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STATE OF NEW MEXICO
BEFORE THE
OCCUPATIONAL HEALTH AND SAFETY REVIEW COMMISSION

NEW MEXICO ENVIRONMENT
DEPARTMENT, OCCUPATIONAL
HEALTH AND SAFETY BUREAU,

Case No. OSHA 22-11

Complainant,

v.

RUST MOVIE PRODUCTIONS, LLC,

Respondent.

**ANSWER OF RUST MOVIE PRODUCTIONS, LLC TO
ADMINISTRATIVE COMPLAINT**

Rust Movie Productions, LLC (hereinafter, “RMP”), by and through its counsel, Pillsbury Winthrop Shaw Pittman LLP (Thomas L. Van Wyngarden, Melina Spadone, and Derek M. Mayor), hereby files this Answer to Administrative Complaint and Affirmative Defenses in response to Complainant New Mexico Department, Occupational Health and Safety Bureau’s Administrative Complaint (hereinafter, “Complaint”) as follows.

1. Paragraph 1 of the Complaint sets forth legal assertions to which no factual response is required. To the extent Paragraph 1 contains allegations concerning the Department’s motivations for bringing the Complaint, RMP lacks information sufficient to either admit or deny such allegations and, on that basis, denies such allegations.
2. Paragraph 2 of the Complaint is a legal assertion to which no factual response is required.
3. RMP admits the allegations contained in this paragraph.

4. RMP admits the allegations contained in this paragraph.
5. RMP admits the allegations contained in this paragraph.
6. RMP admits the allegations contained in this paragraph.
7. RMP admits the allegations contained in this paragraph.
8. Paragraph 8 of the Complaint sets forth legal assertions to which no factual response is required.

9. RMP admits that it is a domestic limited liability company, incorporated in New Mexico and conducting business in the State of New Mexico with a principal place of business at 502 S. Broad Street, Thomasville, Georgia, 31792.

10. RMP admits it is a special purpose entity formed for the purpose of contracting with production crew and talent to make the film *Rust*. RMP is an LLC, and its functions are set forth in a Production Services Agreement. Specifically, RMP is responsible for “(i) furnishing or procuring studio and location facilities and services for the Picture, including, without limitation, wardrobe, sets, props, photography, sound, and mixing; (ii) furnishing or procuring all production, filming, location and generally all other permits, licenses, consents and permissions required in connection with the pre-production, production and postproduction of the Picture; (iii) engaging persons rendering services for the Picture, including without limitation (but subject to the express terms hereof) producers, directors, writers, actors, actresses and crew; (iv) providing use of, access to and the services of Production Company’s existing infrastructure, office space, facilities, equipment and personnel in connection with the rendition of the Production Services; (v) obtaining insurance for the Picture; and (vi) providing such other production services which may be necessary to complete and deliver the Picture in accordance with the provisions hereof.” RMP

contracted with production technicians and talent, who are experts in their field, and relied on them to adhere to all industry guidelines and laws and provide a safe working environment.

11. RMP admits it was cited by the Bureau on April 19, 2021, as set forth in: Citation 1, Item 1; Citation 2, Item 1a; and Citation 2, Item 1b. RMP further admits that, as set forth in the citations, the alleged violations occurred at the Site, as the term is defined in Paragraph 11 of the Complaint.

12. RMP admits the allegations contained in this paragraph.

13. RMP admits the allegations contained in this paragraph.

14. RMP admits the allegations contained in this paragraph.

15. RMP admits the allegations contained in this paragraph.

16. Based on information and belief, RMP admits that the Sheriff's Office issued a news release on October 21, 2021, the content of which speaks for itself.

17. RMP lacks information sufficient to either admit or deny the allegations contained in this Paragraph 17 and, on that basis, denies such allegations.

18. RMP admits the allegation contained in Paragraph 18 that the Sheriff's Office was actively investigating the Site on October 22, 2021. RMP denies the allegation in Paragraph 18 that Katherine "Row" Walters denied Lorenzo Montoya access to inspect the Site, take photographs and interview witnesses. RMP further responds that the Sheriff's Office was actively investigating the Site on October 22, 2021, and denied Mr. Montoya from taking photographs and interviewing witnesses. Any statements Ms. Walters may or may not have made to Mr. Montoya concerning access to the Site were made based on instructions from the Sheriff's Office. RMP lacks information sufficient to either admit or deny the allegation contained in this Paragraph 18 regarding the reasons why Mr. Montoya departed the Site and, on that basis, denies such allegation.

19. Based on information and belief, RMP admits the allegations contained in this paragraph.

20. RMP admits that Denise Stevens was acting as outside legal counsel for RMP. Based on information and belief, RMP admits the remaining allegations contained in this paragraph.

21. RMP denies that the item designated a “fire extinguisher” by Mr. Montoya was, in fact, a fire extinguisher. Instead, the apparatus identified by Mr. Montoya as a “fire extinguisher” is a special effects device used to create artificial smoke for atmospheric visual effect. In fact, Mr. Montoya was advised, as was the Department, that the device was not a fire extinguisher and therefore not subject to regulations concerning fire extinguishers. RMP admits that the device did not bear markings indicating it was being used as a prop simply because it is not a prop, and there was no intention to use it as a prop. Instead, as stated, it is a special effects device.

22. Based on information and belief, RMP admits the allegations contained in this paragraph.

23. RMP admits that the Department requested documents and information from RMP, interviewed witnesses, and communicated with RMP regarding its investigation. RMP lacks information sufficient to either admit or deny the remaining allegations contained in this Paragraph 23 and, on that basis, denies such allegations.

24. RMP denies that Ryan Smith is a representative of the “Employer.” Ryan Smith set up the RMP entity, but has no greater role than any other producer involved with the *Rust* film production. All the producers had equal authority, even if they divided their responsibilities based on expertise. Certain producers were responsible for financing, others focused more on sales and marketing, while others, notably *not* Ryan Smith, were responsible for day-to-day activities of the

set and were on-set from opening to closing. RMP denies that the second closing conference occurred on March 18, 2022; however, RMP admits that a second closing conference occurred on March 16, 2022, and that Mr. Smith, and Derek Mayor, Tom Van Wyngarden and Aaron Dyer, outside legal counsel for RMP, were among those in attendance.

25. RMP lacks information sufficient to either admit or deny what the Bureau “learned” during its investigation as set forth in this Paragraph 25 and, on that basis, denies such allegations. As stated above, RMP did not have officers, directors, or employees. RMP denies the allegation contained in this paragraph that Ms. Pickle, as Line Producer, directly hired individuals and crews, approved hours worked, and provided discipline. The crew contracted by RMP were independent contractors. Where applicable, the head of each independent contractor was responsible for the individuals within his or her department (e.g., special effects, stunts, or animal wranglers). RMP admits that (a) Ms. Pickle had authority to counsel crew members, (b) Ms. Walters and Mr. Halls shared similar oversight and crew authority as Ms. Pickle, and, like Ms. Pickle, were also independent contractors, (c) Mr. Halls was the First Assistant Director, and (d) Mr. Halls was generally responsible for workplace safety on set, during production.

26. RMP admits that live ammunition was strictly prohibited on set and only blank or dummy rounds were permitted to be used during production. Live ammunition was also strictly prohibited by Bonanza Creek Ranch, which owns the Site. RMP had no knowledge that this strict prohibition had been violated prior to the incident on October 21, 2021. RMP denies that it ordered ammunition for use in the film production. The acquisition of dummy and blank rounds was the responsibility of Sarah Zachry, the Property Master, and/or Hannah Gutierrez-Reed, the Armorer, both of whom are independent contractors. Based on information and belief, the production’s Armorer was erroneously provided live ammunition mixed in with dummy rounds in a box labeled

“Dummy Rounds” that was supplied by a third-party ammunition vendor, either PDQ Arm & Prop, LLC (“PDQ”) or Spots & Props Unlimited, LLC, or from the Armorer, Hannah Gutierrez-Reed. RMP could not have known that the live ammunition had been included in a box of dummy rounds and brought onto the set. RMP admits that dummy rounds may be distinguishable from live ammunition; however, RMP lacks information sufficient to either admit or deny whether (a) such a distinction can be made by the means stated in this Paragraph 26, (b) the means identified are the exclusive manner in which to make such a distinction, and (c) the round must be inspected outside the storage box or firearm prior to making such a distinction—and therefore denies such allegations. Further, RMP lacks information sufficient to either admit or deny statements made to the Bureau by Ms. Zachry and, on that basis, denies such allegations. RMP is a production company. As such, its responsibility in connection with the making of *Rust* includes, and is limited to (a) obtaining financing for the movie production; (b) hiring talent; and (c) hiring and contracting with independent contractors—experts in their fields, such as armorers, animal wranglers, costume designers, carpenters, special effects, make-up, etc. RMP is not an expert in the field of armory as this is a highly specialized technical field. As a result, RMP hired and relied upon Ms. Gutierrez-Reed, an independent contractor, to perform and supervise all functions related to the use of firearms including, but not limited to, providing safety training, obtaining and using blank and dummy rounds, armament selection, and supervising the Property Master, Ms. Zachry, to the extent she handled firearms and ammunition.

27. RMP admits that Bulletin #1, issued by the Industry Wide Labor-Management Safety Committee provides recommendations for the use of blanks on set. With respect to the content of Bulletin #1, “Recommendations for Safety with Firearms and Use of ‘Blank Ammunition’” (“Bulletin #1”), RMP refers to the document, which speaks for itself. RMP lacks

information sufficient to either admit or deny the remaining allegations contained in this Paragraph 27 and, on that basis, denies such allegations.

28. To the extent Paragraph 28 contains allegations concerning the content of Bulletin #1, RMP refers to the document, which speaks for itself. RMP admits that (a) Ms. Gutierrez-Reed was the weapons handler and held the title of “Armorer,” (b) Ms. Guterrez-Reed worked in her capacity as Armorer on production days involving firearms, and (c) “[a]s the Armorer on set, she was responsible for storage, maintenance, and handling of firearms and ammunition, training members of the cast who would be handling firearms, and loading the firearms with dummies and blanks” (*see* Complaint ¶ 28). Although Ms. Guterrez-Reed did not have a lengthy track record, she came highly recommended by the owner of PDQ, Seth Kenney, who was a well-respected armorer in his own right, and supplier of firearms and ammunition widely used and known in the entertainment industry. Mr. Kenney also acted as armorer-mentor to Ms. Guterrez-Reed. Similarly, Ms. Guterrez-Reed’s father, Thel Reed, who is widely considered to be the leading armorer in the industry, trained Ms. Guterrez-Reed, who had grown up in the trade. At the time she was recommended, she had just concluded her job as the armorer on a Nicholas Cage movie, and, as noted by Mr. Kenney, owner of PDQ, she had been raised on movie sets, learning the trade from her father from a very young age. RMP further admits that Ms. Gutierrez-Reed also acted as the “Props Assistant to Ms. Zachary (sic)” on days that did not involve the use of firearms. This second role was merely an accommodation made to maximize Ms. Gutierrez-Reed’s compensation, since she would otherwise be on set without compensation on days firearms were not to be utilized. At no time did Ms. Gutierrez-Reed perform the role of Armorer and Props Assistant simultaneously.

29. Based on information and belief, RMP admits that Ms. Gutierrez-Reed and Ms. Pickle exchanged text messages. To the extent Paragraph 29 contains allegations concerning the content of those text messages, RMP refers to the text messages, which speak for themselves.

30. Based on information and belief, RMP admits that Ms. Gutierrez-Reed and Ms. Pickle exchanged text messages. To the extent Paragraph 30 contains allegations concerning the content of those text messages, RMP refers to the text messages, which speak for themselves.

31. Based on information and belief, RMP admits that Ms. Gutierrez-Reed and Ms. Pickle exchanged email and/or text messages. To the extent Paragraph 31 contains allegations concerning the content of such communications, RMP refers to the email or text messages, which speak for themselves. Insofar as Paragraph 31 contains allegations about Ms. Gutierrez-Reed's belief that 10 "Armorer days" were "likely needed," RMP further responds, based on information and belief, this was an effort to add additional "Armorer days" to the schedule that were not initially needed. The motivation for doing so was due to the fact that Ms. Gutierrez-Reed received a higher compensation rate for "Armorer days" than she received while performing the duties of Props Assistant.

32. Based on information and belief, RMP admits that Ms. Gutierrez-Reed and Ms. Pickle exchanged email messages. To the extent Paragraph 32 contains allegations concerning the content of those email messages, RMP refers to the emails, which speak for themselves. RMP further responds, based on information and belief, that the "unattended firearm" referenced in this Paragraph 32 was instead a prop, incapable of firing any ammunition, not even a blank round. RMP further responds that Ms. Gutierrez-Reed's duties as Armorer were, in fact, her priority and why RMP entered into a contract with her. Ms. Gutierrez-Reed's duties as Props Assistant were

secondary and merely offered as an accommodation to maximize her compensation on days where firearms would not be used.

33. Based on information and belief, RMP admits that Ms. Gutierrez-Reed and Ms. Pickle exchanged text messages. To the extent Paragraph 33 contains allegations concerning the content of those text messages, RMP refers to the text messages, which speak for themselves.

34. Based on information and belief, RMP admits that on October 16, 2021, Ms. Zachry inadvertently discharged a quarter load *blank* round while loading a pistol pointed at the ground. Based on information and belief, Ms. Zachry later discussed the incident with Armorer Ms. Guitierrez-Reed. Such an event, as a matter of prudence and safety, is anticipated, which is why Ms. Zachry and Ms. Gutierrez-Reed, specialized independent contractors, loaded the firearms. Based on information and belief, RMP further admits that on the same day, October 16, 2021, a stuntman, Blake Texiera, inadvertently discharged a rifle loaded with *blank* ammunition that was intended to be used in a gunfight scene. As a stunt double, Mr. Texiera played an actor's character during scenes that involved blank gunfire. This is common industry practice because stunt doubles such as Mr. Texiera are trained to handle firearms and discharge blank ammunition. While accidental discharges like these are rare on movie sets, such an event, as a matter of prudence and safety, is to be anticipated. This is why specialized independent contractors such as Mr. Texiera, a stunt double with experience handling and firing firearms loaded with blank ammunition, was engaged. When production was later advised about these incidents, they were investigated and deemed accidents, as there was nothing reported that suggested (a) the mishandling of firearms or ammunition, (b) defects in the firearm(s) or blank ammunition, or (c) there were gun safety risks that required further action. These two accidental discharges occurred in the hands of the very people meant to handle firearms with blank ammunition on a movie set. RMP otherwise lacks

information sufficient to either admit or deny the allegations contained in this Paragraph 34 and, on that basis, denies such allegations.

35. Based upon information and belief, RMP admits that Lane Luper and Katherine “Roe”. Walters exchanged text messages. To the extent Paragraph 35 contains allegations concerning the content of those text messages, RMP refers to the text messages, which speak for themselves. To the extent Paragraph 35 implies Ms. Walters “did not ask any additional questions” of Mr. Luper or others, RMP denies such an allegation. Further, based on information and belief, RMP admits that on October 16, 2021, a special effects “popper” meant to simulate the sound and appearance of a bullet contacting a surface, inadvertently activated. The safety concerns around a loud noise discharge clearly differ from those involving firearms and blank/dummy ammunition.

36. RMP denies the allegations contained in this Paragraph 36.

37. Based on information and belief, RMP admits that Ms. Gutierrez-Reed and Ms. Pickle exchanged emails and/or text messages. To the extent Paragraph 37 contains allegations concerning the content of those text messages, RMP refers to the email and/or text messages, which speak for themselves.

38. RMP admits that Mr. Luper resigned as a result of RMP’s refusing his request to be paid for lodging accommodations, which were unnecessary, nor required by the Union safety guidance, given his proximity to the Site. To the extent Paragraph 38 contains allegations concerning the content of Mr. Luper’s resignation email, RMP refers to the document, which speaks for itself. The events of Mr. Luper’s resignation followed his dissatisfaction with housing for himself and his camera crew in Santa Fe. Production and the producers partnered with the West Coast representatives for the International Cinematographers Guild (“ICG”) (International Alliance of Theatrical Stage Employees (“IATSE”) 600) to determine that housing would be

provided for crew who lived within the 60-mile radius under 2 conditions: (1) The crew member worked 13 or more hours in a day; or (2) the crew member was required the following day earlier than 6 a.m. call time. This decision was conveyed to the crew. Mr. Luper did not meet these criteria, yet found this unacceptable, and, in addition to continuing to speak with production and the film's producers, Mr. Luper called IATSE multiple times looking for a different answer. According to the calls production received from the Union, the only safety concerns addressed in those calls concerned housing. Based on information and belief, on October 13, 2022, despite working less than 13 hours and call time being later than 6 a.m., Production did book 30 rooms at a hotel in Santa Fe for local crew who felt unsafe driving home. Based on information and belief, Mr. Luper contacted production to let them know the hotel quality was unacceptable and he would not be staying there. The hotel contacted production, informing the office that Mr. Luper had attempted to cancel the reservations for all 30 rooms. Mr. Luper continued to insist they be given housing, but rejected the available options offered. Mr. Luper also texted Ms. Walters about a safety concern regarding misfires on set. Ms. Walters addressed the issues in person as stated above. On October 20, 2021, Mr. Luper and the majority of the camera team resigned. Based on information and belief, Mr. Luper cited the same inadvertent discharges of blank rounds referenced in his October 16th text message to Ms. Walters. As one can see from Mr. Luper's email, his safety concern regarding the inadvertent discharges of blanks involved auditory injury (e.g., Mr. Luper's purported tinnitus) rather than weapon safety. On the morning of the incident, October 21, 2021, there was a safety meeting in which producer Anjul Nigam, Union Steward Matt Hemmer, Property Master Ms. Zachry, Armorer Ms. Gutierrez-Reed, First Assistant Director Dave Halls, and Director Joel Souza, among others, were present, when firearm safety was addressed. Union representatives, including from IATSE, were present on set. Every daily call sheet listed IATSE's

safety hotline phone number. The safety numbers are means for reporting safety concerns and stopping production. IATSE appointed shop steward Matt Hemmer, who acted as the liaison between the set and the Union, which specifically includes raising and addressing any safety issues. Mr. Hemmer was consulted multiple times throughout the production. Mr. Hemmer reported no firearm safety concerns. Last, every IATSE member has access to a phone application, with which they can flag any safety issues—again, no such reports were made.

39. Based on information and belief, RMP admits that (a) Ms. Gutierrez-Reed loaded a .45 caliber Colt revolver, with what were believed to be dummy rounds, and (b) handed the revolver to Mr. Halls. To the extent Paragraph 39 contains allegations purporting to set forth Ms. Gutierrez-Reed’s impressions, thoughts, expectations, beliefs, or statements made to the Bureau during its investigation, RMP lacks sufficient information to either admit or deny such allegations contained in this Paragraph 39 and, on that basis, denies such allegations. RMP further responds that regardless of Ms. Gutierrez-Reed’s impressions, thoughts, expectations, beliefs, or statements made to the Bureau, she was a specialized independent contractor singularly responsible for all tasks associated with the use of firearms and ammunition in connection with the production of *Rust* including, but not limited to, ensuring that RMP’s express prohibition against the presence of live ammunition was strictly followed, ensuring that only blanks were used when called for by the script, and that only dummy rounds were used when called for by the script. To the extent Paragraph 39 alleges Mr. Halls “proceeded to hand the revolver to Alec Baldwin,” RMP lacks sufficient information to either admit or deny such allegation and, on that basis, denies such allegation. RMP admits that Halyna Hutchins and Mr. Souza were struck by a projectile fired from the .45 caliber revolver.

40. RMP lacks information sufficient to either admit or deny the allegations contained in this Paragraph 40 and, on that basis, denies such allegations. RMP further responds, based on information and belief, that in preparing the violations, the Department failed to consider evidence that undercuts the basis for the violations and instead chose to selectively rely on “evidence” that it believed supported the violations. Among other things, and by way of example, the Bureau failed to interview Ms. Pickle, Ms. Walters and any of the film’s producers; and further failed to acknowledge the fact that (a) RMP hired and relied upon Ms. Gutierrez-Reed, an independent contractor, to perform and supervise all functions related to the use of firearms including, but not limited to, providing safety training, obtaining and using blank and dummy rounds, armament selection, and the supervision of the Property Master, Ms. Zachry, to the extent she handled firearms and ammunition, (b) the limited role of a production company, such as RMP, in the film’s creation, and (c) numerous statements to the Department that the identified “fire extinguisher” was not a fire extinguisher at all, but a special effects device with the sole purpose of generating smoke during filming.

41. RMP admits it was cited by the Bureau. With respect to the remaining allegations contained in this Paragraph 41, RMP refers to Citation 1, Item 1, which speaks for itself.

42. RMP denies the allegations in this Paragraph 42.

43. RMP denies the allegations in this Paragraph 43.

44. Based upon information and belief, RMP admits Mr. Halls was present on set when the first “misfire” of a blank occurred. RMP admits that Mr. Halls did not inform RMP or any of the producers which comprise RMP, of the misfire. RMP otherwise lacks information sufficient to either admit or deny the remaining allegations contained in this Paragraph 44 and, on that basis, denies such allegations.

45. Based upon information and belief, RMP admits Mr. Halls was present on set on October 16, 2021, when the second misfire of a blank occurred. RMP admits that Mr. Halls did not inform RMP, or any of the producers which comprise RMP, of the misfire. RMP otherwise lacks information sufficient to either admit or deny the remaining allegations contained in this Paragraph 45 and, on that basis, denies such allegations.

46. To the extent Paragraph 46 contains allegations concerning the content of Mr. Luper's resignation email, RMP refers to the document, which speaks for itself. RMP denies that individuals working as part of the production failed to take action to review or address safety concerns.

47. RMP denies Ms. Guterrez-Reed was ever "instructed" to focus less on her Armorer tasks. Further, to the extent Paragraph 47 contains allegations concerning the content of written communications between Ms. Guterrez-Reed and Ms. Pickle, RMP refers to the documents, which speak for themselves. RMP further denies the intended implication of the erroneous allegations contained in this Paragraph 47; specifically, that (a) actors had not already received firearms training—all of them had received such training; (b) that the stunt crew lacked firearms training—they did not, and were trained by the head of the stunt department, an independent contractor responsible for the training of its own crew; and/or (c) that the responsibilities of an Armorer to ensure no live ammunition is on the Site—as expressly prohibited by both RMP and the Bonanza Creek Ranch—or to ensure that no live ammunition is acquired or inadvertently loaded into a firearm, is somehow transferred to other individuals (such as Mr. Halls) by merely handing them the firearm. RMP further responds that regardless of Ms. Gutierrez-Reed's impressions, thoughts, expectations, beliefs, or statements made to the Bureau, she was a specialized independent contractor singularly responsible for all tasks associated with the use of

firearms and ammunition in connection with the production of *Rust* including, but not limited to, ensuring that RMP's express prohibition against the presence of live ammunition was strictly followed, ensuring that only blanks were used when called for by the script, and that only dummy rounds were used when called for by the script. These responsibilities are not transferred or somehow obviated by the transfer from Ms. Gutierrez-Reed of a firearm she loaded to another individual.

48. RMP denies that Mr. Smith is an “employer representative.” Mr. Smith is one of several producers, who have equal but separate responsibilities. Mr. Smith's role was obtaining financing for the movie production; while others oversaw the (a) hiring of talent for the production, (b) contracting with independent contractors—experts in their fields, such as armorers, animal wranglers, costume designers, carpenters, special effects, make-up, etc., and (c) day-to-day set operations. RMP admits that it recognized the hazards associated with firearms loaded with blank ammunition, and, in this regard, RMP admits that (a) Ms. Gutierrez-Reed was the weapons handler and held the title of “Armorer,” (b) Ms. Guitierrez-Reed worked in her capacity as Armorer on production days involving firearms, and (c) “[a]s the Armorer on set, she was responsible for storage, maintenance, and handling of firearms and ammunition, training members of the cast who would be handling firearms, and loading the firearms with dummies and blanks” (*see* Complaint ¶ 28). With respect to the remaining allegations contained in this Paragraph 48, RMP denies such allegations.

49. RMP denies the allegations set forth in this Paragraph 49. Live ammunition was expressly prohibited at the Site and this was conveyed to everyone on the Site. Specialized independent contractors were contracted with specifically to train individuals in firearms safety and operation, procure firearms and blank and dummy ammunition, safely manage the transfer and

use of firearms on the Site, and conduct safety meeting on days where the firing of blank ammunition was to occur (of the 11 days of Production, there had been 8 days where blank ammunition was fired on set). Further, everyone on set, including the Union shop steward and Mr. Luper, had “stop work authority,” which provided any cast or crew member with authority to shut down production based on a safety concern. Likewise, Union safety representatives were always present on set.

50. RMP admits it was cited by the Bureau. With respect to the remaining allegations contained in this Paragraph 50, RMP refers to Citation 2, Items 1(a) and 1(b), which speak for themselves.

51. RMP admits that the Bureau issued a Citation and Notification of Penalty totaling \$136,793.00 on April 19, 2022. RMP lacks sufficient information to either admit or deny the allegation contained in this Paragraph 51 regarding whether the Citation and Notice of Penalty were the “result of the inspection” and, on that basis, denies such allegation.

52. RMP hereby incorporates by reference its responses to Paragraphs 1-51 of the Complaint.

53. Paragraph 53 of the Complaint is a legal assertion to which no factual response is required.

54. RMP admits it was cited by the Bureau on April 19, 2022. With respect to the remaining allegations contained in this Paragraph 54, RMP refers to Citation 1, Item 1, which speaks for itself.

55. RMP admits it was cited by the Bureau on April 19, 2022. With respect to the remaining allegations contained in this Paragraph 55, RMP refers to Citation 2, Item 1(a), which speaks for itself.

56. RMP admits it was cited by the Bureau on April 19, 2022. With respect to the remaining allegations contained in this Paragraph 56, RMP refers to Citation 2, Item 1(b), which speaks for itself.

57. Paragraph 57 of the Complaint sets forth legal assertions to which no factual response is required.

58. RMP admits that Citation 1, Item 1 is classified willful-serious with a proposed penalty of \$136,793.00.

59. RMP admits the allegation contained in this Paragraph 59.

60. RMP denies the allegations contained in this Paragraph 60 which ignores the Department's own correspondence following an inquiry by RMP's counsel to clarify the issue of abatement based on a conflict created by the Department, as follows. As stated in an email from RMP's legal counsel to the Bureau on April 21, 2021, the Citations contained a conflict "which on the one hand state that each of the cited violations must be abated by May 13, 2022, and the Department's press release, which on the other hand states that '[s]hould the production of this film resume in the future, Rust Movie Productions, LLC is required to abate the violations referred to in this citation before resuming operations,' suggesting RMP is not required to abate the alleged violations (because it cannot since production ceased after the October 21, 2021 incident)." On April 22, 2021, the Department's attorney responded by email in part that "regarding abatement, if RMP is not going to resume production, then abatement is complete. If RMP plans to resume production, then RMP will have to abate by May 13, 2022. If RMP resumes production after May 13, 2022, then RMP will be required to abate before it resumes production and will also be subject to a follow up inspection to determine compliance with abatement."

61. RMP denies that Citation 1, Item 1, and Citation 2, Items 1(a) and 1(b) should be affirmed and respectfully requests that the Commission refuse to sustain such citations based on the failure of the Department to satisfy its burden of proof, and/or the application of one or more affirmative defenses to each of the citations.

62. RMP denies that any penalties are warranted based on the allegations contained in the Complaint.

63. RMP denies that the Department is entitled to any relief as requested in the Complaint, including any “further relief,” which is unavailable as a matter of law.

AFFIRMATIVE DEFENSES

RMP asserts the following affirmative defenses:

FIRST AFFIRMATIVE DEFENSE REASONABLE RELIANCE ON A SPECIALTY CONTRACTOR

To the extent the General Duty Clause, or any cited regulation was violated, RMP exercised reasonable diligence in relying on specialty and independent contractors’ expertise to perform work related to the contractor’s specialty safety and according to OSHA standards.

SECOND AFFIRMATIVE DEFENSE MULTI-EMPLOYER WORKSITE

RMP was not the creating, controlling, correcting, or exposing employer at the multi-employer worksite.

THIRD AFFIRMATIVE DEFENSE UNPREVENTABLE EMPLOYEE MISCONDUCT

To the extent the General Duty Clause, or any cited regulation was violated, it was caused by unpreventable employee misconduct.

**FOURTH AFFIRMATIVE DEFENSE
UNPREVENTABLE SUPERVISORY MISCONDUCT**

To the extent the General Duty Clause, or any cited regulation was violated, it was caused by unpreventable supervisory misconduct.

**FIFTH AFFIRMATIVE DEFENSE
VAGUENESS, AMBIGUITY OR LACK OF FAIR NOTICE REGARDING THE
STANDARD'S REQUIREMENTS**

The standards the Department relies upon in issuing the subject citations, and the manner in which they are being applied, are vague, ambiguous, or lack fair notice.

**SIXTH AFFIRMATIVE DEFENSE
INAPPLICABILITY OF THE CITED STANDARDS**

The standards set forth in the subject citations which the Department alleges were violated do not apply to the particular facts at issue.

**SEVENTH AFFIRMATIVE DEFENSE
IMPOSSIBILITY OR INFEASIBILITY OF COMPLIANCE**

To the extent the General Duty Clause, or any cited regulation was violated, compliance was impossible or infeasible.

**EIGHTH AFFIRMATIVE DEFENSE
DUPLICATE CITATIONS**

Citation 2, Item 1(a) and Citation 2, 1(b) are duplicative.

**NINTH AFFIRMATIVE DEFENSE
ISOLATED OCCURRENCE**

To the extent the General Duty Clause, or any cited regulation was violated, it was caused by an isolated occurrence.

WHEREFORE, RMP respectfully requests this tribunal enter an order dismissing the Complaint and citations with prejudice, for costs, and such other and further relief as may be deemed just and proper.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer was served on the following by email on September 6, 2022:

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Dated: September 6, 2022

By:  _____
Mary C. Green

Certificate of Service

I hereby certify that on September 6, 2022 a copy of the foregoing Answer was emailed to the persons listed below. A copy will be mailed first class upon request.

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