

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

**STATE OF NEW MEXICO,**

**Plaintiff,**

**v.**

**No. D-101-CR-2023-00040**

**HANNAH GUTIERREZ,**

**Defendant.**

**STATE’S RESPONSE TO RUST MOVIE PRODUCTIONS, LLC’S EXPEDITED  
MOTION FOR PROTECTIVE ORDER AND TO QUASH SUBPOENA**

**THE STATE OF NEW MEXICO**, by and through Special Prosecutors Kari T. Morrissey and Jason J. Lewis, hereby submit the following response to Rust Productions LLC’s Expedited Motion for Protective Order and to Quash Subpoena. For its response, the State submits the following:

**FACTUAL BACKGROUND**

The State does not dispute the facts as set forth by Rust, except the subpoena was served upon Rust on August 30, 2023, and not May 9, 2023, as alleged in the Motion for Protective Order.

**ARGUMENT**

**I. BURDENSOME**

Rust Productions, LLC (“Rust”) first argues the State’s subpoena is unduly burdensome<sup>1</sup> and will result in unreasonable expense. This is patently false. The subpoena seeks a very limited

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<sup>1</sup> To the extent Rust had concerns regarding the scope of the records the is State requesting, Rust made no efforts to reach out to the State to request clarification or limiting the scope of the request prior to seeking intervention of the Court. Special Prosecutor Kari T. Morrissey spoke to counsel for Rust, Ryan Villa, concerning the subpoena at issue

set of documents: 1) Agreements between Rust and Alexander Baldwin III (“Baldwin”) for the period January 1, 2020 - October 21, 2021 and 2) Agreements between Rust and El Dorado Pictures, LLC, for the period January 1, 2020 - October 21, 2021. Although Rust argues this request is “obviously” burdensome, the State cannot imagine a more discrete request. The agreements sought are between a grand total of three entities and are limited to contracts, agreements, letters of intent, and memoranda of understanding, and for a limited period of time. Such documents should be easily identifiable and easy to locate. Simply alleging a request is burdensome is insufficient. Rust gives no approximation to the Court of how many documents the State’s request implicates, although the State estimates there are less than ten (10) responsive documents. As the Court is likely aware, Rust has been engaged in extensive civil litigation concerning the events occurring on October 21, 2021, and has likely already completed the gathering, examination and review of the documents requested by the State. Indeed, the effort is not Herculean and the documents requested are few. Allegations of the State’s request being unduly burdensome are not accurate and are not supported by any facts before the Court. On the contrary, the State has limited the inquiry to a discrete set of documents involving only three entities and for a limited time. A request of this limited nature is not “unduly burdensome” as contemplated by NMRA Rule 5-511.

## **II. MATERIALITY**

Rust argues that because Mr. Baldwin’s criminal charges were dismissed, the documents sought by the State are immaterial in case against Hannah Gutierrez. This argument is non-

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in this motion as well as a second subpoena for audio and video. Ms. Morrissey offered to receive the requested documents under a protective order, and never received a response, nor did Mr. Villa or anyone else representing Rust express concerns over the scope of the subpoena before coming to this Court for relief. Seeking intervention of the Court without first attempting to timely resolve issues directly with the special prosecutors is a repeating pattern from Rust. The last time Rust filed a similar motion, the special prosecutors worked with Rust’s counsel to limit the request and we were able to resolve the issue – although slowly over many weeks – without the Court’s intervention.

sensical. Baldwin was a producer on the show and heavily involved in the development of the script and other aspects of the film, and was personally involved in firearms training provided by Ms. Gutierrez. Most importantly, however, is that Ms. Gutierrez's counsel alerted the State to a potentially mitigating issue relating to Ms. Gutierrez. Ms. Gutierrez alleges she made requests for additional armorer days and for additional time to provide gun handling training to Mr. Baldwin. Ms. Gutierrez asserts that it is her belief these requests were denied for financial/budgetary reasons. This is an appropriate line of inquiry for the State to explore by reviewing the agreements between Mr. Baldwin and the various production companies to determine whether there were financial or other considerations involved in the decision to deny Ms. Gutierrez to work additional armorer days and/or provide additional training days to Mr. Baldwin. For example, Mr. Baldwin's agreements likely require that he receive a certain amount of compensation for each day filming or for each day performing tasks related to filming, such as firearm training. The State and Ms. Gutierrez should be permitted to explore whether Ms. Gutierrez's requests were denied due to financial considerations, and not due to safety or other reasonable considerations. Evaluating the motive of individuals involved in the production of this film and how those motives may have affected Ms. Gutierrez's ability to perform her job are plainly material to Ms. Gutierrez's criminal case. Similarly, Mr. Baldwin's contracts may provide that he receive a percentage of the profits from the movie, again demonstrating that financial gain may have impacted Ms. Gutierrez's ability to perform her job as an armorer. As this Court is aware, the special prosecutors have a duty to investigate potentially exculpatory evidence, and as to Ms. Gutierrez, if it is proven true, it is exculpatory.

Our Supreme Court has defined "material" as a "reasonable probability that, had the evidence been disclosed to the defense, the result of the proceeding would have been different.

State v. Redd, 2013-NMCA-089, 26, 308 P.3d 1000, 1006, 2013 N.M. App. LEXIS 50, \*21, 2013 WL 4499376. Certainly, evidence that Ms. Gutierrez's request for additional armorer days and/or additional training days was denied purely for financial considerations is evidence that may affect the results of these proceedings, and the State's interest in obtaining the information in Ms. Gutierrez's case is compelling.

### **III. CONFIDENTIAL / PROPRIETARY TRADE INFORMATION**

Finally, Rust argues the documents should be protected as they contain confidential and proprietary trade information. Rust does not state even in general terms what this supposed proprietary trade information is, but upon information and belief, the documents are nothing more than customary contracts used in the film and entertainment industry and do not contain any information that could reasonably be described as secret, proprietary trade information. To the extent the documents contain information that should be unavailable to the public at large, the Court could address this concern by issuing a protective order, limiting the release of the information only to the State and defense counsel, and their experts. The State's interest in receiving the information to examine whether the documents contain mitigating information is outweighed by any right by Rust to keep the information private. As mentioned previously, Ms. Morrissey offered to Mr. Villa the option of a protective order, but this offer was never responded to by any representative of Rust.

For the foregoing reasons, the State respectfully requests this Court enter an order denying Rust's motion for protective order and motion to quash, and further order Rust to provide documents responsive to the State's Subpoena Deuces Tecum within a reasonable period of time.

Respectfully submitted,

/s/ Jason J. Lewis  
Jason J. Lewis

Kari T. Morrissey  
Special Prosecutors  
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**CERTIFICATE OF SERVICE**

I hereby certify that on the 2<sup>nd</sup> day of October 2023, I served the forgoing pleading to all parties or counsel of record as well as counsel for Rust Productions, LLC:

/s/ Jason J. Lewis  
Jason J. Lewis