IN THE SUPREME COURT OF THE UNITED STATES OF NEVADA

SUPREME COURT CASE NO. 75609

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

Petitioners,

v.

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

Respondents

GAVIN AND MIHN-HAHN COX

Real Parties In Interest.

FILED

APR 24 2018

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

REAL PARTIES IN INTEREST GAVIN COX AND MINH-HAHN COX'S ANSWER TO PETITIONERS' WRIT OF MANDAMUS

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IN THE COURT OF APPEALS

STATE OF NEVADA

DAVID COPPERFIELD'S DISAPPEARING, INC.; DAVID COPPERFIELD A/K/A DAVID KOTKIN; and MGM GRAND HOTEL, LLC, Petitioners, vs. THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE MARK R. DENTON, DISTRICT JUDGE, Respondents, and GAVIN COX; AND MINH-HAHN COX, Real Parties in Interest	)	Court of Appeals No.: 75609 District Court No. A-14-705164-C

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NRAP 26.1 DISCLOSURE

The law firms representing Real Parties in Interest, Gavin Cox and Minh-Hahn Cox, in District Court and in this Court are Morelli Law Firm, PLLC and Harris & Harris

DATED this 25 day of April, 2018

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By:_____

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I.

STATEMENT OF RELEVANT FACTS

On November 12, 2013, Real Parties in Interest, GAVIN COX and MINH-HAHN COX ("Cox Parties"), attended the David Copperfield Show at the MGM Grand Hotel and Casino. During the show, GAVIN COX was selected to participate in the "Thirteen" Illusion. As Mr. Cox was navigating the route chosen by Petitioners, DAVID COPPERFIELD'S DISAPPEARING, INC., DAVID COPPERFIELD A/K/A DAVID KOTKIN, and MGM GRAND HOTEL, LLC ("Petitioners"), being hurried down dark passageways, he was caused to fall and suffer injuries.

The Cox Parties filed their Complaint against Petitioner and other Defendants on August 6, 2014.

Trial in this matter began on April 3, 2018. Prior to this Court's Order, Trial was set to resume on April 24, 2018.

On April 10, 2018. Petitioners filed a Trial Brief seeking to close certain court proceedings from the media and public. A hearing was held on April 13, 2018. At the hearing, Counsel for the Cox Parties raised the issue that more than 100,000 people have participated in the "Thirteen" Illusion without signing a non-disclosure agreement. ***See Cox Appendix Exhibit 1, at Page 10, Lines 22-25 and Page 11, Lies***

1-4.

On April 17, 2018, the District Court issued an Order denying Petitioners' request to close the courtroom with regard to testimony or evidence related to the "Thirteen" Illusion in which GAVIN COX was a participant. In its' Order, the Court left open the possibility of limiting or precluding electronic recording of testimony or evidence regarding other illusions Petitioners' may wish to protect. ***See Cox Appendix at Exhibit "2."***

On April 13, 2018, Petitioners offered Opening Statements to the jury. In such Opening Statements, Petitioners emphasized the fact that more than 96,000 people have participated in the "Thirteen" Illusion prior to November 12, 2013. ***See Cox Appendix Exhibit 3, Pages 99-101.*** Moreover, Petitioners have made it clear one of the primary defense tactics is to attempt to show there were nearly 100,000 people who have participated in the Thirteen Illusion over the course of twenty (20) years without injury.

In fact, in her opening statements counsel for Petitioners demonstrated the vast number of people who have participated by stating it is equal to five (5) full capacity T-Mobile Arenas at a Golden Knights Hockey game. ***See Cox Appendix Exhibit "3," Page100, Lines 2-18.***

. . . .

Respondents agree it is undeniable almost 100,000 have participated in the Thirteen Illusion and are therefore aware of how it is completed. Respondents, however, dispute the contention there were no injuries to any of these people during their prior participation in the Thirteen Illusion. In fact, if it were not for media coverage of this trial, Petitioners could have gotten away with perpetrating a fraud on the Court and the public by claiming there were not prior injuries at the Copperfield Show. Media coverage of the trial has uncovered at least three (3) witnesses, including prior participants in the Thirteen Illusion, who have either been injured themselves or have directly witnessed injuries during prior execution of this Illusion. ***See Cox Appendix Exhibit "4."*** The testimony of these participants may call into question testimony made by the parties at Trial and prior testimony made by those parties and other witnesses under oath. These witnesses only learned of the trial and felt compelled to come forward when they saw Petitioner's claims no one had ever previously been injured in the performance of this trick as reported by various media outlets.

In addition, Petitioners' are too late to prevent dissemination of the illusion. That ship has sailed. Mr. Copperfield's counsel and Chris Kenner, Executive Producer of the David Copperfield Show, have explained the illusion to the jury and the press in great detail. In her opening, Counsel describes the path taken by

participants from leaving on the "dragon" through stage curtains, down passageways and back into the theater behind the audience. ***See Appendix Exhibit "3," Pages 115-117.*** Likewise, on April 17, 2018, witness Chris Kenner, Executive Producer of the David Copperfield Show and co-creator of the "Thirteen" Illusion testified under oath in this Trial regarding many of the specific elements of the "Thirteen" Illusion. ***See Cox Appendix Exhibit "5."*** Mr. Kenner reiterated the fact that "well over 100,000 people" have participated in the Thirteen Illusion. ***See Appendix Exhibit "6," Page 102, Lines 11-18.*** In addition, Mr. Kenner's testimony included detailed information regarding how the Thirteen illusion is performed and the various responsibilities of approximately numerous employees and people in every show who are required to make sure it happens as planned. ***See Cox Exhibit "5," Page 130, Lines 4-5, and 23-25, Page 131, Lines 16-19, Page 136, Lines 23-25, and Pages 144-146(generally describing the route).***

In addition, Mr. Kenner testified the Thirteen Illusion is no longer part of Mr. Copperfied's Show. In fact, the Illusion was removed from the show in 2013. ***See Cox Appendix, Exhibit "5," Page 100, Lines 1-3 and 19-22.***

The trial and the Illusion have been the subject of articles and/or coverage on Good Morning America, the Today show and other national broadcasts. In its April 18, 2018, article, the Associated Press described the "Thirteen" Illusion, reporting:

> "Practiced stagehands with flashlights hurried randomly chosen participants through dark curtains, down unfamiliar passageways, around corners, outdoors, indoors and through an MGM Grand resort kitchen in time to re-enter the back of the theater for their "reappearance" during the show finale."

***See* Appendix Exhibit "7"**

Likewise, the trial and the illusion have been the subject of extensive media coverage on all major news networks during the last few weeks. ***See* Cox Appendix Exhibit "7."** In addition to coverage on Good Morning America and the Today Show, the Illusion has received coverage on ABC World News Tonight, The Washington Post, the Las Vegas Review journal, People Magazine, NBC News, The Times (UK), the Independent and Celebrity Access among other programs and news outlets. ***See* Cox Appendix Exhibit "7."**

The world knows how the Thirteen Illusion is done. After hearing argument on the issue, Judge Denton determined he was "not going to close the proceedings relative to the specific illusion that's involved here, the Thirteen Illusion, because I think that's–that's been out for quite a while." ***Cox Appendix Exhibit "1," Page 22, Lines23-25 and Page 23, Line 1.*** Petitioners' "secrets" have been disclosed on the internet, by the 100,000 participants, in the testimony of Chris Kenner and in the numerous media reports including a widely run Associated Press story, which lay out for the world the way the Thirteen Illusion is performed. Petitioners' Writ seeks to

preclude the public and the media from the courtroom during testimony so as to prevent revealing the "secrets" of the illusion which are available in just a few keystrokes. Mandamus in not warranted where, as here, no trade secrets exist and no irreparable harm will result. The public knows how the illusion is done. That cat is out of the proverbial bag. As such, no harm will result from further discussion of the illusion in an open setting.

Petitioners seek Mandamus to reverse the District Court's ruling denying Petitioners' Motion to close the trial proceedings related to trade secrets and specifically the "Thirteen" illusion. Petitioners premise their request, as some such Petitioners did their underlying Motion, on their contention that in formation about their illusions constitute trade secrets and confidential commercial information that are entitled to protection and that said protection purportedly constitutes good cause to override the well-established presumption, protected by the First Amendment, that legal proceedings, and particularly trials, are inherently public affairs.

Trial in this matter began on April 3, 2018. After nearly two weeks of Voir Dire, a Jury was seated. Respondents began presenting their case-in-chief on April 17, 2018 with two days of testimony from Executive Producer Chris Kenner and the beginning of testimony from Defendant David Copperfield. Mr. Copperfield is currently set to resume his testimony at 9:00 a.m. on Tuesday, April 24, 2018.

Following the testimony of Mr. Copperfield, Respondents have numerous witnesses scheduled to prove the liability of Defendants in this bifurcated trial. Should the Court's Stay continue through April 24, 2018, Respondents anticipate complications scheduling witness testimony as well as further inconvenience to jurors who have committed weeks of their life caused by further delay.

For the reasons set forth herein, Real Parties in Interest, GAVIN COX and MINH-HAHN COX request this Court deny Petitioners' Writ of Mandamus and permit Trial in this matter to resume as scheduled on April 24, 2018, in open Court.

II.

A. A SECRET KEPT BY 100,000 PEOPLE IS NOT A SECRET—THE THIRTEEN ILLUSION NOT A TRADE SECRET--- MANDAMUS MUST BE DENIED.

The Thirteen Illusion does not meet the standards required to consider it a Trade Secret because it was not kept a "secret" by Petitioners at all. To the contrary, it was shared with at least one hundred thousand (100,000) people. At the finale of each show, after the audience has witnessed a number of amazing feats of magic, thirteen audience members were selected at random, with no instructions, with no information, with no waivers signed, but an experience to tell your friends and family about, but "shhhh don't tell." Over the course of twenty years, what other conclusion could possibly be reached than this illusion is not a "secret," but is a marketing effort

to get the next batch of tickets sold. Petitioners never required any of the admitted one hundred thousand (100,000) audience participants to sign a waiver, non-disclosure agreement, or any other agreement of any kind. Respondents believe the Thirteen Illusion was intended to provide at least thirteen (13) audience members per show with an amazing story to tell their friends and family therefore encouraging others to attend future shows with the hope of the opportunity to be selected. Petitioners are not entitled to special protection for the Thirteen Illusion and Mandamus must not be granted. Petitioners cite no case law to support their contention that the method by which a "magic trick" is performed constitutes a trade secret and rely solely on N.R.S. 600A.030(5)(a) which provides:

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5. "Trade secret":

> (a) information, including, without limitation, a formula, pattern, program, device, method, technique, product, system, process, design, prototype, procedure, computer programming instruction or code that:
>
> (1) 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
>
> (2) Is the subject of efforts that are reasonable under the circumstances to maintain its secrecy.

N.R.S. 600A.030(5)(a)

Factors to consider in determining whether something is a trade secret within the meaning of N.R.S. 600A.030(5)(a) include: (1)"[t]he 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 [party] guarded the secrecy of the information; and (4) .... whether this information is known by the [party's] competitors." ***Chemeon Surface Technology, LLC, v. Metalast International, Inc., Case No. 315CV00294MMDVPC, 2018 WL 1567846, at 10 (D.***

Nev. Mar. 30, 2018). The Thirteen Illusion does not meet the requirements for this Court to consider it a Trade Secret and does not, therefore, entitle Petitioners to Mandamus. Mandamus is only appropriate in circumstances where there is clear error which, without correction, will cause irreparable harm. ***See Double Diamond Ranch Master Ass'n v. Second Judicial Dist. Court, 354 P. 3d 641, 646-647 (Nev. 2015) citing In re Linee Aeree Italiane (Alitalia), 469 F.3d 638, 640 (7th Cir. 2006). Id at 647 citing Reno Hilton Resort Corp. v. Verderber, 121 Nev. 1, 5-6, 106 P.3d 134, 136-37 (2005).***

1. There is no irreparable harm where the alleged "secret" has been shared with at least one hundred thousand (100,000) strangers.

The method by which the subject Thirteen Illusion is performed is not a trade secret because, by Petitioners' own admission, nearly one hundred thousand (100,000) individual audience members know how the trick is completed through their own experience of participating in the trick. Moreover, Petitioners' competitors are likely well apprised of the manner of its performance via its exposure to the audience participants as well as media attention gained as a result of this case. Petitioners have provided absolutely no evidence to support their contention that the method of completing the Thirteen Illusion is not well known within the industry. Although Petitioners allege they keep the information about the performance of the Thirteen Illusion confidential by having all of their employees sign nondisclosure

agreements, they notably do not have the one hundred thousand (100,000) audience participants sign NDAs as a prerequisite to participating in the Illusion. Petitioners, therefore, do not take all reasonable efforts to maintain the purported secrecy of the Thirteen Illusion. If Petitioners wanted to keep an illusion or technique secret they should not ask one hundred thousand (100,000) audience members to be involved. By doing so, they assume their own risk by sharing the information with the public and failing to keep the Illusion a secret. There is no reason to share the details of any other Illusion in this Trial. Further, There is no legitimate basis for deeming the methods of Petitioners' Thirteen Illusion "trade secrets."

2. The Information About How The Trick Is Completed Is Easily Acquired.

The Thirteen Illusion is not a Trade Secret because any competitor who wants to know how the trick is performed merely needs to ask any one of the one hundred thousand (100,000) audience participants who have been a part of the illusion during the past twenty (20) years. Moreover, even prior to this trial, a simple search of the internet would have uncovered Petitioners' "secrets." It is disingenuous to suggest that the participants don't know the whole story of how the Illusion comes together. They know the most important part...how they got from the stage to the back of the theater. Then, they are shown an "audience perspective" recording of what they missed while they were running through a darkened maze to accomplish this trick.

Mr. Kenner, the executive producer, testified to this fact during direct examination in this Trial. ***See Cox Appendix Exhibit "" Page 150, Lines 17-25 and Page 151, Lines1-5.***

3. There was little effort to keep the Thirteen Illusion a secret for the over 20 years it was performed.

The Thirteen Illusion was not kept confidential or secret. Of the one hundred thousand (100,000) audience participants, Respondents have seen no evidence of a single one who was asked to sign a non-disclosure agreement relative to their participation in the Illusion. Moreover, multiple media outlets are already aware of and have published the details of the Thirteen Illusion. The following media entitities have published stories and information regarding how the Thirteen Illusion is accomplished in great detail:

ABC World Nightly News -http://abcnews.go.com/WNT/video/david-copperfield-forced-reveal-magic-tricks-54571469http://abcnews.go.com/WNT/video/david-copperfield-forced-reveal-magic-tricks-54571469

AP:https://www.apnews.com/89a4d1c6d8aa4e5ab2320152fa49c2a0/Lawsuit-leads-to-revelations-about-David-Copperfield's-act
AP:http://www.nydailynews.com/newswires/entertainment/illusionist-copperfield-takes-stand-tourist-injury-case-article-1.3942276

Las Vegas Review-Journal: https://www.reviewjournal.com/crime/courts/david-copperfield-takes-witness-stand-in-las-vegas-trial-video/https://www.reviewjournal.com/crime/courts/david-copperfield-takes-witness-

stand-in-las-vegas-trial-video/

Washington Post: https://www.washingtonpost.com/news/arts-and-entertainment/wp/2018/04/18/a-david-copperfield-trick-allegedly-injured-a-participant-its-secret-was-just-exposed-in-court/?noredirect=on&utm_term=.530daacb8012ERLINK"https://www.washingtonpost.com/news/arts-and-entertainment/wp/2018/04/18/a-david-copperfield-trick-allegedly-injured-a-participant-its-secret-was-just-exposed-in-court/?noredirect=on&utm_term=.530daacb8012"\t"_blank"https://www.washingtonpost.com/news/arts-and-entertainment/wp/2018/04/18/a-david-copperfield-trick-allegedly-injured-a-participant-its-secret-was-just-exposed-in-court/?noredirect=on&utm_term=.530daacb8012

People Magazine: http://people.com/human-interest/david-copperfield-reveals-magic-trick-court-case-nevada/http://people.com/human-interest/david-copperfield-reveals-magic-trick-court-case-nevada/

NBC: https://www.nbcnews.com/pop-culture/celebrity/david-copperfield-testify-about-magic-trick-left-participant-thousands-medical-n866576https://www.nbcnews.com/pop-culture/celebrity/david-copperfield-testify-about-magic-trick-left-participant-thousands-medical-n866576https://www.nbcnews.com/pop-culture/celebrity/david-copperfield-testify-about-magic-trick-left-participant-thousands-medical-n866576

The Times: https://www.thetimes.co.uk/article/copperfield-forced-to-reveal-secret-of-magic-trick-that-injured-briton-2zz32n8m7https://www.thetimes.co.uk/article/copperfield-forced-to-reveal-secret-of-magic-trick-that-injured-briton-2zz32n8m7

The Independent: https://www.independent.co.uk/news/world/americas/david-copperfield-sued-magician-brain-injury-illusion-a8311251.htmlhttps://www.independent.co.uk/news/world/americas/david-copperfield-sued-magician-brain-injury-illusion-a8311251.html

Celebrity Access Encore: https://celebrityaccess.com/2018/04/18/copperfield-trick-revealed-during-lawsuit/https://celebrityaccess.com/2018/04/18/copperfield-trick-revealed-during-lawsuit.

Petitioners made no effort to guard the secret of how the Thirteen Illusion is completed—it was a marketing technique to get future audience members to attend and potentially participate.

There was no real effort by Petitioners to guard the secret of the Thirteen Illusion. In fact, it seems more likely to be part of a marketing scheme rather than a true "Illusion." By using the Thirteen Illusion as the finale of the show, Petitioners engaged an ideal number of at least thirteen (13) individuals in every single performance. Those thirteen (13) are asked to be a part of the Illusion and understand how it worked. This, because those participants were undoubtedly sharing that information with family and friends, this enticed future audience members with the chance to be part of the act. Secrets are not part of this part of the performance. The audience may be mesmerized, but the one hundred thousand (100,000) participants know exactly what happened. The most Petitioners asked of any participant was to "please don't tell." Realistically, however, each one of those people told many others about their experience as a participant in the show. It doesn't take an expert to understand this...human nature prevails. The number of people who may be aware of the details of how the Thirteen Illusion is accomplished, both by participation and those who told others about their experience, is realistically likely in the many hundreds of thousands if not millions. A secret kept between that many people is not

a secret.

4. Petitioners competitors either knew or now know how the Thirteen Illusion is accomplished.

Given the admitted number of participants involved throughout the decades of completing this trick, it is incredibly unlikely Petitioners' competitors do not know how it is accomplished. Petitioners give no evidence that competitors are unaware of how the trick is completed. Yet there is extensive and compelling evidence to indicate almost anyone who wishes to discover how the Thirteen Illusion is performed can find those details. All that is required is locating any one of the one hundred thousand (100,000) participants who know how it was completed. Moreover, now that the media has published this information throughout the world, there is no possibility any competitor is unaware of how the Thirteen Illusion is completed unless they are willingly avoiding this knowledge.

The Details Of The Thirteen Illusion At The Heart Of The Issues In Dispute In This Case, Have Already Been Revealed In Open Court Witness Testimony, And Are Already Known To The Public At Large—There Is Nothing Left To Hide The details of how the Thirteen Illusion is performed and completed is at the heart of the dispute in this case—those details have already been revealed through open court testimony and disseminated to the world at large. Public safety and awareness demands open courts during a Trial. As such, the details of the Thirteen Illusion have

already been revealed during two days of testimony from Executive Producer Chris Kenner. Those details have been the subject of countless local, national, and international news broadcasting already. Simply stated—the cat is out of the bag, the bell is rung, the bird has sung, and the beans are spilled, and the ship has sailed. There is nothing of this Illusion left to hide. If any competitor wishes to know how the Thirteen Illusion is performed, a simple internet search would reveal a number of news outlets with all the details. Blocking media from the courtroom at this point has nothing to do with preserving a "trade secret" and everything to do with Petitioners wishing to avoid potentially looking bad in front of Copperfield's fans. Petitioners contention that parts of the Thirteen are similar to other Illusions is a red herring. There is no other Illusion at issue in this matter and any other Illusions are irrelevant. Repondents are neither aware of nor have they presented evidence of any other Illusions performed by Mr. Copperfield. Should Petitioners wish to divulge details of other Illusions they do so at their own peril. Furthermore, the Trial Judge has already ordered that any testimony regarding any other Illusions shall be restricted from public view.

Because information about Thirteen Illusion 1) is easily acquired via personal knowledge of any one of the one hundred thousand (100,000) it was shared with; 2) there was no effort to keep the details of the Thirteen Illusion from those one hundred

thousand (100,000) participants; 3) there was no effort to guard the secrets of the Thirteen Illusion besides asking the participants "don't tell" as part of a greater marketing scheme; and 4) competitors know how the Illusion is accomplished either via first hand information from one of the one hundred thousand participants or the information in the media relative to statements by counsel and testimony already provided in this Trial, there is absolutely no basis to consider the Thirteen Illusion or any part thereof a "trade secret." Petitioners Writ of Mandamus should be denied in its entirety.

B. THERE WAS NO ABUSE OF DISCRETION BY THE TRIAL JUDGE—MANDAMUS IS NOT WARRANTED NOR APPROPRIATE

The Trial Judge in this matter made a clear record of his decision to allow this case to be witnessed by the public via television, print, and other media. He heard argument from all parties and made a well-reasoned decision. Mandamus will not lie to control discretionary action, unless discretion is manifestly abused or is exercised arbitrarily or capriciously. ***See Nev. Dep't of Pub. Safety v. Coley, 368 P.3d 758, 760-61 (Nev. 2016) citing Round Hill Gen. Improvement Dist. v. Newman, 97 Nev. 601, 603-04, 637 P.2d 534, 536 (1981)***. An exercise of discretion is considered arbitrary if it is "founded on prejudice or preference rather than on reason" and capricious if it is "contrary to the evidence or established rules of law." ***Id*** citing ***State v. Eighth Judicial Dist. Court (Armstrong), 127 Nev. 927, 931-32, 267 P.3d 777,***

780 (2011) (quoting Arbitrary and Capricious, Black's Law Dictionary (9th ed. 2009)). The burden of proof to show the capriciousness is on the applicant" ***Id*** *citing Gragson v. Toco, 90 Nev. 131, 133, 520 P.2d 616, 617 (1974).*

Judge Denton did not abuse his discretion and his ruling is within the clear purview of his authority to control how Trial will be run in his Court. Mandamus overruling his decision would require a manifest abuse of discretion—there is no such abuse in this case. The Thirteen Illusion has already been revealed. Moreover, Judge Denton has already issued protection to prevent any other potentially unrelated Illusions from becoming public. Mandamus must be denied as there was no abuse of discretion and the Thirteen Illusion does not constitute a "trade secret" requiring protection. Petitioners' request must be denied in its entirety.

C. OPEN COURTROOMS ENHANCE JUSTICE

Open Courtrooms are preferred by the Courts and the First Amendment. Petitioners have wholly failed to make the specific showing required to establish that an important countervailing interest exists to justify impinging upon the First Amendment rights of the public and press to observe and record the proceedings in this action.

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. . . .

It is well established that "[l]egal proceedings, and particularly trials, are inherently public affairs." ***See Suen v. Las Vegas Sands, Inc., 2013 WL 3862263, (Nev. Dist. Ct., Clark Co. April 19, 2013)***. Indeed, this principle is specifically codified in the Nevada Revised Statutes:

> 1.090 Public sittings
>
> The sitting of every court of justice shall be public except as otherwise provided by law; but the judge of any court may exclude any minor during any criminal trial therein except such minor be on trial, or when testifying as a witness, or when the minor shall be a law student preparing to apply for a license to practice law.

N.R.S. 1.090.

Moreover, the Supreme Court of Nevada, citing the First Amendment, has noted that "historically, both civil and criminal trials have been presumptively open [to the public]." ***Del Papa v. Steffen, 112 Nev. 369,374 (1996) (internal quotations and citations omitted)***. The Court explained:

> A major purpose of the First Amendment is to protect the free discussion of governmental affairs .... Furthermore, open court proceedings assure that proceedings are conducted fairly and discourage perjury, misconduct by participants, and biased decision making. Openness promotes public understanding, confidence, and acceptance of judicial processes and results, while secrecy encourages misunderstanding, distrust, and disrespect for the courts.

Del Papa, 112 Nev. at 374 (internal citations omitted).

The federal courts of appeal have also widely held that the First Amendment and common law provide a right of access to civil trials and associated records and documents. ***See Courthouse News Serv. v. Planet 750 F.3d 776, 786 (9th Cir. 2014) (citing NY Civil Liberties Union v. NYC. Transit Auth., 684 F.3d 286,305 (2d Cir.2011); Publicker Indus., Inc. v. Cohen, 733 F.2d 1059, 1061 (3d Cir.1984); In re Cont'l Ill. Sec. Litig., 732 F.2d 1302, 1308 (7th Cir.1984); Brown & Williamson Tobacco Corp. v. Fed. Trade Comm 'n, 710 F.2d 1165, 1177 (6th Cir.1983)); see also Ctr.for Auto Safetyv. Chrysler Grp., LLC, 809 F.3d 1092, 1096 (9th Cir. 2016)*** ("The presumption of access is based on the need for courts, although independent-indeed, particularly because they are independent-to have a measure of accountability and for the public to have confidence in the administration of justice")(internal citation omitted). "It is thus well-established that the right of access to public records and proceedings is necessary to the enjoyment of the right to free speech." ***Courthouse News Serv., 750 F.3d at 786.*** As such, a court may only limit the public and press' right of access when an important, countervailing interest is shown with specificity. ***Publicker Indus., Inc., 733 F.2d at 1071.***

Here, Petitioners have wholly failed to make the specific showing required to establish that an important countervailing interest exists to justify impinging upon the First Amendment rights of the public and press to observe and record the

proceedings in this action.

D. MEDIA COVERAGE HOLDS PARTIES ACCOUNTABLE

Media coverage of trials increases public awareness of issues of safety and trust and can lead to public accountability. This is true especially in circumstances where a vast number of people may either be involved, or have found themselves in the same circumstances, or may have information previously withheld which would be helpful to the finder of fact—the Jury. For instance, in this case, media coverage has led to the discovery of at least three (3) witnesses including prior participants in the Thirteen Illusion who have either been injured themselves or have directly witnessed injuries during prior execution of this Illusion. Respondents will produce identified witnesses pursuant to the District Court's Order. The testimony of these participants is anticipated to rebut and call into question testimony made by the parties at Trial and prior testimony made by those parties and other witnesses under oath. Without freedom of information to the public, parties would have a greater opportunity to perpetrate a fraud upon this Court and avoid accountablility.

There is an inherent value to having free access to information, especially information which is well known to many others already. It is even more imperative and essential that Trials are made public so as to be certain all available information is presented to the finder of fact. If the Jury does not have all of the information,

there is no possibility of finding truth or justice. There is a reason for the well-known saying, "if you aren't guilty, you don't have anything to hide."

The Thirteen Illusion is not a trade secret and does not qualify for special protection. Petitioners' Writ of Mandamus must be denied in its entirety.

E. THE SECRET OF THIS ILLUSION HAS ALREADY BEEN REVEALED—AN ONGOING STAY DELAYS JUSTICE AND IS UNFAIR TO THE WAITING JURY.

There is no value in restricting media coverage for an illusion the details of which are already widely known. Mr. Kenner testified for two days about the specifics of how the Thirteen Illusion is performed. This jury has already been through over a week of voir dire, opening statements, and witness testimony about the details of the Thirteen Illusion. To cause them to wait longer to continue the proceedings is a waste of their time. With each day of delay, there is an increased possibility we will ultimately lose a juror and skews the schedule of witnesses. Judicial economy and inherent fairness require this case to move forward as swiftly as possible without further delay.

Trial is scheduled to resume on Tuesday, April 24, at 9:00am with Mr. Copperfield on the stand. While Respondents strongly contend testimony should resume in an open and public Court, we are concerned with delays imposed by this Stay and wish to move forward, whatever this Court's decision may be, with the

greatest expedience possible. Respondents respectfully request the decision by this honorable Court will result in a lifting of the stay currently imposed and will allow this case to move forward as scheduled.

III.

CONCLUSION

The details of a magic trick disclosed to at least one hundred thousand people is not a secret. Mandamus is not warranted. A Writ of Mandamus is an extraordinary measure only appropriate in the most agregious of circumstances where the trial judge has abused his discretion—that is not the case here. Petitioners must show that some irreparable harm will result without Court intervention. While Petitioners may claim the Thirteen Illusion has been a very profitable marketing tool, it does not meet the standards required for a "trade secret" as it's details have been revealed to at least one hundred thousand (100,000) individual participants. Moreover, witness Mr. Kenner has already testified in open court for two days revealing the details of the Thirteen Illusion. These details have been picked up by several national and international news outlets and have been disseminated across the globe. As set forth herein, no irreparable harm could result from continuing to present this case in an open courtroom as likely hundreds of thousands, if not millions, of people learned of the details of the Illusion from former participants.

There are at least 100,000 participants who know from personal experience how the Thirteen Illusion is completed. In addition, evidence and testimony deduced to this point in the trial from witnesses and Petitioners themselves debunks the "mystery" of the Illusion. While it is clear Petitioners would like to restrict the world from learning more about Mr. Copperfield's performances, keeping this particular Illusion a secret cannot be one of the motivations as it has been shared with so many people during the course of decades. It is significant to note, as a result of media coverage of this incident and Trial, more witnesses have come forward to share their experiences and information which directly contradicts some of the testimony given to date.

Petitioners no longer have a secret to keep. The fact that the specifics of the Illusion are known to the masses precludes any claim that disclosure of these "secrets" in Court will further impact Petitioners ability to perform this illusion in the future. By his own admission, Mr. Copperfield has not performed this particular trick in over four (4) years. His interest in keeping the media out has far less to do with keeping a trade secret and more to do with an unwillingness to look bad in front of his fans.

Finally, Petitioners's claims do not warrant locking the public and press out of the courtroom. Public trials are a necessity in this country. The transparency of the

justice system holds parties and the system accountable to the public. Such a meaningful process should not be obscured where, as here, there should be nothing to hide.

The Stay currently in place while the questions presented herein are resolved should be lifted and Trial allowed to proceed on Tuesday, April 24, 2018, as scheduled.

For the reasons set forth herein, Petitioners' Writ of Mandamus should be denied and this matter allowed to continue with trial in an open courtroom through its resolution.

Respectfully submitted this 25 day of April, 2018.

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of ***NRAP 32(a)(4)***, the typeface requirements of NRAP 32(a)(5) and the type style requirements of ***NRAP 32(a)(6)*** because this brief has been prepared in a proportionally spaced typeface using Corel WordPerfect X4 in 14-point Times New Roman font.

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

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3. Finally, I hereby certify that I have read this brief, 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 brief 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.

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

DATED this 25 day of April, 2018.

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CERTIFICATE OF SERVICE

The undersigned certifies that on this 20th day of April, 2018, service of the foregoing **REAL PARTIES IN INTEREST GAVIN COX AND MINH-HAHN COX'S ANSWER TO PETITIONERS' WRIT OF MANDAMUS** was served as follows:

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IN THE COURT OF APPEALS

STATE OF NEVADA

DAVID COPPERFIELD'S DISAPPEARING, INC.; DAVID COPPERFIELD A/K/A DAVID KOTKIN; and MGM GRAND HOTEL, LLC, Petitioners, vs. THE EIGHTH JUDICIAL DISTRICT COURT FOR THE STATE OF NEVADA IN AND FOR THE COUNTY OF CLARK; AND THE HONORABLE MARK R. DENTON, DISTRICT JUDGE, Respondents, and GAVIN COX; AND MINH-HAHN COX, Real Parties in Interest	Court of Appeals No.: 75609 District Court No. A-14-705164-C

REAL PARTIES IN INTEREST GAVIN COX AND MINH-HAHN COX'S ANSWER TO PETITIONERS' WRIT OF MANDAMUS

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Abbreviations:
HS: Host send
HR: Host receive
WS: Waiting send
PL: Polled local
PR: Polled remote
MS: Mailbox save
MP: Mailbox print
RP: Report
FF: Fax Forward
CP: Completed
FA: Fail
TU: Terminated by user
TS: Terminated by system
G3: Group 3
EC: Error Correct