


EXHIBIT D



CLERK OF THE COURT

1 **OPPM**
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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-15-706336-C

DEPT. NO.: XXXII

**PLAINTIFF'S OPPOSITION TO
GRUPO FAMSA MOTION TO STAY
PROCEEDINGS PENDING OUTCOME
OF PETITION FOR WRIT OF
PROHIBITION; DECLARATION OF
KELLY J. BRINKMAN IN SUPPORT**

Hearing Date: August 11, 2015

Hearing Time: 9:00 a.m.

21 Plaintiff, B.E. Uno, LLC ("Plaintiff"), by and through its attorney, Kelly J. Brinkman,
22 hereby files its opposition to Defendant Grupo Famsa, S.A. de C.V.'s ("Grupo") Motion to Stay
23 Proceedings Relating to Grupo Famsa, S.A. de C.V. Pending Outcome of Petition for Writ of
24 Prohibition ("Motion to Stay"). This opposition is made and based upon the following Points
25 and Authorities and exhibits, Declaration in Support, pleadings, papers, and records on file, and
26 any oral argument presented at the time of the hearing on Grupo's Motion to Stay.

27 **I.**
28 **INTRODUCTION¹**

On July 14, 2015, this Court held a hearing on Grupo's Motion to Quash. At that hearing, this Court denied the Motion to Quash finding that Grupo had been properly served under both the Hague Convention as well as the internal laws of Mexico and the Grupo's due process rights were not violated. At the end of the hearing, Grupo, through its counsel, made an

¹ This Opposition is supported by the Declaration of Kelly Brinkman attached hereto.

1 oral motion to stay the ruling, which was denied. **TWENTY-FOUR DAYS LATER**, Grupo
2 filed this Motion to Stay. Leaving aside the issues with the lack of cause and notice, the Motion
3 to Stay must be denied. First and foremost, there is nothing to stay as Grupo has not yet filed
4 (and may never file) a writ of prohibition with the Nevada Supreme Court. Second, Grupo has
5 failed to satisfy the standards for a stay – an extraordinary remedy that should not be lightly
6 granted. Third, there is no prejudice to Grupo in having to defend itself in this case as Grupo's
7 attorneys are the exact same attorneys already intimately involved in representing Famsa, Inc., a
8 company wholly-owned by Grupo. The issue in this case, damages, will be the same issue that
9 both Grupo and Famsa will have to defend. This issue does not change depending on who is a
10 defendant. On the other hand, great prejudice will be suffered by Plaintiff if a stay is granted as
11 Grupo is likely the only defendant with assets sufficient to cover any and all judgments awarded
12 Plaintiff. Fourth, this appears to be nothing more than another delay tactic by defendants in
13 avoiding paying damages following the breach of lease and guaranty. Fifth, to the extent this
14 Court is inclined to grant a stay, such stay should only issue upon the posting of a bond in the
15 amount of \$1,000,000.00. Finally, Grupo failed to comply with EDCR 2.26 and 8.06(a),
16 requiring denial of the Motion to Stay.

17 **II.**

18 **LEGAL ARGUMENT**

19 **A. There is Nothing to Stay as Grupo Has Yet to File Any Writ of Prohibition.**

20 Despite having 24-days to file a writ of prohibition, Grupo has yet to file such writ,
21 merely alleging that Grupo is “**preparing**” such a writ. Thus, **there is nothing to stay**. That is,
22 even if the standards for a stay could be satisfied – which Plaintiff disputes – Grupo has yet to
23 file such a writ and may never do so. Is this another stalling tactic by Grupo? Who knows?
24 Nevertheless, the “potential” filing of a writ cannot be grounds for the issuance of a stay.

25 **B. Grupo Has Failed to Satisfy the Standards for Issuance of a Stay.**

26 First, the issuance of a stay is an extraordinary remedy that should only be granted when
27 the circumstances are clearly warranted. Here, Grupo sat on its rights for 24-days following this
28

1 Court's ruling denying its Motion to Quash. Further, Grupo has yet to file any writ. Grupo was
2 also granted, at their request, thirty (30) rather than the standard twenty (20) days to file an
3 answer. See NRCP 12(a). Additionally, service of the Summons and Complaint was made on
4 Grupo in Mexico on March 17, 2015, almost 5 months ago. Other than the Motion to Quash,
5 Grupo has yet to challenge service in Mexico or otherwise.

6 Despite Grupo's contention, prior to issuance of a stay, Grupo must still show some
7 likelihood of success. As stated in Fritz Hansen A/S v. Dist. Ct., 6 P.3d 982, 986, 116 Nev. 650
8 (2000), Grupo must "present a substantial case on the merits . . . and show that the balances of
9 equities weighs heavily in favor of granting the stay." Here, Grupo has not demonstrated that its
10 writ (not yet filed) demonstrates a substantial legal question or that equities weigh in its favor.²

11 Grupo's argument is that its due process rights have been violated. In essence, the
12 question is whether it is reasonable to require Grupo to defend a suit in Nevada following the
13 breach of lease and guaranty for a Nevada commercial premises where Famsa and Grupo elected
14 to do business (and then elected to abandon the leased premises and breach the lease and
15 guaranty)? As previously briefed, Grupo's due process rights have not been violated. Due
16 Process simply requires notice reasonably calculated to apprise interested parties of the pendency
17 of the action. Mullane v. Central Hanover Bank & Trust Co., 339 U.S. 306 (1950). There is no
18 dispute that Grupo has notice of this proceeding (as well as the prior proceeding, in which they
19 participated in a formal mediation with their wholly-owned subsidiary). Plaintiff has made
20 efforts to avoid taking a default against Grupo and has requested that they actively participate in
21 this case. Plaintiff requested that Grupo's attorneys agree to accept service on behalf of Grupo –
22 which was denied. Thus, Plaintiff was forced to go through the time-consuming and expensive
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24
25 ² The service provisions of the Hague Convention take precedence over conflicting Nevada procedural
26 rules. Article VI of the United States Constitution establishes that treaties are the supreme law of the land, binding
27 upon states. The Hague Convention is recognized with status equivalent to a treaty. See Volkswagenwerk
28 Aktiengesellschaft, 443 So.2d 880 (Ala. 1983). Thus, when state service of process procedures have been found to
be in direct conflict with the Hague Convention, courts have been compelled to recognize the supremacy of the
Convention's provisions. See generally Ackermann v. Levine, 788 F.2d 830, 840-41 (2d Cir. 1986). Further, the
Central Authority's return of a Certificate of Service is *prima facie* evidence that service was made in compliance
with Mexican law. Unite Nat'l Retirement Fund v. Ariela, Inc., 643 F.Supp. 2d 328, 334 (S.D.N.Y. 2008).

1 process of serving Grupo in Mexico pursuant to the Hague Convention and the internal laws of
2 Mexico. Due process merely requires notice and the opportunity to be heard. These protections
3 have been satisfied in this case. Grupo's continual efforts for delay must be stopped.

4 In Hansen, Hansen filed a writ of prohibition challenging the district court order that
5 denied its motion to quash service of process for lack of personal jurisdiction. Hansen, 6 P.3d
6 982, 983, 116 Nev. 650 (2000). Hansen then filed a motion for stay of the district court
7 proceedings pending resolution of the petition. The Nevada Supreme Court held that a stay was
8 not warranted. Id. Applying the factors under NRAP 8(c), the Supreme Court held that
9 participating in the proceedings and incurring litigation expenses are neither irreparable nor
10 serious harm. Further, the Court found that Hansen had not shown it was likely to prevail on the
11 merits since Hansen's argument was contrary to well-established case law and that such
12 extraordinary relief was unwarranted. Id. at 987. This case is no different and, in fact, even
13 more deserving of a denial of a stay given that a writ of prohibition has not yet been filed. The
14 fact that a portion of this case discussed a general and special appearance does not mean that this
15 case, which is binding on this Court, is distinguishable or irrelevant.

16
17 C. There is No Harm to Grupo by Denying the Stay Given that Damages Are
18 Already Being Litigated by the Same Set of Attorneys for Famsa.

19 The ultimate issue in this case is the amount of damages Plaintiff is entitled to following
20 Famsa and Grupo's breach of lease and guaranty (and Plaintiff's mitigation efforts). Given that
21 Famsa and Grupo have identical attorneys and the damage issue is the same as to both Famsa, as
22 tenant, and Grupo, as guarantor, there is little or no harm to Grupo in having this litigation
23 proceed without a stay. Grupo is not subject to any special or additional defense separate and
24 apart from Famsa. Further, Nevada courts have already held that "litigation expenses, while
25 potentially substantial, are neither irreparable nor serious." Hansen, 6 P.3d at 986-87. See also
26 Wisconsin Gas Co. v. F.E.R.C., 758 F.2d 669, 674 (D.C. Cir. 1985) ("[m]ere injuries, however
27 substantial, in terms of money, time and energy necessarily expended in the absence of a stay are
28 not enough" to show irreparable harm).

1 Further, and despite Grupo's contention, Plaintiff will be harmed if a stay is granted as it
2 still has yet to be compensated following Famsa and Grupo's breach of lease and guaranty (no
3 rent having been paid since November 2012 – close to three years). Famsa has indicated on
4 numerous occasions that all of their assets are encumbered by a loan made by Grupo. Thus,
5 Plaintiff's only real chance of recovery in this matter is to obtain a judgment against Grupo.
6 Thus, any stay of the proceedings against Grupo will frustrate Plaintiff's efforts to pursue Grupo
7 for its obligations under the Guaranty and following Famsa's breach of lease.

8
9 D. Even if Grupo Can Somehow Claim it Satisfied the Standards for a Stay, Such
Stay Cannot Issue Unless a Bond is Posted.

10 Even if Grupo could somehow claim a stay was appropriate, such a stay should not issue
11 unless and until Grupo posts a bond with this Court. Pursuant to NRAP 8(2)(E), the filing of a
12 bond is appropriate whenever a stay may be issued. Although Plaintiff disputes that a stay
13 should issue, if this Court is somehow inclined to grant any such stay, Plaintiff requests that a
14 bond in the minimum amount of \$1,000,000.00 be required as a condition to the granting of any
15 stay. This amount is based on the Judgment obtained in the prior litigation (Case No. A-12-
16 672870-C) in the amount of \$748,394.19 plus attorney fees (\$126,712.50) and costs (\$7,577.02)
17 awarded for a total of \$882,683.71. See Judgment and Order on Attorney on Attorney Fees and
18 Costs attached hereto as Exhibit A, which Plaintiff requests this Court take judicial notice. This
19 Judgment, all of which remains outstanding, was awarded in April of 2014, and continues to bear
20 interest. Thus, a bond in the amount of \$1,000,000.00 is reasonable.

21 E. A Stay Cannot Issue Given Grupo's Failure to Comply with EDCR 2.26 and 8.06.

22 First off, the order shortening time should never have been granted given that Grupo is
23 the party that created the circumstances requiring that this matter be heard on shortened time.
24 That is, for some unknown reason, Grupo waited **24-days** before filing its Motion for Stay (and
25 has yet to file any writ of prohibition). Thus, what "good cause" did Grupo have to justify this
26 matter being heard on shortened time under EDCR 2.26? Further, EDCR 2.26 requires that if an
27 order shortening time "*shortens the notice of a hearing to less than 10 days,*" such order "*may*
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1 *not be served by mail.*” See EDCR 2.26 (“An order which shortens the notice of a hearing to less
2 than 10 days may not be served by mail.”). Further, EDCR 8.06(a) provides that electronic
3 service is the equivalent of mail service – requiring three (3) calendar days to be added. See
4 EDCR 8.06(a) (“ . . . whenever a party has the right or is required to do some act or file same
5 within the prescribed period after service of the notice or other paper, other than process, and the
6 notice or paper is electronically served upon the party, three (3) calendar days must be added to
7 the prescribed period.”). As the filing of this Opposition, Grupo has yet to hand-deliver Plaintiff
8 with the Motion to Stay. Plaintiff only learned about this Motion to Stay when it received a
9 service notification email from the electronic-court-filing-system on Friday afternoon (August
10 7th). Given that the hearing on the Motion to Stay is set for Tuesday, August 11, 2015 (less than
11 10 days), Grupo was required to serve the Motion to Stay on Plaintiff via hand-delivery.
12 Therefore, Grupo has failed to comply with both EDCR 2.26 – “good cause” to justify
13 shortening the time for hearing this Motion to Stay, as well as EDCR 8.06(a) by properly serving
14 this Motion to Stay on Plaintiff. Additionally, as of the filing of this Opposition, a review of the
15 Court Docket fails to show that Grupo even filed a separate Ex Parte Motion for Order
16 Shortening Time relating to its Motion to Stay. Instead, Grupo apparently created some sort of
17 hybrid motion, ex parte application, affidavit and order (none of which were properly and timely
18 served on Plaintiff). See Court Docket attached hereto as Exhibit B.

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IV.
CONCLUSION

Given that: (a) there is no actual writ of prohibition filed; (b) the standards for a stay have not be met; (c) there is no harm to Grupo in defending this matter as the damage issue is already being defended by the same set of attorneys representing Famsa (its wholly owned entity); and (d) service of the Motion to Stay has not been properly and timely made, Plaintiff requests that Grupo's Motion to Stay be denied. If, however, this Court is inclined to grant a stay, Plaintiff requests that a bond in the amount of \$1,000,000.00 be required before any such stay may be issued.

DATED this 10th day of August, 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

1 **DECLARATION OF KELLY J. BRINKMAN IN SUPPORT**

2 Kelly J. Brinkman, under penalty of perjury, declares as follows:

3 1. I have personal knowledge of the facts set forth herein, except as otherwise stated,
4 and if called to do so, I could and would competently testify thereto. I make this Declaration in
5 Opposition to Defendant Grupo Famsa, S.A. de C.V.'s Motion to Quash Service of Process.

6 2. On July 14, 2015, this Court held a hearing on Grupo's Motion to Quash. At that
7 hearing, this Court denied the Motion to Quash finding that Grupo has been properly served
8 under both the Hague Convention as well as the internal laws of Mexico and the Grupo's due
9 process rights were not violated. At the end of that hearing, Grupo, through its counsel, made an
10 oral motion to stay the ruling, which was denied.

11 3. **TWENTY-FOUR DAYS LATER**, Grupo filed its Motion to Stay on an order
12 shortening time.

13 4. As admitted by Grupo in its Motion to Stay, Grupo has not yet filed any writ of
14 prohibition with the Nevada Supreme Court and Plaintiff's counsel has not yet been served with
15 any such writ of prohibition as of the filing of this Opposition.

16 5. Defendants have previously informed Plaintiff that Famsa's assets are fully
17 encumbered by a loan made by Grupo to Famsa. Thus, it is reasonable to infer that Group is the
18 only defendant with unencumbered assets sufficient to cover Plaintiff's judgment (both in the
19 prior litigation and any judgment obtained in this matter).

20 6. Both Famsa and Grupo have the identical set of attorneys (two different firms)
21 defending them in this case (as well as other cases where Famsa breached its lease with different
22 landlords in California and Grupo Famsa was also a guarantor).

23 7. The remaining issue in this case is one of damages following the breach of lease
24 (and guaranty). That issue is the same, whether litigated by the tenant or the guarantor.

25 8. Grupo has notice of this proceeding as well as the prior litigation with Famsa. In
26 fact, Grupo participated in a mediation in the prior litigation.

27 9. Plaintiff has made efforts to avoid taking a default against Grupo and has
28 requested that they actively participate in this case. Plaintiff requested that Grupo's attorneys

1 agree to accept service on behalf of Grupo – which was denied. Thus, Plaintiff was forced to go
2 through the time-consuming and expensive process of serving Grupo in Mexico pursuant to the
3 Hague Convention and the internal laws of Mexico.


4 10. Neither Famsa nor Grupo have paid rent (or any amounts on the prior Judgment)
5 to Plaintiff since November 2012 (the last time Famsa paid rent to Plaintiff). Famsa's
6 representative has informed Plaintiff that all of Famsa's assets are encumbered by a loan made
7 by Grupo. Plaintiff's only real chance of recovery in this matter is to obtain a judgment against
8 Grupo. Thus, any stay of the proceedings against Grupo will frustrate Plaintiff's efforts to
9 pursue Grupo for its obligations under the Guaranty and following Famsa's breach of lease.

10 11. In the prior litigation with Famsa over the breach of lease and guaranty (Case No.
11 A-12-672870-C), Plaintiff was awarded a Judgment in the amount of \$748,394.19 plus attorney
12 fees (\$126,712.50) and costs (\$7,577.02) for a total of \$882,683.71.

13 12. Grupo failed to comply with EDCR 2.26 and 8.06(a). As of the filing of this
14 Opposition, Plaintiff has yet to been properly served with the Motion to Stay, only receiving an
15 electronic notification through the court electronic service on Friday afternoon, August 7, 2015 –
16 for a hearing scheduled for Tuesday morning, August 11, 2015. A hand-deliver of the Motion to
17 Stay has yet to be served on this office on behalf of Plaintiff.

18 I declare under the penalty of perjury that the foregoing is true and correct.

19 DATED this 10th day of August, 2015.

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23 Kelly J. Brinkman
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1 **CERTIFICATE OF SERVICE**

2 I hereby certify that I am an employee of the law firm of Goold Patterson, and on the 10th
3 day of August, 2015, I served the foregoing PLAINTIFF'S OPPOSITION TO DEFENDANT
4 GRUPO FAMSA, S.A. de C.V.'s MOTION TO STAY PROCEEDINGS RELATING TO
5 GRUPO FAMSA, S.A. DE C.V. PENDING OUTCOME OF PETITION FOR WRIT OF
6 PROHIBITION; DECLARATION OF KELLY J. BRINKMAN IN SUPPORT by electronic
7 mail and facsimile, addressed as follows:

8 Christopher Byrd, Esq.
9 FENNEMORE CRAIG JONES VARGAS
300 S. Fourth Street, Suite 1400
10 Las Vegas, NV 89101
11 **Facsimile: (702) 692-8099**
Email: cbyrd@fclaw.com
12 *Attorneys for Defendants*

13 Richard I. Arshonsky, Esq.
14 LEVINSON ARSHONSKY & KURTZ, LLP
15 15303 Ventura Blvd., Suite 1650
Sherman Oaks, CA 91403
16 **Facsimile: (818) 382-3433**
Email: rarshonsky@laklawyers.com
17 *Attorneys for Defendants*

18 
19 An Employee of Goold Patterson
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EXHIBIT A

**JUDGMENT
AND
AWARD OF ATTORNEY FEES AND COSTS**

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JUDGE
Christopher H. Byrd, Esq. [NV Bar No. 1633]
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Attorneys for Defendant FAMSA, INC.

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-12-672870-C

DEPT. NO. XIII

JUDGMENT

This matter having come before the Court on a non-jury Trial on February 25 and 26, 2014
(the "Trial"), and the Court having entered Findings of Fact and Conclusions of Law, and good
cause appearing,

IT IS ORDERED, ADJUDGED AND DECREED that judgment is entered in favor of
Plaintiff and against Defendant FAMSA, Inc., in the principal amount of Seven hundred forty ^{81,477}
thousand ^{three} ^{ninety-four} ^{nineteen} ^{748,394.19} hundred ^{sixty-seven} ^{sixteen} dollars and ^{sixteen} cents (\$748,394.19), which amount shall bear
interest at the contract rate until satisfied in full; and

LEVINSON ARSHONSKY & KURTZ, LLP

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DISTRICT COURT DEPT. NO. XIII

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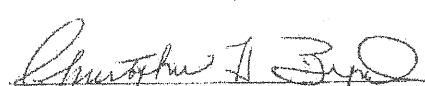
1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff shall recover its
2 costs and reasonable attorneys' fees, the amount of which shall be determined pursuant to separate
3 motion.

4 DATED this 27th day of April 2014.

5
6 
DISTRICT COURT JUDGE

7 Submitted by:

8 FENNEMORE CRAIG JONES VARGAS

9
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25 Attorneys for Defendant FAMSA, INC.

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17 *Attorneys for Defendant FAMSA, INC.*

18 **DISTRICT COURT**
19 **CLARK COUNTY, NEVADA**

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

22 Plaintiff,

23 vs.

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

27 Defendants.

CASE NO. A-12-672870-C

DEPT. NO. XIII

ORDER

28 THIS MATTER having come before the Court on June 5, 2014 for hearing on Defendant FAMSA, Inc.'s
Motion to Retax and Settle Costs, and on Plaintiff's Motion for Award of Attorneys' Fees, Costs, and
Disbursements, Plaintiff appearing by and through Kelly J. Brinkman, Esq. of the firm of Goold Patterson, and
said Defendant appearing by and through Christopher H. Byrd, Esq. of the firm of Fennemore Craig Jones Vargas,
and the Court having heard argument of counsel and having then taken the matter under advisement for further
consideration, and being now fully advised in the premises, ²and having rendered its Decision of June 30, 2014
a good cause appearing therefore, the Court
hereby finds as follows:

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LEVINSON ARSHONSKY & KURTZ, LLP

JUL 10 2014

DISTRICT COURT DEPT#13

A. Defendant's Motion re Costs

The Court is persuaded by Defendant's Motion regarding the following costs and, it is GRANTED IN PART as to the same:

Los Angeles Superior Court filing Fees in the amount of \$110.09 are not properly taxable herein;

- Mediation costs in the amount of \$2,175.75 are not properly taxable herein; and

- Expert witness fee is reduced from \$12,300.00 to \$1,500.00 per NRS 13.095(5).

In all other respects, the Motion is DENIED IN PART.

B. Plaintiff's Motion re Attorneys' Fees, Costs, and Disbursements

The Motion is GRANTED IN PART to the extent of the costs that the Court has allowed to remain in A. above, but DENIED IN PART as to those which have not been allowed in A. above.

Regarding attorneys' fees, the Court is persuaded by Defendant's points as to the attorneys' fees sought pertaining to the Fullerton firm, the Buckner firm, and the Askworth firm in the total amount of \$12,772.25, and the Motion is DENIED IN PART as to those fees. To the extent that any of those fees may have previously been allowed in the Court's Order of September 27, 2013, their allowance therein is rescinded.

On the other hand, in giving due application to the factors set forth in *Branzell v. Golden Gate National Bank*, 85 Nev. 345, 349, 455 P.2d 31, 33 (1969), the Court is persuaded by Plaintiff's position regarding the remainder of the attorneys' fees which have been incurred with the firm of Gould Patterson, \$126,712.50, and the Motion is GRANTED IN PART as to those fees. The fact that the Court did not adopt Plaintiff's positions on the acceleration and anticipatory repudiation issues after trial does not obviate the significance of those interesting issues going into trial and the place that they took in trying the case. The same is true of the time and effort of Gould Patterson in endeavoring to set the case up against Defendant's parent, Grupo Famsa.

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Based upon the foregoing the Court concludes:

1. Plaintiff shall recover costs from Defendant in the amount of \$7,577.02.
2. Plaintiff shall recover attorneys' fees from Defendant in the amount of \$126,712.50.

IT IS HEREBY ORDERED.

DATED this 22nd day of July, 2014.

DISTRICT COURT JUDGE

Submitted by:

FENNEMORE CRAIG JONES VARGAS

By:


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Attorneys for Defendant FAMSA, INC.

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EXHIBIT B

COURT DOCKET
A-14-706336-C

REGISTER OF ACTIONS

CASE NO. A-14-706336-C

BE Uno LLC, Plaintiff(s) vs. FAMSA Inc, Defendant(s)

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§
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Case Type: Other Contract

Date Filed: 08/29/2014

Location: Department 32

Cross-Reference Case Number: A706336

PARTY INFORMATION

Defendant	FAMSA Inc	Lead Attorneys Christopher H. Byrd Retained 702-692-8000(W)
Defendant	Grupo Famsa SA de CV	
Plaintiff	BE Uno LLC	Kelly J. Brinkman Retained 7026997500(W)

EVENTS & ORDERS OF THE COURT

	OTHER EVENTS AND HEARINGS
08/29/2014	Case Opened
08/29/2014	Complaint Complaint
09/04/2014	Initial Appearance Fee Disclosure Initial Appearance Fee Disclosure (NRS Chapter 19)
12/03/2014	Ex Parte Application to Extend Time for Service 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 Celso Najera in Support
12/11/2014	Order Extending Time to Serve Order on Ex Parte Application for Extension of Time in Which to Effectuate Service Upon Grupo Famsa, S.A. de C.V.
12/11/2014	Notice of Entry of Order Notice of Entry of Order for Extension of Time in Which to Effectuate Service Upon Grupo Famsa, S.A. de C.V.
12/29/2014	Summons Issued Summons - Civil
01/07/2015	Answer to Complaint Defendant FAMSA, Inc.'s Answer to Complaint of Plaintiff B.E. Uno, LLC
01/07/2015	Initial Appearance Fee Disclosure Initial Appearance Fee Disclosure
01/23/2015	Consent Consent to Service by Electronic Means
02/04/2015	Notice of Early Case Conference
03/05/2015	Joint Case Conference Report Joint Case Conference Report
03/27/2015	Scheduling Order Scheduling Order
04/08/2015	Order Setting Civil Non-Jury Trial Order Setting Civil Non-Jury Trial, Pre-Trial/Calendar Call
05/21/2015	Certificate of Service Certificate of Service Re: Defendant Grupo Famsa, S.A. de C.V.

05/21/2015	Three Day Notice of Intent to Default <i>Three (3) Day Notice of Intent to Take Default Upon Defendant Grupo Famsa, S.A. de C.V.</i>
06/01/2015	Motion to Quash <i>Defendant Group FAMSA, S.A., DE C.V.'s Motion to Quash Service of Process</i>
06/02/2015	Certificate of Service <i>Certificate of Service</i>
06/16/2015	Opposition to Motion <i>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 Njera Gonzalez in Support</i>
06/29/2015	Stipulation and Order to Extend Discovery Deadlines <i>Stipulation and Order to Extend Initial and Rebuttal Expert Disclosures [First Request]</i>
06/29/2015	Notice of Entry of Stipulation and Order <i>Notice of Entry of Stipulation and Order</i>
07/02/2015	Affidavit of Service <i>Affidavit of Service</i>
07/07/2015	Reply in Support <i>Reply in Support of Defendant Grupo FAMSA, S.A., DE C.V.'s Motion to Quash Service of Process</i>
07/14/2015	Motion to Quash Service (9:00 AM) (Judicial Officer Bare, Rob) <i>Defendant Group FAMSA, S.A., DE C.V.'s Motion to Quash Service of Process</i> <u>Parties Present</u> <u>Minutes</u>
	Result: Denied
07/20/2015	Supplemental List of Documents <i>Plaintiff's First Supplemental Production of Documents Pursuant to N.R.C.P. 16.1</i>
07/21/2015	Stipulation and Order <i>Stipulation and Order to Extend Initial and Rebuttal Expert Disclosures [Second Request]</i>
07/21/2015	Notice of Entry of Stipulation and Order <i>Notice of Entry of Stipulation and Order</i>
08/04/2015	Order Denying Motion <i>Order Denying Defendant Grupo Famsa's Motion for Order to Quash Service of Process and Setting Deadline to File an Answer to Complaint</i>
08/05/2015	Notice of Entry of Order <i>Notice of Entry of Order</i>
08/07/2015	Motion to Stay <i>Defendant Grupo Famsa, S.A. De C.V.'s Motion to Stay all Proceedings Relating to Grupo Famsa, S.A. De CV Pending Outcome of Petition for Writ of Prohibition on an Order Shortening Time</i>
08/11/2015	Motion to Stay (9:00 AM) (Judicial Officer Bare, Rob) <i>Defendant Grupo Famsa, S.A. De C.V.'s Motion to Stay all Proceedings Relating to Grupo Famsa, S.A. De CV Pending Outcome of Petition for Writ of Prohibition on an Order Shortening Time</i>
12/17/2015	Pretrial/Calendar Call (11:00 AM) (Judicial Officer Bare, Rob)
01/04/2016	Bench Trial (9:00 AM) (Judicial Officer Bare, Rob)

FINANCIAL INFORMATION

| Defendant FAMSA Inc

	Total Financial Assessment			251.00
	Total Payments and Credits			251.00
	Balance Due as of 08/10/2015			0.00
01/07/2015	Transaction Assessment			226.50
01/07/2015	Wiznet	Receipt # 2015-01591-CCCLK	FAMSA Inc	(223.00)
01/07/2015	Wiznet	Receipt # 2015-01592-CCCLK	FAMSA Inc	(3.50)
01/07/2015	Transaction Assessment			3.50
01/07/2015	Wiznet	Receipt # 2015-01595-CCCLK	FAMSA Inc	(3.50)
06/29/2015	Transaction Assessment			3.50
06/29/2015	Wiznet	Receipt # 2015-67882-CCCLK	FAMSA Inc	(3.50)
06/29/2015	Transaction Assessment			3.50
06/29/2015	Wiznet	Receipt # 2015-67978-CCCLK	FAMSA Inc	(3.50)
07/07/2015	Transaction Assessment			3.50
07/07/2015	Wiznet	Receipt # 2015-70798-CCCLK	FAMSA Inc	(3.50)
07/21/2015	Transaction Assessment			3.50
07/21/2015	Wiznet	Receipt # 2015-76493-CCCLK	FAMSA Inc	(3.50)
07/21/2015	Transaction Assessment			3.50
07/21/2015	Wiznet	Receipt # 2015-76595-CCCLK	FAMSA Inc	(3.50)
08/07/2015	Transaction Assessment			3.50
08/07/2015	Wiznet	Receipt # 2015-83261-CCCLK	FAMSA Inc	(3.50)
	Defendant Grupo Famsa SA de CV			3.50
	Total Financial Assessment			3.50
	Total Payments and Credits			0.00
	Balance Due as of 08/10/2015			3.50
06/01/2015	Transaction Assessment			(3.50)
06/01/2015	Wiznet	Receipt # 2015-57264-CCCLK	Grupo Famsa SA de CV	
	Plaintiff BE Uno LLC			315.50
	Total Financial Assessment			315.50
	Total Payments and Credits			0.00
	Balance Due as of 08/10/2015			3.50
01/26/2015	Transaction Assessment			(3.50)
01/26/2015	Wiznet	Receipt # 2015-08079-CCCLK	BE Uno LLC	3.50
03/05/2015	Transaction Assessment			3.50
03/05/2015	Wiznet	Receipt # 2015-23103-CCCLK	BE Uno LLC	(3.50)
05/22/2015	Transaction Assessment			3.50
05/22/2015	Wiznet	Receipt # 2015-54015-CCCLK	BE Uno LLC	(3.50)
06/16/2015	Transaction Assessment			3.50
06/16/2015	Wiznet	Receipt # 2015-63096-CCCLK	BE Uno LLC	(3.50)
07/21/2015	Transaction Assessment			3.50
07/21/2015	Wiznet	Receipt # 2015-76292-CCCLK	BE Uno LLC	(3.50)
08/04/2015	Transaction Assessment			3.50
08/04/2015	Wiznet	Receipt # 2015-81895-CCCLK	BE Uno LLC	(3.50)
08/05/2015	Transaction Assessment			3.50
08/05/2015	Wiznet	Receipt # 2015-82085-CCCLK	BE Uno LLC	(3.50)
08/29/2014	Transaction Assessment			273.50
08/29/2014	Wiznet	Receipt # 2014-99835-CCCLK	BE Uno LLC	(270.00)
08/29/2014	Wiznet	Receipt # 2014-99836-CCCLK	BE Uno LLC	(3.50)
09/04/2014	Transaction Assessment			3.50
09/04/2014	Wiznet	Receipt # 2014-101422-CCCLK	BE Uno LLC	(3.50)
12/03/2014	Transaction Assessment			3.50
12/03/2014	Wiznet	Receipt # 2014-135027-CCCLK	BE Uno LLC	(3.50)
12/11/2014	Transaction Assessment			3.50
12/11/2014	Wiznet	Receipt # 2014-137864-CCCLK	BE Uno LLC	(3.50)
12/11/2014	Transaction Assessment			3.50
12/11/2014	Wiznet	Receipt # 2014-138189-CCCLK	BE Uno LLC	(3.50)
12/29/2014	Transaction Assessment			3.50
12/29/2014	Wiznet	Receipt # 2014-143521-CCCLK	BE Uno LLC	(3.50)

EXHIBIT C

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CLERK OF THE COURT

LEVINSON ARSHONSKY & KURTZ, LLP

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APR 15 2014

DISTRICT COURT DEPT. #

1 JUDGE
2 Christopher H. Byrd, Esq. [NV Bar No. 1633]
3 FENNEMORE CRAIG JONES VARGAS
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5 Las Vegas, NV 8910
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10 Richard I. Arshonsky, Esq. [NV Bar No. 4518]
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17
18 Attorneys for Defendant FAMSA, INC.

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-12-672870-C

DEPT. NO. XIII

JUDGMENT

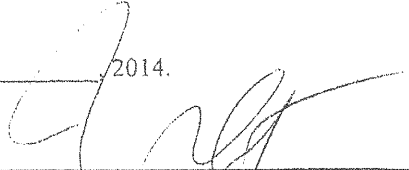
This matter having come before the Court on a non-jury Trial on February 25 and 26, 2014
(the "Trial"), and the Court having entered Findings of Fact and Conclusions of Law, and good
cause appearing,

IT IS ORDERED, ADJUDGED AND DECREED that judgment is entered in favor of
Plaintiff and against Defendant FAMSA, Inc., in the principal amount of Seven hundred forty ^{eight}
thousand ^{three} ^{ninety-four} ^{nineteen} ^{748,394.19} ~~two~~ hundred ~~sixty-seven~~ ^{sixty-seven} dollars and ~~sixteen~~ ^{sixteen} cents (\$~~742,867.16~~), which amount shall bear
interest at the contract rate until satisfied in full; and

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IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff shall recover its costs and reasonable attorneys' fees, the amount of which shall be determined pursuant to separate motion.

DATED this 27th day of April 2014.


DISTRICT COURT JUDGE

Submitted by:

FENNEMORE CRAIG JONES VARGAS

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Attorneys for Defendant FAMSA. INC.

EXHIBIT B

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DISTRICT COURT DEPT 13

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Attorneys for Defendant FAMSA, INC.

DISTRICT COURT
CLARK COUNTY, NEVADA

B.E. UNG, 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-12-672370-C

DEPT. NO. XIII

ORDER GRANTING MOTION TO
QUASH SERVICE

An oral motion having come before the Honorable Mark R. Denton, on February 26, 2014,
on special appearance by Christopher Byrd, Esq. of the law firm of Fennemore Craig Jones Vargas
and Richard I. Arshonsky, Esq. of the law firm of Levinson, Arshonsky & Kurtz, LLP, for GRUPO
FAMSA, S.A. DE C.V. ("Grupo"), a Mexican corporation, for the sole purpose of challenging
jurisdiction and to quash purported service of process on Grupo; and Kelly Erinkman, Esq. and
Bryan Day, Esq., of the law firm of Gould Patterson, appearing on behalf of Plaintiff; and the Court
having taken judicial notice of the pleadings on file and having considered the documents purporting
to demonstrate service and oral argument from counsel and being fully advised of the premises, and
good cause appearing therefore, the Court hereby finds as follows:

1 1. Plaintiff alleges service in this case was proper on several grounds: including but not
2 limited to: service on FAMSA Inc. ("FAMSA") should substitute for service on Grupo because
3 FAMSA is Grupo's subsidiary in the United States and Grupo had knowledge of the lawsuit once
4 FAMSA was served; and service on Grupo under the terms of Hague Convention was complete
5 when a process server went to the address on the Summons and there was no Grupo Famsa at that
6 address and he was told by an unidentified individual that the Grupo office was in Mexico City and
7 later Plaintiff's law firm sent process by federal express to Grupo at the same address in Mexico
8 visited by the process server.

9 2. Plaintiff did not file a return of service on Grupo prior to trial of this matter. The only
10 return of service filed was an acceptance of service on behalf of FAMSA, Inc.

11 3. Although the parties had different versions of the effort to serve process on Grupo
12 personally in Mexico and the reasons for non-delivery of process, Grupo was not personally served
13 by the process server in Mexico. Plaintiff did not provide any explanation for not sending the
14 process server back to attempt personal service on Grupo a second time after the package was
15 delivered to the Mexico address.

16 4. There was no evidence that FAMSA, Inc. was authorized to accept service for Grupo
17 in the United States, regardless of relationship that Plaintiff claims exists between FAMSA and
18 Grupo.

19 5. FAMSA is not an officer, general partner, member, manager, trustee or director of
20 Grupo for purposes of service of process under NRCP 4(d)(2), although Mr. Ignacio Ortiz is the
21 president of FAMSA and a director of Grupo.

22 6. There was no evidence that Mr. Arshonsky or his firm were authorized to accept
23 service of process for Grupo, even though they may represent FAMSA Inc. and Grupo in other
24 litigation outside Nevada.

25 7. The Court takes judicial notice of the fact that Plaintiff had until December 6, 2013 to
26 serve Grupo pursuant to order of the this Court and there has been no request for additional time to
27 complete service.

28

1 8. The federal express receipt for the package addressed to Grupo indicates the package
2 was mailed by the law firm representing Plaintiff in this case.

3 9. In order for service of process to be effective a party has to comply strictly with
4 NRCP 4. Plaintiff did not comply with the requirements of NRCP 4 for personal service of Grupo
5 either under the Hague Convention or substitute service on a foreign corporation.

6 Based upon the foregoing the Court concludes:

7 1. Plaintiff had the burden to prove service of process was properly effected. Under
8 Nevada law, notice of a lawsuit does not substitute for compliance with the requirements of NRCP 4
9 for service of process. Even if Grupo had notice of the suit from its subsidiary FAMSA Inc. or from
10 attorneys that represent Grupo in other litigation, such notice cannot substitute for service under
11 NRCP 4.

12 2. Plaintiff did not satisfy NRCP 4(d)(2) because FAMSA was not a an officer, general
13 partner, member, manager, trustee or director of Grupo. NRS 14.065 does change the rules for
14 substitute service of a foreign corporation and there is no Nevada statute that would permit serving a
15 United States subsidiary of a foreign corporation in a lawsuit involving breach of a lease.

16 3. The rules of Mexico would control whether mailing can be used to complete service
17 under the Hague Convention. Based upon *Cardona v. Kraemer*, 235 P. 3d 1026 (Ariz. 2010)
18 Mexico does not permit mailing as a method for completing service under the Hague Convention.

19 4. An attorney for a party cannot serve process. The participation by Plaintiff's attorney
20 in the attempt to complete the service by mailing would have made service under the Hague
21 Convention defective, even if mailing were permitted.

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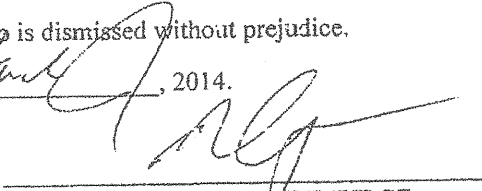
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5. NRCP 4(i) requires dismissal without prejudice if timely service of process is not made on a party.

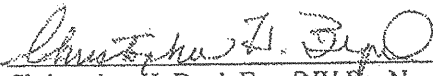
Based upon the above Findings of Fact and Conclusions of Law, and good cause appearing, **IT IS HEREBY ORDERED** that the Motion to Quash Service on Grupo is hereby GRANTED and the Complaint against Grupo is dismissed without prejudice.

DATED this 14th day of March, 2014.


DISTRICT COURT JUDGE

Submitted by:

FENNEMORE CRAIG JONES VARGAS

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Attorneys for Defendant FAMSA, INC.

EXHIBIT A

BONANZA EAST SHOPPING CENTER

SHOPPING CENTER LEASE

BY AND BETWEEN

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

AS LANDLORD

AND

FAMSA, INC., a California corporation,

AS TENANT

BONANZA EAST SHOPPING CENTER

SHOPPING CENTER LEASE

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EXHIBIT F	MEMORANDUM OF LEASE
EXHIBIT G	TENANT'S PROMOTIONAL EVENTS
EXHIBIT H	SIGN CRITERIA

GUARANTY

GUARANTY OF LEASE dated June 3, 2005, by and between B.E. UNO, LLC, a Nevada limited liability company, as Landlord and FAMS, INC., a California corporation, d/b/a FAMS, as Tenant.

FOR VALUABLE CONSIDERATION, receipt of which is hereby acknowledged, the undersigned Guarantor hereby unconditionally and irrevocably guarantees the full and faithful performance by Tenant of all the terms, covenants and conditions of the above referenced Lease. This Guaranty shall remain in full force and effect regardless of any amendment, modification, extension, compromise or release of any term, covenant or condition of the Lease or of any party thereto, as the case may be.

Guarantor waives any right or claim or rights to cause a marshalling of Tenant's assets or to proceed against Guarantor or Tenant or any security for the Lease or this Guaranty in any particular order and Guarantor agrees that any payments or performance required to be made hereunder shall become due upon demand in accordance with the terms hereof immediately upon the happening of a default (which remains uncured after any applicable notice and cure periods) under the Lease whether or not Guarantor has been given notice of such default, and Guarantor hereby expressly waives and relinquishes all rights and remedies accorded by applicable law to guarantors, including, but not limited to, notice of demand, notice of default, any failure to pursue Tenant or its property, any defense arising out of the absence, impairment or loss of any right of reimbursement or subrogation and any defense arising by reason of any defense of Tenant or by reason of the cessation of the liability of Tenant or any defense by reason of the assertion by Landlord against Tenant of any of the rights or remedies reserved to Landlord pursuant to the provisions of the Lease, or by reason of summary or other proceedings against Tenant.

No delay on Landlord's part in exercising any right, power or privilege under this Guaranty or any other document executed in connection herewith shall operate as a waiver of any such privilege, power or right, unless Guarantor is prejudiced thereby.

Guarantor agrees that any judgment rendered against Tenant for monies or performance due Landlord shall in every and all aspects bind and be conclusive against Guarantor to the same extent as if Guarantor had appeared in any such proceedings and judgment herein had been rendered against Guarantor.

So long as Tenant has any remaining obligations under the Lease, Guarantor subordinates to Tenant's obligations to Landlord all indebtedness of Tenant to Guarantor, whether now existing or hereafter contracted, whether direct or indirect, contingent or determined. With respect to any such indebtedness of Tenant to Guarantor, Guarantor further agrees to make no claim therefor until any and all obligations of Tenant to Landlord shall have been discharged in full and Guarantor further covenants and agrees not to assign all or any part of such indebtedness while this Guaranty remains in effect.

Guarantor shall provide Landlord with annual consolidated financial statements, which Landlord agrees to hold in strict confidence and subject to confidentiality requested by Guarantor.

The terms, covenants and conditions contained in this Guaranty shall inure to the benefit of the successors and assigns of Landlord.

If any term, covenant or condition of this Guaranty, or any application thereof, should be held by a court of competent jurisdiction to be invalid, void or unenforceable, all terms, covenants and conditions of this Guaranty, and all applications thereof not held invalid, void or unenforceable shall continue in full force and effect and shall in no way be affected, impaired or invalidated thereby.

In this Guaranty, whenever the context so requires, the masculine gender includes the feminine and/or neuter, and the singular number includes the plural.

This Guaranty shall be construed in accordance with its intent and without regard to any presumption or other rule requiring construction against the party causing the same to be drafted.

The laws of the State of Nevada shall govern the validity, construction, performance and effect of this Guaranty.

Should Guarantor consist of more than one person or entity, then, in such event, all such persons and entities shall be jointly and severally liable as Guarantor hereunder. In any action brought by Landlord to enforce any of its rights under or arising from this Guaranty, Landlord shall be entitled to receive its costs and legal expenses including reasonable attorneys' fees, whether such action is prosecuted to judgment or not.

Any other provision of this Guaranty to the contrary notwithstanding, following an assignment and assumption of the Lease to a person or entity other than an affiliate of Tenant, the following provisions shall apply:

(a) No amendment, modification, or supplement to the Lease entered into after the assignment shall be binding on Guarantor without Guarantor's prior written approval, in Guarantor's reasonable discretion; and

(b) Following such assignment, Landlord shall give Guarantor notice of any default by the then tenant under the Lease of which Landlord has knowledge, simultaneously upon giving such notice of default to such tenant. If the default is for failure to pay rent or any other sum which the Lease requires such tenant to pay, Guarantor shall have ten (10) days from the receipt of such notice to cure the default before Landlord can terminate the Lease, re-enter, or exercise any other remedy for default. If the default is of any other type, Guarantor shall have ten (10) days beyond the date by which such tenant could reasonably have cured the default to undertake to cure the default before

Landlord can terminate the Lease, re-enter, or exercise any other remedy for default. Notwithstanding anything herein to the contrary (including without limitation, any time limits for cure of default set forth herein), Landlord shall not terminate the Lease, re-enter, or exercise any other remedy for default (unless the default is for failure to pay rent or any other sum which the Lease requires such tenant to pay), if (i) Guarantor is making good faith efforts to correct such default or (ii) Guarantor is proceeding in a timely manner to foreclose a deed of trust in the Lease granted by such tenant to Guarantor.

Dated this 21 day of JUNE, 2005.

GUARANTOR:

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

By: 

Luis Gerardo Villareal,
Chief Financial Officer.

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 vs.

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

9 Respondents.

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

12 Real Party in Interest and
Plaintiff.

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SUPREME COURT CLERK
68626 Tracie K. Lindeman
Clerk of Supreme Court

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

13
14 **REAL PARTY IN INTEREST'S SUPPLEMENTAL APPENDIX IN**
15 **SUPPORT OF ANSWER TO PETITION FOR WRIT OF**
16 **PROHIBITION**

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18 KELLY J. BRINKMAN, ESQ.
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24 *Attorneys for Real Party in Interest/Plaintiff*

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	<u>DOCUMENT TITLE</u>	<u>BATES STAMP NO.</u>
A.	Guaranty signed by Grupo Famsa, S.A. de C.V. dated June 3, 2005	0113-0117
B.	Order filed on March 19, 2014 in prior case (A-12-672870-C)	0118-0121
C.	Judgment entered on April 28, 2014 in prior case (A-12-672870-C)	0122-0123
D.	Plaintiff's Opposition to Grupo Famsa Motion to Stay Proceedings Pending Outcome of Petition For Writ of Prohibition; Declaration of Kelly J. Brinkman in Support filed on August 10, 2015	0124-0143

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2 **PROOF OF SERVICE**

3 I hereby certify that I am an employee of the law firm of Goold
4 Patterson, and on the 28th day of August, 2015 I served the foregoing REAL
5 PARTY IN INTEREST'S SUPPLEMENTAL APPENDIX IN SUPPORT
6 OF ANSWER TO PETITION FOR WRIT OF PROHIBITION by enclosing
7 a true and correct copy of the same in a sealed envelope, postage fully pre-
8 paid thereon, and depositing said envelope in a mailbox of the United States
9 Post Office, addressed as follows:

10 TO: Christopher Byrd, Esq.
11 FENNEMORE CRAIG, P.C.
12 300 S. Fourth Street, Suite 1400
13 Las Vegas, NV 89101
Attorneys for Petitioner

14 TO: District Court Judge Rob Bare
15 Department 32
16 Regional Justice Center
17 200 Lewis Avenue
18 Las Vegas, NV 89155
Respondent

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21 An employee of Goold Patterson
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