

IN THE SUPREME COURT OF THE STATE OF NEVADA

INDICATE FULL CAPTION:

GAVIN COX and MINH-HAHN COX, Husband and Wife,
Appellants,
v.
MGM GRAND HOTEL, LLC; DAVID COPPERFIELD aka
DAVID S. KOTKIN; BACKSTAGE EMPLOYMENT AND
REFERRAL, INC.; DAVID COPPERFIELD'S DISAPPEARING,
INC.; TEAM CONSTRUCTION MANAGEMENT, INC.; AND
BEACHERS LV, LLC

No. 76422

Electronically Filed
Aug 12 2019 11:05 p.m.

Elizabeth A. Brown
DOCKETING STATEMENT
CIVIL APPEALS

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See KDI Sylvan Pools v. Workman, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District EIGHTH

Department XIII

County CLARK

Judge The Honorable MARK DENTON

District Ct. Case No. A705164

2. Attorney filing this docketing statement:

Attorney Gil Glancz

Telephone 702.228.7717

Firm Selman Breitman LLP

Address 3993 Howard Hughes Parkway, Suite 200, Las Vegas, Nevada 89169

Client(s) MGM Grand Hotel, LLC, David Copperfield aka David S. Kotkin and David Copperfield's Disappearing, Inc.

If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Elaine K. Fresch

Telephone 702.228.7717

Firm Selman Breitman LLP

Address 3993 Howard Hughes Parkway, Suite 200, Las Vegas, Nevada 89169

Client(s) David Copperfield aka David A. Kotkin, and David Copperfield's Disappearing, Inc.

Attorney Jerry C. Popovich

Telephone 714.647.9700

Firm Selman Breitman LLP

Address 6 Hutton Centre Drive, Suite 1100, Santa Ana, California 92707

Client(s) MGM Grand Hotel, LLC

(List additional counsel on separate sheet if necessary)

1. Judicial District EIGHTH

Department XIII

County CLARK

Judge The Honorable MARK DENTON

District Ct. Case No. A705164

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If this is a joint statement by multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondents(s):

Attorney Howard J. Russell

Telephone 702.938.3838

Firm Weinberg, Wheeler, et al.

Address 6385 S. Rainbow Blvd., Suite 400, Las Vegas, Nevada 89118

Client(s) Backstage Employment & Referral, Inc.

Attorney Gary W. Call

Telephone 702.997.3800

Firm Resnik & Louis LLP

Address 8925 W. Russell Road, Las Vegas, Nevada 89148

Client(s) Team Construction Management, Inc.

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|---|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Dismissal: |
| <input checked="" type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Lack of jurisdiction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Failure to state a claim |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Failure to prosecute |
| <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief | <input type="checkbox"/> Other (specify): _____ |
| <input type="checkbox"/> Grant/Denial of injunction | <input type="checkbox"/> Divorce Decree: |
| <input type="checkbox"/> Grant/Denial of declaratory relief | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Review of agency determination | <input type="checkbox"/> Other disposition (specify): _____ |

5. Does this appeal raise issues concerning any of the following?

- ☐ Child Custody
- ☐ Venue
- ☐ Termination of parental rights

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

Court of Appeals of the State of Nevada - 75609

David Copperfield's Disappearing, Inc.; David Copperfield aka David Kotkin; and MGM Grand Hotel, LLC, Petitioners

The Eighth Judicial District Court of 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 of the State of Nevada - 75762

Gavin Cox; and Minh-Hahn Cox, Petitioners

The Eighth Judicial District Court of the State of Nevada, in and for the County of Clark; and the Honorable Mark R. Denton, District Judge, Petitioners and MGM Grand Hotel, LLC; David Copperfield's Disappearing, Inc.; David Copperfield; Backstage Employment and Referral, Inc.; and Team Construction Management, Inc., Real Parties in Interest.

7. Pending and prior proceedings in other courts. List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

8. Nature of the action. Briefly describe the nature of the action and the result below:

This action is a personal injury claim wherein Gavin Cox was injured while he was participating in an illusion as an audience member at the David Copperfield show. Mr. Cox and his wife, Minh-Hahn Cox, claimed David Copperfield, David Copperfield's disappearing Act, Inc., Backstage Employment and Referral, Inc. and Team Construction Management, Inc. This case involved 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 claimed he was injured while participating in an illusion as an audience member. Plaintiffs alleged 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 claimed the area was a construction area that was covered with construction dust which caused Mr. Cox to slip and fall. The Defendants denied the allegations of Plaintiffs as each disputed liability, causation and damages claimed by Plaintiffs. A bifurcated trial in this matter began on April 3, 2018. The jury found for all Defendants as they attributed 100% of comparative fault to Mr. Cox.

9. Issues on appeal. State concisely the principal issue(s) in this appeal (attach separate sheets as necessary):

The issues on appeal are whether the District Court erred in denying the motion for judgment as a matter of law of David Copperfield.

10. Pending proceedings in this court raising the same or similar issues. If you are aware of any proceedings presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket numbers and identify the same or similar issue raised:

11. Constitutional issues. If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

☒ N/A

☐ Yes

☐ No

If not, explain:

12. Other issues. Does this appeal involve any of the following issues?

☐ Reversal of well-settled Nevada precedent (identify the case(s))

☐ An issue arising under the United States and/or Nevada Constitutions

☐ A substantial issue of first impression

☐ An issue of public policy

☐ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions

☐ A ballot question

If so, explain:

13. Assignment to the Court of Appeals or retention in the Supreme Court. Briefly set forth whether the matter is presumptively retained by the Supreme Court or assigned to the Court of Appeals under NRAP 17, and cite the subparagraph(s) of the Rule under which the matter falls. If appellant believes that the Supreme Court should retain the case despite its presumptive assignment to the Court of Appeals, identify the specific issue(s) or circumstance(s) that warrant retaining the case, and include an explanation of their importance or significance:

Defendants agree with the Plaintiffs' Routing Statement concerning their appeal.

Defendants' cross-appeal concerns the denial by the District Court of DAVID COPPERFIELD a/k/a DAVID S. KOTKIN's Motion for Judgment as a Matter of Law following Plaintiffs' case in chief. Respondent timely filed a Notice of Cross-Appeal pursuant to NRAP 4(a)(2) and NRAP 4(a)(6). This Court has jurisdiction pursuant to NRAP 3A(b)(1).

14. Trial. If this action proceeded to trial, how many days did the trial last? 56 _____

Was it a bench or jury trial? JURY _____

15. Judicial Disqualification. Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal? If so, which Justice?
NO.

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from June 20, 2018

If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

17. Date written notice of entry of judgment or order was served June 21, 2018

Was service by:

☐ Delivery

☒ Mail/electronic/fax

18. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59)

(a) Specify the type of motion, the date and method of service of the motion, and the date of filing.

☒ NRCP 50(b) Date of filing July 5, 2018

☐ NRCP 52(b) Date of filing _____

☒ NRCP 59 Date of filing July 5, 2018

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev._____, 245 P.3d 1190 (2010).

(b) Date of entry of written order resolving tolling motion N/A

(c) Date written notice of entry of order resolving tolling motion was served N/A

Was service by:

☐ Delivery

☐ Mail

19. Date notice of appeal filed July 11, 2018

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

July 11, 2018 Plaintiffs Gavin and Minh-Hahn Cox filed an amended notice of appeal on December 6, 2018.

20. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a) or other

NRAP 4(a)(1)

SUBSTANTIVE APPEALABILITY

21. Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:

(a)

- | | |
|---|--|
| <input checked="" type="checkbox"/> NRAP 3A(b)(1) | <input type="checkbox"/> NRS 38.205 |
| <input type="checkbox"/> NRAP 3A(b)(2) | <input checked="" type="checkbox"/> NRS 233B.150 |
| <input type="checkbox"/> NRAP 3A(b)(3) | <input checked="" type="checkbox"/> NRS 703.376 |
| <input type="checkbox"/> Other (specify) | |
-

(b) Explain how each authority provides a basis for appeal from the judgment or order:

22. List all parties involved in the action or consolidated actions in the district court:

(a) **Parties:** Gavin Cox and Minh-Hahn Cox, Husband and Wife, Plaintiffs v. MGM Grand Hotel, LLC; David Copperfield aka David S. Kotkin; Backstage Employment and Referral, Inc.; David Copperfield's Disappearing, Inc.; and Team Construction Management, Inc.

(b) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, e.g., formally dismissed, not served, or **other:** Defendant MGM Grand Hotel, LLC's third-party complaint against Beacher's LV, LLC and Beacher's LV, LLC's counterclaim against MGM Grand Hotel was stayed by the District Court's order of March 29, 2018.

23. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims, or third-party claims and the date of formal disposition of each claim.

Plaintiff's brought a claim for negligence on May 29, 2018. The jury found for all defendants.

24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action or consolidated actions below?

☐ Yes

☒ No

25. If you answered "No" to question 24, complete the following:

(a) **Specify the claims remaining pending below:**

Defendant MGM Grand Hotel, LLC's third-party complaint against Beacher's LV, LLC and Beacher's LV, LLC's counterclaim against MGM Grand Hotel was stayed by the District Court's order of March 29, 2018 and David Copperfield, David Copperfield's Disappearing, Inc. and MGM Grand Hotels cross-claim against Team Construction.

(b) Specify the parties remaining below:
MGM Grand Hotel, Beachers LV, LLC and Team Construction.

(c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b)?

☒ Yes

☐ No

(d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment?

☒ Yes

☐ No

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

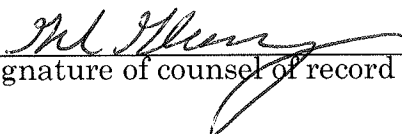
VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

David Copperfield
Name of appellant

Gil Glancz
Name of counsel of record

Aug 12, 2019
Date


Signature of counsel of record

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I certify that on the 12th day of August, 2019, I served a copy of this completed docketing statement upon all counsel of record:

- ☐ By personally serving it upon him/her; or
- ☐ By mailing it by first class mail with sufficient postage prepaid to the following address(es): (NOTE: If all names and addresses cannot fit below, please list names below and attach a separate sheet with the addresses.)

SEE ATTACHED CERTIFICATE OF SERVICE

Dated this _____ day of _____, _____

Signature

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of SELMAN BREITMAN LLP and on the 12th day of August 2019, a true and correct copy of the above and foregoing document was e-filed and e-served on all registered parties to the Supreme Court's electronic filing system and by United States First-Class mail to all unregistered parties as listed below:

SEE SERVICE LIST BELOW

/s/ Bonnie Kerkhoff Juarez

BONNIE KERKHOFF JUAREZ

An Employee of Selman Breitman LLP

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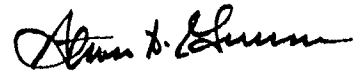
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CLERK OF THE COURT

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12 *Attorneys for Plaintiffs*

13 **DISTRICT COURT**

14 **CLARK COUNTY, NEVADA**

15 GAVIN COX and MINH-HAHN COX, Husband
16 and Wife,

17 Plaintiff,

18 vs.

19 MGM GRAND HOTEL, LLC; DAVID
20 COPPERFIELD aka DAVID S. KOTKIN;
21 BACKSTAGE EMPLOYMENT AND REFERRAL,
22 INC.; DAVID COPPERFIELD'S DISAPPEARING,
23 INC.; TEAM CONSTRUCTION MANAGEMENT,
24 INC.; DOES 1 through 20; DOE EMPLOYEES 1
25 through 20; and ROE CORPORATIONS 1 through
26 20;

27 Defendants.

CASE NO. A-14-705164-C
DEPT. NO. XIII

COMPLAINT AND DEMAND
FOR JURY TRIAL

(Exemption from Arbitration Requested)

28 Plaintiffs by and through their attorneys of record, Robert T. Eglet, Esq. and
Tracy A. Eglet, Esq. of the The Eglet Law Firm allege as follows:

///

EGLET LAW FIRM
Trial Attorneys

FACTS COMMON TO ALL CAUSES OF ACTION

1
2 1. That Plaintiffs, Gavin Cox and Minh-Hahn Cox are husband and wife, and at all
3 times relevant hereto were and are residents of the United Kingdom and presently reside in
4 Clark County, Nevada.

5
6 2. That at all times mentioned, upon information and belief, Defendant, MGM
7 Grand Hotel, LLC was and is a domestic limited liability company, authorized to do business
8 and doing business in Clark County, Nevada, and was the owner and/or manager and/or
9 developer and/or builder and/or supervisor and/or controller of the premises known as the
10 MGM Grand Hotel/Casino located at 3799 Las Vegas Blvd. South, Las Vegas, Nevada.

11
12 3. That at all times mentioned, upon information and belief, Defendant David S.
13 Copperfield aka David S. Kotkin, was the main performer of the David Copperfield Show
14 which show was performed at the Hollywood Theater inside the MGM Grand Hotel/Casino
15 located at 3799 Las Vegas Blvd. South, Las Vegas, Nevada. Defendant Copperfield owns
16 property in Clark County, Nevada and also has a location listed in Encino, California.

17
18 4. That at all times mentioned, upon information and belief, Defendant Backstage
19 Employment and Referral, Inc. is a domestic corporation licensed to do business and doing
20 business in Clark County, Nevada, and upon information and belief, is a company owned
21 and/or run by Defendant David Copperfield.

22
23 5. That at all times mentioned, upon information and belief, Defendant, David
24 Copperfield's Disappearing, Inc. is a domestic corporation licensed to do business and doing
25 business in Clark County, Nevada, and upon information and belief, is a company owned
26 and/or run by Defendant David Copperfield.

1 6. That at all times mentioned, upon information and belief, Defendant Team
2 Construction Management, Inc. is a domestic corporation licensed to do business and doing
3 business in Clark County, Nevada.

4 7. That the true names and capacities, whether individual, corporate, agents,
5 association or otherwise of the Defendants, DOES 1 through 20, DOE EMPLOYEES 1
6 through 20, and ROE CORPORATIONS 1 through 20, inclusive, are unknown to Plaintiffs,
7 who therefore sue said Defendants by such fictitious names. Plaintiffs are informed and
8 believe, and thereupon allege, that each of the Defendants designated herein as DOES and/or
9 ROE CORPORATIONS are responsible in some manner for the events and happenings herein
10 referred to, and in some manner caused the injuries and damages proximately thereby to the
11 Plaintiffs as herein alleged; that the Plaintiffs will ask leave of this court to amend this
12 Complaint to insert the true names and capacities of said Defendants, DOES 1 through 20,
13 and/or DOE EMPLOYEES 1 through 20, and/or ROE CORPORATIONS 1 through 20,
14 inclusive, when the same have been ascertained by the Plaintiffs, together with appropriate
15 charging allegations, and to join such Defendants in this action.
16
17
18

19 8. The identity of resident and non-resident defendants designated herein as
20 DOES 1 through 20, and ROE CORPORATIONS 1 through 20, inclusive, are unknown to
21 Plaintiffs at the present time; however, it is alleged and believed these defendants were
22 involved in the initiation, approval, support, and/or execution of the wrongful acts upon which
23 this action is premised, or of similar actions directed against Plaintiffs about which they are
24 presently unaware. As the specific identities of these parties are revealed through the course
25 of discovery, the DOE and ROE appellations will be replaced to identify these parties by their
26 true names and capacities.
27
28

1 9. All of the facts, acts, omissions, events, and circumstances herein mentioned
2 and described occurred in the County of Clark, State of Nevada, and the Defendants, and each
3 of them, are residents of the County of Clark, State of Nevada, and/or have their principal
4 place of business in said County and State, and/or are legally doing business in said County
5 and State.
6

7 10. At all times mentioned herein, Defendants, and each of them, were agents,
8 servants, partners, and employees of each and every other Defendant, and were acting within
9 the course and scope of their agency, partnership or employment.
10

11 11. On or about November 12, 2013, Plaintiffs Gavin and Mihn Cox were guests at
12 the MGM Grand Hotel/Casino and were in attendance at the David Copperfield Show taking
13 place within the Hollywood Theater on the premises of the MGM Grand Hotel/Casino.
14

15 12. That Plaintiff, Gavin Cox, while a part of the audience at the David Copperfield
16 Show was selected at random with no warning to participate in the final trick of the show
17 called the Lucky #13. During the trick Plaintiff was injured, when he was hurried with no
18 guidance or instruction through a dark area under construction with cement dust and debris
19 causing him to slip and fall.
20

21 13. At all times herein concerned and relevant to this action, Defendants, and each
22 of them, acted by and through their duly authorized agents, servants, workers and/or
23 employees, then and there acting within the course and scope of their employment and scope of
24 their authority for the Defendants.

25 14. That all the facts and circumstances that give rise to the subject lawsuit
26 occurred in Clark County, State of Nevada.
27
28

FIRST CAUSE OF ACTION
(Negligence)

15. Plaintiffs incorporate by this reference each and every allegation previously made in this Complaint, as if fully set forth herein.

16. Defendants, while in the course and scope of their employment and agency with other Defendants, negligently failed to control, supervise, and maintain the premises inside and outside of the theater and further failed to warn Plaintiff of hazards, such as the ongoing construction and the ramp outside the building which Plaintiff was required to utilize and which resulted in Plaintiff Gavin Cox's injuries. Participants of the David Copperfield Show are distracted by the general atmosphere of their location and because of said distraction, the dark ramp under construction outside the building could go unnoticed by said participants. Defendants, and each of them, failed to warn Plaintiff that unreasonably dangerous conditions existed.

17. On or about November 12, 2013, and for some time prior thereto, Defendants and/or DOE/ROE Defendants, by and through their authorized agents, servants, and employees, acting within the course and scope of their employment, caused a dangerous condition and/or negligently and carelessly owned, maintained, operated, occupied, and controlled the subject property in that they failed to prevent, inspect, maintain, and warn of dangerous conditions in and about the common walkways, common areas, and outside the theater, creating a dangerous and hazardous condition to participants of the David Copperfield Show, thereby causing the common walkways and common areas, inside and outside the building, to be hazardous and dangerous to such persons as participants in the show, and more particularly to the Plaintiff Gavin Cox.

1 18. Defendants and/or DOE/ROE Defendants, by implementing this trick did place
2 Plaintiff Gavin Cox in physical danger, giving him no warning of the same.

3 19. Defendants and/or DOE/ROE Defendants had a duty to maintain the premises
4 and keep clear the areas of traffic and walkways where the trick was being performed.

5 20. Defendants and/or DOE/ROE Defendants had a duty to maintain the premises
6 and keep warning signage in the areas of traffic and walkways.

7 21. Defendants and/or DOE/ROE Defendants had a duty to keep common areas and
8 walkways clean, free of hazards.

9 22. As a further direct and proximate result, Plaintiff Gavin Cox has incurred
10 expenses for medical care and treatment in excess of \$400,000.00, and will incur expenses for
11 medical care and treatment in the future in an amount to be proven at trial.

12 23. As a further direct and proximate result, Plaintiff Gavin Cox sustained past and
13 future loss of earnings and earning capacity in an amount to be proven at trial.

14 24. As a further direct and proximate result, Plaintiff Gavin Cox has suffered a
15 loss of past and future household services.

16 25. Each Defendant breached their duties in the following ways, including but not
17 limited to:

- 18 1. Hurrying Plaintiff through a dark construction zone;
- 19 2. Failing to clear the walkways of debris and dust;
- 20 3. Failure to maintain adequate lighting;
- 21 4. Failure to devise a trick that would be safe for audience participants;
- 22 5. Failure to warn audience participants of hazards prior to participation;
- 23
- 24
- 25
- 26
- 27
- 28

1 6. Failure to adequately warn or instruct audience participants prior to
2 getting consent for participation; and

3 7. Knowingly subjecting audience participants to known hazards.

4 26. As a direct and proximate result, due to Plaintiff Gavin Cox's trip and fall, he
5 was seriously injured and caused to suffer great pain of body and mind, all to Plaintiff's
6 general damage in an amount in excess of \$10,000.00.

7
8 27. That Defendants did knowingly, willfully and maliciously, with a conscious
9 disregard for the safety of Plaintiff, Gavin Cox, commit acts and/or omissions and by reason
10 thereof, Plaintiffs seek punitive and exemplary damages from the above-named Defendants.

11 28. As a result of Defendants' conduct, as set forth herein, Plaintiffs have been
12 required to retain the services of an attorney, and, as a direct, natural, and foreseeable
13 consequence thereof, have been damaged thereby, and are entitled to reasonable attorneys' fees
14 and costs.
15

16 **SECOND CAUSE OF ACTION**
17 ***(Respondeat Superior)***

18 29. Plaintiffs incorporate by this reference each and every allegation previously made
19 in this Complaint, as if fully set forth herein.

20 30. At all times relevant herein, maintenance personnel were employees and/or agents
21 of one or all of Defendants and were acting within the scope of their employment.

22 31. Accordingly, Defendants, and each of them, are vicariously liable for the damages
23 caused by their employees' actions and/or negligence, further encompassing the actions of those
24 hired by Defendants to maintain the premises, under the doctrine of respondeat superior and/or
25 N.R.S. 41.130, which states:
26
27

28

1 Except as otherwise provided in N.R.S. 41.745, whenever any person shall suffer
2 personal injury by wrongful act, neglect or default of another, the person causing
3 the injury is liable to the person injured for damages; and where the person
4 causing the injury is employed by another person or corporation responsible for
his conduct, that person or corporation so responsible is liable to the person
injured for damages.

5 32. As a direct and proximate result of the conduct of the Defendants described
6 hereinabove, Plaintiff Gavin Cox has sustained damages in excess of \$10,000.00.

7 33. That Defendants did knowingly, willfully and maliciously, with a conscious
8 disregard for the safety of Plaintiff, Gavin Cox, commit acts and/or omissions and by reason
9 thereof, Plaintiffs seek punitive and exemplary damages from the above-named Defendants.
10

11 34. As a result of Defendants' conduct, as set forth herein, Plaintiffs have been
12 required to retain the services of an attorney, and, as a direct, natural, and foreseeable
13 consequence thereof, have been damaged thereby, and are entitled to reasonable attorneys' fees
14 and costs.
15

16 **THIRD CAUSE OF ACTION**
17 ***(Negligent Hiring, Training, Supervision and Retention)***

18 35. Plaintiffs incorporate by this reference each and every allegation previously made
19 in this Complaint, as if fully set forth herein.

20 36. At all times mentioned herein, Defendants owed to the public, including Plaintiff
21 Gavin Cox, a duty to exercise reasonable care in the hiring, training, retention, and supervision
22 of its employees.
23

24 37. Upon information and belief, Defendants, and each of them, breached their duty
25 in the hiring, training, supervision, and retention of its employees.

26 38. As a direct and proximate result of the conduct of the Defendants described
27 hereinabove, Plaintiff Gavin Cox has sustained damages in excess of \$10,000.00.
28

1 39. That Defendants did knowingly, willfully and maliciously, with a conscious
2 disregard for the safety of Plaintiff, Gavin Cox, commit acts and/or omissions and by reason
3 thereof, Plaintiffs seek punitive and exemplary damages from the above-named Defendants.

4 40. As a result of Defendants' conduct, as set forth herein, Plaintiffs have been
5 required to retain the services of an attorney, and, as a direct, natural, and foreseeable
6 consequence thereof, have been damaged thereby, and are entitled to reasonable attorneys' fees
7 and costs.

8
9 **FOURTH CAUSE OF ACTION**
10 ***(Loss of Consortium)***

11 41. Plaintiffs incorporate by this reference each and every allegation previously made
12 in this Complaint, as if fully set forth herein.

13 42. As a further direct and proximate result, Plaintiff, Minh-Hahn Cox, has lost the
14 society, companionship and consortium of her husband, Gavin Cox, and, as a result thereof, has
15 suffered general damages in an amount in excess of \$10,000.00.

16
17 43. As a result of Defendants' conduct, as set forth herein, Plaintiffs have been
18 required to retain the services of an attorney, and, as a direct, natural, and foreseeable
19 consequence thereof, have been damaged thereby, and are entitled to reasonable attorneys' fees
20 and costs.

21
22 **FIFTH CAUSE OF ACTION**
23 ***(Punitive/Exemplary Damages)***

24 44. That Plaintiffs incorporate by this reference each and every allegation previously
25 made in this Complaint, as if fully set forth herein.

26 45. At all times mentioned herein, Defendants, and each of them, acted with fraud,
27 oppression, and/or malice toward Plaintiffs, exhibited an intention and willingness to injure
28


1 Plaintiffs and/or a conscious disregard for the rights and safety of the Plaintiffs, and Defendants
2 should be punished and made an example of by imposition of punitive or exemplary damages in
3 an amount in excess of \$10,000.00.

4 WHEREFORE, Plaintiffs pray judgment of this Court against Defendants, and each of
5 them, as follows:
6

- 7 1. General damages in an amount in excess of \$10,000.00;
- 8 2. Special damages in an amount according to proof at trial;
- 9 3. Compensatory damages in an amount in excess of \$10,000.00;
- 10 4. Medical and incidental expenses incurred and to be incurred;
- 11 5. Damages for lost past and future household services;
- 12 6. Loss of earnings and earning capacity in an amount to be proven at trial;
- 13 7. Punitive damages; in an amount in excess of \$10,000.00;
- 14 8. Loss of consortium claim on behalf of Plaintiff Minh-Hanh Cox;
- 15 9. Cost of suit; pre-judgment interest; post-judgment interest; attorney's fees;
16 and
17
- 18 10. For such other and further relief as is just and proper.

19 DATED this 6 day of August, 2014.
20

21 **EGLET LAW FIRM**

22 
23 ROBERT T. EGLET, ESQ.
24 Nevada Bar No. 3402
25 TRACY A. EGLET, ESQ.
26 Nevada Bar No. 6419
27 400 S. 7th St., Ste. 400
28 Las Vegas, NV 89101
Attorneys for Plaintiffs


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DEMAND FOR JURY TRIAL

Plaintiffs by and through their attorneys of record, EGLET LAW FIRM and hereby
demand a jury trial of all of the issues in the above matter.

DATED this 6 day of August, 2014.

EGLET LAW FIRM



ROBERT T. EGLET, ESQ.
TRACY A. EGLET, ESQ.
Attorneys for Plaintiffs


EGLET LAW FIRM
Trial Attorneys


CLERK OF THE COURT

1 **NEO**
2 ERIC O. FREEMAN
3 NEVADA BAR NO. 6648
4 SELMAN BREITMAN LLP
5 3993 Howard Hughes Parkway, Suite 200
6 Las Vegas, NV 89169-0961
7 Telephone: 702.228.7717
8 Facsimile: 702.228.8824
9 Email: efreeman@selmanbreitman.com

10 Attorneys for Defendant DAVID
11 COPPERFIELD'S DISAPPEARING, INC. and
12 MGM GRAND HOTEL, LLC.

13 DISTRICT COURT
14 CLARK COUNTY, NEVADA

15 GAVIN COX and MIHN-HAHN COX,
16 Husband and Wife,

17 Plaintiff,

18 v.

19 MGM GRAND HOTEL, LLC; DAVID
20 COPPERFIELD aka DAVID S. KOTKIN;
21 BACKSTAGE EMPLOYMENT AND
22 REFERRAL, INC.; DAVID COPPERFIELD'S
23 DISAPPEARING, INC.; TEAM
24 CONSTRUCTION MANAGEMENT, INC.;
25 DOES 1 through 20; DOE EMPLOYEES 1
26 through 20; and ROE CORPORATIONS 1
27 through 20,

28 Defendants.

Case No. A-14-705164-C
Dept: XIII

NOTICE OF ENTRY OF ORDER

29 PLEASE TAKE NOTICE, that the Stipulation And Order Regarding Defendant David
30 Copperfield's Disappearing, Inc.'s Motion to Dismiss Plaintiffs' Fifth Cause of Action –
31 Punitive/Exemplary Damages Pursuant to NRCP 12(B)(5) was entered on the 22nd day of October,

32 ///

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34 ///

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2014, a copy of which is attached hereto.

DATED: October 23, 2014

SELMAN BREITMAN LLP

By: /s/ Eric O. Freeman

ERIC O. FREEMAN

3993 Howard Hughes Parkway, Suite 200
Las Vegas, NV 89169-0961

Attorneys for Defendant DAVID
COPPERFIELD'S DISAPPEARING, INC. and
MGM GRAND HOTEL, LLC.

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 FAX:** E.D.C.R. 7.26(a), I served via facsimile; or
- ☐ **BY MAIL AND FAX:** N.R.C.P. 5(b) and E.D.C.R. 7.26(a), I deposited for first class United States mailing, postage prepaid, at Las Vegas, Nevada, and served via facsimile; 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 **NOTICE OF ENTRY OF ORDER**, this 23 day of October 2014, addressed as follows:

Robert T. Eglet, Esq.
Tracy A. Eglet, Esq.
EGLET LAW FIRM
400 South 7th Street, Suite 400
Las Vegas, NV 89101


Attorneys for Plaintiffs

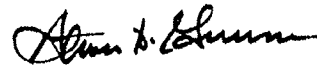
Brian Terry, Esq.
THORNDAL, ARMSTRONG, DELK,
BALKENBUSH & EISINGER
1100 East Bridger Ave.
Las Vegas, NV 89125

Attorneys for Defendant Backstage
Employment and Referral, Inc.

Loren S. Young, Esq.
Shannon G. Splaine, Esq.
LINCOLN GUSTAFSON & CERCOS, LLP
3960 Howard Hughes Parkway, Suite 200
Las Vegas, NV 89169

Attorneys for Team Construction Management,
Inc.


CRYSTAL MARTIN
An Employee of Selman Breitman LLP



CLERK OF THE COURT

1 **SAO**
2 ERIC O. FREEMAN
3 NEVADA BAR NO. 6648
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6 Las Vegas, NV 89169-0961
7 Telephone: 702.228.7717
8 Facsimile: 702.228.8824
9 Email: efreeman@selmanbreitman.com

10 Attorneys for Defendant DAVID
11 COPPERFIELD'S
12 DISAPPEARING, INC. and MGM GRAND
13 HOTEL, LLC.

14 DISTRICT COURT
15 CLARK COUNTY, NEVADA

16 GAVIN COX and MIHN-HAHN COX,
17 Husband and Wife,

18 Plaintiff,

19 v.

20 MGM GRAND HOTEL, LLC; DAVID
21 COPPERFIELD aka DAVID S. KOTKIN;
22 BACKSTAGE EMPLOYMENT AND
23 REFERRAL, INC.; DAVID COPPERFIELD'S
24 DISAPPEARING, INC.; TEAM
25 CONSTRUCTION MANAGEMENT, INC.;
26 DOES 1 through 20; DOE EMPLOYEES 1
27 through 20; and ROE CORPORATIONS 1
28 through 20,

Defendants.

Case No. A-14-705164-C
Dept: XIII

**STIPULATION AND ORDER
REGARDING DEFENDANT DAVID
COPPERFIELD'S DISAPPEARING, INC.'S
MOTION TO DISMISS PLAINTIFFS'
FIFTH CAUSE OF ACTION -
PUNITIVE/EXEMPLARY DAMAGES
PURSUANT TO NRCP 12(B)(5)**

TO ALL PARTIES AND TO THIS HONORABLE COURT:

IT IS HEREBY STIPULATED by and between plaintiffs GAVIN COX and MIHN-HAHN COX, by and through their attorney of record, Paul A. Shpirt, Esq. of Eglet Law Group, defendant BACKSTAGE EMPLOYMENT AND REFERRAL, INC., by its attorney of record, Brian K. Terry, Esq. of Thorndal, Armstrong, Delk, Balkenbush & Eisinger, and defendants

1 DAVID COPPERFIELD'S DISAPPEARING, INC. and MGM GRAND HOTEL, LLC, by and
2 through their attorney of record, Eric O. Freeman, Esq. of Selman Breitman, LLP, that Plaintiffs
3 dismiss the Fifth Cause of Action for Punitive Damages in their Complaint, while retaining the
4 punitive damages prayer and language in Causes of Action 1-3.

5 IT IS FURTHER STIPULATED Defendants MGM GRAND HOTEL, LLC, DAVID
6 COPPERFIELD'S DISAPPEARING, INC., and DAVID COPPERFIELD aka DAVID S.
7 KOTKIN shall file an answer within twenty (20) days of October 6, 2014.

8
9 DATED: October 16th, 2014

EGLET LAW GROUP

By: 

Paul A. Shpirt, Esq.
Nevada Bar No. 10441
400 S. Seventh St., Suite 400
Las Vegas, NV 89101
Attorney for Plaintiffs

15 DATED: October ____, 2014

THORNDAL, ARMSTRONG, DELK, BALKENBUSH
& ESINGER

By: _____

Brian K. Terry, Esq.
Nevada Bar No. 3171
1100 East Bridger Ave.
Las Vegas, NV 89125
Attorney for Defendant BACKSTAGE
EMPLOYMENT AND REFERRAL, INC.

22 DATED: October 20, 2014

SELMAN BREITMAN LLP

By: 

ERIC O. FREEMAN
Nevada Bar No. 6648
3993 Howard Hughes Parkway, Suite 200
Las Vegas, NV 89169-0961
Attorneys for Defendant DAVID
COPPERFIELD'S
DISAPPEARING, INC. and MGM GRAND
HOTEL, LLC.

1 DAVID COPPERFIELD'S DISAPPEARING, INC. and MGM GRAND HOTEL, LLC, by and
2 through their attorney of record, Eric O. Freeman, Esq. of Selman Breitman, LLP, that Plaintiffs
3 dismiss the Fifth Cause of Action for Punitive Damages in their Complaint, while retaining the
4 punitive damages prayer and language in Causes of Action 1-3.

5 IT IS FURTHER STIPULATED Defendants MGM GRAND HOTEL, LLC, DAVID
6 COPPERFIELD'S DISAPPEARING, INC., and DAVID COPPERFIELD aka DAVID S.
7 KOTKIN shall file an answer within twenty (20) days of October 6, 2014.

8
9 DATED: October ____, 2014

EGLET LAW GROUP

11 By: _____

12 Paul A. Shpirt, Esq.
13 Nevada Bar No. 10441
14 400 S. Seventh St., Suite 400
15 Las Vegas, NV 89101
16 Attorney for Plaintiffs

17 DATED: October 14th, 2014

THORNDAL, ARMSTRONG, DELK, BALKENBUSH
& ESINGER

18 By: _____

19 Brian K. Terry, Esq.
20 Nevada Bar No. 3171
21 1100 East Bridger Ave.
22 Las Vegas, NV 89125
23 Attorney for Defendant BACKSTAGE
24 EMPLOYMENT AND REFERRAL, INC.

25 DATED: October ____, 2014

SELMAN BREITMAN LLP

26 By: _____

27 ERIC O. FREEMAN
28 Nevada Bar No. 6648
3993 Howard Hughes Parkway, Suite 200
Las Vegas, NV 89169-0961
Attorneys for Defendant DAVID
COPPERFIELD'S
DISAPPEARING, INC. and MGM GRAND
HOTEL, LLC.

ORDER

Upon stipulation of the parties and good cause appearing therefor,

IT IS HEREBY ORDERED that Plaintiffs dismiss the Fifth Cause of Action for Punitive Damages in their Complaint, while retaining the punitive damages prayer and language in Causes of Action 1-3.

IT IS FURTHER ORDERED Defendants MGM GRAND HOTEL, LLC, DAVID COPPERFIELD'S DISAPPEARING, INC., and DAVID COPPERFIELD aka DAVID S. KOTKIN shall file an answer within twenty (20) days of October 6, 2014.

IT IS SO ORDERED.

Dated: October 21, 2014

By: 

Judge, Clark County District Court

Submitted By: 

SELMAN BREITMAN LLP

ERIC O. FREEMAN

NEVADA BAR NO. 6648

3993 Howard Hughes Parkway, Suite 200

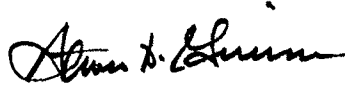
Las Vegas, NV 89169-0961

Telephone: 702.228.7717

Facsimile: 702.228.8824

Attorneys for Defendant DAVID COPPERFIELD'S

DISAPPEARING, INC. and MGM GRAND HOTEL, LLC.



CLERK OF THE COURT

CRCM
ERIC O. FREEMAN
NEVADA BAR NO. 6648
SELMAN BREITMAN LLP
3993 Howard Hughes Parkway, Suite 200
Las Vegas, NV 89169-0961
Telephone: 702.228.7717
Facsimile: 702.228.8824
Email: efreeman@selmanbreitman.com

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

DISTRICT COURT
CLARK COUNTY, NEVADA

GAVIN COX and MIHN-HAHN COX,
Husband and Wife,

Plaintiff,

v.

MGM GRAND HOTEL, LLC; DAVID
COPPERFIELD aka DAVID S. KOTKIN;
BACKSTAGE EMPLOYMENT AND
REFERRAL, INC.; DAVID COPPERFIELD'S
DISAPPEARING, INC.; TEAM
CONSTRUCTION MANAGEMENT, INC.;
DOES 1 through 20; DOE EMPLOYEES 1
through 20; and ROE CORPORATIONS 1
through 20,

Defendants.

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

Cross-Claimant,

v.

TEAM CONSTRUCTION MANAGEMENT,
INC.; DOES 1 through 20; and ROE

Case No. A-14-705164-C
Dept.: XIII

**DEFENDANTS DAVID COPPERFIELD'S
DISAPPEARING, INC., DAVID
COPPERFIELD AKA DAVID KOTKIN
AND MGM GRAND HOTEL, LLC.'S
AMENDED ANSWER TO PLAINTIFFS'
COMPLAINT AND CROSS-CLAIM
AGAINST TEAM CONSTRUCTION
MANAGEMENT, INC.**

Selman Breitman LLP
ATTORNEYS AT LAW

BUSINESS ENTITIES 1 through 20, inclusive
Cross-Defendants.

**DEFENDANTS DAVID COPPERFIELD'S DISAPPEARING, INC., DAVID
COPPERFIELD AKA DAVID KOTKIN AND MGM GRAND HOTEL, LLC.'S
AMENDED ANSWER TO PLAINTIFFS' COMPLAINT AND CROSS-CLAIM AGAINST
TEAM CONSTRUCTION MANAGEMENT, INC.**

Defendants DAVID COPPERFIELD'S DISAPPEARING, INC., DAVID COPPERFIELD
aka DAVID KOTKIN and MGM GRAND HOTEL, LLC, by and through their attorney of record,
Eric O. Freeman, Esq. of Selman Breitman LLP, hereby responds to Plaintiffs' Complaint as
follows:

FACTS COMMON TO ALL CAUSES OF ACTION

1. Answering paragraph 1 of Plaintiffs' Complaint, these answering defendants are
without sufficient information or knowledge to form a belief as to the truth or falsity of the
allegations contained in paragraph 1, and on that basis, denies the allegations contained therein.

2. Answering paragraph 2 of Plaintiffs' Complaint, these answering defendants are
without sufficient information or knowledge to form a belief as to the truth or falsity of the
allegations contained in paragraph 2, and on that basis, denies the allegations contained therein.

3. Answering paragraph 3 of Plaintiffs' Complaint, these answering defendants are
without sufficient information or knowledge to form a belief as to the truth or falsity of the
allegations contained in paragraph 3, and on that basis, denies the allegations contained therein.

4. Answering paragraph 4 of Plaintiffs' Complaint, these answering defendants are
without sufficient information or knowledge to form a belief as to the truth or falsity of the
allegations contained in paragraph 4, and on that basis, denies the allegations contained therein.

5. Answering paragraph 5 of Plaintiffs' Complaint, these answering defendants are
without sufficient information or knowledge to form a belief as to the truth or falsity of the
allegations contained in paragraph 5, and on that basis, denies the allegations contained therein.

6. Answering paragraph 6 of Plaintiffs' Complaint, these answering defendants are
without sufficient information or knowledge to form a belief as to the truth or falsity of the
allegations contained in paragraph 6, and on that basis, denies the allegations contained therein.

1 7. Answering paragraph 7 of Plaintiffs' Complaint, these answering defendants are
2 without sufficient information or knowledge to form a belief as to the truth or falsity of the
3 allegations contained in paragraph 7, and on that basis, denies the allegations contained therein.

4 8. Answering paragraph 8 of Plaintiffs' Complaint, these answering defendants are
5 without sufficient information or knowledge to form a belief as to the truth or falsity of the
6 allegations contained in paragraph 8, and on that basis, denies the allegations contained therein.

7 9. Answering paragraph 9 of Plaintiffs' Complaint, these answering defendants are
8 without sufficient information or knowledge to form a belief as to the truth or falsity of the
9 allegations contained in paragraph 9, and on that basis, denies the allegations contained therein.

10 10. Answering paragraph 10 of Plaintiffs' Complaint, these answering defendants are
11 without sufficient information or knowledge to form a belief as to the truth or falsity of the
12 allegations contained in paragraph 10, and on that basis, denies the allegations contained therein.

13 11. Answering paragraph 11 of Plaintiffs' Complaint, these answering defendants are
14 without sufficient information or knowledge to form a belief as to the truth or falsity of the
15 allegations contained in paragraph 11, and on that basis, denies the allegations contained therein.

16 12. Answering paragraph 12 of Plaintiffs' Complaint, these answering defendants deny
17 the allegations contained therein.

18 13. Answering paragraph 13 of Plaintiffs' Complaint, these answering defendants deny
19 the allegations contained therein.

20 14. Answering paragraph 14 of Plaintiffs' Complaint, these answering defendants are
21 without sufficient information or knowledge to form a belief as to the truth or falsity of the
22 allegations contained in paragraph 14, and on that basis, denies the allegations contained therein.

23 **FIRST CAUSE OF ACTION**

24 **(Negligence)**

25 15. Answering paragraph 15 of Plaintiffs' Complaint, these answering defendants
26 repeats and realleges each and every response to paragraphs 1 through 14 of Plaintiffs' Complaint,
27 and incorporates them herein by this reference as if fully set forth at length.
28

1 16. Answering paragraph 16 of Plaintiffs' Complaint, these answering defendants deny
2 the allegations contained therein.

3 17. Answering paragraph 17 of Plaintiffs' Complaint, these answering defendants deny
4 the allegations contained therein.

5 18. Answering paragraph 18 of Plaintiffs' Complaint, these answering defendants deny
6 the allegations contained therein.

7 19. Answering paragraph 19 of Plaintiffs' Complaint, these answering defendants deny
8 the allegations contained therein.

9 20. Answering paragraph 20 of Plaintiffs' Complaint, these answering defendants deny
10 the allegations contained therein.

11 21. Answering paragraph 21 of Plaintiffs' Complaint, these answering defendants deny
12 the allegations contained therein.

13 22. Answering paragraph 22 of Plaintiffs' Complaint, these answering defendants deny
14 the allegations contained therein.

15 23. Answering paragraph 23 of Plaintiffs' Complaint, these answering defendants deny
16 the allegations contained therein.

17 24. Answering paragraph 24 of Plaintiffs' Complaint, these answering defendants deny
18 the allegations contained therein.

19 25. Answering paragraph 25 (1-7) of Plaintiffs' Complaint, these answering defendants
20 deny the allegations contained therein.

21 26. Answering paragraph 26 of Plaintiffs' Complaint, these answering defendants deny
22 the allegations contained therein.

23 27. Answering paragraph 27 of Plaintiffs' Complaint, these answering defendants deny
24 the allegations contained therein.

25 28. Answering paragraph 28 of Plaintiffs' Complaint, these answering defendants deny
26 the allegations contained therein.
27
28

SECOND CAUSE OF ACTION

(Respondeat Superior)

29. Answering paragraph 29 of Plaintiffs' Complaint, these answering defendants repeats and realleges each and every response to paragraphs 1 through 28 of Plaintiffs' Complaint, and incorporates them herein by this reference as if fully set forth at length.

30. Answering paragraph 30 of Plaintiffs' Complaint, these answering defendants deny the allegations contained therein.

31. Answering paragraph 31 of Plaintiffs' Complaint, these answering defendants deny the allegations contained therein.

32. Answering paragraph 32 of Plaintiffs' Complaint, these answering defendants deny the allegations contained therein.

33. Answering paragraph 33 of Plaintiffs' Complaint, these answering defendants deny the allegations contained therein.

34. Answering paragraph 34 of Plaintiffs' Complaint, these answering defendants deny the allegations contained therein.

THIRD CAUSE OF ACTION

(Negligent Hiring, Training, Supervision and Retention)

35. Answering paragraph 35 of Plaintiffs' Complaint, these answering defendants repeats and realleges each and every response to paragraphs 1 through 34 of Plaintiffs' Complaint, and incorporates them herein by this reference as if fully set forth at length.

36. Answering paragraph 36 of Plaintiffs' Complaint, these answering defendants deny the allegations contained therein.

37. Answering paragraph 37 of Plaintiffs' Complaint, these answering defendants deny the allegations contained therein.

38. Answering paragraph 38 of Plaintiffs' Complaint, these answering defendants deny the allegations contained therein.

39. Answering paragraph 39 of Plaintiffs' Complaint, these answering defendants deny

1 the allegations contained therein.

2 40. Answering paragraph 40 of Plaintiffs' Complaint, these answering defendants deny
3 the allegations contained therein.

4 **FOURTH CAUSE OF ACTION**

5 **(Loss of Consortium)**

6 41. Answering paragraph 41 of Plaintiffs' Complaint, these answering defendants
7 repeats and realleges each and every response to paragraphs 1 through 40 of Plaintiffs' Complaint,
8 and incorporates them herein by this reference as if fully set forth at length.

9 42. Answering paragraph 42 of Plaintiffs' Complaint, these answering defendants deny
10 the allegations contained therein.

11 43. Answering paragraph 43 of Plaintiffs' Complaint, these answering defendants deny
12 the allegations contained therein.

13 **FIFTH CAUSE OF ACTION**

14 **(Punitive/Exemplary Damages)**

15 44. This Cause of Action has been dismissed pursuant to Stipulation and Order
16 therefore no answer is necessary.

17 45. This Cause of Action has been dismissed pursuant to Stipulation and Order
18 therefore no answer is necessary.

19 **PLAINTIFFS' PRAYER FOR RELIEF**

20 These answering defendants deny that Plaintiffs are entitled to any relief whatsoever under
21 any cause of action, and on the basis denies the Plaintiffs' prayer for relief numbers 1 through 10.

22 **AFFIRMATIVE DEFENSES**

23 **FIRST AFFIRMATIVE DEFENSE**

24 The negligence of the plaintiffs exceeds that of these answering defendants, if any, and the
25 plaintiffs are thereby barred from any recovery.

26 **SECOND AFFIRMATIVE DEFENSE**

27 These answering defendants are informed and believes, and thereon alleges, the damages
28

1 suffered by plaintiffs if any, were the direct and proximate result of the negligence of parties,
2 persons, corporations and/or entities other than these answering defendants, and that the liability
3 of these answering defendants, if any, is limited in direct proportion to the percentage of fault
4 actually attributable to these answering defendants.

5 **THIRD AFFIRMATIVE DEFENSE**

6 The plaintiffs have failed to mitigate their damages.

7 **FOURTH AFFIRMATIVE DEFENSE**

8 Plaintiffs failed to name a party necessary for full and adequate relief essential in this
9 action.

10 **FIFTH AFFIRMATIVE DEFENSE**

11 The allegations contained in Plaintiffs' Complaint fail to state a cause of action against
12 these answering defendants upon which relief can be granted.

13 **SIXTH AFFIRMATIVE DEFENSE**

14 The injuries, if any, suffered by the plaintiffs were caused in whole or in part by the
15 negligence of a third party over which these answering defendants had no control.

16 **SEVENTH AFFIRMATIVE DEFENSE**

17 These answering defendants allege that the hazard or defect alleged in Plaintiffs'
18 Complaint was open and obvious to the plaintiffs and the plaintiffs are thereby barred from any
19 recovery.

20 **EIGHTH AFFIRMATIVE DEFENSE**

21 The injuries claimed to have been suffered by the plaintiffs were caused by pre-existing
22 and/or unrelated medical conditions.

23 **NINTH AFFIRMATIVE DEFENSE**

24 These answering defendants are informed and believes, and thereon alleges, that the
25 complaint was brought without reasonable cause and without a good faith belief that there was a
26 justifiable controversy under the facts of the law which warranted the filing of the complaint
27 against these answering defendants. Plaintiffs should therefore be responsible for all defendant's
28

1 necessary and reasonable defense costs.

2 **TENTH AFFIRMATIVE DEFENSE**

3 The plaintiffs' cause of action is barred by the doctrine of laches.

4 **ELEVENTH AFFIRMATIVE DEFENSE**

5 There has been an insufficiency of process.

6 **TWELFTH AFFIRMATIVE DEFENSE**

7 There has been an insufficiency of service of process.

8 **THIRTEENTH AFFIRMATIVE DEFENSE**

9 The Complaint and any purported causes of action alleged therein are uncertain, vague and
10 ambiguous.

11 **FOURTEENTH AFFIRMATIVE DEFENSE**

12 These answering defendants allege that they lacked any notice, actual or constructive, of a
13 defect and/or hazard on the premises at the time and place of the plaintiffs' alleged injuries and
14 further allege that these answering defendants did not have the opportunity to warn of any such
15 defect and/or hazard, or cure any such defect and/or hazard did, in fact, exist at the time and place
16 of the plaintiffs' alleged injuries as alleged in the complaint.

17 **FIFTEENTH AFFIRMATIVE DEFENSE**

18 The allegations contained in plaintiffs' complaint fail to state facts sufficient to warrant an
19 award of punitive or exemplary damages against these answering defendants.

20 **SIXTEENTH AFFIRMATIVE DEFENSE**

21 These answering defendants are informed and believe, and thereon alleges, that the claim
22 for punitive damages is unconstitutional under the United States Constitution and the Nevada
23 Constitution, including but not limited to, the excessive fines, due process and equal protection
24 provisions thereof.

25 **SEVENTEENTH AFFIRMATIVE DEFENSE**

26 These answering defendants are informed and believe, and thereon allege, that plaintiffs
27 fail to state facts sufficient to, and that no facts exist which are sufficient to, warrant any claim or
28

1 claims for punitive and/or exemplary damages.

2 **EIGHTEENTH AFFIRMATIVE DEFENSE**

3 Pursuant to NRCP 11, as amended, all possible affirmative defenses may not have been
4 alleged herein, insofar as sufficient facts were not available after reasonable inquiry upon the
5 filing of these answering defendants' answer and, therefore, defendant reserves the right to amend
6 this answer to allege additional affirmative defenses if subsequent investigation warrants.

7 **CROSS-CLAIM AGAINST TEAM CONSTRUCTION MANAGEMENT, INC.**

8 COMES NOW Cross-Claimants DAVID COPPERFIELD'S DISAPPEARING, INC.,
9 DAVID COPPERFIELD aka DAVID KOTKIN, and MGM GRAND HOTEL, LLC., by and
10 through their attorneys of record, Eric O. Freeman, Esq., of Selman Breitman, LLP, and hereby
11 complains and alleges as follows:

12 **FIRST CROSS-CLAIM**
13 **(Contribution)**

14 1. That Cross Defendants TEAM CONSTRUCTION MANAGEMENT, INC. and
15 DOES 1 through 20, and ROE BUSINESS ENTITIES 1 through 20, inclusive, were at all times
16 herein relevant, residents, citizens, and domiciliaries of, or business entities conducting business
17 within, the County of Clark, state of Nevada.

18 2. This Cross-Claim arises from an alleged incident that occurred on November 12,
19 2013 at the David Copperfield Show at the MGM Grand Hotel/Casino involving plaintiffs GAVIN
20 COX and MINH-HANH COX. Plaintiffs instituted a personal injury action allegedly arising from
21 such said incident.

22 3. That Cross-Claimants are unaware of the true names and legal capacities, whether
23 individual, corporate, associate, or otherwise, of the Cross Defendants sued herein as DOES 1
24 through 20, and ROE BUSINESS ENTITIES 1 through 20, inclusive, and therefore sues said
25 Cross-Defendants by such fictitious names. Cross-Claimants prays leave to insert said Cross-
26 Defendants' true names and legal capacities when ascertained.

27 4. That Cross-Claimants are informed and believes, and thereon alleges, that each of
28 the Cross-Defendants designated herein as a DOES 1 through 20, and ROE BUSINESS

ENTITIES 1 through 20 is in some way directly or vicariously responsible and liable for the events referred to herein and proximately caused the damages alleged.

5. That Cross-Defendants are liable to Cross-Claimants for any judgment rendered against it in this action as the damages alleged in the claims made by Plaintiffs against Cross-Claimants are the result of the acts and/or omissions of Cross-Defendants.

6. That in the event of any judgment for the Plaintiffs and against Defendants/Cross-Claimants DAVID COPPERFIELD'S DISAPPEARING, INC., DAVID COPPERFIELD aka DAVID KOTKIN, and MGM GRAND HOTEL, LLC., said Cross-Claimants are entitled to contribution from said Cross-Defendants pursuant to NRS 17.225, et seq.

7. That by reason of this action, it has been necessary for Defendants/Cross-Claimants to incur costs and to retain an attorney to defend and prosecute this action on their behalf and that Defendants/Cross-Claimants are therefore entitled to costs of suit and reasonable attorney's fees incurred.

SECOND CROSS-CLAIM
(Indemnity)

8. Cross-Claimants DAVID COPPERFIELD'S DISAPPEARING, INC., DAVID COPPERFIELD aka DAVID KOTKIN, and MGM GRAND HOTEL, LLC., hereby alleges and incorporates by reference all of the allegations previously set forth in paragraphs 1 through 7, inclusive, as if set forth in full herein.

9. That Cross-Defendants are liable to Cross-Claimants for any judgment rendered against it in this action as the damages alleged in the claims made by Plaintiffs against Cross-Claimants are the result of the acts and/or omissions of Cross-Defendants.

10. That in the event of any judgment for the Plaintiffs and against Defendants/Cross-Claimants DAVID COPPERFIELD'S DISAPPEARING, INC., DAVID COPPERFIELD aka DAVID KOTKIN, and MGM GRAND HOTEL, LLC., said Cross-Claimants are entitled to indemnification for the full amount of said judgment from Cross-Defendants, and each of them.

11. That by reason of this action, it has been necessary for Defendants/Cross-Claimants

1 to incur costs and to retain an attorney to defend and prosecute this action on his behalf and that
2 Defendants/Cross-Claimants are therefore entitled to costs of suit and reasonable attorney's fees
3 incurred.

4 **PRAYER FOR RELIEF**

5 WHEREFORE, having fully answered Plaintiffs' Complaint, and asserted affirmative
6 defenses, these answering defendants request the following relief:

- 7 1. That plaintiffs take nothing by way of their complaint;
8 2. For an award of attorneys' fees and costs of suit;
9 3. For such other relief as this court deems just and proper;
10 4. For judgment against Cross-Defendants for their pro-rata share and contribution for
11 the amount of any judgment entered against Defendant/Cross-Claimants and in favor of Plaintiffs;
12 and
13 5. For contribution and/or indemnification against all other parties whose negligence
14 contributed to the happening of the claimed incident or alleged injuries of the plaintiffs.

15 DATED: February 1, 2016

16 SELMAN BREITMAN LLP

17
18 By: /s/ Eric O. Freeman
19 ERIC O. FREEMAN
20 NEVADA BAR NO. 6648
21 3993 Howard Hughes Parkway, Suite 200
22 Las Vegas, NV 89169-0961
23 Telephone: 702.228.7717
24 Facsimile: 702.228.8824
25 Attorneys for Defendant DAVID
26 COPPERFIELD'S DISAPPEARING, INC.,
27 DAVID COPPERFIELD aka DAVID KOTKIN,
28 and MGM GRAND HOTEL, LLC.

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 MAIL AND FAX:** N.R.C.P. 5(b) and E.D.C.R. 7.26(a), I deposited for first class United States mailing, postage prepaid, at Las Vegas, Nevada, and served via facsimile; or

☒ **BY E-MAIL/ELECTRONIC SERVICE:** N.R.C.P. 5(b), I caused the foregoing document to be served upon the persons designated by the parties in the E-Service master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.

a true and correct copy of the above and foregoing **DEFENDANTS DAVID COPPERFIELD'S DISAPPEARING, INC., DAVID COPPERFIELD AKA DAVID KOTKIN AND MGM GRAND HOTEL, LLC'S AMENDED ANSWER TO PLAINTIFFS' COMPLAINT AND CROSS-CLAIM AGAINST TEAM CONSTRUCTION MANAGEMENT, INC.,** this 1 day of February 2016, addressed as follows:

Brian K. Harris, Esq.
HARRIS & HARRIS
2029 Alta Drive
Las Vegas, NV 89106

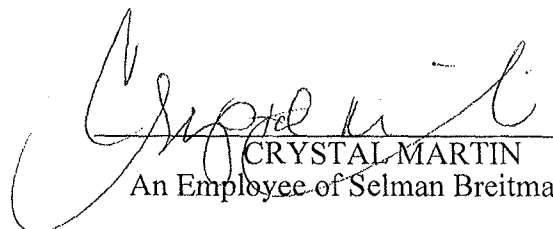
Attorneys for Plaintiffs

Howard J. Russell, Esq.
WEINBERG, WHEELER, HUDGINS, GUNN
& DIAL, LLC
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Las Vegas, NV 89118

Attorneys for Defendant Backstage
Employment and Referral, Inc.

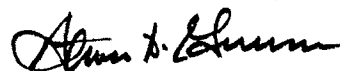
Shannon G. Splaine, Esq.
LINCOLN GUSTAFSON & CERCOS, LLP
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Attorneys Team Construction Management,
Inc.


CRYSTAL MARTIN
An Employee of Selman Breitman LLP

1 **TPC**
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CLERK OF THE COURT

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

DISTRICT COURT
CLARK COUNTY, NEVADA

GAVIN COX and MIHN-HAHN COX,
Husband and Wife,

Plaintiff,

v.

MGM GRAND HOTEL, LLC; DAVID
COPPERFIELD aka DAVID S. KOTKIN;
BACKSTAGE EMPLOYMENT AND
REFERRAL, INC.; DAVID COPPERFIELD'S
DISAPPEARING, INC.; TEAM
CONSTRUCTION MANAGEMENT, INC.;
DOES 1 through 20; DOE EMPLOYEES 1
through 20; and ROE CORPORATIONS 1
through 20,

Defendants.

MGM GRAND HOTEL, LLC,

Third-Party Plaintiff,

v.

BEACHER'S LV, LLC, and DOES 1 through
20, inclusive,

Third-Party Defendants.

Case No. A-14-705164-C
Dept.: XIII

**DEFENDANT MGM GRAND HOTEL,
LLC.'S THIRD-PARTY COMPLAINT
AGAINST BEACHER'S LV, LLC**

**DEFENDANT MGM GRAND HOTEL, LLC.'S THIRD-PARTY COMPLAINT AGAINST
BEACHER'S LV, LLC**

COMES NOW Defendant/Third-Party Plaintiff, MGM GRAND HOTEL, LLC (hereinafter "MGM Grand"), by and through its counsel, Selman Breitman LLP, and for the Third-Party Complaint against Third-Party Defendant Beacher's LV, LLC and DOES 1 through 20 and ROE BUSINESS ENTITIES 1 through 20, alleges as follows:

GENERAL ALLEGATIONS

1. Third-Party Plaintiff, MGM Grand, at all times mentioned herein, was a corporation organized and existing under and by virtue of the laws of the State of Nevada and authorized to do business in the County of Clark, State of Nevada.

2. MGM Grand is informed and believes, and therefore alleges that Third-Party Defendant, Beacher's LV, LLC, was and is a company doing business in Clark County, Nevada.

3. MGM Grand is informed and believes and based thereon alleges that Third-Party Defendants DOES 1 though 20 and ROE BUSINESS ENTITIES 1 through 20 were either individuals, sole proprietorships, partnerships, registered professionals, corporations, or other legal entities which were licensed to do business in the County of Clark, State of Nevada, at all times relevant to the subject matter of this action.

4. That the true names and/or capacities, whether individual, corporate, associate or otherwise, of the Third-Party Defendants are unknown to MGM Grand, who, therefore, sues said Third-Party Defendants by such fictitious names and will ask for relief to amend this Third-Party Complaint to show their true names and capacities when the same have been ascertained. MGM Grand is informed and believes, and based thereon alleges that at all times herein mentioned, Third-Party Defendants, and each of them, were agents, servants, partners and employees of their Co-Third-Party Defendants, each acting in the scope of its authority as such agent, servant, partner and employee with the permission and consent of each of their Co-Third-Party Defendants; and each fictitiously named Third-Party Defendant is in some way as yet unknown to MGM Grand

1 legally responsible for damages hereinafter pleaded. MGM Grand will pray for leave of the Court
2 to amend this Third-Party Complaint to show such matter when the same has been ascertained.

3 5. Plaintiffs filed a Complaint against MGM GRAND HOTEL, LLC; DAVID
4 COPPERFIELD aka DAVID S. KOTKIN; BACKSTAGE EMPLOYMENT AND REFERRAL,
5 INC.; DAVID COPPERFIELD'S DISAPPEARING, INC.; TEAM CONSTRUCTION
6 MANAGEMENT, INC.; DOES 1 through 20; DOE EMPLOYEES 1 through 20; and ROE
7 CORPORATIONS 1 through 20 on August 6, 2014 arising out of an incident that occurred on
8 November 12, 2013 at the David Copperfield Show at the MGM Grand Hotel/Casino involving
9 plaintiffs GAVIN COX and MINH-HANH COX. Plaintiffs instituted a personal injury action
10 allegedly arising from such said incident.

11 6. MGM Grand is informed and believes, and thereon alleges, that if, in fact, Plaintiffs
12 were injured or damaged as alleged in Plaintiffs' Complaint as described above, those injuries and
13 damages were caused solely through the negligence or carelessness of one or more of the Third-
14 Party Defendants and their employees and agents, and not through any negligence or carelessness
15 on the part of MGM Grand, its agents or employees.

16
17 **FIRST CAUSE OF ACTION**
18 **(Express Indemnity)**

19 7. MGM Grand incorporates by reference paragraphs 1 through 6, inclusive, as if set
20 forth in full herein.

21 8. MGM Grand is informed and believes and based thereon alleges that the Third-
22 Party Defendant, Beacher's LV, LLC entered into written contracts regarding the lease of space
23 and for the work performed on the premises at the MGM Grand, in which the Third-Party
24 Defendant Beacher's LV, LLC agreed, in exchange for valuable consideration, to indemnify MGM
25 Grand and hold MGM Grand harmless for any and all liabilities.

26 9. If the allegations of Plaintiffs' Complaint are true (which allegations MGM Grand
27 has denied and continues to deny), MGM Grand is informed and believes, and based thereon
28 alleges that the acts and/or omissions of the Third-Party Defendants proximately contributed to the

1 damages as alleged and described in the above-described Complaint, and to the damages, if any,
2 sustained by Plaintiffs.

3 10. MGM Grand demands that Third-Party Defendant Beacher's LV, LLC defend and
4 indemnify MGM Grand.

5 11. If, as a result of the matters alleged in Plaintiffs' Complaint, MGM Grand is held
6 liable for any part of the claims asserted against it which arise out of the acts and/or omissions of
7 the said Third-Party Defendants they are required to indemnify MGM Grand pursuant to the terms
8 of the agreement.

9 12. MGM Grand has incurred, and continues to incur, necessary and reasonable costs
10 and expenses, including expert fees, in defending the action by Plaintiffs as well as possible
11 settlement or judgment costs. By the terms of the agreement between MGM Grand and Third-
12 Party Defendants, MGM Grand is entitled to recover these fees, costs and expenses from Third-
13 Party Defendants. MGM Grand does not know the full amount thereof at this time and will move
14 to amend this Third-Party Complaint to state the amount when it becomes known.

15
16 **SECOND CAUSE OF ACTION**
17 **(Implied Indemnity)**

18 13. MGM Grand incorporates by reference paragraphs 1 through 12, inclusive, as if set
19 forth in full herein.

20 14. If MGM Grand is held to be liable for any part of Plaintiffs' alleged damages, then
21 the liability will be solely due to the conduct of the Third-Party Defendants.

22 15. If Plaintiffs recover against MGM Grand, then MGM Grand is entitled to implied
23 indemnity from the Third-Party Defendants for any amount claimed against or paid by MGM
24 Grand.

25 16. If the allegations of Plaintiffs' Complaint are true (which allegations MGM Grand
26 has denied and continues to deny), MGM Grand is informed and believes, and based thereon
27 alleges that the acts and/or omissions of the Third-Party Defendants proximately contributed to the
28 damages as alleged and described in the above-described Complaint, and to the damages, if any,

1 sustained by Plaintiffs.

2 17. MGM Grand is informed and believes, and based thereon, alleges that it is in no
3 way legally responsible for the damages alleged in Plaintiffs' Complaint. MGM Grand further
4 alleges that if, as a result of the matters alleged in the above-described Complaint, MGM GRAND
5 is held liable for any part of the claims asserted against it, MGM GRAND will be damaged.
6 MGM GRAND is entitled to implied indemnity so that MGM GRAND can recoup from Third-
7 Party Defendants, and each of them, any sum MGM Grand must pay to Plaintiffs or any other
8 party herein, which sum, when compared to the total judgment is in excess of the proportionate
9 amount of MGM Grand's negligence assessed by the trier of fact. MGM Grand is entitled to
10 judgment against these Third-Party Defendants, and each of them, for all sums incurred including
11 reasonable attorney's fees and all costs including expert fees, expenses and damages incurred in
12 this action.

13
14 **THIRD CAUSE OF ACTION**
(Contribution and Allocation)

15 18. MGM Grand repeats by reference Paragraphs 1 through 17, inclusive, as if set forth
16 in full herein.

17 19. MGM Grand is informed and believes that it is in no way legally responsible for
18 the injuries or damages alleged in Plaintiffs' Complaint or any other related action. MGM Grand
19 alleges that if, as a result of the matters alleged in the above-described Complaint, MGM Grand is
20 held liable for any part of the claims asserted against it, Third-Party Defendants, and each of them,
21 to the extent of their fault as determined by the Court, are obligated to reimburse MGM Grand and
22 will be legally responsible to MGM Grand for any liabilities so assessed by way of contribution.
23 Accordingly, MGM GRAND asserts herein their rights to such contribution; namely, that Third-
24 Party Defendants, and each of them, are obligated to provide equitable contribution to any
25 judgment or settlement herein in direct proportion to the amount of negligence of each such Third-
26 Party Defendant.

1 **WHEREFORE**, MGM Grand prays for judgment as follows:

2 1. For a judgment declaring the respective responsibility and liability of the parties
3 hereto for Plaintiffs' damages, if any;

4 2. For a judgment against Third-Party Defendants, and each of them, by way of
5 express contractual indemnity for any sum MGM Grand must pay to Plaintiffs or any other party
6 herein, which sum, when compared to the total judgment for Plaintiffs or any other party, is in
7 excess of the proportionate amount of MGM Grand negligence as assessed by the trier of fact;

8 3. For a judgment against Third-Party Defendants, and each of them, by way of
9 equitable indemnity for any sum MGM Grand must pay to Plaintiffs or any other party herein,
10 which sum, when compared to the total judgment for Plaintiffs or any other party, is in excess of
11 the proportionate amount of MGM Grand negligence as assessed by the trier of fact;

12 4. For a judgment against Third-Party Defendants, and each of them, by way of
13 indemnification for any sum adjudged against MGM Grand, if any, in favor of Plaintiffs or any
14 other party herein;

15 5. For a judgment against Third-Party Defendants, and each of them, by way of
16 contribution for any sum adjudged against MGM Grand, if any, in favor of Plaintiffs or any other
17 party herein;

18 6. For a declaration that Third-Party Defendants are obligated to pay any judgment
19 awarded Plaintiffs or any other party herein against MGM Grand or to reimburse MGM Grand in
20 the amount of such judgment if MGM GRAND pay it;

21 7. For a declaration that Third-Party Defendants are obligated to reimburse MGM
22 Grand for attorneys' fees, expert fees, costs and all other expenses incurred and to be incurred by
23 MGM Grand in investigating Plaintiffs' claim and in preparing to defend and defending against
24 Plaintiffs in the above-entitled action against MGM Grand;

25 8. For a declaration otherwise in accordance with the contentions of MGM Grand as
26 alleged in this Third-Party Complaint;

27 9. For a judgment against Third-Party Defendants, and each of them, for MGM
28

1 Grand's attorneys' fees, expert fees, court costs, investigative costs and other costs incurred in
2 defending this action, according to proof; and

3 10. For such other and further relief as the court may deem just and proper.

4
5 DATED: February 1, 2016

SELMAN BREITMAN LLP

6
7 By: /s/ Eric O. Freeman

ERIC O. FREEMAN

NEVADA BAR NO. 6648

3993 Howard Hughes Parkway, Suite 200

Las Vegas, NV 89169-0961

Telephone: 702.228.7717

Facsimile: 702.228.8824

Attorneys for Defendant DAVID

COPPERFIELD'S DISAPPEARING, INC.,

DAVID COPPERFIELD aka DAVID KOTKIN,

and MGM GRAND HOTEL, LLC.

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 FAX:** E.D.C.R. 7.26(a), I served via facsimile; or

☐ **BY MAIL AND FAX:** N.R.C.P. 5(b) and E.D.C.R. 7.26(a), I deposited for first class United States mailing, postage prepaid, at Las Vegas, Nevada, and served via facsimile; or

☒ **BY E-MAIL/ELECTRONIC SERVICE:** N.R.C.P. 5(b), I caused the foregoing document to be served upon the persons designated by the parties in the E-Service master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.

a true and correct copy of the above and foregoing **DEFENDANT MGM GRAND HOTEL, LLC.'S THIRD-PARTY COMPLAINT AGAINST BEACHER'S LV, LLC**, this 1 day of February 2016, addressed as follows:

Brian K. Harris, Esq.
HARRIS & HARRIS
2029 Alta Drive
Las Vegas, NV 89106

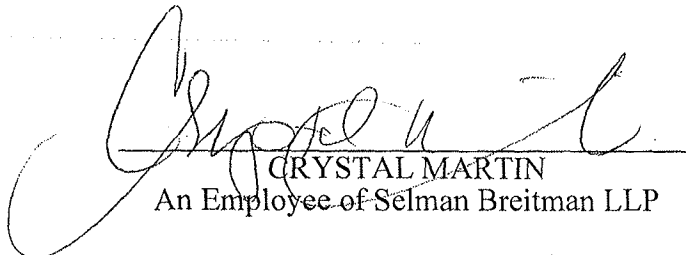
Attorneys for Plaintiffs

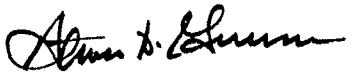
Howard J. Russell, Esq.
WEINBERG, WHEELER, HUDGINS, GUNN
& DIAL, LLC
6985 s. Rainbow Blvd., Suite 400
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Attorneys for Defendant Backstage
Employment and Referral, Inc.

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3960 Howard Hughes Pkwy., Suite 200
Las Vegas, NV 89169

Attorneys Team Construction Management,
Inc.


CRYSTAL MARTIN
An Employee of Selman Breitman LLP



CLERK OF THE COURT

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3 Nevada Bar No. 010715
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Las Vegas, Nevada 89169
5 Telephone No. (702) 405-8100
Fax No. (702) 405-8101

6 *Attorney for Third-Party Defendant,*
7 BEACHER'S LV, LLC

8 DISTRICT COURT

9 CLARK COUNTY, NEVADA

10 GAVIN COX and MIHN-HAHN COX,
Husband and Wife,

11 Plaintiff,

12 vs.

13 MGM GRAND HOTEL, LLC; DAVID
14 COPPERFIELD aka DAVID S. KOTIKIN;
BACKSTAGE EMPLOYMENT AND
15 REFERRAL, INC.; DAVID
COPPERFIELD'S DISAPPEARING, INC.;
16 TEAM CONSTRUCTION MANAGEMENT,
INC.; DOES 1 through 20; DOE
17 EMPLOYEES 1 through 20 ; and ROE
CORPORATIONS 1 through 20,

18 Defendants.

19 MGM GRAND HOTEL, LLC,

20 Third-Party Plaintiff,

21 v.
22

23 BEACHER'S LV, LLC, and DOES 1 through
24 20, inclusive,

25 Third-Party Defendants.

CASE NO: A-14-705164-C

DEPT. NO: XIII

~~PROPOSED~~
**BEACHER'S LV, LLC'S AMENDED
ANSWER TO MGM GRAND HOTEL'S
THIRD-PARTY COMPLAINT;
COUNTERCLAIM BY BEACHER'S LV,
LLC; THIRD-PARTY COMPLAINT BY
BEACHER'S LV, LLC**

26 **BEACHER'S LV, LLC'S AMENDED ANSWER TO MGM GRAND HOTEL'S THIRD**
PARTY COMPLAINT

27 COMES NOW Third-Party Defendant BEACHER'S LV, LCC, (hereinafter
28 "BEACHER'S" or "This answering Third-Party Defendant"), by and through its counsel of

1 record, MORRIS SULLIVAN LEMKUL & PITEGOFF, LLP, hereby responds to the Third-
2 Party Complaint filed by Defendant/Third-Party Plaintiff MGM GRAND HOTEL, LLC
3 (hereinafter "MGM" or "Third-Party Plaintiff") as follows:

4 **GENERAL ALLEGATIONS**

5 1. BEACHER'S lacks sufficient information or belief on which to admit the truth, or
6 falsity, of the allegations contained in paragraph 1 and on that basis denies them.

7 2. BEACHER'S admits the allegations contained in paragraph 2.

8 3. BEACHER'S lacks sufficient information or belief on which to admit the truth, or
9 falsity, of the allegations contained in paragraph 3 and on that basis denies them. Additionally,
10 this paragraph contains allegations that are directed at other entities for which BEACHER'S is
11 not required to respond.

12 4. BEACHER'S lacks sufficient information or belief on which to admit the truth, or
13 falsity, of the allegations contained in paragraph 4 and on that basis denies them.

14 5. BEACHER'S admits the allegations contained in paragraph 5.

15 6. BEACHER'S denies the allegations contained in paragraph 6 as stated.

16 **FIRST CAUSE OF ACTION**

17 **(Express Indemnity)**

18 7. Responding to paragraph 7, BEACHER'S repeats, realleges and incorporates by
19 reference all of the preceding paragraphs as though fully set forth herein.

20 8. The allegations in paragraph 8 are legal conclusions to which no response is required. To
21 the extent the allegations of paragraph 8 are determined to contain factual allegations that
22 pertain to BEACHER'S, BEACHER'S lacks sufficient information or belief on which to admit
23 the truth, or falsity, of the allegations contained in paragraph 8 and on that basis denies them.

24 9. BEACHER'S denies the allegations contained in paragraph 9 as stated.

25 10. The allegations of paragraph 10 are legal conclusions to which no response is required.
26 To the extent the allegations of paragraph 10 are determined to contain factual allegations that
27 pertain to BEACHER'S, BEACHER'S lacks sufficient information or belief on which to admit
28 the truth, or falsity, of the allegations contained in paragraph 10 and on that basis denies them.

1 11. The allegations of paragraph 11 are legal conclusions to which no response is required.
2 To the extent the allegations of paragraph 11 are determined to contain factual allegations that
3 pertain to BEACHER'S, BEACHER'S lacks sufficient information or belief on which to admit
4 the truth, or falsity, of the allegations contained in paragraph 11 and on that basis denies them.

5 12. The allegations of paragraph 12 are legal conclusions to which no response is required.
6 To the extent the allegations of paragraph 12 are determined to contain factual allegations that
7 pertain to BEACHER'S, BEACHER'S lacks sufficient information or belief on which to admit
8 the truth, or falsity, of the allegations contained in paragraph 12 and on that basis denies them.

9 **SECOND CAUSE OF ACTION**

10 **(Implied Indemnity)**

11 13. Responding to paragraph 13, BEACHER'S repeats, realleges and incorporates by
12 reference all of the preceding paragraphs as though fully set forth herein.

13 14. BEACHER'S denies the allegations of paragraph 14 as stated.

14 15. The allegations of paragraph 15 are legal conclusions to which no response is required.
15 To the extent the allegations of paragraph 15 are determined to contain factual allegations that
16 pertain to BEACHER'S, BEACHER'S denies each and every allegation contained therein.

17 16. BEACHER'S denies the allegations of paragraph 16 as stated.

18 17. The allegations of paragraph 17 contain legal conclusions to which no response is
19 required. To the extent the allegations of paragraph 17 are determined to contain factual
20 allegations that pertain to BEACHER'S, BEACHER'S denies each and every allegation
21 contained therein.

22 **THIRD CAUSE OF ACTION**

23 **(Contribution and Allocation)**

24 18. Responding to paragraph 18, BEACHER'S repeats, realleges and incorporates by
25 reference all of the preceding paragraphs as though fully set forth herein.

26 19. The allegations of paragraph 19 are legal conclusions to which no response is required.
27 To the extent the allegations of paragraph 19 are determined to contain factual allegations that
28 pertain to BEACHER'S, BEACHER'S denies each and every allegation contained therein.

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1 duty and/or performance of this Answering Third-Party Defendant is excused by reason of
2 waiver, breach of condition precedent, breach by Third-party plaintiff and/or others,
3 impossibility of performance, prevention by Third-party plaintiff or others, frustration of
4 purpose and/or acceptance by Third-party plaintiff or others, and/or lack of consideration.

5 **FIFTH AFFIRMATIVE DEFENSE**

6 **(Mitigation of Damages)**

7 As a fifth and separate affirmative defense, this Answering Third-Party Defendant is
8 informed, believes and based thereon alleges that if any contract, obligations or agreements as
9 alleged in Third-party plaintiff's Third-Party Complaint have been entered into, and if any duty
10 and/or performance obligations are found to exist, and if Third-party plaintiff is able to sustain
11 any cause of action against this Answering Third-Party Defendant, or anyone, Third-party
12 plaintiff has failed to exercise reasonable care in mitigating the damages of which it now
13 complains, and is thus barred from recovering any such alleged damages.

14 **SIXTH AFFIRMATIVE DEFENSE**

15 **(Comparative Fault)**

16 As a sixth and separate affirmative defense, this Answering Third-Party Defendant is
17 informed, believes and based thereon alleges that all or a portion of the alleged damages of
18 which Third-party plaintiff complains are the result of the negligent acts and/or omissions of
19 Third-party plaintiff and/or other parties, and that, accordingly, any and all damages established
20 by Third-party plaintiff must be apportioned to account for Third-party plaintiff's own
21 negligence and other conduct which caused or contributed to the alleged damages of which
22 Third-party plaintiff now complains.

23 **SEVENTH AFFIRMATIVE DEFENSE**

24 **(Unenforceable Contract)**

25 As a seventh and separate affirmative defense, this Answering Third-Party Defendant is
26 informed, believes and based thereon alleges that to the extent Third-party plaintiff entered into
27 any contract, as alleged in its Third-Party Complaint, said contract is unenforceable as Third-
28 party plaintiff seeks to enforce it against this Answering Third-Party Defendant

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EIGHTH AFFIRMATIVE DEFENSE

(Ambiguity)

As an eighth and separate affirmative defense, this Answering Third-Party Defendant is informed, believes and based thereon alleges that any contract, as Third-party plaintiff seeks to enforce it against this Answering Third-Party Defendant, was ambiguous and the terms thereof as alleged were never agreed to by this Answering Third-Party Defendant.

NINTH AFFIRMATIVE DEFENSE

(Superseding Cause)

As a ninth and separate affirmative defense, this Answering Third-Party Defendant is informed, believes and based thereon alleges that if Third-party plaintiff suffered or sustained any obligation or liability for any loss, damage or injury as alleged in its Third-Party Complaint, such loss, damage or injury was proximately caused or contributed to by the wrongful and negligent acts and conduct of parties, persons or entities other than this Answering Third-Party Defendant, and that such wrongful and negligent acts or conduct were an intervening or superseding cause of the alleged loss, alleged damage and/or alleged injury of which Third-party plaintiff complains.

TENTH AFFIRMATIVE DEFENSE

(Negligence of Others)

As a tenth and separate affirmative defense, this Answering Third-Party Defendant is informed, believes and based thereon alleges that if Third-party plaintiff suffered or sustained any obligation or liability for any loss, damage or injury as alleged in its Third-Party Complaint, such liability or obligation for such matter was proximately caused or contributed to by persons or entities other than this Answering Third-Party Defendant. The liability for all responsible parties, named or unnamed, should be apportioned according to the relative degrees of fault, and the liability of this Answering Third-Party Defendant should be reduced accordingly and/or barred entirely.

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1 **ELEVENTH AFFIRMATIVE DEFENSE**

2 **(Unclean Hands)**

3 As an eleventh and separate affirmative defense, this Answering Third-Party Defendant
4 is informed, believes and based thereon alleges that at all times relevant to this case and to
5 Third-party plaintiff's Third-Party Complaint, Third-party plaintiff was itself guilty of
6 unreasonable and unconscionable conduct which was intimately connected with the facts giving
7 rise to the claims it now seeks to bring. Accordingly, and by virtue of the doctrine of unclean
8 hands, Third-party plaintiff is barred from asserting any of the alleged claims.

9 **TWELFTH AFFIRMATIVE DEFENSE**

10 **(Laches)**

11 As a twelfth and separate affirmative defense, this Answering Third-Party Defendant is
12 informed, believes and based thereon alleges that Third-party plaintiff has unreasonably and
13 inexcusably delayed the commencement of this action as against this Answering Third-Party
14 Defendant, to the prejudice of this Answering Third-Party Defendant. Accordingly, and by
15 virtue of the doctrine of laches, Third-party plaintiff is barred from asserting any of the claims
16 alleged in its Third-Party Complaint against this Answering Third-Party Defendant.

17 **THIRTEENTH AFFIRMATIVE DEFENSE**

18 **(Estoppel)**

19 As a thirteenth and separate affirmative defense, this Answering Third-Party Defendant
20 is informed, believes and based thereon alleges that by virtue of Third-party plaintiff's conduct,
21 both before and after execution of the contract allegedly at issue, Third-party plaintiff is
22 estopped from raising the claims alleged in its Third-Party Complaint.

23 **FOURTEENTH AFFIRMATIVE DEFENSE**

24 **(Statutes of Limitation / Statutes of Repose)**

25 As a fourteenth and separate affirmative defense, this Answering Third-Party Defendant
26 is informed, believes and based thereon alleges that the Third-Party Complaint and each and
27 every cause of action alleged therein, is barred by applicable Nevada statutes of limitation

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1 and/or statutes of repose, including but not limited to Nevada Revised Statutes ("NRS") 11.190
2 and 11.202.

3 **FIFTEENTH AFFIRMATIVE DEFENSE**

4 **(Lack of Causation)**

5 As a fifteenth and separate affirmative defense, this Answering Third-Party Defendant is
6 informed, believes and based thereon alleges that even if Third-party plaintiff's allegations were
7 true, and even if Third-party plaintiff sustained the damages alleged in the Third-Party
8 Complaint, Third-party plaintiff is still not entitled to recover for these alleged damages as
9 against this Answering Third-Party Defendant, because Third-party plaintiff cannot prove that
10 the conduct of this Answering Third-Party Defendant was the proximate or legal cause of
11 damage to the Plaintiffs in the underlying Complaint or to Third-party plaintiff.

12 **SIXTEENTH AFFIRMATIVE DEFENSE**

13 **(Lack of Standing)**

14 As a sixteenth and separate affirmative defense, this Answering Third-Party Defendant
15 is informed, believes and based thereon alleges Third-party plaintiff lacks standing to bring any
16 of the claims alleged in its Third-Party Complaint against this Answering Third-Party
17 Defendant.

18 **SEVENTEENTH AFFIRMATIVE DEFENSE**

19 **(Third Party Plaintiff's Performance Failure)**

20 As a seventeenth and separate affirmative defense, this Answering Third-Party
21 Defendant is informed, believes and based thereon alleges that at all times and places relevant
22 hereto, Third-party plaintiff failed to perform contractual duties and obligations required under
23 its own agreements, written and/or oral, entered into between Third-party plaintiff and this
24 Answering Third-Party Defendant or any other party herein (such as Plaintiffs), and that such
25 acts or omissions by Third-party plaintiff bars Third-party plaintiff from recovery herein.

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EIGHTEENTH AFFIRMATIVE DEFENSE

(Failure to Join Parties)

As a eighteenth and separate affirmative defense, this Answering Third-Party Defendant is informed, believes and based thereon alleges that Third-party plaintiff has failed to join a party necessary for just adjudication of the claims at issue in its Third-Party Complaint pursuant to NRCP 19.

NINETEENTH AFFIRMATIVE DEFENSE

(Excuse and Justification)

As a nineteenth and separate affirmative defense, this Answering Third-Party Defendant is informed, believes and based thereon alleges that if it is determined that this Answering Third-Party Defendant committed any negligence, which it denies, then this Answering Third-Party Defendant's conduct was committed with legally sufficient excuse and/or justification.

TWENTIETH AFFIRMATIVE DEFENSE

(Insufficient Indemnification Demand)

As a twentieth and separate affirmative defense, this Answering Third-Party Defendant is informed, believes and based thereon alleges that the Third-party plaintiff has failed to make a legally sufficient demand for indemnification upon this Answering Third-Party Defendant prior to instituting this action, and as such, Third-party plaintiff, and/or other parties, may not recover under any indemnity theory this Answering Third-Party Defendant.

TWENTY-FIRST AFFIRMATIVE DEFENSE

(Consent)

As a twenty-first and separate affirmative defense, this Answering Third-Party Defendant is informed, believes and based thereon alleges that Third-party plaintiff consented to all actions that gave rise to Third-party plaintiff's Third-Party Complaint and is therefore barred from any and all such alleged causes of action claimed.

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TWENTY-SECOND AFFIRMATIVE DEFENSE

(Assumption of the Risk)

As a twenty-second and separate affirmative defense, this Answering Third-Party Defendant is informed, believes and based thereon alleges that Third-party plaintiff and Plaintiff voluntarily exposed themselves and knowingly appreciated any risks that may have been involved with the actions that gave rise to Third-party plaintiff's Third-Party Complaint, and as such are barred from recovering any such alleged damages.

TWENTY-THIRD AFFIRMATIVE DEFENSE

(Open & Obvious)

As a twenty-third and separate affirmative defense, this Answering Third-Party Defendant is informed, believes and based thereon alleges that this Answering Third-Party Defendant did not and does not owe any duty to warn of open and obvious dangers.

TWENTY-FOURTH AFFIRMATIVE DEFENSE

(No Acts/Omissions)

As a twenty-fourth and separate affirmative defense, this Answering Third-Party Defendant is informed, believes and based thereon alleges that this Answering Third-Party Defendant engaged in no acts or omissions relevant to the subject matter of the Third-Party Complaint that would create any liability or duty whatsoever on the part of this Answering Third-Party Defendant.

TWENTY-FIFTH AFFIRMATIVE DEFENSE

(Contribution from Others)

As a twenty-fifth and separate affirmative defense, this Answering Third-Party Defendant is informed, believes and based thereon alleges that should this Answering Third-Party Defendant be held liable to Third-party plaintiff herein, this Answering Third-Party Defendant is entitled to contribution from all other persons, parties, and/or organizations that are responsible for injuries and damages of Third-party plaintiff.

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1 **TWENTY-SIXTH AFFIRMATIVE DEFENSE**

2 **(Active-Passive Negligence Defense)**

3 As a twenty-sixth and separate affirmative defense, this Answering Third-Party
4 Defendant is informed, believes and based thereon alleges that any damages claimed by Third-
5 party plaintiff are void and unenforceable because Third-party plaintiff was actively negligent
6 and this Answering Third-Party Defendant's negligence, if any, was passive and secondary to
7 Third-party plaintiff.

8 **TWENTY-SEVENTH AFFIRMATIVE DEFENSE**

9 **(No Duty)**

10 As a twenty-seventh and separate affirmative defense, this Answering Third-Party
11 Defendant is informed, believes and based thereon alleges that this Answering Third-Party
12 Defendant owes no duty to Third-party plaintiff for the damages Third-party plaintiff claims,
13 and Third-party plaintiff's Third-Party Complaint also fails to establish that this Answering
14 Third-Party Defendant owes a duty to Third-party plaintiff.

15 **TWENTY-EIGHTH AFFIRMATIVE DEFENSE**

16 **(Act of God)**

17 As a twenty-eighth and separate affirmative defense, this Answering Third-Party
18 Defendant is informed and believes and based thereon alleges that any and all events,
19 happenings, injuries, and damages, if any, as alleged in the Plaintiffs' underlying Complaint
20 and/or in Third-party plaintiff's Third-Party Complaint were the direct result of an Act of God
21 and/or unavoidable forces for which this Answering Third-Party Defendant had no control.

22 **TWENTY-NINTH AFFIRMATIVE DEFENSE**

23 **(Excuse, Justification, Impossibility, Frustration of Purpose, and Acceptance of Contract)**

24 As a twenty-ninth and separate affirmative defense, this Answering Third-Party
25 Defendant is informed and believes and based thereon alleges that if any contract, obligations or
26 agreements as alleged in Third-party plaintiff's Third-Party Complaint have been entered into,
27 any duty or performance of this Answering Third-Party Defendant is excused by reason of
28 failure of consideration, waiver, breach of condition precedent, breach by Third-party plaintiff,

1 impossibility of performance, prevention by Third-party plaintiff frustration of purpose, and/or
2 acceptance by Third-party plaintiff.

3 **THIRTIETH AFFIRMATIVE DEFENSE**

4 **(Unconscionable)**

5 As a thirtieth and separate affirmative defense, this Answering Third-Party Defendant is
6 informed, believes and based thereon alleges that if any contract, obligations or agreements as
7 alleged in Third-party plaintiff's Third-Party Complaint have been entered into with
8 BEACHER'S, such are unconscionable as Third-party plaintiff seeks to enforce such contract,
9 obligations or agreements, and as such, this Answering Third-Party Defendant is relieved from
10 the claims Third-party plaintiff seeks to assert against this Answering Third-Party Defendant.

11 **THIRTY-FIRST AFFIRMATIVE DEFENSE**

12 **(Lack of Consideration)**

13 As a thirty-first and separate affirmative defense, this Answering Third-Party Defendant
14 is informed and believes and based thereon alleges that the provisions alleged to have been in
15 the contract between Third-party plaintiff and this Answering Third-Party Defendant were not
16 supported by any consideration afforded to this Answering Third-Party Defendant. As a result,
17 the alleged contract fails for lack of consideration.

18 **THIRTY-SECOND AFFIRMATIVE DEFENSE**

19 **(Statute of Frauds)**

20 As a thirty-second and separate affirmative defense, this Answering Third-Party
21 Defendant is informed and believes and based thereon alleges that contractual obligations upon
22 which Third-party plaintiff's seeks to rely upon fail to satisfy the requirements of the Statute of
23 Frauds. Said failure acts as a complete bar to any recovery as to any alleged contractual
24 obligations by this Answering Third-Party Defendant.

25 **THIRTY-THIRD AFFIRMATIVE DEFENSE**

26 **(Additional Affirmative Defenses)**

27 As a thirty-third and separate affirmative defense, this Answering Third-Party Defendant
28 is informed, believes and based thereon alleges that this Answering Third-Party Defendant may

1 discover additional facts which may give rise to additional, as-yet un-ascertained affirmative
2 defenses, including but not limited to affirmative defenses espoused in NRCP 8. This
3 Answering Third-Party Defendant thus expressly reserves the right to assert additional
4 affirmative defenses as relevant facts become known, and reserves the right to assert said
5 defenses at any time such facts are discovered.

6 WHEREFORE, BEACHER'S prays for judgment as follows:

- 7 1. Third-Party Plaintiff takes nothing by way of its Third-Party Complaint;
- 8 2. Dismissal of Third-Party Plaintiff's Complaint with prejudice;
- 9 3. An award of reasonable attorney's fees and costs to Third-Party Defendant for the
10 defense of this matter; and
- 11 4. For such other relief as the Court deems reasonable and proper.

12 DATED this 7th day of October, 2016.

13 **MORRIS, SULLIVAN, LEMKUL &**
14 **PITEGOFF**

15 /s/ Ryan S. Petersen

16 JEFFREY I. PITEGOFF, ESQ.

17 Nevada Bar No. 005458

18 RYAN S. PETERSEN, ESQ.

Nevada Bar No. 010715

3770 Howard Hughes Parkway, Suite 170

Las Vegas, Nevada 89169

Telephone No. (702) 405-8100

Fax No. (702) 405-8101

Attorney for Third-Party Defendant,
21 BEACHER'S LV, LLC

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1 being caused by Beacher's, then Beacher's is entitled to indemnity, contribution, and equitable
2 claims and rights from Defendant/Third Party Plaintiff MGM Grand.

3 **FIRST CAUSE OF ACTION**

4 **(Express Indemnity Against MGM Grand Hotel, LLC)**

5 8. Beacher's refers to and incorporates by reference paragraphs 1 through 6 as though fully
6 set herein.

7 9. Beacher's is informed, believes, and thereon alleges that pursuant to the terms and
8 conditions in the Lease Agreement entered into between Beacher's and MGM Grand, Beacher's
9 has express rights to a defense, to be held harmless, and to be indemnified by MGM Grand.

10 10. In defending against the claims stated in Plaintiffs' Complaint, Beacher's necessarily
11 and reasonably incurred or will incur, and paid, or will pay, attorneys' fees and other legal costs
12 in the a sum to be determined upon proof at the time of trial.

13 11. Beacher's has performed all the conditions and obligations to be performed on its part
14 under its contract with MGM Grand.

15 12. By reason of the foregoing, Beacher's is entitled to a defense and to be defended, held
16 harmless, and indemnified by MGM Grand in a sum to be determined at the time of trial.

17 13. Beacher's has incurred, and continues to incur, necessary and reasonable attorneys' fees
18 and other legal costs in prosecuting this action against MGM Grand.

19 14. By the terms and conditions of the contracts between Beacher's and MGM Grand,
20 Beacher's is entitled to recover these fees and costs. Beacher's does not know the full amount of
21 these fees and costs at this time, so Beacher's will seek leave of Court to amend its
22 Counterclaim to show the amount of said damages when same becomes known to Beacher's or
23 will present such sums at the time of trial.

24 **SECOND CAUSE OF ACTION**

25 **(Equitable/Total/Partial/Implied Indemnity Against MGM Grand Hotel, LLC)**

26 15. Beacher's refers to and incorporates by reference paragraphs 1 through 13 as though
27 fully set forth herein.

28 ///

1 16. While denying the allegations of Plaintiffs' Complaint on file herein, Beacher's alleges,
2 upon information and belief, that if these allegations are found to be true, then such liability was
3 caused by the primary and active negligence of MGM Grand, and/or their agents, employees,
4 lessees, and each of them, whereas the negligence of Beacher's, if any, was passive and
5 derivative.

6 17. Beacher's is informed, believes, and thereon alleges that any damages and injuries
7 claimed by Plaintiffs in their Complaint were caused by the acts and/or omissions of MGM
8 Grand in whole or in part, and/or by MGM Grand's agents, employees, and lessees.

9 18. In the event that Beacher's is found in some manner to be responsible to Plaintiffs as a
10 result of the conduct, events, or matters as described in Plaintiffs' Complaint, then Beacher's
11 contends that such liability would be based solely upon a derivative form of liability not
12 resulting from the conduct of Beacher's, but only from an obligation imposed upon it by law,
13 and would therefore be entitled to equitable, total, partial, and implied indemnity from MGM
14 Grand, based on tort, equity, and/or implied contractual principles.

15 19. Beacher's hereby demands that MGM Grand indemnify and hold harmless Beacher's for
16 any sums paid by way of settlement, or in the alternative, judgment rendered against Beacher's.

17 20. It has been necessary for Beacher's to retain the services of counsel to defend against
18 Plaintiffs' claims asserted by MGM Grand in their Third-Party Complaint and to prosecute this
19 action. Accordingly, Beacher's is entitled to recover attorney's fees and costs herein.

20 **THIRD CAUSE OF ACTION**

21 **(Contribution and Allocation Against MGM Grand Hotel, LLC)**

22 21. Beacher's refers to and incorporates by reference paragraphs 1 through 19 as though
23 fully set forth herein.

24 22. Beacher's is informed and believes, and thereon alleges, that MGM Grand was
25 negligently or tortiously responsible, in whole or in part, for the obligations, if any, owed to
26 Plaintiffs as alleged in their Complaint.

27 23. If Plaintiffs recover against Beacher's, then Beacher's is entitled to contribution
28 pursuant to NRS 17.225 among and from MGM Grand, to their respective shares of the

1 obligations, if any, owed to Plaintiffs by way of sums paid by settlement or, in the alternative,
2 judgment rendered against Beacher's.

3 24. It has been necessary for Beacher's to retain the services of counsel to defend against
4 Plaintiffs' claims asserted by MGM Grand in their Third-Party Complaint and to prosecute this
5 action. Accordingly, Beacher's is entitled to recover attorney's fees and costs herein.

6 **WHEREFORE** Beacher's prays for judgment as follows:

- 7 1. Beacher's be entitled to express indemnity and a defense from MGM Grand Hotel, LLC;
8 2. That Beacher's be entitled to implied indemnity from MGM Grand Hotel, LLC;
9 3. That Beacher's be entitled to equitable indemnity and contribution, and apportionment
10 from MGM Grand, in accordance with the respective faults of each;

11 DATED this 7th day of October, 2016.

12 **MORRIS, SULLIVAN, LEMKUL &**
13 **PITEGOFF**

14 /s/ Ryan S. Petersen

15 JEFFREY I. PITEGOFF, ESQ.

16 Nevada Bar No. 005458

17 RYAN S. PETERSEN, ESQ.

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19 3770 Howard Hughes Parkway, Suite 170

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21 Telephone No. (702) 405-8100

22 Fax No. (702) 405-8101

23 *Attorney for Third-Party Defendant,*

24 BEACHER'S LV, LLC

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1 recitation herein. However, to the extent that Plaintiffs' claims are somehow established as
2 being caused by Beacher's, then Beacher's is entitled to indemnity, contribution, and equitable
3 claims and rights from Team Construction, DOES I-X, and ROE CORPORATIONS 1-10.

4 8. Beacher's does not know the true names of the Third-Party Defendants identified herein
5 in fictitious names as DOES I-X, and ROE CORPORATIONS 1-10. Beacher's alleges that said
6 Third-Party Defendants are liable to Beacher's under the claims of relief set forth below.
7 Beacher's requests leave of this Court to amend this Third-Party Complaint with appropriate
8 allegations when the true names of said Third-party Defendants are discovered.

9 9. For all purposes herein Team Construction, DOES I-X, and ROE CORPORATIONS 1-
10 10 will collectively be referred to as "Third-Party Defendants."

11 **FIRST CAUSE OF ACTION**
12 **(Express Indemnity Against Team Construction, DOES I-X, and**
ROE CORPORATIONS 1-10)

13 10. Beacher's refers to and incorporates by reference paragraphs 1 through 6 as though fully
14 set herein.

15 11. Beacher's is informed, believes, and thereon alleges that pursuant to the terms and
16 conditions in the Construction Contract entered into between Beacher's and Team
17 Construction, Beacher's has express rights to a defense, to be held harmless, and to be
18 indemnified by Team Construction.

19 12. In defending against the claims stated in Plaintiffs' Complaint, Beacher's necessarily
20 and reasonably incurred or will incur, and paid, or will pay, attorneys' fees and other legal costs
21 in the a sum to be determined upon proof at the time of trial.

22 13. Beacher's has performed all the conditions and obligations to be performed on its part
23 under its contract with Team Construction.

24 14. By reason of the foregoing, Beacher's is entitled to a defense and to be defended, held
25 harmless, and indemnified by Team Construction in a sum to be determined at the time of trial.

26 15. Beacher's has incurred, and continues to incur, necessary and reasonable attorneys' fees
27 and other legal costs in prosecuting this action against MGM Grand.

28 ///

1 16. By the terms and conditions of the contracts between Beacher's and Team Construction,
2 Beacher's is entitled to recover these fees and costs. Beacher's does not know the full amount of
3 these fees and costs at this time, so Beacher's will seek leave of Court to amend its Third-Party
4 Complaint to show the amount of said damages when same becomes known to Beacher's or will
5 present such sums at the time of trial.

6 **SECOND CAUSE OF ACTION**
7 **(Equitable/Total/Partial/Implied Indemnity Against Team Construction,**
8 **DOES I-X, and ROE CORPORATIONS 1-10)**

8 17. Beacher's refers to and incorporates by reference paragraphs 1 through 16 as though
9 fully set forth herein.

10 18. While denying the allegations of Plaintiffs' Complaint on file herein, Beacher's alleges,
11 upon information and belief, that if these allegations are found to be true, then such liability was
12 caused by the primary and active negligence of Team Construction, and/or their agents,
13 employees, subcontractors, and each of them, whereas the negligence of Beacher's, if any, was
14 passive and derivative.

15 19. Beacher's is informed, believes, and thereon alleges that any damages and injuries
16 claimed by Plaintiffs in their Complaint were caused by the acts and/or omissions of Team
17 Construction in whole or in part, and/or Team Construction's agents, employees, and
18 subcontractors.

19 20. In the event that Beacher's is found in some manner to be responsible to Plaintiffs as a
20 result of the conduct, events, or matters as described in Plaintiffs' Complaint, then Beacher's
21 contends that such liability would be based solely upon a derivative form of liability not
22 resulting from the conduct of Beacher's, but only from an obligation imposed upon it by law,
23 and would therefore be entitled to equitable, total, partial, and implied indemnity from Team
24 Construction, based on tort, equity, and/or implied contractual principles.

25 21. Beacher's hereby demands that Team Construction indemnify and hold harmless
26 Beacher's for any sums paid by way of settlement, or in the alternative, judgment rendered
27 against Beacher's.

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1 22. It has been necessary for Beacher's to retain the services of counsel to defend against
2 Plaintiffs' claims asserted by MGM Grand in their Third-Party Complaint and to prosecute this
3 action. Accordingly, Beacher's is entitled to recover attorney's fees and costs herein.

4 **THIRD CAUSE OF ACTION**
5 **(Contribution and Allocation Against Team Construction,**
6 **DOES I-X, and ROE CORPORATIONS 1-10)**

7 23. Beacher's refers to and incorporates by reference paragraphs 1 through 22 as though
8 fully set forth herein.

9 24. Beacher's is informed and believes, and thereon alleges, that Team Construction was
10 negligently or tortiously responsible, in whole or in part, for the obligations, if any, owed to
11 Plaintiffs as alleged in their Complaint.

12 25. If Plaintiffs recover against Beacher's, then Beacher's is entitled to contribution
13 pursuant to NRS 17.225 among and from Third-Party Defendants and each of them, to their
14 respective shares of the obligations, if any, owed to Plaintiffs by way of sums paid by settlement
15 or, in the alternative, judgment rendered against Beacher's.

16 26. It has been necessary for Beacher's to retain the services of counsel to defend against
17 Plaintiffs' claims asserted by MGM Grand in their Third-Party Complaint and to prosecute this
18 action. Accordingly, Beacher's is entitled to recover attorney's fees and costs herein.

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WHEREFORE Beacher's prays for judgment as follows:

1. Beacher's be entitled to express indemnity and a defense from all Third-Party Defendants, and each of them;
2. That Beacher's be entitled to implied indemnity from all Third-Party Defendants, and each of them;
3. That Beacher's be entitled to equitable indemnity and contribution, and allocation from all from all Third-Party Defendants, and each of them, in accordance with the respective faults of each;
4. For reasonable attorneys fees and costs of suit;
5. For such other and further relief as the Court deems just and proper.

DATED this 7th day of October, 2016.

**MORRIS, SULLIVAN, LEMKUL &
PITEGOFF**

/s/ Ryan S. Petersen
JEFFREY I. PITEGOFF, ESQ.
Nevada Bar No. 005458
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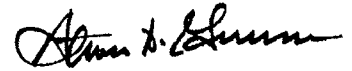
1 **CERTIFICATE OF SERVICE (E.D.C.R 8.05 (f))**

2 I do hereby certify that on **October 7, 2016**, I served a copy of the following
3 document(s):

4 **BEACHER'S LV, LLC'S AMENDED ANSWER TO MGM GRAND HOTEL'S**
5 **THIRD-PARTY COMPLAINT; COUNTERCLAIM BY BEACHER'S LV, LLC;**
6 **THIRD-PARTY COMPLAINT BY BEACHER'S LV, LLC**

7 via "Wiznet" (Clark County District Court's Electronic-filing and e-service) on all parties listed
8 therein.

9
10 /s/ Allyson Lodwick
11 MORRIS, SULLIVAN, LEMKUL & PITEGOFF, LLP



CLERK OF THE COURT

1 **NEOJ**

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4 hrussell@wwhgd.com

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5 Nevada Bar No. 12828

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6 WEINBERG, WHEELER, HUDGINS,

GUNN & DIAL, LLC

7 6385 S. Rainbow Blvd., Suite 400

Las Vegas, Nevada 89118

8 Telephone: (702) 938-3838

Facsimile: (702) 938-3864

9 *Attorneys for Defendant*

10 *Backstage Employment and Referral, Inc.*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 GAVIN COX and MINH-HAHN COX, Husband
and Wife,

14 Plaintiffs,

15 v.

16 MGM GRAND HOTEL, LLC; DAVID
17 COPPERFIELD aka DAVID S. KOTKIN;
18 BACKSTAGE EMPLOYMENT AND
19 REFERRAL, INC.; DAVID COPPERFIELD'S
20 DISAPPEARING, INC.; TEAM
21 CONSTRUCTION MANAGEMENT, INC.;
22 DOES 1 through 20; DOE EMPLOYEES 1
through 20; and ROE CORPORATIONS 1
through 20;

23 Defendants.

24 MGM GRAND HOTEL, LLC,

25 Third-Party Plaintiff,

26 v.

27 BEACHER'S LV, LLC, and DOES 1 through 20,
inclusive,

28 Third-Party Defendants.

Case No.: A-14-705164-C

Dept. No.: XIII

**NOTICE OF ENTRY OF ORDER
GRANTING IN PART AND DENYING
IN PART DEFENDANT BACKSTAGE
EMPLOYMENT AND REFERRAL,
INC.'S MOTION FOR SUMMARY
JUDGMENT**

Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC
6385 S. Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
(702) 938-3838

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6385 S. Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
(702) 938-3838

**NOTICE OF ENTRY OF ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT BACKSTAGE EMPLOYMENT AND
REFERRAL, INC.'S MOTION FOR SUMMARY JUDGMENT**

YOU WILL PLEASE TAKE NOTICE that an Order Granting in Part and Denying in Part Defendant Backstage Employment and Referral, Inc.'s Motion For Summary Judgment was filed on February 9, 2017 in the above-captioned matter. A copy of the Order is attached hereto.

DATED this 10th day of February, 2017.



D. Lee Roberts, Jr., Esq.
Howard J. Russell, Esq.
Timothy A. Mott, Esq.
WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC
6385 S. Rainbow Blvd., Suite 400
Las Vegas, NV 89118

*Attorneys for Defendant
Backstage Employment and Referral, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on the 10th day of February, 2017, a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT BACKSTAGE EMPLOYMENT AND REFERRAL, INC.'S MOTION FOR SUMMARY JUDGMENT** was electronically filed / served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

<p>Brian K. Harris, Esq. Christian N. Griffin, Esq. HARRIS & HARRIS 2029 Alta Dr. Las Vegas, NV 89106 bharris@harrislawyers.net</p> <p><i>Attorneys for Plaintiffs</i></p>	<p>Eric O. Freeman, Esq. SELMAN BREITMAN, LLP 3993 Howard Hughes Pkwy., Suite 200 Las Vegas, NV 89169 efreeman@selmanbreitman.com</p> <p><i>Attorney for Defendants David Copperfield's Disappearing, Inc., David Copperfield aka David S. Kotkin and MGM Grand Hotel, LLC</i></p>
<p>Benedict P. Morelli, Esq. Adam E. Deutsch, Esq. MORELLI LAW FIRM PLLC 777 Third Ave., 31st Floor New York, NY 10017 bmorelli@morellilaw.com adeutsch@morellilaw.com</p> <p><i>Attorneys for Plaintiffs</i></p>	<p>Jerry C. Popovich, Esq. SELMAN BREITMAN, LLP 6 Hutton Centre Dr., Suite 1100 Santa Ana, CA 92707 jpopovich@selmanlaw.com</p> <p><i>Attorney for Defendants David Copperfield's Disappearing, Inc., David Copperfield aka David S. Kotkin and MGM Grand Hotel, LLC</i></p>
<p>Gary Call, Esq. Melissa L. Alessi, Esq. RESNICK & LOUIS, P.C. 5940 S. Rainbow Blvd. Las Vegas, NV 89118 (702) 997-3800 Office (702) 997-3800 Fax gcall@rlattorneys.com malessi@rlattorneys.com</p> <p><i>Attorneys for Defendants Team Construction Management, Inc. and Beacher's LV, LLC</i></p>	



An Employee of WEINBERG, WHEELER,
HUDGINS, GUNN & DIAL, LLC

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FEB 07 2017

DISTRICT COURT DEPT# 13

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9 *Attorneys for Defendant*
10 *Backstage Employment and Referral, Inc.*

11 DISTRICT COURT
12 CLARK COUNTY, NEVADA

14 GAVIN COX and MINH-HAHN COX, Husband
15 and Wife,

16 Plaintiffs,

17 v.

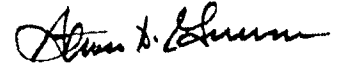
18 MGM GRAND HOTEL, LLC; DAVID
19 COPPERFIELD aka DAVID S. KOTKIN;
20 BACKSTAGE EMPLOYMENT AND
21 REFERRAL, INC.; DAVID COPPERFIELD'S
22 DISAPPEARING, INC.; TEAM
23 CONSTRUCTION MANAGEMENT, INC.;
DOES 1 through 20; DOE EMPLOYEES 1
through 20; and ROE CORPORATIONS 1
through 20;

24 Defendants.

Case No.: A-14-705164-C
Dept. No.: XIII

ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT
BACKSTAGE EMPLOYMENT AND
REFERRAL, INC.'S MOTION FOR
SUMMARY JUDGMENT

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CLERK OF THE COURT

26 ///

27 ///

28 ///

1 Defendant Backstage Employment and Referral, Inc.'s Motion for Summary Judgment
2 came before the Court for hearing on January 19, 2017, D. Lee Roberts, Jr., Esq. and Howard J.
3 Russell, Esq. appearing for Defendant Backstage Employment and Referral, Inc., and Adam
4 Deutsch, Esq. and Christian Griffin, Esq. appearing for Plaintiffs. Having reviewed the briefs and
5 submissions of all parties, considering the arguments of counsel, and for the reasons set forth, the
6 Court finds as follows:

~~FINDINGS~~
CONTENTIONS

7
8 1. Defendant Backstage Employment and Referral, Inc. ("Backstage") moves for summary
9 judgment on all claims. Backstage argues the following with respect to Plaintiffs' causes of
10 action:

- 11 a. There is no question of material fact on Plaintiffs' negligence claim, as there is no
12 evidence to support a jury finding that Backstage breached any duty owed to Plaintiff
13 Gavin Cox.
- 14 b. Plaintiffs' claim for *respondeat superior* fails as a matter of law, as this is not a
15 recognized cause of action in Nevada.
- 16 c. Plaintiffs' claim for negligent hiring, retention, training and supervision fails as a matter
17 of law, as Plaintiffs cannot sustain this claim in light of Backstage's admission of
18 *respondeat superior* liability for the acts of its employees. Backstage cites *Alvares v.*
19 *McMullin*, 2015 WL 3558673 (D. Nev., June 4, 2015) and *Jeld-Wen, Inc. v.*
20 *Superior Court*, 131 Cal. App. 4th 853, 862 (Cal. App. 4th Dist. 2005) for this
21 proposition.
- 22 d. There is no question of material fact on Plaintiffs' claim for negligent hiring, retention,
23 training and supervision, as there is no evidence to support a jury finding that Backstage
24 breached any duties in the hiring, retention, training and supervision of its employees.
25 Further, there is no question of material fact on Plaintiffs' claim for negligent hiring,
26 retention, training and supervision, as there is no evidence that any Backstage employee
27 was unfit for the position for which he or she was hired.

28 ///

1 e. Plaintiff Minh-Hahn Cox cannot sustain a derivative claim for loss of consortium.

2 f. There is no question of material fact on Plaintiffs' claim for punitive damages, as there is
3 no clear and convincing evidence to support a jury finding that Backstage engaged in
4 any conduct to warrant a finding of punitive damages.

5 2. Plaintiffs oppose Backstage's Motion on the following grounds:

6 a. There are questions of material fact on Plaintiffs' negligence claims.

7 b. Plaintiffs' claim for *respondeat superior* can survive, as dismissal of this cause of action
8 would place form over substance.

9 c. There are questions of material fact on Plaintiffs' claim for negligent hiring, retention,
10 training and supervision.

11 d. There are questions of material fact on the derivative claim for loss of consortium.

12 3. Plaintiffs did not address Backstage's proposition that *Alvares v. McMullin*, 2015 WL
13 3558673 (D. Nev., June 4, 2015) and *Jeld-Wen, Inc. v. Superior Court*, 131 Cal. App. 4th
14 853, 862 (Cal. App. 4th Dist. 2005) dictate dismissal of any claims for negligent hiring,
15 retention, training and supervision.

16 4. Plaintiffs did not oppose Backstage's Motion for Summary Judgment as it relates to punitive
17 damages, and at the hearing of this Motion, conceded that this claim was subject to dismissal.

18 **HOLDING**

19 1. Backstage's Motion for Summary Judgment is **GRANTED** in part, and **DENIED** in part.

20 2. Backstage's Motion is **GRANTED** as to Plaintiffs' Second Cause of Action. The Court
21 agrees that *respondeat superior* is not an independent cause of action.

22 3. Backstage's Motion is **GRANTED** as to Plaintiffs' Third Cause of Action. The Court
23 agrees that this claim for negligent hiring, retention, training and supervision merges into
24 the general negligence claim. Plaintiffs may still present evidence that the manner in which
25 Backstage trained its employees to carry out the Illusion was negligent, but that evidence
26 goes to Plaintiffs' First Cause of Action for Negligence.

27 4. Backstage's Motion is **GRANTED** as to Plaintiffs' Fifth Cause of Action. Plaintiffs have
28 conceded there is no basis to establish a claim for punitive damages.

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1 5. Backstage's Motion is **DENIED** as to Plaintiffs' First and Fourth Causes of Action. The
2 Court finds there are questions of material fact related to Plaintiffs' negligence claims, and
3 the derivative loss of consortium claim.
4

5 IT IS SO ORDERED.

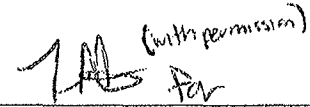
6 This 8th day of February, 2017.


HON. MARK R. DENTON
DISTRICT COURT JUDGE 

10 Submitted by:

11 
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13 D. Lee Roberts, Jr., Esq.
14 Nevada Bar No. 8877
15 Howard J. Russell, Esq.
16 Nevada Bar No. 8879
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20 Approved as to form and content;

21  (with permission)
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19 KOTKIN, and MGM GRAND HOTEL, LLC.

20 DISTRICT COURT
21 CLARK COUNTY, NEVADA

22 GAVIN COX and MIHN-HAHN COX,
23 Husband and Wife,

24 Plaintiff,

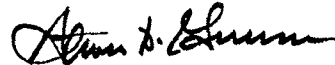
25 v.

26 MGM GRAND HOTEL, LLC; DAVID
27 COPPERFIELD aka DAVID S. KOTKIN;
28 BACKSTAGE EMPLOYMENT AND
REFERRAL, INC.; DAVID COPPERFIELD'S
DISAPPEARING, INC.; TEAM
CONSTRUCTION MANAGEMENT, INC.;
DOES 1 through 20; DOE EMPLOYEES 1
through 20; and ROE CORPORATIONS 1
through 20,

Defendants.

AND RELATED CROSS-ACTIONS

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CLERK OF THE COURT

Case No. A-14-705164-C
Dept.: XIII

NOTICE OF ENTRY OF ORDER

PLEASE TAKE NOTICE that an Order Granting Defendants' Motion for Summary

Judgment on Plaintiffs' Punitive Damages Claim was entered on the 28th day of March, 2017, a copy of which is attached hereto.

DATED: March 29, 2017

SELMAN BREITMAN LLP

By: /s/ Eric O. Freeman

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DAVID COPPERFIELD aka DAVID KOTKIN,
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Selman Breitman LLP and, pursuant to:
☒ **BY E-MAIL/ELECTRONIC SERVICE:** N.R.C.P. 5(b), I caused the foregoing document to be served upon the persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.

a true and correct copy of the above and foregoing **NOTICE OF ENTRY OF ORDER**, this
29 day of March 2017, addressed as follows:

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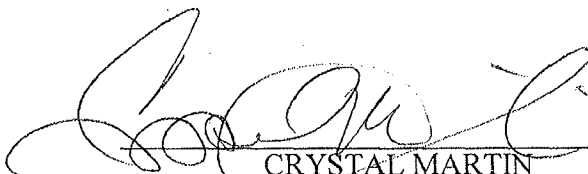
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Attorneys for Team Construction Management,
Inc and Beacher's LV, LLC


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An Employee of Selman Breitman LLP

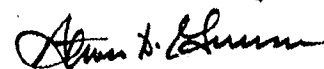
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DISTRICT COURT DEPT# 13

Selman Breitman LLP
ATTORNEYS AT LAW

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CLERK OF THE COURT

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DISTRICT COURT
CLARK COUNTY, NEVADA

GAVIN COX and MIHN-HAHN COX,
Husband and Wife,

Plaintiff,

v.

MGM GRAND HOTEL, LLC; DAVID
COPPERFIELD aka DAVID S. KOTKIN;
BACKSTAGE EMPLOYMENT AND
REFERRAL, INC.; DAVID COPPERFIELD'S
DISAPPEARING, INC.; TEAM
CONSTRUCTION MANAGEMENT, INC.;
DOES 1 through 20; DOE EMPLOYEES 1
through 20; and ROE CORPORATIONS 1
through 20,

Defendants.

Case No. A-14-705164-C
Dept.: XIII

**ORDER GRANTING DEFENDANTS'
MOTION FOR SUMMARY JUDGMENT
ON PLAINTIFFS' PUNITIVE DAMAGES
CLAIM**

AND RELATED CROSS-ACTIONS

Defendants, MGM GRAND HOTEL, LLC, DAVID COPPERFIELD aka DAVID S.
KOTKIN, and DAVID COPPERFIELD'S DISAPPEARING, INC., by and through their counsel,

1 Elaine K. Fresch, Esq., Jerry C. Popovich, Esq., and Eric O. Freeman, Esq. of Selman Breitman
2 LLP, having filed it Motion for Summary Judgment on Plaintiffs' Punitive Damages Claim, and
3 Defendants TEAM CONSTRUCTION MANAGEMENT, INC. and BEACHER'S LC, LLC, by
4 and through their counsel, Gary W. Call, Esq. of Resnick & Louis, P.C. joined said Motion, the
5 Motion and Joinder have been noticed, no objections have been made, and the Court fully
6 appraised in the premises, good cause appearing, it is hereby ORDERED that pursuant to NRCP
7 Rule 56 and NRS 42.005 Defendants' Motion for Summary Judgement on Plaintiffs' Punitive
8 Damages Claim and Joinder to the Motion is hereby GRANTED.


9 IT IS SO ORDERED.

10
11 Dated: March 27, 2017


District Court Judge 

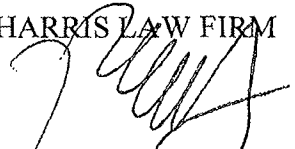
12
13 Submitted by:

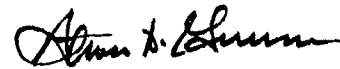
14 SELMAN BREITMAN LLP

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Attorneys for MGM Grand Hotel, LLC,
David Copperfield and David Copperfield's Disappearing

22 Reviewed as to form and content:

23 HARRIS LAW FIRM

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CLERK OF THE COURT

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17 COPPERFIELD'S DISAPPEARING, INC.,
18 DAVID COPPERFIELD aka DAVID
19 KOTKIN, and MGM GRAND HOTEL, LLC.

20 DISTRICT COURT
21 CLARK COUNTY, NEVADA

22 GAVIN COX and MIHN-HAHN COX,
23 Husband and Wife,

24 Plaintiff,

25 v.

26 MGM GRAND HOTEL, LLC; DAVID
27 COPPERFIELD aka DAVID S. KOTKIN;
28 BACKSTAGE EMPLOYMENT AND
REFERRAL, INC.; DAVID COPPERFIELD'S
DISAPPEARING, INC.; TEAM
CONSTRUCTION MANAGEMENT, INC.;
DOES 1 through 20; DOE EMPLOYEES 1
through 20; and ROE CORPORATIONS 1
through 20,

Defendants.

Case No. A-14-705164-C
Dept.: XIII

NOTICE OF ENTRY OF ORDER

AND RELATED CROSS-ACTIONS

PLEASE TAKE NOTICE that an Order Granting in Part and Denying in Part Defendant

1 David Copperfield's Motion for Summary Judgment on All Claims Against Defendant David
2 Copperfield; Findings of Fact and Conclusions of Law was entered on the 28th day of March,
3 2017, a copy of which is attached hereto.
4

5 DATED: March 21, 2017

SELMAN BREITMAN LLP

7 By: /s/ Eric O. Freeman

8 ELAINE K. FRESCH

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and MGM GRAND HOTEL, LLC.

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of Selman Breitman LLP and, pursuant to:
☒ **BY E-MAIL/ELECTRONIC SERVICE:** N.R.C.P. 5(b), I caused the foregoing document to be served upon the persons designated by the parties in the E-Service Master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.

a true and correct copy of the above and foregoing **NOTICE OF ENTRY OF ORDER**, this  day of March 2017, addressed as follows:

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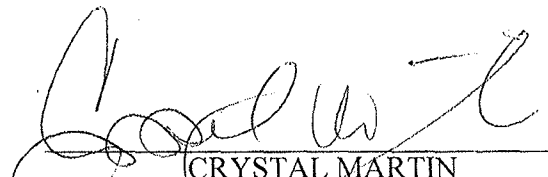
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Attorneys for Team Construction Management,
Inc and Beacher's LV, LLC


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Selman Breitman LLP
ATTORNEYS AT LAW

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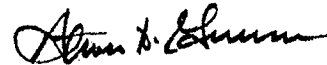
DISTRICT COURT DEPT#13

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ORD

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CLERK OF THE COURT

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DAVID COPPERFIELD aka DAVID
KOTKIN, and MGM GRAND HOTEL, LLC.

DISTRICT COURT
CLARK COUNTY, NEVADA

GAVIN COX and MIHN-HAHN COX,
Husband and Wife,

Plaintiff,

v.

MGM GRAND HOTEL, LLC; DAVID
COPPERFIELD aka DAVID S. KOTKIN;
BACKSTAGE EMPLOYMENT AND
REFERRAL, INC.; DAVID COPPERFIELD'S
DISAPPEARING, INC.; TEAM
CONSTRUCTION MANAGEMENT, INC.;
DOES 1 through 20; DOE EMPLOYEES 1
through 20; and ROE CORPORATIONS 1
through 20,

Defendants.

Case No. A-14-705164-C
Dept.: XIII

**ORDER GRANTING IN PART AND
DENYING IN PART DEFENDANT DAVID
COPPERFIELD'S MOTION FOR
SUMMARY JUDGMENT ON ALL
CLAIMS AGAINST DEFENDANT DAVID
COPPERFIELD; FINDINGS OF FACT
AND CONCLUSIONS OF LAW**

AND RELATED CROSS-ACTIONS

**ORDER GRANTING IN PART AND DENYING IN PART DEFENDANT DAVID
COPPERFIELD'S MOTION FOR SUMMARY JUDGMENT ON ALL CLAIMS
AGAINST DEFENDANT DAVID COPPERFIELD; FINDINGS OF FACT,
CONCLUSIONS OF LAW**

This matter having come on for hearing on January 19, 2017, before the honorable, Mark Denton in Department XIII of the above-entitled court; Elaine K. Fresch, Esq., Jerry C. Popovich, Esq., and Eric O. Freeman, Esq. of Selman Breitman LLP appearing on behalf of Defendants DAVID COPPERFIELD aka DAVIS S. KOTKIN, MGM GRAND HOTEL, LLC and DAVID COPPERFIELD'S DISAPPEARING, INC.; Adam E. Deutsch, Esq. and Perry Fallick, Esq. (Pro Hac Vice pending) of Morelli Law Firm and Christian N. Griffin, Esq. of Harris Law Firm appearing on behalf of Plaintiffs GAVIN COX and MINH-HAHN COX; Howard J. Russell, Esq. and Lee Roberts, Esq. of Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC appearing on behalf of Defendants BACKSTAGE EMPLOYMENT & REFERRAL, INC.; and Gary Call, Esq. of Resnick & Louis, P.C. appearing on behalf of Defendants TEAM CONSTRUCTION MANAGEMENT, INC. and BEACHER'S LV, LLC; the Court having reviewed the pleadings and papers on file herein, having heard oral argument of counsel and being apprized in the premises thereof, hereby rules as follows:

FINDINGS OF FACT

1. Defendant David Copperfield filed a Motion for Summary Judgment on all claims against him.
2. Plaintiffs opposed the Motion and Defendant David Copperfield filed a Reply.
3. Defendant David Copperfield argued that, individually, he was not personally liable to Plaintiffs.
4. Defendant David Copperfield also argued that he was not the Alter Ego of David Copperfield's Disappearing, Inc.

CONCLUSIONS OF LAW

1. There are questions of material fact as to whether Defendant David Copperfield is personally liable to Plaintiffs.

2. There is no evidence supporting the claim that David Copperfield is the Alter Ego of David Copperfield's Disappearing, Inc.

ORDER

IT IS HEREBY ORDERED that Defendant David Copperfield's Motion for Summary Judgment on All Claims Against Defendant David Copperfield is GRANTED IN PART and DENIED IN PART.

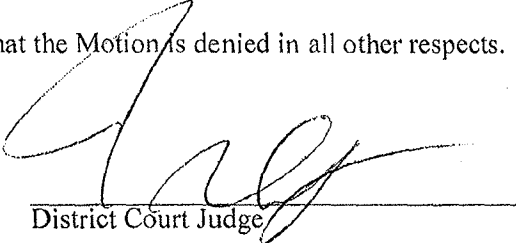
IT IS HEREBY FURTHER ORDERED that the Motion is granted in part in that Defendant DAVID COPPERFIELD is not the Alter Ego of Defendant DAVID COPPERFIELD'S DISAPPEARING, INC.

IT IS HEREBY FURTHER ORDERED that the Motion is denied in part as to the negligence claims against Defendant DAVID COPPERFIELD.

IT IS HEREBY FURTHER ORDERED that the Motion is denied in all other respects.


IT IS SO ORDERED.

Dated: March 27, 2017


District Court Judge

Submitted by:

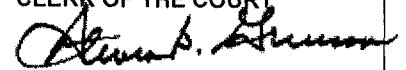
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Attorneys for MGM Grand Hotel, LLC,
David Copperfield and David Copperfield's Disappearing, Inc.

Reviewed as to form and content:


HARRIS LAW FIRM

BRIAN K. HARRIS, ESQ.
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Attorneys for Defendant DAVID
COPPERFIELD'S DISAPPEARING, INC.,
DAVID COPPERFIELD aka DAVID
KOTKIN, and MGM GRAND HOTEL, LLC.

DISTRICT COURT
CLARK COUNTY, NEVADA

GAVIN COX and MIHN-HAHN COX,
Husband and Wife,

Plaintiff,

v.

MGM GRAND HOTEL, LLC; DAVID
COPPERFIELD aka DAVID S. KOTKIN;
BACKSTAGE EMPLOYMENT AND
REFERRAL, INC.; DAVID COPPERFIELD'S
DISAPPEARING, INC.; TEAM
CONSTRUCTION MANAGEMENT, INC.;
DOES 1 through 20; DOE EMPLOYEES 1
through 20; and ROE CORPORATIONS 1
through 20,

Defendants.

AND RELATED CROSS-ACTIONS.

Case No. A-14-705164-C

Dept.: XIII

**NOTICE OF FILING EMERGENCY
PETITION FOR WRIT OF MANDAMUS**

1 NOTICE IS HERBY GIVEN that Defendants DAVID COPPERFIELD'S
2 DISAPPEARING, INC., DAVID COPPERFIELD, and MGM GRAND HOTEL, LLC have filed
3 an Emergency Petition for Writ of Mandamus pursuant to NRAP 27(E) to the Supreme Court of
4 Nevada in relation to the Eighth Judicial District Court's Order Regarding Defendants' Trial Brief
5 Related to Closing Certain Proceedings from the Media and the General Public, filed on
6 April 18, 2018. The subject Order was entered on April 17, 2018.

7 DATED: April 18, 2018

SELMAN BREITMAN LLP

8
9 By: /s/ Gil Glancz

10 ELAINE K. FRESCH
11 NEVADA BAR NO. 9263
12 ERIC O. FREEMAN
13 NEVADA BAR NO. 6648
14 GIL GLANCZ
15 NEVADA BAR NO. 9813
16 JERRY C. POPOVICH [PRO HAC]
17 CALIFORNIA BAR NO. 138636
18 3993 Howard Hughes Parkway, Suite 200
19 Las Vegas, NV 89169-0961
20 Telephone: 702.228.7717
21 Facsimile: 702.228.8824
22 Attorneys for Defendant DAVID
23 COPPERFIELD'S DISAPPEARING, INC.,
24 DAVID COPPERFIELD aka DAVID KOTKIN,
25 and MGM GRAND HOTEL, LLC.
26
27
28

Selman Breitman LLP
ATTORNEYS AT LAW

☒ **BY E-MAIL/ELECTRONIC SERVICE:** N.R.C.P. 5(b), I caused the foregoing document to be served upon the persons designated by the parties in the E-Service master List for the above-referenced matter in the Eighth Judicial District Court eFiling System in accordance with the mandatory electronic service requirements of Administrative Order 14-2 and the Nevada Electronic Filing and Conversion Rules.

a true and correct copy of the above and foregoing **NOTICE OF FILING EMERGENCY**
PETITION FOR WRIT OF MANDAMUS, this 18th day of April 2018.

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

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Location : [District Court Civil/Criminal](#) [Help](#)

REGISTER OF ACTIONS

CASE No. A-14-705164-C

Gavin Cox, Plaintiff(s) vs. MGM Grand Hotel LLC, Defendant(s)

§
§
§
§
§
§
§

Case Type: **Negligence - Premises Liability**

Date Filed: **08/06/2014**

Location: **Department 13**

Cross-Reference Case Number: **A705164**

Supreme Court No.: **76422**

PARTY INFORMATION

Cross Claimant	Copperfield, David <i>Also Known As</i> Kotkin, David S	Lead Attorneys Eric O. Freeman <i>Retained</i> 7022287717(W)
Cross Claimant	David Cooperfield 's Disappearing Inc	Eric O. Freeman <i>Retained</i> 7022287717(W)
Cross Claimant	MGM Grand Hotel LLC	Eric O. Freeman <i>Retained</i> 7022287717(W)
Cross Defendant	Team Construction Management Inc	Chatree Thongkham, ESQ <i>Retained</i> 702-387-9397(W)
Defendant	Backstage Employment and Referral Inc	D Lee Roberts, Jr. <i>Retained</i> 702-938-3838(W)
Defendant	Copperfield, David <i>Also Known As</i> Kotkin, David S	Eric O. Freeman <i>Retained</i> 7022287717(W)
Defendant	David Cooperfield 's Disappearing Inc	Eric O. Freeman <i>Retained</i> 7022287717(W)
Defendant	MGM Grand Hotel LLC	Eric O. Freeman <i>Retained</i> 7022287717(W)
Defendant	Team Construction Management Inc	Chatree Thongkham, ESQ <i>Retained</i> 702-387-9397(W)
Plaintiff	Cox, Gavin	Brian K. Harris <i>Retained</i> 7028804529(W)
Plaintiff	Cox, Minh-Hahn	Brian K. Harris <i>Retained</i> 7028804529(W)
Third Party Defendant	Beacher's LV LLC	Melissa L. Alessi <i>Retained</i> 702-799-5373(W)
Third Party Plaintiff	MGM Grand Hotel LLC	Eric O. Freeman <i>Retained</i>

EVENTS & ORDERS OF THE COURT

04/30/2018 Jury Trial (1:30 PM) (Judicial Officer Denton, Mark R.)

04/30/2018, 05/01/2018, 05/02/2018, 05/03/2018, 05/04/2018, 05/08/2018, 05/09/2018, 05/10/2018, 05/11/2018, 05/22/2018, 05/23/2018, 05/24/2018, 05/25/2018, 05/29/2018

Minutes

04/30/2018 1:30 PM

- OUTSIDE THE PRESENCE OF THE JURY: (In Chambers) Mr. Russell requested that Mr. Cox's sons be excused during testimony as they will testify in the damages phase. Objection by Mr. Deutsch. Counsel further noted that all counsel did not object to them being in the trial thus far. Court noted that the Exclusionary rule had been invoked therefore, the sons were to not be present during Mr. Cox's testimony. Arguments by counsel regarding Defendant's possible prior notice of injuries by other contestants. Colloquy regarding giving the Jury an instruction before the testimony of Ms. Lawrence. Court advised it would give an instruction to the jury. IN THE PRESENCE OF THE JURY: Amy Lawrence video deposition played. Gavin Cox sworn and testified. COURT ADMONISHED and EXCUSED the jury for the evening. COURT ORDERED, trial CONTINUED.

05/01/2018 9:00 AM

05/01/2018 9:00 AM

- Jerry Popovich, MGM counsel, present. OUTSIDE THE PRESENCE OF THE JURY: Arguments by counsel regarding additional prospective witnesses that had recently come forward of being injured during the illusion. IN THE PRESENCE OF THE JURY: Gavin Cox and Paul King sworn and testified. Exhibits presented (see worksheets) COURT ADMONISHED and EXCUSED the jury for the evening. COURT ORDERED, trial CONTINUED. OUTSIDE THE PRESENCE OF THE JURY: Colloquy regarding trial schedule and playing the video testimony of Ms. Esack.

05/02/2018 9:00 AM

- Jerry Popovich present on behalf of David Copperfield's Disappearing, Inc. OUTSIDE THE PRESENCE OF THE JURY: Mr. Morelli stated they were able to speak to the witness they spoke about yesterday, Ms. Anderson, and exchanged the information with Defense last night. Mr. Morelli indicated she was willing to come in and testify, and requested an opportunity to bring her in without spending another day doing depositions. Mr. Russell stated the request made for discovery was for seven years. The request for 30(b)(6) deposition was for five years. There were no additional requests for prior incidences beyond that, and as far as Backstage was concerned, it was cumulative and prejudicial. Mr. Freeman concurred. COURT ADVISED it was going to permit Ms. Anderson to testify in Plaintiff's case in chief and reserved it ruling the rebuttal. JURY PRESENT: Testimony of Paul King continued. Testimony and exhibits presented (see worksheets). OUTSIDE THE PRESENCE OF THE JURY: Argument by counsel regarding objections raised at the Bench. JURY PRESENT: Portions of Patricia Esack's video deposition played by Mr. Deutsch and portions of it were read by Elaine Fresch, who was SWORN IN (Deposition not published). Testimony and exhibits presented (see worksheets). COURT ADMONISHED and EXCUSED the jury for the evening. COURT ORDERED, trial CONTINUED. 5/3/18 10:00 AM JURY TRIAL

05/03/2018 10:00 AM

- Jerry Popovich, MGM counsel, present. OUTSIDE THE PRESENCE OF THE JURY: Argument by Mr. Deutsch of withheld evidence of the video from the night Mr. Cox was injured and request for sanctions. Objection by Ms. Fresch that the video could not be located. Court ordered, request for sanctions. DENIED. IN THE PRESENCE OF THE JURY: Testimony resumed by David Copperfield. Exhibits presented (see worksheets). Plaintiff rests. COURT ADMONISHED and EXCUSED the jury for the evening. COURT ORDERED, trial CONTINUED. OUTSIDE THE PRESENCE OF THE JURY: Rule 50 motion by Mr. Popovich for a direct verdict by the Court on the negligence of MGM and premises liability. Opposition by Mr. Deutsch. COURT ORDERED, motion DENIED. Rule 50 motion by Ms. Fresch for direct verdict on David Copperfield individually as he is an employee of David Copperfield Disappearing Inc and was in his course and scope of employment. Opposition by Mr. Deutsch. COURT ORDERED, motion DENIED. Rule 50 motion by Ms. Fresch for direct verdict on David Copperfield Disappearing Inc. COURT ORDERED, motion DENIED. Motion for direct verdict by Mr. Roberts for failure to meet the burden on proximate causation. Joinder in the motion by

Defense. Opposition by Mr. Deutsch. COURT ORDERED, motion DENIED. Motion for direct verdict by Mr. Call and Mr. Strassburg and argument of no notice of foreseeable injury. Opposition by Mr. Deutsch. COURT ORDERED, motion DENIED.

05/04/2018 1:30 PM

- IN THE PRESENCE OF THE JURY: Dennis Funes-Navas sworn and testified. OUTSIDE THE PRESENCE OF THE JURY: Mr. Deutsch objected to opinions of defense expert Dr. Baker. Arguments to preclude illumination of the scene, run around by the participants, and comments of Ms. Cox's statement of the ambulance arrival. Defense counsel jointly requested a jury view of the scene. Objection by Mr. Deutsch. Arguments that the premises is not the same as the night of the injury. Defense counsel agreed to pay the jury view expense and make arrangements. COURT ORDERED, request for jury view GRANTED. Court further instructed counsel to raise objections during Dr. Baker's testimony. IN THE PRESENCE OF THE JURY: Court advised the jury that a viewing of the scene will take place 5/8/18 at 8pm (sunset). COURT ADMONISHED and EXCUSED the jury for the evening. COURT ORDERED, trial CONTINUED 5/8/18 9:00am.

05/08/2018 9:00 AM

- OUTSIDE THE PRESENCE OF THE JURY: Court advised that it had reconsidered the request for the Jury View of the incident site and the Jury will no longer be going to the MGM property. Request for Jury View DENIED. Mr. Deutsch argued to preclude testimony of the expert opinion regarding lighting. Objections by counsel. Court advised it would rule as testimony and objections came in. Further objections put on the record regarding expert fees being reasonable and customary. IN THE PRESENCE OF THE JURY: John Baker sworn and testified. Exhibits presented. COURT ADMONISHED and EXCUSED the jury for the evening. COURT ORDERED, trial CONTINUED.

05/09/2018 9:00 AM

- OUTSIDE THE PRESENCE OF THE JURY: Objections put on the record regarding Dr. Baker's testimony. Mr. Deutsch requested to strike the testimony. Request DENIED. Objections by Mr. Deutsch to strike expert Dr. Yang testimony as cumulative. Mr. Call argued that the testimony was coefficient of friction. Court advised it would allow Dr. Yang's testimony. Mr. Deutsch requested to allow testimony of Tara Anderson. Objection by Ms. Fresch. Court reserved ruling. IN THE PRESENCE OF THE JURY: Minh-Hahn Cox sworn and testified. Exhibits presented. MGM, David Copperfield and David Copperfield Disappearing Inc, rest. David Voiss and Nicholas Yang sworn and testified. COURT ADMONISHED and EXCUSED the jury for the evening. COURT ORDERED, trial CONTINUED. OUTSIDE THE PRESENCE OF THE JURY: Objections put on the record regarding slides. Further objections put on the record regarding surveillance videos of Mr. Cox to be used for impeachment.

05/10/2018 10:00 AM

- IN THE PRESENCE OF THE JURY: Witness testimony by Nicholas Yang. Exhibits presented and admitted. (see worksheets). COURT ADMONISHED and EXCUSED the jury for the evening. COURT ORDERED, trial CONTINUED. OUTSIDE THE PRESENCE OF THE JURY: Objections put on the record by counsel regarding surveillance videos of Mr. Cox. Mr. Deutsch argued to allow testimony of Tara Anderson as a rebuttal witness to statements that there was no previous injuries. Objection by Ms. Fresch.

05/11/2018 9:00 AM

- OUTSIDE THE PRESENCE OF THE JURY: Objections put on the record to strike testimony of Tara Anderson. Court will allow Ms. Anderson to testify as a rebuttal witness for the purpose of notice of prior accidents. IN THE PRESENCE OF THE JURY: Team Construction rests. Plaintiff rebuttal. Tara Anderson sworn and testified. Exhibits presented and admitted. (see worksheets). OUTSIDE THE PRESENCE OF THE JURY: Objections put on the record by counsel regarding surveillance videos of Mr. Cox used for impeachment. Court will allow the videos. IN THE PRESENCE OF THE JURY: Backstage Employment and Referral rests. Kevin Janson sworn and testified. COURT ADMONISHED and EXCUSED the jury for the evening. COURT ORDERED, trial CONTINUED. OUTSIDE THE PRESENCE OF THE JURY: Arguments by Mr. Deutsch regarding comparable negligence of Mr. Cox. Objections by Defense. Court finds that is for the jury to decide.

05/22/2018 9:00 AM

05/22/2018 9:00 AM

- OUTSIDE THE PRESENCE OF THE JURY: Jury Instructions

discussed between the Court and counsel. Jury Instructions settled on the record. Proposed jury verdict discussed on the record. Trial CONTINUED.

05/23/2018 9:00 AM

- OUTSIDE THE PRESENCE OF THE JURY: Objections to the Verdict form by Ms. Fresch. Arguments regarding David Copperfield being sued as an individual. Court finds the verdict was consistent with the theory of the case. IN THE PRESENCE OF THE JURY: Court instructed the jury. Closing arguments by counsel. COURT ADMONISHED and EXCUSED the jury for the evening. COURT ORDERED, trial CONTINUED. OUTSIDE THE PRESENCE OF THE JURY: Objections put on the record regarding disparaging statements made during Plaintiff's closing.

05/24/2018 11:00 AM

- IN THE PRESENCE OF THE JURY: Closing statements by counsel. OUTSIDE THE PRESENCE OF THE JURY: Objections put on the record regarding improper conduct of counsel and demonstrative aids. Court will instruct the jury and the Court will not allow warning signs to be used. IN THE PRESENCE OF THE JURY: Closing statements by counsel. COURT ADMONISHED and EXCUSED the jury for the evening. COURT ORDERED, trial CONTINUED.

05/25/2018 9:00 AM

- OUTSIDE THE PRESENCE OF THE JURY: Discussions with the Court and counsel regarding using the same jury panel during the second phase of trial. IN THE PRESENCE OF THE JURY: Closing statements by counsel. COURT ADMONISHED and EXCUSED the jury for the evening. COURT ORDERED, trial CONTINUED.

05/29/2018 9:00 AM

- OUTSIDE THE PRESENCE OF THE JURY: Court advised counsel that juror #10 contacted Chambers that she was ill and requested to be excused. There being no objection by counsel, Court excused juror #10 and appointed alternate juror. Objections put on the record regarding Plaintiff's inappropriate statements during closing and request the jury be instructed to disregard. Court sustained the objection and will instruct the jury. Further request by Mr. Roberts that Instruction #19 be removed. Request DENIED. IN THE PRESENCE OF THE JURY: Closing statements by counsel. At the hour of 4:07 pm the jury retired to deliberate. At the hour of 7:06 pm the jury returned with the verdict in favor of the Defendants and against the Plaintiff. The Court thanked and excused the Jury. OUTSIDE THE PRESENCE OF THE JURY: Mr. Deutsch requested to set aside the verdict. Court instructed counsel to file the appropriate pleadings. Trial Ends.

05/30/2018 9:00 AM

Parties Present

Return to Register of Actions

ORIGINAL

FILED IN OPEN COURT
STEVEN D. GRIERSON
CLERK OF THE COURT

MAY 29 2018

DISTRICT COURT
CLARK COUNTY, NEVADA BY ALICE JACOBSON, DEPUTY

7:07 pm

GAVIN COX and MINH-HAHN COX,

Plaintiffs,

v.

MGM GRAND HOTEL, LLC; DAVID
COPPERFIELD aka DAVID S. KOTKIN;
BACKSTAGE EMPLOYMENT AND
REFERRAL, INC.; DAVID COPPERFIELD'S
DISAPPEARING, INC.; TEAM
CONSTRUCTION MANAGEMENT, INC.,

Defendants.

Case No.: A-14-705164-C

Dept. No.: XIII

VERDICT (Phase 1)

We, the jury in the above-entitled action, find the following special verdict on the following questions submitted to us:

Question 1:

a. Do you find by a preponderance of the evidence that defendant MGM Grand Hotel, LLC was negligent?

Yes ☒ No ☐

If you answered "Yes" to subpart a., answer subpart b. If you answered "No" to subpart a., skip subpart b., and go to Question 2.

b. Do you find by a preponderance of the evidence that MGM Grand Hotel's negligence was a proximate cause of the accident?

Yes ☐ No ☒

Go to Question 2.

///

A-14-705164-C
VER
Verdict
4760266



1 **Question 2:**

2 a. Do you find by a preponderance of the evidence that defendant David Copperfield aka
3 David S. Kotkin was negligent?

4 Yes ☒ No ☐

5 *If you answered "Yes" to subpart a., answer subpart b. If you answered "No" to subpart a., skip*
6 *subpart b., and go to Question 3.*

7 b. Do you find by a preponderance of the evidence that David Copperfield aka David S.
8 Kotkin's negligence was a proximate cause of the accident?

9 Yes ☐ No ☒

10 *Go to Question 3.*

11
12 **Question 3:**

13 a. Do you find by a preponderance of the evidence that defendant David Copperfield's
14 Disappearing, Inc. was negligent?

15 Yes ☒ No ☐

16 *If you answered "Yes" to subpart a., answer subpart b. If you answered "No" to subpart a., skip*
17 *subpart b., and go to Question 4.*

18 b. Do you find by a preponderance of the evidence that David Copperfield's Disappearing,
19 Inc.'s negligence was a proximate cause of the accident?

20 Yes ☐ No ☒

21 *Go to Question 4.*

22
23 **Question 4:**

24 a. Do you find by a preponderance of the evidence that defendant Backstage Employment &
25 Referral, Inc. was negligent?

26 Yes ☐ No ☒

27 *If you answered "Yes" to subpart a., answer subpart b. If you answered "No" to subpart a., skip*
28 *subpart b., and go to Question 5.*

b. Do you find by a preponderance of the evidence that Backstage Employment & Referral, Inc.'s negligence was a proximate cause of the accident?

Yes _____ No _____

Go to Question 5.

Question 5:

a. Do you find by a preponderance of the evidence that defendant Team Construction Management, Inc. was negligent?

Yes _____ No ☒ _____

If you answered "Yes" to subpart a., answer subpart b. If you answered "No" to subpart a., skip subpart b., and read the explanation below 5b.

b. Do you find by a preponderance of the evidence that Team Construction Management, Inc.'s negligence was a proximate cause of the accident?

Yes _____ No _____

If you answered "Yes" to one or more of 1b., 2b., 3b., 4b., or 5b. above, go to Question 6. If you did not answer "Yes" to any of 1b., 2b., 3b., 4b., or 5b. above, stop here, answer no further questions, and have your foreperson sign and date this Verdict.

Question 6:

a. Do you find by a preponderance of the evidence that plaintiff Gavin Cox was negligent?

Yes ☒ _____ No _____

If you answered "Yes" to subpart a., answer subpart b. If you answered "No" to subpart a., skip subpart b., and go to Question 7.

b. Do you find by a preponderance of the evidence that Gavin Cox's negligence was a proximate cause of the accident?

Yes ☒ _____ No _____

Go to Question 7.

Question 7:

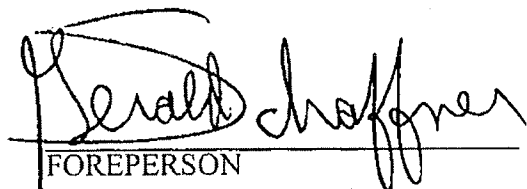
For any party where you answered "Yes" to subpart b. above, enter the percentage of liability next to the party below. For any party for which you did not answer "Yes" to subpart b. above, enter a "0" next to the party.

Using one hundred percent (100%) as the total combined negligence which acted as a proximate cause of Mr. Cox's accident, allocate the percentages of the total combined negligence that you find to be attributable to each party that does not already have a "0" entered on his or its line:

MGM GRAND HOTEL, LLC	0	%
DAVID COPPERFIELD aka DAVID S. KOTKIN	0	%
DAVID COPPERFIELD'S DISAPPEARING, INC.	0	%
BACKSTAGE EMPLOYMENT AND REFERRAL, INC.	0	%
TEAM CONSTRUCTION MANAGEMENT, INC.	0	%
GAVIN COX	100	%
TOTAL	100%	

THIS IS OUR VERDICT.

Dated this 29th day of May, 2018.


FOREPERSON

Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC
6385 S. Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
(702) 938-3838



1 **NJUD**

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5 Howard J. Russell, Esq.

6 Nevada Bar No. 8879

7 hrussell@wwhgd.com

8 WEINBERG, WHEELER, HUDGINS,

9 GUNN & DIAL, LLC

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Facsimile: (702) 938-3864

Attorneys for Defendant

Backstage Employment and Referral, Inc.

DISTRICT COURT

CLARK COUNTY, NEVADA

GAVIN COX and MINH-HAHN COX,
Husband and Wife,

Plaintiffs,

v.

MGM GRAND HOTEL, LLC; DAVID
COPPERFIELD aka DAVID S. KOTKIN;
BACKSTAGE EMPLOYMENT AND
REFERRAL, INC.; DAVID COPPERFIELD'S
DISAPPEARING, INC.; TEAM
CONSTRUCTION MANAGEMENT, INC.;
DOES 1 through 20; DOE EMPLOYEES 1
through 20; and ROE CORPORATIONS 1
through 20;

Defendants.

Case No.: A-14-705164-C

Dept. No.: XIII

**NOTICE OF ENTRY OF JUDGMENT
ON SPECIAL VERDICT**

MGM GRAND HOTEL, LLC,

Third-Party Plaintiff,

v.

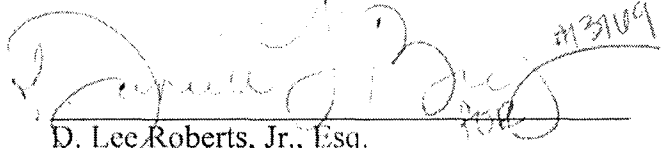
BEACHER'S LV, LLC, and DOES 1 through 20,
inclusive,

Third-Party Defendants.

Weinberg, Wheeler, Hudgins, Gunn & Dial, LLC
6385 S. Rainbow Blvd., Suite 400
Las Vegas, Nevada 89118
(702) 938-3838

1 YOU WILL PLEASE TAKE NOTICE that a Judgment on Special Verdict was entered on
2 June 20, 2018 in the above-captioned matter. A copy of the Judgment is attached hereto.

3
4 DATED this 21st day of June, 2018.

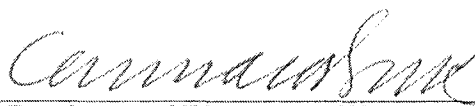
 #13109
D. Lee Roberts, Jr., Esq.
Howard J. Russell, Esq.
WEINBERG, WHEELER, HUDGINS,
GUNN & DIAL, LLC
6385 S. Rainbow Blvd., Suite 400
Las Vegas, NV 89118

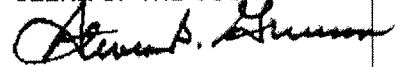
*Attorneys for Defendant
Backstage Employment and Referral, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of June, 2018, a true and correct copy of the foregoing **NOTICE OF ENTRY OF JUDGMENT ON SPECIAL VERDICT** was electronically filed / served on counsel through the Court's electronic service system pursuant to Administrative Order 14-2 and N.E.F.C.R. 9, via the electronic mail addresses noted below, unless service by another method is stated or noted:

<p>Brian K. Harris, Esq. Christian N. Griffin, Esq. HARRIS & HARRIS 2029 Alta Dr. Las Vegas, NV 89106 bharris@harrislawyers.net</p> <p><i>Attorneys for Plaintiffs</i></p>	<p>Eric O. Freeman, Esq. SELMAN BREITMAN, LLP 3993 Howard Hughes Pkwy., Suite 200 Las Vegas, NV 89169 efreeman@selmanbreitman.com</p> <p><i>Attorney for Defendants David Copperfield's Disappearing, Inc., David Copperfield aka David S. Kotkin and MGM Grand Hotel, LLC</i></p>
<p>Benedict P. Morelli, Esq. Adam E. Deutsch, Esq. MORELLI LAW FIRM PLLC 777 Third Ave., 31st Floor New York, NY 10017 bmorelli@morellilaw.com adeutsch@morellilaw.com</p> <p><i>Attorneys for Plaintiffs</i></p>	<p>Jerry C. Popovich, Esq. SELMAN BREITMAN, LLP 6 Hutton Centre Dr., Suite 1100 Santa Ana, CA 92707 jpopovich@selmanlaw.com</p> <p><i>Attorney for Defendants David Copperfield's Disappearing, Inc., David Copperfield aka David S. Kotkin and MGM Grand Hotel, LLC</i></p>
<p>Gary Call, Esq. Melissa L. Alessi, Esq. RESNICK & LOUIS, P.C. 5940 S. Rainbow Blvd. Las Vegas, NV 89118 (702) 997-3800 Office (702) 997-3800 Fax gcall@rlattorneys.com malessi@rlattorneys.com</p> <p><i>Attorneys for Defendants Team Construction Management, Inc. and Beacher's LV, LLC</i></p>	<p>Michael V. Infuso, Esq. Keith W. Barlow, Esq. Sean B. Kirby, Esq. GREENE INFUSO, LLP 3030 S. Jones Blvd., Suite 101 Las Vegas, NV 89146 minfuso@greeneinfusolaw.com kbarlow@greeneinfusolaw.com skirby@greeneinfusolaw.com</p> <p><i>Attorneys for MGM Grand Hotel, LLC</i></p>


An Employee of WEINBERG, WHEELER,
HUDGINS, GUNN & DIAL, LLC



DISTRICT COURT
CLARK COUNTY, NEVADA

GAVIN COX and MINH-HAHN COX,

Plaintiffs,

v.

MGM GRAND HOTEL, LLC; DAVID
COPPERFIELD aka DAVID S. KOTKIN;
BACKSTAGE EMPLOYMENT AND
REFERRAL, INC.; DAVID COPPERFIELD'S
DISAPPEARING, INC.; TEAM
CONSTRUCTION MANAGEMENT, INC.,

Defendants.

Case No.: A-14-705164-C

Dept. No.: XIII

JUDGMENT ON SPECIAL VERDICT

This action came on regularly for trial with the calling of the first witness on April 17, 2018, in Dept. XIII of the Eighth Judicial District Court, Clark County, Nevada, the Honorable Mark R. Denton, District Judge, presiding. Plaintiffs Gavin Cox and Minh-Hahn Cox were represented by Benedict Morelli, Esq. and Adam Deutsch, Esq. of Morelli Law Firm, PLLC and Brian Harris, Esq. of Harris & Harris; Defendant MGM Grand Hotel, LLC was represented by Jerry Popovich, Esq. of Selman Breitman LLP; Defendants David Copperfield aka David S. Kotkin and David Copperfield's Disappearing, Inc. were represented by Elaine K. Fresch, Esq. and Eric Freeman, Esq. of Selman Breitman LLP; Defendant Backstage Employment and Referral, Inc. was represented by D. Lee Roberts, Jr., Esq. and Howard Russell, Esq. of Weinberg, Wheeler, Hudgins,

RECEIVED

JUN 17 2018

DISTRICT COURT DEPT#13

1 Gunn & Dial, LLC; and Defendant Team Construction Management, Inc. was represented by
2 Roger Strassburg, Esq. and Gary Call, Esq. of Resnick & Louis, P.C.

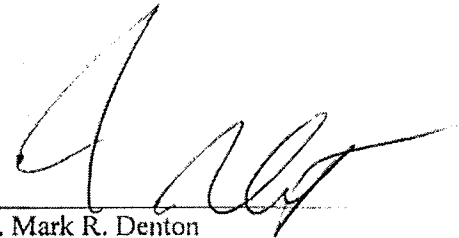
3 The issues having been duly tried, and the jury having duly rendered a Special Verdict to
4 determine questions of negligence and proximate cause as to each defendant, which Special
5 Verdict was filed by the Clerk on May 29, 2018, it is hereby ORDERED, ADJUDGED and
6 DECREED, in accordance with the jury's Special Verdict:

- 7 1. Based on the jury's finding that Defendant MGM Grand Hotel, LLC was not the
8 proximate cause of Plaintiff Gavin Cox's accident, Defendant MGM Grand Hotel, LLC
9 has judgment that Plaintiffs Gavin Cox and Minh-Hahn Cox take nothing by way of their
10 operative complaint, and that this defendant shall recover its ^{taxable} costs.
- 11 2. Based on the jury's finding that Defendant David Copperfield aka David S. Kotkin was
12 not the proximate cause of Plaintiff Gavin Cox's accident, Defendant David Copperfield
13 aka David S. Kotkin has judgment that Plaintiffs Gavin Cox and Minh-Hahn Cox take
14 nothing by way of their operative complaint, and that this defendant shall recover his ^{taxable}
15 costs.
- 16 3. Based on the jury's finding that Defendant David Copperfield's Disappearing, Inc. was
17 not the proximate cause of Plaintiff Gavin Cox's accident, Defendant David
18 Copperfield's Disappearing, Inc. has judgment that Plaintiffs Gavin Cox and Minh-Hahn
19 Cox take nothing by way of their operative complaint, and that this defendant shall
20 recover its ^{taxable} costs.
- 21 4. Based on the jury's finding that Defendant Backstage Employment and Referral, Inc. was
22 not negligent, Defendant Backstage Employment and Referral, Inc. has judgment that
23 Plaintiffs Gavin Cox and Minh-Hahn Cox take nothing by way of their operative
24 complaint, and that this defendant shall recover its ^{taxable} costs.
- 25 5. Based on the jury's finding that Defendant Team Construction Management, Inc. was not
26 negligent, Defendant Team Construction Management, Inc. has judgment that Plaintiffs
27 Gavin Cox and Minh-Hahn Cox take nothing by way of their operative complaint, and
28 that this defendant shall recover its ^{taxable} costs.

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6. The court reserves amendment of this judgment based on any proper requests or motions for costs or fees submitted by any defendant.

SO ORDERED this 18th day of June 2018.



Hon. Mark R. Denton
District Court Judge