gun. (Mot. 8-9.) Courts may address this issue as a matter of law, especially in clear-cut cases like this. *See, e.g.*, *F & T Co. v. Woods*, 1979-NMSC-030, ¶¶ 2, 11, 15 (holding plaintiff failed to establish proximate cause as a matter of law in a negligent hiring claim against employer

whose employee attacked plaintiff in her home three days after delivering a television there, even though employer allegedly knew of employee's dangerous propensities).[4]

III. PLAINTIFFS' CLAIM FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS FAILS

Plaintiffs have mistaken bulk for substance. It does not matter that "Plaintiffs dedicate over 60 paragraphs detailing the many safety violations" that allegedly occurred. (Resp. 9.) What matters is that Plaintiffs have not pled the extreme and outrageous conduct ***by the Baldwin Defendants*** necessary to state a claim for intentional infliction of emotional distress.

Plaintiffs misconstrue the central element of the claim: Conduct is considered extreme and outrageous only when it is "beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Andrews v. Stallings*, 1995-NMCA-015, ¶¶ 50, 56 (affirming dismissal where alleged statements "could hardly" rise to that level). Plaintiffs' "over 60 paragraphs" fail to meet this standard. That is especially so because the myriad actions that Baldwin should or should not have taken related to set administration, such as delaying production, investigating misfires, and scheduling safety meetings, and were all explicitly outside of his purview, both as an actor and a producer with limited input only on cost-free creative matters. (Resp. 9-10.) A failure to take actions outside one's expertise and purview is not "intolerable in a civilized community." *Andrews*, 1995-NMCA-015, ¶¶ 50, 56.

Plaintiffs also fail to plead the severe emotional distress necessary to plead a claim for intentional infliction of emotional distress. As Plaintiffs' cases acknowledge, severe emotional

---

[4] Plaintiffs' cases are inapposite. *Bober v. New Mexico State Fair,* 1991-NMSC-031, ¶ 17, concerns the scope of a landowner's ordinary duty of care to a passersby when the landowner is not physically present. *Rodriguez v. Del Sol Shopping Ctr. Assoc., LP,* 2014-NMSC-014, decided at summary judgment, addressed the issue of foreseeability in the context of the duty owed by a shopping mall owner to patrons. *Spencer v. Health Force, Inc.*, 2005-NMSC-002, decided on summary judgment, considered the duty owed by employers who, under statute and policy considerations, were expected to conduct criminal background checks prior to hiring caregivers for the ill and elderly. None of these cases has any bearing here.

distress means "a reasonable person, normally constituted, would be unable to cope adequately with the mental distress engendered by the circumstances." *Trujillo v. N. Rio Arriba Elec. Co-op, Inc.*, 2002-NMSC-004, ¶ 28 (quotation omitted). In *Trujillo*, the plaintiff's depression, subsequent medication, and erratic physical symptoms experienced did not rise to the level of severe emotional distress under the law. *Id.* Here, Plaintiff's "insomnia, anxiety, depression" and other symptoms are doubtlessly unfortunate (Compl. ¶ 84), but "liability does not flow from every act that succeed[s] in causing even severe emotional distress," *Padwa v. Hadley*, 1999-NMCA-067, ¶ 12, and "[t]he law intervenes only where the distress inflicted is so severe that no reasonable [person] could be expected to endure it," *Trujillo*, 2002-NMSC-004, ¶ 28.[5] That is not the case here.

IV. PLAINTIFFS' DEMAND FOR PUNITIVE DAMAGES FAILS

Plaintiffs have conceded, by failing to address Baldwin Defendants' argument, that they do not have a claim for punitive damages. *See, e.g.*, *Bruker*, 2003 WL 27384994, at *3, *supra*. In any event, Plaintiffs' conclusory allegations of liability through non-existent agency and joint-venture relationships and failure to plead any actual recklessness or misconduct on the part of Baldwin Defendants preclude punitive damages as a matter of law. *See, e.g.*, *Dawson v. Wilheit*, 1987-NMCA-056, ¶ 8 (dismissing punitive damages where negligence insufficiently pled).

V. BECAUSE AMENDMENT IS FUTILE, THE COURT SHOULD DENY LEAVE TO AMEND

Plaintiffs similarly concede by their silence that "the insufficiency or futility of [Plaintiffs'] pleading is apparent on its face[,]" and that "granting the motion [to amend] would serve no purpose." *Stinson v. Berry*, 1997-NMCA-076, ¶ 9; *see also Bruker*, 2003 WL 27384994, at *3, *supra*. Accordingly, the Court should not grant Plaintiffs leave to amend.

---

[5] Plaintiffs' other case is *Baldonado v. El Paso Nat. Gas Co.*, 2008-NMSC-005, ¶ 22, 143 N.M. 288, which is inapplicable because it concerns the special relationship inherent to rescue services.

CONCLUSION

The Court should dismiss the Complaint without leave to amend.

Date: June 6, 2023

Respectfully submitted,

By: */s/ Luke Nikas*
Luke Nikas (*pro hac vice* pending)
QUINN EMANUEL URQUHART & SULLIVAN, LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010
Telephone: (212) 849-7000
Email: lukenikas@quinnemanuel.com

Robert M. Schwartz (*pro hac vice* pending)
QUINN EMANUEL URQUHART & SULLIVAN, LLP
865 S. Figueroa Street, 10th Floor
Los Angeles, California 90017
Telephone: (213) 443-3000
Email: robertschwartz@quinnemanuel.com

By: */s/ Brian P. Brack*
Jeff Ray
Brian P. Brack
Ray | Peña | McChristian, PC
6501 Americas Parkway N.E., Suite 820
Albuquerque, NM 87110
Telephone: (505) 855-6000
Email: jray@raylaw.com
Email: bbrack@raylaw.com

Attorneys for Defendants Alexander R. Baldwin III and El Dorado Pictures

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on all counsel of record through the Odyssey E-Serve system on June 6, 2023.

/s/ Brian P. Brack
Brian P. Brack

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

ROSS ADDIEGO,
DORAN CURTIN, and
REESE PRICE,

Plaintiff,

vs.

ALEXANDER R. Baldwin III, an individual; RUST MOVIE PRODUCTIONS, LLC, a New Mexico limited liability company; and EL DORADO PICTURES, a California corporation,

Defendants.

No. D-101-CV-2023-00427
Judge Bryan Biedscheid

DEFENDANT ALEXANDER R. BALDWIN III'S MOTION TO STAY THE ACTION PENDING RESOLUTION OF CRIMINAL PROCEEDINGS

Alexander R. Baldwin III, by and through his counsel, Luke Nikas and Robert M. Schwartz of Quinn, Emanuel, Urquhart & Sullivan, LLP and Jeff Ray and Brian P. Brack of Ray | Pena | McChristian, P.C. herby submits his Motion to Stay the Action Pending Resolution of Criminal Proceedings and as grounds therefore, states:

PRELIMINARY STATEMENT

Defendant Alec Baldwin is defending several civil actions arising out of the accidental shooting on the *Rust* set. The special prosecutors in the criminal proceeding recently dismissed the criminal charges against him. Even though the criminal charges should never have been filed in the first place and should not be refiled, the dismissal was without prejudice. Therefore, if this civil case proceeds, the settled law considers Baldwin to be in the "position of having to choose

between risking a loss in [his] civil cases by invoking [his] Fifth Amendment rights, or risking conviction in [the] criminal cases by waiving [his] Fifth Amendment rights and testifying in the civil proceedings[.]" *Chand v. Corizon Med.*, 2018 WL 3935038, at *2 (D.N.M. Aug. 16, 2018) (quotations omitted). Baldwin is entitled to a stay of these proceedings until the criminal case against him has been dismissed with prejudice.

As the complaint makes clear, Plaintiffs will seek discovery from Baldwin regarding the events on set leading up to the shooting. Throughout their complaint, Plaintiffs cite documents that the district attorney referenced in the criminal case to support charges. *See* Compl. ¶¶ 88-90. That Plaintiffs intend to seek, and the prosecutors intended to rely on, the same evidence concerning Baldwin means that the discovery in this case could be used against Baldwin in a criminal proceeding.

But Baldwin has a constitutional right not to testify against himself. Unless this action is stayed, his lawful exercise of his constitutional rights in the civil case will lead to adverse inferences that severely prejudice him. Courts have long recognized that the solution to this dilemma is to stay the civil case, pending the outcome of the criminal case. This Court should do the same and stay this action until the criminal case is dismissed with prejudice and, as appropriate, set deadlines for the parties to inform the Court of the status of a with-prejudice dismissal so that the Court can reassess the continuing need for the stay.

Counsel for Plaintiffs were contacted pursuant to Rule 1-007.1 regarding whether they opposed this Motion. As of filing, a response had not been received.

FACTUAL BACKGROUND

On October 21, 2021, on a movie set in New Mexico, an accidental shooting took the life of cinematographer Halyna Hutchins. In the year and a half since the tragedy, Baldwin has faced

numerous claimants in both California and New Mexico. Plaintiffs—three crew members who witnessed the accident and thereby claim damages—filed this action on February 24, 2023.

On January 19, 2023, just a few weeks before Plaintiffs filed their Complaint, the First Judicial District Attorney's Office for the State of New Mexico in Santa Fe announced that Baldwin would face two alternate counts of involuntary manslaughter related to the accident on the *Rust* set. On January 31, 2023, the New Mexico District Attorney's Office filed an information charging Baldwin with the alternate counts. After Baldwin challenged the ex post facto firearm enhancement on constitutional grounds, on February 20, 2023, the New Mexico District Attorney's Office filed an amended charge dropping the enhancement. Baldwin also challenged the constitutionality of the special prosecutor's service on the case, because she was simultaneously serving as a state legislator. The original special prosecutor ultimately resigned, and the district attorney subsequently withdrew from the case. On April 21, 2023, the new special prosecutors handling the case announced that they were dismissing charges against Baldwin without prejudice. *State v. Baldwin*, No. D-0101-CR-202300039, Nolle Prosequi.

Baldwin now must defend himself in civil suits in which the evidence substantially overlaps with evidence that is present in the special prosecutors' further investigation.

LEGAL STANDARD

The Fifth Amendment to the United States Constitution provides that "[no] person … shall be compelled in any criminal case to be a witness against himself…." Article II, Section 15 of the New Mexico Constitution contains a similar clause, stating that, "[n]o person shall be compelled to testify against himself in a criminal proceeding." To ensure that litigants are afforded these constitutional protections, courts "have broad discretion to stay discovery in a civil case while

parallel criminal proceedings are pending." *Ramirez v. Martinez*, 2021 WL 3269247 (D.N.M. July 30, 2021).[1]

ARGUMENT

Courts consider six factors when determining whether the particular circumstances and competing interests involved in a case warrant a stay:

> (1) the extent of overlap between the proceedings; (2) the status of the criminal case; (3) the plaintiffs' interests in speedy resolution weighed against the prejudice caused by delay; (4) the burden on the defendants; (5) the interests of the courts; and (6) the public interest."

Flynn v. City of Las Cruces, 2015 WL 13643322 (D.N.M. Nov. 9, 2015) (internal quotations and citation omitted). Each of these factors favors entering a stay.

I. THE OVERLAP BETWEEN THE PROCEEDINGS WEIGHS IN FAVOR OF A STAY

The first factor that courts consider is the extent of overlap between the civil suit and the criminal proceedings. It is "the most important factor in ruling on a motion to stay." *Hilda M. v. Brown*, 2010 WL 5313755, at *3 (D. Colo. Dec. 20, 2010) (quotations omitted). A "high degree of overlap" factors heavily in favor of a stay. *Flynn v. City of Las Cruces*, 2015 WL 13643322, at *2 (D.N.M. Nov. 9, 2015). Here, the civil suit and criminal investigation cover the same conduct and events. Plaintiffs have injected the criminal case into their suit by extensively citing the Criminal Information and Statement of Probable Cause filed against Baldwin. Compl. ¶¶ 89-90. At their core, both the civil action and criminal investigation focus on Baldwin's conduct on the

[1] Because Baldwin's Motion to Stay is based on Fifth Amendment rights as well as New Mexico law, this Motion uses federal case law—in which constitutional issues are more frequently addressed—where relevant. In any event, New Mexico courts may look to federal authorities as persuasive precedent. *See State v. Gutierrez*, 1993-NMSC-062, ¶ 16 (noting New Mexico courts cite federal law when they "find the views expressed persuasive and because we recognize the responsibility of state courts to preserve national uniformity in development and application of fundamental rights guaranteed by our state and federal constitutions").

Rust set. Because both the civil suit and criminal investigation center on the same conduct and event, a stay is warranted. *Flynn*, 2015 WL 13643322, at *2.

II. THE STATUS OF THE CRIMINAL CASE FAVORS A STAY

The next factor that courts consider is the status of the criminal case. Courts often stay cases where defendants are not under indictment but have been informed that they are under investigation. For instance, in *D.S. v. Geo Grp., Inc.*, 2015 WL 13667108, at *1 (D.N.M. Dec. 18, 2015), the defendant had received "a target letter from the United States Department of Justice regarding" allegations against him but had not been formally charged or indicted. The court stayed the action finding that the looming criminal investigation meant that the defendant's "right to assert the Fifth Amendment will be substantially prejudiced if he is required to participate in discovery because he will be forced to decide between accepting adverse inferences in this civil case and compromising his defense in the criminal matter." *Id.* at *3.

The likelihood of prejudice to Baldwin's Fifth Amendment rights is greater than in "pre-indictment" cases, because the State filed a Criminal Information against Baldwin on January 31, 2023, charging him with two alternative counts of involuntary manslaughter. Compl. ¶ 88. The dismissal of the case was without prejudice, and the prosecutors noted in the *Nolle Prosequi* they filed with the court that the "investigation is active and on-going." *See State v. Baldwin*, No. D-0101-CR-202300039, Nolle Prosequi.

III. THE PREJUDICE CAUSED BY A DELAY IS MINIMAL AND FAVORS A STAY

"The third factor calls on the Court to examine the interests of the plaintiff in proceeding with discovery against the prejudice to plaintiff caused by the delay." *Urrutia*, 2016 WL 9777168, at *2.

First, given the "relative infancy" of the civil case, and that discovery has not begun, the

prejudice of delay is minimal at this point. *Id.*; *see also D.S. v. Geo Grp., Inc.*, 2015 WL 13667108, at *3 (D.N.M. Dec. 18, 2015) ("[P]rocedurally, this civil case is at its inception, meaning any harm to Plaintiffs' ability to litigate their case should be minimal.") The parties have not expended resources serving and preparing for discovery or preparing witnesses or evidence for trial. Indeed, the extent of activity thus far in the case is the filing of the Plaintiffs' complaint. As such, "the negative impact of a modest delay in the civil proceedings is minimal." *Urrutia*, 2016 WL 9777168, at *2.

Second, there is no risk of loss of evidence or other prejudice typically associated with delay. The underlying event on which all claims in both the criminal and civil cases are based took place in October 2021. The physical evidence has been gathered and is being preserved for the criminal matter and there are numerous witness statements on record. Further, the witnesses that Plaintiffs will likely call in the civil case are the same witnesses sought by the special prosecutors. *State v. Alexander Rae Baldwin*, No. D-0101-CR-202300039, State's Fourth Amended Witness List For Preliminary Hearing.

Third, that Plaintiffs waited until February 2023, sixteen months after the incident and only weeks after Baldwin was charged, to file their complaint "detracts from their assertions that a stay at this juncture will prejudice their ability to prove their case." *D.S. v. Geo Grp., Inc.*, 2015 WL 13667108, at *3 (D.N.M. Dec. 18, 2015). If Plaintiffs were concerned about maintaining evidence or moving quickly, they could have filed their suit immediately after the incident. Instead, Plaintiffs strategically waited until Baldwin was charged to bring this suit, relying heavily on the District Attorney's work product in their Complaint. *See* Complaint ¶¶ 88-90. They cannot simultaneously use the government's investigation to assemble their case while also potentially looking for an adverse inference in any privilege that Baldwin invokes on account of that

investigation against him. Their decision to tactically wait to bring claims undermines any argument that a delay will prejudice them. *D.S.*, 2015 WL 13667108, at *3.

Baldwin believes that a full stay is warranted given the limited prejudice to Plaintiffs where all evidence has been collected and preserved. But should the Court disagree, a deadline by which the parties are to report back on updates would alleviate that prejudice. *D.S.*, 2015 WL 13667108, at *3 ("the Court will set a deadline by which the parties are to report back on the progress of the Defendant Walden's criminal proceedings.").

IV. THE BURDEN ON BALDWIN WOULD BE GREAT, WHICH FAVORS A STAY

The burden of continuing discovery on Baldwin would be great. "[T]he complete overlap between the criminal and civil cases suggests that [the defendant] will invoke [his] Fifth Amendment rights repeatedly and therefore the potential for prejudice is high." *Flynn*, 2015 WL 13643322, at *3. Indeed, as evidenced by their reliance on the Criminal Information to make case in the Complaint, Plaintiffs will inevitably seek testimony and evidence related to the same events at the heart of the State's investigation. Even if the Plaintiffs offered to seal deposition testimony, Baldwin "could have a legitimate concern that information he provided would not be forever protected from criminal prosecution." *Urrutia*, 2016 WL 9777168, at *3. The only way to prevent this prejudice is to stay the case.

V. THE INTERESTS OF THE COURT AND THE INTERESTS OF THE PUBLIC FAVOR A STAY

The final two factors are the interests of the Court and the public. Both favor a stay. It would be a waste of judicial and party resources to proceed with civil discovery given that Baldwin would be permitted to invoke his right not to testify until the criminal matter is dismissed with prejudice. *D.S.*, 2015 WL 13667108, at *4 (noting that the benefits of staying pending the resolution of a criminal case include increasing "the possibility of settlement"). Furthermore, the

Complaint argues repeatedly that Baldwin is liable for the alleged negligence of third parties, including Hannah Gutierrez-Reed, on an agency basis. Compl. ¶¶ 20-22, 57-61. Gutierrez-Reed continues to face criminal charges related to her conduct. She is unlikely to participate in a deposition or other discovery until those criminal charges are resolved, which will require an extended discovery period as well. Both the Court and the public "have an interest in not needlessly expending resources" on litigation. *Urrutia*, 2016 WL 9777168, at *4.

CONCLUSION

For the reasons set forth above, Baldwin respectfully requests that the Court stay this action pending the with-prejudice dismissal of the criminal matter. In the alternative, Baldwin requests that the Court grant a stay with scheduled deadlines for the parties to update the Court on the status of the State's investigation.

Date: May 5, 2023

Respectfully submitted,

By: _____

Luke Nikas (*pro hac vice* pending)
QUINN EMANUEL URQUHART & SULLIVAN, LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010
Telephone: (212) 849-7000
Email: lukenikas@quinnemanuel.com

Robert M. Schwartz (*pro hac vice* pending)
QUINN EMANUEL URQUHART & SULLIVAN, LLP
865 S. Figueroa Street, 10th Floor
Los Angeles, California 90017
Telephone: (213) 443-3000
Email: robertschwartz@quinnemanuel.com

By: */s/ Brian Brack*

Jeff Ray
Brian Brack
Ray | Peña | McChristian, PC
6501 Americas Parkway N.E., Suite 820
Albuquerque, NM 87110
Telephone: (505) 855-6000
Email: jray@raylaw.com
Email: bbrack@raylaw.com
Attorneys for Defendants Alexander R. Baldwin III and El Dorado Pictures

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on all counsel of record through the Odyssey E-Serve system on May 5, 2023.

/s/ Brian Brack
Brian Brack

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

ROSS ADDIEGO, DORAN CURTIN,
and REESE PRICE,

Plaintiffs,

v.

Case No. D-101-CV-2023-00427

ALEXANDER BALDWIN III, an individual; RUST MOVIE PRODUCTIONS, LLC, a New Mexico limited liability company; and EL DORADO PICTURES, a California corporation,

Defendants.

PLAINTIFFS' RESPONSE TO DEFENDANT ALEXANDER BALDWIN, III'S MOTION TO STAY THE ACTION PENDING RESOLUTION OF CRIMINAL PROCEEDINGS

Plaintiffs Ross Addiego, Doran Curtin, and Reese Price, by and through their counsel, Vigil Law Firm, P.A., hereby respond to Defendant Alexander Baldwin, III's Motion to Stay the Action Pending Resolution of Criminal Proceedings. For the reasons below, Defendant Baldwin has not shown good cause for the extraordinary remedy of granting a total, indefinite stay of these proceedings and his motion should be denied.

Preliminary Statement

A stay would greatly prejudice Plaintiffs who, like the Court and the public, have an interest in the just, expeditious resolution of their claims. Although criminal charges against Defendant Baldwin for his role in shooting and killing Halyna Hutchins were dismissed without prejudice in April 2023, his Motion is premised on the fact that these charges could be refiled. However, because no "pending" criminal proceeding exists, Defendant Baldwin tacitly requests that a stay be entered indefinitely. Plaintiffs' interests outweigh whatever claimed prejudice a denial of a stay would have on Defendant Baldwin.

The self-incrimination privilege concern raised by Defendant Baldwin has no effect here because he has already freely divulged facts about the shooting and production to the public. He has previously waived his Fifth Amendment right against self-incrimination by (1) fully participating in an interview with Santa Fe County sheriffs following the shooting; (2) appearing on ABC with George Stephanopoulos in November 2021; and (3) appearing on CNN in August 2022. In the court of public opinion, Defendant Baldwin has already testified against himself in each instance where he gave statements about what happened on *Rust's* set. So, Defendant Baldwin should not be permitted to now rely on the privilege against self-incrimination to stay these proceedings.

Plus, as shown in the Complaint, the facts to be tried do not include whether Defendant Baldwin was criminally responsible for the death of *Rust's* director of photography. The Complaint seeks damages against the production companies' negligence and recklessness in failing to maintain a safe set for Plaintiffs and other crew members who were put in harm's way.

The Court should deny the motion to stay these proceedings because (1) there is no pending, overlapping criminal proceeding against Defendant Baldwin; (2) Defendant Baldwin has previously waived his self-incrimination privilege; and (3) it is in the interests of Plaintiffs, the Court, and the public to push this case towards resolution.

Statement of Facts

On October 21, 2021, Defendant Baldwin fired a revolver towards the crew on the movie set of *Rust,* killing the film's director of photography, and injuring Plaintiffs. Plaintiffs suffered blast injuries and trauma as a result of being inside a small church set and in the line of fire when Defendant Baldwin dislodged a live round of ammunition from a functional revolver towards them. Plaintiffs claim that Defendants Baldwin, Rust Movie Productions, LLC and El Dorado Pictures are responsible for Plaintiffs' injuries because of their negligent and reckless actions and omissions.

Legal Authority

"When applying for a stay, a party must show a clear case of hardship or inequity if even a fair possibility exists that the stay would damage another party." *Creative Consumer Concepts, Inc. v. Kreisler,* 563 F.3d 1070, 1080 (10th Cir. 2009) (internal citation and quotation marks omitted).[1] Indeed, the "Constitution does not generally require a stay of civil proceedings pending the outcome of criminal proceedings, absent substantial prejudice to a party's rights." *Id.* (internal citation omitted). "When deciding whether the interests of justice seem to require a stay, the court must consider the extent to which a party's Fifth Amendment rights are implicated." *Id.* But "[a] defendant has no absolute right not to be forced to choose between testifying in a civil matter and asserting his Fifth Amendment privilege." *Id.* (emphasis added) (internal citation and quotation marks omitted).

As discussed above, there is no pending criminal proceeding against Defendant Baldwin. The charges against him were dismissed on April 21, 2023. And even if criminal charges were still pending against him, Defendant Baldwin still has not satisfied the conditions for this Court to enter the "extraordinary remedy" of a total, indefinite stay. *See In re Par Pharm. Sec. Litig.*, 133 F.R.D. 12, 13 (S.D.N.Y. 1990).

In determining whether to grant a stay when there are parallel civil and criminal proceedings, courts have looked to a six-factor test which considers: (1) the extent of overlap between the proceedings; (2) the status of the criminal case; (3) the plaintiff's interests in speedy resolution weighed against the prejudice caused by delay; (4) the burden on the defendants; (5) the interests of the courts; and (6) the public interest. *See Trustees of the Plumbers and Pipefitters*

[1] *See State v. Gutierrez,* 1993-NMSC-062, ¶ 16, 863 P.2d 1052 (noting that New Mexico courts treat federal precedent as persuasive).

Nat'l Pension Fund v. Transworld Mech., Inc., 886 F.Supp. 1134, 1139 (S.D.N.Y. 1995); *Flynn v. City of Las Cruces,* 2015 WL 13643322, *1 (D.N.M. Nov. 09, 2015). It bears repeating, however, that "while the extent to which the defendant's fifth amendment rights are implicated is a significant factor in deciding whether to stay a civil proceeding, it is only one consideration to be weighed against others." *SEC ARVCO Capital Research, LLC,* 2013 WL 3779338 (D. Nev. July 16, 2013) (internal citations and quotations omitted).

It should further be noted that "[t]hese tests . . . no matter how carefully refined, can do no more than act as a rough guide for the district court as it exercises its discretion." *Louis Vuitton Malletier S.A., LY USA, Inc.,* 676 F.3d 83, 99 (2d Cir. 2012). "They are not mechanical devices for churning out correct results in overlapping civil and federal proceedings, replacing the district court's studied judgment as to whether the civil action should be stayed based on the particular facts before it and the extent to which such a stay would work a hardship, inequity, or injustice to a party, the public or the court." *Id.*

Finally, the Court must keep in mind that a "general stay is just one of several procedures available" to the Court in addressing the circumstances at issue. *In re CFS-Related Securities Fraud Litigation,* 256 F.Supp.2d 1227, 1236 (N.D. Okla. 2013). "These alternate tools include the imposition of protective orders, sealed interrogatories, a stay for a finite period of time, or a stay limited to a specific subject matter." *Id.*

Here, as set out below, Defendant Baldwin has not satisfied his burden of showing that a stay of discovery is warranted.

Argument

I. There Is No Pending Criminal Case Against Defendant Baldwin

Defendant Baldwin admits that criminal charges against him have been dropped. Thus, there is no pending criminal proceeding. Still, he argues that the Court should stay discovery

because, at some unknown time in the future, prosecutors could use the evidence he produces in discovery against him. Defendant Baldwin's concerns cannot establish the harm, prejudice, and inequity that need to be present to stay this case.

Defendant Baldwin has expressed no concern with preserving his constitutional rights against self-incrimination. He waived his rights when he freely sat for an interview with county sheriffs following the shooting. He has given interviews with the press regarding the events of October 21, 2021, and has appeared on major news networks including ABC and CNN. For example, Defendant Baldwin is reported saying, on camera:

> Someone put a live bullet in the gun who should have known better.... That was [the armorer's] job. Her job was to look at the ammunition and put in the dummy round or the blank round, and there wasn't supposed to be any live rounds on set.

https://www.cnn.com/2022/08/19/entertainment/alec-baldwin-interview-rust-shooting/index.html. From this statement alone, Defendant Baldwin provided information relevant to Plaintiffs' claims.

II. Any Overlap Between The Civil And Potential Future Criminal Case Is Minimal And Not Prejudicial To Defendant Baldwin

There is no significant overlap between Plaintiffs' claims and any potential criminal case against Defendant Baldwin. The criminal charges brought, and then dismissed, against Defendant Baldwin involved his shooting of the revolver that killed Halyna Hutchins and injured director Joel Souza. But in this case, Plaintiffs claims go beyond Defendant Baldwins' individual actions on the day of the shooting. Plaintiffs sue Defendant Baldwin and the *Rust* film production companies for prioritizing their joint venture—the quick and cheap production of the film—over their duty to provide adequate safety measures. The one point at which the potential criminal and civil cases converge is on the issue of Defendant Baldwin's use of the revolver. But Defendant Baldwin has already discussed his use of the revolver publicly with the media. Criminal prosecutors will not be investigating whether Defendants were negligent in their management and operation of the *Rust*

production or whether that negligence caused severe compensable injuries to these Plaintiffs. The now-dismissed criminal matter against Defendant Baldwin centered on the death of Halyna Hutchins. Thus, there is not, as Defendant Baldwin asserts, such an overlap between this case and a potential criminal case that a stay of the civil proceedings is warranted.

III. Defendant Baldwin's Pre-Litigation Conduct Contradicts His Feigned Interest In Protecting His Self-Incrimination Privilege

As discussed above, Defendant Baldwin spoke openly to investigators and the media regarding the facts that prompt this lawsuit, thereby diminishing his interests in raising Fifth Amendment protections. *See, e.g., Creative Consumer Concepts v. Kreisler,* 563 F.3d 1070 (D. Kan. 2009) (finding that, "by the time [the defendant] moved for a stay, the court had little hope of protecting [her] right against self-incrimination" because she had given a deposition while she was unrepresented months earlier). Further, "[o]ther courts have noted a variety of procedures that can be utilized to lessen the detriment to a defendant facing [the quandary currently faced by Defendant Baldwin]." *In re CFS-Related Securities Fraud Litigation,* 256 F. Supp. 2d at 1240. "Less drastic methods in lieu of a stay include sealing answers to interrogatories, sealing answers to depositions, imposing protective orders, imposing a stay for a finite period of time, limiting a stay to a particular subject, or limiting disclosure only to counsel." *Id.* Plus, any protections afforded against providing incriminating statements or testimony does not extend to the production of documents. *United States v. Doe*, 465 U.S. 605, 610-11 (1984) (finding that documents that were prepared voluntarily must be produced because the "Fifth Amendment protects the person asserting the privilege only from compelled self-incrimination"). So, Defendant Baldwin must still respond to requests for production and is not otherwise protected from producing relevant documents during discovery. In short, even if the Court finds that Defendant Baldwin might be prejudiced by any aspect of discovery moving forward, that prejudice can be cured by a remedy that is not as drastic and burdensome as a stay.

Defendant Baldwin also argues that, because this case involves allegations that could give rise to criminal charges that have not yet been brought, he may have additional criminal liability if the civil case proceeds. [2] This argument lacks merit. If a civil defendant were able to stay civil discovery based on the hypothetical threat of criminal charges, cases such as this one could never be litigated. Defendant Baldwin's interests are not superior to those of other defendants, and he should protect his privilege the same ways that all other defendants protect theirs—specific objection. Defendant Baldwin can raise the Fifth Amendment privilege as he so chooses. But absent an indictment or charges against him, there is no reason to even consider staying discovery indefinitely based on the hypothetical threat that Defendant Baldwin may face additional criminal charges in the future.

IV. Plaintiffs' Interests To Proceed Are Tantamount

Plaintiffs have a strong interest in preserving discovery, as there is an increased risk that, if discovery is stayed, "witnesses will become unavailable, memories of conversations will fade, and documents will be lost and destroyed." *Board of County Commissioners of the Cnty. of Adams v. Asay,* 2012 WL 6107949, *3 (D. Colo., Dec. 10, 2012); *see also Fry v. Schroder,* 986 N.E. 2d 821, 824 (Ind. Ct. App. 2013) ("an indefinite stay would increase the danger that critical evidence may

[2] Defendant Baldwin relies on an unpublished case where the defendant was not named in an active criminal proceeding but still requested a stay because the Department of Justice issued him a target letter. *See D.S. v. Geo Group, Inc.*, 2015 WL 13667108, at *3 (D.N.M. Dec. 18, 2015). The target defendant was one of multiple named defendants in the civil lawsuit. *Id.* In D.S., the target defendant could "promise no expedient resolution of his criminal case" as a stay pending resolution of any criminal cause could result in an indefinite stay. *Id.* The court recognized that any indefinite stay would harm the plaintiffs' "ability to conduct discovery and prepare their case for trial." *Id.* So, the court stayed the proceedings until the completion of a settlement conference which was scheduled for approximately three months later. *Id.* About 15 months after entry of the stay, the court partially lifted it, continuing the stay only for the targeted defendant and only "insofar as discovery would request statements or testimony" by the target defendant. *D.S. v. Geo Group, Inc.*, 2017 WL 3588793, at *1 (D.N.M. March 2, 2017). The court then permitted full formal discovery between the plaintiff and other defendants. *Id.* at *3. And the court also permitted plaintiffs to submit requests for production against the target defendant. *Id.*

be lost due to witnesses not being able to recall facts, becoming unavailable, or dying and of records or document[s] disappearing.").

Plaintiffs have a right to preserve any negative inferences that can be drawn from Fifth Amendment privileges raised by Defendant Baldwin. *See ARVCO Capital Research, LLC,* 2013 WL 3779338, *7 ("Not only is it *permissible* to conduct a civil proceeding at the same time as a related criminal proceeding, even if that necessitates invocation of the Fifth Amendment privilege, but it is even permissible for the trier of fact to draw adverse inferences from the invocation of the Fifth Amendment in a civil proceeding." (internal citation and quotation marks omitted)).

Defendant Baldwin's argument that the Plaintiffs' interests are minimal because they filed suit against him 16 months after the shooting is unavailing and unpersuasive. First, Plaintiffs timely filed their action well within the applicable statutes of limitations. Second, had Plaintiffs filed suit without gathering the requisite facts and information in accordance with their obligations under Rule 1-011, NMRA, then Defendants would have argued that the Complaint did not set forth requisite allegations. Defendant Baldwin cannot have it both ways. He cannot use his celebrity as a mouthpiece to sway public opinion by denying his potential wrongdoing on the one hand, and then blame injured victims for not suing immediately after the shooting.

V. The Interests Of The Court And The Public Also Support Denying The Stay Request

"The Court has a strong interest in keeping litigation moving to conclusion without unnecessary delay." *In re CFS-Related Securities Fraud Litigation,* 256 F. Supp. 2d at 1241. "This interest is enhanced in complex litigation . . ." *Id.* The public, too, has an interest in the "prompt resolution of civil cases as well as the fair prosecution of criminal cases." *See Digital Equip. Corp.*, 142 F.R.D. at 14 (internal citation omitted). As this Court is aware, the *Rust* shooting received national and international attention. Nearly every major news outlet reported on the incident and published multiple articles and stories about it. Certainly, the public's interest in this case is

widespread and larger issues that affect the public are at play, such as movie set safety. Moreover, the factor that dictates where the public interest lies "is normally a question of what interest the [prosecutor] has in the request for a stay." *In re CFS-Related Securities Fraud Litigation,* 256 F. Supp. 2d at 1242. Here, the prosecutors have not joined Defendant Baldwin's request for stay, and so the public interest militates towards proceeding with discovery.

Conclusion

For the reasons set forth above, Defendant Baldwin's interests and any burden placed upon him by this lawsuit do not warrant a stay of discovery. Accordingly, Plaintiffs Ross Addiego, Doran Curtin, and Reese Price respectfully ask the Court to deny Defendant Baldwin's Motion and allow their case to proceed expeditiously.

Respectfully submitted,

VIGIL LAW FIRM, P.A.

/s/ Jacob G. Vigil, Esq.
Jacob G. Vigil, Esq.
Alexandra Cervantes
2014 Central Ave., S.W.
Albuquerque, New Mexico 87104
(505) 243-1706
jake@zlaws.com
alexandra@zlaws.com
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on May 19, 2023, the foregoing pleading was filed electronically through the New Mexico Odyssey e-file and serve system providing service to all counsel of record.

/s/ Jacob G. Vigil, Esq.
Jacob G. Vigil, Esq.

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

ROSS ADDIEGO,
DORAN CURTIN, and
REESE PRICE,

Plaintiffs,

vs.

ALEXANDER R. Baldwin III, an individual; RUST MOVIE PRODUCTIONS, LLC, a New Mexico limited liability company; and EL DORADO PICTURES, a California corporation,

Defendants.

No. D-101-CV-2023-00427
Judge Bryan Biedscheid

DEFENDANT ALEXANDER R. BALDWIN III'S REPLY IN SUPPORT OF HIS MOTION TO STAY THE ACTION PENDING RESOLUTION OF CRIMINAL PROCEEDINGS

Alexander R. Baldwin III, by and through his counsel, Luke Nikas and Robert M. Schwartz of Quinn, Emanuel, Urquhart & Sullivan, LLP and Jeff Ray and Brian P. Brack of Ray | Pena | McChristian, P.C., hereby submits his Reply in Support of his Motion to Stay the Action Pending Resolution of Criminal Proceedings and as grounds therefore, states:

PRELIMINARY STATEMENT

Plaintiffs ask the Court to depart from decades of New Mexico and Supreme Court precedent and from principles of fundamental fairness solely because they are impatient to take discovery from Baldwin. But Baldwin has a constitutional right not to testify against himself. And the only way to avoid making Baldwin face the untenable choice of either asserting his Fifth Amendment rights or risk losing this case is to stay this action pending the dismissal of the criminal matter with prejudice. None of Plaintiffs' arguments to the contrary holds water.

First, Plaintiffs contend that the Court should not issue a stay because there is no pending criminal proceeding. But that is not required. Courts frequently stay civil actions when a defendant is merely the "target" of a criminal investigation. That is so here: The prosecutors dismissed the criminal case against Baldwin *without* prejudice and expressly stated that the "investigation is active and on-going."

Second, the most important factor in ruling on a stay is whether there is significant overlap between the civil and criminal matters. While Plaintiffs assert there is no overlap, that does not withstand even a cursory review of the complaint. It parrots the Statement of Probable Cause filed in the criminal case and relies heavily on it in pleading the negligence claim.

Third, Plaintiffs' contention that Baldwin waived his rights against self-incrimination by speaking with county sheriffs and the press finds no support in the law. It flies in the face of well-established Supreme Court precedent holding that waiver of the Fifth Amendment privilege is not to be lightly inferred and that courts should indulge every reasonable presumption against waiver of fundamental constitutional rights. Also, the waiver analysis is confined to what happens in this proceeding. What Baldwin may have said to the sheriffs or media has no relevance.

Fourth, Plaintiffs claim they will be prejudiced if a stay is entered due to the risk of lost evidence—memories fading, documents being lost and destroyed. But the events at issue occurred in October 2021, and there is no real risk of lost evidence because it has already been gathered and there are numerous witness statements on record. Regardless, if this were an actual concern, Plaintiffs would not have waited *16 months* to file their claims.

Finally, the interests of both the Court and the public favor entering a stay. It would be a waste of judicial and party resources to proceed with civil discovery given that Baldwin would be permitted to invoke his right not to testify. In addition, waiting to see if there is going to be any further criminal prosecution would serve to advance the public interests.

ARGUMENT

I. IT DOES NOT MATTER WHETHER THERE IS A PENDING CRIMINAL CASE

Without citing any caselaw in support, Plaintiffs argue that a stay is improper because "there is no pending criminal proceeding." (Resp. 4.) But that is not the law and omits the status of the criminal investigation. On the law, where a civil defendant is just the *target* of a criminal investigation is sufficient to stay the civil case. *See, e.g., D.S. v. Geo Grp., Inc.*, 2015 WL 13667108, at *1, *3 (D.N.M. Dec. 18, 2015) (entering stay where defendant had received "a target letter from the United States Department of Justice regarding" allegations against him but had not been formally charged or indicted, noting that defendant's "right to assert the Fifth Amendment will be substantially prejudiced if he is required to participate in discovery because he will be forced to decide between accepting adverse inferences in this civil case and compromising his defense in the criminal matter"). Here, the State filed a Criminal Information against Baldwin, charging him with two alternative counts of involuntary manslaughter, then dismissed the case *without* prejudice. In the *Nolle Prosequi* the prosecutors filed with the court, they noted that the "investigation is active and on-going." *State v. Baldwin*, No. D-0101-CR-202300039, Nolle Prosequi. Thus, the fact that Baldwin is still being investigated is sufficient to warrant the stay.

II. THERE IS SIGNIFICANT OVERLAP BETWEEN THE PROCEEDINGS

Plaintiffs assert that "[t]here is no significant overlap between [their] claims and any potential criminal case" because "Plaintiffs' claims go beyond . . . Baldwin's individual actions on the day of the shooting." (Resp. 5.[1]) Plaintiffs' complaint alleges otherwise.

It extensively cites the Statement of Probable Cause filed in the criminal case, including the contentions that Baldwin "was not present for required firearms training," "failed to appear for

[1] Notably, Plaintiffs fail to cite any case law in support of their position that a stay is improper because this litigation is supposedly broader than the criminal matter. For good reason: Plaintiffs'

mandatory safety training," "deviate[ed] from the practice of only accepting the firearm from the armorer," and "put[] his finger on the trigger of a real firearm when a replica or rubber gun should have been used." (Compl. ¶ 88.) In support of their negligence claim, Plaintiffs allege that Baldwin had a duty to "[a]ttend and fully participate in all mandatory firearm safety training," "[a]ccept firearms only from the armorer," "[r]equest the use of a replica firearms for lineups and rehearsals and any scenes where a firearm is not explicitly necessary," and "[a]void placing his finger on the trigger until he was ready to shoot." (*Id.* ¶ 99.)

This significant overlap between the civil case and criminal investigation is "the most important factor in ruling on a motion to stay." *Hilda M. v. Brown*, 2010 WL 5313755, at *3 (D. Colo. Dec. 20, 2010) (internal quotation marks omitted); *see also Flynn v. City of Las Cruces*, 2015 WL 13643322, at *2 (D.N.M. Nov. 9, 2015) (noting that a "high degree of overlap" weighs heavily in favor of a stay).

III. BALDWIN HAS NOT WAIVED HIS FIFTH AMENDMENT RIGHTS

Plaintiffs argue that Baldwin "waived his rights [against self-incrimination] when he freely sat for an interview with county sheriffs following the shooting" and when he spoke to the press regarding the events. (Resp. 5.) Not so. *See, e.g., Krause v. Rhodes*, 390 F. Supp. 1070, 1072 (N.D. Ohio 1974) ("speaking to a member of the press does not constitute a waiver of the privilege of the Fifth Amendment."); *Garcia v. Condarco*, No. CIV 00-238 BB/LFG-ACE, (D.N.M. Jan. 25, 2001) (quoting same).

---

position is wrong and courts routinely stay civil cases under these circumstances. *See, e.g., Parker v. Dawson*, 2007 WL 2462677, *8 (E.D.N.Y. August 27, 2007) (entering stay where criminal charges were based on the same conduct as only some of the civil claims). What is more, Plaintiffs' assertion that prosecutors will not be investigating Defendants' "management and operation of the *Rust* set" (Resp. 5-6) is undercut by their allegations citing to the Statement of Probable Cause. (*See, e.g.*, Compl. ¶ 89(a) ("Defendant Baldwin was in a position to manage, oversee, commence, and require firearm safety training to industry standards.").)

The Supreme Court has made it clear that the waiver of such a fundamental constitutional guarantee as the Fifth Amendment privilege "is not to be lightly inferred" and that courts should "indulge every reasonable presumption against waiver of fundamental constitutional rights." *Emspak v. United States*, 349 U.S. 190, 196, 198 (1955) (internal quotation marks omitted); *see also United States v. A&P Arora, Ltd.*, 1995 WL 18276, at *1 (10th Cir. Jan. 18, 1995) (noting that the Fifth Amendment privilege "has a unique, constitutional grounding, which counsels caution in the application of technical waiver principles") (internal citation omitted).

A waiver of the right against self-incrimination is limited to the particular proceeding in which the witness appears. *See, e.g.*, *United States v. Rivas-Macias*, 537 F.3d 1271, 1280 (10th Cir. 2008) ("A witness' testimonial waiver of the privilege is only effective, however, if it occurs in the *same proceeding* in which a party desires to compel the witness to testify.") (emphasis added); *see also U.S. v. Constantine*, 263 F.3d 1122, 1128 n.4 (10th Cir. 2001) ("Plaintiffs want to compel Garcia and Salcido to testify in this civil proceeding, but the report to the State Police investigator and the other reports and statements were given in the criminal matter.").

Therefore, neither sitting for an interview with the county sheriffs nor speaking with the press had any effect on Baldwin's rights. *See also United States v. Rivas-Macias*, 537 F.3d 1271, 1281 (10th Cir. 2008) (finding coconspirator did not "waive[] his Fifth Amendment privilege by . . . giving several unsworn, debriefing statements to the Government prior to Defendant's trial"); *Flynn v. City of Las Cruces, New Mexico*, 2016 WL 10539120, at *2 (D.N.M. May 31, 2016) (denying plaintiffs' motion to reconsider order entering a stay where plaintiffs alleged that defendants waived their Fifth Amendment rights when they gave statements to a police investigator, because defendants "have not provided testimony or statements under oath").[2] At

[2] Plaintiffs' cases are readily distinguishable. In *Creative Consumer Concepts v. Kreisler*, 563 F.3d 1070 (D. Kan. 2009), there was limited overlap between the issues and evidence in the civil

bottom, Plaintiffs have not come close to meeting the high standard to show that Baldwin has waived the right to assert his Fifth Amendment privilege.[3]

IV. ANY PREJUDICE CAUSED BY A DELAY WOULD BE MINIMAL

Each of the arguments supporting plaintiffs' contention that their "interests to proceed are tantamount" misses the mark. (Resp. 7.)

First, relying on *Board of County Commissioners of the Cnty. of Adams v. Asay*, 2012 WL 6107949, *1 (D. Colo. Dec. 10, 2012), Plaintiffs assert that there is a risk of lost evidence if discovery is stayed. But in that case, the events underlying the litigation occurred seven years prior. *Id.* at *3. And the stay was of considerable duration—significantly, Plaintiffs truncated their quote from the case, leaving out the italicized portion: "*[I]f a stay lasts [multiple years]*, the risk that witnesses will become unavailable, memories of conversations will fade, and documents will be lost and destroyed is greatly increased." *Id.* at *3 (internal quotations and citation omitted; emphasis added). By contrast, the events underlying this litigation occurred in October 2021, and

---

and criminal matters and the defendant did not move for a stay until months after she had already given a deposition in the civil case. Baldwin has not been deposed in this or any other case. In *In re CFS-Related Securities Fraud Litigation*, 256 F. Supp. 2d 1227, 1239 (N.D. Okla. 2003), plaintiffs had an interest in "depos[ing] a central witness early in the litigation to comply with the rigid and painstakingly devised Deposition Protocol Procedure for deposing over two hundred witnesses." That is not analogous to this case. And in *United States v. Doe*, 465 U.S. 605, 606 (1984), the court addressed "whether, and to what extent, the Fifth Amendment privilege against compelled self-incrimination applies to the business records of a sole proprietorship." That is not the issue here. And although the court found that "the contents of th[e] records are not privileged" because "Respondent does not contend that he prepared the documents involuntarily or that the subpoena would force him to restate, repeat, or affirm the truth of their contents," it also recognized that "[a]lthough the contents of a document may not be privileged," under certain circumstances "the act of producing the document may be." *Id.* at 611-12.

[3] Baldwin is not seeking to "stay[] discovery indefinitely." (Resp. 7.) Baldwin explicitly requested a stay only "until the criminal case is dismissed with prejudice and, as appropriate, set[ting] deadlines for the parties to inform the Court of the status of a with-prejudice dismissal so that the Court can reassess the continuing need for the stay." (Mot. 2.)

there is no real risk of lost evidence because the physical evidence has been gathered and is being preserved for the criminal matter and there are numerous witness statements on record.[4]

Second, Plaintiffs cite *S.E.C. v. ARVCO Cap. Rsch., LLC*, 2013 WL 3779338, *7 (D. Nev. July 16, 2013), to support their argument that they have a right to preserve any negative inferences that can be drawn from Baldwin's assertion of his Fifth Amendment privilege. (Resp. 8.) Baldwin does not take issue with the *ARVCO* court's statement that, under certain circumstances, it may be "*permissible* to conduct a civil proceeding at the same time as a related criminal proceeding." *Id.* (emphasis in original). But *ARVCO* could not be more different than this case. There, the court found that the absence of a stay would not significantly implicate defendants' Fifth Amendment rights, in part because one of the defendants "made it abundantly clear that he is waiving his Fifth Amendment right against self-incrimination in th[e] civil action" and the other defendant "ha[d] apparently already given testimony under oath in related actions concerning the allegations . . . that are at issue in th[e] litigation." *Id.* Baldwin has not given any indication that he is waiving his Fifth Amendment right. Nor has he given testimony under oath in a related action.

Finally, Plaintiffs argue that their decision to wait until February 2023—*16 months* after the incident—to sue does not support their position. (Resp. 8.) Plaintiffs supposedly worry about lost evidence when Baldwin exercises his constitutional rights, but had no problem waiting for over a year before asserting their claims. Given Plaintiffs lengthy inaction, the law is against them. *See, e.g.*, *D.S.*, 2015 WL 13667108, at *3 (plaintiffs waited over a year to sue "which detracts from their assertions that a stay at this juncture will prejudice their ability to prove their case").

---

[4] Plaintiffs reliance on *Fry v. Schroder*, 986 N.E. 2d 821 (Ind. Ct. App. 2013), is similarly overstated. (Resp. 7-8.) There, the court affirmed the rejection of a stay because plaintiffs "had a legitimate concern that [defendant]'s assets may be depleted before the civil case could be completed" and defendant was "not willing to agree to any restrictions upon his real property." *Id.* at 823-24 (internal quotations and citation omitted). That is not the concern here.

V. THE INTERESTS OF THE COURT AND THE INTERESTS OF THE PUBLIC FAVOR A STAY

Again, relying on *In re CFS-Related Securities Fraud Litig.*, 256 F. Supp. 2d at 1241 (Resp. 8), Plaintiffs argue that "[t]he Court has a strong interest in keeping litigation moving to conclusion without unnecessary delay." But the court in *CFS* expressly noted that "[t]his interest is enhanced in complex litigation such as the CFS case, which has been pending [for several years]," and that "[f]or the past several months, counsel for the Plaintiffs and Defendants have devoted a substantial number of hours in formulating a two-tier deposition track schedule," which "has involved coordinating the schedules of the attorneys in the action, the two hundred (200) plus witnesses the parties are deposing, and other terms of the deposition order." *Id.* None of those concerns is present here. It is clear, however, that it would be a waste of judicial and party resources to proceed with civil discovery given that Baldwin would be permitted to invoke his right not to testify until the criminal matter is dismissed with prejudice. And both the Court and the public "have an interest in not needlessly expending resources" on litigation. *Urrutia v. Montoya*, 2016 WL 9777168, at *4 (D.N.M. June 29, 2016).

It is also in the interest of the public for this case to be stayed because, where there are "overlapping issues in the criminal and civil cases," any criminal investigation can be relied upon to "serve to advance the public interests at stake." *Hilda M. v. Brown*, 2010 WL 5313755, at *6 (D. Colo. Dec. 20, 2010) (considering the discussion of the public interest factor in *In re CFS-Related Securities Fraud Litigation*). "While a district attorney's request to stay civil proceedings is a factor that militates in favor of a stay, the absence of such a request does not mean that the district attorney favors ongoing civil discovery, or even that the district attorney is indifferent to whether civil discovery proceeds." *Urrutia*, 2016 WL 9777168, at *4. As such, the absence of a district attorney's request does not factor into the Court's consideration (Resp. 9). *Id.*

Finally, Plaintiffs' unsupported argument that "[c]ertainly, the public's interest in this case is widespread and larger issues that affect the public are at play, such as movie set safety" (Resp. 8-9), simply blinks reality. The public and the film business are already well aware of the events that occurred on the *Rust* movie set in October 2021—the matter generated wide media coverage—and do not need this lawsuit to address the issues that those events raise.

CONCLUSION

For the reasons set forth above and in Baldwin's opening brief, the Court should stay this action pending the dismissal of the criminal matter with prejudice. In the alternative, the Court should grant a stay with scheduled deadlines for the parties to update the Court on the status of the State's investigation.

Date: June 6, 2023

Respectfully submitted,

By: */s/ Luke Nikas*

Luke Nikas (*pro hac vice* pending)
QUINN EMANUEL URQUHART & SULLIVAN, LLP
51 Madison Avenue, 22nd Floor
New York, NY 10010
Telephone: (212) 849-7000
Email: lukenikas@quinnemanuel.com

Robert M. Schwartz (*pro hac vice* pending)
QUINN EMANUEL URQUHART & SULLIVAN, LLP
865 S. Figueroa Street, 10th Floor
Los Angeles, California 90017
Telephone: (213) 443-3000
Email: robertschwartz@quinnemanuel.com

By: */s/ Brian P. Brack*

Jeff Ray
Brian P. Brack
Ray | Peña | McChristian, PC
6501 Americas Parkway N.E., Suite 820
Albuquerque, NM 87110
Telephone: (505) 855-6000
Email: jray@raylaw.com
Email: bbrack@raylaw.com
Attorneys for Defendants Alexander R. Baldwin III and El Dorado Pictures

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served on all counsel of record through the Odyssey E-Serve system on June 6, 2023.

/s/ Brian P. Brack
Brian P. Brack