IN THE SUPREME COURT OF

THE STATE OF NEVADA

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DAVID SAXE PRODUCTIONS, LLC, SAXE MANAGEMENT, LLC AND DAVID SAXE Petitioners, v. The EIGHTH JUDICIAL DISTRICT COURT of the State of Nevada, In and For the COUNTY OF CLARK, the Honorable ERIKA BALLOU, District Judge, Department XXIV, Respondent. ALEXANDER MARKS, Real Party In Interest	Supreme Court Case No.: District Court Case No.: A-17-757284-C

DAVID SAXE PRODUCTIONS, LLC, SAXE MANAGEMENT, LLC, AND DAVID SAXE'S PETITION FOR A WRIT OF MANDAMUS, OR IN THE ALTERNATIVE, A WRIT OF PROHIBITION

JACKSON LEWIS P.C.

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DAVID SAXE PRODUCTIONS, LLC, SAXE MANAGEMENT, LLC AND DAVID SAXE Plaintiff(s), v. The EIGHTH JUDICIAL DISTRICT COURT of the State of Nevada, In and For the COUNTY OF CLARK, the Honorable ERIKA BALLOU, District Judge, Department XXIV, Respondent. ALEXANDER MARKS, Real Party In Interest	Supreme Court Case No.: District Court Case No.: A-17-757284-C **PETITIONERS' N.R.A.P. 26.1 DISCLOSURES**

Pursuant to NRAP 26.1, the undersigned counsel of record certifies that David Saxe Productions, LLC, is a Nevada limited liability company. Counsel further certifies that Saxe Management, LLC is a Nevada limited liability company and the manager of David Saxe Productions, LLC. David Saxe is an individual and a member of Saxe Management, LLC.

The undersigned counsel of record further certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representations are made in order that the Justices of this Court may evaluate

possible disqualification or recusal.

1. David Saxe Productions, LLC
   Defendant/ Petitioner

2. Saxe Management, LLC
   Defendant/ Petitioner

3. David Saxe
   Defendant/ Petitioner

4. Alexander Marks
   Plaintiff / Real Party in Interest

5. Kirsten A. Milton, Esq.
   Counsel for Defendants/Petitioners

6. Jeffrey Gronich, Esq.
   Counsel for Plaintiff / Real Party in Interest

DATED 10th day of November, 2021.

JACKSON LEWIS P.C.

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STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

JOSHUA A. SLIKER, ESQ., being first duly sworn, deposes and says:

1. I am an attorney with the law firm of Jackson Lewis P.C. and one of the attorneys representing Defendants/Petitioners David Saxe Productions, LLC ("DSP"), Saxe Management, LLC ("SM"), and David Saxe ("Saxe") (collectively, "Defendants") in this matter, and have knowledge of the facts discussed herein.

2. Plaintiff / Real Party in Interest Alexander Marks was formerly employed by DSP as its General Counsel. Shortly after Marks began employment in April 2015, he notified DSP's owner and manager, Saxe, that his true passion was politics rather than the law and that he was running for political office in order to pursue his dream. Marks already struggled with communication and meeting task deadlines at DSP before he began actively campaigning. As Marks increased his focus on his preferred career path of politics, he became more withdrawn from his responsibilities as General Counsel of DSP. Marks' lack of engagement at DSP culminated in a March 2, 2016 meeting where Saxe asked Marks to increase his focus on work. Fifteen minutes later, Saxe observed Marks complaining about Saxe instead of working. Saxe then terminated Mark's employment. Following his

termination, Marks filed complaints with the Nevada Labor Commissioner and Occupational Health and Safety Administration.

3. On June 22, 2017, Marks filed a Complaint in the Eighth Judicial District Court alleging three causes of action: (1) retaliation pursuant to the Fair Labor Standards Act, 29 U.S.C. § 215 ("FLSA"); (2) violation of NRS 613.040; and (3) tortious discharge. Defendants removed the case to the U.S. District Court, District of Nevada, on August 4, 2017.

4. On September 1, 2017, Defendants filed a Motion to Dismiss Plaintiff's Third Claim for Relief (Tortious Discharge). On June 12, 2018, the U.S. District Court entered an Order granting Defendants' Motion in part which effectively narrowed the scope of Plaintiff's Third Claim for Relief to include only his alleged threat to report alleged violations to the Occupational Health and Safety Administration ("OSHA").

5. On December 19, 2019, Defendants filed a Motion for Summary Judgment on all of Plaintiff's causes of action. Relevant to this Writ, Defendants argued that Plaintiff's tortious discharge claim failed as a matter of law because it was undisputed that Plaintiff did not make a complaint outside of his employer prior to the termination of his employment and thus, did not meet the definition of a whistleblower as established by this Court.

6. On August 20, 2021, the U.S. District Court granted Defendants' Motion in part and entered summary judgment on Plaintiff's First Claim for retaliation under the FLSA, but declined to exercise supplemental jurisdiction over Plaintiff's remaining claims and remanded decision to the Eighth Judicial District Court.

7. The District Court held hearings on Defendants' Motion for Summary Judgment on June 29, 2021 and July 13, 2021. After arguments from the parties, the District Court granted summary judgment on Plaintiff's Second Claim, but denied summary judgment as to Plaintiff's Third Claim for tortious discharge finding "there is a genuine dispute of material fact as to whether (1) Plaintiff put Defendants on notice of an alleged complaint to the Occupational Safety and Health Administration ("OSHA") and (2) whether Plaintiff's complaint to David Saxe was a substantial factor in Plaintiff's termination of employment."

8. The jury trial of this case is scheduled to commence on September 6, 2022.

9. Defendants have no plain, speedy or adequate remedy at law to compel the District Court to grant Defendant's Motion for Summary Judgment and dismiss Plaintiff's remaining cause of action for tortious discharge.

10. Defendants' Writ Petition is necessary to prevent the District Court from acting in excess of its jurisdiction, thereby preventing any further harm or injury to Defendants.

11. I have reviewed the facts set forth in this Petition for a Writ of Mandamus, or in the Alternative, a Writ of Prohibition, and verify they are true and correct based on my knowledge of the same and/or reference to the documentary evidence and testimony produced in this case.

12. This Petition is proffered and based upon this Affidavit, the Appendices, and the Memorandum of Points and Authorities.

FURTHER AFFIANT SAYETH NAUGHT

JOSHUA A. SLIKER, ESQ.

SUBSCRIBED and SWORN to before me this 9th day of November, 2021.

NOTARY PUBLIC

KELLEY D. CHANDLER
Notary Public, State of Nevada
Appointment No. 99-53776-1
My Appt. Expires Jun 11, 2023

I. ROUTING STATEMENT

The issues presented in this Petition are presumptively retained by the Supreme Court pursuant to NRAP 17(a)(12) as this Petition raises a question of statewide public importance. Specifically, this Petition raises the issue of whether a claim for tortious discharge for whistleblowing fails as a matter of law when it is undisputed that the employee did not report the alleged misconduct of his or her employer to the "proper authorities" prior to the termination of employee's employment, regardless if other disputes of fact exist.

II. RELIEF SOUGHT

This Court has repeatedly held that to maintain a claim for tortious discharge based on whistleblowing, the plaintiff must have reported the alleged illegal activity to the "proper authorities"; internal reporting to his or her supervisors does not suffice. *See, e.g., Wiltsie v. Baby Grand Corp.*, 105 Nev. 291, 293, 774 P.2d 432, 433 (1989). Despite undisputed evidence that Plaintiff did not report any alleged illegal activity to anyone other than his supervisor prior to the termination of his employment, the District Court denied Defendants' Motion for Summary Judgment on Plaintiff's tortious discharge claim after finding a genuine issue of material fact existed as to whether: (1) Plaintiff put Defendants on notice of an alleged complaint to the Occupational Safety and Health Administration ("OSHA"); and (2) Plaintiff's Complaint to David Saxe was a substantial factor in Plaintiff's termination of

employment, despite the fact that Plaintiff never reported any alleged misconduct to "proper authorities."

The District Court effectively sidestepped this Court's clear precedent regarding tortious discharge claims, and further improperly relied upon a mixed motive analysis to deny Defendants' summary judgment motion. *Allum v. Valley Bank*, 114 Nev. 1313, 1320, 970 P.2d 1062, 1066 (1998) (holding "the 'mixed motives' concept in the context of wrongful termination cases would [undermine] the . . . 'at-will' doctrine . . . Accordingly, [] we decline to adopt a 'mixed motives' approach to tortious discharge cases."). In doing so, the District Court committed a manifest abuse of discretion.

An appeal will not vindicate the principles set forth in *Wiltsie* and *Allum*. In order to avoid further litigation expense, Defendants seek the issuance of a writ of mandamus, or alternatively, a writ of prohibit, directing the District Court to enter an order granting Defendants' Motion for Summary Judgment, pursuant to N.R.A.P. 21, N.R.S. 34.160-.170, N.R.S. 34.190, N.R.S. 34.320-.340, and Article 6, Section 4 of the Nevada Constitution.

III. PROCEDURAL HISTORY

On June 22, 2017, Plaintiff filed a Complaint in the Eighth Judicial District Court alleging three causes of action: (1) retaliation pursuant to the Fair Labor Standards Act, 29 U.S.C. § 215 ("FLSA"); (2) violation of NRS 613.040; and (3)

tortious discharge based on whistleblowing activity. Petitioner's Appendix ("PA"), Vol. I, 0001-0010. Defendants removed the case to the U.S. District Court, District of Nevada, on August 4, 2017. *Id.* at 0011-0028.

On September 1, 2017, Defendants filed a Motion to Dismiss Plaintiff's Third Claim for Relief ("Motion to Dismiss"). *Id.* at 0029-0035. On June 12, 2018, the U.S. District Court entered an Order granting Defendants' Motion in part and dismissed Plaintiff's tortious discharge claim based on his "intention to report Defendants' alleged FLSA violations." *Id.* at 0062:16. Thus, the scope of Plaintiff's tortious discharge claim was narrowed to include only his alleged threat to report alleged violations to the Occupational Health and Safety Administration ("OSHA"). *Id.* at 0061:10-15.

On December 19, 2019, Defendants filed a Motion for Summary Judgment on all of Plaintiff's causes of action. PA, Vol. I, 0063-0092 (Motion); Vol. I, 0093-Vol. II, 0262 (Exhibits). Plaintiff filed an opposition (PA, Vol. II, 0263 – 0406), and Defendants filed a reply. PA, Vol. II, 0407-0427(Motion); 0428-0452 (Exhibits). On August 20, 2021, the U.S. District Court entered an Order granting in part and denying in part, Defendants' Motion. PA, Vol. III, 0453-0460. Specifically, the court dismissed Plaintiff's First Claim for retaliation under the FLSA. *Id.* at 0459:8-16. As to Plaintiff's remaining Second and Third Claims, the U.S. District Court declined to exercise continuing supplemental jurisdiction and remanded those claims to the

Eighth Judicial District Court ("District Court"). *Id.* at 0459:17-23. Judgment was entered in favor of Defendants on August 20, 2020. *Id.* at 0460.

On June 29, 2021 and July 13, 2021, the District Court held oral arguments on Defendants' Motion for Summary Judgment on Plaintiff's Second and Third Claims. PA, Vol. III, 0462-0475; 0476-0499. On July 22, 2021, the District Court entered an Order granting in part and denying in part, Defendants' Motion for Summary Judgment. PA, Vol. III, 0503-0505. As to Plaintiff's Second Claim for alleged violations of NRS 613.040, the District Court found there was no genuine dispute of material fact "that Defendant did not 'make any rule or regulation' that prohibited or prevented [Plaintiff] from 'engaging in politics or becoming a candidate for any public office'" and granted summary judgment in favor of Defendants. *Id.* at 0504:10-19. As to Plaintiff's Third Claim for Tortious Discharge, the District Court denied summary judgment finding "there is a genuine dispute of material fact as to whether (1) Plaintiff put Defendants on notice of an alleged complaint to the Occupational Safety and Health Administration ("OSHA") and (2) whether Plaintiff's complaint to David Saxe was a substantial factor in Plaintiff's termination of employment." *Id.* at 0505:1-4. Notice of Entry of Order was filed on July 23, 2021. *Id.* at 0500-0508. The jury trial of this case is scheduled to commence on September 6, 2022. *Id.* at 0510.

IV. STATEMENT OF FACTS

A. Plaintiff's Employment with DSP.

Defendant David Saxe Productions, LLC ("DSP") employed Plaintiff Alexander Marks ("Marks" or "Plaintiff") as its General Counsel from April 2015 until March 2, 2016. PA, Vol. I, 0103:6-10. David Saxe, the owner and manager of DSP, is responsible for the day-to-day management of Defendant DSP and oversees DSP's accounting, legal, and human resources departments. *Id.* at 0101:21-0102:14. Saxe hired Plaintiff after a referral from Plaintiff's mother, who worked at a coffee shop frequented by Saxe. *Id.* at 0104:16-0105:5. During the interview process, Saxe conveyed his expectation that Plaintiff would be in the office and working during DSP's normal office hours of 8:30 a.m. to 5:00 p.m., Monday through Friday. *Id* at 0106:15-19, 0107:9-14.

As General Counsel, Plaintiff was responsible for ensuring DSP was operating in compliance with the law, specifically, his "primary focus was contracts and fair labor." *Id.* at 0151:10-19. Plaintiff testified that in his "role as general counsel . . . [he] was supposed to talk to [Defendant Saxe] as an attorney about issues that [] [he] thought were in violation of wage and hour loss [sic]." *Id.* at 0189:25-0190:4. Plaintiff testified, "my job is compliance. If I find an issue, I have to fix it. I don't look for issues but if they arise, that's my job as general counsel, to look for the company's best interest." *Id.* at 0154:14-17. Plaintiff further testified that "it was

[his] job" as General Counsel to "keep[] [David Saxe] compliant" with the law. *Id.* at 0137:16-25; 0139:7-55:3.

Shortly after Plaintiff commenced employment, he announced his intention to run for political office. *Id.* at 0108:6-16. Plaintiff told Saxe not to worry about Plaintiff's ability to balance his duties at DSP with his upcoming campaign. *Id.* at 0110:11-24. Despite these assurances, Saxe was concerned about Plaintiff's ability to focus on his work at DSP while campaigning. *Id.* at 0111:17-0112:19. Indeed, Plaintiff described running for political office as very time consuming and admitted he worked on his campaign during DSP work hours. *Id.* at 0134:6-23, 0159:16-21. In fact, shortly after Plaintiff told Saxe of his intention to run for political office, Saxe walked by Plaintiff's office and observed him talking about his political goals on the telephone during the workday. *Id.* at 0113:12-118:6. In another incident, Saxe learned that Marks appeared to be directing the marketing team to assist him with his campaign. *Id.* at 0114:7-17.

Saxe testified that Ania Koslowski, DSP's sales and marketing manager, asked him to "get Alex away from people," and stated "[h]e's driving us [expletive] crazy with his political stuff." *Id.* at 0115:5-9. DSP employee Andrew August ("August") testified that "Alex [Marks] must have called me into his office at least 20 times just to brag to me that he was running for state senate and to try to ask my opinion on things like his website [and] logo design." *Id.* at 0095:4-23; 0097, ¶ 4. Indeed,

consistent with Saxe's February and March 2016 emails to Plaintiff, August testified that "Alex admitted to me that David told him to stop working on his campaign at the office and to stop distracting and soliciting the employees with his political campaign, but Alex stated that he didn't 'give a shit' and was going to do it anyway." *Id.* at 0095:4-23; 0097, ¶ 5.

Increasingly, Saxe could not locate Plaintiff in the office because Plaintiff was leaving work in the middle of the day for campaign meetings. On one occasion, Saxe could not find Plaintiff in the office at 10:15 a.m. PA, Vol. I, 0203. Saxe sent Plaintiff an email stating "I'm happy for you about your political aspirations but I shouldn't have to pay for it. Constantly leaving the office early, not showing up, working on your campaign out of the office etc. doesn't work for me. Not sure why you aren't in office now but when/if you come back we need to discuss." *Id.* Plaintiff admitted he was absent that day because he was meeting with a lobbyist to solicit funds for his campaign. *Id.* at 0157:3-0158:7.

Other DSP employees noticed that Plaintiff seemed to spend a lot of the workday focused on his campaign activities. *Id.* at 0097, ¶ 7. For example, former DSP Controller Larry Tokarski ("Tokarski") testified that Plaintiff asked him his opinion about his campaign logo, discussed his campaign with him, worked on his campaign at the office, and even left the office to work on campaign-related activities. *Id.* at 0212:14-0213:8. DSP's Vice President of Operations, Veronica

Duran ("Duran"), noticed that Plaintiff would leave the office for two-hour lunches, arrive later in the mornings, and leave work early on an increasingly frequent basis as the campaign season progressed. *Id.* at 0222, ¶ 7. When Duran walked by Plaintiff's office, she often observed Plaintiff working on his personal tablet rather than his work computer. *Id.* at ¶ 8. Based on her observations, Duran estimated that Plaintiff spent half of his time in the office working on his personal tablet. *Id.* at ¶ 9. Duran was heavily involved in assisting Saxe with the day-to-day management of all departments at DSP, including the legal department, and also noticed that Plaintiff often failed to complete tasks in a timely fashion. *Id.* at ¶ 10. Duran believed Plaintiff could have completed all of his assigned tasks if he had worked a forty-hour workweek. *Id.* at 0223, ¶ 11. Duran shared her concerns regarding Plaintiff's lack of focus and overall job performance with Saxe. *Id.* at ¶ 12.

As early as June 2015, Saxe had already started to express frustration with Plaintiff's failure to meet deadlines, as well as communicate his status on the projects to which he was assigned. PA, Vol. I, 0226, ¶ 6; 0229. Saxe testified that, during his employment, Plaintiff was "**constantly**" missing deadlines. *Id.* at 0115:18-25 (emphasis added). For example, Plaintiff was responsible for procuring work visas for performers coming from outside the United States to perform in one of Saxe's productions. *Id.* at 0118:7-12. However, Plaintiff failed to procure the visas on time, which resulted in the performers having to arrive later than expected, as well as

increasing the associated costs to DSP, which had to pay for expedited processing fees due to Plaintiff's delay. *Id*. at 0118:2-9; 0226, ¶ 10; 0237-0240. Additionally, in October 2015, Plaintiff failed to timely secure a deposit for a show, did not notify Saxe of this failure, and still let the show open without securing the appropriate funds. *Id.* at 0226, ¶ 9; 0234-0234. Plaintiff also failed to properly manage and coordinate with outside counsel regarding lawsuits those counsel were handling for DSP. *Id.* at 0119:18-0120:5.

Further, in as early as August 2015, Saxe told Plaintiff that he was considering terminating Plaintiff's employment for performance issues, stating "[y]our attitude has been poor for a while now and your performance lackluster at best. This isn't working for me. Let's meet today at noon to discuss our options: [t]ermination, [quitting], [o]r getting on the same page!" PA, Vol. I, 0226, ¶ 7; 0230-0231. Plaintiff admitted he understood that at various points throughout his employment, Saxe had issues with his performance, and that only four months after Plaintiff was hired, Saxe was considering terminating Plaintiff's employment. *Id.* at 0153:8-19; 0195:11-14.

Plaintiff's failure to communicate with Saxe was a persistent issue throughout his employment at DSP. *Id.* at 0226, ¶ 8; 0232-0233. Plaintiff agreed that, throughout his employment, he needed to do a better job of communicating with Saxe and Saxe was already telling him he needed to do so in August 2015. *Id.* at 0193:5-0194:6. Plaintiff continued to struggle with communication until his termination, as evidence

by a January 28, 2016 email from Plaintiff to Saxe wherein Plaintiff promised to communicate more with Saxe in response to a request for the statuses of several outstanding projects. *Id.* at 0227, ¶ 11; 0241-0243. Ultimately, Saxe believed Plaintiff's failure to perform his job duties "got progressively worse." *Id.* at 0121:13-19.

B. The Termination of Plaintiff's Employment.

For Saxe, it became clear in or around February 2016 that Plaintiff "was clearly not into work (sic) for me" and his decision to run for political office was coming at the expense of his ability to perform sufficiently his job duties as General Counsel. *Id.* at 0124:4-5; 0226, ¶ 12; 0244-0245. In a February 29, 2016 email, Saxe reiterated that Plaintiff's run for political office had been and continued to "interfere with [] [his] obligations at work." *Id.* On March 1, 2016, Saxe once again told Plaintiff, "I am very excited for you that you are running for office, but it is not fair that you conduct your campaign business while at the office and during hours you are being paid by dsp." *Id.* at 0227, ¶ 13; 0246-0247.

On March 2, 2016, Saxe decided to terminate Plaintiff's employment. PA. Vol. I, 0123:7-15. Saxe made the decision after a conversation with Plaintiff where Saxe asked Marks to show up to the office and focus on work. *Id.* at 0123:23-0124:15. Approximately 15 minutes after Saxe asked Plaintiff to focus on work, Saxe observed Plaintiff call another employee into Plaintiff's office to complain about

Saxe, rather than work on his assigned tasks as Saxe had directed. *Id.* at 0125:2-154:2. Saxe called Plaintiff back into his office and said, "All right. Apparently you didn't do what I'm asking of you, and it doesn't work for me, and we have grown apart. . . . you're just not my guy, and I don't trust you anymore, and you have no respect for me or this job, so I'm going to let you go." *Id.* at 0127:20-0128:8. When asked about this conversation during his deposition, Plaintiff testified, in part, that Saxe "said, you're just never here, this isn't working for me, you're fired." *Id.* at 0198:11-15.

C. Plaintiff's After-the-Fact Characterization of his Termination.

During his deposition, Plaintiff testified that he believed he was terminated for conducting an alleged "wage investigation" on behalf of himself concerning the day he left work early and received full pay. PA, Vol. I, 0165:8-21; 0188:4-5. Plaintiff testified this was the actual reason for his suit: "the Friday of him telling me not to pay me, that was the original comment he had made. So I kind of told [Tokarski] that that was the catalyst of everything. . . .". *Id.* According to Plaintiff, the alleged issue of "illegally deducting exempt workers' wages" and "wage theft" stemmed from a conversation he had with Tokarski on February 27, 2016, where Tokarski told Plaintiff that Saxe had instructed him not to pay Plaintiff for the previous day when Plaintiff had left work early due to illness. *Id.* at 0146:5-11. In response, Plaintiff claimed he asked Tokarski for three years' worth of payroll records for exempt,

salaried employees, and Tokarski responded that he could not do so because he was too busy. *Id.* at 0146:12-21, 0147:8-19. Although Tokarski did not recall Plaintiff's alleged request for three years of payroll records, both Plaintiff and Tokarski confirmed that Tokarsksi never communicated Plaintiff's alleged request for payroll records to Saxe. *Id.* at 0147:20-0148:10; 0216:21-0217:5; 0218:12-17. In any event, Plaintiff's admits that DSP did in fact pay him for the sick day, and that he never told Saxe of any threat of going to the Labor Commission. *Id.* at 0138:14-0139:8.

Plaintiff also testified that "five minutes before" Saxe terminated his employment on March 2, 2016, Plaintiff told Saxe he was doing a "wage investigation." *Id.* at 0144:7-21; 0145:8-13; 0196:22-0197:9. Plaintiff did not mention any wage issues regarding non-exempt employees or threaten to go to the Labor Commissioner. *Id.* During his deposition, Plaintiff ultimately testified that he had no knowledge or evidence demonstrating that Saxe was aware of Plaintiff's alleged wage claims prior to his termination. *Id.* at 0181:8-13; 0199:21-0200:25. Saxe also confirmed that neither Tokarski nor Plaintiff asked him for any employee payroll information. *Id.* at 0122:10-25. And, Saxe's testimony is consistent with Plaintiff's version of the last conversation he had with Saxe, in which, according to Plaintiff, he said to Saxe "this is about the wage investigation" and Saxe said, "I don't know what you're talking about." *Id.* at 0141:14-0142:15. Notably, Tokarski denied that there were any specific instances where DSP employees were not being

paid properly. *Id.* at 0207:14-16.

Tokarski also testified that Plaintiff and he talked about "the genesis of everything was [Plaintiff] not getting paid for the day he worked." *Id.* at 0214:21-0215:4. Plaintiff also emailed another DSP employee and claimed "David [Saxe] and I had a slight disagreement over not illegally deducting exempt workers' wages today, so I was let go. I went down fighting for workers, so that's fine." *Id.* at 0191:20-0192:14; 0249. He also told his friend, that he believed he "was terminated for looking into wage theft," that he "was given the reason of political campaigning . . . but [] [he] believe[d] it was something else." *Id.* at 0162:17-0163:8.

D. Plaintiff's Post-Termination Complaints to the Labor Commissioner and OSHA.

On March 3, 2016, the day after his termination, Plaintiff filed two complaints with the Office of the Labor Commissioner for the State of Nevada ("Labor Commissioner"). PA, Vol. I, 0164:13-18; PA, Vol. II, 0250-0255. Plaintiff drafted the content of the complaints after his termination and delivered the complaints by hand. PA, Vol. I, 0166:9-24; 0167:13-0168:7.

On March 4, 2016, Plaintiff filed a complaint with OSHA. PA, Vol. II, 0256-0258. Like his complaint to the Labor Commissioner, Plaintiff admitted that he "never actually filed a complaint with OSHA until after [his] employment was terminated." PA, Vol. I, 0177:16-0178:7; 0179:10-0180:7; 0494:11-12.

According to Plaintiff, he first became aware of an alleged OSHA "issue" in November 2015 when he arranged a theater tour for a group of students. PA, Vol. I, 0169:18-0170:13. As he walked the students through the theater, Plaintiff claims he noticed an employee welding, learned that certifications were required to perform welding, and discovered after the fact that the employee he observed during the tour did not have a certification. *Id*. at 0170:14-24; 0171:6-16; 0172:24-0173:11. Plaintiff, Duran, and Saxe began working to resolve the issue by identifying employees that had previous certifications and other employees whom it be would be cost-effective to have certified. *Id.* at 0174:25-0175:21. Plaintiff admitted he did not observe a single DSP employee performing welding without certification after January 2016. PA, Vol. I, 0177:16-0178:7; 0179:10-0180:7; PA, Vol. II, 0256-0258.

Plaintiff's OSHA complaint also contained an allegation that the V Theater did not have a hot works permit. PA, Vol. I, 0181:20-0182:2. However, Plaintiff admitted he never talked to anyone outside of DSP about the alleged permit issue and that he discussed the permits with Saxe at the same time as the welding issue. *Id*. at 0176:8-16. Plaintiff also admitted he never mentioned the alleged OSHA issues to Saxe in a context other than his role as General Counsel and that, his Complaint allegation, wherein he alleged he "told Saxe that he would have to report the violations to OSHA" was mischaracterized. *Id.* at 0183:15-0184:9; 0185:4-18; 0186:12-0187:3.

V. STANDARD FOR WRIT RELIEF

A writ of mandamus is available to compel the performance of an act that the law requires or to control an arbitrary or capricious exercise or manifest abuse of discretion. NRS 34.160; *see Int'l Game Tech., Inc. v. Second Judicial Dist. Court*, 124 Nev. 193, 197, 179 P.3d 556, 558 (2008). "A manifest abuse of discretion is [a] clearly erroneous interpretation of the law or a clearly erroneous application of a law or rule." *See State v. Eighth Judicial Dist. Court (Armstrong)*, 127 Nev. 927, 932, 267 P.3d 777, 780 (2011). A writ of prohibition is available to arrest the proceedings of a district court exercising its judicial functions, when such proceedings are in excess of the jurisdiction of the district court. NRS 34.320.

The decision of whether to consider a petition for extraordinary relief is consigned to this Court's discretion. *See Smith v. Eighth Judicial Dist. Court,* 107 Nev. 674, 677, 679, 818 P.2d 849, 851, 853 (1991). This Court has exercised this discretion when judicial economy is served by considering the petition. *See W. Cab Co. v. Eighth Judicial Dist. Court,* 133 Nev. 65, 67, 390 P.3d 662, 667 (2017); *Smith v. Eighth Judicial Dist. Court*, 113 Nev. 1343, 1345, 950 P.2d 280, 281 (1997) ("The interests of judicial economy . . . will remain the primary standard by which this court exercises its discretion"). In addition, this Court has considered writ petitions challenging a district court's denial of summary judgment (1) "where no disputed factual issues exist and, pursuant to clear authority under a statute or rule, the district

court [was] obligated to dismiss [the] action;" or (2) "when an important issue of law needs clarification and this court's review would serve considerations of public policy or sound judicial economy and administration." *Smith*, 113 Nev. at 1345; *Int'l Game Tech., Inc.*, 122 Nev. at 142. Neither writ will issue, however, if petitioner has a plain, speedy and adequate remedy in the ordinary course of law. NRS 34.170; 34.330.

Here, The District Court manifestly abused its discretion when it denied summary judgment on Plaintiff's tortious discharge claim. *State v. Eighth Judicial Dist. Court (Armstrong),* 127 Nev. 927, 932, 267 P.3d 777, 780 (2011) (internal citations omitted) (noting that mandamus is available to correct decisions based entirely on improper reasons). There are no genuinely disputed facts and clear authority requires the District Court to enter summary judgment as to Plaintiff's tortious discharge claim because it is undisputed that Plaintiff did not report any alleged unlawful activity to the "appropriate authorities" until *after* his termination. *See, e.g., Wiltsie,* 105 Nev. at 293.

Further, the issues raised in this Petition are appropriate for interlocutory review because it involves: (1) an issue, if decided in favor of Defendants, that is entirely case dispositive, and (2) clarifies and affirms the requirements for maintaining a tortious discharge claim based on whistleblowing. Additionally, it addresses a recurring and important issue of the bounds of common law tortious

discharge claims based on whistleblowing and this Court's holdings indicating such claims are narrowly focused. This Court has repeatedly stated that a writ of mandamus is an appropriate remedy for important issues of law that need clarification or that implicate important public policies. *Lowe Enters. Residential Ptnrs., L.P. v. Eighth Judicial Dist. Court*, 118 Nev. 92, 97 (2002); *Business Comput. Rentals v. State Treasurer*, 114 Nev. 63, 67 (1998).

Accordingly, Defendants respectfully request that this Honorable Court exercise its discretion to consider Petitioners/Defendants' Petition for a Writ of Mandamus, or in the alternative, a Writ of Prohibition, as there is no adequate, speedy remedy available at law to address this continuing injury to Defendants. *See Dzack v. Marshall*, 80 Nev. 345, 348, 393 P.2d 610, 611 (1964) ("The mere fact that other relief may be available does not necessarily preclude the remedy of mandamus.).

VI. STANDARD OF REVIEW

This Court reviews a district court's denial of summary judgment *de novo*. *Wood v. Safeway, Inc.*, 121 Nev. 724, 729, 121 P.3d 1026, 1029 (2005); *Helfstein v. Eighth Judicial Dist. Court*, 131 Nev. 909, 913, 362 P.3d 91, 94 (2015) ("However, we review questions of law . . . *de novo*, even in the context of writ petitions."). The District Court must grant summary judgment when "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of

law." NRCP 56(c). The substantive law controls which factual disputes are material and will preclude summary judgment; other factual disputes are irrelevant. *Wood*, 121 Nev. at 731. "A genuine issue of material fact is one where the evidence is such that a reasonable jury could return a verdict for the non-moving party." *Posadas v. City of Reno*, 109 Nev. 448, 452, 851 P.2d 438, 441-42 (1993). In the absence of any contrary evidence, summary judgment is appropriate. *See Lee v. GNLV Corp.*, 117 Nev. 291, 294, 22 P.3d 209, 211 (2001).

VII. ARGUMENT

A. The District Court Erred in Finding a Genuine Issue of Material Fact Regarding Plaintiff's Post-Termination OSHA Complaint.

This Court has "severely limited [public policy tortious discharge actions] to those *rare and exceptional cases* where the employer's conduct violates strong and compelling public policy." *Sands Regent v. Valgardson*, 105 Nev. 436, 440, 777 P.2d 898, 900 (1989) (emphasis added); *see also State v. Eighth Judicial District Court (Anzalone)*, 118 Nev. 140, 151-52, 42 P.3d 233, 240-41 (2002). Here, Plaintiff claims he was tortiously discharged for engaging in whistleblowing activity. PA, Vol. I, 0009. While this Court has recognized that whistleblowing can serve as the basis for a tortious discharge claim, the necessary circumstances are not present in this case such that Plaintiff can maintain a tortious discharge claim.

In order to maintain a tortious discharge claim for whistleblower activity, the employee **must** report the unlawful activity to the "appropriate authorities" **outside**

of his employment. *Wiltsie*, 105 Nev. at 293, 774 P.2d at 433 (emphasis added). Internal complaints to management or the employee's boss do not suffice because such activity is deemed as "merely acting in a private or proprietary manner," and do not qualify an employee as a whistleblower. *Id.*, 105 Nev. at 293; *Scott v. Corizon Health Inc.*, No. 3:14-CV-00004-LRH-VPC, 2014 U.S. Dist. LEXIS 65066, *6-7 (D. Nev. 2014) (citing *Biesler v. Prof. Sys. Corp.*, 177 Fed. Appx. 655, 656 (9th Cir. 2006) ("Nevada precedent is clear, therefore, that unless an employee reports the employer's allegedly illegal activity to authorities outside of the company, he [] cannot claim protected whistleblower status.")).

Relying on *Wiltsie*, this Court, the U.S. District Court of Nevada, and the U.S. Court of Appeals for the Ninth Circuit have all repeatedly dismissed tortious discharge claims specifically because the employee did not report the alleged illegal activities "to the appropriate authorities *outside the company*." *Whiting v. Maxim Healthcare Servs., Inc.*, No. 56432, 2012 Nev. Unpub. LEXIS 1215, at *2 (Nev. Sept. 13, 2012); *Reuber v. Reno Dodge Sales, Inc.*, No. 61602, 2013 Nev. Unpub. LEXIS 1658, at *3 (Nev. Nov. 1, 2013) (citation omitted); *Ainsworth v. Newmount Mining Corp.*, No. 56250, 2012 Nev. Unpub. LEXIS 435, at *7-8 (2012); *Biesler*, 177 Fed. Appx. at 656; *see Van Asdale v. Int'l Game Tech.*, No. 11-16538, No. 11016626, 549 Fed. Appx. 611, 2013 U.S. App. LEXIS 19843, at *5 (9th Cir. 2013); *Wilson v.*

Greater Las Vegas Ass'n of Realtors, Case No. 2:14-cv-00362-APG-NJK, 2016 U.S. Dist. LEXIS 58595, at *18-19 (D. Nev. 2015).

Here, it is undisputed that Plaintiff did not report any conduct to "appropriate authorities" *outside* of his employer as required to state a claim in Nevada until after his termination. PA, Vol. I, 0179:10-0180:7; PA, Vol. II, 0256-0258. It logically follows that the adverse action – i.e., termination – could not have been taken if the employee (never) actually complained to "appropriate authorities" *outside* of his employer prior to termination. This fact alone is fatal to Plaintiff's tortious discharge claim and the District Court erred by not granting summary judgment in Defendants' favor because whether Plaintiff put Defendants on notice of a threatened complaint to OSHA is not a genuine factual issue. In other words, it has no bearing on whether Plaintiff can maintain his tortious discharge claim for whistleblowing in the first instance.

Moreover, during his deposition, Plaintiff confirmed that not only did he not complain to any outside authority, but he did not decide to "expose" any alleged illegal OSHA practices contrary to the allegations in his Complaint. Specifically, Plaintiff testified that, in his discussions with Saxe, he "wasn't explicit I'm going to OSHA. It was these are reportable violations" and, instead, was simply "advising [] [Saxe] as the general counsel that [] [he] thought these were violations of OSHA." PA, Vol. I, 0185:14-0186:18. Marks even further clarified to Saxe that "that's not

I'm reporting you to OSHA. That's different." *Id*. at 0186:24-0187:3. The undisputed material fact is clear: Plaintiff never even threatened, much less actually reported – as he must under the law – to report any alleged violation to OSHA during his employment.

Even if the Court were to look beyond Plaintiff's failure to report the alleged OSHA issues outside of the company prior to his termination, Plaintiff cannot meet the heavy burden to establish proximate or *actual* cause, especially where the only instances he allegedly mentioned OSHA to Saxe prior to his termination were in his advisory role as General Counsel. Marks testified his role at DSP was specifically to ensure that Defendants were in compliance with the law. PA, Vol. I, 0154:14-17 ("my job is compliance… [because] that's my job as general counsel, to look for the company's best interest."). Indeed, Marks testified that he never mentioned the alleged OSHA issues to Saxe in a context other than his role as General Counsel and that, his Complaint allegation, wherein he alleged he "told Saxe that he would have to report the violations to OSHA" was mischaracterized. *Id.* at 0183:15-0184:9; 0185:4-13. As such, no reasonable person would have understood such a statement to mean that Marks filed, or even was threatening to file, a complaint with OSHA. In the absence of such a threat and the presence of multiple, undisputed performance issues, Marks cannot show that his OSHA-related discussions were a cause, let alone *the proximate cause*, of his termination.

Accordingly, Marks' conduct is insufficient as a matter of law to establish a whistleblower claim and thus, the District Court should have granted summary judgment in Defendants' favor. *Wiltsie*, 105 Nev. at 293.

B. The District Court Erred in Finding that Genuine Issues of Material Fact Existed Regarding Whether Plaintiff's Alleged Whistleblowing was a Substantial Factor for his Termination.

The District Court further denied summary judgment on Plaintiff's Third Claim because it found a "genuine dispute of material fact as to . . . (2) whether Plaintiff's complaint to David Saxe was a *substantial factor* in Plaintiff's termination of employment." PA, Vol. III, 0505, ¶ 9 (emphasis added). This was an error of law.

1. Internal complaints are insufficient to sustain a tortious discharge claim.

As an initial matter, whether Plaintiff complained to David Saxe is immaterial because even if he did so, such an internal complaint to his supervisor is insufficient to sustain a tortious discharge claim for whistleblowing. *See e.g., Wiltsie*, 105 Nev. at 293.

2. The District Court erroneously applied the Title VII burden shifting framework to Plaintiff's tortious discharge claim.

Plaintiff argued (and the District Court apparently accepted) that the burden shifting framework applicable in Title VII discrimination cases should also be

applied to Plaintiff's tortious discharge claim.[1] PA, Vol. II, 0282:1-0283:11; 0494:17-0497:23. However, this Court has expressly rejected this approach. *Allum*, 114 Nev. at 1319-20. In *Allum v. Valley Bank*, this Court held:

> We hold that recovery for retaliatory discharge under state law may not be had upon a "mixed motives" theory; thus, a plaintiff must demonstrate that his protected conduct was the proximate cause of his discharge.
> . . .
> We note that the case at bar involves tortious discharge - it is not a discrimination case. Even if it were, judicial application of a "mixed motives" analysis occurs in only a "small subset of all employment discrimination cases in which the employer may have had more than one motive." *Miller v. Cigna Corp.*, 47 F.3d 586, 597 n.9 (3d Cir. 1995). Further, we conclude that the use of the "mixed motives" concept in the context of wrongful termination cases would have the effect of undermining the Nevada legislature's intent in creating the "at-will" doctrine. Accordingly, until the legislature chooses to intervene, we decline to adopt a "mixed motives" approach to tortious discharge cases.

Id. at 1320. Thus, the District Court erred as a matter of law in relying on the Title VII burden shifting framework to deny summary judgment.

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[1] "In a Title VII mixed motives case, the plaintiff can recover upon a showing that the adverse employment decision resulted from a mixture of legitimate reasons and prohibited discriminatory motives." *Allum v. Valley Bank*, 114 Nev. 1313, 1318, 970 P.2d 1062, 1065 (1998) (internal citations omitted)." To succeed on a mixed-motives theory, the plaintiff must demonstrate that 'it is more likely than not that a protected characteristic 'played a motivating part in [the] employment decision.'" *Id.* (quoting *Sischo-Nownejad v. Merced Community College Dist.*, 934 F.2d 1104, 1110 (9th Cir. 1991). "The burden then shifts to the defendant employer to show that it would have made the same decision absent the unlawful motive." *Id.*

3. The District Court applied the incorrect standard of causation.

Plaintiff cannot establish a tortious discharge claim merely by showing that his whistleblowing was a "substantial factor" in the decision to terminate his employment. PA, Vol. II, 0282:1-0283:11; 0494:17-0497:20. Rather, Plaintiff's burden "is to prove that the protected conduct was the "proximate cause" of [his] discharge; a "mixed motives" theory is insufficient for tortious discharge." *Cummings v. United Healthcare Servs*., 2014 U.S. Dist. LEXIS 44789, *17 (D. Nev. 2014) (citing *Allum v. Valley Bank of Nev.*, 114 Nev. 1313, 1318, 970 P.2d 1062 (1998) and discussing that "proximate" cause means "actual" cause); *see also Stephens v. One Nev. Credit Union*, 2016 U.S. Dist. LEXIS 75302, *11 (D. Nev. 2016) ("To prevail on his tortious discharge claim, [employee] must show that his complaint was the proximate or actual cause for his termination.").

Defendants were not able to locate any Nevada case law discussing the distinction between "substantial factor" and "proximate cause." However, in *Rickman v. Premera Blue Cross*, the Washing Supreme Court explained that:

> We recognize that causation in a wrongful discharge claim is not an all or nothing proposition. The employee "need not attempt to prove the employer's sole motivation was retaliation." [] Instead, the employee must produce evidence that the actions in furtherance of public policy were "a cause of the firing, and [the employee] may do so by circumstantial evidence." [] This test asks whether the employee's conduct in furthering a public policy was a "'substantial'" factor motivating the employer to discharge the employee. *Id.* at 71.

184 Wash. 2d 300, 314, 358 P.3d 1153, 1160 (2015).

Similarly, in *Estes v. Lewis & Clark Coll.*, the Oregon Court of Appeals held that in order for a plaintiff to maintain a claim for tortious discharge, the plaintiff:

> must establish a "causal connection' between a protected activity and the discharge. [] That is, the employee's protected activity must have been a 'substantial factor' in the motivation to discharge the employee. [] As we have said in the analogous context of discrimination actions, to be a substantial factor, the employer's wrongful purpose must have been "a factor that made a difference" in the discharge decision.

152 Or. App. 372, 381, 954 P.2d 792, 796-97 (1998).

In other words, "substantial factor" necessarily involves consideration of mixed motives. Otherwise, there would be no need to consider whether the whistleblowing activity was "the factor that made a difference" in the decision to terminate Plaintiff's employment. This Court has made it clear that "[a] plaintiff may not recover based on a mixed-motives theory (e.g., employer had legitimate and illegitimate reason for the discharge)." *Allum*, 114 Nev. at 1310-20, 970 P.2d at 1066. In other words, Plaintiff must demonstrate that DSP's motivation was "purely wrongful." *Sproul v. Washoe Barton Med. Clinic*, 2013 U.S. Dist. LEXIS 60054, *17, 2013 WL 1792187 (D. Nev. 2013) (citing *Allum*, 970 P.2d 1062). Thus, the District Court erred, and summary judgment should have been entered in Defendants' favor.

4. Plaintiff cannot prove his alleged complaint was the proximate (actual) cause for his termination.

The District Court erred in finding a genuine dispute of material fact because Plaintiff failed to present any facts sufficient to establish that his employment was terminated for anything other than his inability to perform sufficiently his duties as General Counsel – much less that the proximate cause of his termination was retaliatory animus on the part of Saxe for Plaintiff's alleged OSHA complaints, complaints he admittedly did not make, or even threaten to make, prior to the termination of his employment. PA, Vol. I, 0185:14-18; 298:12-299:3 ("That's not I'm reporting you to OSHA. That's different.").

In short, Plaintiff cannot meet the heavy burden to establish proximate or *actual* cause, especially where the only instances wherein he allegedly mentioned OSHA to Saxe prior to his termination were in his advisory role as General Counsel. Plaintiff testified his role at DSP was specifically to ensure that Defendants were in compliance with the law. *Id.* at 0154:14-17 ("my job is compliance… [because] that's my job as general counsel, to look for the company's best interest."). Indeed, Plaintiff testified that he never mentioned the alleged OSHA issues to Saxe in a context other than his role as General Counsel and that, his Complaint allegation, wherein he alleged he "told Saxe that he would have to report the violations to OSHA" was mischaracterized. *Id.* at 0183:15-0184:9; 0185:4-13. As such, no reasonable person would have understood such a statement to mean that Plaintiff

filed, or even was threatening to file, a complaint with OSHA. In the absence of such a threat and the presence of multiple, undisputed performance issues, Plaintiff cannot show that his OSHA-related discussions were a cause, let alone the proximate cause, of his termination.

Further, there is no question that Plaintiff is unable to establish "purely wrongful" motivation where the record is replete with evidence that the DSP's motive for terminating Plaintiff was his persistent inability to perform his job duties. *Sproul*, 2013 U.S. Dist. LEXIS 60054 at *17. Plaintiff's performance issues were evident as early as June of 2015, well before he allegedly became aware of a welding issue in November 2015. PA, Vol. I, 0226, ¶ 6; 0241-0243; 0169:18-0170:13. Saxe's expressed dissatisfaction with Plaintiff's performance and contemplation of his termination before Plaintiff engaged in any alleged protected activity sufficient to state a claim for tortious discharge, negates Plaintiff's allegation of a retaliatory motive for his termination, as does Plaintiff's characterization of the cooperative and advisory nature of the alleged OSHA discussions with Saxe and Duran. *Id.* at 0174:25-0175:21; 0186:12-18.

Even if the Court were to conclude that Plaintiff's discussions with Saxe regarding OSHA contributed in part to Saxe's motive for termination, Plaintiff cannot establish, as a matter of law, that Saxe's entire motive was based on these discussions.

The U.S. District Court's decision in *Blanck v. Hager*, 360 F. Supp. 2d 1137, No. CV-N-04-0051-PMP (RAM) (D. Nev. 2005) is instructive here. In *Blanck*, the court found that "even assuming Plaintiff's actions were a motivating cause of his termination, *it is evident that his actions were but one of many reasons for his termination as General Counsel*…[i]n Nevada, a Plaintiff seeking relief under a theory of tortious or retaliatory discharge must demonstrate that his protected conduct was the proximate cause of his termination." *Id.* at 1156 (citing *Allum*, 970 P.2d at 1066). Here, as in *Blanck*, Plaintiff's tortious discharge claim must be rejected because he "fails to provide any evidence that his protected conduct was the proximate cause of his termination, and not one of many causes." *Id.*

Accordingly, the District Court erred in denying Defendants' Motion for Summary Judgment on Plaintiff's tortious discharge claim.

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VIII. CONCLUSION

Based on the foregoing, Defendants/Petitioners respectfully request that this Honorable Court exercise its discretion and grant the instant Writ Petition.

DATED this 10th day of November, 2021.

JACKSON LEWIS P.C.

/s/ Joshua A. Sliker

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IN THE SUPREME COURT OF

THE STATE OF NEVADA

****

DAVID SAXE PRODUCTIONS, LLC, SAXE MANAGEMENT, LLC AND DAVID SAXE Plaintiff(s), v. The EIGHTH JUDICIAL DISTRICT COURT of the State of Nevada, In and For the COUNTY OF CLARK, the Honorable ERIKA BALLOU, District Judge, Department XXIV, Respondent. ALEXANDER MARKS, Real Party In Interest	Supreme Court Case No.: District Court Case No.: A-17-757284-C

NRAP 28.2 CERTIFICATE

1. I hereby certify that this Petition complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRCP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

[X] This brief has been prepared in a proportionally spaced typeface using Microsoft Word 360 in Times New Roman 14-point; or

[ ] This brief has been prepared in a monospaced typeface using [state name and version of word-processing program] with [state number of characters per inch and name of type style].

2. I further certify that this Petition complies with the page- or type-volume limitations of NRAP 32(a)(7), excluding the parts of the brief exempted by NRAP 32(a)(7)(C), because it is either:

[X] Proportionately spaced, has a typeface of 14 points or more, and contains 6,800 words; or

[ ] Monospaced, has 10.5 or fewer characters per inch, and contains _____ words or _____ lines of text; or

[ ] Does not exceed ___ pages.

3. Finally, I hereby certify that I have read this Petition, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this Petition complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found.

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I understand that I may be subject to sanctions in the event that this Petition is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED 10th day of November, 2021.

JACKSON LEWIS P.C.

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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Jackson Lewis P.C. and that on this 10th day of November, 2021, I caused to be served a true and correct copy of **DAVID SAXE PRODUCTIONS, LLC, SAXE MANAGEMENT, LLC, AND DAVID SAXE'S PETITION FOR A WRIT OF MANDAMUS, OR IN THE ALTERNATIVE, A WRIT OF PROHIBITION**, via the methods set forth below, to the following:

Via U.S. Mail, First Class, Postage Prepaid

Hon. Erika Ballou
Eighth Judicial District Court
Clark County, Nevada
Department 24, Courtroom 12C
Phoenix Building, 12th Floor
330 S. 3rd St.
Las Vegas, Nevada 89101

Respondent

Via Electronic Mail

Jeffrey Gronich, Esq.
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/s/ Joshua A. Sliker
Employee of Jackson Lewis P.C.