

IN THE SUPREME COURT OF THE STATE OF NEVADA
SUPREME COURT CASE NO.

DAVID COPPERFIELD'S DISAPPEARING, INC.; DAVID COPPERFIELD aka
DAVID KOTKIN; and MGM GRAND HOTEL, LLC,

Petitioners,

v.

THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA,
CLARK COUNTY AND THE HONORABLE MARK R. DENTON

Respondents.

CAVIN AND MIHN-HAHN COX,

Real Parties In Interest.

From the Eighth Judicial District Court, Clark Count, Nevada
Case No. A-14-705164-C

NRAP 27(E), CERTIFICATE

ELAINE K. FRESCH
NEVADA BAR NO. 9263
SELMAN BREITMAN LLP
ERIC O. FREEMAN
NEVADA BAR NO. 6648
GIL GLANCZ
NEVADA BAR NO. 9813
JERRY C. POPOVICH [PRO HAC]
CALIFORNIA BAR NO. 138636
3993 Howard Hughes Parkway, Suite 200
Las Vegas, NV 89169-0961
Telephone: 702.228.7717
Facsimile: 702.228.8824

Attorneys for Petitioners DAVID COPPERFIELD'S DISAPPEARING, INC.; DAVID
COPPERFIELD aka DAVID KOTKIN; and MGM GRAND HOTEL, LLC

NRAP 27(E) CERTIFICATE

COME NOW, DAVID COPPERFIELD'S DISAPPEARING, INC. and DAVID COPPERFIELD aka DAVID KOTKIN (hereinafter "Petitioners"), by and through their counsel, Selman Breitman LLP, and hereby submit this Petition respectfully requesting issuance of a Writ of Mandamus pursuant to NRAP 21 and NRS 34.160. Petitioners are entitled to a writ relating to the District Court's erroneous Order filed April 17, 2018 in which the District Court denied Petitioners' request to close certain trial proceedings from the general public and media related to Petitioners' confidential and proprietary information.

I. RELIEF SOUGHT BY PETITIONER

A Writ of Mandamus to direct the Honorable Mark R. Denton to amend the April 17, 2018 order denying Petitioners' request to close certain trial proceedings from the general public and media related to design, methods, techniques and process to accomplish the Petitioners' "Thirteen" illusion. The Order is erroneous because Petitioners provided evidence establishing that the Petitioners' confidential and proprietary information related to the "Thirteen" illusion are Trade Secrets pursuant to the Nevada's Uniform Trade Secrets Act definition of a trade secret in NRS 600A.030 (5)(a) and (b) that warrant protection by closing certain proceedings to the public and media. *Whitehead v. Nevada Comm'n on Jud. Discipline*, 893 P.2d 866, 897, 111 Nev. 70 (NV, 1995)

II. ISSUES PRESENTED

- A. Whether the court erred in not finding that Petitioners' confidential and proprietary information regarding the design, methods, techniques and process to accomplish the "Thirteen" illusion meet the definition of Trade Secrets pursuant to NRS 600A.030 (5)(a) and (b).
- B. Whether the court abused its discretion by not closing certain portions of the trial proceedings for opening statements, closing arguments and the parts of the argument/testimony related to Petitioners' trade secrets related to the "Thirteen" illusion as well as where other potential illusions are discussed and instead allowing public and media access to the proceedings.

III. EMERGENCY PETITITON UNDER NRAP 27(E)

A. Telephone Numbers and Address of Attorneys for the Parties

- 1) The Honorable Mark R. Denton
200 Lewis Avenue, Dept. XIII
Las Vegas, NV 89155
(702) 671-4429
- 2) Brian K. Harris, Esq.
Christian Griffin, Esq.
Harris & Harris
2029 Alta Drive
Las Vegas, NV 89106
(702) 880-4529

Benedict P. Morelli, Esq.
Adam E. Deutsch, Esq.
Perry S. Fallick, Esq.
Morelli Law Firm PLLC
777 Third Ave., 31st Floor
New York, NY 10017
(212) 751-9800
Attorneys for Plaintiffs

- 3) Lee Roberts, Esq.
Howard J. Russell, Esq.
Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC
6985 S. Rainbow Blvd., Suite 400
Las Vegas, NV 89118
(702) 938-3838
Attorneys for Defendant Backstage Employment and Referral, Inc.
- 4) Roger Strassburg, Esq.
Gary W. Call, Esq.
Resnick & Louis, P.C.
5940 S. Rainbow Blvd.
Las Vegas, NV 89118
(702) 997-3800
Attorneys for Defendants Team Construction Management, Inc.
and Beacher's LV, LLC

B. Facts Showing Existence and Nature of the Claimed Emergency

1) Limited Statement of Facts

This case involves an incident that occurred on November 12, 2013 at the David Copperfield Show at the MGM Grand Hotel/Casino. Plaintiffs are husband and wife Gavin Cox and Minh-Hanh Cox. Plaintiff Gavin Cox claims he was injured while participating in the "Thirteen" illusion as an audience member. Plaintiffs allege that he was injured while participating in the illusion when he was allegedly hurried with no guidance or instruction through a dark area that was

under construction. Plaintiffs claim the area was a construction area that was covered with cement dust and debris which caused Mr. Cox to slip and fall. Petitioners have denied these allegations and continue to do so. Trial in the matter began on April 13, 2018. Petitioners' witnesses are scheduled to begin their respective testimony within the next 24 hours.

At the outset of this case, the parties recognized and appreciated that certain information, materials and testimony regarding the show and illusion were confidential trade secrets and needed to be protected for a variety of reasons. Information regarding the illusion and how the illusion is accomplished should not get out to competitors, the media and public. Defendants agreed to produce confidential information and testify regarding confidential issues based on the Confidentiality Agreement and the entering of a Stipulated Protective Order.

Relying on the Confidentiality Agreement and Protective Order, Defendants allowed access to the show as well as provided information, documents and testimony related to Defendants' confidential trade secrets generally and with respect to the specific illusion at issue "Thirteen" including how the illusion is accomplished to make the participants "disappear" and "reappear." This is especially true given the fact that the trade secret information provided does not only explain how the "Thirteen" illusion is accomplished, but essentially explains how other of Defendants' illusions are also performed. These illusions do not have

audience participation thus nothing is ever revealed to any persons outside of those who work on the show.

On April 10, 2018, Petitioners' filed a trial brief related to closing certain court proceedings from the media and general public in an effort to protect Petitioners' design, methods, techniques and process to accomplish illusions that will be discussed. Specifically, Petitioners requested that the court close the proceedings for opening statements, closing arguments as well as examination of witnesses and any argument that specifically relate to how Petitioners perform the specific illusion at issue "Thirteen" as well as other illusions beyond the "Thirteen" illusion as the other illusions use similar techniques to those used for the "Thirteen" illusion and/or could also potentially be discussed as to the custom and practice with respect to audience participants. These other illusions do not have audience participation thus nothing has ever been revealed to any persons outside of those who work on the show.

The Court determined that Petitioners' confidential and proprietary information relating to the specific illusion that is involved in this case, the "Thirteen" illusion, did not warrant the closing of the courtroom as the Court concluded that said information "has been out for quite some time in terms of what happened in this case." As such, Petitioners' request to close proceedings relating to the "Thirteen" illusion that is involved in this case was denied.

Conversely, the Court did find that there may be reason to either prohibit the use of electronic recording or close the courtroom during certain portions of the trial related to the Petitioners' other illusions. The Court found that there are some things with respect to these other illusions that may be protectable trade secrets that warrant the Court's consideration of closure of proceedings and therefore the Court found that they must be ruled upon separately and individually as the situations arise throughout trial.

2) Standard for Emergency Writ of Mandamus

This court has original jurisdiction over the extraordinary remedies of writs of mandamus, prohibition and certiorari. Nev. Const. Art. 6 Sec. 4 and 6. A writ of mandamus will not issue where the petitioner has a plain, speedy and adequate remedy in the ordinary course of the law. NRS 34.170. When circumstances reveal urgency or strong necessity, or an important issue of law needs clarification, and public policy is served by the Supreme Court's invocation of its original jurisdiction, this court may consider a petition for extraordinary relief, even if alternative remedies may be available. *Employers Ins. Co. of Nevada v. State Bd. of Examiners*, 117 Nev. 249, 21 P.3d 628 (2001). This court has stated that it would "exercise its discretion" when "an important issue of law requires clarification" and declared that "the primary standard" in the determination of whether to entertain a writ petition will be "the interests of judicial economy."

Smith v. District Court, 113 Nev. 1343, 1344, 950 P.2d 280, 281 (1997).

Petitioners carry the burden of demonstrating that extraordinary relief is warranted. *Pan v. Eighth Judicial District Court*, 120 Nev. 222, 228, 88 P.3d 840 (2004). The trial in this matter has already begun and Petitioners' witnesses are scheduled to testify within the next 24 hours. Petitioners will suffer serious financial injury if the media or public learned of its confidential trade secrets. The threat of irreparable injury to Petitioners' if their trade secrets are compromised is significant. In contrast, a Court Order closing certain trial proceedings that relate to Petitioners' trade secrets from the public and media, creates no burden on the remaining parties as it does not prohibit them from litigated their respective cases.

C. Notice of the Emergency Writ of Mandamus

The District Court, parties and their counsel were all notified that an Emergency Petition for Writ of Mandamus was forthcoming at the Court Hearing on April 13, 2018. In addition, the District Court was served via hand delivery, and the parties and their counsel were all served via e-mail with the Emergency Petition for Writ of Mandamus pursuant to NRAP 27(e) and the instant certificate simultaneously with the filing of the same.

IV. CONCLUSION

Based on the foregoing certificate, Petitioners request that this Court rule on the pending Petition for Writ of Mandamus pursuant to NRAP 27(e)(3) and issue

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Selman Breitman LLP and, pursuant to:

- BY MAIL:** N.R.C.P. 5(b), I deposited for first class United States mailing, postage prepaid, at Las Vegas, Nevada; or
- BY E-MAIL/ELECTRONIC SERVICE:** N.R.C.P. 5(b)(2)(D) and addressee(s) having consented to electronic service, I served via e-mail or other electronic means to the e-mail address(es) of the addressee(s).

a true and correct copy of the above and foregoing **NRAP 27(E), CERTIFICATE**, this 18th day of April 2018, addressed as follows:

SEE ATTACHED SERVICE LIST

 /s/ Bonnie Kerkhoff Juarez
BONNIE KERKHOFF JUAREZ
An Employee of Selman Breitman LLP

Brian K. Harris, Esq.
Christian Griffin, Esq.
HARRIS & HARRIS
2029 Alta Drive
Las Vegas, NV 89106
bharris@harrislawyers.net
cgriffin@harrislawyers.net

Attorneys for Plaintiffs/Real Parties in Interest

Benedict P. Morelli, Esq.
Adam E. Deutsch, Esq.
Perry S. Fallick, Esq.
MORELLI LAW FIRM PLLC
777 Third Ave., 31st Floor
New York, NY 10017
bmorelli@morellilaw.com
adeutsch@morellilaw.com
pfallick@morellilaw.com

Attorneys for Plaintiffs/Real Parties in Interest

Lee Roberts, Esq.
Howard J. Russell, Esq.
WEINBERG, WHEELER, HUDGINS, GUNN
& DIAL, LLC
6985 S. Rainbow Blvd., Suite 400
Las Vegas, NV 89118
lroberts@wwhgd.com
hrussell@wwhgd.com

Attorneys for Defendant Backstage
Employment and Referral, Inc.

Roger Strassburg, Esq.
Gary W. Call, Esq.
RESNICK & LOUIS, P.C.
5940 S. Rainbow Blvd.
Las Vegas, NV 89118
gcall@rlattorneys.com
rstrassburg@rlattorneys.com

Attorneys for Defendants Team Construction
Management, Inc. and Beacher's LV, LLC

Elaine K. Fresch, Esq.
Jerry C. Popovich, Esq.
Eric O. Freeman, Esq.
SELMAN BREITMAN LLP
3993 Howard Hughes Parkway, Suite 200
Las Vegas, NV 89169
efresch@selmanlaw.com
jpopovich@selmanlaw.com
efreeman@selmanlaw.com

Attorneys for Petitioners/Defendants David
Copperfield's Disappearing, Inc., David
Copperfield, and MGM Grand Hotel, LLC

IN THE SUPREME COURT OF THE STATE OF NEVADA
SUPREME COURT CASE NO.

DAVID COPPERFIELD'S DISAPPEARING, INC.; DAVID COPPERFIELD
DAVID KOTKIN; and MGM GRAND HOTEL, LLC, App. 18 2018 10:01 a.m.
Petitioners, Elizabeth A. Brown
Clerk of Supreme Court

v.

THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA,
CLARK COUNTY AND THE HONORABLE MARK R. DENTON

Respondents.

CAVIN AND MIHN-HAHN COX,

Real Parties In Interest.

From the Eighth Judicial District Court, Clark Count, Nevada
Case No. A-14-705164-C

**EMERGENCY PETITION FOR WRIT OF MANDAMUS UNDER NRAP
27(E), IMMEDIATE ACTION IS NECESSARY AS THE TRIAL IS
ALREADY IN PROGRESS**

ELAINE K. FRESCH
NEVADA BAR NO. 9263
SELMAN BREITMAN LLP
ERIC O. FREEMAN
NEVADA BAR NO. 6648
GIL GLANCZ
NEVADA BAR NO. 9813
JERRY C. POPOVICH [PRO HAC]
CALIFORNIA BAR NO. 138636
3993 Howard Hughes Parkway, Suite 200
Las Vegas, NV 89169-0961
Telephone: 702.228.7717
Facsimile: 702.228.8824

Attorneys for Petitioners DAVID COPPERFIELD'S DISAPPEARING, INC.; DAVID
COPPERFIELD aka DAVID KOTKIN; and MGM GRAND HOTEL, LLC

TABLE OF CONTENTS

	<u>Page(s)</u>
I. RELIEF SOUGHT BY PETITIONER.....	4
II. ISSUES PRESENTED	5
III. STATEMENT OF FACTS.....	5
IV. STATEMENT OF REASONING FOR THE ISSUANCE OF A WRIT AND POINTS AND AUTHORITIES	9
A. Legal Standard for Writ of Mandamus.....	9
B. Issuing a Writ of Mandamus will Promote Judicial Economy	12
V. ARGUMENT	13
A. The District Court Erred in Not Making a Specific Finding That Petitioners' Confidential And Pro- prietary Information Related to the "Thirteen" Illusion are Trade Secrets	13
B. The District Court Abused Its Discretion in Denying Petitioners' Request to Close Certain Court Proceedings Related to Trade Secrets	18
VI. CONCLUSION.....	22

TABLE OF AUTHORITIES

	Page(s)
Cases	
<i>Brown & Williamson Tobacco Corp. v. F.T.C.</i> , 710 F.2d 1165 (6th Cir. 1983).....	19
<i>Cote v. Eighth Judicial District Court</i> , 124 Nev. 36, 175 P.3d 906 (2008)	10
<i>State ex. Rel. Dep't Transp v. Thompson</i> , 99 Nev. 358, 662 P.2d 1338 (1983)	10
<i>Employers Ins. Co. of Nevada v. State Bd. of Examiners</i> , 117 Nev. 249, 21 P.3d 628 (2001)	11
<i>Finkel v. Cashman Professional, Inc.</i> , 128 Nev. 68, 270 P.3d 1259	14
<i>Greene v. Eighth Judicial District Court</i> , 115 Nev. 391, 990 P.2d 184 (1999)	11
<i>In re Iowa Freedom of Information Council</i> , 724 F.2d 658 (1983)	20
<i>Lund v. Eighth Judicial Dist. Ct.</i> , 127 Nev. 358, 255 P.3d 280 (2011)	11
<i>Marlette Lake Co. v. Sawyer</i> , 79 Nev. 334, 383 P.2d 369 (1963)	10
<i>Marshall v. District Court</i> , 108 Nev. 459, 836 P.2d 47 (1992)	10
<i>Olsen Family Trust v. Eighth Judicial District Court</i> , 110 Nev. 548, 874 P.2d 778 (1994)	12
<i>Pan v. Eighth Judicial District Court</i> , 120 Nev. 222, 88 P.3d 840 (2004)	12

<i>Publicker Industries, Inc. v. Cohen</i> , 733 F.2d at 1073	19, 20
<i>Round Hill Gen. Imp. Dist. v. Newman</i> , 97 Nev. 601, 637 P.2d 534 (1981)	10
<i>Saini v. Intl Game Tech.</i> , 434 F. Supp. 2d 913 (D. Nev. 2006)	20
<i>Salaiscooper v. Eighth Judicial District Court</i> , 117 Nev. 892, 34 P.3d 509 (2001)	13
<i>Scarbo v. Eighth Judicial Dist. Ct.</i> , 125 Nev. 118, 206 P.3d 975 (2009)	11
<i>Scrimmer v. Eighth Judicial District Court</i> , 116 Nev. 507, 998 P.2d 1190 (2000)	13
<i>Smith v. District Court</i> , 113 Nev. 1343, 950 P.2d 280 (1997)	11
<i>Whitehead v. Nevada Comm'n on Jud. Discipline</i> , 893 P.2d 866, 111 Nev. 70 (NV, 1995)	5, 13, 19

Statutes

NRS 34.160	3, 10
NRS 34.170	10
NRS 600A.030 (5)(a) and (b)	4, 5, 13

Other Authorities

Nev. Adv. Op. 6 (2012)	14
Nev. Const. Art. 6 Sec. 4 and 6	9
Nev. R. Civ. P. 26(c)(7) and (8)	18, 19

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Selman Breitman LLP and, pursuant to:

- BY MAIL:** N.R.C.P. 5(b), I deposited for first class United States mailing, postage prepaid, at Las Vegas, Nevada; or
- BY E-MAIL/ELECTRONIC SERVICE:** N.R.C.P. 5(b)(2)(D) and addressee(s) having consented to electronic service, I served via e-mail or other electronic means to the e-mail address(es) of the addressee(s).

a true and correct copy of the above and foregoing **DAVID COPPERFIELD'S DISAPPEARING, INC.; DAVID COPPERFIELD aka DAVID KOTKIN; and MGM GRAND HOTEL, LLC PETITION FOR WRIT OF MANDAMUS**, this 18th day of April 2018, addressed as follows:

SEE ATTACHED SERVICE LIST

/s/ Bonnie Kerkhoff Juarez
BONNIE KERKHOFF JUAREZ
An Employee of Selman Breitman LLP

EMERGENCY PETITION FOR WRIT OF MANDAMUS

COME NOW, DAVID COPPERFIELD'S DISAPPEARING, INC. and DAVID COPPERFIELD aka DAVID KOTKIN (hereinafter "Petitioners"), by and through their counsel, Selman Breitman LLP, and hereby submit this Petition respectfully requesting issuance of a Writ of Mandamus pursuant to NRAP 21 and NRS 34.160. Petitioners are entitled to a writ relating to the District Court's erroneous Order filed April 17, 2018 in which the District Court denied Petitioners' request to close certain trial proceedings from the general public and media related to Petitioners' confidential and proprietary information.

Specifically, Petitioners sought to protect information related to their designs, methods, techniques and processes to accomplish the "Thirteen" illusion as well as several other illusions that are still currently being performed by Petitioners. The Court concluded that the Petitioners' confidential information as they relate to the "Thirteen" illusion did not warrant protection and therefore the District Court denied Petitioners' request to close certain portions of the trial to the public and media. In contrast, the District Court ruled that there may be reason to close the courtroom with respect Petitioners' confidential information related to their other illusions because there may be protectable trade secrets.

Petitioners' respectfully petition this Honorable Court to issue a Writ of Mandamus to direct the Honorable Mark Denton to amend the April 17, 2018

order denying Petitioners' request to close certain trial proceedings from the general public and media related to design, methods, techniques and process to accomplish the Petitioners' "Thirteen" illusion. Petitioners have no plain, speedy or adequate remedy in the ordinary course of the law. Petitioners' will suffer irreparable injury if the Writ is denied as its proprietary information related to its illusions designs, methods, techniques and processes to accomplish Petitioners' illusions will be made public.

Writ consideration is appropriate as it is necessary for the court to address this important issue concerning the protection of Petitioners' trade secrets from their release to the general public and media.

I. RELIEF SOUGHT BY PETITIONER

A Writ of Mandamus to direct the Honorable Mark Denton to amend the April 17, 2018 order denying Petitioners' request to close certain trial proceedings from the general public and media related to design, methods, techniques and process to accomplish the Petitioners' "Thirteen" illusion. The Order is erroneous because Petitioners provided evidence establishing that the Petitioners' confidential and proprietary information related to the "Thirteen" illusion are Trade Secrets pursuant to the Nevada's Uniform Trade Secrets Act definition of a trade secret in NRS 600A.030 (5)(a) and (b) that warrant protection by closing certain proceedings to the public and

media. *Whitehead v. Nevada Comm'n on Jud. Discipline*, 893 P.2d 866, 897, 111 Nev. 70 (NV, 1995)

II. ISSUES PRESENTED

1. Whether the court erred in not finding that Petitioners' confidential and proprietary information regarding the design, methods, techniques and process to accomplish the "Thirteen" illusion meet the definition of Trade Secrets pursuant to NRS 600A.030 (5)(a) and (b).
2. Whether the court abused its discretion by not closing certain portions of the trial proceedings for opening statements, closing arguments and the parts of the argument/testimony related to Petitioners' trade secrets related to the "Thirteen" illusion as well as where other potential illusions are discussed and instead allowing public and media access to the proceedings.

III. STATEMENT OF FACTS

This case involves an incident that occurred on November 12, 2013 at the David Copperfield Show at the MGM Grand Hotel/Casino. Plaintiffs are husband and wife Gavin Cox and Minh-Hanh Cox. Plaintiff Gavin Cox claims he was injured while participating in the "Thirteen" illusion as an audience member. Plaintiffs allege that he was injured while participating in the illusion when he was allegedly hurried with no guidance or instruction through a dark area that was under construction. Plaintiffs claim the area was a construction area that was

covered with cement dust and debris which caused Mr. Cox to slip and fall. Petitioners have denied these allegations and continue to do so.

At the outset of this case, the parties recognized and appreciated that certain information, materials and testimony regarding the show and illusion was confidential and needed to be protected for a variety of reasons. Information regarding the illusion and how the illusion is accomplished should not get out to competitors, the media and public. Petitioners agreed to produce confidential information and testify regarding confidential issues based on the parties' agreement to enter the Confidentiality Agreements. Recognizing the sensitive nature of this information, this Court also entered a Stipulated Protective Order.¹

The Confidentiality Agreements specifically state that the parties will maintain "the confidentiality of any and all proprietary information" and it specifically states that the "parties shall not provide copies of the Protected Materials to any media, news, or broadcast entity." Relying on the Confidentiality Agreements, Petitioners allowed access to the show, the illusion, the secrets and confidential information. Petitioners further produced confidential documents and testified in regards to confidential details regarding the show and specifically the "Thirteen" illusion, including how the illusion is accomplished to make the

¹ A true and correct copy of the Confidentiality Agreement and Protective Order and the Amended Confidentiality Agreement and Protective Order attached hereto as Exhibit "A."

participants "disappear" and reappear. The Confidentiality Agreement must be protected and the Protective Order must be enforced.

Relying on the Confidentiality Agreement and Protective Order, Petitioners allowed access to the show as well as provided information, documents and testimony related to the specific illusion at issue "Thirteen" including how the illusion is accomplished to make the participants "disappear" and "reappear."

On April 10, 2018, Petitioners' filed a trial brief related to closing certain court proceedings from the media and general public in an effort to protect Petitioners' design, methods, techniques and process to accomplish illusions that will be discussed. Specifically, Petitioners requested that the court close the proceedings for opening statements, closing arguments as well as examination of witnesses and any argument that specifically relate to how Petitioners perform the specific illusion at issue "Thirteen" as well as other illusions beyond the "Thirteen" illusion as the other illusions use similar techniques to those used for the "Thirteen" illusion and/or could also potentially be discussed as to the custom and practice with respect to audience participants. These other illusions do not have audience participation thus nothing has ever been revealed to any persons outside of those who work on the show.

The Court determined that Petitioners' confidential and proprietary information relating to the specific illusion that is involved in this case, the

"Thirteen" illusion, did not warrant the closing of the courtroom as the Court concluded that said information "has been out for quite some time in terms of what happened in this case." As such, Petitioners' request to close proceedings relating to the "Thirteen" illusion that is involved in this case was denied.

Conversely, the Court did find that there may be reason to either prohibit the use of electronic recording or close the courtroom during certain portions of the trial related to the Petitioners' other illusions. The Court found that there are some things with respect to these other illusions that may be protectable trade secrets that warrant the Court's consideration of closure of proceedings and therefore the Court found that they must be ruled upon separately and individually as the situations arise throughout trial.

Specifically, the District Court issued the following Order:

IT IS ORDERED, ADJUDICATED and DECREED the Petitioners' request to close certain portions of this trial to the public and media as they relate to the "Thirteen" illusion is hereby DENIED.

IT IS FURTHER ORDERED, ADJUDICATED and DECREED that there may be reason to preclude electronic recording or close the courtroom during certain portions of the trial related to the Petitioners' other illusions as there are some things there that may be protectable Trade Secrets that would warrant the Court's consideration of closure of proceedings and therefore must be ruled upon separately as the situations arise throughout trial.²

Remarkably, the design, methods, techniques and process to accomplish the

² A true and correct copy of the District Court Order entered April 17, 2018 is attached hereto as exhibit B.

"Thirteen" illusion are identical to those to accomplish some of Petitioners' currently used illusions. As a result, the District Court Order requiring the Petitioners' to disclose the design, methods, techniques and process to accomplish the "Thirteen" illusion will also by its virtue require Petitioners to also disclose confidential proprietary information related to some of their other illusions that the District Court found may be protectable trade secrets.

Petitioners now bring this Petition for Writ of Mandamus as they believe the District Court erroneously and without legal authority denied Petitioners' request to close proceedings relating to the "Thirteen" illusion and the release of confidential Trade Secrets. A Writ of Mandamus is necessary and appropriate as there is not another speedy and adequate remedy. A failure to have this issue resolved immediately, would lead to the disclosure of Petitioners' confidential Trade Secrets and cause Petitioners to suffer serious financial injury, especially given that this same information will also explain how other of Petitioners' presently used illusions are also accomplished.

IV. STATEMENT OF REASONING FOR THE ISSUANCE OF A WRIT AND POINTS AND AUTHORITIES

A. Legal Standard for Writ of Mandamus

This court has original jurisdiction over the extraordinary remedies of writs of mandamus, prohibition and certiorari. Nev. Const. Art. 6 Sec. 4 and 6. The Supreme Court of Nevada may issue a writ of mandamus to control a district

court's arbitrary or capricious exercise of discretion. *Marshall v. District Court*, 108 Nev. 459, 466, 836 P.2d 47, 52 (1992); see also *Round Hill Gen. Imp. Dist. v. Newman*, 97 Nev. 601, 637 P.2d 534 (1981). A party is entitled to a writ of mandamus when a tribunal such as the district court has failed to legally and properly discharge its obligations under the law. A writ of mandamus is an extraordinary remedy that may be issued to compel an act that the law requires. *Cote v. Eighth Judicial District Court*, 124 Nev. 36, 39, 175 P.3d 906 (2008); NRS 34.160. "The writ may be issued by the Supreme Court, a district court or a judge of the district court, to compel the performance of an act which the law especially enjoins as a duty resulting from an office, trust or station.... NRS 34.160. A writ of mandamus will issue to enforce the performance of an act, which the law requires as a duty resulting from an office. *Marlette Lake Co. v. Sawyer*, 79 Nev. 334, 335-336, 383 P.2d 369 (1963).

A writ of mandamus, being an extraordinary remedy, is discretionary with this court. *State ex. Rel. Dep't Transp v. Thompson*, 99 Nev. 358, 662 P.2d 1338 (1983). A writ of mandamus will not issue where the petitioner has a plain, speedy and adequate remedy in the ordinary course of the law. NRS 34.170. When circumstances reveal urgency or strong necessity, or an important issue of law needs clarification, and public policy is served by the Supreme Court's invocation of its original jurisdiction, this court may consider a petition for extraordinary

relief, even if alternative remedies may be available. *Employers Ins. Co. of Nevada v. State Bd. of Examiners*, 117 Nev. 249, 21 P.3d 628 (2001).

Writ review may be granted to clarify "an important issue of law," or to avert further avoidable error. *Scarbo v. Eighth Judicial Dist. Ct.*, 125 Nev. 118, 121, 206 P.3d 975, 977 (2009); *Lund v. Eighth Judicial Dist. Ct.*, 127 Nev. 358, 363, 255 P.3d 280, 284 (2011) (citing *Ex Parte Simons*, 247 U.S. 231, 239, 38 S.Ct. 497, 62 L.Ed. 1094 (1918) (holding that extraordinary relief was warranted to correct a legal error prior to entry of the final judgment)).

This court has stated that it would "exercise its discretion" when "an important issue of law requires clarification" and declared that "the primary standard" in the determination of whether to entertain a writ petition will be "the interests of judicial economy." *Smith v. District Court*, 113 Nev. 1343, 1344, 950 P.2d 280, 281 (1997).

This Court may issue a writ of prohibition 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. *Greene v. Eighth Judicial District Court*, 115 Nev. 391, 393, 990 P.2d 184 (1999), citing NRS 34.320. A petition for writ of prohibition is addressed to the sound discretion of this Court, and such a writ may issue only when there is no plain, speedy, and adequate remedy at law. *Greene*, supra, 115 Nev. at 393. Its object is to restrain inferior courts from acting without

authority of law in cases where wrong, damage and injustice are likely to follow from such action. *Olsen Family Trust v. Eighth Judicial District Court*, 110 Nev. 548, 552, 874 P.2d 778 (1994).

Petitioners carry the burden of demonstrating that extraordinary relief is warranted. *Pan v. Eighth Judicial District Court*, 120 Nev. 222, 228, 88 P.3d 840 (2004). The trial in this matter has already begun and Petitioners' witnesses will testify within the next 24 hours. Petitioners will suffer serious financial injury if the media or public learned of its confidential trade secrets. The threat of irreparable injury to Petitioners' if their trade secrets are compromised is significant. In contrast, a Court Order closing certain trial proceedings that relate to Petitioners' trade secrets from the public and media, creates no burden on the remaining parties as it does not prohibit them from litigated their respective cases.

Petitioners respectfully request this Honorable Court to issue a writ of mandamus since Petitioners have no other adequate remedy at law to address the erroneous April 17, 2018 Order of the Eighth Judicial District Court denying Petitioners' request to close certain portions of this trial to the public and media as they relate to the "Thirteen" illusion. Determining this issue now pursuant to a Writ of Mandamus would promote judicial economy.

B. Issuing a Writ of Mandamus will Promote Judicial Economy

This court has agreed to hear Writ petitions where, sound judicial economy

and administration militate in favor of a petition. See *Salaiscooper v. Eighth Judicial District Court*, 117 Nev. 892, 901-02, 34 P.3d 509, 516-18 (2001) and *Scrimmer v. Eighth Judicial District Court*, 116 Nev. 507, 512, 998 P.2d 1190, 1193 (2000). In the present case, sound judicial economy and administration militate in favor of determining this particular issue at the present time.

V. ARGUMENT

As more specifically described herein, the Order is erroneous because Petitioners provided clear evidence establishing that the Petitioners' confidential and proprietary information related to the "Thirteen" illusion are trade secrets pursuant to the Nevada's Uniform Trade Secrets Act definition of a trade secret in NRS 600A.030 (5)(a) and (b) that warrant protection by closing certain proceedings to the public and media. *Whitehead v. Nevada Comm'n on Jud. Discipline*, 893 P.2d 866, 897, 111 Nev. 70 (NV, 1995).

A. The District Court Erred in Not Making a Specific Finding That Petitioners' Confidential And Proprietary Information Related to the "Thirteen" Illusion are Trade Secrets

Petitioners sought to protect the information subject to the Confidentiality Agreement and Protective Order as it is clearly Petitioners' trade secrets and proprietary information. Nevada's Uniform Trade Secrets Act defines a trade secret in NRS 600A.030 (5)(a) and (b) as follows:

“Trade secret” means information, including, without limitation, a formula, pattern, compilation, program, device, method, technique, product, system,

process, design, prototype, procedure, computer programming instruction or code that:

- a) Derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by the public or any other persons who can obtain commercial or economic value from its disclosure or use; and
- b) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

The factors to consider in determining if something is a trade secret include:

(1) the extent to which the information is known outside of the business and the ease or difficulty with which the acquired information could be properly acquired by others; (2) whether the information was confidential or secret; (3) the extent and manner in which the employer guarded the secrecy of the information; and (4) the former employee's knowledge of customer's buying habits and other customer data and whether this information is known by the employer's competitors. *Finkel v. Cashman Professional, Inc.*, 128 Nev. 68, 270 P.3d 1259, 33 IER Cases 879, 128 Nev. Adv. Op. 6 (2012) citing *Frantz v. Johnson*, 116 Nev. 455, 466-67, 999 P.2d 351, 358-59 (2000).

The confidential information and materials Petitioners are seeking to protect clearly meet the definition of "trade secret" under Nevada's Uniform Trade Secrets Act as the illusions undoubtedly all have their own specific design, method, technique and process that derive economic value for the Petitioners from not being generally known by the public given that the public cannot easily obtain such

information. Similarly, it is also clear that the Petitioners have made and continue their reasonable efforts to maintain the secrecy of the trade secrets, including having all persons who work with Petitioners in connection with their illusions and shows execute a nondisclosure agreement and most recently by entering into a Confidentiality Agreement with Plaintiffs and requiring a Protective Order to be issued in this matter prior to providing any information with respect to its trade secrets. In the field of magic, a magician's success depends upon the secrecy of the methods, apparatus, and workings of magical effects and illusions; and a magician creates and establishes his reputation based upon the originality and novelty of the various magical illusions which are proprietary information, intellectual property and proprietary technologies which all constitute a trade secret.

Moreover, magicians themselves believe their illusions are trade secrets and therefore try to limit the exposure of the illusions or the methods employed to perform the illusion. The vast majority of magicians including Mr. Copperfield are members of various magician societies such as The Society of American Magicians or International Brotherhood of Magicians. All magicians who are members of these various societies have a code of ethics that each magician agrees to maintain. The code of ethics of these societies include that each magician will "oppose the willful exposure to the public of any principles of the Art of Magic, or

the methods employed in any magic effect or illusion." See Joint Ethics Guidelines for The Society of American Magicians attached hereto as Exhibit "C" and page 18 of the International Brotherhood of Magicians Standing Rules at Section 10(d) attached hereto as Exhibit "D." There are penalties if a magician does not meet his ethical obligations with respect to exposing the principles or methods employed the magician including being black listed, fines, expulsion or even litigation.

With respect to some of the trade secrets related to the other illusions Petitioners sought to protect, portions of those illusions are based on the same technics used in the "Thirteen" illusion. These other illusions do not have audience participation; thus, nothing is ever revealed to any persons outside of those who work on the show. Therefore, this information and documentation meet the requirements of Nevada's Uniform Trade Secrets Act and contain trade secret information.

Although the District Court did not make a specific finding that the confidential information related to the "Thirteen" illusion are trade secrets, it did find that Petitioners' confidential information are trade secrets with respect to the other illusions as the Order clearly sets forth that there may be reason to preclude electronic recording or close the courtroom during certain portions of the trial related to the Petitioners' other illusions **as there are some things there that may**

be protectable Trade Secrets that would warrant the Court's consideration of closure of proceedings.

The District Court denied Petitioners' request to close proceedings related to their confidential information regarding the "Thirteen" illusion because the District Court found that the information did not warrant protection because it "has been out for quite some time in terms of what happened in this case."³ This simply is not the case. Any prior release of any of such confidential information related directly or indirectly to the "Thirteen" illusion was only disclosed to the parties pursuant to a Confidentiality Agreement and the entering of a Stipulated Protective Order to ensure that it would not be released to those not parties to the current litigation. The confidential information regarding the "Thirteen" illusion was never released to the general public or media. Therefore, despite Petitioners' reasonable efforts to maintain the secrecy of their confidential and proprietary information or the financial injury that Petitioners' will certainly suffer as a result of the release of this information, the District Court found that information did not warrant protection.

Thus it is clear that the District Court erred in not making specific findings as to that the design, methods, techniques and process to accomplish the "Thirteen"

³ Transcript of the April 13, 2017 District Court Hearing, page 21, lines 10-25 and page 22, lines 1-4. A true and correct copy of the April 13, 2017 District Court Hearing Transcript attached hereto as Exhibit "E."

illusion are protectable trade secrets pursuant to Nevada's Uniform Trade Secrets Act.

B. The District Court Abused Its Discretion in Denying Petitioners' Request to Close Certain Court Proceedings Related to Trade Secrets

Although the District Court did not make a specific finding that the confidential information related to the "Thirteen" illusion are trade secrets, it did find that Petitioners' confidential information are trade secrets with respect to the other illusions as the Order clearly sets forth that there may be reason to preclude electronic recording or close the courtroom during certain portions of the trial related to the Petitioners' other illusions as there are some things there that may be protectable trade secrets that would warrant the Court's consideration of closure of proceedings.

Petitioners' trade secrets must be protected by closing certain court proceedings related to the same from the media and general public. Nevada law recognizes that courts should protect trade secrets or other confidential information by reasonable means, including allowing parties to file documents containing such information under seal and having closed proceedings. See SRCR 3(4)(g); Nev. R. Civ. P. 26(c)(7) and (8) (a court may enter an order "that a trade secret or other confidential research, development, or commercial information not be revealed or be revealed only in a designated way," including under seal).

Although there is a presumptive openness in judicial proceedings," there are

certain exceptions to the presumptive openness of judicial proceedings." *Id.* See also *Brown & Williamson Tobacco Corp. v. F.T.C.*, 710 F.2d 1165, 1179 (6th Cir. 1983). Courts have held that the presumption of openness in judicial proceedings may be overcome by an *interest in safeguarding a trade secret and is the kind of confidential commercial information that courts have traditionally protected.* *Publicker Industries, Inc. v. Cohen*, 733 F.2d at 1073 citing *Zenith Radio Corp. v. Matsushita Electric Industrial Co.*, 529 F.Supp. 890.

The Nevada Supreme Court has acknowledged that closure of court proceedings or records should occur only when necessary (a) to comply with established public policy set forth in the constitution, statutes, rules, or case law; (b) **to protect trade secrets**; (c) to protect a compelling governmental interest [e.g., national security; confidential informants]; (d) to obtain evidence to properly determine legal issues in a case; (e) to avoid substantial injury to innocent third parties [e.g., to protect young witnesses from offensive testimony; to protect children in a divorce]; or (f) to avoid substantial injury to a party by disclosure of matters protected by a common law or privacy right not generally inherent in the specific type of civil proceeding sought to be closed. *Whitehead v. Nevada Comm'n on Jud. Discipline*, 893 P.2d 866, 897, 111 Nev. 70 (NV, 1995). Public disclosure of a trade secret destroys the information's status as a trade secret, harming the trade secret owner by both depriving him of a property interest and by

allowing his competitors to reproduce his work without an equivalent investment of time and money. *Saini v. Intl Game Tech.*, 434 F. Supp. 2d 913, 919 (D. Nev. 2006).

"The party seeking the closure of a hearing or the sealing of a transcript bears the burden of showing that the material is the kind of information that courts will protect and that there is good cause for the order to issue." *Id.* at 1070-1071 citing *Zenith Radio Corp. v. Matsushita Electric Industrial Co.*, 529 F.Supp. 866, 890 (E.D.Pa.1981). "Good cause is established on a showing that disclosure will work a clearly defined and serious injury to the party seeking closure. *Id.*" "Procedurally, a trial court in closing a proceeding must both articulate the countervailing interest it seeks to protect and make "findings specific enough that a reviewing court can determine whether the closure order was properly entered."" *Publicker Industries, Inc. v. Cohen*, 733 F.2d 1059, 1072 (1984) citing *Press-Enterprise Co. v. Superior Court of California, Riverside County*, 104 S.Ct. 819, 824 (1984); *In re Iowa Freedom of Information Council*, 724 F.2d 658, 662 (1983).

In the instant action, good cause certainly exists for the District Court to issue an Order to close certain court proceedings to protect the Petitioners' interests in the trade secret information revealing the confidential details of the show or the specific design, method, technique, process and details of any of the illusion performed including the subject "Thirteen" illusion. It cannot be disputed that the

revealing of how the "Thirteen" illusion is accomplished to make the participants "disappear" and "reappear" to the media or general public would certainly cause Petitioners to suffer serious financial injury, especially given that this same information will also explain how other of Petitioners' illusions that are currently still being performed are also accomplished. In the field of magic, a magician's success depends upon the secrecy of the methods, apparatus, and workings of magical effects and illusions. Once a magic secret is revealed, the illusion becomes virtually worthless.

As a result of the District Court not closing certain trial proceedings that relate to Petitioners' trade secrets, the District Court is forcing Petitioners to choose between properly defending themselves and disclosing confidential proprietary information that will lead to serious financial harm.

Petitioners' requested that the District Court close the proceedings for opening statements, closing arguments and the parts of the argument/testimony related to Petitioners' trade secrets and specifically the "Thirteen" illusion as well as where other potential illusions are discussed. Petitioners' request is narrowly tailored to serve their overriding interests in protecting their trade secrets and confidential information that will be discussed in certain court proceedings because it is undeniable that Petitioners will suffer serious financial injury if the media or public learned of its confidential trade secrets.

The threat of irreparable injury to Petitioners' if their trade secrets are compromised is significant. In contrast, a Court Order closing certain trial proceedings that relate to Petitioners' trade secrets from the public and media, creates no burden on the remaining parties as it does not prohibit them from litigated their respective cases.

VI. CONCLUSION

This court should grant Petitioners' Writ of Mandamus because Petitioners will suffer serious financial injury if the media or public learned of its confidential trade secrets. This Writ of Mandamus is necessary because Petitioners have no plain, speedy or adequate remedy in the ordinary course of law to correct the District Court's erroneous decision and April 17, 2018 Order which denied Petitioners' request to close certain trial proceedings.

Accordingly, it is requested that this court grant this Writ of Mandamus.

Respectfully submitted,

DATED: April 18, 2018

SELMAN BREITMAN LLP

By: /s/ Gil Glancz

Elaine K. Fresch

Nevada Bar No. 9263

Selman Breitman LLP

Eric O. Freeman

Nevada Bar No. 6648

Gil Glancz

Nevada Bar No. 9813

Jerry C. Popovich [Pro Hac]

California Bar No. 138636

Suite 200

3993 Howard Hughes Parkway, Las

Vegas, NV 89169-0961

Telephone: 702.228.7717

Facsimile: 702.228.8824

Attorneys for Petitioners DAVID
COPPERFIELD'S DISAPPEARING,
INC.; DAVID COPPERFIELD aka
DAVID KOTKIN; and MGM GRAND
HOTEL, LLC

Brian K. Harris, Esq.
Christian Griffin, Esq.
HARRIS & HARRIS
2029 Alta Drive
Las Vegas, NV 89106
bharris@harrislawyers.net
cgriffin@harrislawyers.net

Attorneys for Plaintiffs/Real Parties in Interest

Benedict P. Morelli, Esq.
Adam E. Deutsch, Esq.
Perry S. Fallick, Esq.
MORELLI LAW FIRM PLLC
777 Third Ave., 31st Floor
New York, NY 10017
bmorelli@morellilaw.com
adeutsch@morellilaw.com
pfallick@morellilaw.com

Attorneys for Plaintiffs/Real Parties in Interest

Lee Roberts, Esq.
Howard J. Russell, Esq.
WEINBERG, WHEELER, HUDGINS, GUNN
& DIAL, LLC
6985 S. Rainbow Blvd., Suite 400
Las Vegas, NV 89118
lroberts@wwhgd.com
hrussell@wwhgd.com

Attorneys for Defendant Backstage
Employment and Referral, Inc.

Roger Strassburg, Esq.
Gary W. Call, Esq.
RESNICK & LOUIS, P.C.
5940 S. Rainbow Blvd.
Las Vegas, NV 89118
gcall@rlattorneys.com
rstrassburg@rlattorneys.com

Attorneys for Defendants Team Construction
Management, Inc. and Beacher's LV, LLC

Elaine K. Fresch, Esq.
Jerry C. Popovich, Esq.
Eric O. Freeman, Esq.
SELMAN BREITMAN LLP
3993 Howard Hughes Parkway, Suite 200
Las Vegas, NV 89169
efresch@selmanlaw.com
jpopovich@selmanlaw.com
efreeman@selmanlaw.com

Attorneys for Petitioners/Defendants David
Copperfield's Disappearing, Inc., David
Copperfield, and MGM Grand Hotel, LLC