

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

NEW MEXICO ENVIRONMENT DEPARTMENT,

Complainant,

v.

**INSPECTION NO. 1560072**

RUST MOVIE PRODUCTIONS, LLC, AND ITS

SUCCESSORS,

Respondent.

**NOTICE OF CONTEST**

TO: Robert Genoway, Bureau Chief  
NMED Occupational Health and Safety Bureau  
P.O. Box 5469  
Santa Fe, New Mexico 87502

Compliance Program Manager  
NMED Occupational Health and Safety Bureau  
P.O. Box 5469  
Santa Fe, New Mexico 87502

Rust Movie Productions, LLC (“RMP”) hereby contests the following Citations issued by the New Mexico Environment Department (“NMED”) on April 19, 2022:

- A. Citation 1, Item 1 (Willful-Serious) (*see* ATTACHMENT A)
  - i. RMP contests the alleged violation itself—the existence of the alleged conditions and/or that such conditions constitute a violation of the cited provision (50-9-5.A NMSA 1978);
  - ii. RMP contests the classification of the alleged violation;
  - iii. RMP contests the proposed penalty; and
  - iv. RMP contests the abatement and abatement date.
  
- B. Citation 2, Item 1 a (Other-than-Serious) (*see* ATTACHMENT B)

- i. RMP contests the alleged violation itself—the existence of the alleged conditions and/or that such conditions constitute a violation of the cited provision (29CFR 1910.157(e)(2), NMAC 11.5.2.9);
  - ii. RMP contests the classification of the alleged violation; and
  - iii. RMP contests the abatement and abatement date.
- C. Citation 2, Item 1 b (Other-than-Serious) (*see* ATTACHMENT C)
- i. RMP contests the alleged violation itself—the existence of the alleged conditions and/or that such conditions constitute a violation of the cited provision (29CFR 1910.157(e)(3), NMAC 11.5.2.9);
  - ii. RMP contests the classification of the alleged violation; and
  - iii. RMP contests the abatement and abatement date.

RMP disputes NMED’s Citations and its Summary of Investigation because its bases for the citations are factually and legally inaccurate, for the following reasons, among others:

- 1) The supposed “fire extinguisher” NMED claims should have been inspected and maintained is not a real fire extinguisher – it is a special effects device used to create fake smoke. The attempt to extend the application of a fire extinguisher regulation to a special effects device shows their misunderstanding of the film industry.
- 2) RMP was not the “employer” responsible for supervising the film set, much less for supervising specific protocols such as the maintenance and loading of weapons. The law properly permits producers to delegate such critical functions as firearm safety to experts in that field and does not place such responsibility on producers whose expertise is in arranging financing and contracting for the logistics of filming.
- 3) RMP did not “willfully” violate any safety protocol, and in fact enforced all applicable safety protocols, including:

- a. The three alleged “misfires” were properly addressed. The first was not a misfire at all and did not involve a firearm – it was a harmless noise from a special effects “popper.” The other two involved discharges of blank rounds. Contrary to NMED’s statements, none of the “misfires” violated firearm safety protocols on the set and appropriate corrective actions were taken, including safety briefings of cast and crew.
- b. All actors handling firearms received firearms training, and additional safety restrictions were implemented to protect a child actor from exposure to firearms loaded with blank ammunition.
- c. Assistant Directors were instructed by the Unit Production Manager to conduct morning safety meetings on all days firearms were used. In fact, a safety meeting was held the morning of the incident.
- d. *All personnel on the set* were instructed that they always had Stop Work Authority—the ability to cease activity during any aspect of filming *at any time* until his or her safety concerns were resolved. The union steward’s telephone number as well as the International Alliance of Theatrical Stage Employees (“IATSE”) safety hotline appeared on every daily call sheet. Further, industry guild and union representatives were always present on site, including a designated crew member from IATSE, to ensure their own safety protocols are implemented.
- e. NMED’s conclusion that the Armorer was overburdened is contradicted by substantial evidence. The Armorer had sufficient time to properly inspect and safeguard all firearms and ammunition on set, and her duties as Armorer always

took precedence over any responsibilities related to props. Costumer Designer Terese Davis (“Ms. Davis”) stated to Property Master Sarah Zachary in an October 29, 2021 communication, that “ [Ms. Guitierrez-Reed] didn’t do her job properly. And she had plenty of time to do so because we had extra time that morning while camera was f\*\*king off. So she can say what she wants about training time and all that bullshit but it’s not why she killed Halyna.” (See p. 4 of New Mexico Regional Computer Forensics Laboratory Report, Ref. No. 2021007949, dated December 7, 2021.)

- f. NMED improperly relies on statements made by a First Assistant Camera who was not privy to other department safety protocols and procedures, nor a safety expert of any type. Further, the camera assistant was not on set the day of the incident, having walked off set over complaints about his hotel accommodations.

Copies of the relevant Citations are attached hereto as Exhibits A through C. RMP, in filing this Notice of Contest, expressly reserves any argument that it is not the responsible employer in connection with the Citations, which are the subject of this Notice of Contest.

Dated: May 9, 2022



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PILLSBURY WINTHROP SHAW PITTMAN LLP  
Thomas L. Van Wyngarden  
Aaron S. Dyer  
Derek M. Mayor  
725 South Figueroa Street, 36<sup>th</sup> Floor  
Los Angeles, California 90017-5524  
(213) 488-3615  
tom.vanwyngarden@pillsburylaw.com  
derek.mayor@pillsburylaw.com  
**Attorneys for Rust Movie Productions, LLC**