

**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

Electronically Filed
Nov 12 2021 10:32 a.m.
Elizabeth A. Brown
Clerk of Supreme Court
Supreme Court Case No.:
District Court Case No.: A-17-757284-C

**APPENDIX IN SUPPORT 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
(VOLUME III OF III)**

JACKSON LEWIS P.C.

/s/ Joshua A. Sliker

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DOCUMENT	VOLUME	DATE	PAGE(S)
Complaint	I	06/22/2017	0001 - 0010
Notice to Federal Court of Removal of Civil Action from State Court	I	08/14/2017	0011 - 0028
Defendants' Motion to Dismiss Plaintiff's Third Claim for Relief	I	09/01/2017	0029 - 0035
Plaintiff's Response to Defendants' Motion to Dismiss Plaintiff's Third Claim for Relief	I	09/29/2017	0036 - 0049
Reply in Support of Motion to Dismiss Plaintiff's Third Claim for Relief	I	10/13/2017	0050 - 0057
Order re Defendants' Motion to Dismiss Plaintiff's Third Claim for Relief	I	06/12/2018	0058 - 0062
Defendants' Motion for Summary Judgment	I & II	12/20/2019	0063 - 0092
Exhibit A to MSJ – Deposition of Andrew August	I	09/18/2019	0093 – 0098
Exhibit B to MSJ – Deposition of David Saxe	I	07/11/2018	0099 – 0129
Exhibit C to MSJ – Deposition of Alexander Marks	I	07/09/2018	0130 – 0201
Exhibit D to MSJ – Email	I		0202 – 0203
Exhibit E to MSJ – Deposition of Larry Tokarski	I	08/16/2018	0204 – 0219
Exhibit F to MSJ – Declaration of Veronica Duran	I	12/20/2019	0220 – 0223
Exhibit G to MSJ – Declaration of David Saxe	I	12/19/2019	0224 – 0227
Exhibit 1 to Exhibit G to MSJ – Email	I	06/05/2015	0228 – 0229
Exhibit 2 to Exhibit G to MSJ – Email	I	08/11/2015	0230 – 0231
Exhibit 3 to Exhibit G to MSJ – Email	I	08/12/2015	0232 – 0233

DOCUMENT	VOLUME	DATE	PAGE(S)
Exhibit 4 to Exhibit G to MSJ – Email	I	10/27/2015	0234 – 0235
Exhibit 5 to Exhibit G to MSJ – Email	I	01/28/2016	0236 – 0240
Exhibit 6 to Exhibit G to MSJ – Email	I	01/28/2016	0241 – 0243
Exhibit 7 to Exhibit G to MSJ – Email	I	02/29/2016	0244 – 0245
Exhibit 8 to Exhibit G to MSJ – Email	I	03/01/2016	0246 – 0247
Exhibit H to MSJ – Email	I	03/02/2016	0248 – 0249
Exhibit I to MSJ – Office of Labor Commissioner Employment Complaints	II	03/03/2016	0250 – 0255
Exhibit J to MSJ – Occupational Safety and Health Administration Notice of Alleged Safety of Health Hazards	II	03/04/2016	0256 – 0258
Exhibit K to MSJ – Declaration of Lynn McChrystal	II	12/20/2019	0259 – 0262
Plaintiff’s Response to Defendants’ Motion for Summary Judgment	II	01/24/2020	0263 – 0288
Exhibit I to Response – Declaration of Alexander Marks	II	01/24/2020	0289 – 0293
Exhibit II to Response – Employee File Notice	II	04/07/2015	0294 – 0295
Exhibit III to Response – Bank of America Checking Deposits	II	2015	0296 – 0297
Exhibit IV to Response – DSP Employee Handbook	II	05/2015	0298 – 0306
Exhibit V to Response – Electronic Surveillance Waiver	II	04/06/2015	0307 – 0308
Exhibit VI to Response – Email	II	02/25/2016	0309 – 0311
Exhibit VII to Response – Email	II	02/29/2016	0312 – 0313

DOCUMENT	VOLUME	DATE	PAGE(S)
Exhibit VIII to Response – Email	II	08/11/2015	0314 – 0319
Exhibit IX to Response – Image	II		0320 – 0321
Exhibit X to Response – Email	II	01/28/2016	0322 – 0326
Exhibit XI to Response – Defendants’ Amended Fifth Supplemental Initial Disclosures	II	05/10/2019	0327 – 0329
Exhibit XII to Response – Calendar	II		0330 – 0332
Exhibit XIII to Response – Defendant DSP’s Responses to Plaintiff’s First Set of Interrogatories	II	03/09/2018	0333 – 0347
Exhibit XIV to Response – Deposition of David Saxe	II	07/11/2018	0348 – 0364
Exhibit XV to Response – Deposition of Larry Tokarski	II	08/16/2018	0365 – 0384
Exhibit XVI to Response – Deposition of Andrew August	II	09/18/2019	0385 – 0395
Exhibit XVII to Response – Declaration of Jeffrey Gronich	II	01/24/2020	0396 – 0399
Exhibit (a) to Exhibit XVII to Response – Email	II	06/15/2018	0400 – 0406
Defendants’ Reply in Support of their Motion For Summary Judgment	II	2/18/2020	0407 – 0427
Exhibit A to Reply – Defendant DSP’s Responses to Plaintiff’s First Set of Interrogatories	II	03/09/2018	0428 – 0433
Exhibit B to Reply – Chart	II		0434 – 0437
Exhibit C to Reply – Deposition of David Saxe	II	07/11/2018	0438 – 0442
Exhibit D to Reply – Plaintiff’s Initial Disclosures	II	10/03/2017	0443 – 0449
Exhibit E to Reply – Declaration of Kirsten Milton	II	02/18/2020	0450 – 0452

DOCUMENT	VOLUME	DATE	PAGE(S)
Order Granting in Part Defendants' Motion for Summary Judgment As To Second And Third Causes of Action and Remanding Action To State Court	II	8/20/2020	0453 – 0460
Clerk's Judgment In Favor Of Defendant And Against Plaintiff On Claim Retaliation Under FLSA	II	8/20/2020	0461
Transcript of June 29, 2021 Hearing on Defendants' Motion for Summary Judgment	II	06/29/2021	0462 – 0475
Transcript of July 13, 2021 Hearing on Defendants' Motion for Summary Judgment	II	07/13/2021	0476 – 0499
Notice of Entry of Order Granting in Part and Denying in Part Defendants' Motion for Summary Judgment	III	07/26/2021	0500 – 0508
Docket Sheet	III		0509 – 0510

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 **APPENDIX IN SUPPORT 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 (VOLUME III OF III)** , 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

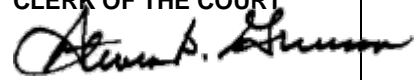
Respondent

Via Electronic Mail

Jeffrey Gronich, Esq.
Jeffrey Gronich, Attorney at Law, P.C.
1810 E. Sahara Ave., Suite 109
Las Vegas, Nevada 89104

Attorney for Real Party in Interest / Plaintiff

/s/ Joshua A Sliker
Employee of Jackson Lewis P.C.



Kirsten A. Milton
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Kirsten.milton@jacksonlewis.com
Tel: (702) 921-2460
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*Attorneys for Defendants
David Saxe Productions, LLC, Saxe
Management, LLC and David Saxe*

DISTRICT COURT

CLARK COUNTY, NEVADA

ALEXANDER MARKS, an individual,

Plaintiff,

Case No.: A-17-757284-C
Dept. No.: XXIV

vs.

**NOTICE OF ENTRY OF ORDER
GRANTING IN PART AND DENYING IN
PART DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT**

DAVID SAXE PRODUCTIONS, LLC;
SAXE MANAGEMENT, LLC; DAVID
SAXE, an individual; EMPLOYEE(S) /
AGENT(S) DOES 1-10; and ROE
CORPORATIONS 11-20, inclusive,

Defendants.

PLEASE TAKE NOTICE that an Order Granting in Part and Denying in Part
Defendants' Motion for Summary Judgment was entered in the above-captioned matter on July 23,
2021. A true and correct copy of which is attached hereto as Exhibit A.

Dated this 26th day of July, 2021.

JACKSON LEWIS P.C.

/s/ Kirsten A. Milton

Kirsten A. Milton, Bar No. 14401
300 S 4th Street, Suite 900
Las Vegas, Nevada 89101

*Attorneys for Defendants
David Saxe Productions, LLC, Saxe
Management, LLC and David Saxe*

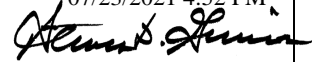
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Jeffrey Gronich, Esq.
Jeffrey Gronich, Attorney at Law, P.C.
1810 E. Sahara Ave., Suite 109
Las Vegas, Nevada 89104

/s/ Wende Hughey
Employee of Jackson Lewis P.C.

EXHIBIT A

EXHIBIT A


CLERK OF THE COURT

ORDR

KIRSTEN A. MILTON, ESQ.
Nevada Bar No. 14401
JACKSON LEWIS P.C.
300 S. Fourth Street, Suite 900
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Telephone: (702) 921-2460
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*Attorneys for Defendants
David Saxe Productions, LLC,
Saxe Management, LLC and David Saxe*

DISTRICT COURT

CLARK COUNTY, NEVADA

ALEXANDER MARKS, an individual,

Plaintiff,

vs.

Case No. A-17-757284-C

Dept. No. ~~XX~~ XXIV

DAVID SAXE PRODUCTIONS, LLC;
SAXE MANAGEMENT, LLC; DAVID
SAXE, an individual; EMPLOYEE(S) /
AGENT(S) DOES 1-10; and ROE
CORPORATIONS 11-20, inclusive,

Defendants.

~~PROPOSED~~ ORDER GRANTING IN
PART AND DENYING IN PART
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT

It is hereby **ORDERED, ADJUDGED**, and **DECREED** that Defendant David Saxe Productions LLC, Saxe Management, LLC, and David Saxe's (collectively, "Defendants") Motion for Summary Judgment is **GRANTED IN PART** and **DENIED IN PART** as follows. The Court's ruling is based on the following undisputed material facts and legal determinations:

1. On June 22, 2017, Plaintiff Alexander Marks ("Plaintiff" or "Marks") initiated this lawsuit by filing his original Complaint in the Eighth Judicial District Court in Clark County, Nevada, entitled *Alexander Marks v. David Saxe Productions, LLC et al.*, Case No. A-17-757284-C.

2. In his Complaint, Plaintiff alleged the following 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.

1 3. On August 4, 2017, Defendants removed the case to federal court based on federal
2 question jurisdiction because Plaintiff's Complaint contained claims that arose under federal law,
3 specifically the FLSA. ECF No. 1.

4 4. Following the close of discovery, Defendants filed a Motion for Summary
5 Judgment. ECF No. 41.

6 5. On August 20, 2020, the District Court of Nevada granted in part Defendants'
7 Motion for Summary Judgment, entering judgment for Defendant and against Plaintiff on Plaintiff's
8 claim for retaliation under the FLSA and remanded Plaintiff's Second and Third Claims for Relief
9 for alleged violations of NRS 613.040 and tortious discharge. ECF No. 46.

10 6. On July 13, 2021, the Court held oral argument on Plaintiff's Second and Third
11 Claims for Relief for alleged violations of NRS 613.040 and tortious discharge.

12 7. NRS 613.040, the basis of Marks' Second Claim for Relief, provides:

13 It shall be unlawful for any person, firm or corporation doing business or
14 employing labor in the State of Nevada to make any rule or regulation
15 prohibiting or preventing any employee from engaging in politics or
 becoming a candidate for any public office in this state.

16 8. The Court finds there is no genuine dispute of material fact that Defendant did not
17 "make any rule or regulation" that prohibited or prevented Marks from "engaging in politics or
18 becoming a candidate for any public office" and therefore grants Defendant's Motion for Summary
19 Judgment on Plaintiff's Second Claim for Relief.

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1 9. Regarding Plaintiff's Third Claim for Relief, the Court finds that there is a genuine
2 dispute of material fact as to whether (1) Plaintiff put Defendants on notice of an alleged complaint
3 to the Occupational Safety and Health Administration ("OSHA") and (2) whether Plaintiff's
4 complaint to David Saxe was a substantial factor in Plaintiff's termination of employment.

5 DATED this ____ day of July, 2021.

Dated this 23rd day of July, 2021



HON. ERIKA BALLOU
DISTRICT COURT JUDGE

1B9 1F5 3BC2 F072
Erika Ballou
District Court Judge

9 *Submitted by:*

Approved as to form and content by:

10 JACKSON LEWIS P.C.

JEFFREY GRONICH, ATTORNEY AT
LAW P.C.

11 /s/ Kirsten A. Milton

/s/ Jeffrey Gronich

12 KIRSTEN A. MILTON, ESQ.
13 Nevada Bar No. 14401
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18 *Attorneys for Defendants*
19 *David Saxe Productions, LLC,*
20 *Saxe Management, LLC and David Saxe*

Attorneys for Plaintiff
Alexander Marks

From: Jeffrey Gronich <jgronich@gronichlaw.com>
Sent: Wednesday, July 21, 2021 11:03 AM
To: Milton, Kirsten A. (Chicago)
Cc: McChrystal, Lynne K. (Las Vegas)
Subject: Re: Marks v. Saxe: Proposed Order on Defendants' Motion for Summary Judgment

[EXTERNAL SENDER]

Thank you Kirsten, you may affix my e-signature and file with the court.

Jeffrey Gronich, Esq.
Jeffrey Gronich, Attorney at Law, P.C.
1810 E. Sahara Ave, Suite 109
Las Vegas, NV 89104
702-727-3903

On Mon, Jul 19, 2021 at 9:03 AM Milton, Kirsten A. (Chicago) <Kirsten.Milton@jacksonlewis.com> wrote:

Hi Jeff,

Please let me know what you think of the attached. I tried to use the language that the Court used, but if you disagree, please let me know.

We'll fix the spacing/page numbers once we have any edits from you.

Thanks,

Kirsten

Kirsten A. Milton
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Kirsten.Milton@jacksonlewis.com | www.jacksonlewis.com

[Visit our resource page](#) for information and guidance on COVID-19's workplace implications

1 **CSERV**

2
3 DISTRICT COURT
CLARK COUNTY, NEVADA

4		
5		
6	Alexander Marks, Plaintiff(s)	CASE NO: A-17-757284-C
7	vs.	DEPT. NO. Department 24
8	David Saxe Productions, LLC,	
9	Defendant(s)	

10
11 **AUTOMATED CERTIFICATE OF SERVICE**

12 This automated certificate of service was generated by the Eighth Judicial District
13 Court. The foregoing Order was served via the court's electronic eFile system to all
recipients registered for e-Service on the above entitled case as listed below:

14 Service Date: 7/23/2021

15	Jeffrey Gronich	jgronich@gronichlaw.com
16	Lynne McChrystal	lynne.mcchrystal@jacksonlewis.com
17	Kirsten Milton	kirsten.milton@jacksonlewis.com

REGISTER OF ACTIONS

CASE NO. A-17-757284-C

Alexander Marks, Plaintiff(s) vs. David Saxe Productions, LLC,
Defendant(s)

§
§
§
§
§
§

Case Type: **Employment Tort**
 Date Filed: **06/22/2017**
 Location: **Department 24**
 Cross-Reference Case Number: **A757284**

PARTY INFORMATION

Defendant	David Saxe Productions, LLC	Lead Attorneys Kirsten A. Milton Retained 702-921-2458(W)
Defendant	Saxe Management, LLC	Kirsten A. Milton Retained 702-921-2458(W)
Defendant	Saxe, David	Kirsten A. Milton Retained 702-921-2458(W)
Plaintiff	Marks, Alexander	Jeffrey S. Gronich Retained 702-259-7777(W)

EVENTS & ORDERS OF THE COURT

07/23/2021 **DISPOSITIONS**
Summary Judgment (Judicial Officer: Ballou, Erika)
 Debtors: Alexander Marks (Plaintiff)
 Creditors: David Saxe Productions, LLC (Defendant), Saxe Management, LLC (Defendant), David Saxe (Defendant)
 Judgment: 07/23/2021, Docketed: 07/26/2021
 Comment: In Part/Certain Claims

06/22/2017 **OTHER EVENTS AND HEARINGS**
Complaint With Jury Demand Doc ID# 1
 [1] Complaint

06/22/2017 **Initial Appearance Fee Disclosure** Doc ID# 2
 [2] Initial Appearance Fee Disclosure

06/22/2017 **Summons Electronically Issued - Service Pending** Doc ID# 3
 [3] Summons

07/20/2017 **Notice of Service** Doc ID# 4
 [4] Notice of Service of Summons and Complaint

08/04/2017 **Notice of Removal** Doc ID# 5
 [5] Notice to State Court of Filing of Notice of Removal of Civil Action to Federal Court

11/06/2017 **Order to Statistically Close Case** Doc ID# 6
 [6] Order to Statistically Close Case

09/03/2020 **Order of Remand from Federal Court** Doc ID# 7
 [7] Order

01/04/2021 **Case Reassigned to Department 24**
 Judicial Reassignment to Judge Erika D. Ballou

04/30/2021 **Notice of Hearing** Doc ID# 8
 [8] Notice of Hearing

05/11/2021 **Status Check** (9:00 AM) (Judicial Officer Ballou, Erika)
 05/11/2021, 06/08/2021
[Parties Present](#)
[Minutes](#)
 Result: Matter Continued

06/07/2021 **Filing Fee Remittance** Doc ID# 9
 [9] Filing Fee Remittance

06/29/2021 **Argument** (9:00 AM) (Judicial Officer Ballou, Erika)
 06/29/2021, 07/13/2021
 Argument: Summary Judgment
[Parties Present](#)
[Minutes](#)
 Result: Matter Continued

07/14/2021 **Scheduling and Trial Order** Doc ID# 10
 [10] Scheduling Order and Order Setting Civil Jury Trial and Calendar Call

07/23/2021	Order Doc ID# 11 [11] Order Granting in Part and Denying in Part Defendant's Motion for Summary Judgment
07/26/2021	Notice of Entry Doc ID# 12 [12] Notice of Entry of Order Granting in Part and Denying in Part Defendants' Motion for Summary Judgment
10/25/2021	Notice of Hearing Doc ID# 13 [13] Notice of Hearing
11/05/2021	Recorders Transcript of Hearing Doc ID# 14 [14] Transcript of Proceedings: Argument, Summary Judgment 7.13.21
11/09/2021	Status Check: Reset Trial Date (9:00 AM) (Judicial Officer Ballou, Erika) Case needs a sooner Trial date
08/30/2022	Calendar Call (9:00 AM) (Judicial Officer Ballou, Erika)
09/06/2022	Jury Trial (1:00 PM) (Judicial Officer Ballou, Erika)

FINANCIAL INFORMATION

	Defendant David Saxe Productions, LLC			
	Total Financial Assessment			293.50
	Total Payments and Credits			293.50
	Balance Due as of 11/08/2021			0.00
08/04/2017	Transaction Assessment			3.50
08/04/2017	Efile Payment	Receipt # 2017-62475-CCCLK	David Saxe Productions, LLC	(3.50)
06/08/2021	Transaction Assessment			286.50
06/08/2021	Efile Payment	Receipt # 2021-35508-CCCLK	David Saxe Productions, LLC	(286.50)
07/26/2021	Transaction Assessment			3.50
07/26/2021	Efile Payment	Receipt # 2021-46241-CCCLK	David Saxe Productions, LLC	(3.50)
	Plaintiff Marks, Alexander			
	Total Financial Assessment			270.00
	Total Payments and Credits			270.00
	Balance Due as of 11/08/2021			0.00
06/23/2017	Transaction Assessment			270.00
06/23/2017	Efile Payment	Receipt # 2017-52777-CCCLK	Marks, Alexander	(270.00)