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Rust Movie Productions, LLC, Alexander R. Baldwin, III, El Dorado
9 Pictures, Inc., Ryan Donnell Smith, Langley Allen Cheney,
Thomasville Pictures, LLC, Anjul Nigam, Matthew DelPiano, and
10 Cavalry Media, Inc. (*erroneously sued as* Calvary Media, Inc.)

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA
12 COUNTY OF LOS ANGELES
13

14 MAMIE MITCHELL, an individual;

15 Plaintiff,

16 vs.

17 RUST MOVIE PRODUCTIONS, LLC., a domestic limited
liability company; ALEXANDER R. BALDWIN III, an
18 individual; EL DORADO PICTURES, INC., California
corporation; RYAN DONNELL SMITH, an individual;
19 LANGLEY ALLEN CHENEY, an individual;
THOMASVILLE PICTURES, LLC, a domestic limited
20 liability company; NATHAN KLINGHER, an individual;
RYAN WINTERSTERN, an individual; SHORT PORCH
21 PICTURES, LLC, a domestic limited liability company;
ANJUL NIGAM, an individual; BRITTANY HOUSE
22 PICTURES, a business form unknown; MATTHEW
DELPIANO, an individual; CALVARY MEDIA, INC., a
23 Delaware corporation; GABRIELLE PICKEL, an individual;
3RD SHIFT MEDIA, LLC, a domestic limited liability
24 company; HANNAH GUTIERREZ-REED, an individual;
SARAH ZACHRY, an individual; SETH KENNEY, an
25 individual; DAVID HALLS, an individual; KATHERINE
WALTERS, an individual; CHRIS M.B. SHARP, an
26 individual; JENNIFER LAMB, an individual; EMILY
SALVESON, an individual; STREAMLINE GLOBAL, a
27 business form unknown; and DOES 1 through 100, Inclusive;

28 Defendants.

Case No. 21STCV42301

DEFENDANTS' NOTICE OF
DEMURRER AND DEMURRER
TO PLAINTIFF'S COMPLAINT;
MEMORANDUM OF POINTS
AND AUTHORITIES IN
SUPPORT THEREOF

Date: February 24, 2022
Time: 1:30 p.m.
Dept: 32

Judge: Hon. Michael E. Whitaker

Reservation No.: 745190912051

1 **TO PLAINTIFF AND HER ATTORNEYS OF RECORD:**

2 PLEASE TAKE NOTICE that on February 24, 2022, at 1:30 p.m., or as soon thereafter as
3 the matter can be heard, in Department 32 of the above-entitled Court, located at the Spring Street
4 Courthouse, 312 North Spring Street, Los Angeles, CA 90012, Defendants Rust Movie Productions,
5 LLC, Alexander R. Baldwin, III, El Dorado Pictures, Inc., Ryan Donnell Smith, Langley Allen
6 Cheney, Thomasville Pictures, LLC, Anjul Nigam, Matthew DelPiano, and Cavalry Media, Inc.
7 (*erroneously sued as* Calvary Media, Inc.) (collectively “Defendants”) will and hereby do demur to
8 Plaintiff Mamie Mitchell’s Complaint, which alleges three causes of action against all Defendants
9 for (1) assault, (2) intentional infliction of emotional distress (“IIED”), and (3) “deliberate infliction
10 of harm,” and asks the Court to dismiss the Complaint in its entirety without leave to amend.

11 This Demurrer is brought pursuant to Section 430.10(e) of the California Code of Civil
12 Procedure on the grounds that:

- 13 1. Plaintiff’s first cause of action for assault fails to state facts sufficient to constitute a
14 cause of action. Cal. Civ. Proc. Code § 430.10(e).
- 15 2. Plaintiff’s second cause of action for IIED fails to state facts sufficient to constitute a
16 cause of action. Cal. Civ. Proc. Code § 430.10(e).
- 17 3. Plaintiff’s third cause of action for “deliberate infliction of harm” fails to state facts
18 sufficient to constitute a cause of action. Cal. Civ. Proc. Code § 430.10(e).

19 This Demurrer is being filed after Defendants met and conferred with Plaintiff in good faith.
20 This Demurrer is based upon this Notice of Demurrer and Demurrer, the accompanying
21 Memorandum of Points and Authorities in support thereof, a declaration of Aaron S. Dyer, and
22 documents in support thereof, all pleadings, records and papers on file in this action, and such other
23 evidence and arguments as may be presented at the time of the hearing on this matter. Defendants’
24 respectfully request that:

- 25 1. Defendants’ Demurrer be sustained without leave to amend Plaintiff’s Complaint;
- 26 2. The Court enter an order dismissing this action;

27 ///

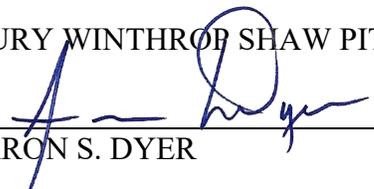
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- 3. Defendant be awarded costs of this action; and
- 4. The Court grant such other and further relief that it considers just and proper.

Dated: January 24, 2022

PILLSBURY WINTHROP SHAW PITTMAN LLP

By: 
AARON S. DYER

Attorneys for Defendants
Rust Movie Productions, LLC, Alexander R. Baldwin, III, El Dorado Pictures, Inc., Ryan Donnell Smith, Langley Allen Cheney, Thomasville Pictures, LLC, Anjul Nigam, Matthew DelPiano, and Cavalry Media, Inc. (*erroneously sued as Calvary Media, Inc.*)

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19	sufficient to constitute a cause of action.18
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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 Defendants Rust Movie Productions, LLC, Alexander R. Baldwin, III, El Dorado Pictures,
3 Inc., Ryan Donnell Smith, Langley Allen Cheney, Thomasville Pictures, LLC, Anjul Nigam,
4 Matthew DelPiano, and Cavalry Media, Inc. (*erroneously sued as* Calvary Media, Inc.) (collectively
5 “Defendants”) submit this memorandum in support of their Demurrer to Plaintiff Mamie Mitchell’s
6 (“Plaintiff”) Complaint (“Demurrer”), which asserts three causes of action under New Mexico law
7 for assault, intentional infliction of emotional distress, and “deliberate infliction of harm.”

8 **I. INTRODUCTION**

9 As this Court respectfully knows, the law governing demurrers requires this Court to accept
10 the allegations in the Complaint as if they are true, and consequently for purposes of this Demurrer,
11 Defendants cannot, and are not, challenging whether any of those *factual* allegations are in fact true.
12 As Plaintiff alleges, a terrible tragedy occurred on October 21, 2021 during the production of the
13 western-theme movie, “*Rust*, ” when defendant Alexander R. Baldwin III (“Mr. Baldwin”) was
14 handed a prop gun during a rehearsal, was advised that it was a “cold gun” – meaning the prop gun
15 was either unloaded or loaded only with inert/non-firing “dummy” rounds – and the gun discharged,
16 resulting in the death of the Cinematographer and injury to the Director.

17 What Defendants challenge is Plaintiff’s claim that she has any legal right to any monetary
18 recovery in this Court. The law is clear that she does not. As Plaintiff obviously recognizes, having
19 cited the New Mexico Supreme Court case *Delgado v. Phelps Dodge* as the basis for each of the
20 three causes of action in her Complaint, Plaintiff cannot bring a workplace injury claim before this
21 Court based on alleged negligence because Defendants are generally immune from such claims
22 under New Mexico’s worker’s compensation law. *See Delgado v. Phelps Dodge Chino, Inc.*, 131
23 N.M. 272, 280 (2001). Any such claim brought in civil court would be dismissed as a matter of law.
24 *See Morales v. Reynolds*, 136 N.M. 280, 287 (N.M. Ct. App. 2004) (motion to dismiss granted
25 where “there was no indication that the failure to provide safety devices was anything but negligent”
26 and plaintiff’s exclusive remedy was under New Mexico’s workers’ compensation law); *see also*
27 *Roberts v. Pup 'N' Taco Driveup*, 160 Cal. App. 3d 278, 284 (demurrer sustained and complaint
28 dismissed without leave to amend where plaintiff’s claim of intentional misconduct sounded in

1 negligence and was subject to worker’s compensation as plaintiff’s exclusive remedy).

2 Nor can Plaintiff overcome this pleading barrier by adding a conclusory statement that such
3 allegations of negligence were “intentional acts and/or omissions.” In the opening paragraph of
4 Plaintiff’s Complaint (Compl. 3:1-4) and paragraph 32, which immediately precedes the factual
5 allegations, Plaintiff attempts to prophylactically cast those allegations as intentional, when they
6 clearly are not:

7 DEFENDANTS engaged in, without limitation, the following intentional acts and/or
8 omissions, without any just cause or excuse, that were reasonably expected to result
9 in the injury suffered by Plaintiff with utter disregard for the consequences (*see*
Delgado v. Phelps Dodge Chino, Inc. (2001) 34 P.3d 1148, 1156).

10 Such a conclusory statement is not sufficient to meet the pleading burden. *See Ankeny v. Lockheed*
11 *Missile & Space Co.*, 88 Cal. App. 3d 531, 537 (1979) (“It is settled law that a pleading must allege
12 facts and not conclusions, and that material facts must be alleged directly and not by way of
13 recital.”).

14 In fact, Plaintiff’s faulty comparison of this accident to Russian Roulette is a perfect
15 illustration of the distinction between Plaintiff’s allegations and intentional conduct. She claims,
16 “Mr. Baldwin chose to play Russian Roulette with a loaded gun without checking it and without
17 having the Armorer do so.” (Compl. 5:6-7). “Russian Roulette,”¹ however, is intentionally firing a
18 gun that is known to be loaded with a single live round – not failing to double-check a gun that has
19 been announced to be “cold.”

20 Even if these claims are not properly treated as New Mexico workers’ compensation claims,
21 all three of Plaintiff’s causes of action should be dismissed because, despite Plaintiff’s attempt to
22 label claims as intentional, *nothing* about Plaintiff’s allegations suggest that any of Defendants
23 intentionally committed harmful conduct under New Mexico law. The underlying accident occurred
24 when Cinematographer Halyna Hutchins (“Ms. Hutchins”), Director Joel Souza (“Mr. Souza”), and
25 Mr. Baldwin, among other film crew members, were rehearsing Mr. Baldwin drawing and pointing a
26

27 ¹ Merriam-Webster defines “Russian Roulette” as “an act of bravado consisting of spinning the
28 cylinder of a revolver loaded with one cartridge, pointing the muzzle at one's own head, and pulling
the trigger.” Merriam-Webster, <https://www.merriam-webster.com/dictionary/Russian%20roulette>
(last visited January 24, 2022).

1 prop six-shooter style revolver firearm (“Prop Gun”) for a cowboy-standoff scene. *Plaintiff*
2 *concedes* in her Complaint that the Prop Gun *was not intended to be loaded with “live ammunition,”*
3 but it unexpectedly discharged while Ms. Hutchins and Mr. Souza stood immediately adjacent to the
4 camera where Mr. Baldwin was directed by Ms. Hutchins to point the Prop Gun (the “Incident”).
5 Plaintiff concedes in her Complaint that the Prop Gun was intended to be “cold,” meaning it was
6 either unloaded, or it was loaded only with inert “dummy” rounds (which contain no primer,
7 propellant, or explosive charge) used to give the six-shooter revolver Prop Gun the appearance of
8 being loaded when filmed. *Nothing* about Plaintiff’s allegations suggest that any of Defendants,
9 including Mr. Baldwin, *intended* the Prop Gun to be loaded with live ammunition. Moreover,
10 *nothing* about Plaintiff’s allegations suggests any of the Defendants *knew* the Prop Gun contained
11 live ammunition. The absence of such allegations of course makes sense because the Incident is
12 apparently unprecedented in the filmmaking industry.

13 Because all three of Plaintiff’s causes of action, are based on allegations of negligence that
14 resulted in a workplace accident, they should be dismissed because her exclusive remedy is New
15 Mexico’s Workers’ Compensation Act (“NMWCA”) (*see* N.M. Stat. Ann. § 52-1-1, et seq.), not a
16 civil action filed in California State Court.² Moreover, Plaintiff’s claims should be dismissed
17 because *she does not allege any facts whatsoever* against Defendants Rust Movie Productions, LLC,
18 Ryan Donnell Smith, Langley Allen Cheney, Thomasville Pictures, LLC, Anjul Nigam, Matthew
19 DelPiano, Cavalry Media, Inc. (*erroneously sued as* Calvary Media, Inc.) or El Dorado Pictures, Inc.
20 None of those individual or entity defendants are even mentioned in the factual allegations, much
21 less alleged to have been involved in intentional conduct. Accordingly, her causes of action against
22 these entities and individuals are baseless and should be summarily dismissed outright.

23 It is completely illogical for Plaintiff to contend defendant Mr. Baldwin received a prop gun
24 that everyone including Plaintiff and defendant Mr. Baldwin expected to be “cold,” while at the
25 same time stating that Mr. Baldwin’s conduct was intentional in accidentally firing a live round.

26
27
28 ² If Defendants’ Demurrer is denied, Defendants may file a Motion to Dismiss this lawsuit pursuant to Section 410.30 of the California Code of Civil Procedure on the grounds that this case should be dismissed because California is an inconvenient forum.

1 Despite no apparent physical injury, Plaintiff raced to the courthouse in California, without
2 providing the notice in New Mexico required for a worker’s compensation claim, apparently to get
3 her claim in front of any potential claims by the two individuals who were hit by the live round. It is
4 difficult to ascertain from her allegations what injury she could actually have suffered, but what is
5 clear is that she should not be permitted to assert any such claim in this Court. Defendants
6 respectfully request that this Demurrer be sustained and each of Plaintiff’s causes of action
7 dismissed without leave to amend. *See Morales*, 136 N.M. at 287; *Roberts*, 160 Cal. App. 3d at 284.

8 **II. STATEMENT OF FACTS**

9 Plaintiff is a resident of the County of Santa Fe, New Mexico, and a “Script Supervisor for
10 the western-themed motion picture ‘*Rust*’ at issue in this litigation.” Compl. ¶ 1. She alleges that she
11 suffered emotional distress from “a tragic incident on October 21, 2021, [during] the 12th day of a
12 21-day [movie] shoot on the Bonanza Creek Ranch near Santa Fe, New Mexico.” *See id.* ¶¶ 38, 35,
13 71, 78-79, and 102. Plaintiff claims Mr. Baldwin “fired a loaded gun containing a live bullet killing
14 Director of Photography Halyna Hutchins, injuring Director Joel Souza, and causing physical and
15 emotional injuries to Plaintiff Mamie Mitchell, the Script Supervisor, who was standing in the line of
16 fire when the gun went off.” *Id.* 3:5-9, ¶ 34.

17 Plaintiff contends that the Prop Gun at issue was not supposed to have “live ammunition” in
18 it and that it was “unexpected” when the Prop Gun was discharged. *Id.* 3:18-19, ¶¶ 42-47. She
19 alleges, however, that the discharge of the Prop Gun was committed “without any just cause or
20 excuse,” it was “reasonably expected to result in the injury suffered by Plaintiff,” and it was
21 committed with “utter disregard for the consequences.” *Id.* 3:1-3.

22 Plaintiff’s allegations consist of a list of things that she contends, in hindsight, should or
23 should not have been done, such as the way in which the Prop Gun was handled and discharged (*id.*
24 3:20-22), the purported existence of live ammunition on the set (*id.* 3:18-19); who should have
25 provided the Prop Gun (*id.* 4:15-20), whether the prop gun should have been checked by Mr.
26 Baldwin (*id.* 4:13-14), the need to follow safety protocols (*id.* 4:15-20), the obligation to secure prop
27 guns and ammunition (*id.* 4:21-25; ¶ 40), and the observance of industry safety bulletins (*id.* 4:6-12,
28 5:1-3). In addition, Plaintiff refers to prior incidents that were separate from this accident (*id.* 3:10-

1 14, ¶ 39, 4:1-5).

2 Although Plaintiff’s allegations sound in negligence, she concludes that Defendants
3 committed “intentional acts and/or omissions, without any just cause or excuse and with utter
4 disregard of the consequences of said acts and/or omissions.” *Id.* 3:1-4, 5:7-9, ¶¶ 26, 32, 54, 63, 66,
5 73, 75, 77, 81, 83, 101, 103, and 105. On November 17, 2021, Plaintiff filed her Complaint
6 asserting three causes of action for (1) assault, (2) IIED, and (3) “deliberate infliction of harm.”

7 On December 8, 2021, service was effectuated by returned receipt and acknowledgement of
8 Plaintiff’s Complaint. Declaration of Aaron S. Dyer (“Dyer Decl.”) ¶ 3. On that same day, pursuant
9 to Rule 3.110(d) of the California Rules of Court, Plaintiff’s counsel provided Defendants a 15-day
10 extension of time to respond to Plaintiff’s Complaint. *Id.*

11 Prior to filing this Demurrer, Defendants, by and through their counsel, made good faith
12 attempts to resolve the issues addressed in this Demurrer through a meet and confer process. *Id.* at ¶
13 4-5. Defendants timely filed this Demurrer on January 24, 2022. *Id.* at ¶¶ 3, 5.

14 **III. LEGAL STANDARD**

15 A demurrer tests the legal sufficiency of the opposing party’s pleading. Cal. Civ. Proc.
16 § 422.10, et seq.; *Owens v. Kings Supermarket*, 198 Cal. App. 3d 379, 383 (1988); *Genis v.*
17 *Schainbaum*, 66 Cal. App. 5th 1007, 1014 (2021). A complaint fails to state a cause of action if all
18 the essential elements of the claim are not present and if the allegations in the complaint (and
19 judicially noticeable facts) demonstrate that the claim is barred by an affirmative defense. *See, e.g.,*
20 *Halvorsen v. Aramark Uniform Services, Inc.*, 65 Cal. App. 4th 1383, 1391 (1998) (when a
21 complaint affirmatively alleges facts amounting to an affirmative defense, it is subject to demurrer);
22 *see also Arriaga v. County of Alameda*, 9 Cal. 4th 1055, 1060 (1995). When there is no reasonable
23 possibility that a defect can be cured by amendment, the court should sustain the demurrer without
24 leave to amend. *Blank v. Kirwan*, 39 Cal. 3d 311, 318 (1985); *Vaillette v. Fireman’s Fund Ins. Co.*,
25 18 Cal. App. 4th 680, 685 (1993). The burden of proving any reasonable possibility that the defect
26 could be cured by amendment rests squarely upon the plaintiff. *Blank*, 39 Cal.3d at 318.

27 In considering a demurrer, the Court looks only to the face of the pleading demurred to or
28 judicially noticeable facts. *Nava v. McMillan*, 123 Cal. App. 3d 262, 264 (1981). For purposes of the

1 ruling on a demurrer, all facts pleaded in the complaint are assumed to be true however improbable
2 they may be. *Dino, Inc. v. Boreta Enterprises, Inc.*, 226 Cal. App. 2d 336, 339 (1964). However,
3 conclusory allegations such as “malicious,” “willfully,” “deliberately,” or “intentionally,” do not
4 help the plaintiff. *Appl v. Lee Swett Livestock Co.*, 192 Cal. App. 3d 466, 470 (1987). A pleading
5 must allege facts, not conclusions. *Ankeny*, 88 Cal. App. 3d at 537.

6 **IV. PLAINTIFF’S NEW MEXICO CAUSES OF ACTION SHOULD BE DISMISSED**
7 **BECAUSE SHE FAILS TO ALLEGE THE REQUISITE ELEMENTS UNDER NEW**
8 **MEXICO LAW**

8 **A. Plaintiff’s workplace injury claim is barred by the exclusive provisions of New**
9 **Mexico’s workers’ compensation law.**

10 Plaintiff alleges an injury that occurred in the course and scope of her employment as a Script
11 Supervisor for “*Rust*.” Compl. 3:5-9, ¶¶ 1, 33, 36-37. Typically, an employee’s exclusive remedy
12 for a job-related injury is workers’ compensation, not those provided by civil court. *See Delgado v.*
13 *Phelps Dodge Chino, Inc.*, 131 N.M. 272, 277 (2001) (“*Delgado*”); *Roberts v. Pup 'N' Taco Driveup*,
14 160 Cal. App. 3d 278, 284 (1984) (“Where the complaint affirmatively alleges facts indicating
15 coverage by the workers’ compensation laws, if it fails to state additional facts negating application
16 of the exclusive remedy provision, no civil action will lie and the complaint is subject to a general
17 demurrer.”).

18 Plaintiff attempts to plead around the workers’ compensation bar by asserting three causes of
19 action for intentional torts: assault, IIED, and “deliberate infliction of harm.” Compl. 3:1-4, ¶ 32, 66,
20 75, 83. Plaintiff tries to surreptitiously avoid her exclusive workers’ compensation remedy by
21 claiming she is entitled to civil remedies pursuant to the New Mexico Supreme Court *Delgado* case.
22 Compl. 3:1-4, ¶¶ 32, 66, 75, 83. *Delgado* recognizes that the NMWCA “continues to provide
23 immunity for negligence” but, based on the unique facts of that case, that “employers who
24 intentionally inflict injuries, like workers who do the same, are deprived of their respective benefits
25 under the [NMWCA].” *Id.* at 278-80. *Delgado*, however, does not support Plaintiff’s claims
26 because Plaintiff’s alleged emotional distress injury was not alleged to be intentional by any means
27 and certainly not when measured against the extraordinary facts in *Delgado*. Plaintiff appears to be
28 asserting a claim for workplace negligence, which under New Mexico law, falls exclusively within

1 the purview of the NMWCA. *See id.* at 280.

2 **B. Plaintiff’s first cause of action for assault against all Defendants does not state**
3 **facts sufficient to constitute a cause of action under New Mexico law.**

4 Plaintiff cannot recharacterize her negligence claim as an assault. Initially, the authority she
5 relies upon, *Delgado*, represents what New Mexico caselaw recognizes as a “narrow exception”
6 from workers’ compensation exclusivity that does not apply here. In *Delgado*, a worker at a
7 smelting plant was ordered by his supervisor to remove a fifteen-foot iron cauldron brimming over
8 with molten slag, without shutting down a furnace or otherwise correcting an especially dangerous
9 emergency “runaway” condition that caused additional slag to continue flowing. *Id.* at 275. Although
10 the worker protested the orders and informed the supervisor that he was not qualified or competent
11 to perform the removal because he had never operated a specialized “kress-haul” truck (a special
12 truck for removing the cauldron) alone under such conditions, the supervisor insisted he proceed. *Id.*
13 The worker did as he was ordered by his supervisor and “emerged from the smoke-filled tunnel,
14 fully engulfed in flames,” suffering third-degree burns over his entire body. *Id.* He later died of his
15 injuries. *Id.*

16 The surviving wife of the deceased worker filed a complaint asserting causes of action for
17 “wrongful death and loss of consortium, prima facie tort, and intentional infliction of emotional
18 distress based on the theory that in ordering Delgado to remove the overflowing ladle, Respondents
19 acted intentionally, with the knowledge that Delgado would be seriously injured and killed as a
20 result of their actions.” *Id.* The trial court dismissed because plaintiff’s allegations of a series of acts
21 fell short of alleging an actual intent to harm. *Id.* at 275. The New Mexico Court of Appeal affirmed
22 and held that the NMWCA provides an employer immunity from tort liability unless the worker’s
23 injury stems from the employer’s “actual intent” to injure the worker. *Id.* 275-76.

24 The New Mexico Supreme Court reversed and remanded. *Id.* at 281. The *Delgado* Court
25 ruled that plaintiffs do not need to allege specific intent as a precondition of tort recovery—the
26 NMWCA “limits its scope to accidents, barring both compensation and exclusivity when the worker
27 sustains a non-accidental injury.” *Id.* 278-79. Given the facts of the case, in which “a supervisor
28 ordered [the worker] to perform a task that, according to [him], was virtually certain to kill or cause

1 him serious bodily injury,” the Court held “that willfulness renders a worker’s injury *non-accidental*,
2 and therefore outside the scope of the [NMWCA], when: (1) *the worker or employer engages in an*
3 *intentional act or omission, without just cause or excuse, that is reasonably expected to result in the*
4 *injury suffered by the worker; (2) the worker or employer expects the intentional act or omission to*
5 *result in the injury, or has utterly disregarded the consequences; and (3) the intentional act or*
6 *omission proximately causes the injury.”* *Id.* at 274, 280 (emphasis added).

7 **1. Plaintiff does not have a *Delgado* claim.**

8 Since *Delgado*, New Mexico courts have made clear that *Delgado* represents a “narrow
9 exception” to the NMWCA, and “[n]ot only must a party proffer evidence meeting each of
10 *Delgado*’s three elements, but they must also demonstrate their opponent acted unconscionably and
11 with a comparable degree of egregiousness as the employer in *Delgado*.” *Pearson v. Johnson*
12 *Controls, N. N.M., LLC*, 149 N.M. 740, 744–45 (N.M. Ct. App. 2011). Similarly, “whether an
13 accident meets the requirements of *Delgado* as a matter of law” must take into consideration “the
14 type of unconscionable conduct that *Delgado* sought to deter.” *Morales*, 136 N.M. at 282, 284–85
15 (The purpose for a threshold determination of egregiousness in *Delgado* cases was to “preserve the
16 bargain of the [NMWCA] in a meaningful way” such that “an injured worker gives up his or her
17 right to sue the employer for damages in return for an expedient settlement covering medical
18 expenses and wage benefits, while the employer gives up its defenses in return for immunity from a
19 tort claim.”). Thus, “the mere assertion that the employer did or did not do something that somehow
20 led to the injurious event is not adequate to meet the requirements of *Delgado*.” *Id.* at 284.

21 Alleging the absence of safety measures or knowledge of health and safety hazards generally
22 will not give rise to a *Delgado* claim. *See May v. DCP Midstream, L.P.*, 148 N.M. 595, 599 (N.M.
23 Ct. App. 2010) (“The absence of safety measures by itself demonstrates neither intent nor an
24 inherent probability of injury, and we believe the Supreme Court in *Delgado* intended more than the
25 disregard of preventative safety devices when contemplating an exception to the [NMWCA].”); *see*
26 *also Dominguez v. Perovich Props., Inc.*, 137 N.M. 401, 407 (N.M. Ct. App. 2005) (holding that an
27 employer’s “appalling [...] disregard [for] safety requirements” designed “to help prevent injury and
28 death” in the workplace does not equate to an employer “specifically and willfully caus[ing] the

1 [worker] to enter harm’s way, facing virtually certain serious injury or death, as contemplated under
2 *Delgado*”); *Morales*, 136 N.M. at 286 (summary judgment for defendant-employer where plaintiff-
3 employee’s claims were subject to the NMWCA because he failed to demonstrate his injuries from
4 chemical exposure were equivalent to sending plaintiff into certain severe injury or death); *Martinez*
5 *v. Chevron Mining, Inc.*, No. A-1-CA-37140, 2020 WL 3032879, at *3 (N.M. Ct. App. June 4, 2020)
6 (absent plaintiff being ordered to work amidst a “specific dangerous circumstance” plaintiff’s
7 allegations are insufficient to state a claim under *Delgado*).

8 Plaintiff’s allegations sound in negligence, which are subject to the NMWCA. As discussed
9 above, Plaintiff’s allegations necessarily are framed in terms of what her employer should and
10 should not have done and do not approach the conscious directive in *Delgado* to place oneself in
11 harm’s way that inevitably would have resulted in injury, if not death. Just as similar allegations of
12 an “absence of safety measures” or “disregard for safety requirements” failed to bring the post-
13 *Delgado* cases discussed above within the *Delgado* exception, the allegations here are
14 unavailing. Accordingly, Plaintiff’s Complaint should be dismissed without leave to amend. *See*
15 *Roberts*, 160 Cal. App. 3d at 284.

16 **2. Plaintiff alleges no facts establishing assault under New Mexico law.**

17 In any case, Plaintiff’s allegations do not satisfy the elements of an assault under New
18 Mexico law, which requires plaintiff plead: (1) an attempt to commit a battery on another person;
19 (2) an unlawful act, threat, or menacing conduct which causes the plaintiff to reasonably believe she
20 is in danger of receiving an immediate battery; or (3) the use of insulting language toward another
21 impugning his honor, delicacy or reputation. *See* N.M. Stat. Ann. § 30-3-1. A battery under New
22 Mexico law in turn “is the unlawful, intentional touching or application of force to the person of
23 another, when done in a rude, insolent or angry manner.” N.M. Stat. Ann. § 30-3-4.

24 Plaintiff alleges that Mr. Baldwin pointed the Prop Gun towards her, while Plaintiff observed
25 “to ensure continuity with the upcoming afternoon scenes.” Compl. ¶¶ 67-68. Plaintiff alleges that
26 she did not “consent to having a *loaded* gun pointed and discharged toward her.” *Id.* 69 (emphasis
27 added).

28 Plaintiff’s allegations, even if true, are insufficient to state a claim for assault. As an initial

1 matter, Plaintiff does not allege *any facts* concerning her assault claim and Defendants Rust Movie
2 Productions, LLC, Ryan Donnell Smith, Langley Allen Cheney, Thomasville Pictures, LLC, Anjul
3 Nigam, Matthew DelPiano, Cavalry Media, Inc. (*erroneously sued as* Calvary Media, Inc.) or El
4 Dorado Pictures, Inc.

5 Moreover, no allegations in Plaintiff’s Complaint suggest that Mr. Baldwin, or any of the
6 Defendants, (1) attempted to commit a battery on Plaintiff, (2) committed “an unlawful act, threat, or
7 menacing conduct which causes the plaintiff to reasonably believe she is in danger of receiving an
8 immediate battery,” or (3) used “insulting language toward another impugning his honor, delicacy or
9 reputation.” At the time of the Incident, Plaintiff, Mr. Baldwin, and others *were rehearsing a movie*
10 *scene* that involved Mr. Baldwin drawing and pointing the Prop Gun toward the camera, which
11 Plaintiff stood near along with Ms. Hutchins and Mr. Souza. Comp. ¶ 48. Everyone understood the
12 Prop Gun as “cold”—neither Plaintiff, Mr. Baldwin, nor any of the Defendants, were aware the Prop
13 Gun actually was not “cold.” Plaintiff in fact concedes that the firearm *was intended to not be loaded*
14 *with a live round*. Compl. ¶¶ 42-47. Plaintiff alleges facts suggestive of negligence (*i.e.*, a claim
15 exclusively subject to New Mexico’s workers’ compensation system), not assault. *See Morales*, 136
16 N.M. at 287 (motion to dismiss granted where there is no indication that the failure to provide safety
17 devices was anything but negligent). Accordingly, Plaintiff’s cause of action for assault fails.

18 **3. Plaintiff alleges no facts that Defendants “acted with intent to cause**
19 **harmful or offensive contact or threatened to touch plaintiff in a harmful**
20 **or offensive manner.”**

21 Plaintiff does not purport to assert a cause of action under California law, but even if she did,
22 the caselaw supports dismissal. To state a cause of action for assault under California law, a plaintiff
23 must plead: “(1) *defendant acted with intent to cause harmful or offensive contact, or threatened to*
24 *touch plaintiff in a harmful or offensive manner*; (2) plaintiff reasonably believed she was about to
25 be touched in a harmful or offensive manner or it reasonably appeared to plaintiff that defendant was
26 about to carry out the threat; (3) plaintiff did not consent to defendant’s conduct; (4) plaintiff was
27 harmed; and (5) defendant’s conduct was a substantial factor in causing plaintiff’s harm.” *So v. Shin*,
212 Cal. App. 4th 652, 668–69 (2013) (emphasis added).

28 As stated above, Plaintiff’s allegations, however, do not claim, or even suggest, any of the

1 Defendants “acted with intent to ‘cause harmful or offensive contact, or threatened to touch plaintiff
2 in a harmful or offensive manner,’” (*id.*) which requires that they ““willfully commit an act the
3 direct, natural and probable consequences of which[,] if successfully completed[,] would be the
4 injury to another”” (*People v. Miller*, 164 Cal. App. 4th 653, 662 (2008)).

5 Under Plaintiff’s alleged circumstances, Mr. Baldwin and the other Defendants did not
6 “willfully commit an act the direct, natural and probable consequences of which[,] if successfully
7 completed[,] would be the injury to another” (*see id.*), nor did Mr. Baldwin or any of the Defendants
8 harbor deliberate intent to deviate from *rehearsing a movie scene with a Prop Gun* that was
9 supposed to be “cold”— Plaintiff’s allegations sound in negligence (*i.e.*, a claim exclusively subject
10 to the NMWCA). *Cf. Cobbs v. Grant*, 8 Cal. 3d 229, 240–241 (1972) (battery allegation against
11 surgeon for injuries sustained during surgery should be plead as negligence when there is no
12 “deliberate intent to deviate from the consent given”). Accordingly, Plaintiff’s cause of action for
13 assault fails in the first instance and Defendants’ Demurrer should be sustained dismissing this cause
14 of action without leave to amend.

15 **C. Plaintiff’s second cause of action for IIED against all Defendants does not state**
16 **facts sufficient to constitute a cause of action.**

17 For the same reasons asserted above, this cause of action must fail because Plaintiff cannot
18 avail herself of *Delgado* to take her negligence claims outside New Mexico’s workers’
19 compensation framework. There are no additional facts in this cause of action that make this
20 accident comparable to the extraordinary facts of *Delgado*. Instead, the post-*Delgado* cases
21 concluding that the accident at issue was subject to the NMWCA govern, and this cause of action
22 should be dismissed. In any case, Plaintiff’s IIED claim fails to satisfy the elements of the cause of
23 action, as discussed below.

24 **1. Plaintiff does not allege “extreme and outrageous conduct.”**

25 Under New Mexico law, to state a cause of action for IIED, Plaintiff must allege (1) extreme
26 and outrageous conduct by the defendant with the intention of causing, or reckless disregard of the
27 probability of causing, emotional distress; (2) the plaintiff’s suffering severe or extreme emotional
28 distress; and (3) actual and proximate causation of the emotional distress by the defendant’s

1 outrageous conduct. *See Trujillo v. Northern Rio Arriba Elec. Co-op., Inc.*, 131 N.M. 607, 616
2 (2001) (New Mexico IIED elements). Again, even though Plaintiff does not purport to assert this
3 claim under California law, the caselaw for California IIED provides for the same elements. *Hughes*
4 *v. Pair*, 46 Cal.4th 1035, 1050 (2009) (California IIED elements).

5 The standard of “extreme and outrageous” is difficult for a plaintiff to meet:

6 It has not been enough that the defendant has acted with an intent which is tortious or
7 even criminal, or that he has intended to inflict emotional distress, or even that his
8 conduct has been characterized by ‘malice,’ or a degree of aggravation which would
9 entitle the plaintiff to punitive damages for another tort. Liability has been found only
10 where the conduct has been so outrageous in character, and so extreme in degree, as
11 to go beyond all possible bounds of decency, and to be regarded as atrocious, and
utterly intolerable in a civilized community. Generally, the case is one in which the
recitation of the facts to an average member of the community would arouse his
resentment against the actor, and lead him to exclaim, ‘Outrageous!’

12 *Dominguez v. Stone*, 97 N.M. 211, 214 (N.M. Ct. App. 1981); *cf. Hughes*, 46 Cal.4th at 1050–51 (a
13 defendant’s conduct is “‘outrageous’ when it is so ‘extreme as to exceed all bounds of that usually
14 tolerated in a civilized community.’ And the defendant’s conduct must be ‘intended to inflict injury
15 or engaged in with the realization that injury will result.’”).

16 Plaintiff’s IIED allegations mirror those in her assault claim. She asserts her IIED cause of
17 action against all defendants based on Mr. Baldwin’s allegedly “point[ing] and discharg[ing] a
18 loaded gun towards Plaintiff [which] constituted extreme and outrageous conduct under the facts and
19 circumstances of the ‘*Rust*’ filmmaking.” Compl. ¶ 76 (emphasis added).

20 Plaintiff’s IIED claim fails for the same reason she does not allege facts to support assault.
21 Plaintiff does not allege any facts that constitute a claim whatsoever against Defendants Rust Movie
22 Productions, LLC, Ryan Donnell Smith, Langley Allen Cheney, Thomasville Pictures, LLC, Anjul
23 Nigam, Matthew DelPiano, Cavalry Media, Inc. (*erroneously sued as* Calvary Media, Inc.) or El
24 Dorado Pictures, Inc. Furthermore, Plaintiff does not allege any facts suggesting she or any of the
25 Defendants, including Mr. Baldwin, knew the Prop Gun was loaded with a live round when the
26 Incident occurred. As stated above, Plaintiff concedes that the firearm *was intended to not be loaded*
27 *with a live round*. Compl. ¶¶ 42-47. Moreover, there are no facts to support that Defendants’
28 conduct surpassed the bounds of decency. This is a tragic accident that happened while Plaintiff

1 participated in filmmaking involving a Prop Gun. There are no allegations that Defendants intended
2 to cause Plaintiff or anyone harm, and Plaintiff’s cause of action for IIED fails and should be
3 dismissed without leave to amend.

4 **2. Plaintiff does not allege Defendants’ conduct was intended to cause harm.**

5 To assert a cause of action for IIED, Plaintiff must allege that Defendants engaged in
6 “conduct intended to inflict injury or engaged in with the realization that injury will result.”
7 *Christensen v. Superior Court*, 54 Cal.3d 868, 903 (1991); *see Baldonado v. El Paso Natural Gas*
8 *Company*, 143 N.M. 288, 296 (2007). Plaintiff’s IIED allegations fail because, as previously stated,
9 there are no facts in her Complaint that suggest the Incident was intentional.

10 **3. Plaintiff does not allege Defendants’ conduct was committed with reckless**
11 **disregard of the Plaintiff and the probability of causing Plaintiff severe**
emotional distress.

12 To assert a cause of action for IIED, when “reckless disregard” is the theory of recovery,
13 Plaintiff must allege that Defendants intentionally did an act “with utter indifference to the
14 consequences.” *Baldonado*, 143 N.M. at 296–97 (citing *Restatement (Second) of Torts* § 46 cmt. i,
15 which defines “recklessness” as “deliberate disregard of a high degree of probability that the
16 emotional distress will follow”); *cf. Christensen*, 54 Cal. 3d at 903, 906 (under California law
17 Plaintiff must plead Defendant “directed [the] conduct at, and in conscious disregard of the threat to,
18 a [plaintiff],” and the tortious act must be committed with “substantial certainty that [Plaintiff]
19 would suffer severe emotional injury.”). The “reckless disregard” theory of IIED recovery is
20 “limited to ‘the most extreme cases of violent attack, where there is some especial likelihood of
21 fright or shock.’” *Id.* at 905 (citation omitted).

22 Plaintiff’s “reckless disregard” theory of IIED fails because Plaintiff does not, and cannot,
23 allege that Mr. Baldwin, let alone any of the other Defendants showed, “deliberate disregard of a
24 high degree of probability that the emotional distress will follow.” *Baldonado*, 143 N.M. at 296–97.
25 Plaintiff alleges her emotional distress injury stems from standing near the direction Mr. Baldwin
26 pointed the Prop Gun during the *rehearsal of a movie scene*. Plaintiff concedes that the Prop Gun
27 was intended to be “cold,” *i.e.*, not loaded with live ammunition. Plaintiff’s allegations in the
28 Complaint show that Mr. Baldwin, let alone any other Defendant, did not as a matter of law engage

1 in intentional conduct, but claim only negligence (*i.e.*, a claim exclusively subject to the
2 NMWCA). *See Christensen*, 54 Cal. 3d at 906 (plaintiffs had no standing to sue for IIED when they
3 had “not alleged that the conduct of any of the defendants was directed primarily at them, was
4 calculated to cause them severe emotional distress, or was done with knowledge of their presence
5 and of a substantial certainty that they would suffer severe emotional injury.”).

6 **D. Plaintiff’s third cause of action for “deliberate infliction of harm” against all**
7 **Defendants does not state facts sufficient to constitute a cause of action.**

8 Although not a clearly defined and established cause of action, Plaintiff alleges that she
9 suffered “deliberate infliction of harm” by all Defendants. As discussed above, this cause of action
10 alleges nothing different than the assault and IIED claims and should be governed by New Mexico’s
11 workers’ compensation statute.

12 If anything, Plaintiff’s additional allegations here underscore the essence of this claim being
13 in negligence, and not an intentional tort. Although not a clearly defined and established cause of
14 action, Plaintiff alleges that she suffered “deliberate infliction of harm” by all Defendants. However,
15 Plaintiff also expressly alleges that Defendants breached their duty (Compl. ¶¶ 84-86 and 93), which
16 sounds in negligence, not “deliberate” conduct. *See Schmidt v. International Playthings LLC*, 503
17 F.Supp.3d 1060, 1099 (D.N.M. 2020) (“In New Mexico, negligence encompasses the concepts of
18 foreseeability of harm to the person injured and of a duty of care toward that person.”). Plaintiff’s
19 claim fails. Once again, does not allege any facts that constitute a claim whatsoever against
20 Defendants Rust Movie Productions, LLC, Ryan Donnell Smith, Langley Allen Cheney,
21 Thomasville Pictures, LLC, Anjul Nigam, Matthew DelPiano, Cavalry Media, Inc. (*erroneously*
22 *sued as* Calvary Media, Inc.) or El Dorado Pictures, Inc.

23 In any case, Plaintiff also does not allege any facts supporting Mr. Baldwin, or the other
24 Defendants, “deliberately” intended to cause harm. *See Grover v. Stechel*, 132 N.M. 140, 145 (N.M.
25 Ct. App. 2002) (dismissing claim for prima facie tort because “Plaintiff does not allege any facts to
26 support his assertion that Defendant intentionally harmed him, only that her acts or omissions
27 created a dangerous situation and permitted [her son] to engage in intentional violence.”); *Delgado*,
28 131 N.M. at 275 (noting trial court’s finding that the complaint failed to allege defendants actually

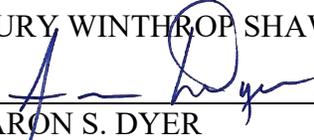
1 intended to harm the employee); *Williams v. Int'l Paper Co.*, 129 Cal. App. 3d 810, 819 (1982)
2 (finding no civil liability for intentional infliction of injuries where plaintiff failed to allege that his
3 employer “acted deliberately with the specific intent to injure him.”); *Tyrone W. v. Superior Ct.*, 151
4 Cal. App. 4th 839, 850 (2007) (“The word ‘deliberate’ suggests the infliction of physical harm must
5 have been ‘intentional [,] premeditated [, or] fully considered.’ (Black’s Law Dict. (8th ed.2004) p.
6 459, col. 2.)”).

7 **V. CONCLUSION**

8 For the foregoing reasons, the Demurrer should be sustained and Plaintiff’s Complaint
9 should be dismissed without leave to amend. *See Morales*, 136 N.M. at 287; *Roberts*, 160 Cal. App.
10 3d at 284.

11
12 Dated: January 24, 2022

PILLSBURY WINTHROP SHAW PITTMAN LLP

13
14 By: 
AARON S. DYER

Attorneys for Defendants

Rust Movie Productions, LLC, Alexander R.
Baldwin, III, El Dorado Pictures, Inc., Ryan
Donnell Smith, Langley Allen Cheney,
Thomasville Pictures, LLC, Anjul Nigam, Matthew
DelPiano, and Cavalry Media, Inc. (*erroneously
sued as Calvary Media, Inc.*)



Make a Reservation

MAMIE MITCHELL, AN INDIVIDUAL vs RUST MOVIE PRODUCTIONS, LLC., A DOMESTIC LIMITED LIABILITY COMPANY, et al.

Case Number: 21STCV42301 Case Type: Civil Unlimited Category: Other Personal Injury/Property Damage/Wrongful Death

Date Filed: 2021-11-17 Location: Spring Street Courthouse - Department 32

Reservation

Case Name:

MAMIE MITCHELL, AN INDIVIDUAL vs RUST MOVIE PRODUCTIONS, LLC., A DOMESTIC LIMITED LIABILITY COMPANY, et al.

Case Number:

21STCV42301

Type:

Demurrer - without Motion to Strike

Status:

RESERVED

Filing Party:

RUST MOVIE PRODUCTIONS, LLC., a domestic limited liability company (Defendant)

Location:

Spring Street Courthouse - Department 32

Date/Time:

02/24/2022 1:30 PM

Number of Motions:

1

Reservation ID:

745190912051

Confirmation Code:

CR-CVS2KPKRKVI5EOWWP

Fees

Description	Fee	Qty	Amount
First Paper Fees (Unlimited Civil)	435.00	1	435.00
Credit Card Percentage Fee (2.75%)	11.96	1	11.96
TOTAL			\$446.96

Payment

Amount:

\$446.96

Type:

Visa

Account Number:

XXXX6068

Authorization:

024048

[Print Receipt](#)

[Reserve Another Hearing](#)

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9 Pictures, Inc., Ryan Donnell Smith, Langley Allen Cheney,
Thomasville Pictures, LLC, Anjul Nigam, Matthew DelPiano, and
10 Cavalry Media, Inc. (*erroneously sued as* Calvary Media, Inc.)

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF LOS ANGELES

13 MAMIE MITCHELL, an individual;

14 Plaintiff,

15 vs.

16 RUST MOVIE PRODUCTIONS, LLC., a domestic
limited liability company; ALEXANDER R.
BALDWIN III, an individual; EL DORADO
17 PICTURES, INC., California corporation; RYAN
DONNELL SMITH, an individual; LANGLEY
18 ALLEN CHENEY, an individual; THOMASVILLE
PICTURES, LLC, a domestic limited liability
19 company; NATHAN KLINGHER, an individual;
RYAN WINTERSTERN, an individual; SHORT
20 PORCH PICTURES, LLC, a domestic limited liability
company; ANJUL NIGAM, an individual; BRITTANY
21 HOUSE PICTURES, a business form unknown;
MATTHEW DELPIANO, an individual; CALVARY
22 MEDIA, INC., a Delaware corporation; GABRIELLE
PICKEL, an individual; 3RD SHIFT MEDIA, LLC, a
23 domestic limited liability company; HANNAH
GUTIERREZ-REED, an individual; SARAH
24 ZACHRY, an individual; SETH KENNEY, an
individual; DAVID HALLS, an individual;
25 KATHERINE WALTERS, an individual; CHRIS M.B.
SHARP, an individual; JENNIFER LAMB, an
26 individual; EMILY SALVESON, an individual;
STREAMLINE GLOBAL, a business form unknown;
27 and DOES 1 through 100, Inclusive;

28 Defendants.

Case No. 21STCV42301

DECLARATION OF AARON DYER IN
SUPPORT OF DEFENDANTS'
DEMURRER TO PLAINTIFF'S
COMPLAINT

Date: February 24, 2022

Time: 1:30 p.m.

Dept: 32

Judge: Hon. Michael E. Whitaker

Reservation No.: 745190912051

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DECLARATION OF AARON S. DYER

I, Aaron S. Dyer declare as follows:

1. I am an attorney duly admitted to practice in the State of California and before this Court, and am a partner with Pillsbury Winthrop Shaw Pittman LLP, counsel of record for Defendants Rust Movie Productions, LLC, Alexander R. Baldwin, III, El Dorado Pictures, Inc., Ryan Donnell Smith, Langley Allen Cheney, Thomasville Pictures, LLC, Anjul Nigam, Matthew DelPiano, and Cavalry Media, Inc. (*erroneously sued* as Calvary Media, Inc.) in the above captioned matter. Except where otherwise indicated, I have personal knowledge of the facts set forth herein which are known by me to be true and correct and, if called as a witness, I could and would testify competently thereto.

2. I am making this declaration in support of Defendants’ Demurrer to the Complaint filed by Plaintiff Mamie Mitchell on November 17, 2021 (the “Complaint”).

3. On December 8, 2021, I accepted service of Complaint by returning receipt and acknowledgement of Plaintiff’s Complaint on behalf of Defendants Rust Movie Productions, LLC, Alexander R. Baldwin, III, El Dorado Pictures, Inc., Ryan Donnell Smith, Langley Allen Cheney, Thomasville Pictures, LLC, Anjul Nigam, Matthew DelPiano, and Cavalry Media, Inc. (*erroneously sued* as Calvary Media, Inc.) (collectively “Defendants”). On that same day, I had a telephone discussion with Plaintiff’s counsel Nathan Goldberg (“Mr. Goldberg”). On the telephone call, Mr. Goldberg agreed on behalf of Plaintiff to provide Defendants a 15-day extension of time to respond to Plaintiff’s Complaint pursuant to Rule 3.110(d) of the California Rules of Court.

4. On January 19, 2022, I called Mr. Goldberg, counsel for Plaintiff, and left him a voice message to arrange a meet and confer conversation regarding Defendants’ Demurrer in compliance with the requirements of California Code of Civil Procedure § 430.41. Also on January 19, 2022, my colleague Derek Mayor sent an email to Mr. Goldberg outlining Defendants’ position as to the Complaint and seeking to arrange a meet and confer telephone conversation.

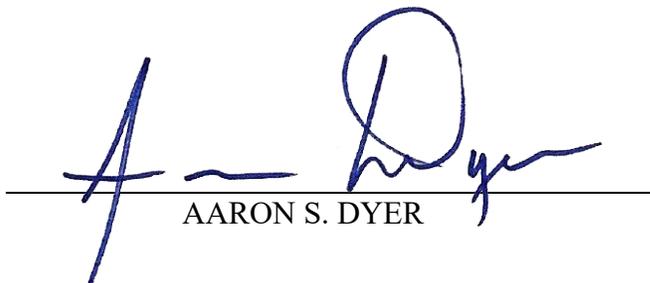
5. On January 21, 2022, Mr. Mayor met and conferred by telephone with Mr. Goldberg in a good faith effort to resolve the objections raised in Defendants’ Demurrer to the Complaint.

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They did not reach an agreement, and Mr. Goldberg indicated that Plaintiff would proceed with the Complaint without amendment, and Mr. Mayor stated Defendants would file their Demurrer on Monday, January 24, 2022, when the Demurrer is due.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and based upon my personal knowledge.

Dated: January 24, 2022



AARON S. DYER

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26 individual; EMILY SALVESON, an individual;
STREAMLINE GLOBAL, a business form unknown;
27 and DOES 1 through 100, Inclusive;

28 Defendants.

Case No. 21STCV42301

[PROPOSED] ORDER SUSTAINING
DEFENDANTS' DEMURRER TO
PLAINTIFF'S COMPLAINT

Date: February 24, 2022

Time: 1:30 p.m.

Dept: 32

Judge: Hon. Michael E. Whitaker

Reservation No.: 745190912051

1 The Demurrer of Defendants Rust Movie Productions, LLC, Alexander R. Baldwin, III, El
2 Dorado Pictures, Inc., Ryan Donnell Smith, Langley Allen Cheney, Thomasville Pictures, LLC,
3 Anjul Nigam, Matthew DelPiano, and Cavalry Media, Inc. (*erroneously sued* as Calvary Media,
4 Inc.) to the Complaint in this proceeding, filed by Plaintiff Mamie Mitchell (the “Plaintiff”) on
5 November 17, 2021, came on for hearing on February 24, 2022 in Department 32 of the Superior
6 Court of California, County of Los Angeles, the Honorable Michael E. Whitaker presiding.

7 Having considered the papers filed by counsel in support of and in opposition to the
8 Demurrer, the arguments of counsel at the hearing, and the Court’s files and records in this matter,
9 the Court hereby sustains Defendants’ Demurrer without leave to amend.

10 **IT IS SO ORDERED.**

11 Dated:

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13 _____
14 Hon. Michael E. Whitaker
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9 Pictures, Inc., Ryan Donnell Smith, Langley Allen Cheney,
Thomasville Pictures, LLC, Anjul Nigam, Matthew DelPiano, and
10 Cavalry Media, Inc. (*erroneously sued as* Calvary Media, Inc.)

11 SUPERIOR COURT OF THE STATE OF CALIFORNIA

12 COUNTY OF LOS ANGELES

13 MAMIE MITCHELL, an individual;

14 Plaintiff,

15 vs.

16 RUST MOVIE PRODUCTIONS, LLC., a domestic
limited liability company; ALEXANDER R.
BALDWIN III, an individual; EL DORADO
17 PICTURES, INC., California corporation; RYAN
DONNELL SMITH, an individual; LANGLEY
ALLEN CHENEY, an individual; THOMASVILLE
18 PICTURES, LLC, a domestic limited liability
company; NATHAN KLINGHER, an individual;
RYAN WINTERSTERN, an individual; SHORT
19 PORCH PICTURES, LLC, a domestic limited liability
company; ANJUL NIGAM, an individual; BRITTANY
20 HOUSE PICTURES, a business form unknown;
MATTHEW DELPIANO, an individual; CALVARY
21 MEDIA, INC., a Delaware corporation; GABRIELLE
PICKEL, an individual; 3RD SHIFT MEDIA, LLC, a
22 domestic limited liability company; HANNAH
GUTIERREZ-REED, an individual; SARAH
23 ZACHRY, an individual; SETH KENNEY, an
individual; DAVID HALLS, an individual;
24 KATHERINE WALTERS, an individual; CHRIS M.B.
SHARP, an individual; JENNIFER LAMB, an
25 individual; EMILY SALVESON, an individual;
STREAMLINE GLOBAL, a business form unknown;
26 and DOES 1 through 100, Inclusive;

27 Defendants.
28

Case No. 21STCV42301

PROOF OF SERVICE

Date: February 24, 2022

Time: 1:30 p.m.

Dept: 32

Judge: Hon. Michael E. Whitaker

Reservation No.: 745190912051

1 **PROOF OF SERVICE**

2 I, Mary C. Green, the undersigned, hereby declare as follows:

3 1. I am over the age of 18 years and am not a party to the within cause. I am employed by
4 Pillsbury Winthrop Shaw Pittman LLP in the City of Sacramento, California.

5 2. My email and business addresses are mary.green@pillsburylaw.com, 500 Capitol Mall,
6 Suite 1800, Sacramento, CA 95814.

7 3. On January 24, 2022 I authorized the vendor First Legal to electronically serve the
8 following documents along with the filing of same:

- 9 • DEFENDANTS’ NOTICE OF DEMURRER AND DEMURRER TO PLAINTIFF’S
- 10 COMPLAINT; MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT
- 11 THEREOF
- 12 • DECLARATION OF AARON DYER IN SUPPORT OF DEFENDANTS’
- 13 DEMURRER TO PLAINTIFF’S COMPLAINT; and
- 14 • [PROPOSED] ORDER SUSTAINING DEFENDANTS’ DEMURRER TO
- 15 PLAINTIFF’S COMPLAINT

16 on the parties listed below:

<p>18 Gloria Allred, Esq. 19 gallred@amglaw.com 20 Nathan Goldberg, Esq. 21 ngoldberg@amglaw.com 22 Renee Mochkatel, Esq. 23 rmochkatel@amglaw.com 24 ALLRED, MAROKO & GOLDBERG 25 6300 Wilshire Blvd., Suite 1500 26 Los Angeles, CA 90048 27 Tel: (323) 653-6530 28 Fax: (323) 653-1660</p> <p><i>Attorneys for Plaintiff</i> MAMIE MITCHELL</p>	<p>John C. Carpenter, Esq. carpenter@czrlaw.com Carlos A. Hernandez, Esq. carpenter@czrlaw.com CARPENTER & ZUCKERMAN 8827 West Olympic Boulevard Beverly Hills, California 90211 Tel: (310) 273-1230 Fax: (310) 858-1063</p> <p><i>Attorneys for Plaintiff</i> MAMIE MITCHELL</p>
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1 in the following manner:
2

3 **(BY MAIL)** I caused each envelope, with postage thereon fully prepaid, to be
4 placed in the United States mail at Sacramento, CA. I am readily familiar with the
5 practice of Pillsbury Winthrop Shaw Pittman LLP for collection and processing of
6 correspondence for mailing, said practice being that in the ordinary course of
7 business, mail is deposited in the United States Postal Service the same day as it is
8 placed for collection.

9 **(BY FACSIMILE)** The above-referenced document(s) was/were transmitted by
10 facsimile transmission, and the transmission was reported as complete and without
11 error to the numbers listed above.

12 **(BY EMAIL TRANSMISSION)** The above-referenced document(s) was/were
13 transmitted via electronic transmission to the persons with electronic-email addresses
14 indicated above through the Court's electronic filing and electronic service provider
15 First Legal.

16 **(BY PERSONAL SERVICE)** I delivered to an authorized courier or driver
17 authorized by Capitol Couriers to receive documents to be delivered on the same
18 date. A proof of service signed by the authorized courier will be filed forthwith.

19 **(BY OVERNIGHT COURIER)** I am readily familiar with the practice of Pillsbury
20 Winthrop Shaw Pittman LLP for collection and processing of correspondence for
21 overnight delivery and know that the document(s) described herein will be deposited
22 in a box or other facility regularly maintained by _____ for overnight delivery.

23 I declare under penalty of perjury that the foregoing is true and correct. Executed
24 January 24, 2022, at Citrus Heights, California.
25

26 

27 _____
28 Mary C. Green