

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

**NEW MEXICO ENVIRONMENT
DEPARTMENT, OCCUPATIONAL
HEALTH AND SAFETY BUREAU,**

Complainant,

Case No. OSHA 22-11

v.

RUST MOVIE PRODUCTIONS, LLC,

Respondent.

SETTLEMENT AGREEMENT

Complainant, New Mexico Environment Department, Occupational Health and Safety Bureau (“NMED”), and Respondent, Rust Movie Productions, LLC (“Respondent”), hereby agree to the following terms for full and complete settlement of the citations at issue in this case, subject to the provisions of 11.5.5.503 NMAC.

RECITALS

On April 19, 2022, NMED issued two citations in connection with NMED’s investigation of the incident which occurred during the production of the film “Rust”. Citation 1, Item 1 was classified as willful-serious, and Citation 2, Items 1 and 2 were classified as “other-than-serious”. Respondent properly appealed the citations. These two citations are the subject of this Settlement Agreement.

The parties participated in settlement discussions, and on February 2, 2023, through arm’s length negotiations, the parties resolved all issues arising out of the two (2) citations issued by NMED.

This Settlement Agreement is entered into solely for the purpose of compromise. The parties

expressly agree and acknowledge that neither this Settlement Agreement nor any act performed hereunder is, or may be deemed an admission or evidence of the validity or invalidity of either party's claims, defenses, or representations made in this appeal or otherwise. Nor is this Settlement Agreement, or any act performed hereunder, to be construed as an admission or evidence of any wrongdoing, fault, omission, or liability.

The parties intend that this Settlement Agreement resolve all claims and disputes between them. Therefore, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows.

TERMS AND CONDITIONS

1. Citations and Penalties.

A. Citation 1

Citation 1, Item 1, issued to Respondent on April 19, 2022, was classified as a Willful-Serious violation, and provided for a penalty of \$136,793.00.

Revised Alleged Violation Description. The Alleged Violation Description for Citation 1, Item 1 shall be amended and read as follows:

50-9-5.A NMSA 1978: The employer did not furnish a place of employment free from hazards in that employees were exposed to being struck by discharged rounds or projectiles when firearms were used on the set of the motion picture production.

Classification. The classification of Citation 1, Item 1 shall be amended from Willful-Serious to Serious.

Penalty. A material term of this Settlement Agreement is that the penalty will be amended to \$100,000.00.

B. Citation 2

Citation 2, Item 1(a), issued to Respondent on April 19, 2022, was classified as other-than-serious and provided for a penalty of \$0.00. The citation remains as issued.

Citation 2, Item 1(b), issued to Respondent on April 19, 2022, was classified as other-

than-serious and provided for a penalty of \$0.00. The citation remains as issued.

2. Payment of Penalties. Respondent agrees to pay a penalty of \$100,000.00 within thirty (30) calendar days after this Settlement Agreement becomes the Final Order of the Occupational Health and Safety Review Commission pursuant to 11.5.5.503(G) NMAC.

The payment of penalties made pursuant to this Settlement Agreement shall be by corporate check, certified check, or other guaranteed negotiable instrument, and shall be sent to the Department at the following address:

New Mexico Environment Department
Occupational Health and Safety Bureau
525 Camino de los Marquez, Suite 3
Santa Fe, New Mexico 87505

3. Withdrawal of Contest of Citations. Pursuant to the terms of this Settlement Agreement, Respondent hereby withdraws its contest of the citations at issue in this proceeding, and consents to the entry of a Final Order by the Occupational Health and Safety Review Commission that incorporates the terms of this Settlement Agreement.

4. Abatement of Accepted Citation. NMED and Respondent agree that Respondent has abated the citations at issue in this appeal in that worksite operations ceased, and Respondent does not intend to do business in the State of New Mexico in the future. If Respondent or any of its principals intends to resume the filming of the motion picture "Rust" in the State of New Mexico in the future, it/they will provide NMED with thirty (30) calendar days' notice prior to commencing any production in the State of New Mexico. This requirement shall remain in effect for a period of five (5) years from the execution of this Settlement Agreement. Further, Respondent agrees that NMED may conduct an onsite inspection of any such production site in New Mexico to determine compliance with the laws and regulations of the State of New Mexico.

5. Notice. In the event any party is required to provide notice to the other party under the terms of this Settlement Agreement, such notice shall be made by Certified Mail to the following:

- For the New Mexico Environment Department, Occupational Health and Safety Bureau:

Robert Genoway, Chief
New Mexico Environment Department
Occupational Health and Safety Bureau
Post Office Box 5469
Santa Fe, New Mexico 87502

- For Respondent Rust Movie Productions, LLC:

Ryan Smith
Rust Movie Productions, LLC
502 South Broad Street
Thomasville, Georgia 31792

6. **No Admissions.** Neither this Settlement Agreement nor Respondent's consent to entry of a Final Order by the Occupational Health and Safety Review Commission pursuant to this Settlement Agreement constitutes any admission by Respondent of a violation of the New Mexico Occupational Health and Safety Act or regulations or standards promulgated thereunder in any proceedings other than proceedings brought directly under the provisions of the Act.

Further, Respondent admits neither any alleged facts, any of the characterizations of its alleged conduct, nor any of the conclusions set forth in the citations or amended citation issued in this matter. This Settlement Agreement shall not be offered, used or admitted in evidence in any proceeding or litigation, whether civil or criminal, other than proceedings brought by NMED for purposes of administration and enforcement. This Settlement Agreement and the terms and conditions set forth herein, and the contents of any and all of the parties' settlement negotiations or discussions, are not intended to be and shall not be construed by anyone or in any proceeding as an admission of wrongdoing, or that any alleged violation caused an injury or illness, and may not be used in any other proceedings involving any other person, whether said proceeding be legal, equitable or administrative. The parties acknowledge that the agreements, statements, stipulations, and actions herein are made solely for the purpose of settling this matter fairly, economically, and without litigation or further expense.

7. **Explanation for Non-Posting.** Pursuant to 11.5.5.503(D)(2)(a), Respondent will submit an Affidavit of Explanation for Non-Posting. The parties agree that no posting is required because the

Respondent no longer has affected employees in the State of New Mexico.

8. Final Order. If no timely objection to this Settlement Agreement is filed within twenty (20) days after its filing, then without further action, it shall become a Final Order of the Occupational Health and Safety Review Commission pursuant to 11.5.5.503(G) NMAC.

9. Entire Agreement. The Settlement Agreement contains the entire agreement and understanding of the parties, and supersedes and replaces any and all prior written or oral negotiations, proposed agreements, or agreements. Each party acknowledges that no other party, or any agent of attorney of any party, has made any promise, representation, or warranty whatsoever, express or implied, not contained in this Settlement Agreement or Affidavit of Explanation for Non-Posting to induce any party to sign this Settlement Agreement, and each party acknowledges that it has not executed this Settlement Agreement in reliance on any such promise, representation, or warranty.

10. Agreement to Cooperate. Without further consideration, the parties agree to execute and deliver such other documents and take such other action as may be necessary to consummate the subject matter of this Settlement Agreement.

11. Headings. The various headings in this Settlement Agreement are inserted for convenience only and shall not affect this Settlement Agreement or any of its provisions.

12. Fees and Costs. Each party agrees to bear its own attorneys' fees, costs, and other expenses incurred by such party in connection with any stage of the above-referenced proceeding.

Wherefore, by the authorized signatures below, the parties to this Settlement Agreement certify that this Settlement Agreement has been read and understood in its entirety and that the parties

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execute this Settlement Agreement with the intent to fully and forever be bound by all of its terms, as of the date executed below.

Respectfully submitted,

RUST MOVIE PRODUCTIONS, LLC

DocuSigned by:
By: Ryan D. Smith
Ryan D. Smith

Date: February 2 2023

Rust Movie Productions, LLC
502 South Broad Street
Thomasville, Georgia 31792

NEW MEXICO ENVIRONMENT DEPARTMENT

By: Robert Genoway
Robert Genoway, Chief

Date: February 23, 2023

Occupational Health and Safety Bureau
Post Office Box 5469
Santa Fe, New Mexico 87502

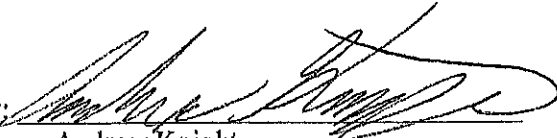
Approved as to form:

By: Thomas L. Van Wyngarden
Thomas L. Van Wyngarden

Date: February 2, 2023

Pillsbury Winthrop Shaw Pittman LLP
725 South Figueroa Street, 36th Floor
Los Angeles, California 90017
Counsel for Respondent Rust Movie Productions, LLC

By:


Andrew Knight
Jennifer Olson

Date: February 16, 2023

Assistants General Counsel, New Mexico Environment Dept.
Post Office Box 5469
Santa Fe, New Mexico 87502
Counsel for Complainant New Mexico Environment Dept.