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8 *and El Dorado Pictures, Inc.*

9 **SUPERIOR COURT OF THE STATE OF CALIFORNIA**
10 **FOR THE COUNTY OF LOS ANGELES**

11 MAMIE MITCHELL, an individual,
12 Plaintiff,

13 vs.

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

Case No. 21STCV42301

**DEFENDANTS ALEXANDER R. BALDWIN
III AND EL DORADO PICTURES, INC.'S
REPLY IN SUPPORT OF DEMURRER TO
PLAINTIFF'S FIRST AMENDED
COMPLAINT**

Judge: Hon. Michael E. Whitaker
Department: 32
Hearing Date: June 21, 2022
Time: 1:30 P.M.

Reservation No.: 420081535070

1 SALVESON, an individual; STREAMLINE
2 GLOBAL, a business form unknown; and
3 DOES 1 through 100, Inclusive,

4 Defendants.

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14
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22
23
24
25
26
27
28

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES ii

PRELIMINARY STATEMENT.....1

ARGUMENT3

I. MITCHELL CONCEDES THAT SHE HAS ENGAGED IN IMPROPER GROUP PLEADING.....3

II. MITCHELL’S FIRST CAUSE OF ACTION FOR ASSAULT FAILS.....4

III. MITCHELL’S SECOND CAUSE OF ACTION FOR INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS FAILS.....6

IV. MITCHELL CONCEDES THAT HER THIRD CAUSE OF ACTION FOR DELIBERATE INFLICTION OF HARM FAILS8

V. MITCHELL’S FOURTH CAUSE OF ACTION FOR NEGLIGENCE FAILS.....8

VI. THE COURT SHOULD DENY LEAVE TO AMEND10

CONCLUSION10

TABLE OF AUTHORITIES

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Page(s)

Cases

Appl v. Lee Swett Livestock Co.,
192 Cal. App. 3d 466 (1987)..... 4, 5, 7

Baca v. Velez,
114 N.M. 13 (Ct. App. 1992) 6

Baldonado v. El Paso Nat. Gas Co.,
143 N.M. 288 (2007)..... 8

Bichai v. Dignity Health,
61 Cal. App. 5th 869 (2021)..... 4, 7, 8

Falahati v. Kondo,
127 Cal. App. 4th 823 (2005)..... 3, 9

Hawley Bros. Hardware Co. v. Brownstone,
123 Cal. 643 (1899)..... 3

Heckendorn v. City of San Marino,
42 Cal. 3d 481 (1986)..... 10

La Rosa v. Presb. Healthcare Servs., Inc.,
2011 WL 6016977 (Ct. App. Nov. 16, 2011) 9

Med. Marijuana, Inc. v. ProjectCBD.com,
6 Cal. App. 5th 602 (2016)..... 5, 8

Pena v. Greffet,
108 F. Supp. 3d 1030 (D.N.M. 2015) 4

People v. Stanley,
10 Cal. 4th 764 (1995)..... 3, 5, 9

Romero v. Giant Stop-N-Go of New Mexico, Inc.,
146 N.M. 520 (Ct. App. 2009) 8, 9

Rudick v. State Bd. of Optometry,
41 Cal. App. 5th 77 (2019)..... 3, 5, 9

Shaeffer v. Califia Farms, LLC,
44 Cal. App. 5th 1125 (2020)..... 8

Trujillo v. N. Rio Arriba Elec. Co-op, Inc.,
131 N.M. 607 (2001)..... 6, 7

United States v. Acosta-Sierra,
690 F.3d 1111 (9th Cir. 2012)..... 6

1
2
3
4
5
6
7
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9
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11
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14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

Constitutional Provisions

N.M. CONST. art. II, § 6..... 5

Statutory Authorities

N.M. Stat. Ann. § 30-3-1..... 1, 4, 5

N.M. Stat. Ann. § 30-7-2..... 1, 5

Other Authorities

Restatement (Second) of Torts § 24 cmt. a 6

Restatement (Second) of Torts § 46 cmt. d..... 7

Restatement (Second) of Torts § 46 cmt. f..... 7

1 Defendants Alexander R. Baldwin III (“Baldwin”) and El Dorado Pictures, Inc. (“El
2 Dorado” and collectively the “Baldwin Defendants”) respectfully submit this reply in support of
3 their demurrer to Plaintiff Mamie Mitchell’s first amended complaint (“FAC”).

4 **PRELIMINARY STATEMENT**

5 The Baldwin Defendants based their demurrer on the body of case law holding that
6 pleading ultimate facts is insufficient to establish Mitchell’s claims. Instead of addressing those
7 cases or citing any that support the adequacy of her allegations, Mitchell’s opposition consists of
8 little more than copying and pasting those inadequate allegations into her brief. Because none of
9 the unsupported arguments that Mitchell does make demonstrates the sufficiency of the FAC, the
10 Court should sustain the Baldwin Defendants’ demurrer, with prejudice.

11 *First*, the Baldwin Defendants argued that Mitchell engages in improper group pleading
12 throughout the FAC, and with regard to each claim, by lumping all defendants together and not
13 specifying the actions of any individual defendant. Even though the Baldwin Defendants raised
14 this argument numerous times in their opening brief, Mitchell does not address it. Accordingly,
15 she concedes the point and that their demurrer should be sustained on this ground. This is so
16 endemic that she did not notice her repeated references to the Baldwin Defendants as “Defendants
17 Nigam and Brittany House Productions [sic]” when she recycled here her opposition to their
18 demurrer. *See, e.g.*, Pl. Opp. 5, 11.

19 *Second*, Mitchell argues that she has stated a claim for assault under the second prong of
20 N.M. Stat. Ann. § 30-3-1, which requires an “unlawful act, threat or menacing conduct which
21 causes another person to reasonably believe that he is in danger of receiving an immediate
22 battery.” Not so. Assault requires intent, and Mitchell’s general, conclusory allegations of intent
23 are insufficient under well-established California law. They are also undercut by her specific
24 allegations that the incident was “unexpected” (FAC ¶ 56), for which she has no answer. Nor has
25 Mitchell adequately alleged an “unlawful act, threat or menacing conduct.” Although she attempts
26 to satisfy that standard by arguing that it “is unlawful for anyone to carry any type of deadly
27 weapon anywhere” in New Mexico (Pl. Opp. 10), the statute she relies on, N.M. Stat. Ann. § 30-7-
28 2, prohibits the carrying of a “concealed” firearm. The gun at issue here, however, was not

1 concealed. The statute also does not apply to unloaded firearms, which Baldwin, Mitchell, and all
2 others on the set believed the gun to be. Lastly, though she argues otherwise, Mitchell’s assault
3 claim also fails because she has not adequately pled that she apprehended an immediate battery
4 *prior* to the accidental discharge of the gun. Instead, she admits that the discharge was
5 “unexpected” and that she experienced fear only *after* the gun fired. FAC ¶¶ 56, 59-60, 62.

6 *Third*, the Baldwin Defendants argued in their opening brief that Mitchell has not stated a
7 claim for intentional infliction of emotional distress because she has not alleged that the conduct at
8 issue was extreme and outrageous or that the Baldwin Defendants acted intentionally or in reckless
9 disregard of Mitchell. In response, Mitchell claims that she satisfies the extreme-and-outrageous
10 standard because of her strong emotional involvement in the incident. But whether conduct is
11 extreme and outrageous is assessed through the objective lens of “an average member of the
12 community”—it is not a question of Mitchell’s subjective reaction. Moreover, her allegations that
13 the Baldwin Defendants acted intentionally or in reckless disregard of her well-being are
14 conclusory and, as such, are to be disregarded when judging the sufficiency of her claim.

15 *Fourth*, Mitchell concedes that the Court should dismiss her claim for “deliberate infliction
16 of harm” because it is not a valid cause of action.

17 *Fifth*, in response to the Baldwin Defendants’ argument that Mitchell fails to state a claim
18 for negligence because she merely recites its elements, Mitchell does not distinguish the decisions
19 that the Baldwin Defendants cited or cite any case law of her own. Rather, she simply recites the
20 allegations from the FAC. But merely repeating her inadequate allegations does not make them
21 adequate, nor rebut the cases holding that her allegations are insufficient to state a claim. Next,
22 Mitchell argues that she has stated a negligence claim against the Baldwin Defendants based on
23 her allegations against four other defendants: Rust Movie Productions, Thomasville Pictures, Ryan
24 Smith, and Langley Cheney. According to Mitchell, that’s so because all defendants acted in
25 concert. But Mitchell must allege facts, not conclusions, and her boilerplate allegation of
26 concerted conduct, devoid of any facts, is not sufficient to state a claim against the Baldwin
27 Defendants. Lastly, Mitchell flat-out ignores, and therefore concedes, the Baldwin Defendants’
28 argument that her failure to adequately plead physical injury is fatal to her negligence claim.

1 *Finally*, the Court should dismiss Mitchell’s claims with prejudice and not grant her the
2 opportunity to amend the FAC. Mitchell has failed to identify any additional facts not already in
3 her pleading that would cure these defects.

4 **ARGUMENT**

5 **I. MITCHELL CONCEDES THAT SHE HAS ENGAGED IN IMPROPER GROUP PLEADING**

6 Throughout their opening brief and with regard to each cause of action, the Baldwin
7 Defendants explained that Mitchell engages in improper “group pleading” by lumping all
8 defendants together and failing to provide any facts specific to each (or any) defendant’s conduct.
9 Def. Br. 5-8, 10-11. In her opposition, Mitchell simply ignores, and thus concedes, this defect.

10 Mitchell conclusorily alleges that “each and every Defendant” acted through an agency or
11 joint venture with “each and every other Defendant” and that “[t]hose responsible for the unsafe
12 conditions” on the *Rust* set include the 19 “Defendant Producers” (FAC ¶¶ 34-35, 66), without
13 pleading any facts to establish those legal relationships or to support such collective responsibility.
14 *See, e.g., Falahati v. Kondo*, 127 Cal. App. 4th 823, 829 (2005) (a complaint containing
15 “boilerplate allegation[s] [that] each defendant was the agent and employee of the others and ...
16 charging allegations respecting ‘defendants and each of them’” fails to state a claim where “it does
17 not allege [that] any conduct on [a particular defendant’s] part caused any harm, loss or damage on
18 the plaintiffs’ part”). Mitchell’s general allegations against all defendants are insufficient to put
19 specific defendants on notice of the claims against them, a basic pleading requirement that the
20 California Supreme Court has recognized for over a century. *See, e.g., Hawley Bros. Hardware*
21 *Co. v. Brownstone*, 123 Cal. 643, 646-47 (1899) (a demurrer should be sustained where “[i]t is not
22 possible by any reading of the complaint ... to say[] whether one, and if one, which one, of the
23 persons named in the caption” is allegedly responsible for particular conduct).

24 Although the Baldwin Defendants raised this argument numerous times, Mitchell fails to
25 address it in her opposition, thereby conceding the point and that their demurrer should be
26 sustained. *See, e.g., Rudick v. State Bd. of Optometry*, 41 Cal. App. 5th 77, 90 (2019) (by failing
27 to address opposing party’s arguments, plaintiffs “implicitly concede” them); *People v. Stanley*, 10
28 Cal. 4th 764, 793 (1995) (“[E]very brief should contain a legal argument with citation of

1 authorities on the points made. If none is furnished on a particular point, the court may treat it as
2 waived, and pass it without consideration.”). Notably, Mitchell refuses to differentiate between
3 defendants in her cut-and-paste, recycled opposition brief, which still contains references to
4 “Defendants Nigam and Brittany House Productions [sic].” *See, e.g.*, Pl. Opp. 5, 11. That
5 Mitchell is content merely to copy the arguments she made against other defendants, on another
6 demurrer, underscores that she has not adequately pled her case. Mitchell sued 24 individual
7 defendants here. Mitchell thus bears—but has not satisfied—the burden of pleading the role of
8 each in the events that led to her purported injuries.

9 **II. MITCHELL’S FIRST CAUSE OF ACTION FOR ASSAULT FAILS**

10 An assault (FAC ¶¶ 77-85) under New Mexico law¹ is (1) “an attempt to commit a battery
11 upon the person of another,” (2) “any unlawful act, threat or menacing conduct which causes
12 another person to reasonably believe that he is in danger of receiving an immediate battery,” or (3)
13 “the use of insulting language toward another impugning his honor, delicacy or reputation.” N.M.
14 Stat. Ann. § 30-3-1. Mitchell argues that she satisfies the second prong. Pl. Opp. 10. She is
15 wrong.

16 *First*, Mitchell claims that she “has plead sufficient facts to establish th[at] ... Baldwin ...
17 committed tortious conduct constituting assault.” *Id.* That requires Mitchell to have adequately
18 alleged intent, *see, e.g., Pena v. Greffet*, 108 F. Supp. 3d 1030, 1048 (D.N.M. 2015), by pleading
19 *facts*, not conclusions, *see, e.g., Bichai v. Dignity Health*, 61 Cal. App. 5th 869, 877 (2021).
20 Mitchell has failed to do so. She only conclusorily alleges that Baldwin’s actions “constituted
21 intentional acts and/or omissions, without any just cause or excuse” (FAC ¶ 85), which is
22 insufficient under well-established California pleading standards. *See, e.g., Appl v. Lee Swett*

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¹ Although Mitchell’s opposition primarily cites California authorities, the Court has made clear that New Mexico substantive law applies to her claims, which arise out of alleged conduct that occurred in that state. *See* June 2, 2022 Minute Order at 5 (ordering supplemental briefing solely on issues of New Mexico law); Def. Br. 1. Even if the sufficiency of the FAC’s allegations were assessed under California law, Mitchell still fails to state a claim. *See* Def. Br. 1, 6 n.1, 8 n.4, 12-13 n.5.

1 *Livestock Co.*, 192 Cal. App. 3d 466, 470 (1987) (conclusory labels such as “maliciously,”
2 “willfully,” “oppressively,” or “deliberately” are not assumed as true on a demurrer).

3 Regardless, Mitchell’s general allegations of intent are undercut by her specific allegations
4 about the event underlying the alleged assault, which she describes as an “unexpected,” “tragic
5 incident” resulting from a gun that had been declared “cold.” FAC ¶¶ 5, 51-56; *see, e.g., Med.*
6 *Marijuana, Inc. v. ProjectCBD.com*, 6 Cal. App. 5th 602, 619 (2016) (“California courts have
7 adopted the principle that specific allegations in a complaint control over an inconsistent general
8 allegation.”). By not addressing the Baldwin Defendants’ argument that the specific trumps the
9 general (Def. Br. 7), Mitchell concedes the point. *See, e.g., Rudick*, 41 Cal. App. 5th at 90;
10 *Stanley*, 10 Cal. 4th at 793.

11 *Second*, Mitchell has not properly alleged an “unlawful act, threat or menacing conduct.”
12 N.M. Stat. Ann. § 30-3-1. While Mitchell argues that in New Mexico it “is unlawful for anyone to
13 carry any type of deadly weapon anywhere, with limited exceptions” (Pl. Opp. 10), the statute
14 Mitchell cites has no relevance here because it prohibits “carrying a *concealed* loaded firearm,”
15 N.M. Stat. Ann. § 30-7-2 (emphasis added),² and Mitchell does not allege that the firearm at issue
16 was concealed. On the contrary, she alleges that its presence was conspicuous, from the
17 announcement of “cold gun” to her observation of Baldwin’s movement of the gun “to ensure
18 continuity with the upcoming afternoon scenes.” FAC ¶¶ 5, 80. Moreover, the statute is clear that
19 it “shall [not] be construed to prevent the carrying of any unloaded firearm,” N.M. Stat. Ann. § 30-
20 7-2, which Baldwin, Mitchell, and all others on the set believed the gun to be (*see* FAC ¶¶ 5, 56).
21 Because Mitchell does not otherwise argue or plead facts to support that the Baldwin Defendants’
22 actions were “menacing” or “threat[ening],” N.M. Stat. Ann. § 30-3-1, she has not satisfied this
23 element of assault.

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27 ² The New Mexico Constitution protects the right “to keep and bear arms for security and
28 II, § 6. The “carrying of concealed weapons” is a stated limit to this right. *Id.* Thus, what
Mitchell misleadingly states as the rule is in fact the exception.

1 *Finally*, Mitchell is required to allege that she experienced fear or anticipation of receiving
2 an immediate battery *before* the single, accidental discharge of the gun. *See Baca v. Velez*, 114
3 N.M. 13, 15 (Ct. App. 1992) (cause of action for assault requires a plaintiff to “fe[el] scared *before*
4 the [contact] took place”) (emphasis added); *United States v. Acosta-Sierra*, 690 F.3d 1111, 1121-
5 22 (9th Cir. 2012) (assault cannot lie where purported victim “did not realize what had happened
6 until after the threat of imminent bodily harm had passed,” because a “general feeling of fear or
7 unease” after the event “is not the same as apprehension of an imminent battery”). But, contrary
8 to Mitchell’s argument (Pl. Opp. 10), her allegations are insufficient because she does not allege
9 that she felt any fear until *after* the gun unexpectedly discharged. *See* FAC ¶¶ 59-60, 62 (alleging
10 that *after* the gun discharged, Mitchell “feared for her life” and was “terrified”).

11 Indeed, Mitchell alleges that she was *unaware* that the gun contained live ammunition
12 while Baldwin was “moving the loaded gun within approximately 4 feet in front of her” and
13 “pointing” it towards her. *Id.* ¶¶ 56, 58, 60, 79-80. That allegation also dooms her claim. *See*,
14 *e.g.*, Restatement (Second) of Torts § 24 cmt. a (noting that “if the actor ... points [a revolver] at
15 another ... the actor is not liable [for assault] if the other believes that the revolver is unloaded,”
16 *even if* “the revolver is in fact loaded”). Mitchell’s after-the-fact allegation of fear does not suffice
17 to state a claim for assault.

18 **III. MITCHELL’S SECOND CAUSE OF ACTION FOR INTENTIONAL INFLICTION OF EMOTIONAL**
19 **DISTRESS FAILS**

20 To state a claim for intentional infliction of emotional distress (FAC ¶¶ 86-93) under New
21 Mexico law, a plaintiff must allege, among other things, that “the conduct in question was extreme
22 and outrageous” and that “the conduct of the defendant was intentional or in reckless disregard of
23 the plaintiff.” *Trujillo v. N. Rio Arriba Elec. Co-op, Inc.*, 131 N.M. 607, 616 (2001). The
24 Baldwin Defendants’ opening brief explained that Mitchell has not satisfied these elements. Def.
25 Br. 8-9. None of the arguments that Mitchell makes in her opposition changes that conclusion.

26 *First*, Mitchell argues that she satisfies her burden of pleading extreme and outrageous
27 conduct by alleging “evidence of strong emotional involvement and intense emotions resulting
28

1 from the tortious conduct.”³ Pl. Opp. 12. But the Restatement (Second) of Torts, which New
2 Mexico has adopted, *see, e.g., Trujillo*, 131 N.M. at 616, assesses extreme and outrageous conduct
3 through the objective lens of “an average member of the community”—not the plaintiff’s
4 subjective reaction. Restatement (Second) of Torts § 46 cmt. d. Because Mitchell has not even
5 attempted to plead that the Baldwin Defendants were aware of or exploited any unique emotional
6 sensitivities, Mitchell’s reaction to the Baldwin Defendants’ conduct is insufficient to satisfy this
7 element. *See id.* cmt. f (“The extreme and outrageous character of the conduct may arise from the
8 actor’s knowledge that the other is peculiarly susceptible to emotional distress, by reason of some
9 physical or mental condition or peculiarity.”).

10 Moreover, as the Baldwin Defendants noted in their opening brief, Mitchell alleges that
11 Baldwin’s conduct was extreme and outrageous “*under the facts and circumstances* of the ‘*Rust*’
12 filmmaking.” FAC ¶ 88 (emphasis added). But those “facts and circumstances” were the
13 production of a “western-themed motion picture” that required Baldwin to be “sitting in a pew
14 wearing a holster with a gun [declared to be ‘cold’] that had been handed to him” and to “mov[e]
15 the ... gun within” Mitchell’s proximity. *Id.* ¶¶ 5, 42, 52, 56, 58. These routine and expected
16 actions on the set of a film “that ... necessitate[d] the use of numerous weapons” (*id.* ¶ 42) are not
17 “so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of
18 decency.” *Trujillo*, 131 N.M. at 616.

19 *Second*, Mitchell simply repeats her allegations in an attempt to show that she’s adequately
20 alleged the Baldwin Defendants’ intent or “reckless disregard of the plaintiff.” *Id.*; *see* Pl. Opp.
21 12-13. What’s missing from Mitchell’s argument is any legal support. Mitchell fails to cite even
22 one case in which a court found that conclusory, boilerplate allegations like hers were sufficient to
23 withstand a demurrer. That is for good reason: her allegations are deficient. For example,
24 Mitchell’s only allegation of intent is the assertion that the discharge of the gun was a “deliberate”
25 action. FAC ¶¶ 56, 89. But that is a legal conclusion that must be disregarded on a demurrer, *see,*
26 *e.g., Appl*, 192 Cal. App. 3d at 470; *Bichai*, 61 Cal. App. 5th at 877, and is belied and superseded

27 _____
28 ³ Mitchell cites California law for this proposition. As explained above, New Mexico law
applies. *See supra* n.1.

1 by Mitchell’s specific allegations that the event was “unexpected.” FAC ¶ 56; *see Med.*
2 *Marijuana*, 6 Cal. App. 5th at 619.

3 To maintain a claim for intentional infliction of emotional distress based on “reckless
4 disregard,” Mitchell must allege the Baldwin Defendants’ “deliberate disregard of a high degree of
5 probability that [her] emotional distress w[ould] follow.” *Baldonado v. El Paso Nat. Gas Co.*, 143
6 N.M. 288, 296-97 (2007). Mitchell has not satisfied this standard. In particular, she does not
7 explain how the Baldwin Defendants consciously disregarded a likelihood that their conduct could
8 result in emotional harm to *anyone*, much less that *her emotional distress* was a probable result.

9 **IV. MITCHELL CONCEDES THAT HER THIRD CAUSE OF ACTION FOR DELIBERATE**
10 **INFLICTION OF HARM FAILS**

11 Mitchell does not oppose the Baldwin Defendants’ demurrer to her third cause of action
12 for “deliberate infliction of harm” (FAC ¶¶ 94-117), which is not a recognized tort under New
13 Mexico or California law and has been dismissed against other defendants in this action. Pl. Opp.
14 3, 17; *see* June 2, 2022 Minute Order at 5 (sustaining defendants Anjul Nigam and Brittany House
15 Pictures’s demurrer to Mitchell’s third cause of action).

16 **V. MITCHELL’S FOURTH CAUSE OF ACTION FOR NEGLIGENCE FAILS**

17 In addition to the improper group pleading that plagues all of Mitchell’s claims, the
18 Baldwin Defendants’ opening brief explained how Mitchell’s negligence claim is insufficiently
19 pled for several other reasons. Def. Br. 10-13. Instead of addressing those arguments and the
20 decisions that the Baldwin Defendants cited, Mitchell simply quotes the deficient allegations from
21 the FAC.

22 *First*, to state a negligence claim, a plaintiff must allege “a duty owed from the defendant
23 to the plaintiff; that based on a standard of reasonable care under the circumstances, the defendant
24 breached that duty; and that the breach was a cause in fact and proximate cause of the plaintiff’s
25 damages.” *Romero v. Giant Stop-N-Go of New Mexico, Inc.*, 146 N.M. 520, 522 (Ct. App. 2009).
26 The Baldwin Defendants argued that Mitchell merely recites those elements (FAC ¶¶ 119-24),
27 which is insufficient to state a claim. *See Shaeffer v. Califia Farms, LLC*, 44 Cal. App. 5th 1125,
28 1143 (2020); *see also Bichai*, 61 Cal. App. 5th at 877. In her opposition, Mitchell does not

1 address that argument. For example, she cites no case law demonstrating that the FAC’s
2 allegations meet the applicable standard. Instead, she merely copies and pastes the allegations
3 from the FAC into her brief. But simply reciting the allegations does not rebut the Baldwin
4 Defendants’ argument that those allegations are deficient.

5 *Second*, Mitchell argues that her claim that a group of 19 “Defendant Producers” “skirt[ed]
6 all industry-wide protocols” and “prioritize[d] profit over the safe handling of weapons” suffices
7 to state a claim for negligence against the *Baldwin Defendants*. Pl. Opp. 14-15. But Mitchell
8 made her allegations of “intentionally” producing *Rust* “on a low budget and cost-cutting scheme
9 that was known to create unsafe conditions for movie production crews” against only four
10 “Defendant Producers”—*and not against* the Baldwin Defendants. *Id.* at 6; *see* FAC ¶¶ 63-66.
11 Mitchell’s attempt to impute her allegations to the Baldwin Defendants through a cursory assertion
12 that all “Defendant Producers” acted in concert (*id.* ¶¶ 34-35, 66), does not suffice. *See, e.g.,*
13 *Falahati*, 127 Cal. App. 4th at 829 (“boilerplate allegation[s] [that] each defendant was the agent
14 and employee of the others” fail to state a claim against specific defendants). Instead, to state a
15 claim for negligence against each of the Baldwin Defendants, Mitchell must plead “a duty owed
16 from *the* defendant” and that “*the* defendant breached that duty.” *Romero*, 146 N.M. at 522
17 (emphasis added). She has not done so.

18 *Finally*, by not addressing the Baldwin Defendants’ argument that Mitchell has not
19 adequately pled physical injuries, she concedes it and that their demurrer should be sustained. *See,*
20 *e.g., Rudick*, 41 Cal. App. 5th at 90; *Stanley*, 10 Cal. 4th at 793. The core of Mitchell’s alleged
21 injuries are “emotional distress for which she has had to employ medical treaters, including,
22 without limitation, mental health providers.” FAC ¶ 123. But, as the Baldwin Defendants
23 explained (Def. Br. 12-13), New Mexico law permits recovery for allegedly negligently-inflicted
24 emotional injuries in limited circumstances, none of which applies here. *See, e.g., La Rosa v.*
25 *Presb. Healthcare Servs., Inc.*, 2011 WL 6016977, at *2 (Ct. App. Nov. 16, 2011) (a plaintiff may
26 recover for emotional injuries caused by another’s negligence only “if the conduct also caused a
27 personal, physical injury” or under New Mexico’s limited definition of negligent infliction of
28 emotional distress).

1 **VI. THE COURT SHOULD DENY LEAVE TO AMEND**

2 Upon sustaining a demurrer, a court should not grant a plaintiff leave to amend if there is
3 no “reasonable possibility” that her complaint’s defects can be cured. *Heckendorn v. City of San*
4 *Marino*, 42 Cal. 3d 481, 486 (1986). Here, there are no facts that Mitchell can rely on to fashion
5 viable claims under New Mexico law against the Baldwin Defendants. If there were, it was
6 Mitchell’s duty to have stated them in her opposition. She offered nothing to cure these defects.
7 The Court should therefore deny her leave to amend.

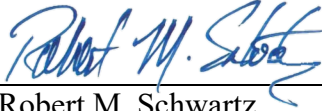
8 **CONCLUSION**

9 For the reasons stated above and in their opening brief, the Court should sustain the
10 Baldwin Defendants’ demurrer with prejudice.

11 DATED: June 14, 2022

Respectfully submitted,

12
13 QUINN EMANUEL URQUHART & SULLIVAN, LLP

14 By: 

15 Robert M. Schwartz
Luke Nikas (admission *pro hac vice* pending)

16 *Attorneys for Defendants Alexander R. Baldwin III*
17 *and El Dorado Pictures, Inc.*

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1 **PROOF OF SERVICE**

2 **STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

3 At the time of service, I was over 18 years of age and not a party to this action. I am
4 employed in the County of Los Angeles, State of California. My business address is 865 South
5 Figueroa Street, 10th Floor, Los Angeles, California 90017.

6 On June 14, 2022, I served true copies of the following document(s) described as

7 **DEFENDANTS ALEXANDER R. BALDWIN III AND EL DORADO PICTURES,
8 INC.'S REPLY IN SUPPORT OF DEMURRER TO PLAINTIFF'S FIRST
9 AMENDED COMPLAINT**

10 on the interested parties in this action as follows:

11 12 13 14 15 16 17 18 19 20 21 22	Gloria Allred Nathan Goldberg Renee Mochkatel <i>Attorneys for Plaintiff Mamie Mitchell</i>	ALLRED, MAROKO & GOLDBERG 6300 Wilshire Boulevard, Suite 1500 Los Angeles, California 90048 gallred@amglaw.com ngoldberg@amglaw rmochkatel@amglaw.com
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26 27 28	Aaron S. Dyer Michael J. Finnegan Ronald L. Cheng Derek M. Mayor <i>Attorneys for Defendants Rust Movie Productions, LLC, Ryan Donnell Smith, Langley Allen Cheney, Thomasville Pictures, LLC, Matthew DelPiano, and Cavalry Media, Inc.</i>	PILLSBURY WINTHROP SHAW PITTMAN LLP 725 South Figueroa Street, Suite 2800 Los Angeles, California 90017 aaron.dyer@pillsburylaw.com mfinnegan@pillsburylaw.com ronald.cheng@pillsburylaw.com derek.mayor@pillsburylaw.com
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<p>4 Nicole Whyte 5 Kevin B. Wheeler 6 <i>Attorneys for Defendants Anjul Nigam and Brittany</i> 7 <i>House Pictures</i></p>	<p>BREMER WHYTE BROWN & O'MEARA, LLP 20320 S.W. Birch Street, 2nd Floor Newport Beach, California 92660 nwhyte@bremerwhyte.com kwheeler@bremerwhyte.com</p>

8 **BY OVERNIGHT MAIL:** I enclosed the document(s) in a sealed envelope or package
9 addressed to the persons at the addresses listed in the Service List and placed the envelope for
10 collection and overnight mailing, following our ordinary business practices. I am readily familiar
11 with the practice of Quinn Emanuel Urquhart & Sullivan, LLP for collecting and processing
12 correspondence for overnight mailing. On the same day that correspondence is placed for
13 collection and overnight mailing, it is deposited in the ordinary course of business with the United
14 States Postal Service, in a sealed envelope with postage fully prepaid. I am a resident or employed
15 in the county where the mailing occurred. The envelope was placed in the mail at Los Angeles,
16 California.

17 I declare under penalty of perjury under the laws of the State of California that the
18 foregoing is true and correct.

19 Executed on June 14, 2022, at Los Angeles, California.

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