

1 **DEC**

Christopher Byrd, Esq. (No. 1633)

2 Daniel Nubel, Esq. (No. 13553)

**FENNEMORE CRAIG, P.C.**

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6 Attorneys for Defendants

7 *In association with:*

8 Richard I. Arshonsky, Esq. (No. 4518)

9 **LEVINSON ARSHONSKY & KURTZ, LLP**

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10 Sherman Oaks, CA 91403

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12 Attorneys for Defendants

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 B.E. UNO, LLC, a Nevada limited liability  
company,

17 Plaintiff,

18 vs.

19 FAMSA, INC., a California corporation;  
20 GRUPO FAMSA, S.A. DE C.V., a Mexican  
corporation,

21 Defendants.

Case No.: A-14-706336-C

Dept. No.: XXXII

**AMENDED DECLARATION OF**  
**HUMBERTO LOZA IN SUPPORT OF**  
**DEFENDANT GRUPO FAMSA, S.A., DE**  
**C.V.'s MOTION TO QUASH SERVICE OF**  
**PROCESS**

23 Humberto Loza hereby declares as follows:

24 1. I am the Legal Director of Grupo Famsa, S.A. DE C.V.

25 2. In my capacity as Legal Director, I have personal knowledge of the facts herein  
26 and make these statements based on my own personal knowledge unless otherwise stated.

27 3. The individual that Plaintiff in this case claims was served process, Claudia  
28 Palomo Martinez, does not have the authority to accept legal documents on Grupo Famsa's


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4. Claudia Palomo Martinez is employed by Grupo as a hostess to greet individuals g into the store.

5. The foregoing is true and correct to the best of my knowledge and belief under  
y of perjury of the laws of the State of Nevada.

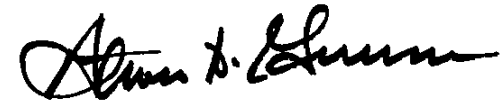
DATED this 6 day of July, 2015.

015.



---

Humberto Loza



CLERK OF THE COURT

1 **ODM**  
2 Kelly J. Brinkman, Esq.  
3 Nevada Bar No. 6238  
4 GOOLD PATTERSON  
5 1975 Village Center Circle, Suite 140  
6 Las Vegas, Nevada 89134  
7 (702) 436-2600 (Telephone)  
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9 [kbrinkman@gooldpatterson.com](mailto:kbrinkman@gooldpatterson.com)  
10 *Attorneys for Plaintiff*

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 B.E. UNO, LLC, a Nevada limited liability  
10 company,

11 Plaintiff,

12 vs.

13 FAMSA, INC., a California corporation;  
14 GRUPO FAMSA, S.A. de C.V., a Mexican  
15 corporation,

16 Defendants.

Case No. A-14-706336-C

Dept. No. XXXII

**ORDER DENYING DEFENDANT**  
**GRUPO FAMSA'S MOTION FOR**  
**ORDER TO QUASH SERVICE OF**  
**PROCESS AND SETTING DEADLINE**  
**TO FILE AN ANSWER TO**  
**COMPLAINT**

16 This matter having come before the Honorable Rob Bare, on July 14, 2015, on the Motion  
17 to Quash Service of Process ("Motion") filed by Defendant, Grupo Famsa, S.A. de C.V., a Mexican  
18 corporation ("Defendant Grupo Famsa"), against Plaintiff, B.E. Uno, LLC, a Nevada limited  
19 liability company ("Plaintiff"), regarding the issue of service of process upon Defendant Grupo  
20 Famsa; Kelly Brinkman, Esq., of the law firm of Goold Patterson, appearing on behalf of Plaintiff,  
21 and Christopher H. Byrd, Esq., of the law firm of Fennemore Craig, P.C., appearing on behalf of  
22 Defendant Grupo Famsa to contest service; the Court having reviewed the pleadings and papers on  
23 file herein, considered the arguments of counsel, being fully advised of the premises, finding no  
24 genuine issues of material fact, and good cause appearing therefore, the Court hereby finds as  
25 follows:

26 **FINDINGS OF FACTS**

27 1. On or about August 29, 2014, Plaintiff filed its Complaint against Defendants for  
28 breach of a commercial lease and guaranty.

**GOOLD PATTERSON**  
1975 VILLAGE CENTER CIRCLE, SUITE 140  
LAS VEGAS, NEVADA 89134  
(702) 436-2600 FAX: (702) 436-2650

2. On or about December 3, 2014, Plaintiff applied to this Court for an Order extending time to effectuate service upon Defendant Grupo Famsa. An Order extending time was granted and entered on or about December 11, 2014, which extended time to Serve Defendant Grupo Famsa through and including April 30, 2015.

3. On or about March 17, 2015, service was effectuated upon Defendant Grupo Famsa under the Hague Service Convention.

4. On or about June 1, 2015, Defendant's counsel filed a Motion to Quash Service of Process, alleging service upon Defendant Grupo Famsa was improper. Defendant Grupo Famsa submitted evidence that the person allegedly served on behalf of Grupo Famsa was a hostess or waitress at a Grupo Famsa address and that she was not authorized to accept service on behalf of Grupo Famsa. Defendant Grupo Famsa argued that service of the hostess did not satisfy due diligence, even if Plaintiff could demonstrate that it arguably complied with the Hague Convention.

5. On or about June 16, 2015, Plaintiff filed its Opposition to Defendant's Motion to Plaintiff presented evidence that service upon Defendant Grupo Famsa was properly made ng to the internal laws of Mexico and the Hague Convention and that Nevada laws relating ce of process were preempted.

6. Plaintiff's counsel thereafter filed its Reply in Support of Defendant Grupo Famsa, C.V.'s Motion to Quash Service of Process.

## CONCLUSION OF LAW

Based upon the foregoing findings:

A. Plaintiff properly served Defendant Grupo Famsa under the laws of Mexico as well as the Hague Convention and that such service efforts satisfied constitutional standards of Due Process.

B. Nevada law regarding service of process is preempted by the Hague Convention  
Mexican law in this case.

C. IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant Grupo S.A. de C.V.'s Motion to Quash Service of Process is DENIED;

111

GOOLD PATTERSON  
1975 VILLAGE CENTER CIRCLE, SUITE 140  
LAS VEGAS, NEVADA 89134  
(702) 436-2600 FAX: (702) 436-2650

1 D. IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant Grupo  
2 Famsa has thirty (30) days from the date of this hearing (July 14, 2015) in which to file an Answer  
3 to the Complaint (i.e., through and including August 13, 2015).

4 **ORDER**

5 IT IS SO ORDERED this 3 day of Aug, 2015.

6  
7 


8 DISTRICT COURT JUDGE

9 ROB BARE  
JUDGE, DISTRICT COURT, DEPARTMENT 32

10 Submitted by:

11 Dated this 30<sup>th</sup> day of July, 2015

12 GOOLD PATTERSON

13 By:   
14 Kelly J. Brinkman, Esq.  
15 Nevada Bar No. 6238  
16 1975 Village Center Circle, Suite 140  
17 Las Vegas, Nevada 89134  
18 *Attorneys for Plaintiff*

19 **REVIEWED BY:**

20 Dated this 30th day of July, 2015

21 FENNEMORE CRAIG, P.C.

22 By: \_\_\_\_\_  
23 Christopher H. Byrd, Esq.  
24 Nevada Bar No. 1633  
25 300 S. Fourth Street, Suite 1400  
26 Las Vegas, NV 89101  
27 *Attorney for Defendants*  
28

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2 Famsa has thirty (30) days from the date of this hearing (July 14, 2015) in which to file an Answer  
3 to the Complaint (i.e., through and including August 13, 2015).

4 **ORDER**

5 IT IS SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2015.

6  
7  
8 

---

DISTRICT COURT JUDGE

9 Submitted by:

10 Dated this 30<sup>th</sup> day of July, 2015

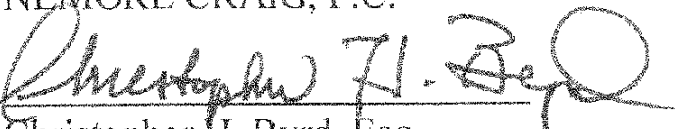
11 GOOLD PATTERSON

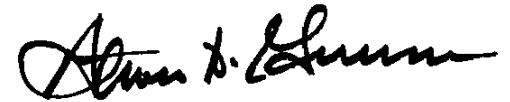
12 By: \_\_\_\_\_  
13 Kelly J. Brinkman, Esq.  
14 Nevada Bar No. 6238  
15 1975 Village Center Circle, Suite 140  
16 Las Vegas, Nevada 89134  
17 *Attorneys for Plaintiff*

18 **REVIEWED BY:**

19 Dated this 30th day of July, 2015

20 FENNEMORE CRAIG, P.C.

21 By:   
22 Christopher H. Byrd, Esq.  
23 Nevada Bar No. 1633  
24 300 S. Fourth Street, Suite 1400  
25 Las Vegas, NV 89101  
26 *Attorney for Defendants*  
27  
28



CLERK OF THE COURT

1 **NEOJ**  
2 Kelly J. Brinkman, Esq.  
3 Nevada Bar No. 6238  
4 **GOOLD PATTERSON**  
5 1975 Village Center Circle, Suite 140  
6 Las Vegas, Nevada 89134  
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9 [kbrinkman@gooldpatterson.com](mailto:kbrinkman@gooldpatterson.com)  
10 *Attorneys for Plaintiff*

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 B.E. UNO, LLC, a Nevada limited liability  
10 company,

11 Plaintiff,

12 vs.

13 FAMSA, INC., a California corporation;  
14 GRUPO FAMSA, S.A. de C.V., a Mexican  
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16 Defendants.

CASE NO.: A-14-706336-C

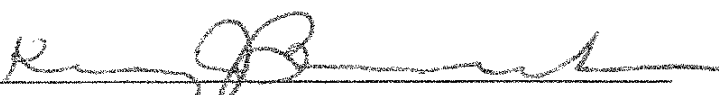
DEPT. NO.: XXXII

**NOTICE OF ENTRY OF ORDER**

17 PLEASE TAKE NOTICE that an Order Denying Defendant Grupo Famsa's Motion for  
18 Order to Quash Service of Process and Setting Deadline to File an Answer to Complaint was  
19 entered on the 4<sup>th</sup> day of August, 2015, a copy of which is attached hereto as Exhibit 1.

20 DATED this 5<sup>th</sup> day of August, 2015.

21 **GOOLD PATTERSON**

22  
23 By:   
24 Kelly J. Brinkman, Esq.  
25 Nevada Bar No. 6238  
26 1975 Village Center Circle, Suite 140  
27 Las Vegas, Nevada 89134  
28 *Attorneys for Plaintiff*

**GOOLD PATTERSON**  
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GOOLD PATTERSON  
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LAS VEGAS, NEVADA 89134  
(702) 436-2600 FAX: (702) 436-2650

CERTIFICATE OF SERVICE

I hereby certify that I am an employee of the law firm of Goold Patterson, and on the 5<sup>th</sup> day of August, 2015, I served the foregoing NOTICE OF ENTRY OF ORDER by enclosing a true and correct copy of the same in a sealed envelope, postage fully pre-paid thereon, and depositing said envelope in a mailbox of the United States Post Office, addressed as follows:

Christopher Byrd, Esq.  
FENNEMORE CRAIG, P.C.  
300 S. Fourth Street, Suite 1400  
Las Vegas, NV 89101  
*Attorneys for Defendants, Famsa, Inc.  
and Grupo Famsa, S.A. de C.V.*

Richard I. Arshonsky, Esq.  
LEVINSON ARSHONSKY & KURTZ, LLP  
15303 Ventura Blvd., Suite 1650  
Sherman Oaks, CA 91403  
*Attorneys for Defendants, Famsa, Inc.  
and Grupo Famsa, S.A. de C.V.*

  
An employee of Goold Patterson



# EXHIBIT 1



CLERK OF THE COURT

1 **ODM**  
2 Kelly J. Brinkman, Esq.  
3 Nevada Bar No. 6238  
4 GOOLD PATTERSON  
5 1975 Village Center Circle, Suite 140  
6 Las Vegas, Nevada 89134  
7 (702) 436-2600 (Telephone)  
8 (702) 436-2650 (Fax)  
9 [kbrinkman@gooldpatterson.com](mailto:kbrinkman@gooldpatterson.com)  
10 *Attorneys for Plaintiff*

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

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10 company,

11 Plaintiff,

12 vs.

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15 corporation,

16 Defendants.

Case No. A-14-706336-C

Dept. No. XXXII

**ORDER DENYING DEFENDANT  
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ORDER TO QUASH SERVICE OF  
PROCESS AND SETTING DEADLINE  
TO FILE AN ANSWER TO  
COMPLAINT**

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19 corporation ("Defendant Grupo Famsa"), against Plaintiff, B.E. Uno, LLC, a Nevada limited  
20 liability company ("Plaintiff"), regarding the issue of service of process upon Defendant Grupo  
21 Famsa; Kelly Brinkman, Esq., of the law firm of Goold Patterson, appearing on behalf of Plaintiff,  
22 and Christopher H. Byrd, Esq., of the law firm of Fennemore Craig, P.C., appearing on behalf of  
23 Defendant Grupo Famsa to contest service; the Court having reviewed the pleadings and papers on  
24 file herein, considered the arguments of counsel, being fully advised of the premises, finding no  
25 genuine issues of material fact, and good cause appearing therefore, the Court hereby finds as  
26 follows:

26 **FINDINGS OF FACTS**

27 1. On or about August 29, 2014, Plaintiff filed its Complaint against Defendants for  
28 breach of a commercial lease and guaranty.

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2. On or about December 3, 2014, Plaintiff applied to this Court for an Order extending time to effectuate service upon Defendant Grupo Famsa. An Order extending time was thereby granted and entered on or about December 11, 2014, which extended time to Serve Defendant Grupo Famsa through and including April 30, 2015.

3. On or about March 17, 2015, service was effectuated upon Defendant Grupo Famsa through the Hague Service Convention.

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5. On or about June 16, 2015, Plaintiff filed its Opposition to Defendant's Motion to Quash. Plaintiff presented evidence that service upon Defendant Grupo Famsa was properly made according to the internal laws of Mexico and the Hague Convention and that Nevada laws relating to service of process were preempted.

6. Plaintiff's counsel thereafter filed its Reply in Support of Defendant Grupo Famsa, S.A. de C.V.'s Motion to Quash Service of Process.

#### CONCLUSION OF LAW

Based upon the foregoing findings:

A. Plaintiff properly served Defendant Grupo Famsa under the laws of Mexico as well as the Hague Convention and that such service efforts satisfied constitutional standards of Due Process;

B. Nevada law regarding service of process is preempted by the Hague Convention and Mexican law in this case.

C. IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant Grupo Famsa, S.A. de C.V.'s Motion to Quash Service of Process is DENIED;


///

GOOLD PATTERSON  
1975 VILLAGE CENTER CIRCLE, SUITE 140  
LAS VEGAS, NEVADA 89134  
(702) 436-2600 FAX: (702) 436-2650

1 D. IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant Grupo  
2 Famsa has thirty (30) days from the date of this hearing (July 14, 2015) in which to file an Answer  
3 to the Complaint (i.e., through and including August 13, 2015).

4 **ORDER**

5 IT IS SO ORDERED this 3 day of Aug, 2015.


7   
8 DISTRICT COURT JUDGE

ROB BARE  
JUDGE, DISTRICT COURT, DEPARTMENT 32

9 Submitted by:

10 Dated this 30<sup>th</sup> day of July, 2015

11 GOOLD PATTERSON

12 By:   
13 Kelly J. Brinkman, Esq.  
14 Nevada Bar No. 6238  
15 1975 Village Center Circle, Suite 140  
16 Las Vegas, Nevada 89134  
17 *Attorneys for Plaintiff*

18 **REVIEWED BY:**

19 Dated this 30th day of July, 2015

20 FENNEMORE CRAIG, P.C.

21 By: \_\_\_\_\_  
22 Christopher H. Byrd, Esq.  
23 Nevada Bar No. 1633  
24 300 S. Fourth Street, Suite 1400  
25 Las Vegas, NV 89101  
26 *Attorney for Defendants*

GOOLD PATTERSON  
1975 VILLAGE CENTER CIRCLE, SUITE 140  
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(702) 436-2600 FAX: (702) 436-2650

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3 to the Complaint (i.e., through and including August 13, 2015).

4 **ORDER**

5 IT IS SO ORDERED this \_\_\_\_ day of \_\_\_\_\_, 2015.

6  
7  
8 \_\_\_\_\_  
DISTRICT COURT JUDGE

9 Submitted by:

10 Dated this 30<sup>th</sup> day of July, 2015

11 GOOLD PATTERSON

12 By: \_\_\_\_\_

13 Kelly J. Brinkman, Esq.  
14 Nevada Bar No. 6238  
15 1975 Village Center Circle, Suite 140  
16 Las Vegas, Nevada 89134  
Attorneys for Plaintiff

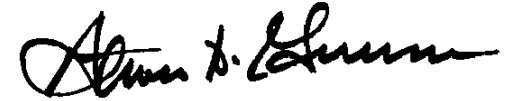
17 **REVIEWED BY:**

18 Dated this 30th day of July, 2015

19 FENNEMORE CRAIG, P.C.

20 By:  \_\_\_\_\_

21 Christopher H. Byrd, Esq.  
22 Nevada Bar No. 1633  
23 300 S. Fourth Street, Suite 1400  
24 Las Vegas, NV 89101  
25 Attorney for Defendants  
26  
27  
28



CLERK OF THE COURT

**MOT**  
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**FENNEMORE CRAIG, P.C.**  
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-and-  
Richard I. Arshonsky, Esq., NV Bar No. 4518  
**LEVINSON ARSHONSKY & KURTZ, LLP**  
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Sherman Oaks, CA 91403  
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E-Mail: rarshonsky@laklawyers.com

*Attorneys for Defendants FAMSA, INC.,  
and GRUPO FAMSA, S.A. DE C.V.*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

B.E. UNO, LLC, a Nevada limited liability  
company,

Plaintiff,

vs.

FAMSA, INC., a California corporation;  
GRUPO FAMSA, S.A. DE C.V., a Mexican  
corporation,

Defendants.

Case No.: A-14-706336-C

Dept. No.: XXXII

**DEFENDANT GRUPO FAMSA, S.A. DE  
C.V.'S MOTION TO STAY ALL  
PROCEEDINGS RELATING TO GRUPO  
FAMSA, S.A. DE C.V. PENDING  
OUTCOME OF PETITION FOR WRIT OF  
PROHIBITION ON AN ORDER  
SHORTENING TIME**

COMES NOW Defendant GRUPO FAMSA, S.A. DE C.V. ("Grupo"), by and through its  
attorneys of record, Christopher Byrd, Esq. of the law firm of Fennemore Craig, P.C. and Richard I.  
Arshonsky, Esq. of the law firm of Levinson Arshonsky & Kurtz, LLP, and hereby moves this Court  
for an order to stay all proceedings relating to Grupo, pending the outcome of Grupo's Writ of  
Prohibition on an Order Shortening Time ("Motion").

///

///

///

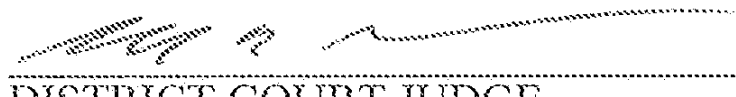
1 This Motion is based upon the papers and pleadings on file, the attached points and  
2 authorities and any oral argument that this Court may agree to entertain.

3 Dated: August 6, 2015

By:   
Christopher Byrd, Esq. [NV Bar No. 1633]  
FENNEMORE CRAIG, P.C.  
300 S. Fourth Street Suite 1400  
Las Vegas, NV 89101  
E-Mail: [cbyrd@fclaw.com](mailto:cbyrd@fclaw.com)  
-and-  
Richard I. Arshonsky, Esq. [NV Bar No. 4518]  
LEVINSON ARSHONSKY & KURTZ, LLP  
15303 Ventura Blvd., Suite 1650  
Sherman Oaks, CA 91403  
E-Mail: [rarshonsky@laklawyers.com](mailto:rarshonsky@laklawyers.com)  
*Attorneys for Defendants FAMSA, INC.,  
and GRUPO FAMSA, S.A. DE C.V.*

11 ORDER SHORTENING TIME


12 It appearing to the satisfaction of the Court, and good cause appearing therefore, IT IS  
13 HEREBY ORDERED that the foregoing Motion to Stay All Proceedings Relating to GRUPO  
14 FAMSA, S.A. de C.V. Pending Outcome of Petition for Writ of Prohibition On An Order Shortening  
15 Time shall be heard on August 11, 2015 at 9:00 a.m. in Dept. XXXII of the  
16 Eighth Judicial District Court.

17   
DISTRICT COURT JUDGE

18 ROB BARE  
JUDGE, DISTRICT COURT, DEPARTMENT 32

19 Respectfully submitted by:

20 FENNEMORE CRAIG, P.C.

21 By:   
22 Christopher Byrd, Esq. [NV Bar No. 1633]  
FENNEMORE CRAIG, P.C.  
23 300 S. Fourth Street Suite 1400  
Las Vegas, NV 89101  
24 E-Mail: [cbyrd@fclaw.com](mailto:cbyrd@fclaw.com)  
-and-  
25 Richard I. Arshonsky, Esq. [NV Bar No. 4518]  
LEVINSON ARSHONSKY & KURTZ, LLP  
26 15303 Ventura Blvd., Suite 1650  
Sherman Oaks, CA 91403  
27 E-Mail: [rarshonsky@laklawyers.com](mailto:rarshonsky@laklawyers.com)  
28 *Attorneys for Defendants FAMSA, INC.,  
and GRUPO FAMSA, S.A. DE C.V.*

1  
2 **AFFIDAVIT OF CHRISTOPHER H. BYRD, ESQ. IN SUPPORT OF MOTION TO STAY**  
3 **ALL PROCEEDINGS AGAINST GRUPO FAMSA, S.A. de C.V. PENDING THE**  
4 **OUTCOME OF PETITION FOR WRIT OF PROHIBITION**  
5

6 STATE OF NEVADA            )  
7 COUNTY OF CLARK         ) ss.

8 I, CHRISTOPHER H. BYRD, ESQ., being first duly sworn on oath states under penalty of  
9 perjury that the following assertions are true and correct of my own personal knowledge:

10 1. I am an attorney duly licensed to practice law in the State of Nevada and am a  
11 director at the law firm of Fennemore Craig, P.C., attorneys for Grupo. This Affidavit is submitted  
12 in support of Grupo's Motion to Stay all Proceedings Against Grupo Pending Outcome of Petition  
13 for Writ of Prohibition (the "Motion").

14 2. This Ex Parte Application is made and based upon Eighth Judicial District Court Rule  
15 2.26.

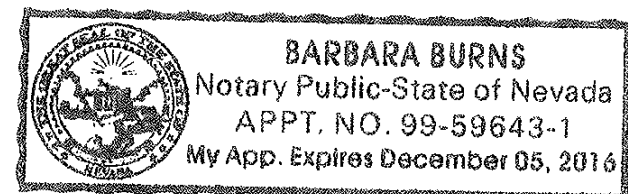
16 3. Grupo respectfully requests that the Motion be heard on shortened time to prevent  
17 Grupo from being forced to file a responsive pleading and engage in discovery while it  
18 simultaneously seeks to prosecute a Writ with the Nevada Supreme Court. Pursuant to the Order  
19 submitted to this Court Grupo is required to file a responsive pleading on August 13, 2015.  
20 Therefore, Grupo respectfully requests that this matter be heard before the responsive pleading date.  
21  
22

23   
24 CHRISTOPHER H. BYRD

25 **SUBSCRIBED AND SWORN** to before me this  
26 6 day of August, 2015.

27 

28 **NOTARY PUBLIC** in and for the  
County of Clark, State of Nevada.





1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I.

3 FACTUAL BACKGROUND

4 Plaintiff filed this action on August 29, 2014. Grupo filed a Motion to Quash Service of  
5 Process (“Motion to Quash”) on the ground that Plaintiff did not properly serve Grupo. This  
6 Honorable Court denied Grupo’s Motion to Quash on July 14, 2015. Grupo respectfully disagrees  
7 with this Court’s finding and is preparing a Writ of Prohibition to the Nevada Supreme Court to  
8 challenge the constitutional insufficiency of the purported service on Grupo. Trial of this matter is  
9 not set until January 4, 2016 and discovery is not presently scheduled to end until October 9, 2015.  
10 Thus, there is time for the Supreme Court to consider the Writ without any prejudice to Plaintiff if  
11 the Writ is denied.

12 II.

13 ARGUMENT

14 Under NRAP 8(c), a Court will generally consider four factors in determining whether to  
15 stay the proceedings: (1) whether the object of the [moving party’s] writ petition will be defeated if  
16 the stay or injunction is denied; (2) whether the [moving party] will suffer irreparable or serious  
17 injury if the stay is denied; (3) whether the [opposing party] will suffer irreparable or serious injury  
18 if the stay is granted; and (4) whether the [moving party] is likely to prevail on the merits in the  
19 appeal or writ petition.

20 It is not necessary for Grupo to satisfy each of these four factors. The Nevada Supreme  
21 Court has “recognize[d] that if one or two factors are especially strong, they may counterbalance  
22 other weak factors.’ *Mikon Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P. 3d 36, 38 (2004),  
23 citing *Hansen v. District Court*, 116 Nev. 650, 659, 6 P. 3d 982, 987 (2000).

24 A. ALL FOUR FACTORS FAVOR A STAY.

25 **1. Factors 1-2: The object of the Writ Petition will be defeated if this Court**  
26 **does not grant a Stay. Furthermore, if the Stay is denied, Grupo’s due process**  
27 **rights will be violated by having to defend on the merits without being properly**  
28 **served with the summons and complaint in this matter.**

Grupo is preparing a Writ of Prohibition (the “Writ Petition”) challenging this Honorable  
Court’s Order Denying Defendant Grupo FAMSA’s Motion for Order to Quash Service of Process

1 and Setting Deadline to File Answer to Complaint (“Order”). In that Order, this Court found that  
2 Grupo was properly served with process under the Hague Convention and Mexican law. The object  
3 of the Writ Petition is to keep Grupo out of this litigation in accord with the principles of due  
4 process. The violation of due process cannot be compensated in money or otherwise repaired in the  
5 event the Nevada Supreme Court agrees due process was not satisfied when purportedly serving  
6 Grupo.

7 A denial of this Motion will defeat the object of the Writ Petition, as such a denial will  
8 require Grupo to actively appear in, participate in, and be subject to, discovery and motion practice  
9 in, a case which ultimately the Nevada Supreme Court may decide Grupo was never properly served  
10 with process. Consequently, the first of the NRAP 8(c) factors has been met and the Court should  
11 grant Grupo’s motion and order a stay.

12 *Hansen*, 116 Nev. At 658-659, 6 P.3d 986-987, would seem to suggest that a stay is not  
13 warranted, but that case is distinguishable. In *Hansen*, the Court was focused on the now outdated  
14 distinction between a general and special appearance, not the effect of the failure to comply with due  
15 process. The Court concluded no stay was necessary because the moving party could still challenge  
16 jurisdiction even if an answer was filed because the trial court had only made a preliminary finding  
17 of jurisdiction. Thus, the party seeking a writ to challenge jurisdiction was given leave to challenge  
18 jurisdiction again at trial. Here, the Court made findings of fact, apparently leaving nothing for  
19 Grupo to contest at trial. Grupo’s only remedy is the Writ Petition. Certainly, if Plaintiff believes  
20 that the issue of jurisdiction can still be tried with the rest of the case, then Grupo is prepared to  
21 withdraw the Motion.

22 **2. Factor (3): Plaintiff will not suffer irreparable or serious injury if a stay**  
23 **is granted.**

24 Plaintiff will not suffer irreparable injury if this matter is stayed as to Grupo. A stay will not  
25 adversely affect Plaintiff’s remaining claims against FAMSA, which has not sought to stay these  
26 proceedings. There is still adequate time to complete discovery—the discovery cut-off date is  
27 presently October 9, 2015, and trial is not scheduled until January 4, 2016. Moreover, “a mere delay  
28 in in pursuing discovery and litigation normally does not constitute irreparable harm.” *Mikon*  
*Gaming*, 120 Nev. at 253, 89 P. 39 at 39. Even with a stay as to Grupo, Plaintiff can proceed with

1 discovery, and even try the case as it did in the prior litigation, when Plaintiff failed to serve Grupo.  
2 Plaintiff's damages in this case are also capped and interest continues to accrue on those claims.  
3 Thus, thus Plaintiff cannot demonstrate any cognizable harm from the issuance of a stay, much less  
4 irreparable harm. This element of NRAP 8(c) strongly favors Grupo.

5 **3. Factor (4): Grupo is likely to prevail on the merits**

6 This factor does not require a showing of probability of success on the merits. *See Hansen*,  
7 116 Nev. at 659, 6 P. 3d at 987 (2000). Instead, the party seeking a stay must present its case on the  
8 merits whenever a serious legal question is involved and the balance of the equities should weigh in  
9 favor of granting a stay. *Id.*


10 In the present case, Grupo certainly believes that a serious constitutional question is  
11 presented given that it is undisputed that service was left with a hostess at a Grupo store. Under no  
12 interpretation of due process is such service effective on a corporate entity, regardless of whether it  
13 occurred in Mexico or the United States.

14 **III.**

15 **CONCLUSION**

16 The equities for a stay strongly favor Grupo. A stay allows Grupo to avoid the expense of  
17 appearing in an action in a foreign country until it has an opportunity to address the constitutionality  
18 of service before the Nevada Supreme Court. The matter can still continue as to FAMSA, so there is  
19 no prejudice to Plaintiff from such a stay. Thus, Grupo requests a stay be entered while the Nevada  
20 Supreme Court considers its Writ Petition.

21 Dated: August 6, 2015

22 By:   
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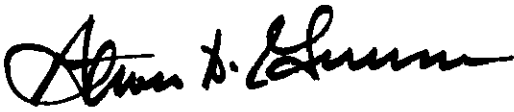
CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing **DEFENDANT GRUPO FAMSA, S.A. DE C.V.'S MOTION TO STAY ALL PROCEEDINGS RELATING TO GRUPO FAMSA, S.A. DE C.V. PENDING OUTCOME OF PETITION FOR WRIT OF PROHIBITION ON AN ORDER SHORTENING TIME** was served upon the following person(s) either by electronic transmission through the Wiznet system pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26 or by mailing a copy to their last known address, first class mail, postage prepaid for non-registered users, on this 7<sup>th</sup> day of August, 2015, as follows:

Kelly J. Brinkman, Esq.  
Goold Patterson  
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☒ Via E-service  
☐ Via U.S. Mail (Not registered with  
CM/ECF Program)

  
An employee of Fennemore Craig, P.C.

  
CLERK OF THE COURT

TRAN

DISTRICT COURT

CLARK COUNTY, NEVADA

\* \* \* \* \*

BE UNO, LLC,

Plaintiff,

vs.

FAMSA, INC., GRUPO FAMSA, S.A.  
DE C.V.,

Defendants.

CASE NO. A-14-706336

DEPT. NO. XXXII

**Transcript of Proceedings**

BEFORE THE HONORABLE ROB BARE, DISTRICT COURT JUDGE

**DEFENDANT GRUPO FAMSA, S.A. DE C.V.'S MOTION TO QUASH  
SERVICE OF PROCESS**

TUESDAY, JULY 14, 2015

**APPEARANCES:**

For the Plaintiff: KELLY BRINKMAN, ESQ.

For the Defendants: CHRISTOPHER H. BYRD, ESQ.

RECORDED BY: CARRIE HANSEN, DISTRICT COURT  
TRANSCRIBED BY: KRISTEN LUNKWITZ

Proceedings recorded by audio-visual recording, transcript  
produced by transcription service.

1 TUESDAY, JULY 14, 2015 AT 9:21 A.M.

2

3 THE CLERK: Case number A706336.

4 MR. BYRD: Good morning, Your Honor. Christopher  
5 Byrd representing Grupo.

6 THE COURT: Okay.

7 MS. BRINKMAN: Good morning, Your Honor. Kelly  
8 Brinkman on behalf of the plaintiff and with me present is  
9 the representative, Warren Kellogg, on behalf of the  
10 plaintiff, BE Uno.

11 THE COURT: All right. Go ahead and have a seat  
12 and relax.

13 Well, this is a Defense Motion to Quash. It all  
14 stems from a breach of lease an related guaranty for  
15 commercial property here in property in Las Vegas.

16 Now, I do find some relevance in the fact that  
17 there was some prior litigation and I think that's relevant  
18 to this Motion to Quash in some ways. My good friend, Mark  
19 Denton, had the case, ruled that there was a breach of  
20 lease, and liability for damages through a certain time  
21 period. I think it was when trial was scheduled in  
22 February 2014, but I'm not --

23 MS. BRINKMAN: That's correct.

24 THE COURT: Okay. And, anyway, then the plaintiff  
25 has to try to mitigate, of course, by releasing a property

1 like this and they do that to Ross Dress For Less. I --  
2 yeah, I know what kind of store that is. And so, anyway,  
3 this -- our case seems to be a case designed to recover  
4 additional damages following that chain of events.

5           The question here is what about service? There  
6 was a service on a Claudia Martinez [phonetic] and I think  
7 it's question -- it's a question as to what status or  
8 capacity Claudia Martinez [phonetic] is in at any time  
9 really, whether she's an agent or an authorized employee or  
10 what she is. It's been suggested that she worked in the  
11 defense's legal department even in the pleadings, but, in  
12 any event, there's a certificate of service, which, of  
13 course, I have here and I've looked at.

14           I've got to tell you, I've never seen one like  
15 this before because I don't think I've dealt with the idea  
16 of trying to serve a Mexican business entity, but that's  
17 what we have here. So, I've done the best I can to try to  
18 reconcile this certificate and service.

19           Also, I have to tell you all I haven't seen the  
20 Hague Convention discussed for some time. I used to  
21 actually know a lot about both the Geneva and Hague  
22 Conventions as I gave professional CLEs on them when I wore  
23 a green uniform. It has to do with a lot of things having  
24 to do with the law of warfare, and what we can do when we  
25 decide to invade countries, and what we can blow up, and

1 what types of weapons we can use, and what we've got to do  
2 with POWs. But that was 26 years ago.

3           Haven't seen it much since and not in this  
4 context, but, apparently -- well, certainly the Hague  
5 Convention now becomes relevant both in the Federal Court  
6 system and in the State Court system when they decide how  
7 to deal with the issue of legal service having to do with  
8 companies in Mexico. And so, I learned from the *Dahya* case  
9 and also from this federal case, *McCarthy*, or *McCarty*  
10 [phonetic], that the idea, it seems to me, that more than  
11 anything, it's almost as though there has to be a bit of a  
12 blessing through the Mexican court system and that's really  
13 the question here as to whether the appropriate legal  
14 blessing occurred and that -- the blessing thing I just  
15 threw in. It didn't say that in here, but that's what it  
16 seems like it kind of is to me.

17           And so, all I can say is I'm doing the best I  
18 possibly can. If you look at the service certificate,  
19 there's a clerk sort of a signature there on the second  
20 page. And that sure does look like the Mexican Court  
21 authorities, if you will, have somewhat acknowledged this  
22 service. That's what it looks like to me. In other words,  
23 what I'm saying straight out is it appears to be evidence  
24 of compliance with whatever Mexican law and procedure there  
25 would be.



1           That's what it appears to be, but that's sometimes  
2 why we have court because you -- the defense has indicated  
3 that this lady is a hostess. I think that's what you  
4 called her. So I don't know what capacity she's in, but it  
5 seems like the Mexican authorities think she's got the  
6 requisite authority to accept service.

7           And then the other part of this is it seems like  
8 the defense knew about the case anyway as they participate  
9 in a mediation and did some other stuff with Judge Denton.  
10 Right?

11           MS. BRINKMAN: That is correct.

12           THE COURT: That's what it seems like. So let me  
13 just turn my attention to the defense side and see what  
14 else you want to say about it.

15           MR. BYRD: Thank you, Your Honor. I think the  
16 real issue here is really one of due process. The cases  
17 that have been cited to Your Honor basically suggest that  
18 even though there may have been compliance with the Hague  
19 Convention --

20           THE COURT: Yeah.

21           MR. BYRD: -- that there still is an additional  
22 hurdle with respect to service and that is due process.  
23 And, in this case, the fact that the service was dropped  
24 off with someone that was outside of the Grupo address as a  
25 hostess or a greeter, as we pointed out in our Reply brief,

1 there's no difference than if you went to Walmart and  
2 handed the greeter the process and said I've now served  
3 Walmart. Certainly no one would suggest that under any  
4 notion or concept of due process that is sufficient to  
5 start the clock ticking under service of process.

6           So, our focus here, Your Honor, is not necessarily  
7 with the Hague Convention. It's really a due process  
8 argument, a constitutional argument, and that the fact that  
9 Grupo may have notice of this suit or the prior suit or had  
10 been to some negotiations in the prior lawsuit really  
11 doesn't answer the question of whether Grupo should be  
12 obligated to begin to spend dollars defending itself when  
13 it hasn't been properly served under the concepts of due  
14 process.

15           THE COURT: Well, let me ask you a sort of  
16 theoretical question, but it's right on point in my view  
17 with what we're dealing with here. If you comply with the  
18 Hague Convention, and given that both the -- apparently the  
19 Nevada Supreme Court and the District Court -- Federal  
20 District Courts here in Nevada seem to indicate that's  
21 what you have to do. You have to comply with the Hague  
22 Convention. If you were to comply with it and get a  
23 certificate from a Mexican Court indicating that you did,  
24 wouldn't that be sufficient due process enough, in  
25 fairness, to allow the service to be acceptable?

1           MR. BYRD: I don't think that's what the cases  
2 suggest, Your Honor. We cited cases where the argument was  
3 made that the Hague Convention was complied with. The  
4 Court found that there was compliance, but also considered  
5 -- went the next step to determine whether or not the  
6 service made under the Hague Convention also complied with  
7 our constitutional notices of --

8           THE COURT: Okay.

9           MR. BYRD: -- due process.

10          THE COURT: Okay. I understand. I understand. I  
11 think that's a fair argument. Let me ask the plaintiffs to  
12 add anything they'd like.

13          MS. BRINKMAN: Sure. Thank you, Your Honor.

14          I want to start out actually by talking about the  
15 Hague Convention and if you look at the preamble of the  
16 Hague Convention, the -- one of the intended purposes was,  
17 and I'll quote it from the preamble. It says:

18               Desiring to create appropriate means to ensure  
19               that judicial and extrajudicial documents to be served  
20               abroad shall be brought to the notice of the addressee  
21               in sufficient time.

22          So, one of the concepts that was incorporated into  
23 the Hague Convention, which is in Articles 15 and 16, and  
24 I'll go to Articles 15 and 16 in a minute, was the due  
25 process concept under the [indiscernible], which is to

1 reasonably apprise the defendant of the pendency of the  
2 action and give them the opportunity to defend.

3           It has nothing to do with whose service was made  
4 upon, which was done under Mexican law, which the Hague  
5 Convention in Article 5 says pursuant to the internal laws  
6 of Mexico, and we cited the relevant provisions of Mexican  
7 law. We have our Mexican attorney, Celso Najera, who  
8 submitted an affidavit saying it conformed with Mexican law  
9 as well as we have the certificate that was issued under  
10 Article 6 of the Hague Convention where the Court blessed  
11 the service and said it conformed with Mexican law, which  
12 is prima facie evidence under the *Northrup King* [phonetic]  
13 and the other cases that we cited in our brief.

14           But if you look as well at Articles 15 and 16 of  
15 the Hague Convention, Articles 15 and 16 talk about really  
16 taking default, getting relief from default, and taking  
17 default judgments. And Article 15 states that:

18           No judgment shall be given until it is established  
19 that, A, the document was served by the method  
20 prescribed by the internal law of the state addressed  
21 with the service of documents in domestic actions upon  
22 persons who are within its territory.

23           So, it's saying: Hey, I am not going to take --  
24 under Mexican law, I am not going to take, or under the  
25 Hague Convention, a default judgment until I have confirmed

1 that there was notice upon that person, which, again,  
2 incorporates in the due process standards.

3           When I went and did the research on the Hague  
4 Convention, because I hadn't looked at it for many, many  
5 years, there was -- if you look at the legislative history  
6 to Hague Convention, there was something, and I apologize  
7 if I'm mispronouncing it, where there was a [indiscernible]  
8 service called: Notification au Parquet. I don't know if  
9 that's French or Latin.

10           And that was a method of service commonly employed  
11 in various foreign countries that often failed to give  
12 defendants adequate notice of proceeding. And when the  
13 Hague Convention was created they, again, took this into  
14 account when they added in Articles 15, 16, and the  
15 preamble.

16           So, the due process concerns are already really  
17 incorporated into the Hague Convention. So, I want to make  
18 sure that the Court is well aware of that.

19           But as you've pointed out, the whole purpose of  
20 due process is to apprise the defendant that a suit has  
21 been brought against them and give them the opportunity to  
22 defend. They have notice of this lawsuit. They  
23 participated in a mediation. There was a whole other  
24 lawsuit in front of Judge Denton about this exact same  
25 thing, which everybody is already saying: We understand

1 that there's a breach. That's been declared by the Court.  
2 The only issue is left for damages.

3 The guarantor, who is the parent company of the  
4 tenant -- the tenant is already participating. I'm  
5 assuming the tenant is, as the subsidiary, is telling their  
6 guarantor, their parent company, exactly what is going on.  
7 We have the same set of attorneys involved in this case.

8 I mean, the only problem we are having is Group  
9 Famsa, the guarantor, has simply not agreed to accept  
10 service and is forcing the landlord to go through  
11 considerable cost and expense to serve them, so much so  
12 that when we served them in the first case, they objected  
13 to service in the first case. We're not back here in the  
14 second case and had to go through the Hague Convention.  
15 They're not saying that the Hague Convention wasn't  
16 complied with. They're simply saying due process wasn't  
17 complied with and then they cite to cases that say under  
18 Nevada law, you have to serve an authorized agent, officer,  
19 or somebody at the corporation.

20 First of all, if they were doing business in  
21 Nevada, we could have just simply served the resident  
22 agent. But Nevada law isn't applicable here. The Hague  
23 Convention preempts Nevada law. All that's applicable is  
24 the law of Mexico and the Mexican law was complied with and  
25 that's set forth under our affidavit of our Mexican

1 attorney, the process server, and the actual certificate,  
2 which is prima facie evidence that Mexican law was complied  
3 with, which they're not disputing.

4           So if you look at it from a due process, what --  
5 where's the prejudice here? Where's the harm? They  
6 haven't articulated any.

7           THE COURT: All right.

8           MS. BRINKMAN: They know about this lawsuit.  
9 That's all that due process requires.

10          THE COURT: Okay. I understand it. Do you want  
11 to add anything else since it's your motion?

12          MR. BYRD: Just this, Your Honor. All of us know  
13 that our clients find out about lawsuits in different ways.  
14 Particularly now with the internet, a client can find out  
15 about a fact that they've been sued from the internet, but  
16 that doesn't obligate them under the notions of due process  
17 to have to appear in court and begin to expend the fees for  
18 defending themselves.

19          THE COURT: I agree with that. The reason I  
20 mention the Judge Denton lawsuit and the procedural history  
21 of it and really the nature of this instant action, which  
22 is related to -- it's not an independent case. I mean,  
23 it's related to the other case. It has to do with just  
24 fairness. I do think that if you look at concepts of  
25 procedural due process, fairness always enters into that

1 analysis for a court. And so, I do think that there's a  
2 fairness aspect to this. I agree with you that it's not  
3 the end of the day type of an analysis, but it certainly is  
4 relevant to, I think, a Court's consideration of what's  
5 fair when you're talking about due process.

6 MR. BYRD: Your Honor, --

7 THE COURT: So what I'm saying to you is the  
8 fairness issue, I think, in my mind, the plaintiff sort of  
9 inure a benefit in that area because, well, it seems to me  
10 that there was prior participation and knowledge, which  
11 would be a little bit different than just simply noticing a  
12 lawsuit on the internet. I mean, there's actual  
13 participation in the root source of this whole legal  
14 action.

15 MR. BYRD: Well the only participation, just for  
16 clarification, Your Honor, was --

17 THE COURT: Yeah.

18 MR. BYRD: -- that there was a settlement -- a  
19 mediation to try and settle that prior suit and as a  
20 condition for the plaintiff agreeing to go to mediation, it  
21 was that the person that would appear would have authority  
22 from Grupo, the guarantor, as well.

23 The only quote/unquote participation in the suit  
24 other than that was the fact that Grupo objected to the  
25 improper service in the last lawsuit and Judge Denton found



1 that service wasn't properly made and Grupo was not part of  
2 the judgment in that original case.

3 THE COURT: Okay.

4 MR. BYRD: We're suffering from the same  
5 procedural issues in this case in that you can follow the  
6 Hague Convention and even the cases that plaintiff cites  
7 indicate that that's not the end of the analysis. If you -  
8 - if there is some basis to show that the fact that the  
9 process server went out to the address, as we've  
10 demonstrated, and handed it to a hostess, certainly gives  
11 rise to the notice or to the question of whether that's due  
12 process or not. And that's our position.

13 THE COURT: Okay. I understand it. I think it's  
14 a decent argument. I mean, I really don't know, I have to  
15 say, as to what capacity this lady was in, whether a  
16 hostess or works in the legal department, but -- because  
17 there's a dispute having to do with that. But, in my view,  
18 and, you know, I'm doing the best I can with this. There's  
19 times when I know I'm right, but there's times where you  
20 just do the best you can. This is one of those times where  
21 I'm just doing the best I can, I've got to tell you.

22 The best I can make of this is that it seems to me  
23 from the Federal District Court case law here in Nevada and  
24 from the Supreme Court of Nevada case *Dahya*, D-A-H-Y-A --  
25 maybe I said it wrong, but I spelled it right -- that the

1 idea is that in order to perfect service on a Mexican  
2 corporate entity, you've got to follow the Hague Convention  
3 parameters. And, essentially, the way I said it earlier is  
4 it seems to me you've got to go through the Mexico central  
5 authority, if you will, and sort of get a lesson or a stamp  
6 of approval, and that's really what it is. It's a stamp of  
7 approval from the Mexican authorities that constitutes  
8 reasonable service.

9           You bring up this procedural due process concern  
10 and I think that's an interesting idea, but the way I see  
11 it is the full force and effect of the case law seems to  
12 suggest to me is that there is a preemption. I think  
13 that's a really good word. When you use the word  
14 preemption, and I wrote it down, normally we're dealing  
15 with Federal preemption issues, of course, having to do  
16 with federal law that might preempt Nevada law. Here we  
17 have sort of a foreign national preemption that I think is  
18 -- it's a good word. At least the philosophy having to do  
19 with preemption I think really does apply here.

20           What I wrote down in my notes prior to hearing the  
21 word preemption is simply this: Full faith and credit. I  
22 know that's a state law term, I get it. But that's the  
23 same type of philosophy I think applies here. I think the  
24 idea from the case law is that we sort of have to give full  
25 faith and credit to the Mexican court system's view of

1 service in these issues -- on these type of issues.

2 Best I can say is you've got it all here. It  
3 seems to me you've done what you have to do under the law  
4 to cause service to occur. And so, the Motion to Quash is  
5 denied. And that means the plaintiff can draft the order.

6 MR. BYRD: Your Honor, could I ask the Court to  
7 consider staying that order for 60 days while my client  
8 seeks either a nullification procedure in Mexico or files a  
9 writ with the Supreme Court?

10 THE COURT: What's your thought on that?

11 MS. BRINKMAN: We would object.

12 THE COURT: Okay.

13 MS. BRINKMAN: Vehemently object and we would --

14 THE COURT: Okay.

15 MS. BRINKMAN: And --

16 THE COURT: Well, okay. Hold on. You can file a  
17 motion asking for that and they can weigh in on it and  
18 we'll see what happens.

19 MR. BYRD: Okay. Thank you, Your Honor.

20 MS. BRINKMAN: Do -- Your Honor, one other thing.  
21 Do you want to give them a time frame for them to respond  
22 to the Complaint? I'm happy to give them 10 days or 20  
23 days to respond to the Complaint. I -- my intention is not  
24 to take a default against them.

25 THE COURT: All right. So, --

1 MR. BYRD: Your Honor, could I have 30 days? My  
2 client is in Mexico and it takes some time to --

3 THE COURT: Normally, --

4 MR. BYRD: -- communicate with him.

5 THE COURT: Yeah. We'll give him the 30 days to  
6 respond.

7 MS. BRINKMAN: That's fine.

8 THE CLERK: That's August 11<sup>th</sup>.

9 THE COURT: Okay.

10 MS. BRINKMAN: Thank you.

11 MR. BYRD: Thank you, Your Honor.

12

13 PROCEEDING CONCLUDED AT 9:40 A.M.

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1 **CERTIFICATION**

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3

4 I certify that the foregoing is a correct transcript from

5 the audio-visual recording of the proceedings in the

6 above-entitled matter.

7

8 **AFFIRMATION**

9

10 I affirm that this transcript does not contain the social

11 security or tax identification number of any person or

12 entity.

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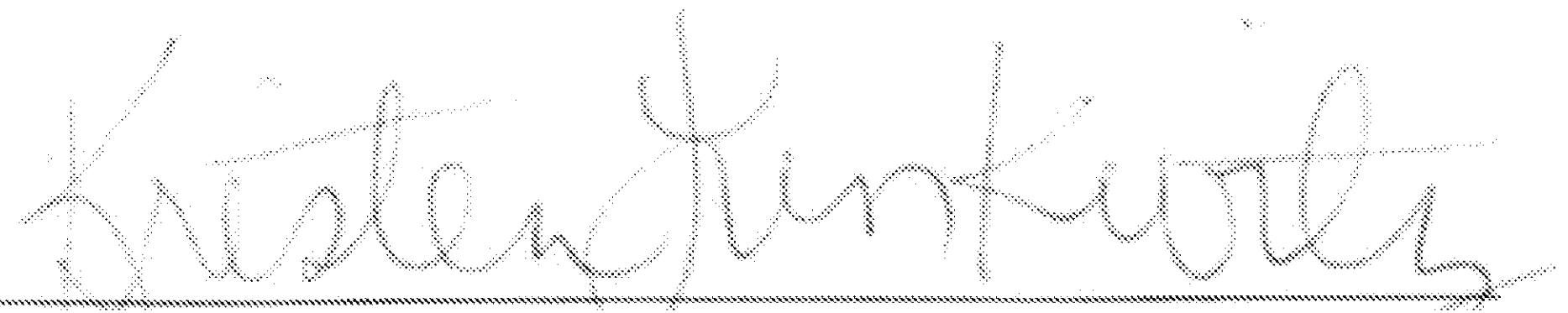
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23 KRISTEN LUNKWITZ

24 INDEPENDENT TRANSCRIBER

25

# Exhibit 1

1 **DEC**

2 Christopher Byrd, Esq. (No. 1633)

3 Daniel Nubel, Esq. (No. 13553)

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11 Attorneys for Defendants

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20 Attorneys for Defendants

21 **DISTRICT COURT**

22 **CLARK COUNTY, NEVADA**

23 B.E. UNO, LLC, a Nevada limited liability  
24 company,

25 Plaintiff,

26 vs.

27 FAMSA, INC., a California corporation;  
28 GRUPO FAMSA, S.A. DE C.V., a Mexican  
corporation,

Defendants.

Case No.: A-14-706336-C

Dept. No.: XXXII

**DECLARATION OF HUMBERTO LOZA**  
**IN SUPPORT OF DEFENDANT GRUPO**  
**FAMSA, S.A. DE C.V.'s MOTION TO**  
**QUASH SERVICE OF PROCESS**

Humberto Loza hereby declares as follows:

1. I am the Legal Director of Grupo Famsa, S.A. DE C.V.

2. In my capacity as Legal Director, I have personal knowledge of the facts herein  
and make these statements based on my own personal knowledge unless otherwise stated.

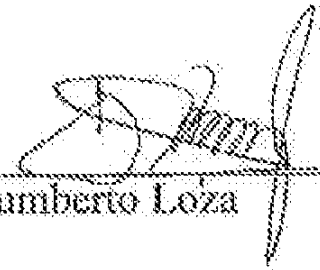
3. The individual that Plaintiff in this case claims was served process, Claudia  
Palomo Martinez, does not have the authority to accept legal documents on Grupo Famsa's

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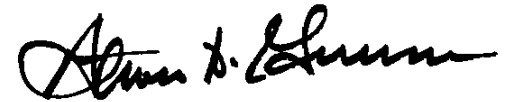
behalf.

4. The foregoing is true and correct to the best of my knowledge and belief under penalty of perjury of the laws of the State of Nevada.

DATED this 4 day of June, 2015.

  
Humberto Loza





CLERK OF THE COURT

1 **OPPM**  
2 Kelly J. Brinkman, Esq.  
3 Nevada Bar No. 6238  
4 GOOLD PATTERSON  
5 1975 Village Center Circle, Suite 140  
6 Las Vegas, Nevada 89134  
7 (702) 436-2600 (Telephone)  
8 (702) 436-2650 (Fax)  
9 [kbrinkman@gooldpatterson.com](mailto:kbrinkman@gooldpatterson.com)  
10 *Attorneys for Plaintiff*

DISTRICT COURT

CLARK COUNTY, NEVADA

B.E. UNO, LLC, a Nevada limited liability  
company,

Plaintiff,

vs.

FAMSA, INC., a California corporation;  
GRUPO FAMSA, S.A. de C.V., a Mexican  
corporation,

Defendants.

CASE NO.: A-15-706336-C

DEPT. NO.: XXXII

**PLAINTIFF'S OPPOSITION TO  
DEFENDANT GRUPO FAMSA, S.A. de  
C.V.'s MOTION TO QUASH SERVICE  
OF PROCESS; DECLARATION OF  
KELLY J. BRINKMAN IN SUPPORT;  
DECLARATION OF CELSO NAJERA  
GONZALEZ IN SUPPORT**

**Hearing Date: July 14, 2015**


**Hearing Time: 9:00 a.m.**

Plaintiff, B.E. Uno, LLC ("Plaintiff"), by and through its attorney, Kelly J. Brinkman, of the law firm Goold Patterson, hereby files its opposition to Defendant Grupo Famsa, S.A. de C.V.'s ("Grupo") Motion to Quash Service of Process ("Mot. to Quash").

Plaintiff's opposition is made and based upon the following Points and Authorities and exhibits, the Declarations in Support filed herewith, the pleadings, papers, and records on file in this case, and any oral argument to be presented at the time of the hearing on the Grupo's Motion to Quash.

DATED this 16<sup>th</sup> day of June, 2015.

GOOLD PATTERSON

By:   
Kelly J. Brinkman, Esq.  
Nevada Bar No. 6238  
1975 Village Center Circle, Suite 140  
Las Vegas, Nevada 89134  
*Attorneys for Plaintiff*

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**MEMORANDUM OF POINTS AND AUTHORITIES**

**I.**

**INTRODUCTION**

On August 29, 2014, Plaintiff filed suit against Famsa, Inc. (“Famsa”) and Grupo for breach of a lease and a related guaranty for a commercial premises located in Las Vegas, Nevada. In prior litigation (Case No. A-12-672870-C), filed in Clark County, Nevada, Judge Denton ruled that Famsa breached the lease and was liable for damages through the date of trial (February 2014). After extensive efforts to relet the premises, Plaintiff was successful in re-leasing the premises to Ross Dress for Less, Inc. As a result, Plaintiff has filed this instant action to recover additional damages against both Famsa and Grupo.

Grupo, however, has taken every conceivable effort to avoid service of process of both this litigation as well as the prior litigation, even though Grupo was well aware of the prior litigation and even participated in a mediation related to the damages due Plaintiff following Famsa and Grupo’s breach of lease and guaranty. Nevertheless, here we are once again, wasting additional time, money and resources responding to Grupo’s Motion.

Given Grupo’s prior efforts to avoid service in the earlier litigation, Plaintiff went through great time and expense to send Plaintiff’s summons and complaint to the Mexican Central Authority in conformity with the Hague Service Convention. On or about April 17, 2015, that service was confirmed by the Mexican court, who issued a Certificate evidencing proper service under the Hague Service Convention.

Notwithstanding, Grupo filed this Motion to Quash essentially arguing that, despite compliance with the Hague Service Convention, Nevada law requires Plaintiff to effectuate personal service on “an authorized representative of Grupo” pursuant to Nevada law. For the reasons set forth below, this argument is unavailing.

**II.**

## LEGAL ARGUMENT

### A. Service of Process Under the Hague Service Convention and Preemption of Nevada Law.

Service of process on a defendant in Mexico is governed by the Hague Service Convention. *See Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 698-99, 108 S.Ct. 2104, 2107 (1988) (The Hague Service Convention applies in all civil or commercial matters “where there is occasion to transmit a judicial or extrajudicial document for service abroad.”). The purpose of this treaty is “to provide a simpler way to serve process abroad, to assure that defendants sued in foreign jurisdictions would receive actual and timely notice of suit, and to facilitate proof of service abroad. *Id.* at 698. The United States Supreme Court has said that the Hague Service Convention “*pre-empts*” inconsistent methods of service prescribed by state law in all cases to which it applies.” *Id.* at 699.

The Hague Service Convention authorizes several different mechanisms for effectuating service of process. The primary vehicle, established in Articles 2 through 7, requires each participating country to set up a “Central Authority” for receiving and processing requests for service from parties abroad. *See* Hague Service Convention, Art. 2-7; *see also Schlunk*, 486 U.S. at 699. Under this method, an applicant must send a request for service directly to the “Central Authority” designated by the government of the receiving country, who then serves the document or arranges to have it served by the appropriate agency. *See* Hague Service Convention, Art. 2-5. The Central Authority checks the documents for compliance with the Hague Service Convention and serves such documents in accordance with its own laws. *See* Art 4-6. The Central Authority must then complete a Certificate detailing how, where, and when service was made, or explaining why service did not occur. *Id.* Art. 5-6. Finally, the completed Certificate is returned to the applicant. *Id.*

Grupo does not dispute that Plaintiff “utilized the correct channels of process when they sent the judicial documents to Mexico’s Central Authority.” *See* Mot. to Quash, p. 4, ll 5-6. Instead, Grupo alleges that service on Ms. Martinez was improper, *even though done in compliance with Mexican law and signed off by and approved by the Court in Mexico*, since

1 Ms. Martinez was not “authorized” to accept service nor was such service reasonably calculated  
2 to apprise Grupo of the pendency of this action. *Id.*, p. 4.

3 B. The Interplay between Mexican Law, Nevada Law and the Hague Service Convention.

4 Grupo contends that, even though the Hague Service Convention applies and it was  
5 served in conformity with it, it was not properly served under Nevada law, which requires  
6 service on an individual authorized to receive service for Grupo. Grupo’s contention, however,  
7 misapprehends the interplay between the relevant provisions of Mexican Law, Nevada law and  
8 the Hague Service Convention, and discounts the effect of the Supremacy Clause contained in  
9 Article VI, Clause 2 of the United States Constitution.

10 When process is served and return of process is completed by an official of a country that  
11 is a signatory to the Hague Service Convention in accordance with Article 6 of the Convention,  
12 as is was here, that service is sufficient, and any additional requirement which may be imposed  
13 by Nevada law is pre-empted. *See Macivor v. Volvo Penta of America, Inc.*, 471 So.2d 187  
14 (Florida 1985) (reversing order quashing service, finding that Supremacy Clause preempts  
15 Florida statute governing service, and service was made under the Hague Service Convention);  
16 *Volkswagenwerk*, 486 U.S. at 699 (stating that by virtue of the Supremacy Clause of the United  
17 States Constitution, the Hague Convention “pre-empts inconsistent methods of service  
18 prescribed by state law in all cases to which it applies.”). Rather, the internal laws of Mexico  
19 apply as to service upon Grupo, which laws have been satisfied in this matter. *See Declaration*  
20 *of Celso Nàjera Gonzalez (“Nàjera Declaration”), ¶ 11, attached hereto.*

21 C. Service upon Grupo Under the Hague Service Convention and Mexican Law.

22 Under the Hague Service Convention, service may be made by any method permitted by  
23 the internal law of the receiving state (Mexico). Therefore, if service is proper under Mexican  
24 law then the service is valid even if the service would not be valid under Nevada law. So, the  
25 question is whether service of Grupo complied with the Hague Service Convention and the  
26 internal laws of Mexico.

1           1.     Hague Service Convention Procedures in Mexico.

2           As discussed above, under the Hague Service Convention, a request for service abroad is  
3 submitted to the Central Authority. *See* Nàjera Declaration, ¶4. The Central Authority reviews  
4 the service request, approves it and sends the process to the local court in the State of Nuevo  
5 Leon, where Grupo maintains its headquarters. *Id.* Service is performed by a “court official”,  
6 who prepares an official report of the service (use of a private process server is not permitted).  
7 *Id.*, ¶¶2, 3, & 7. This report is then submitted to the Mexican court. The court prepares a  
8 Certificate of Service. *Id.*, ¶8. The Certificate in this case was signed by Jehu Ezequiel Echartea  
9 Hernandez, Esq., a Clerk of the Court – for Letters Rogatory for the State of Nuevo Leon. *See*  
10 Certificate attached as Exhibit A to the Nàjera Declaration. The Certificate states the service of  
11 the summons and complaint was served on Grupo on March 17, 2015, by delivering to the  
12 addressee (Grupo), who accepted service voluntarily. *See* Certificate, Exhibit A and Nàjera  
13 Declaration, ¶7. Under both the Hague Service Convention and Mexican law (discussed below),  
14 service is such a manner is appropriate and valid. *See* Nàjera Declaration, ¶11.

15           2.     Mexican Rules of Service of Process.

16           Under Mexican law, service upon a corporation is not required to be made by someone  
17 who is “authorized” by the corporation to receive service of process. *Id.*, ¶¶ 9-10. Rather, under  
18 Mexican law, service of process is governed by civil procedure rules, including Articles 66, 67,  
19 69 and 70 of the Civil Procedures Code for the State of Nuevo Leon. *See* Nàjera Declaration,  
20 ¶¶2, 3 & 10. As detailed in ¶7 of the Nàjera Declaration, the court-appointed process server  
21 delivered the Summons and Complaint to Grupo at the address approved by the Mexican court,  
22 which was the same address listed in the Summons. Thus, by all standards, service upon Grupo  
23 was made in compliance not only with the Hague Service Convention, but the internal  
24 procedural laws of Mexico. *Id.*, ¶ 11.

25           D.     The Central Authority’s Return of the Certificate of Service is Prima Facie Evidence that  
26                 Service on Grupo was Made in Compliance with Mexican Law.

27           The Mexican court appointed Jehu Ezequiel Echartea Hernandez, Esq., a clerk of the  
28 court of Mexico, to serve the summons and complaint (which had been transcribed into Spanish)

1 on Grupo. On March 17, 2015, Mr. Hernandez, the “court-appointed” officer of the Mexican  
2 court, served Grupo in compliance with Article 6 of the Hague Convention and on or about April  
3 17, 2015, the Mexican Central Authority delivered to Plaintiff a Certificate titled “Hague  
4 Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or  
5 Commercial Matters” (“Certificate”). This Certificate was thereafter filed with the Clerk of the  
6 Court of the District Court, Clark County, Nevada on May 21, 2015. A copy of the Certificate  
7 was attached to Plaintiff’s Certificate of Service on Grupo and is also attached to the Nájera  
8 Declaration as Exhibit A. The Certificate details the steps taken to serve Grupo. The  
9 Certificate, which was approved by the Mexican court, is *prima facie* evidence that Grupo was  
10 properly served in accordance with the laws of Mexico.

11 In *Unite Nat’l Retirement Fund v. Ariela, Inc.*, 643 F. Supp. 2d 328, 334 (S.D.N.Y.  
12 2008), the court determined that the certificate filed with the New York court:

13 “establishes a prima facie case that this service complied with  
14 Mexico’s internal laws. By not objecting to the documents and by  
15 certifying service, the Central Authority indicated that the  
16 documents complied with the [Hague] Convention and that it had  
17 served them in compliance with the [Hague] Convention, i.e., that  
18 it had made service as Mexican law required. This Court declines  
19 to look behind the certificate of service to adjudicate issues of  
20 Mexican procedural law that the parties have raised through their  
21 submission of conflicting expert statements on the issue.” *Id.*  
22 *citing Northrup King Co. v. Compania Productora Semillas*  
23 *Algodoneras Selectas*, 51 F.3d 1383, 1390 (8th Cir. 1995).”

24 *Id.* at 334. *See also Resource Trade Finance, Inc. v. PMI Alloys, LLC*, 2002 WL 1836818, 4  
25 (S.D.N.Y. Aug. 12, 2002) (it is well settled that the return of a completed certificate of service by  
26 a Central Authority establishes *prima facie* evidence that the Central Authority’s service was  
27 made in compliance with the convention); *Zions First Nat’l Bank v. Moto Diesel Mexicana, S.A.*  
28 *de C.V.*, 2011 WL 2669608, at \*2 (E.D. Mich., July 7, 2011) (U.S. court should not second-guess  
the foreign central authority’s interpretation of its own law, and thus an argument that although  
the defendant received the summons and complaint the method of service did not comply with  
the law of the foreign state should be unsuccessful). Similarly, in this case, the Mexican court



1 certified that service was completed in accordance with the laws of Mexico. See Nájera  
2 Declaration, ¶ 8.

3 Although a *prima facie* showing of proper service may be rebutted by a lack of actual  
4 notice or some showing of prejudice, Grupo has not made such a showing here. *See Ariela*, 643  
5 F. Supp. 2d at 335, *Northrup*, 51 F.3d at 1390. Grupo has neither disputed that it received actual  
6 notice nor has it articulated any prejudice. Indeed, it is undisputed that Grupo was aware that  
7 Plaintiff had filed a lawsuit against both Famsa, Inc. (“Famsa”), as tenant under the lease, and  
8 Grupo, as guarantor of such lease. In fact, both Famsa and Grupo participated in a Mediation  
9 over the breach of lease and guaranty on January 8, 2014. *See* Declaration of Kelly Brinkman  
10 attached hereto, ¶ 4. Further, Grupo and Famsa both have the same sets of attorneys involved in  
11 this breach of lease litigation (and in the prior litigation with Famsa in which Judge Denton  
12 already ruled that Famsa breached its Lease with Plaintiff). *See* Judgment issued in case A-12-  
13 672870-C, entered on April 24, 2014.<sup>1</sup> Further, there is no evidence that Grupo is unfairly  
14 prejudiced by service under the Hague Service Convention or Mexican law. Indeed, the record  
15 shows that the Mexican court-appointed process server served Grupo and that Plaintiff received  
16 the Certificate, which did not note any problems with the adequacy of service of process.  
17 Accordingly, Grupo has actual notice of this litigation and thus the ability to defend the claims  
18 presented in Plaintiff’s complaint. Therefore, Grupo’s motion to quash must be denied.

19 Further, the denial of service on an “authorized representative of Grupo” does not rebut  
20 the presumption of proper service established by the Certificate. Grupo’s objections simply do  
21 not refute the detailed, sworn statements of the court officer in the Certificate nor under Mexican  
22 law. *See Old Republic Ins. Co. v. Pacific Fin. Services of America, Inc.*, 301 F.3d 54, 57-58 (2d  
23 Cir. 2002) (*quoting Simonds v. Grobman*, 277 A.D.2d 369, 716 N.Y.S.2d 692 (2d Dept. 2000))  
24 (“[N]o hearing is required where the defendant fails to swear to ‘specific facts to rebut the  
25 statements in the process server’s affidavits.’”).

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28 <sup>1</sup> Plaintiff requests that this Court take judicial notice of the Court Docket in the prior litigation between Plaintiff and Famsa pursuant to NRS 47.130.

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IV.

CONCLUSION

Service of process is not intended to be a game of cat and mouse. Rather, “[t]he purpose of service of process is to apprise the defendant that suit has been brought against him and to give him an opportunity to defend.” *National Equipment Rental, Ltd. v. Szukhent*, 311 F.2d 79, 83 (2d Cir. 1962). Here, there is no question that those aims have been fulfilled. The Mexican courts’ return of the Certificate is *prima facie* evidence that service on Grupo was made in compliance with Mexican law. The Hague Service Convention requires that the Central Authority serve the documents by a method specified by its own law (i.e., Mexico). By not objecting to the documents and by certifying service, the Mexican court indicated that the documents complied with the Hague Service Convention and that it had served them in compliance with the Convention, i.e., that is made service as Mexican law required. This Court must decline to look behind the Certificate to adjudicate the issues of Mexican procedural law that Grupo has raised in its Motion to Quash.

DATED this 16<sup>th</sup> day of June, 2015.

GOOLD PATTERSON

By:   
Kelly J. Brinkman, Esq.  
Nevada Bar No. 6238  
1975 Village Center Circle, Suite 140  
Las Vegas, Nevada 89134  
*Attorneys for Plaintiff*



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1                                    **DECLARATION OF CELSO NAJERA GONZALEZ IN SUPPORT OF**  
2                                    **PLAINTIFF'S OPPOSITION TO GRUPO FAMSA'S**  
3                                    **MOTION TO QUASH SERVICE OF PROCESS**

4                    I, Celso E. Najera Gonzalez. Declare under penalty of perjury, as follows:

5                    1.        I am an attorney duly licensed to practice in Mexico. My main area of expertise  
6 involves civil litigation in State and Federal forums. My offices are in the city of Monterrey,  
7 Mexico, which is located in the Mexican state of Nuevo Leon.

8                    2.        Service of process in Mexico is performed entirely through the Mexican Courts.  
9 All process is served by court officials. Service of process is considered a "Court supervised  
10 process" subject to specific rules set by the corresponding procedural codes.  
11

12                   3.        In general, process service is performed by a Court officer or Court-appointed  
13 server who delivers the summons and complaint on the named party. Once this is done, the  
14 server drafts a written record of what transpired during service, so as to establish that all  
15 formalities were met as provided by law.

16                   4.        Service of process in Mexico relating to lawsuits filed in the United States is  
17 governed by the Hague Convention. It requires all process to first be filed with the Central  
18 Authority which is located in Mexico City. The Central Authority reviews the documents to  
19 make sure that all requirements have been met and then transmits them to the local court. In this  
20 case, the Central Authority sent the documents to the court in the state of Nuevo Leon for  
21 service.  
22

23                   5.        I was retained to assist B.E. UNO, LLC in connection with service of process on  
24 Grupo Famsa, S.A. de C.V. ("Grupo Famsa"). B.E. Uno initially encountered obstacles  
25 presented by Grupo Famsa's in-house counsel who denied that Grupo Famsa was located at the  
26 address given for service. Grupo Famsa even went as far as to produce a tax registration form  
27 which stated that a different company was settled there. Even though this definitely is not  
28

1 evidence of Grupo Famsa no longer functioning in said domicile, the court server refused to  
2 perform service on two occasions.

3         6. During the course of my research for evidence to show the Court that B.E. Uno  
4 had the correct address for service, we found a summons published in the most important  
5 newspaper in Monterrey for a shareholders meeting of Grupo Famsa. The summons clearly  
6 stated that the meeting would be held precisely at the address where we had been trying to  
7 perform service. This evidence was provided to the Court which eventually agreed with us and  
8 ordered the process server to carry out service at the assigned place.

10         7. After service was complete, the court official who delivered the process prepared  
11 a two page written report to the court as to what transpired. The report states that the appointed  
12 server made sure that he was at the right place both by the signs placed at the exterior of the  
13 building and by the information provided by the person who received the process, who fully  
14 identified herself and stated that she was an employee of Grupo Famsa. The process server  
15 delivered the process to this individual.

17         8. After reviewing the report of the process server, the court signed a Certificate of  
18 Service which is attached to this declaration as Exhibit A. It is the court certification that service  
19 was completed in conformance with Mexican law.

21         9. Mexican law does not require that service of process on a corporation be made by  
22 service on someone who is authorized by the corporation to receive service of process.

23         10. Articles 66, 67, 69 and 70 of the Civil Procedures Code for the State of Nuevo  
24 Leon are applicable to the topic of service of process and read as follows:

25                 “Article 66.- Consent of the person being served is not required for the validity  
26 of the notification (service of process).”

27                 “Article 67.- The mandate ordering service will express the matter or subject of  
28 service to be performed and the person or persons with whom it should be  
carried out.”

1 "Article 69.- Service of process to defendant, except in cases specified in the  
2 Law, must be made personally at the domicile assigned for such effect, by the  
Court appointed server or Court Clerk. (...)"

3 If the interested (looked for) party is not present and after the server has made  
4 sure, with information provided by two neighbors, that the person to be served  
in fact lives at the assigned domicile, all of which he will state in a written  
5 record, (...); service will be performed through the delivery of a written  
instructive which will state the file number, name and last name of the person  
6 petitioning service, subject and nature of the petition, of the judge or tribunal  
that ordered service, a full copy of the decree to be notified, the date and time  
7 when the written instructive is delivered and the name and last names of the  
person to whom it was delivered."

8 "Article 70.- The written instructive referred to in the previous article will be  
9 delivered to family members, household members or to any other legally able  
person that is found at the house where service is performed. (...)"

10 11. Based on my review of applicable Mexican law and the records of the court  
11 pertaining to service on Grupo Famsa, I conclude that Grupo Famsa was validly served in  
12 accordance with Mexican law.

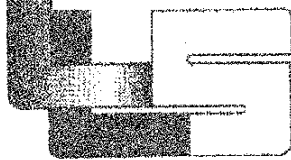
13 I declare under penalty of perjury under the laws of the State of Nevada that the facts  
14 contained in this declaration are true and correct.

15 Executed this 15<sup>th</sup> day of June, 2015, at Monterrey, Mexico.

16  
17  
18  
19 Celso E. Najera Gonzalez

# **EXHIBIT A**

**LEGAL LANGUAGE SERVICES**



A Division of ALS International, Inc.  
8014 State Line Road  
Suite 110  
Leawood, KS 66208

Telephone (913) 341-3167  
Toll Free (800) 755-5775  
Telefax (913) 341-3168  
www.legallanguage.com

May 20, 2015

To whom it may concern:

This is to certify that the attached translation from Spanish into English is an accurate representation of the documents received by this office. These documents are designated as:

**Proof of International Service of Process in Mexico upon the Defendant:  
GRUPO FAMSA, S.A. DE C.V.**

Maria Victoria Portuguese, Manager of this company, certifies that Addy Miro, who translated this document, is fluent in Spanish and standard North American English and qualified to translate. She attests to the following:

"To the best of my knowledge, the accompanying text is a true, full and accurate translation of the specified document".

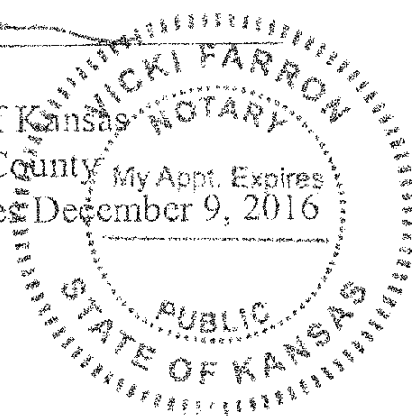
Signature of Maria Victoria Portuguese

Subscribed and sworn to before me this May 20, 2015.

Vicki Farron  
Notary Public, State of Kansas  
Qualified in Johnson County  
My commission expires December 9, 2016

Sincerely,

Victor J. Hertz  
President



"2015, the Year of the General José María Modelos and Pavón."

RESERVED AND CONFIDENTIAL INFORMATION	
Classified Date:	April 17, 2015
Responsible Unit:	Legal Affairs General Administration
Reserve Period:	6 years.
Legal Grounds.	Articles 13, Sections IV and V; 14, Sections III and IV and the Federal Transparency Law and Access to Government Public Information
Classified Sections	ALL SECTIONS AND ANNEXES

**ASJ Matter Number- 12808**

File: ASJ/541/1/2885/2013

**Mexico, D.F., April 17, 2015**

**Case: A-14-706336-C.**

**B.E. UNO, LLC**

**Vs.**

**FAMSA, INC. AND GRUPO FAMSA, S.A. DE C.V.**

**Victoria Portuquez**  
International Litigation Support Services,  
Legal Language Services  
8014 State Line Road, Suite 110,  
Leawood, Kansas, 66208, U.S.A.  
(United States of America)

This concerns the letter rogatory issued by the District Court for Clark County, Nevada, United States of America, under case number A-14-706336-C, requested by **B.E. UNO, LLC** against **FAMSA, INC** and **GRUPO FAMSA, S.A. DE C.V.**

Regarding said matter, I am sending that office the letter rogatory, proof of action taken and the attached certificate titled "*Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*", completed, signed, and sealed by the Letters Rogatory Judge for the State of Nuevo Leon.

I am notifying and sending you the above pursuant to the provisions of Articles 28, Section XI of the Federal Public Administration Organic Law, 14 Section VI and 33 Section IX of the Internal Rules of the Foreign Affairs Secretary, all in full force.

**Sincerely,**  
Letters Rogatory Department Director

*[Signature]*

**Nancy Rocío Alanís Arredondo.**

ANNEX: Letter rogatory, completed, signed, and sealed proof of service

(DG 09464)

\* The letter rogatory is being returned due to unfulfilled requirements by the requesting authority.

**CERTIFICATE**

The undersigned authority has the honour to certify, in conformity with article 6 of the Convention,

1) that the document has been served\*

- the date MARCH 17, 2015  
 - at (place, street, number) PINO SUAREZ AVENUE #1202, NORTH, CENTRAL MONTERREY,  
NUEVO LEON, MEXICO

in one of the following methods authorized by article 5

- ☐ (a) in accordance with the provisions of sub-paragraph (a) of the first paragraph of article 5 of the Convention\*,  
☐ (b) in accordance with the following particular method\*: \_\_\_\_\_  
☒ (c) by delivery to the addressee, who accepted it voluntarily.

The documents referred to in the request have been delivered to:

- (identity and description of person) CLAUDIA PALOMO MARTINEZ.  
 - relationship to the addressee (family, business, or other): EMPLOYEE IN THE DEFENDANTS  
LEGAL DEPARTMENT

2) that the document has not been served, by reason of the following facts\*:

In conformity with the second paragraph of article 12 of the Convention, the applicant is requested to pay or reimburse the expenses detailed in the attached statement\*.

Annexes

Documents returned:

LETTER ROGATORY AND  
CERTIFICATE OF COMPLETION

In appropriate cases, documents establishing the service:

LETTER ROGATORY AND  
CERTIFICATE OF COMPLETION

\*Delete if inappropriate.

Done at UNITED MEXICAN STATES, the \_\_\_\_\_

STATE OF NUEVO LEON  
 LETTERS ROGATORY COURT

[Signature]

IEHU EZEQUIEL ECHARTEA HERNANDEZ, ESQ.  
 CLERK OF THE COURT - FOR LETTERS ROGATORY  
 FOR THE STATE OF NUEVO LEON.



"2015, Año del Generalísimo José María Morelos y Pavón".

INFORMACIÓN RESERVADA Y CONFIDENCIAL	
Fecha de Clasificación:	17 de abril del 2015
Unidad Responsable:	Dirección General de Asuntos Jurídicos
Período de Reserva:	6 años
Fundamento Legal:	Artículos 13, fracciones IV y V; 14, fracciones III y IV de la Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental.
Partes Clasificadas:	TODOS Y ANEXOS

Oficio Número ASJ- 12808

Expediente: ASJ/541/1/2885/2013.

México, D.F., a 17 de abril de 2015

**Caso: A-14-706336-C.**

B.E. UNO, LLC

Vs

FAMSA, INC y GRUPO FAMSA, S.A. DE C.V.

**Victoria Portuguese**

International Litigation Support Services,  
Legal Language Services  
8014 State Line Road, Suite 110,  
Leawood, Kansas, 66208, U.S.A.  
(Estados Unidos de América)

Me refiero a la carta rogatoria librada Tribunal de Distrito, Condado de Clark, Nevada, Estados Unidos de América, deducida del caso número A-14-706336-C, promovido por **B.E. UNO, LLC** en contra de **FAMSA, INC y GRUPO FAMSA, S.A. DE C.V.**

Al respecto, envío a esa oficina la carta rogatoria, las constancias de lo actuado y el certificado anexo al "Convenio de la Haya Sobre la Notificación o el Traslado de Documentos Judiciales o Extrajudiciales en Materia Civil o Comercial", llenado, firmado y sellado por el Juez de Exhortos y Cartas Rogatorias del Estado de Nuevo León.

Lo anterior lo comunico y remito a usted de conformidad con lo dispuesto en los artículos 28 fracción XI de la Ley Orgánica de la Administración Pública Federal, 14 fracción VI y 33 fracción IX del Reglamento Interior de la Secretaría de Relaciones Exteriores, todos los ordenamientos en vigor.

**Atentamente.**

La Jefa del Departamento de Exhortos y Cartas Rogatorias.

  
**Nancy Rocio Alanis Arredondo.**

ANEXO: Carta rogatoria, constancias de lo actuado y certificado llenado, firmado y sellado.

(DG. 09464)

\*Se devuelve carta rogatoria por falta de requisitos a la autoridad exhortante.

CERTIFICACIÓN  
CERTIFICATE  
ATTESTATION

La autoridad infrascripta tiene el honor de certificar, conforme al artículo 6 de dicho Convenio.  
The undersigned authority has the honour to certify, in conformity with article 6 of the Convention.  
L'autorité soussignée a l'honneur d'attester conformément à l'article 6 de ladite Convention.

1. que la petición ha sido ejecutada\*  
1) that the document has been served \*  
1. que la demande a été exécutée \*

- el (fecha)

- the (date)

- le (date)

17 DE MARZO DE 2015

- en (localidad, calle, número)

- at (place, street, number)

- à (localité, rue, numéro)

AVENIDA PINO SUAREZ #1202, NORTE, CENTRO DE MONTERREY

NUEVO LEON, MEXICO

- en una de las formas siguientes previstas en el artículo 5:

- in one of the following methods authorised by article 5:

- dans une des formes suivantes prévues à l'article 5:

☐ a) según las formas legales [artículo 5, párrafo primero, letra (a)].\*

(a) in accordance with the provisions of sub-paragraph (a) of the first paragraph of article 5 of the Convention\*.

a) selon les formes légales (article 5, alinéa premier, lettre a). \*

☐ b) según la forma particular siguiente\*

(b) in accordance with the following particular method\*:

b) selon la forme particulière suivante : \*

☒ c) por simple entrega.\*

(c) by delivery to the addressee, who accepted it voluntarily. \*

c) par remise simple. \*

Los documentos mencionados en la petición han sido entregados a:

The documents referred to in the request have been delivered to:

Les documents mentionnés dans la demande ont été remis à:

- (identidad y calidad de la persona)

- (identity and description of person)

- (identité et qualité de la personne)

CLAUDIA PALOMO MARTINEZ.

- Vínculos de parentesco, subordinación u otros, con el destinatario del documento:

- relationship to the addressee (family, business, or other):

- liens de parenté, de subordination ou autres, avec le destinataire de l'acte:

EMPLEADA DEL AREA JURIDICA

DE LA PARTE DEMANDADA

2. que la petición no ha sido ejecutada en razón a los hechos siguientes:\*

2) that the document has not been served, by reason of the following facts\*:

2. que la demande n'a pas été exécutée, en raison des faits suivants: \*

Conforme al artículo 12, párrafo 2, de dicho Convenio, se ruega al requirente el pago o reembolso de los gastos cuyos detalles figuran en la declaración adjunta\*.

In conformity with the second paragraph of article 12 of the Convention, the applicant is requested to pay or reimburse the expenses detailed in the attached statement\*.

Conformément à l'article 12, alinéa 2, de ladite Convention, le requérant est prié de payer ou de rembourser les frais dont le détail figure au mémoire ci-joint\*.

Anexos

Annexes

Annexes

Documentos reenviados.

Documents returned:

Pièces renvoyées:

CARTA ROGATORIA Y

CERTIFICADO DE

CUMPLIMIENTO

En su caso, los documentos justificativos de la ejecución:

In appropriate cases, documents establishing the service:

Le cas échéant, les documents justificatifs de l'exécution:

CARTA ROGATORIA Y

CERTIFICADO DE

CUMPLIMIENTO

JUEZ

Hecho en \_\_\_\_\_ el \_\_\_\_\_ de \_\_\_\_\_ de \_\_\_\_\_

Donec \_\_\_\_\_, the \_\_\_\_\_

Fait à \_\_\_\_\_, le \_\_\_\_\_

Firma y sello.

Signature and / or stamp.

SECRETAJIA DEL

ESTADO DE NUEVO LEON

LIC. DE HONORARIOS Y CARTAS

ROGATORIAS DEL JUZGADO

DE EXHORTOS Y CARTAS ROGATORIAS

2 EN EL ESTADO DE NUEVO LEON.

\* Tachar las menciones innecesarias.

Delete if inappropriate.

Rayer les mentions inutiles.

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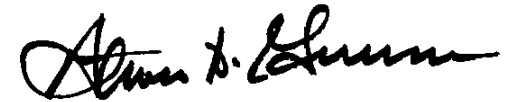
**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of the law firm of Goold Patterson, and on the 16<sup>th</sup> day of June, 2015, I served the foregoing PLAINTIFF'S OPPOSITION TO DEFENDANT GRUPO FAMSA, S.A. de C.V.'s MOTION TO QUASH SERVICE OF PROCESS; DECLARATION OF KELLY J. BRINKMAN IN SUPPORT; DECLARATION OF CELSO NÀJERA GONZALEZ IN SUPPORT by enclosing a true and correct copy of the same in a sealed envelope, postage fully pre-paid thereon, and depositing said envelope in a mailbox of the United States Post Office, addressed as follows:

Christopher Byrd, Esq.  
FENNEMORE CRAIG JONES VARGAS  
300 S. Fourth Street, Suite 1400  
Las Vegas, NV 89101  
*Attorneys for Defendants*

Richard I. Arshonsky, Esq.  
LEVINSON ARSHONSKY & KURTZ, LLP  
15303 Ventura Blvd., Suite 1650  
Sherman Oaks, CA 91403  
*Attorneys for Defendants*

  
An Employee of Goold Patterson



CLERK OF THE COURT

**RIS**

Christopher Byrd, Esq. (No. 1633)

Daniel Nubel, Esq. (No. 13553)

**FENNEMORE CRAIG, P.C.**

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*Attorneys for Defendants*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

B.E. UNO, LLC, a Nevada limited liability  
company,

Plaintiff,

vs.

FAMSA, INC., a California corporation;  
GRUPO FAMSA, S.A. DE C.V., a Mexican  
corporation,

Defendants.

Case No.: A-14-706336-C

Dept. No.: XXXII

**REPLY IN SUPPORT OF DEFENDANT**  
**GRUPO FAMSA, S.A., DE C.V.'s MOTION**  
**TO QUASH SERVICE OF PROCESS**

**HEARING DATE: July 14, 2015**

**HEARING TIME: 9:00 a.m.**

Defendant GRUPO FAMSA, S.A. DE C.V., a Mexican corporation ("Grupo"), by and through its counsel of record, FENNEMORE CRAIG, P.C., and Levinson Arshonsky & Kurtz, LLP, offers this Reply in Support of Grupo's Motion to Quash Service of Process (the "Motion").

Grupo bases this Reply on the pleadings and papers on file herein, the Memorandum of Points and Authorities submitted in support hereof, all other exhibits attached hereto, and any oral argument which the Court may entertain at the time of Hearing. Specifically, attached to this Reply is the Amended Declaration of Humberto Loza, who serves as Grupo's Legal Director. Please find a copy of this Amended Declaration attached as **Exhibit A**. This Declaration confirms

DNUBEL/10583428.1/034570.0001

1 that Claudia Palomo Martinez, the individual Uno served process to in this case, is a mere hostess  
2 employed by Grupo to greet individuals coming into its store. Grupo reserves the right to offer  
3 additional support for this motion.

4 DATED this 7th day of July, 2015.

5 **FENNEMORE CRAIG, P.C.**

6 

7 Christopher Byrd, Esq. (No. 1633)  
8 Daniel Nubel, Esq. (No. 13553)  
9 300 S. Fourth Street Suite 1400  
10 Las Vegas, NV 89101  
11 Telephone: (702) 692-8000  
12 Facsimile: (702) 692-8099  
13 E-Mail: [cbyrd@fclaw.com](mailto:cbyrd@fclaw.com)  
14 [dnubel@fclaw.com](mailto:dnubel@fclaw.com)

15 *In association with:*

16 **LEVINSON ARSHONSKY & KURTZ,  
17 LLP**

18 Richard I. Arshonsky, Esq. (No. 4518)  
19 15303 Ventura Blvd., Suite 1650  
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21 Telephone: (818) 382-3434  
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23 E-Mail: [rarshonsky@laklawyers.com](mailto:rarshonsky@laklawyers.com)  
24 *Attorneys for Defendants*

25 **MEMORANDUM OF POINTS AND AUTHORITIES**

26 **I. INTRODUCTION**

27 B.E. Uno, LLC ("Uno")'s Response to Grupo's Motion (the "Response") fails to provide  
28 any legal authority or even argument that service of process on a hostess or greeter at an address  
for Grupo complies with requirements of the United States Constitution (the "Constitution").  
Unless service complies with Constitution it must be quashed, regardless of whether the attempted  
service might be proper under Mexican law or the Hague Convention.

The Declaration of Humberto Loza, attached as **Exhibit A**, makes clear that Claudia  
Paloma Martinez, the individual Uno allegedly served with process, was a hostess at an address for  
Grupo. While attempted service upon a hostess at a Grupo address may be sufficient in Mexico,  
this case is being heard in an American court, and the Constitution and its protections apply. *See*  
*Burda Media, Inc. v. Viertel*, 417 F.3d 292, 303 (2d Cir. 2005) ("in addition to the Hague

1 Convention, service of process must also satisfy constitutional due process”). Certainly the  
2 Constitution would not permit service upon Golden Nugget Inc. by handing process to a showgirl  
3 in front of the hotel on Freemont Street handing out coupons for free shrimp cocktails at the hotel  
4 or service upon Walmart by handing process to one of its famous greeters. Since Uno served a  
5 hostess or greeter rather than an agent, officer or representative of Grupo, Uno failed to comply  
6 with the Constitution in this case, and service is, therefore, improper.

## 7 **II. LEGAL ARGUMENT**

8 Uno’s Response argues two points: (1) that the Hague Convention supersedes Nevada  
9 law; and (2) that Uno’s service of process on Grupo in this case complied with Mexican Law.  
10 Neither argument is determinative of the issue before this Court, however. Grupo conceded that  
11 Uno “utilized the correct channels of process when they sent the judicial documents to Mexico’s  
12 Central Authority.” *See* Mot. to Quash, p. 4, ll 5-6. Instead, the issue before this Court is whether  
13 handing process to a hostess or greeter at a Grupo address comports with the Constitution.

14 While the Hague Convention defines the procedures for service of process, “the legal  
15 sufficiency of a formal delivery of documents must be measured against some standard. The  
16 Convention does not prescribe a standard, so we almost necessarily must refer to the internal law  
17 of the forum state.” *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 694-95 (1988).  
18 In the United States, “**service of process must comply with both constitutional and statutory**  
19 **requirements.**” *R. Griggs Grp. Ltd. v. Filanto Spa*, 920 F. Supp. 1100, 1103 (D. Nev. 1996)  
20 (emphasis added). The United States Supreme Court has emphasized that “as a legal matter, the  
21 Due Process Clause requires every method of service to provide ‘notice reasonably calculated,  
22 under all circumstances, to appraise interested parties of the pendency of the action.’”  
23 *Volkswagenwerk Aktiengesellschaft*, 486 U.S. at 707. Thus, in addition to complying with the  
24 Hague Convention procedural requirements and Mexico’s internal law, Uno’s service of process  
25 on Grupo **must also comport to the requirements of the United States Constitution.** *Burda*  
26 *Media, Inc. v. Viertel*, 417 F.3d 292, 303 (2d Cir. 2005) (“in addition to the Hague Convention,  
27 service of process must also satisfy constitutional due process”); *see also Heredia v. Transp.*  
28 *S.A.S., Inc.*, 101 F. Supp. 2d 158, 162 (S.D.N.Y. 2000) (“in addition to the Hague Convention,

1 service of process must also satisfy constitutional due process”); *see also Ackermann v. Levine*,  
2 788 F.2d 830, 838 (2d Cir. 1986) (“service of process must satisfy both the statute under which  
3 service is effectuated and constitutional due process”).

4 To constitutionally effectuate service on a foreign corporation, service must be made upon  
5 an agent, officer, or representative of that corporation. *See Tara Minerals Corp. v. Carnegie Min.*  
6 *& Exploration, Inc.*, 2012 WL 760653, at \*1 (D. Nev. Mar. 7, 2012) (“service can be made ‘upon  
7 a representative so integrated with the organization that he will know what to do with the papers.  
8 Generally, service is sufficient when made upon an individual who stands in such a position as to  
9 render it fair, reasonable and just to imply the authority on his part to receive service”) (quoting  
10 *Direct Mail Specialists, Inc. v. Eclat Computerized Techs., Inc.*, 840 F.2d 685, 688 (9th Cir.  
11 1988)); *see also Cont'l Convention & Show Mgmt. v. Am. Broad. Co.*, 230 Minn. 217, 220, 41  
12 N.W.2d 263, 265 (1950) (“in order to maintain an action against a foreign corporation . . . service  
13 of process upon it must be made upon its agent, officer, or representative here acting in such  
14 capacity, so that notice to him will be deemed notice to the corporation”); *see also Courtesy*  
15 *Chevrolet, Inc. v. Tennessee Walking Horse Breeders' & Exhibitors' Ass'n of Am.*, 344 F.2d 860,  
16 866 (9th Cir. 1965) (“the rationale of all rules for service of process on corporations is that service  
17 must be made on *a representative so integrated with the corporation sued as to make it a priori*  
18 *supposable that he will realize his responsibilities* and know what he should do with any legal  
19 papers served on him”) (emphasis added). Uno’s Response provides no law to contradict these  
20 well-reasoned authorities. Instead, Uno ignored Grupo’s constitutional argument and made no  
21 attempt to demonstrate that service on Grupo complied with constitutional standards.

22 Similar to this case, in *R. Griggs Grp. Ltd. v. Filanto Spa*, 920 F. Supp. 1100, 1102 (D.  
23 Nev. 1996), a defendant foreign corporation filed a motion to quash alleging that the plaintiff had  
24 failed to serve an agent, officer, or representative of the defendant foreign corporation. The  
25 defendant foreign corporation filed an affidavit stating that the employee plaintiff served with  
26 process was not an officer, agent, or representative appointed to accept process on its behalf. *Id.* at  
27 1102. Similar to the case here, plaintiff in that case provided only the affidavit of the individual  
28 that served process, which stated that the person served was a “legal representative” of the

1 defendant foreign corporation. *Id.* Given these facts, the court stated as follows:

2 Plaintiff has made no showing that [the individual served] was sufficiently  
3 integrated with the organization to render service upon him fair, reasonable and  
4 just. *Cf. Direct Mail Specialists, Inc. v. Eclat Computerized Technologies, Inc.*,  
5 840 F.2d 685 (9th Cir.1988). While the process server may have thought he was  
6 serving a legal representative of [defendant foreign corporation], no facts have  
7 been presented to the court to support this assumption and that assessment has no  
8 bearing on the court's determination. Plaintiff freely admits that it has yet to  
9 conduct discovery and does not know the extent or nature of [the individual  
10 served] involvement with [defendant foreign corporation], yet asks the court to  
11 share its view that “considering the circumstances surrounding the service, it is  
12 apparent that [the individual served] represented [defendant foreign corporation]  
13 during the WSA show” and that “clearly some formal relationship existed”  
14 between them. This the court declines to do. **The burden is on the plaintiff to  
15 establish the propriety of the service.** *Aetna Business Credit, Inc. v. Universal  
16 Decor & Interior Design, Inc.* 635 F.2d 434, 435 (5th Cir.1981).

17 *R. Griggs Grp. Ltd. v. Filanto Spa*, 920 F. Supp. 1100, 1102-03 (D. Nev. 1996) (emphasis added).

18 Ultimately, the *R. Griggs* court found service of process on this individual improper  
19 because the plaintiff failed to show that the individual served was “an officer, director, employee,  
20 managing agent, or general agent of [defendant foreign corporation]” or that the individual served  
21 was an “agent authorized by appointment or by law to receive service of process on behalf of  
22 [defendant foreign corporation]”. *Id.* at 1102-03.

23 On the other hand, in *Burda Media, Inc. v. Viertel*, 417 F.3d 292, 303 (2d Cir. 2005), the  
24 court found that service on a foreign corporation complied with both the Hague Convention and  
25 the United States Constitution because “[plaintiff] had proof that [the individual served] was a  
26 managing director of [Defendant] and therefore served as its representative.”

27 In this case, Uno caused the judicial documents to be served upon Claudia Palomo  
28 Martinez. Ms. Martinez is a hostess or greeter at a Grupo’s store. *See* Declaration of Humberto  
Loza attached as **Exhibit A**. Since Ms. Martinez is only a hostess at Grupo, she is hardly an agent,  
officer, or representative so integrated within Grupo that service of process upon her could  
comport with the Constitution. In its response Uno asserts that Ms. Martinez’s relationship to Uno  
is irrelevant because a relationship does not have to be established under Mexican law. Uno argues  
that service of process was proper here by the simple fact that “the court-appointed process server



1 delivered the Summons and Complaint to Grupo at the address approved by the Mexican court,  
2 which was the same address listed in the Summons.” See Uno’s Response p 5 ll 20-24. While this  
3 may be enough under the Hague Convention and Mexico internal law, as demonstrated above, it  
4 does not comport with the Constitution, nor should it, given Ms. Martinez’s greeter status with  
5 Grupo.

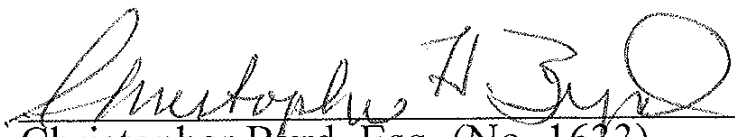
6 The Constitution requires that to maintain an action against a foreign corporation, service  
7 of process must be made on an agent, officer, or representative of that corporation. Uno’s  
8 compliance with Mexican law does not satisfy the Constitutional requirements for valid service.

9 **III. CONCLUSION**

10 Uno’s attempt at service here failed to comport with the requirements of the Constitution  
11 because the summons was served upon Claudia Palomo Martinez, a hostess or greeter at one of  
12 Grupo’s stores. Uno does not dispute that the Constitution must be followed for service to be  
13 valid. Uno ignores the issue completely. The Constitution requires service of an officer, agent or  
14 representative of Grupo, which was not done in this case. Uno does not suggest otherwise.  
15 Therefore service must be quashed.

16 DATED this 7th day of July, 2015.

17 **FENNEMORE CRAIG, P.C.**

18 

19 Christopher Byrd, Esq. (No. 1633)  
20 Daniel Nubel, Esq. (No. 13553)  
21 300 S. Fourth Street Suite 1400  
22 Las Vegas, NV 89101  
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24 Facsimile: (702) 692-8099  
25 E-Mail: [cbyrd@fclaw.com](mailto:cbyrd@fclaw.com)  
26 [dnubel@fclaw.com](mailto:dnubel@fclaw.com)

27 *In association with:*

28 **LEVINSON ARSHONSKY & KURTZ,  
LLP**

Richard I. Arshonsky, Esq. (No. 4518)  
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Sherman Oaks, CA 91403  
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E-Mail: [rarshonsky@laklawyers.com](mailto:rarshonsky@laklawyers.com)  
*Attorneys for Defendants*

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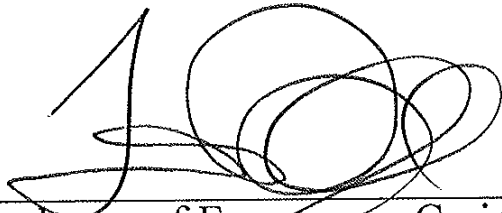
**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the law firm of FENNEMORE CRAIG, P.C.; that on the 7th day of July, 2015, I served a true and correct copy of the document described below on the parties listed by the method indicated at the addresses set forth for said parties:

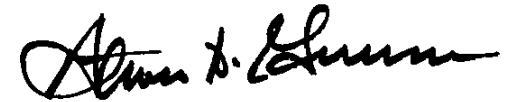
**Document Served:**                      **REPLY IN SUPPORT OF DEFENDANT GRUPO FAMSA, S.A., DE C.V.'s MOTION TO QUASH SERVICE OF PROCESS**

Kelly J. Brinkman, Esq.  
Goold Patterson  
1975 Village Center Circle #140  
Las Vegas, NV 89134

☒ Via E-service  
☐ Via U.S. Mail (Not registered with CM/ECF Program)

  
\_\_\_\_\_  
An Employee of Fennemore Craig, P.C.

# Exhibit A



CLERK OF THE COURT

1 **COMP**  
2 Kelly J. Brinkman, Esq.  
3 Nevada Bar No. 6238  
4 GOOLD PATTERSON  
5 1975 Village Center Circle, Suite 140  
6 Las Vegas, Nevada 89134  
7 (702) 436-2600 (Telephone)  
8 (702) 436-2650 (Fax)  
9 [kbrinkman@gooldpatterson.com](mailto:kbrinkman@gooldpatterson.com)  
10 *Attorneys for B.E. Uno, LLC*

8 **DISTRICT COURT**

9 **CLARK COUNTY, NEVADA**

10 B.E. UNO, LLC, a Nevada limited liability  
11 company,

12 Plaintiff,

13 vs.

14 FAMSA, INC., a California corporation;  
15 GRUPO FAMSA, S.A. de C.V., a Mexican  
16 corporation,

17 Defendants.

CASE NO. A-14-706336-C

DEPT. NO. XXXII

**COMPLAINT**

**ARBITRATION EXEMPT - AMOUNT IN  
CONTROVERSY IN EXCESS OF \$50,000;  
EQUITABLE RELIEF SOUGHT;  
DECLARATORY RELIEF SOUGHT**

17 B.E. Uno, LLC ("Plaintiff"), by and through its attorney, Kelly J. Brinkman, Esq. of Goold  
18 Patterson, for its Complaint states and alleges as follows:

19 **PARTIES**

20 1. Plaintiff is, and at all times relevant herein was, a Nevada limited liability company  
21 duly authorized to conduct business in the State of Nevada.

22 2. Plaintiff is informed and believes, and upon such information and belief alleges,  
23 that Defendant Famsa, Inc. ("FAMSA") is, and at all times relevant herein was, a California  
24 corporation duly authorized to conduct business in the State of Nevada.

25 3. Plaintiff is informed and believes, and upon such information and belief alleges,  
26 that Defendant Grupo Famsa, S.A. de C.V. ("GRUPO FAMSA") is, and at all times relevant  
27 herein was, a Mexican corporation but is subject to the jurisdiction of the Nevada courts, as more  
28 fully set forth below.

GOOLD PATTERSON  
1975 VILLAGE CENTER CIRCLE, SUITE 140  
LAS VEGAS, NEVADA 89134  
(702) 436-2600 FAX: (702) 436-2650

GENERAL ALLEGATIONS

4. Plaintiff owns a shopping center commonly known as Bonanza East Shopping Center located south of the southeast corner of Bonanza Road and Eastern Avenue in the City of Las Vegas, County of Clark, State of Nevada (the "Shopping Center").

5. On or about June 3, 2005, Plaintiff, as landlord, and Defendant FAMSA, as tenant, entered into a lease agreement for commercial retail space at the Shopping Center in exchange for monthly rents and other charges (the "Lease").

6. The leased premises is located at 562 North Eastern Avenue, Las Vegas, Nevada 89109 (the "Leased Property")

7. The Lease was for a term of fifteen (15) years, with the rent commencement date on or about October 29, 2005, with a current base monthly rent of Thirty-Two Thousand Eight Hundred Fifty-Three and 56/100 Dollars (\$32,853.56), subject to increases as set forth in Sections 1.07 and 4.02 of the Lease.

8. Pursuant to the terms of the Lease, Defendant FAMSA agreed to faithfully perform each of the terms, covenants and conditions of the Lease, including payment of all rents and other charges accrued thereunder.

9. Pursuant to the Lease terms, Defendant FAMSA agreed that if it failed to make payments as set forth in the Lease, or if it vacated or abandoned the Leased Property and ceased paying rent and/or additional rent, such events would constitute a default under the Lease.

10. Concurrently with the execution of the Lease, Defendant GRUPO FAMSA agreed to unconditionally and irrevocably guaranty the performance and obligations of the Lease terms by tenant, Defendant FAMSA, and accordingly, Defendant GRUPO FAMSA executed a Guaranty ("Guaranty") covenanting thereto.

11. As part of the Lease, Defendant FAMSA agreed that the Lease would be governed by, interpreted under the laws of, and enforced in the courts of the situs of the Leased Property and thus, Defendant FAMSA is subject to the jurisdiction of the courts of the State of Nevada with respect to this legal action.

1           12. As part of the Guaranty, Defendant GRUPO FAMSA agreed that the Guaranty  
2 would be governed by, interpreted under the laws of, and enforced in the courts of the situs of the  
3 Leased Property and thus, Defendant GRUPO FAMSA is subject to the jurisdiction of the courts  
4 of the State of Nevada with respect to this legal action.

5           13. Defendant FAMSA failed and/or refused to pay monthly rents, its share of the  
6 Parcel's Operating Costs (as defined in the Lease) (*i.e.*, common area charges, insurance, utilities)  
7 and Impositions (as defined in the Lease) attributed to the Leased Property, monthly pylon sign  
8 fee, and late fees to Plaintiff as required by the Lease.

9           14. On or about November 16, 2012, Defendant FAMSA indicated its intent to vacate  
10 the Leased Property on or about November 30, 2012, prior to expiration of the Lease term.

11           15. Defendant GRUPO FAMSA failed and/or refused to pay monthly rents, its share of  
12 the Parcel's Operating Costs (as defined in the Lease) (*i.e.*, common area charges, insurance,  
13 utilities) and Impositions (as defined in the Lease) attributed to the Leased Property, monthly  
14 pylon sign fee, and late fees to Plaintiff as required by the Guaranty.

15           16. The amounts due and owing to Plaintiff continue to increase each month pursuant to  
16 the terms of the Lease and/or Guaranty.

17           17. As a result of Defendants' conduct, Plaintiff has been required to retain the services  
18 of Goold Patterson to prosecute this action and to protect its rights under the Lease and Guaranty,  
19 and is therefore entitled to reasonable attorneys' fees and costs as set forth in the Lease and  
20 Guaranty, as well as by law.

21           18. Plaintiff, on such abandonment of the Leased Property by FAMSA, using care,  
22 made reasonable and diligent efforts and endeavors to relet the Leased property; that such efforts  
23 and endeavors were unsuccessful, and that said Leased Property has remained unrented and vacant  
24 since November 2012 to date.

25           19. On April 28, 2014, this Court awarded Plaintiff a Judgment against Defendant  
26 FAMSA, Inc. in the amount of \$748,394.19 for its failure to pay for rent and other charges due  
27 from November 2012 through February 2014.  
28

20. The Court also found for Plaintiff that liability of Defendant FAMSA under the subject lease will continue to be binding upon Defendant FAMSA in the future.

**FIRST CAUSE OF ACTION**

**(Breach of Contract Against FAMSA)**

21. Plaintiff repeats and re-alleges each and every allegation contained in the above paragraphs as though fully set forth herein.

22. The Lease is a valid and enforceable agreement.

23. Defendant FAMSA has breached the Lease as more fully set forth above.

24. As a direct and proximate cause of Defendant FAMSA's breach, Plaintiff has been damaged in an amount in excess of Ten Thousand Dollars (\$10,000.00), the total of which cannot yet be affixed, and thus, will be subject to proof at the time of trial.

**SECOND CAUSE OF ACTION**

**(Unjust Enrichment Against FAMSA)**

25. Plaintiff repeats and re-alleges each and every allegation contained in the above paragraphs as though fully set forth herein.

26. Defendant FAMSA represented and covenanted that it would perform according to the terms of the Lease.

27. Plaintiff conferred a benefit upon Defendant FAMSA by giving it access to and possession of the premises pursuant to the terms of the Lease in expectation that Plaintiff would be paid by Defendant FAMSA according to the terms of the Lease.

28. Defendant FAMSA failed to pay the monthly rent, the Parcel's Operating Costs (as defined in the Lease), and Impositions (as defined in the Lease) attributed to the Leased Property, despite representations and covenants to Plaintiff that it would pay the same.

29. If Defendant FAMSA is permitted to retain the benefit of the services provided by Plaintiff on Defendant FAMSA's behalf without having to pay for those benefits, Defendant FAMSA will have been unjustly enriched.

30. Accordingly, Plaintiff has been damaged in the amount of the reasonable value of the premises and services provided and as set forth in the Lease, which amount is greater than Ten

1 Thousand Dollars (\$10,000.00) and will be subject to proof at the time of trial.

2 **THIRD CAUSE OF ACTION**

3 **(Breach of Covenant of Good Faith and Fair Dealing Against FAMSA)**

4 31. Plaintiff repeats and re-alleges each and every allegation contained in the above  
5 paragraphs as though fully set forth herein.

6 32. The Lease referred to above is and was contractual, and as such, there existed an  
7 implied in law term imposing an obligation of good faith and fair dealing. Said term obligates  
8 each party to refrain from taking any action which would otherwise interfere with the lawful and  
9 legal rights of the other party to carry out the terms of the Lease. Further, said term requires that  
10 the parties refrain from carrying out any acts which would otherwise cause undue hardship on the  
11 other party.

12 33. Defendant FAMSA breached the covenant of good faith and fair dealing in the  
13 Lease.

14 34. As a direct and proximate result of the breach of the implied covenant of good faith  
15 and fair dealing, Plaintiff has been damaged in an amount in excess of Ten Thousand Dollars  
16 (\$10,000.00), the total amount of which cannot yet be determined, and thus, will be subject to  
17 proof at the time of trial.

18 **FOURTH CAUSE OF ACTION**

19 **(Declaratory Relief Against FAMSA and GRUPO FAMSA)**

20 35. Plaintiff repeats and re-alleges each and every allegation contained in the above  
21 paragraphs as though fully set forth herein.

22 36. A dispute now exists between Plaintiff and Defendant FAMSA as to the rights and  
23 obligations of the parties concerning the allegations set forth herein as well as the terms and  
24 conditions of said Lease and Guaranty. Therefore, under NRS §30.040, et seq., Plaintiff is entitled  
25 to have this Court enter a declaratory judgment setting forth the respective rights, duties and  
26 obligations of the parties hereto.



**FIFTH CAUSE OF ACTION**

**(Monies Due on Account Against FAMSA and GRUPO FAMSA)**

37. Plaintiff repeats and re-alleges each and every allegation contained in the above paragraphs as though fully set forth herein.

38. Defendants owe Plaintiff an amount which is in excess of Ten Thousand Dollars (\$10,000.00), which amount increases monthly.

39. Accordingly, Plaintiff demands judgment in an amount in excess of Ten Thousand Dollars (\$10,000.00) according to the tenant account ledger, and which will be subject to proof at the time of trial.

**SIXTH CAUSE OF ACTION**

**(Breach of Contract Against GRUPO FAMSA)**

40. Plaintiff repeats and re-alleges each and every allegation contained in the above paragraphs as though fully set forth herein.

41. The Guaranty is a valid and enforceable agreement.

42. Defendant GRUPO FAMSA has breached the terms of the Guaranty as more fully set forth above.

43. As a direct and proximate cause of Defendant GRUPO FAMSA's breach, Plaintiff has been damaged in an amount in excess of Ten Thousand Dollars (\$10,000.00), the total of which cannot yet be affixed, and thus, will be subject to proof at the time of trial.

**SEVENTH CAUSE OF ACTION**

**(Unjust Enrichment Against GRUPO FAMSA)**

44. Plaintiff repeats and re-alleges each and every allegation contained in the above paragraphs as though fully set forth herein.

45. Defendant GRUPO FAMSA represented and covenanted that it would perform according to the terms of the Guaranty, including payment of the above-described fees according to the terms of the Guaranty.

46. Plaintiff conferred a benefit upon Defendant GRUPO FAMSA by giving Defendant FAMSA access to and possession of the premises in expectation that Plaintiff would be paid by

1 Defendant FAMSA and/or Defendant GRUPO FAMSA according to the terms of the Guaranty.

2 47. Defendant GRUPO FAMSA failed to pay the monthly rent, the Parcel's Operating  
3 Costs (as defined in the Lease), and Impositions (as defined in the Lease) attributed to the Leased  
4 Property, despite the representations and covenants to Plaintiff that it would pay the same.

5 48. If Defendant GRUPO FAMSA is permitted to retain the benefit of the services  
6 provided by Plaintiff on Defendant GRUPO FAMSA's behalf without having to pay for those  
7 benefits, Defendant GRUPO FAMSA will have been unjustly enriched.

8 49. Accordingly, Plaintiff has been damaged in the amount of the reasonable value of  
9 the premises and services provided and as set forth in the Lease, which amount is greater than Ten  
10 Thousand Dollars (\$10,000.00) and will be subject to proof at the time of trial.

11 **EIGHTH CAUSE OF ACTION**

12 **(Breach of Covenant of Good Faith and Fair Dealing Against GRUPO FAMSA)**

13 50. Plaintiff repeats and re-alleges each and every allegation contained in the above  
14 paragraphs as though fully set forth herein.

15 51. The Guaranty is and was contractual, and as such, there existed an implied in law  
16 term imposing an obligation of good faith and fair dealing. Said term obligates each party to  
17 refrain from taking any action which would otherwise interfere with the lawful and legal rights of  
18 the other party to carry out the terms of the Guaranty. Further, said term requires that the parties  
19 refrain from carrying out any acts which would otherwise cause undue hardship on the other party.

20 52. Defendant GRUPO FAMSA breached the covenant of good faith and fair dealing in  
21 the Guaranty.

22 53. As a direct and proximate result of the breach of the implied covenant of good faith  
23 and fair dealing, Plaintiff has been damaged in an amount in excess of Ten Thousand Dollars  
24 (\$10,000.00), the total amount of which cannot yet be determined, and thus, will be subject to  
25 proof at the time of trial.

26 ///

27 ///

28 ///

PRAYER FOR RELIEF

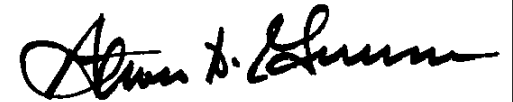
WHEREFORE, Plaintiff B.E. Uno, LLC prays for judgment, damages and other relief from Defendants Famsa, Inc., a California corporation, and Grupo Famsa, S.A. de C.V., a Mexican corporation, as follows:

1. For compensatory, incidental and consequential damages in an amount in excess of Ten Thousand Dollars (\$10,000.00), computed in accordance with the provisions of the Lease;
2. For a sum in excess of \$10,000 for general and special damages for the Plaintiff;
3. For legal pre-judgment interest at the highest rate allowable under the Lease and/or by law;
4. For the value of the Lease;
5. For the costs of recovering possession of and reletting the subject premises;
6. For reasonable attorneys' fees and costs incurred;
7. For declaratory judgment setting forth the respective rights, duties and obligations of the parties; and
8. For such other relief as the Court deems just and proper.

DATED this 29<sup>th</sup> day of August, 2014.

GOOLD PATTERSON

By:   
Kelly J. Brinkman  
Nevada Bar No. 6238  
1975 Village Center Circle, Suite 140  
Las Vegas, Nevada 89134  
*Attorneys for B.E. Uno, LLC*



CLERK OF THE COURT

1 **EXAP**  
2 Kelly J. Brinkman, Esq.  
3 Nevada Bar No. 6238  
4 GOOLD PATTERSON  
5 1975 Village Center Circle, Suite 140  
6 Las Vegas, Nevada 89134  
7 (702) 436-2600 (Telephone)  
8 (702) 436-2650 (Fax)  
9 [kbrinkman@gooldpatterson.com](mailto:kbrinkman@gooldpatterson.com)  
10 *Attorneys for Plaintiff*

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 B.E. UNO, LLC, a Nevada limited liability  
10 company,

11 Plaintiff,

12 vs.

13 FAMSA, INC., a California corporation;  
14 GRUPO FAMSA, S.A. de C.V., a Mexican  
15 corporation,

16 Defendants.

CASE NO.: A-14-706336-C

DEPT. NO.: XXXII

**EX PARTE APPLICATION FOR  
EXTENSION OF TIME IN WHICH TO  
EFFECTUATE SERVICE UPON GRUPO  
FAMSA, S.A. DE C.V.; DECLARATION  
OF KELLY J. BRINKMAN AND  
DECLARATION OF CELSO NAJERA IN  
SUPPORT**

17 COMES NOW Plaintiff, B.E. Uno, LLC, a Nevada limited liability company ("Plaintiff"),  
18 by and through its attorneys, Goold Patterson, hereby applies to this Honorable Court for an Order  
19 extending time in which to serve process upon Defendant GRUPO FAMSA, S.A., de C.V., a  
20 **Mexican corporation**, and states and alleges as follows:

21 **POINTS AND AUTHORITIES**

22 **I. FACTS**

23 This case involves a breach of lease by Famsa Inc., as tenant, and GRUPO FAMSA S.A.  
24 de C.V. ("GRUPO"), as guarantor.

25 On August 29, 2014, Plaintiff filed a Complaint against both Famsa, Inc. (as tenant) and  
26 GRUPO (as guarantor). Service of the Summons and Complaint upon Famsa should be made on  
27 or before December 27, 2014 (the 120-day deadline under NRCP 4(i)), either on Famsa's resident  
28 agent or its counsel. See Declaration of Kelly J. Brinkman ("Brinkman Declaration"), ¶ 2,

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1 attached hereto. Service on Co-Defendant GRUPO, however, has not yet been effectuated, due in  
2 part to the fact that GRUPO is a Mexican corporation with its corporate headquarters in Mexico.  
3 Id. at ¶ 3. As a result, Plaintiff is engaging counsel with a law firm located in Mexico to assist it in  
4 serving GRUPO. Id. at ¶ 4.

5 The attorney assisting with the service of process of GRUPO in Mexico has indicated that  
6 it will likely take between 2-4 months to serve GRUPO, although it could take as long as six (6)  
7 months. See Declaration of Celso Najera ("Najera Declaration"), ¶ 3, attached hereto. In general,  
8 the process for serving a Mexican entity in Mexico is as follows: First, Plaintiff must have the  
9 Summons and Complaint translated into Spanish. Id. at ¶ 4. This process has already occurred.  
10 See Brinkman Declaration at ¶ 5. From there, the translated Summons and Complaint is filed with  
11 the Foreign Affairs Department of the Federal Government in Mexico City ("Foreign Affairs  
12 Department"), where these documents are reviewed pursuant to the Hague Convention. See  
13 Najera Declaration, ¶ 5. This process normally takes between 30-60 business days. Id. Once  
14 reviewed and approved by the Foreign Affairs Department, the Summons and Complaint is  
15 forwarded to the courts in Monterrey for service. Id. This generally takes 10-15 business days.  
16 Id. Once the Summons and Complaint is received, the documents get assigned to a particular court  
17 in Monterrey. Id. at ¶ 6. After assignment to a court, it takes approximately 7-10 business days for  
18 service to be effectuated. Id. These above dates, however, are subject to change, especially given  
19 the fact that the courts in Monterrey adjourn for the holiday season on December 19, 2014, and do  
20 not resume until January 5, 2015. Id. at ¶ 7. Thus, Plaintiff is requesting that this Court extend the  
21 service deadline for GRUPO through and including April 30, 2015.

## 22 II. ARGUMENT

23 NRCP 4(i) provides:

24 (i) *Summons: Time Limit for Service.* If a service of the summons  
25 and complaint is not made upon a defendant within 120 days after  
26 the filing of the complaint and the party on whose behalf such  
27 service was required cannot show good cause why such service was  
28 not made within that period, the action shall be dismissed as to that  
defendant without prejudice upon the court's own initiative with  
notice to such party or upon motion.

1 NRCP 6(b) allows the Court to enlarge the time in which to serve a party "for good cause  
2 shown" by motion of a party, if such motion "is made before the expiration of the period originally  
3 prescribed."

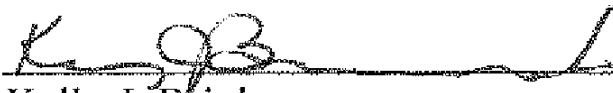
4 The time for effectuating the service upon Defendant GRUPO expires on or about  
5 December 27, 2014. Given various political affiliations in Mexico, Plaintiff had initial difficulties  
6 locating a law firm in Mexico that did not have a conflict with GRUPO as a client or client  
7 affiliate. Notwithstanding, Plaintiff has since retained a law firm and attorney in Mexico to assist  
8 with service upon GRUPO. See Brinkman Declaration, ¶ 4. The attorney, however, anticipates  
9 that it will need until April 30, 2015 in which to serve GRUPO. Therefore, Plaintiff requests an  
10 extension of the December 27, 2014 service deadline through and including April 30, 2015. The  
11 extended time frame should allow for Plaintiff to effectuate service of process on Defendant  
12 GRUPO. A copy of Plaintiff's proposed order is attached hereto as Exhibit A.  
13  
14

### 15 III. CONCLUSION

16 Plaintiff respectfully requests this Court enter an Order permitting Plaintiff additional time  
17 through and including April 30, 2015 (without prejudice to seek a further extension, if need be), in  
18 which to serve service of process upon Defendant GRUPO.

19 DATED this 3<sup>rd</sup> day of December, 2014.

20  
21 GOOLD PATTERSON

22 By:   
23 Kelly J. Brinkman  
24 Nevada Bar No. 6238  
25 1975 Village Center Circle, Suite 140  
26 Las Vegas, Nevada 89134  
27 *Attorneys for Plaintiff*  
28

DECLARATION OF KELLY J. BRINKMAN

I, Kelly J. Brinkman, declare and state under penalty of perjury that:

1. I am a member of the law firm of Goold Patterson, representing Plaintiff, B.E UNO, LLC. I have personal knowledge of the facts set forth herein. I am competent to testify concerning the facts set forth herein, and I make this Declaration in support of the foregoing Ex Parte Application for Extension of Time in Which to Effectuate Service upon GRUPO FAMSA S.A. de C.V.

2. A Summons and Complaint was filed in this matter on August 29, 2014. Service of the Summons and Complaint upon Famsa should be made on or before the 120-day deadline (i.e., December 27, 2014), either on its resident agent or its counsel.

3. Service on Co-Defendant GRUPO, however, has not yet been effectuated, due in part to the fact that GRUPO is a Mexican corporation with its corporate headquarters in Mexico.

4. Plaintiff has retained a law firm in Mexico to assist it with service upon GRUPO.

5. The Summons and Complaint have already been translated into Spanish for service upon GRUPO.

6. The current service deadline for GRUPO is on or about December 27, 2014. Although counsel is diligently working to effectuate service upon GRUPO, Plaintiff still needs additional time to serve GRUPO (through and including April 30, 2015).

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

EXECUTED this 31 day of December, 2014.

  
Kelly J. Brinkman

DECLARATION OF CELSO NAJERA

I, Celso Najera, declare and state under penalty of perjury that:

1. I am an attorney licensed to practice law in Mexico, and am Of-Counsel to the law firm of J.A. Trevino Abogados, S.A. de C.V. I have personal knowledge of the facts set forth herein. I am competent to testify concerning the facts set forth herein, and I make this Declaration in support of the foregoing Ex Parte Application for Extension of Time in Which to Effectuate Service upon GRUPO FAMSA S.A. de C.V.

2. Plaintiff, B.E. Uno, LLC has employed me and my firm to assist in the process of service of a Summons and Complaint upon GRUPO FAMSA, S.A. de C.V. in Mexico.

3. Service of the Summons and Complaint upon GRUPO can take anywhere between 2-4 months, and possibly up to 6 months, to complete.

4. The first step in servicing GRUPO in Mexico is to translate the Summons and Complaint into Spanish, which has occurred.

5. The Summons and Complaint is then filed with the Foreign Affairs Department of the Federal Government in Mexico City, where these documents are reviewed pursuant to the Hague Convention. Once reviewed and approved by the Foreign Affairs Department, which normally takes 30-60 business days, the Summons and Complaint is forwarded to the courts in Monterrey for service. This generally takes 10-15 business days.

6. Once the Summons and Complaint is received, the documents get assigned to a particular court in Monterrey. After assignment, it should take approximately 7-10 business days for service to be effectuated.

7. These dates may change, especially since the courts in Monterrey adjourn for the holiday season on December 19, 2014, and do not resume until January 5, 2015.

8. It is anticipated that service should occur on or before the end of April 2015.

I declare under penalty of perjury under the laws of the State of Nevada that the foregoing is true and correct.

EXECUTED this 2<sup>nd</sup> day of December, 2014.

  
\_\_\_\_\_  
Celso Najera



# EXHIBIT A

1 **OETS**  
2 Kelly J. Brinkman, Esq.  
3 Nevada Bar No. 6238  
4 GOOLD PATTERSON  
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6 Las Vegas, Nevada 89134  
7 (702) 436-2600 (Telephone)  
8 (702) 436-2650 (Fax)  
9 kbrinkman@gooldpatterson.com  
10 *Attorneys for Plaintiff*

11 **DISTRICT COURT**  
12 **CLARK COUNTY, NEVADA**

13 B.E. UNO, LLC, a Nevada limited liability  
14 company,

15 Plaintiff,

16 vs.

17 FAMSA, INC., a California corporation;  
18 GRUPO FAMSA, S.A. DE C.V., a Mexican  
19 corporation,

20 Defendants.

CASE NO.: A-14-706336-C

DEPT. NO.: XXXII

**ORDER ON EX PARTE APPLICATION  
FOR EXTENSION OF TIME IN WHICH  
TO EFFECTUATE SERVICE UPON  
GRUPO FAMSA, S.A. DE C.V.**

21 Based on the Ex Parte Application for Extension of Time in Which to Effectuate Service  
22 Upon GRUPO Famsa, S.A. de C.V. and the Declaration of Kelly J. Brinkman, and good cause  
23 shown:

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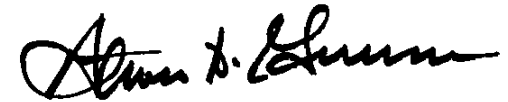
1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Application for  
2 Extension of Time in Which to Effectuate Service Upon GRUPO Famsa, S.A. d C.V. is granted;  
3 and Plaintiff is permitted an additional time, through and including April 30, 2015 (without  
4 prejudice to seek a further extension, if need be), in which to serve process upon Defendant  
5 GRUPO FAMSA, S.A., de C.V., a Mexican corporation.

6 DATED this \_\_\_\_\_ day of December, 2014.

7  
8 \_\_\_\_\_  
DISTRICT COURT JUDGE

9 Submitted By:

10  
11 By:   
12 Kelly J. Brinkman, Esq.  
13 Nevada Bar No. 6238  
14 GOOLD PATTERSON  
15 1975 Village Center Circle, Suite 140  
16 Las Vegas, Nevada 89134  
17 *Attorneys for Plaintiff*  
18  
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28



CLERK OF THE COURT

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*Attorneys for Plaintiff*

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

B.E. UNO, LLC, a Nevada limited liability  
company,

Plaintiff,

vs.

FAMSA, INC., a California corporation;  
GRUPO FAMSA, S.A. DE C.V., a Mexican  
corporation,

Defendants.

CASE NO.: A-14-706336-C

DEPT. NO.: XXXII

**ORDER ON EX PARTE APPLICATION  
FOR EXTENSION OF TIME IN WHICH  
TO EFFECTUATE SERVICE UPON  
GRUPO FAMSA, S.A. DE C.V.**

Based on the Ex Parte Application for Extension of Time in Which to Effectuate Service  
Upon GRUPO Famsa, S.A. de C.V. and the Declaration of Kelly J. Brinkman, and good cause  
shown:

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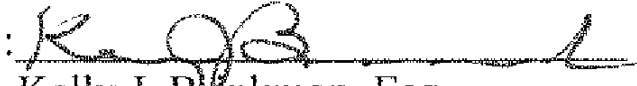
1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Application for  
2 Extension of Time in Which to Effectuate Service Upon GRUPO Famsa, S.A. d C.V. is granted;  
3 and Plaintiff is permitted an additional time, through and including April 30, 2015 (without  
4 prejudice to seek a further extension, if need be), in which to serve process upon Defendant  
5 GRUPO FAMSA, S.A., de C.V., a Mexican corporation.

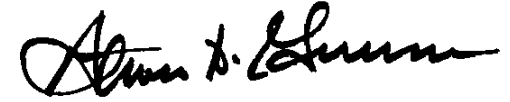
6 DATED this 7 day of December, 2014.

7  
8   
DISTRICT COURT JUDGE

9 Submitted By:

ROB BARE  
JUDGE, DISTRICT COURT, DEPARTMENT 32

10  
11 By:   
12 Kelly J. Brinkman, Esq.  
13 Nevada Bar No. 6238  
14 GOOLD PATTERSON  
15 1975 Village Center Circle, Suite 140  
16 Las Vegas, Nevada 89134  
17 *Attorneys for Plaintiff*  
18  
19  
20  
21  
22  
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CLERK OF THE COURT

1 **NEOJ**  
2 Kelly J. Brinkman, Esq.  
3 Nevada Bar No. 6238  
4 **GOOLD PATTERSON**  
5 1975 Village Center Circle, Suite 140  
6 Las Vegas, Nevada 89134  
7 (702) 436-2600 (Telephone)  
8 (702) 436-2650 (Fax)  
9 kbrinkman@gooldpatterson.com  
10 Attorneys for Plaintiff

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 B.E. UNO, LLC, a Nevada limited liability  
10 company,

11 Plaintiff,

12 vs.

13 FAMSA, INC., a California corporation;  
14 GRUPO FAMSA, S.A. de C.V., a Mexican  
15 corporation,

16 Defendants.

CASE NO.: A-14-706336-C

DEPT. NO.: XXXII

**NOTICE OF ENTRY OF ORDER FOR  
EXTENSION OF TIME IN WHICH TO  
EFFECTUATE SERVICE UPON GRUPO  
FAMSA, S.A. DE C.V.**

17 PLEASE TAKE NOTICE that an Order on Ex Parte Application for Extension of Time in  
18 Which to Effectuate Service Upon Grupo Famsa, S.A. de C.V. was entered on the 11<sup>th</sup> day of  
19 December, 2014, a copy of which is attached hereto as Exhibit A.

20 DATED this 11<sup>th</sup> day of December, 2014.

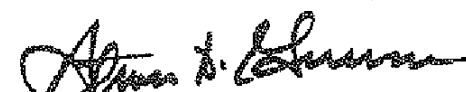
21 **GOOLD PATTERSON**

22  
23 By: /s/ Kelly J. Brinkman

24 Kelly J. Brinkman, Esq.  
25 Nevada Bar No. 6238  
26 1975 Village Center Circle, Suite 140  
27 Las Vegas, Nevada 89134  
28

**GOOLD PATTERSON**  
1975 VILLAGE CENTER CIRCLE, SUITE 140  
LAS VEGAS, NEVADA 89134  
(702) 436-2600 FAX: (702) 436-2650

# **EXHIBIT A**



CLERK OF THE COURT

1 **OETS**  
2 Kelly J. Brinkman, Esq.  
3 Nevada Bar No. 6238  
4 **GOOLD PATTERSON**  
5 1975 Village Center Circle, Suite 140  
6 Las Vegas, Nevada 89134  
7 (702) 436-2600 (Telephone)  
8 (702) 436-2650 (Fax)  
9 [kbrinkman@gooldpatterson.com](mailto:kbrinkman@gooldpatterson.com)  
10 *Attorneys for Plaintiff*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 B.E. UNO, LLC, a Nevada limited liability  
14 company,

15 Plaintiff,

16 vs.

17 FAMSA, INC., a California corporation;  
18 GRUPO FAMSA, S.A. DE C.V., a Mexican  
19 corporation,

20 Defendants.

CASE NO.: A-14-706336-C

DEPT. NO.: XXXII

**ORDER ON EX PARTE APPLICATION  
FOR EXTENSION OF TIME IN WHICH  
TO EFFECTUATE SERVICE UPON  
GRUPO FAMSA, S.A. DE C.V.**

21 Based on the Ex Parte Application for Extension of Time in Which to Effectuate Service  
22 Upon GRUPO Famsa, S.A. de C.V. and the Declaration of Kelly J. Brinkman, and good cause  
23 shown:

24 ///

25 ///

26 ///

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///

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///

**GOOLD PATTERSON**  
1975 VILLAGE CENTER CIRCLE, SUITE 140  
LAS VEGAS, NEVADA 89134  
(702) 436-2600 FAX: (702) 436-2650



GOOLD PATTERSON  
1975 VILLAGE CENTER CIRCLE, SUITE 140  
LAS VEGAS, NEVADA 89134  
(702) 436-2600 FAX: (702) 436-2650

1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the Application for  
2 Extension of Time in Which to Effectuate Service Upon GRUPO Famsa, S.A. d C.V. is granted;  
3 and Plaintiff is permitted an additional time, through and including April 30, 2015 (without  
4 prejudice to seek a further extension, if need be), in which to serve process upon Defendant  
5 GRUPO FAMSA, S.A., de C.V., a Mexican corporation.


6 DATED this 7 day of December, 2014.



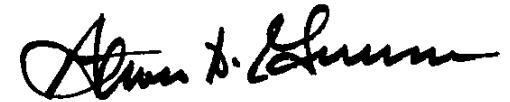
DISTRICT COURT JUDGE

9 Submitted By:

ROB BARE  
JUDGE, DISTRICT COURT, DEPARTMENT 32

11 By: 

12 Kelly J. Brinkman, Esq.  
13 Nevada Bar No. 6238  
14 GOOLD PATTERSON  
15 1975 Village Center Circle, Suite 140  
16 Las Vegas, Nevada 89134  
17 Attorneys for Plaintiff



CLERK OF THE COURT

1 **ANSC**  
Christopher Byrd, Esq., NV Bar No. 1633  
2 **FENNEMORE CRAIG JONES VARGAS**  
300 S. Fourth Street Suite 1400  
3 Las Vegas, NV 89101  
Telephone: (702) 692-8000  
4 Facsimile: (702) 692-8099  
E-Mail: cbyrd@fclaw.com

5  
6 Attorneys for Defendant  
FAMSA, INC., a California corporation

7 *In association with:*

8 Richard I. Arshonsky, Esq., NV Bar No. 4518  
9 **LEVINSON ARSHONSKY & KURTZ, LLP**  
15303 Ventura Blvd., Suite 1650  
Sherman Oaks, CA 91403  
10 Telephone: (818) 382-3434  
Facsimile: (818) 382-3433  
11 E-Mail: rarshonsky@laklawyers.com

12 Attorneys for Defendant FAMSA, INC.,  
a California corporation

13  
14 **DISTRICT COURT**  
15 **CLARK COUNTY, NEVADA**

16 B.E. UNO, LLC, a Nevada limited liability  
company,

17 Plaintiff,

18 vs.

19 FAMSA, INC., a California corporation;  
20 GRUPO FAMSA, S.A. DE C.V., a Mexican  
corporation,

21 Defendants.

Case No.: A-14-706336-C

Dept. No.: XXXII

**DEFENDANT FAMSA, INC.'S ANSWER**  
**TO COMPLAINT OF PLAINTIFF B.E.**  
**UNO, LLC**

Complaint Filed: 08/29/14

22  
23 **COMES NOW**, the answer of defendant FAMSA, INC. ("Defendant") for itself, and no  
24 others, to the Complaint of plaintiff B.E. UNO, LLC ("Plaintiff") as follows:

25 **ANSWER**

26 1. In answer to paragraph 1, 2, 4, 5, 6, 8, 9, 13, 19, 20, 22, 23, 26, and 32 of Plaintiff's  
27 Complaint, this answering Defendant admits the allegations contained therein.

LEVINSON ARSHONSKY & KURTZ, LLP

2. In answer to paragraphs 18, 24, 27, 28, 29, 30, 31, 33, 34, 36, 38, and 39 of Plaintiff's Complaint, this answering Defendant denies the allegations contained therein.

3. In answer to paragraphs 3, 7, 10, 11, 12, 14, 15, 16, 17, 41, 42, 43, 45, 46, 47, 48, 49, 51, 52 and 53 of Plaintiff's Complaint, this answering Defendant lacks sufficient facts to either admit or deny the allegations contained therein and on that basis denies the allegations contained in said paragraphs.

**RESPONSE TO PRAYER FOR RELIEF**

4. This answering Defendant requests that the relief requested in the Prayer for Relief on page 7 of Plaintiff's Complaint be denied.

**FURTHER**, by way of affirmative defenses, Defendant alleges as follows:

**FIRST AFFIRMATIVE DEFENSE**

**(Failure to State a Cause of Action)**

1. The Complaint, and each and every cause of action contained therein, fails to state facts sufficient to constitute a cause of action against this answering Defendant.

**SECOND CAUSE OF ACTION**

**(Failure to Exercise Ordinary Care)**

2. This answering Defendant is informed and believes, and upon such information and belief alleges, that all injuries and/or damages, if any, sustained or suffered by Plaintiff was proximately caused and contributed to by the negligence, mismanagement and/or affirmative wrongful conduct of the Plaintiff's agents, successors-in-interest or predecessors-in-interest, in that they failed to exercise ordinary and reasonable care and caution in carrying out their duties relative to the management of the leasehold which is the subject of Plaintiff's claim.

**THIRD AFFIRMATIVE DEFENSE**

**(Failure to Mitigate Damages)**

3. This answering Defendant is informed and believes, and upon such information and belief alleges, that at all times mentioned herein, Plaintiff, and its successors-in-interest and predecessors-in-interest, failed to use reasonable care to reduce, mitigate, or minimize as much as reasonably possible, the damages, if any, and that said failure was the direct and proximate cause of

any and all damages, if any, sustained by Plaintiff.

**FOURTH AFFIRMATIVE DEFENSE**

**(Waiver)**

4. This answering Defendant is informed and believes, and upon such information and belief alleges, that Plaintiff and/or other third parties have engaged in conduct and activities sufficient to constitute a waiver, by reason of which they are estopped to assert any claim or cause of action against this answering Defendant.

**FIFTH AFFIRMATIVE DEFENSE**

**(Breach of Contract by Plaintiff)**

5. This answering Defendant is informed and believes, and upon such information and belief alleges, that Plaintiff has waived its right to the relief sought in the Complaint by virtue of its acts, conduct, representations and omissions which constituted a breach of contract by Plaintiff.

**SIXTH AFFIRMATIVE DEFENSE**

**(Failure to Serve Notice of Breach)**

6. Plaintiff's Complaint, and each cause of action therein, fails to state a cause of action against this answering Defendant as Plaintiff failed to give timely and proper notice of any breach.

**SEVENTH AFFIRMATIVE DEFENSE**

**(Consent or Ratification)**

7. This answering Defendant is informed and believes, and upon such information and belief alleges, that Plaintiff consented to the matters of which they complain.

**EIGHTH AFFIRMATIVE DEFENSE**

**(Res Judicata/Collateral Estoppel)**

8. Plaintiff's Complaint, and each cause of action therein, is barred under the doctrines of res judicata and/or collateral estoppel.

**WHEREFORE**, Defendant prays for judgment against Plaintiff, as follows:

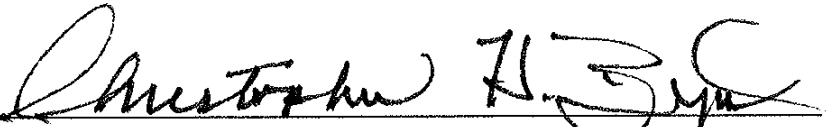
1. That Plaintiff take nothing by way of its Complaint;
2. That the Court awards Defendant its cost of suit incurred herein;
3. For reasonable attorneys' fees and legal expenses; and,

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4. For such other and further relief as the Court may deem just and proper.

DATED this 7<sup>th</sup> day of January, 2015.

**FENNEMORE CRAIG JONES VARGAS**

By: 

Christopher Byrd, Esq. [NV Bar No. 1633]  
FENNEMORE CRAIG JONES VARGAS  
300 S. Fourth Street Suite 1400  
Las Vegas, NV 89101  
Telephone: (702) 692-8000  
Facsimile: (702) 692-8099  
E-Mail: [cbyrd@fclaw.com](mailto:cbyrd@fclaw.com)

*In association with:*

Richard I. Arshonsky, Esq. [NV Bar No. 4518]  
LEVINSON ARSHONSKY & KURTZ, LLP  
15303 Ventura Blvd., Suite 1650  
Sherman Oaks, CA 91403  
Telephone: (818) 382-3434  
Facsimile: (818) 382-3433  
E-Mail: [rarshonsky@laklawyers.com](mailto:rarshonsky@laklawyers.com)

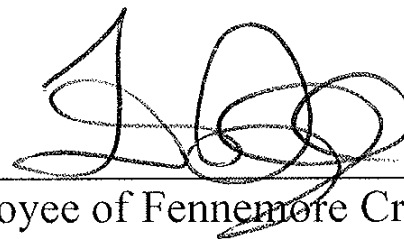
Attorneys for Defendant  
FAMSA, INC., a California corporation

**CERTIFICATE OF SERVICE**

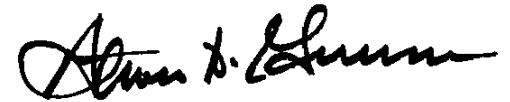
I hereby certify that a copy of the foregoing **DEFENDANT FAMSA, INC.'S ANSWER TO COMPLAINT OF PLAINTIFF B.E. UNO, LLC** was served upon the following person(s) either by electronic transmission through the Wiznet system pursuant to NEFCR 9, NRCP 5(b) and EDCR 7.26 or by mailing a copy to their last known address, first class mail, postage prepaid for non-registered users, on this 7<sup>th</sup> day of January 2015, as follows:

Kelly J. Brinkman, Esq.  
Goold Patterson  
1975 Village Center Circle #140  
Las Vegas, NV 89134

☐ Via E-service  
☒ Via U.S. Mail (Not registered with  
CM/ECF Program)



\_\_\_\_\_  
An employee of Fennemore Craig Jones Vargas



CLERK OF THE COURT

1 **CSERV**  
2 Kelly J. Brinkman, Esq.  
3 Nevada Bar No. 6238  
4 **GOOLD PATTERSON**  
5 1975 Village Center Circle, Suite 140  
6 Las Vegas, Nevada 89134  
7 (702) 436-2600 (Telephone)  
8 (702) 436-2650 (Fax)  
9 [kbrinkman@gooldpatterson.com](mailto:kbrinkman@gooldpatterson.com)  
10 *Attorneys for Plaintiff*

7 **DISTRICT COURT**

8 **CLARK COUNTY, NEVADA**

9 B.E. UNO, LLC, a Nevada limited liability  
10 company,

11 **Plaintiff,**

12 vs.

13 FAMSA, INC., a California corporation;  
14 GRUPO FAMSA, S.A. de C.V., a Mexican  
15 corporation,

16 **Defendants.**

CASE NO.: A-14-706336-C

DEPT. NO.: XXXII

**CERTIFICATE OF SERVICE RE:  
DEFENDANT GRUPO FAMSA, S.A. DE  
C.V.**

17 Service of the Summons and Complaint has been effectuated upon Defendant GRUPO  
18 FAMSA, S.A. de C.V., a Mexican corporation, through the Hague Service Convention. The  
19 Hague Certificate of Service and related documents are attached hereto as Exhibit 1 in both  
20 English and in Spanish.

21 DATED this 21<sup>st</sup> day of May, 2015.

22 **GOOLD PATTERSON**

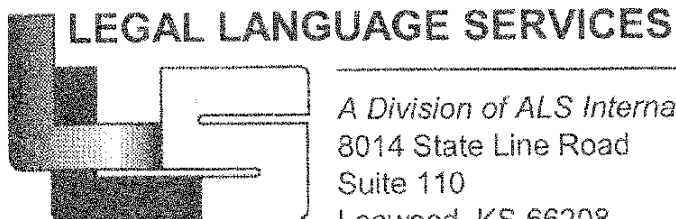
23 By: 

24 Kelly J. Brinkman  
25 Nevada Bar No. 6238  
26 1975 Village Center Circle, Suite 140  
27 Las Vegas, Nevada 89134  
28 *Attorneys for Plaintiff*

**GOOLD PATTERSON**  
1975 VILLAGE CENTER CIRCLE, SUITE 140  
LAS VEGAS, NEVADA 89134  
(702) 436-2600 FAX: (702) 436-2650

# EXHIBIT 1





## LEGAL LANGUAGE SERVICES

A Division of ALS International, Inc.  
8014 State Line Road  
Suite 110  
Leawood, KS 66208

Telephone (913) 341-3167  
Toll Free (800) 755-5775  
Telefax (913) 341-3168  
www.legallanguage.com

May 20, 2015

To whom it may concern:

This is to certify that the attached translation from Spanish into English is an accurate representation of the documents received by this office. These documents are designated as:

**Proof of International Service of Process in Mexico upon the Defendant:  
GRUPO FAMSA, S.A. DE C.V.**

Maria Victoria Portuguese, Manager of this company, certifies that Addy Miro, who translated this document, is fluent in Spanish and standard North American English and qualified to translate. She attests to the following:

"To the best of my knowledge, the accompanying text is a true, full and accurate translation of the specified document".

Signature of Maria Victoria Portuguese

Subscribed and sworn to before me this May 20, 2015.

Vicki Farron  
Notary Public, State of Kansas  
Qualified in Johnson County  
My commission expires December 9, 2016

Sincerely,

Victor J. Hertz  
President

"2015, the Year of the General José María Modelos and Pavón."

RESERVED AND CONFIDENTIAL INFORMATION	
Classified Date:	April 17, 2015
Responsible Unit:	Legal Affairs General Administration
Reserve Period:	6 years.
Legal Grounds.	Articles 13, Sections IV and V; 14, Sections III and IV and the Federal Transparency Law and Access to Government Public Information
Classified Sections	ALL SECTIONS AND ANNEXES

**ASJ Matter Number- 12808**

File: ASJ/541/1/2885/2013

**Mexico, D.F., April 17, 2015**

**Case: A-14-706336-C.**

**B.E. UNO, LLC**

**Vs.**

**FAMSA, INC. AND GRUPO FAMSA, S.A. DE C.V.**

**Victoria Portuguese**  
International Litigation Support Services,  
Legal Language Services  
8014 State Line Road, Suite 110,  
Leawood, Kansas, 66208, U.S.A.  
(United States of America)

This concerns the letter rogatory issued by the District Court for Clark County, Nevada, United States of America, under case number A-14-706336-C, requested by **B.E. UNO, LLC** against **FAMSA, INC** and **GRUPO FAMSA, S.A. DE C.V.**

Regarding said matter, I am sending that office the letter rogatory, proof of action taken and the attached certificate titled "*Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters*", completed, signed, and sealed by the Letters Rogatory Judge for the State of Nuevo Leon.

I am notifying and sending you the above pursuant to the provisions of Articles 28, Section XI of the Federal Public Administration Organic Law, 14 Section VI and 33 Section IX of the Internal Rules of the Foreign Affairs Secretary, all in full force.

**Sincerely,**  
Letters Rogatory Department Director

*[Signature]*

**Nancy Rocío Alanís Arredondo.**

ANNEX: Letter rogatory, completed, signed, and sealed proof of service

(DG. 09464)

\* The letter rogatory is being returned due to unfulfilled requirements by the requesting authority.

CERTIFICATE

The undersigned authority has the honour to certify, in conformity with article 6 of the Convention,

1) that the document has been served\*

- the date MARCH 17, 2015  
- at (place, street, number) PINO SUAREZ AVENUE #1202, NORTH, CENTRAL MONTERREY,  
NUEVO LEON, MEXICO

in one of the following methods authorized by article 5

☐ (a) in accordance with the provisions of sub-paragraph (a) of the first paragraph of article 5 of the Convention\*,

☐ (b) in accordance with the following particular method\*: \_\_\_\_\_

☒ (c) by delivery to the addressee, who accepted it voluntarily.

The documents referred to in the request have been delivered to:

- (identity and description of person) CLAUDIA PALOMO MARTINEZ.  
- relationship to the addressee (family, business, or other): EMPLOYEE IN THE DEFENDANTS  
LEGAL DEPARTMENT

2) that the document has not been served, by reason of the following facts\*:  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

In conformity with the second paragraph of article 12 of the Convention, the applicant is requested to pay or reimburse the expenses detailed in the attached statement\*.

Annexes

Documents returned:

LETTER ROGATORY AND  
CERTIFICATE OF COMPLETION

In appropriate cases, documents establishing the service:

LETTER ROGATORY AND  
CERTIFICATE OF COMPLETION

\*Delete if inappropriate.

Done at \_\_\_\_\_, the \_\_\_\_\_



STATE OF NUEVO LEON  
LETTERS ROGATORY COURT

[Signature]

IEHU EZEQUIEL ECHARTEA HERNANDEZ, ESQ  
CLERK OF THE COURT - FOR LETTERS ROGATORY  
FOR THE STATE OF NUEVO LEON.

"2015, Año del Generalísimo José María Morelos y Pavón".

INFORMACIÓN RESERVADA Y CONFIDENCIAL	
Fecha de Clasificación:	17 de abril del 2015
Unidad Responsable:	Dirección General de Asuntos Jurídicos
Periodo de Reserva:	6 años.
Fundamento Legal:	Artículos 13, fracciones IV y V; 14, fracciones III y IV de la Ley Federal de Transparencia y Acceso a la Información Pública Gubernamental.
Partes Clasificadas	TODO Y ANEXOS.

Oficio Número ASJ- 12808

Expediente: ASJ/541/1/2885/2013.

México, D.F., a 17 de abril de 2015

**Caso: A-14-706336-C.**

B.E. UNO, LLC

Vs

FAMSA, INC y GRUPO FAMSA, S.A. DE C.V.

**Victoria Portuguese**

International Litigation Support Services,  
Legal Language Services  
8014 State Line Road, Suite 110,  
Leawood, Kansas, 66208, U.S.A.  
(Estados Unidos de América)

Me refiero a la carta rogatoria librada Tribunal de Distrito, Condado de Clark, Nevada, Estados Unidos de América, deducida del caso número A-14-706336-C, promovido por **B.E. UNO, LLC** en contra de **FAMSA, INC y GRUPO FAMSA, S.A. DE C.V.**

Al respecto, envío a esa oficina la carta rogatoria, las constancias de lo actuado y el certificado anexo al "Convenio de la Haya Sobre la Notificación o el Traslado de Documentos Judiciales o Extrajudiciales en Materia Civil o Comercial", llenado, firmado y sellado por el Juez de Exhortos y Cartas Rogatorias del Estado de Nuevo León.

Lo anterior lo comunico y remito a usted de conformidad con lo dispuesto en los artículos 28 fracción XI de la Ley Orgánica de la Administración Pública Federal, 14 fracción VI y 33 fracción IX del Reglamento Interior de la Secretaría de Relaciones Exteriores, todos los ordenamientos en vigor.

**Atentamente.**

La Jefa del Departamento de Exhortos y Cartas Rogatorias.

  
**Nancy Rocio Alanis Arredondo.**

ANEXO: Carta rogatoria, constancias de lo actuado y certificado llenado, firmado y sellado.

(DG. 09464)

\*Se devuelve carta rogatoria por falta de requisitos a la autoridad exhortante.

CERTIFICACIÓN  
CERTIFICATE  
ATTESTATION

La autoridad infrascrita tiene el honor de certificar, conforme al artículo 6 de dicho Convenio.  
The undersigned authority has the honour to certify, in conformity with article 6 of the Convention,  
L'autorité soussignée a l'honneur d'attester conformément à l'article 6 de ladite Convention.

1. que la petición ha sido ejecutado\*  
1) that the document has been served \*  
1. que la demande a été exécutée \*

- el (fecha)  
- the (date)  
- le (date)

17 DE MARZO DE 2015

- en (localidad, calle, número)  
- at (place, street, number)  
- à (localité, rue numéro)

AVENIDA PINO SUAREZ #1202, NORTE, CENTRO DE MONTERREY  
NUEVO LEON, MEXICO.

- en una de las formas siguientes previstas en el artículo 5:  
- in one of the following methods authorised by article 5:  
- dans une des formes suivantes prévues à l'article 5:

☐ a) según las formas legales [artículo 5, párrafo primero, letra (a)].\*

(a) in accordance with the provisions of sub-paragraph (a) of the first paragraph of article 5 of the Convention\*.

a) selon les formes légales (article 5, alinéa premier, lettre a).\*

☐ b) según la forma particular siguiente\*

(b) in accordance with the following particular method\*:

b) selon la forme particulière suivante : \*

☒ c) por simple entrega.\*

(c) by delivery to the addressee, who accepted it voluntarily.\*

c) par remise simple.\*

Los documentos mencionados en la petición han sido entregados a:

The documents referred to in the request have been delivered to:

Les documents mentionnés dans la demande ont été remis à:

-(identidad y calidad de la persona)

-(identity and description of person)

-(identité et qualité de la personne)

CLAUDIA PALOMO MARTINEZ.

-Vínculos de parentesco, subordinación u otros, con el destinatario del documento:

-relationship to the addressee (family, business, or other):

-liens de parenté, de subordination ou autres, avec le destinataire de l'acte:

EMPLEADA DEL AREA JURIDICA

DE LA PARTE DEMANDADA.

2. que la petición no ha sido ejecutada en razón a los hechos siguientes:\*

2) that the document has not been served, by reason of the following facts\*:

2. que la demande n'a pas été exécutée, en raison des faits suivants: \*

Conforme al artículo 12, párrafo 2, de dicho Convenio, se ruega al requirente el pago o reembolso de los gastos cuyos detalles figuran en la declaración adjunta\*.

In conformity with the second paragraph of article 12 of the Convention, the applicant is requested to pay or reimburse the expenses detailed in the attached statement\*.

Conformément à l'article 12, alinéa 2, de ladite Convention, le requérant est prié de payer ou de rembourser les frais dont le détail figure au mémoire ci-joint\*.

Anexos  
Annexes  
Annexes

Documentos reenviados:

Documents returned:

Pièces renvoyées:

CARTA ROGATORIA Y

CERTIFICADO DE

CUMPLIMIENTO

En su caso, los documentos justificativos de la ejecución:

In appropriate cases, documents establishing the service:

Le cas échéant, les documents justificatifs de l'exécution:

CARTA ROGATORIA Y

CERTIFICADO DE

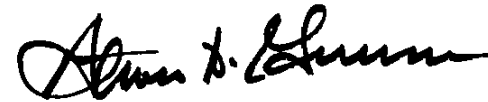
CUMPLIMIENTO)

Hecho en \_\_\_\_\_, el \_\_\_\_\_ de \_\_\_\_\_ de \_\_\_\_\_  
Done at \_\_\_\_\_, the \_\_\_\_\_ of \_\_\_\_\_ of \_\_\_\_\_  
Fait à \_\_\_\_\_, le \_\_\_\_\_ de \_\_\_\_\_ de \_\_\_\_\_

Firma y/o Sello  
Signature and / or stamp.

BOFES JUDICIAL DEL  
ESTADO DE NUEVO LEON  
JUEZ DE EXHORTOS Y CARTAS ROGATORIAS  
LIC. JENNY ESPOLLEO MARTINEZ HERNANDEZ.  
BOFES JUDICIAL DEL JUZGADO  
DE EXHORTOS Y CARTAS ROGATORIAS  
2 EN EL ESTADO DE NUEVO LEON.

\* Tachar las menciones inútiles.  
Delete if inappropriate.  
Rayer les mentions inutiles.



CLERK OF THE COURT

1 TDN

2 Kelly J. Brinkman, Esq.  
3 Nevada Bar No. 6238  
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6 Las Vegas, Nevada 89134  
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[kbrinkman@gooldpatterson.com](mailto:kbrinkman@gooldpatterson.com)  
*Attorneys for Plaintiff*

7 DISTRICT COURT

8 CLARK COUNTY, NEVADA

9 B.E. UNO, LLC, a Nevada limited liability  
10 company,

11 Plaintiff,

12 vs.

13 FAMSA, INC., a California corporation;  
14 GRUPO FAMSA, S.A. de C.V., a Mexican  
15 corporation,

16 Defendants.

CASE NO.: A-14-706336-C


DEPT. NO.: XXXII

**THREE (3) DAY NOTICE OF INTENT  
TO TAKE DEFAULT UPON  
DEFENDANT GRUPO FAMSA, S.A. DE  
C.V.**

17 PLEASE TAKE NOTICE that three (3) days from the date of mailing of this Notice as  
18 shown herein, if Defendant Grupo Famsa, S.A. de C.V., a Mexican corporation, does not file a  
19 responsive pleading, Plaintiff will enter its Default and thereafter, without further notice, request  
20 the Court to enter Judgment.

21 DATED this 21<sup>st</sup> day of May, 2015.

22 GOOLD PATTERSON

23  
24 By:   
25 Kelly J. Brinkman, Esq.  
26 Nevada Bar No. 6238  
27 1975 Village Center Circle, Suite 140  
28 Las Vegas, Nevada 89134  
*Attorneys for Plaintiff*

GOOLD PATTERSON  
1975 VILLAGE CENTER CIRCLE, SUITE 140  
LAS VEGAS, NEVADA 89134  
(702) 436-2600 FAX: (702) 436-2650

CERTIFICATE OF MAILING

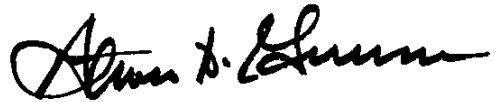
I hereby certify that I am an employee of the law firm of Goold Patterson, and on the 21<sup>st</sup> day of May, 2015, I served the foregoing THREE (3) DAY NOTICE OF INTENT TO TAKE DEFAULT UPON DEFENDANT GRUPO FAMSA, S.A. DE C.V. by enclosing a true and correct copy of the same in a sealed envelope, postage fully pre-paid thereon, and depositing said envelope in a mailbox of the United States Post Office, addressed as follows:

GRUPO FAMSA, S.A. de C.V.  
1202 Pino Suarez Nte., 3er Piso, Unidad A,  
Centro Monterrey; Neuvo Leon; Mexico 64000  
*Defendant*

Courtesy Copy to: Christopher Byrd, Esq.  
FENNEMORE CRAIG JONES VARGAS  
300 S. Fourth Street, Suite 1400  
Las Vegas, NV 89101  
*Attorneys for Defendant, Famsa, Inc.*

Courtesy Copy to: Richard I. Arshonsky, Esq.  
LEVINSON ARSHONSKY & KURTZ, LLP  
15303 Ventura Blvd., Suite 1650  
Sherman Oaks, CA 91403  
*Attorneys for Defendant, Famsa, Inc.*

  
An employee of Goold Patterson



CLERK OF THE COURT

1 **MTQS**  
Christopher Byrd, Esq. (No. 1633)  
2 Daniel Nubel, Esq. (No. 13553)  
**FENNEMORE CRAIG, P.C.**  
3 300 S. Fourth Street Suite 1400  
Las Vegas, NV 89101  
4 Telephone: (702) 692-8000  
Facsimile: (702) 692-8099  
5 E-Mail: [cbyrd@fclaw.com](mailto:cbyrd@fclaw.com)  
[dnubel@fclaw.com](mailto:dnubel@fclaw.com)

6 Attorneys for Defendants

7 *In association with:*

8 Richard I. Arshonsky, Esq. (No. 4518)  
9 **LEVINSON ARSHONSKY & KURTZ, LLP**  
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10 Sherman Oaks, CA 91403  
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11 Facsimile: (818) 382-3433  
E-Mail: [rarshonsky@laklawyers.com](mailto:rarshonsky@laklawyers.com)

12 Attorneys for Defendants

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 B.E. UNO, LLC, a Nevada limited liability  
company,

17 Plaintiff,

18 vs.

19 FAMSA, INC., a California corporation;  
20 GRUPO FAMSA, S.A. DE C.V., a Mexican  
corporation,

21 Defendants.

Case No.: A-14-706336-C

Dept. No.: XXXII

**DEFENDANT GRUPO FAMSA, S.A. DE**  
**C.V.'s MOTION TO QUASH SERVICE OF**  
**PROCESS**

Complaint Filed: 08/29/14

23 Defendant GRUPO FAMSA, S.A. DE C.V., a Mexican corporation ("Grupo"), by and  
24 through its counsel of record, FENNEMORE CRAIG, P.C., and Levinson Arshonsky & Kurtz,  
25 LLP, moves the Court for an order quashing service of process.

26 Grupo bases this Motion on the pleadings and papers on file herein, the Memorandum of  
27 Points and Authorities submitted in support hereof, all other exhibits attached hereto, and any oral  
28



1 argument which the Court may entertain at the time of Hearing. Grupo reserves the right to offer  
2 additional support for this motion.

3 DATED this 1st day of June, 2015.

4  
5 

6 **Fennemore Craig, P.C.**  
7 Christopher Byrd, Esq. (No. 1633)  
8 Daniel Nubel, Esq. (No. 13553)  
9 300 S. Fourth Street Suite 1400  
10 Las Vegas, NV 89101  
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14 [dnubel@fclaw.com](mailto:dnubel@fclaw.com)

15 Attorneys for Defendants

16 *In association with:*

17 **LEVINSON ARSHONSKY & KURTZ,**  
18 **LLP**

19 Richard I. Arshonsky, Esq. (No. 4518)  
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25 Attorneys for Defendants  
26  
27  
28

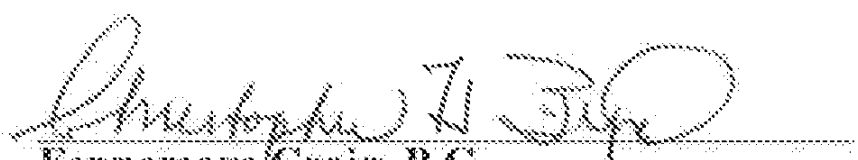
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NOTICE OF MOTION

TO: ALL INTERESTED PARTIES; and  
TO: THEIR ATTORNEYS.

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that the undersigned will bring the foregoing **DEFENDANT GRUPO FAMSA, S.A., DE C.V.'s MOTION TO QUASH SERVICE OF PROCESS** on for hearing before Department XXXII of the above-entitled Court on the 14 day of JULY, 2015, at the hour of 9:00A o'clock  m. on said date, or as soon thereafter as counsel can be heard.

DATED this 15<sup>th</sup> day of June, 2015.

  
Fennemore Craig, P.C.  
Christopher Byrd, Esq. (No. 1633)  
Daniel Nubel, Esq. (No. 13553)  
300 S. Fourth Street Suite 1400  
Las Vegas, NV 89101  
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Attorneys for Defendants

*In association with:*

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Attorneys for Defendants

1 MEMORANDUM OF POINTS AND AUTHORITIES

2 I. INTRODUCTION

3 Uno failed to properly serve Grupo when it left a copy of the summons with Claudia  
4 Palomo Martinez, a person not authorized to accept service of process on Grupo's behalf.  
5 Although Plaintiff utilized the correct channels for service of process when they sent the judicial  
6 documents to Mexico's Central Authority, Plaintiff failed to ensure that the person served had any  
7 relation to Grupo. The United States Supreme Court has emphasized that "as a legal matter, the  
8 Due Process Clause requires every method of service to provide notice reasonably calculated,  
9 under all circumstances, to appraise interested parties of the pendency of the action."  
10 *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 707 (1988). Uno's attempt at  
11 service here was not reasonably calculated to appraise Grupo of the pendency of this action  
12 because the summons was served upon a person with no relation to Grupo. This is made clear in  
13 the Declaration of Humberto Loza, a Legal Director at Grupo. Please find a copy of the  
14 Declaration of Humberto Loza attached to this Motion as **Exhibit 1**. Since Uno failed to serve  
15 Grupo in a manner reasonably calculated to appraise Grupo if this action, Grupo asks that this  
16 Court quash Uno's attempt at service of process.

17 II. FACTUAL BACKGROUND

18 On August 29, 2014, Uno filed its Complaint in the above-entitled action, naming Grupo  
19 as a defendant. On December 3, 2014, Uno filed an ex parte application for an extension of time  
20 to effectuate service upon Grupo. On December 11, 2014, this Court granted Uno's application  
21 and permitted Uno additional time, through and including April 30, 2015) to serve process upon  
22 Grupo. On May 21, 2015, Uno filed its Certificate of Service regarding Grupo. This Certificate of  
23 Service includes a Certificate from the person that completed the alleged service of process on  
24 Grupo. In that Certificate, the person serving process lists March 17, 2015, as the date process  
25 was served, and lists "Claudia Palomo Martinez" as the identity of the person on whom it served  
26 the documents. The Certificate further lists Ms. Martinez's relationship to Grupo as being "an  
27 employee in the Defendants legal department." The relationship listed in that Certificate is  
28 incorrect. The Declaration of Humberto Loza, Legal Director at Grupo, demonstrates that Ms.

1 Martinez is not a person authorized to accept legal documents on Grupo's behalf. Please find a  
2 copy of the Declaration of Humberto Loza attached to this Motion as **Exhibit 1**. On May 21,  
3 2015, the same day Uno filed its Certificate of Service, it filed a Three (3) Day Notice of Intent to  
4 Take Default upon Defendant Grupo.

5 **III. LEGAL ARGUMENT**

6 The Hague Convention on the Service Abroad of Judicial and Extrajudicial Documents in  
7 Civil or Commercial Matters (the "Hague Convention") is designed to provide "a mechanism by  
8 which a plaintiff authorized to serve process under the laws of its country can effect service that  
9 will give appropriate notice to the party being served and will not be objectionable to the country  
10 in which the party is served." *Dahya v. Second Judicial Dist. Court ex rel. Cnty. of Washoe*, 17  
11 Nev. 208, 211, 19 P.3d 239, 241 (2001). The Hague Convention applies "in all cases, in civil or  
12 commercial matters, where there is occasion to transmit a judicial or extrajudicial document for  
13 service abroad." *Id.* at 241-42; *see also* Hague Convention Art. 1. The United States and Mexico  
14 are both parties to the Hague Convention. *McCarty v. Roos*, 2012 WL 6138313, at \*10 (D. Nev.  
15 Dec. 7, 2012) ("The United States [and] Mexico . . . are signatories to the Convention of Service  
16 Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters"). Since both the  
17 United States and Mexico are signatories to the Hague Convention, service of process on a  
18 foreign defendant "must conform to the requirements of the Hague Convention." *Unite Nat'l Ret.*  
19 *Fund v. Ariela, Inc.*, 643 F. Supp. 2d 328, 333 (S.D.N.Y. 2008); *see also Volkswagenwerk*  
20 *Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 705 (1988)("[C]ompliance with the Hague  
21 Convention is mandatory in all cases to which it applies").

22 One method of service under the Hague Convention is service through the Central  
23 Authority of the receiving country. *Dahya*, 17 Nev. at 212, 19 P.3d at 242 (2001) ("service may  
24 go through the central authority of the receiving country") (citing Hague Convention Art. 5). This  
25 was Plaintiff's chosen method to attempt service in this case. Once the Central Authority  
26 determines that the request for service is valid it must serve the document "by a method  
27 prescribed by its internal law for the service of documents in domestic actions upon persons who  
28 are within its territory." Hague Convention Art. 5. The Hague Convention lays out very clearly

1 the process which the Central Authority must undertake in serving the documents. The Central  
2 Authority must serve the documents and then “complete a Certificate detailing how, where, and  
3 when service was made, or explaining why service did not occur.” *Unite Nat’l Ret. Fund*, 643 F.  
4 Supp. 2d 328 at 333 (S.D.N.Y. 2008) (citing Hague Convention Art. 6). On May 21, 2015,  
5 Plaintiff filed the Certificate it received back from the Mexican Central Authority. In that  
6 Certificate, the affiant states that service was made upon Claudia Palomo Martinez. The  
7 Certificate lists Ms. Martinez as being an “employee in the Defendants legal department.” As  
8 demonstrated by the declaration of Humberto Loza, Claudia Palomo Martinez is not authorized to  
9 accept legal documents on Grupo’s behalf. Please find a copy of the Declaration of Humberto  
10 Loza attached to this Motion as **Exhibit 1**.

11 While the Hague Convention defines the procedures for service of process, “the legal  
12 sufficiency of a formal delivery of documents must be measured against some standard. The  
13 Convention does not prescribe a standard, so we almost necessarily must refer to the internal law  
14 of the forum state.” *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 694-95 (1988).  
15 In the United States, “service of process must comply with both constitutional and statutory  
16 requirements.” *R. Griggs Grp. Ltd. v. Filanto Spa*, 920 F. Supp. 1100, 1103 (D. Nev. 1996). The  
17 United States Supreme Court has emphasized that “as a legal matter, the Due Process Clause  
18 requires every method of service to provide ‘notice reasonably calculated, under all  
19 circumstances, to appraise interested parties of the pendency of the action.’” *Volkswagenwerk*  
20 *Aktiengesellschaft*, 486 U.S. at 707. Thus, in addition to complying with the Hague Convention  
21 procedural requirements, service of process must also comport to the requirements of the United  
22 States Constitution. *See Heredia v. Transp. S.A.S., Inc.*, 101 F. Supp. 2d 158, 162 (S.D.N.Y.  
23 2000) (“in addition to the Hague Convention, service of process must also satisfy constitutional  
24 due process”); *see also Ackermann v. Levine*, 788 F.2d 830, 838 (2d Cir. 1986) (“service of  
25 process must satisfy both the statute under which service is effectuated and constitutional due  
26 process”). To constitutionally effectuate service on a foreign corporation, service must be made  
27 upon an agent, officer, or representative of that corporation. *See Tara Minerals Corp. v. Carnegie*  
28 *Min. & Exploration, Inc.*, 2012 WL 760653, at \*1 (D. Nev. Mar. 7, 2012) (“service can be made

1 'upon a representative so integrated with the organization that he will know what to do with the  
2 papers. Generally, service is sufficient when made upon an individual who stands in such a  
3 position as to render it fair, reasonable and just to imply the authority on his part to receive  
4 service") (quoting *Direct Mail Specialists, Inc. v. Eclat Computerized Techs., Inc.*, 840 F.2d 685,  
5 688 (9th Cir. 1988)); see also *Cont'l Convention & Show Mgmt. v. Am. Broad. Co.*, 230 Minn.  
6 217, 220, 41 N.W.2d 263, 265 (1950) ("in order to maintain an action against a foreign  
7 corporation . . . service of process upon it must be made upon its agent, officer, or representative  
8 here acting in such capacity, so that notice to him will be deemed notice to the corporation"); see  
9 also *Courtesy Chevrolet, Inc. v. Tennessee Walking Horse Breeders' & Exhibitors' Ass'n of Am.*,  
10 344 F.2d 860, 866 (9th Cir. 1965) ("the rationale of all rules for service of process on  
11 corporations is that service must be made on a representative so integrated with the corporation  
12 sued as to make it a priori supposable that he will realize his responsibilities and know what he  
13 should do with any legal papers served on him").

14 In this case, Plaintiff caused the judicial documents to be served upon a person completely  
15 unrelated to Grupo. The person that the judicial documents were served upon, Claudia Palomo  
16 Martinez, is not authorized to accept judicial documents on Grupo's behalf because she is not an  
17 agent, officer, or representative of Grupo. Since Uno's service of process cannot be found  
18 reasonably calculated to apprise Grupo of the pendency of this action, it is constitutionally  
19 insufficient. Thus, while Plaintiff did pursue the correct channels for service of process when they  
20 sent the judicial documents to Mexico's Central Authority, Plaintiff still failed to ensure that the  
21 person served had any relation to Grupo. For this reason, Plaintiff's service of process on Grupo  
22 was insufficient and Grupo requests that it be quashed.

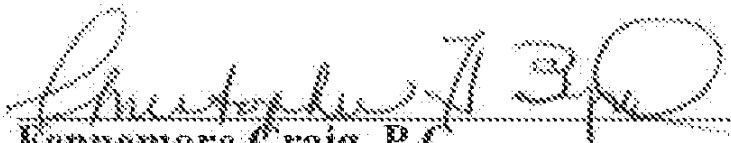
#### 23 IV. CONCLUSION

24 Uno's attempt at service here was not reasonably calculated to appraise Grupo of the  
25 pendency of this action because the summons was served upon Claudia Palomo Martinez, a  
26 person with no relation to Grupo. Since Uno failed to serve Grupo in a manner reasonably  
27 calculated to appraise Grupo of this action, Grupo asks that this Court quash Uno's attempt at

28 ///

1 service of process.

2 DATED this 1 day of June, 2015.

3   
Fennemore Craig, P.C.

4 Christopher Byrd, Esq. (No. 1633)  
Daniel Nubel, Esq. (No. 13553)  
300 S. Fourth Street Suite 1400  
5 Las Vegas, NV 89101  
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8 Attorneys for Defendants

9 *In association with:*

10 **LEVINSON ARSHONSKY & KURTZ,**  
11 **LLP**

12 Richard I. Arshonsky, Esq. (No. 4518)  
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15 Attorneys for Defendants

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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I hereby certify that I am an employee of the law firm of FENNEMORE CRAIG, P.C.; that on 1 day of June, 2015, I served a true and correct copy of the document described below on the parties listed by the method indicated at the addresses set forth for said parties:

**Document Served:** **DEFENDANT GRUPO FAMSA, S.A., DE C.V.'s MOTION TO QUASH SERVICE OF PROCESS**

Kelly J. Brinkman, Esq.  
Goold Patterson  
1975 Village Center Circle #140  
Las Vegas, NV 89134

☐ Via E-service  
☒ Via U.S. Mail (Not registered with CM/ECF Program)

  
\_\_\_\_\_  
Employee of Fennemore Craig, P.C.



1                   **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2   GRUPO FAMSA, S.A. DE C.V., a  
3   Mexican corporation,

4                               Petitioner and Defendant,

5   v.

6   THE EIGHTH JUDICIAL DISTRICT  
7   COURT of the State of Nevada, in and for  
8   the County of Clark, and THE  
9   HONORABLE ROB BARE, District  
10   Court Judge,

11                               Respondents,

12   B.E. UNO, LLC, a Nevada limited  
13   liability company,

14                               Plaintiff,

**CASE NO: 68626**

Electronically Filed  
Aug 14 2015 04:43 p.m.

District Court Case No. 14-700336-C  
Tracie K. Lindeman  
Clerk of Supreme Court

15                   **PETITIONER'S APPENDIX IN SUPPORT OF**  
16                   **PETITION FOR WRIT OF PROHIBITION**

17   Christopher Byrd, Esq. (No. 1633)  
18   Daniel Nubel, Esq. (No. 13553)  
19   **FENNEMORE CRAIG, P.C.**  
20   300 S. Fourth Street Suite 1400  
21   Las Vegas, NV 89101  
22   Telephone: (702) 692-8000  
23   Facsimile: (702) 692-8099  
24   Attorneys for Petitioner

25   *In association with:*

26   **LEVINSON ARSHONSKY & KURTZ,**  
27   **LLP**  
28   Richard I. Arshonsky, Esq. (No. 4518)  
15303 Ventura Blvd., Suite 1650  
Sherman Oaks, CA 91403  
Telephone: (818) 382-3434  
Facsimile: (818) 382-3433  
Attorneys for Petitioner

**PETITIONER'S APPENDIX IN SUPPORT OF  
PETITION FOR WRIT OF PROHIBITION**

<b><u>DOCUMENTS</u></b>	<b><u>BATES STAMP NO.</u></b>
1. Complaint, dated August 29, 2014	0001-0008
2. Ex Parte Application for Extension of Time in Which to Effectuate Service Upon Grupo Famsa, S.A. de C.V.; Declaration of Kelly J. Brinkman and Declaration of Celso Najera in Support, dated December 3, 2014	0009-0016
3. Order on Ex Parte Application for Extension of Time in Which to Effectuate Service Upon Grupo Famsa, S.A. de C.V., dated December 11, 2014	0017-0018
4. Notice of Entry of Order on Ex Parte Application for Extension of Time in Which to Effectuate Service Upon Grupo Famsa, S.A. de C.V., dated December 11, 2014	0019-0022
5. Defendant Famsa, Inc.'s Answer to Complaint of Plaintiff B.E. Uno, LLC, dated January 7, 2015	0023-0027
6. Certificate of Service re: Defendant Grupo Famsa, S.A. de C.V., dated May 21, 2015	0028-0034
7. Three (3) Day Notice of Intent to Take Default Upon Defendant Grupo Famsa, S.A., de C.V., dated May 21, 2015	0035-0036
8. Defendant Grupo Famsa, S.A., de C.V.'s Motion to Quash Service of Process, dated June 1, 2015	0037-0048
9. Plaintiff's Opposition to Defendant Grupo Famsa, S.A. de C.V.'s Motion to Quash Service of Process; Declaration of Kelly J. Brinkman in Support; Declaration of Celso Najera Gonzalez in Support, dated June 16, 2015	0049-0067
10. Reply in Support of Defendant Grupo Famsa, S.A. de C.V.'s Motion to Quash Service of Process, July 7, 2015	0068-0077
11. Order Denying Defendant Grupo Famsa's Motion for Order to Quash Service of Process and Setting Deadline to File an Answer to Complaint, dated August 4, 2015	0078-0081
12. Notice of Entry of Order (Denying Defendant Grupo Famsa's Motion for Order to Quash Service of Process and Setting Deadline to File an Answer to Complaint), dated August 5, 2015	0082-0088

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13. Defendant Grupo Famsa, S.A. de C.V.'s Motion to Stay All Proceedings Relating to Grupo Famsa, S.A. de C.V. Pending Outcome of Petition for Writ of Prohibition on an Order an Order Shortening Time, dated August 7, 2015
14. Transcript of Proceedings on Defendant Grupo Famsa, S.A. de C.V.'s Motion to Quash Service of Process

0089-0095

0096-0112

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Nevada Rule of Appellate Procedure 25(c)(1), I hereby certify  
3 that I am an employee of Fennemore Craig, P.C. and that on this 14<sup>th</sup> day of  
4 August, 2015, I caused the foregoing **PETITIONER'S APPENDIX IN**  
5 **SUPPORT OF PETITION FOR WRIT OF PROHIBITION** to be served by  
6 submission to the electronic filing service for the Nevada Supreme Court upon the  
7 following to the email address on file and by depositing same for mailing in the  
8 Unites States Mail, in a sealed envelope addressed to:

9 Kelly J. Brinkman, Esq.  
10 Goold Patterson  
11 1975 Village Center Circle #140  
12 Las Vegas, NV 89134  
13 kbrinkman@gooldpatterson.com  
14 *Attorneys for Plaintiff*

District Court Judge Rob Bare  
Department 32  
Regional Justice Center  
200 Lewis Avenue  
Las Vegas, NV 89155

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An Employee of Fennemore Craig, P.C.