IN THE SUPREME COURT OF THE STATE OF NEVADA

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

Petitioner and Defendant,

v.

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

Respondents

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

Real Party in Interest and Plaintiff,

SUPREME COURT CASE NO.: 68626

DISTRICT COURT CASE NO.: A-14-706336-C

Electronically Filed
Aug 14 2015 04:50 p.m.
Tracie K. Lindeman
Clerk of Supreme Court

EMERGENCY MOTION UNDER NRAP 27(e) TO STAY PROCEEDINGS AGAINST PETITIONER PENDING RESOLUTION OF WRIT PETITION CHALLENGING SERVICE OF PROCESS ON DUE PROCESS GROUNDS

District Court Deadline to Answer: Thursday, August 13, 2015

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a) and must be disclosed:

There are no entities to be disclosed.

These representations are made in order that the judges of this court may evaluate possible disqualification or recusal.

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Attorneys for Defendant and Petitioner
Grupo FAMSA, S.A. de C.V.

Petitioner GRUPO FAMSA, S.A. DE C.V., a Mexican corporation ("Grupo") moves this Court under NRAP 8 and 27 for an emergency stay of district court proceedings against it, until this Court decides Grupo's Writ of Prohibition (the "Writ Petition") filed concurrently. The Writ Petition challenges the district court's Order Denying Defendant Grupo FAMSA's Motion for Order to Quash Service of Process and Setting Deadline to File Answer to Complaint (the "Order"). In its Order the court concluded that Plaintiff B.E. UNO, LLC ("Plaintiff" or "Uno") complied with Mexican law, the Hague Convention and thus due process when it served Grupo. The court ordered Grupo to answer on or before August 13, 2015 or risk default. The Order was entered August 4, 2015, after a hearing on July 14, 2015. The court denied Grupo's Motion to Stay on August 11, 2015, but has not signed the order.

An emergency exists because a denial of this Motion will defeat the object of the Writ Petition forcing Grupo to elect to actively appear or risk default before its due process rights are fully considered. Loss of one's due process rights cannot be compensated with money.

I. NRAP 27(e) CERTIFICATE

(A) The telephone numbers and office addresses of counsel for Petitioner appears below counsel's signature on this Motion. Those of Plaintiff's lead counsel are as follows: Kelly J. Brinkman, Esq., GOOLD PATTERSON, 1975 Village Center Circle, Suite 140, Las Vegas, Nevada 89134; Tel: (702) 436-2600; Fax: (702) 436-2650; Email: kbrinkman@gooldpatterson.com.

(B) To avoid irreparable harm, relief is needed before the expiration of 14 days. An answer by Grupo is due on August 13, 2015 and even with the time afforded by a three day notice of intent to take default, an answer is due before the expiration of 14 days.

(C) Facts showing the nature of the dispute and the emergency are as follows:

1. Plaintiff filed its Complaint on August 29, 2014. On December 3, 2014, Plaintiff filed an Ex Parte Application to Extend Time for Service on Grupo.

The court granted the Plaintiff's Application on December 11, 2014.

2. On May 21, 2015, Plaintiff filed its Certificate of Service Re: Defendant Grupo (the "Certificate"). On that same day, Plaintiff filed its Three Day Notice of Intent to Take Default upon Grupo. The Certificate states that Claudia Palomo Martinez was served at a Grupo address. The Certificate from the Mexican court regarding service falsely identified Ms. Martinez as an employee of the legal department. See **Exhibit "1"**. In fact Ms. Matinez is a hostess/greeter at Grupo's store. **Exhibit "2" Amended Declaration of Humberto Loza in Support of Motion to Quash ¶4**. Service allegedly occurred on March 7, 2015.

3. Grupo filed its Motion to Quash Service of Process on June 1, 2015. **Exhibit "3".** The court heard Grupo's Motion to Quash on July 14, 2015. On August 4, 2015, the court entered its Order Denying Grupo's Motion to Quash. In its Order, the Court set a deadline of August 13, 2015 for Grupo to submit its Answer. **Exhibit "4"**.

4. In its Order, the court concluded as a matter of law that the service of process satisfied Mexican law, the Hague Convention and thus due process. Id. The Court's decision contradicts the clear case law on the subject, which emphasizes that a Plaintiff must independently satisfy both the Hague Convention and the United States Constitution. *Burda Media, Inc. v. Viertel*, 417 F.3d 292, 303 (2d Cir. 2005) ("in addition to the Hague Convention, service of process must also satisfy constitutional due process"). In addition, the district court's conclusion is based upon a Certificate from the Mexican court containing false information about the employment status of Ms. Martinez, the person served.

5. Claudia Paloma Martinez, the individual Plaintiff purports to have served process, is simply a hostess and greeter at Grupo's store. **Exhibit "2", Amended Declaration of Humberto Loza ¶4**. To satisfy constitutional due process, the Plaintiff needed to serve an agent, officer, or representative highly integrated within the company. *See Tara Minerals Corp. v. Carnegie Min. & Exploration, Inc.*,

2012 WL 760653, at *1 (D. Nev. Mar. 7, 2012) ("service can be made 'upon a representative so integrated with the organization that he will know what to do with the papers. Generally, service is sufficient when made upon an individual who stands in such a position as to render it fair, reasonable and just to imply the authority on his part to receive service") (quoting *Direct Mail Specialists, Inc. v. Eclat Computerized Techs., Inc.*, 840 F.2d 685, 688 (9th Cir. 1988)).

6. Grupo filed its Motion to Stay All Proceedings Related to Grupo Pending Outcome of Petition for Writ of Prohibition on August 7, 2015. **Exhibit "5"**. The district court had denied a prior oral motion to stay with leave to file a written motion. On August 11, 2015, the court heard Grupo's Motion to Stay on shortened time and denied the stay. The Motion to Stay advanced the same grounds set forth herein.

7. In the proposed Order denying Grupo's a stay, the court found that Grupo was unlikely to prevail on the merits of its Writ of Prohibition because "the Mexican court previously approved the service of the Summons and Complaint upon Defendant Grupo Famsa and issued a 'Certificate' approving such service of process." **Exhibit "6"**. The district court again relied upon the same Certificate falsely describing the employment status of Ms. Martinez.

8. Grupo requests that this Court grant its Emergency Motion to Stay to avoid Grupo's due process rights being irreparably harmed. A violation of due process cannot be compensated in money or otherwise repaired. If this Court does not grant Grupo's Emergency Motion to Stay then Grupo will be forced to elect between subjecting itself to litigation in which it was never properly served process, or, risk entry of a default after August 13, 2015.

(D) Petitioner notified Plaintiff's counsel of this Emergency Motion on August 13, 2015, as follows: (1) telephonic conversation with Plaintiff's lead counsel, Kelly J. Brinkman, advising her of the emergency motion. Counsel for Grupo requested that Uno extend the time for Grupo to answer to afford this Court the full 14

days to consider the motion and for Uno to respond. Uno declined the request; and (2) electronic service of the emergency motion on all counsel of record before 5:00 p.m.

Substantial legal questions regarding due process exist in this case and a stay would preserve this Court's power to issue effective writ relief, should it determine that the district court's conclusions about due process were erroneous.

II. AN EMERGENCY STAY IS APPROPRIATE PURSUANT TO NRAP 27(e)

A party may bring an emergency motion "[i]f a movant certifies that to avoid irreparable harm relief is needed in less than 14 days." NRAP 27(e). Grupo filed its Motion to Quash Service of Process on June 1, 2015. The court denied Grupo's Motion to Quash on July 14, but the order was not filed until August 4, 2015. In its Order, the Court set a deadline of August 13, 2015 for Grupo to submit its Answer. At the hearing on July 14, 2015, the court denied Grupo's oral motion to stay with leave to file a written motion. Grupo filed its Motion to Stay All Proceedings Related to Grupo Pending Outcome of Petition for Writ of Prohibition on August 7, 2015. On August 11, 2015, the court heard Grupo's Motion to Stay on shortened time and denied the stay request. The parties submitted an order but the Court has not signed it. Once Grupo is served with a three day notice of intent to take default Grupo will have less than fourteen (14) days to file an answer.

III. THIS COURT SHOULD STAY PROCEEDINGS AGAINST PETITIONER IN THE DISTRICT COURT

Under NRAP 8(c), this Court will generally consider the following factors in deciding whether to issue a stay:

> (1) whether the object of the [moving party's] writ petition will be defeated if the stay or injunction is denied; (2) whether the [moving party] will suffer irreparable or serious injury if the stay is denied; (3) whether the [opposing party] will suffer irreparable or serious injury if the stay is granted; and (4) whether the [moving party] is likely to prevail on the merits in the appeal or writ petition.

These are simply factors for this Court to consider and not strict elements that

Grupo is required to satisfy. Indeed, this Court recognizes, "if one or two factors are especially strong, they may counterbalance other weak factors.' *Mikon Gaming Corp. v. McCrea*, 120 Nev. 248, 251, 89 P. 3d 36, 38 (2004), citing *Hansen v. District Court*, 116 Nev. 650, 659, 6 P. 3d 982, 987 (2000).

A. All Four Factors Favor A Stay

1. Factors 1 And 2: Without A Stay The Object Of The Writ Petition Will Be Defeated And Grupo's Due Process Rights Will Be Violated By Having To Defend On The Merits Without Being Properly Served.

The object of the Writ Petition is to protect Grupo's due process rights. The violation of due process cannot be compensated in money or otherwise repaired in the event the Nevada Supreme Court agrees due process was not satisfied when Uno attempted service on Grupo. A denial of this Motion will defeat the object of the Writ Petition by forcing Grupo to actively appear in, participate in, and be subject to, discovery and motion practice in a case which this Court may decide Grupo was never properly served with process.

The nature of the district court's ruling in this case makes this Court's denial of a stay in *Hansen*, 116 Nev. at 658-659, 6 P.3d 986-987, distinguishable. In *Hansen*, the Court concluded no stay was necessary because the moving party could still challenge jurisdiction at trial. Here the district court's legal conclusions about compliance with Mexican law and the Hague Convention leave nothing to challenge at a trial and require a writ to obtain relief. Thus, a stay is required to preserve Grupo's remedy and the first of the NRAP 8(c) factors has been met.

2. Factor (3): Plaintiff Will Not Suffer Irreparable Or Serious Injury If A Stay Is Granted

Plaintiff will not suffer irreparable injury if this matter is stayed as to Grupo. This is a landlord tenant case and Grupo is the guarantor of the lease. A stay will not adversely affect Plaintiff's remaining claims against the other defendant, who is the tenant and has not sought to stay the case. There is still adequate time for this Court

to consider the writ and to complete discovery—the discovery cut-off date is presently October 9, 2015. Trial is not scheduled until January 4, 2016. Moreover, "a mere delay 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 discovery against the tenant, and even try the case as it did in prior litigation involving the same lease, when Plaintiff failed to serve Grupo.

Plaintiff also has no monetary damages. Plaintiff's damages in this litigation are limited because a new tenant occupies the space and interest continues to accrue on the claim. Thus, Plaintiff cannot demonstrate any cognizable harm from the issuance of a stay, much less irreparable harm. This element of NRAP 8(c) strongly favors Grupo.

3. Factor (4): Grupo Is Likely To Prevail On The Merits

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

In the present case, Grupo can prove that the district court relied upon false information to conclude that Uno had satisfied Mexican law, the Hague Convention and thus due process. On May 21, 2015, Plaintiff filed the Certificate it received back from the Mexican Central Authority. In that Certificate, the affiant states that service was made upon Claudia Palomo Martinez. The Certificate identifies Ms. Martinez as an employee in Grupo's legal department, when in fact she is a hostess greeter. Compare the Certificate **Exhibit "1"** with the Declaration of Humberto Loza, **Exhibit "2"**, Thus, when the Mexican Central Authority signed off that Grupo had been properly served, it was based upon false information. Likewise, the district court relied upon the same false information in finding due process based upon compliance with Mexican law and the Hague Convention. Uno has not demonstrated that service

of process upon a greeter is acceptable under Mexican law, the Hague Convention or due process. Under no interpretation of due process is such service effective on a corporate entity, regardless of whether it occurred in Mexico or the United States.

To properly serve process upon Grupo, Plaintiff must comply with both the Hague Convention *and* the United States Constitution. *See Burda Media, Inc. v. Viertel*, 417 F.3d 292, 303 (2d Cir. 2005) ("in addition to the Hague Convention, service of process must also satisfy constitutional due process"). The United States Supreme Court has emphasized that "as a legal matter, the Due Process Clause requires every method of service to provide notice reasonably calculated, under all circumstances, to appraise interested parties of the pendency of the action." *Volkswagenwerk Aktiengesellschaft v. Schlunk*, 486 U.S. 694, 707 (1988). Handing process to a greeter is not reasonably calculated to give notice to Grupo as the corporate entity.

To constitutionally effectuate service on a corporation, service must be made upon an agent, officer, or representative of that corporation. *See Tara Minerals Corp. v. Carnegie Min. & Exploration, Inc.*, 2012 WL 760653, at *1 (D. Nev. Mar. 7, 2012) ("service can be made 'upon a representative so integrated with the organization that he will know what to do with the papers. Generally, service is sufficient when made upon an individual who stands in such a position as to render it fair, reasonable and just to imply the authority on his part to receive service") (quoting *Direct Mail Specialists, Inc. v. Eclat Computerized Techs., Inc.*, 840 F.2d 685, 688 (9th Cir. 1988)).

Here, Ms. Martinez, who Uno served, is indisputably a hostess or greeter at a Grupo's store with no authority to accept service on Grupo's behalf. She is not an agent, officer, or representative so integrated with Grupo that service of process upon her could sufficiently comport with the Constitution. Uno will undoubtedly argue that it is fair to force Grupo to appear regardless the capacity of Ms. Martinez because the tenant in the litigation is Grupo's subsidiary and has already appeared in the case.

Notice does not satisfy due process or substitute for proper service of process. Nevada law expressly provides that actual notice of a suit is not an effective substitute for service of process. *Abreu v. Gilmer*, 115 Nev. 308, 314, 985 P.2d 746, 750 (1999); see also, *Moulton v. Eugene Burger Mgmt. Corp.*, No. 3:08-CV-00176-BESVPC, 2009 WL 205053, at *3 (D. Nev. Jan. 26, 2009).

Grupo has presented a compelling due process issue based upon the false information relied upon by the district court and the Mexican Central authority to approve service on Grupo. Grupo is entitled to a de novo review as part of the writ process to determine whether service was sufficient before having to participate in the case. A stay is required, however, to protect Grupo's rights.

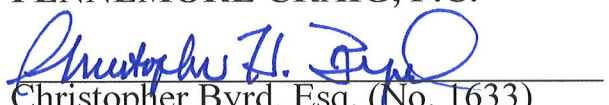
IV.

CONCLUSION

For all the foregoing reasons, Petitioner respectfully requests that this Court issue an emergency stay of the district court proceedings as to Petitioner pending this Court's decision on the Petition for Writ of Prohibition.

DATED this 14th day of August, 2015.

FENNEMORE CRAIG, P.C.



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Attorneys for Defendants

CERTIFICATE OF COMPLIANCE

1. I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5) and the type style requirements of NRAP 32 (a)(6) because:

[X] This brief has been prepared in a proportionally spaced typeface using Microsoft Word version 2010 in Times New Roman with a font size of 14; or

[ ] This brief has been prepared in a monospaced typeface using [*state name and version of word-processing program*] with [*state number of characters per inch and name of type style*].

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

[ ] Proportionately spaced, has a typeface of 14 points or more, and contains _____ words; or

[ ] Monospaced, has 10.5 or fewer characters per inch, and contains _____ words or _____ lines of text; or

[X] Does not exceed 10 pages.

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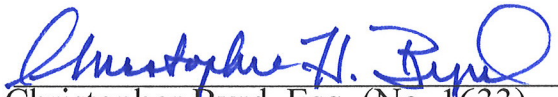
3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 14th day of August, 2015.

FENNEMORE CRAIG, P.C.



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Attorneys for Petition and Defendants

CERTIFICATE OF SERVICE

Pursuant to Nevada Rule of Appellate Procedure 25(c)(1), I hereby certify that I am an employee of Fennemore Craig, P.C. and that on this 14th day of August, 2015, I caused the foregoing EMERGENCY MOTION UNDER NRAP 27(e) TO STAY PROCEEDINGS AGAINST PETITIONER PENDING RESOLUTION OF WRIT PETITION CHALLENGING SERVICE OF PROCESS ON DUE PROCESS GROUND to be served by submission to the electronic filing service for the Nevada Supreme Court upon the following to the email address on file and by depositing same for mailing in the Unites States Mail, in a sealed envelope addressed to:

Kelly J. Brinkman, Esq.
Goold Patterson
1975 Village Center Circle #140
Las Vegas, NV 89134
kbrinkman@gooldpatterson.com
Attorneys for Plaintiff

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

An employee of Fennemore Craig

AFFIDAVIT OF CHRISTOPHER H. BYRD, ESQ. IN SUPPORT OF EMERGENCY MOTION UNDER NRAP 27(e) TO STAY PROCEEDINGS AGAINST PETITIONER PENDING RESOLUTION OF WRIT PETITION CHALLENGING SERVICE OF PROCESS ON DUE PROCESS GROUNDS

STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

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

1. I am an attorney duly licensed to practice law in the State of Nevada and am a director at the law firm of Fennemore Craig, P.C., attorneys for Grupo Famsa, S.A. DE C.V. ("Grupo"). This Affidavit is submitted in support of Grupo's Emergency Motion Under NRAP 27(e) to Stay Proceedings Against Petitioner Pending Resolution of Writ Petition Challenging Service of Process on Due Process Grounds (the "Motion").

2. Plaintiff filed its Complaint in the case below on August 29, 2014. On December 3, 2014, Plaintiff filed an Ex Parte Application to Extend Time for Service on Grupo. The court granted Plaintiff's Application on December 11, 2014.

3. On May 21, 2015, Plaintiff filed its Certificate of Service Re: Defendant Grupo (the "Certificate"). On that same day, Plaintiff filed its Three Day Notice of Intent to Take Default upon Grupo. The Certificate states that Claudia Palomo Martinez was served at a Grupo address. The Certificate from the Mexican court regarding service falsely identified Ms. Martinez as an employee of the legal department. See **Exhibit "1"**. In fact Ms. Matinez is a hostess/greeter at Grupo's store. **Exhibit "2" Amended Declaration of Humberto Loza in Support of Motion to Quash ¶4**. Service allegedly occurred on March 7, 2015.

3. Grupo filed its Motion to Quash Service of Process on June 1, 2015.

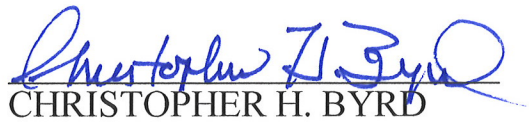
The district court heard Grupo's Motion to Quash on July 14, 2015. **Exhibit "3"**. The district court denied an oral motion to stay at the hearing.

4. On August 4, 2015, the court entered its Order Denying Grupo's Motion to Quash. In its Order, the Court set a deadline of August 13, 2015, for Grupo to submit its Answer. **Exhibit "4"**.

5. Grupo filed its Motion to Stay All Proceedings Related to Grupo Pending Outcome of Petition for Writ of Prohibition on August 7, 2015. **Exhibit "5"**. On August 11, 2015, the court heard Grupo's Motion to Stay on shortened time. The Court denied the motion. An Order has been submitted but the court has not signed it. **Exhibit "6".**

6. I contacted Plaintiff's counsel in this matter, Kelly J. Brinkman, by telephone on the morning of August 13, 2015, and notified her of Grupo's intention to file an emergency motion to stay the time for Grupo to respond to the Complaint. I requested an extension to answer the Complaint for fourteen (14) days so the Court could consider the Motion and Plaintiff would have an opportunity to respond, but Ms. Brinkman declined this request.

DATED this 14th day of August, 2015.



CHRISTOPHER H. BYRD

EXHIBIT

1

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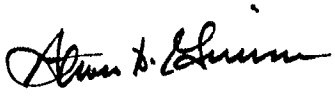

CLERK OF THE COURT

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

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

DATED this 21st day of May, 2015.

GOOLD PATTERSON

By: _____
Kelly J. Brinkman
Nevada Bar No. 6238
1975 Village Center Circle, Suite 140
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Attorneys for Plaintiff

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EXHIBIT 1

LEGAL LANGUAGE SERVICES

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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 Portuguez, 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 Portuguez

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

VICKI FARRON NOTARY PUBLIC My Appt. Expires STATE OF KANSAS

Sincerely,

Victor J. Hertz
President

SRE
SECRETARY OF
FOREIGN AFFAIRS

MEXICAN
UNITED
STATES

Legal Office
Legal Affairs General Administration
International Legal Assistance Administration "B"

"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 Portuguez
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 Alanis 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.

Case No.: A-14-706336-C

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

Done at UNITED MEXICAN STATES, the _____

Signature and / or stamp.

STATE OF NUEVO LEON
LETTERS ROGATORY COURT

[Signature]
JEHU EZEQUIEL ECHARTEA HERNANDEZ, ESQ
CLERK OF THE COURT - FOR LETTERS ROGATORY
FOR THE STATE OF NUEVO LEON.

*Delete if inappropriate.

SRE
SECRETARÍA DE RELACIONES EXTERIORES

Consultoría Jurídica
Dirección General de Asuntos Jurídicos
Dirección de Asistencia Jurídica Internacional "B"

"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 Portuguez
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 Rocío Alanís 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.

Caso No.: A-14-706336-C

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'execution:

CARTA ROGATORIA Y CERTIFICADO DE CUMPLIMIENTO)

Hecho en _____, el ____ de _____ de ____
Done at _____, **the** _____
Fait à _____, *le* _____

Firma y/o sello:
Signature and / or stamp.
Signature et/ou cachet.

SELLO OFICIAL DEL ESTADO DE NUEVO LEON
LIC. JOHN ORTEGA CHARTEA HERNANDEZ.
SECRETARIO DEL JUZGADO
DE EXHORTOS Y CARTAS ROGATORIAS
EN EL ESTADO DE NUEVO LEON.

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

EXHIBIT

2

DEC
Christopher Byrd, Esq. (No. 1633)
Daniel Nubel, Esq. (No. 13553)
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In association with:

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E-Mail: rarshonsky@laklawyers.com

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 **AMENDED 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

behalf.

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

5. 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 6 day of July, 2015.

Humberto Loza

EXHIBIT

3

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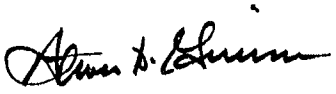

CLERK OF THE COURT

MTQS
Christopher Byrd, Esq. (No. 1633)
Daniel Nubel, Esq. (No. 13553)
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Attorneys for Defendants

DISTRICT COURT

CLARK COUNTY, NEVADA

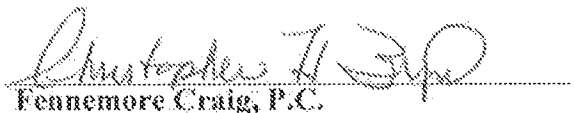
B.E. UNO, LLC, a Nevada limited liability company, Plaintiff, vs. FAMSA, INC., a California corporation; GRUPO FAMSA, S.A. DE C.V., a Mexican corporation, Defendants.	Case No.: A-14-706336-C Dept. No.: XXXII **DEFENDANT GRUPO FAMSA, S.A., DE C.V.'s MOTION TO QUASH SERVICE OF PROCESS** Complaint Filed: 08/29/14

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, moves the Court for an order quashing service of process.

Grupo bases this Motion 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. Grupo reserves the right to offer additional support for this motion.

DATED this 1st day of June, 2015.



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Attorneys for Defendants

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 1st day of June, 2015.

Fennemore Craig, P.C.
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Daniel Nubel, Esq. (No. 13553)
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Attorneys for Defendants

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Attorneys for Defendants

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

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

II. FACTUAL BACKGROUND

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

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

III. LEGAL ARGUMENT

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

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

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

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

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

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

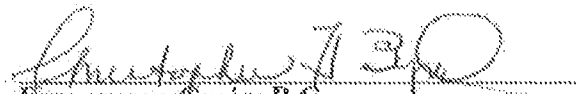
IV. CONCLUSION

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

///

service of process.

DATED this 1 day of June, 2015.



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Attorneys for Defendants

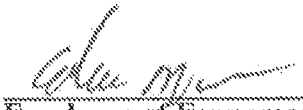
CERTIFICATE OF SERVICE

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
[X] Via U.S. Mail (Not registered with CM/ECF Program)



Employee of Fennemore Craig, P.C.

Exhibit 1

DEC
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 **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.

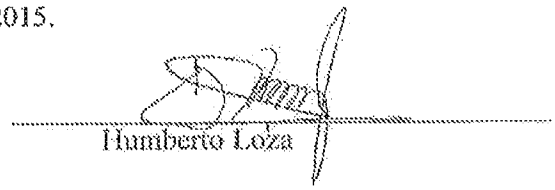
2. In my capacity as Legal Director, I have personal knowledge of the facts herein and make these statements based on my own personal knowledge unless otherwise stated.

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

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

EXHIBIT

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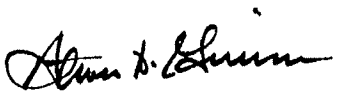

CLERK OF THE COURT

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

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

FINDINGS OF FACTS

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

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.

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 presented evidence that the person allegedly served on behalf of Grupo Famsa was a hostess or greeter 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 process, 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 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;

///

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

ORDER

IT IS SO ORDERED this ___ day of _____, 2015.

_____
DISTRICT COURT JUDGE

Submitted by:

Dated this 30th day of July, 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

REVIEWED BY:

Dated this 30th day of July, 2015

FENNEMORE CRAIG, P.C.

By: _____
Christopher H. Byrd, Esq.
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300 S. Fourth Street, Suite 1400
Las Vegas, NV 89101
Attorney for Defendants

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

ORDER

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

DISTRICT COURT JUDGE

ROB BARE
JUDGE, DISTRICT COURT, DEPARTMENT 32

Submitted by:

Dated this 30th day of July, 2015

GOOLD PATTERSON

By: _____
Kelly J. Brinkman, Esq.
Nevada Bar No. 6238
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Las Vegas, Nevada 89134
Attorneys for Plaintiff

REVIEWED BY:

Dated this 30th day of July, 2015

FENNEMORE CRAIG, P.C.

By: _____
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EXHIBIT

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

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CLERK OF THE COURT

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").

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

Dated: August 6, 2015

By: [signature]
Christopher Byrd, Esq. [NV Bar No. 1633]
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Attorneys for Defendants FAMSA, INC., and GRUPO FAMSA, S.A. DE C.V.

ORDER SHORTENING TIME

It appearing to the satisfaction of the Court, and good cause appearing therefore, IT IS HEREBY ORDERED that the foregoing 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 shall be heard on August 11, 2015 at 9:00 a.m. in Dept. XXXII of the Eighth Judicial District Court.

[signature]
DISTRICT COURT JUDGE

NOB BARE
JUDGE, DISTRICT COURT, DEPARTMENT 32

Respectfully submitted by:

FENNEMORE CRAIG, P.C.

By: [signature]
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Attorneys for Defendants FAMSA, INC., and GRUPO FAMSA, S.A. DE C.V.

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

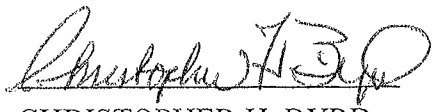
STATE OF NEVADA)
) ss.
COUNTY OF CLARK)

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

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

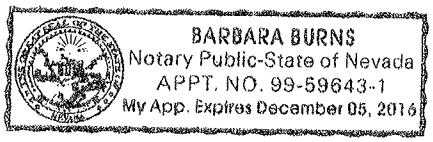
2. This Ex Parte Application is made and based upon Eighth Judicial District Court Rule 2.26.

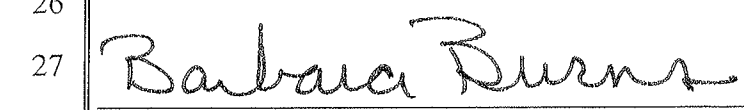
3. Grupo respectfully requests that the Motion be heard on shortened time to prevent Grupo from being forced to file a responsive pleading and engage in discovery while it simultaneously seeks to prosecute a Writ with the Nevada Supreme Court. Pursuant to the Order submitted to this Court Grupo is required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



CHRISTOPHER H. BYRD

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





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

MEMORANDUM OF POINTS AND AUTHORITIES

I.

FACTUAL BACKGROUND

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

II.

ARGUMENT

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

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

A. ALL FOUR FACTORS FAVOR A STAY.

1. Factors 1-2: The object of the Writ Petition will be defeated if this Court does not grant a Stay. Furthermore, if the Stay is denied, Grupo's due process rights will be violated by having to defend on the merits without being properly 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

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

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

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

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

Plaintiff will *not* suffer irreparable injury if this matter is stayed as to Grupo. A stay will not adversely affect Plaintiff's remaining claims against FAMSA, which has not sought to stay these proceedings. There is still adequate time to complete discovery—the discovery cut-off date is presently October 9, 2015, and trial is not scheduled until January 4, 2016. Moreover, "a mere delay 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

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

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

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

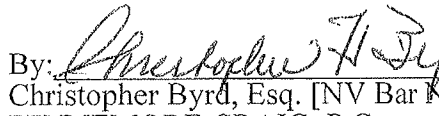
In the present case, Grupo certainly believes that a serious constitutional question is presented given that it is undisputed that service was left with a hostess at a Grupo store. Under no interpretation of due process is such service effective on a corporate entity, regardless of whether it occurred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

III.

CONCLUSION

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

Dated: August 6, 2015

By: 

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

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 7th day of August, 2015, as follows:

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

[X] Via E-service
[ ] Via U.S. Mail (Not registered with CM/ECF Program)

Barbara Burns
An employee of Fennemore Craig, P.C.

EXHIBIT

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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 DENYING DEFENDANT GRUPO FAMSA'S MOTION TO STAY ALL PROCEEDINGS RELATED TO GRUPO FAMSA, S.A. DE C.V. PENDING OUTCOME OF WRIT OF PROHIBITION**

This matter having come before the Honorable Rob Bare, on August 11, 2015, on the Motion to Stay All Proceedings Related to Grupo Famsa, S.A. de C.V. Pending Outcome of Writ of Prohibition ("Motion") filed by Defendant, Grupo Famsa, S.A. de C.V., a Mexican corporation ("Defendant Grupo Famsa"), against Plaintiff, B.E. Uno, LLC, a Nevada limited liability company ("Plaintiff"); Kelly Brinkman of the law firm of Goold Patterson, appearing on behalf of Plaintiff, and Christopher H. Byrd of the law firm of Fennemore Craig, P.C., appearing on behalf of Defendant Grupo Famsa; the Court having reviewed the pleadings and papers on file herein, considered the arguments of counsel, being fully advised of the premises, finding no genuine issues of material fact, and good cause appearing therefore, the Court hereby finds as follows:

A. Taking into account all of the factors under NRCP 8(c) and given this Court's prior ruling denying Grupo Famsa's Motion to Quash, this Court finds that Defendant Grupo Famsa has not demonstrated that it is likely to prevail on the merits in its Writ of Prohibition.

B. In particular, the Mexican court previously approved the service of the Summons and Complaint upon Defendant Grupo Famsa and issued a "Certificate" approving such service of process.

C. IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant Grupo Famsa's Motion is DENIED.

ORDER

IT IS SO ORDERED this ____ day of August, 2015.

_____
DISTRICT COURT JUDGE

Submitted by:

GOOLD PATTERSON

By: _____
Kelly J. Brinkman, Esq.
Nevada Bar No. 6238
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Las Vegas, Nevada 89134
Attorneys for Plaintiff

REVIEWED BY:

FENNEMORE CRAIG, P.C.

By: _____
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