

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

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

4 Petitioner and Defendant,

5 v.

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

11 Respondents,

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

14 Real Party in Interest and
15 Plaintiff,

SUPREME COURT CASE NO.:
68626

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16 **MOTION TO STRIKE B. E. UNO LLC'S SUPPLEMENTAL AUTHORITIES**
17 **AND SUPPLEMENTAL APPENDIX FILED AFTER THE WRIT OF**
18 **PROHIBITION HAD BEEN FULLY BRIEFED**

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

1 Petitioner GRUPO FAMSA, S.A. DE C.V. (“Grupo”) moves to strike B.E.
2 UNO, LLC’s (“Uno”) Supplemental Authorities to Real Party in Interest’s Answer to
3 Petition for Writ of Prohibition and the Supplemental Appendix in Support of
4 Supplemental Authorities (collectively “Supplemental Authorities”). The Nevada
5 Rules of Appellate Procedure do not permit a party to create a new factual record or
6 file additional briefs arguing new matters after the parties have fully briefed the case,
7 and the other party has no opportunity to respond.

8 Uno waited 45 days after it Answered the Writ to file its Supplemental
9 Authorities. In its Supplemental Authorities, Uno submitted a purported translation
10 of the International Service Documents, which Uno claims “provide[s] a detailed
11 history of the extensive efforts taken in Mexico to serve Petitioner”. Uno also
12 provides additional argument based upon these new documents. Uno’s Supplemental
13 Authorities, p. 1, ll. 17-18. Uno failed to submit these documents or the new
14 translation to the district court, and provides no explanation for its failure to do so.
15 Nor did Uno include this new evidence with its Answer to the Writ, or as part of its
16 Supplemental Appendix. Unsatisfied with the record and arguments below and
17 argued in its Answer, Uno is now attempting to raise new matters not addressed to the
18 district court, which is clearly improper. *Toigo v. Toigo*, 109 Nev. 350, 350, 849 P.2d
19 259, 259 (1993) (“an appellate court must confine its consideration to the facts
20 reflected in the record and the necessary and reasonable inferences that may be drawn
21 therefrom”).

22 There is no rule or legal authority that permits Uno to create a new record or
23 brief new arguments at this stage of the proceedings when the matter has already been
24 fully briefed. Nevada Rule of Appellate Procedure 31(e) provides that, “when
25 pertinent and significant authorities come to a party’s attention after the party’s brief
26 has been filed, but before a decision, a party may promptly advise the Supreme Court
27 by filing and serving a notice of supplemental authorities, setting forth the citations.”
28 The rule further provides that “the notice shall further state concisely and without

1 argument the *legal proposition* for which each supplemental authority is cited. *The*
2 *notice may not raise any new points or issues.*” *Id.* (emphasis added). Allowing a
3 party to bring new, controlling legal authorities to this Court’s attention is materially
4 different than creating a new record and providing new arguments after the briefs are
5 complete.

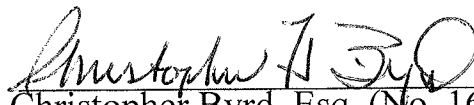
6 Finally, the timing of Uno’s Supplemental Authorities is manifestly unfair to
7 Grupo. Uno waited until after briefing was complete in this case to present new
8 factual information and argument to this Court. By waiting to introduce these new
9 materials and argument, Uno has deprived Grupo of its ability to respond. If this
10 Court intends to consider these new matters, then Grupo should be granted leave to
11 respond before the Writ is decided.

12 CONCLUSION

13 For these reasons, the Court should strike Uno’s Supplemental Authorities to
14 Real Party in Interest’s Answer to Petition for Writ of Prohibition and the
15 Supplemental Appendix in Support of Supplemental Authorities; or, in the alternative,
16 allow Grupo an opportunity to reply to the Supplemental Authorities.

17 Dated this 22nd day of October, 2015.

18 **FENNEMORE CRAIG, P.C.**

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CERTIFICATE OF COMPLIANCE

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

- ☒ This Motion 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 Motion 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
- ☒ Does not exceed 10 pages.

3. I hereby certify that I am counsel of record for Petitioner-Defendant, Grupo FAMSA, S.A. de C.V. in this matter, that I have read the foregoing Motion to Strike B. E. Uno LLC’s Supplemental Authorities and Supplemental Appendix Filed After The Writ Of Prohibition Had Been Fully Briefed and that to the best of my knowledge, information and belief, it is not frivolous or imposed for any improper purpose. I further certify that this Motion complies with all applicable Nevada Rules of Appellate Procedure, in particular N.R.A.P 28(e), which requires every assertion in the Motion regarding matters in the record to be supported by a reference to the page of the transcript or appendix where the matter relied on is to be found. I understand

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1 that I may be subject to sanctions in the event that the accompanying Motion is not in
2 conformity with the requirements of the Nevada Rules of Appellate Procedure.

3 Dated this 22nd day of October, 2015.

4 **FENNEMORE CRAIG, P.C.**

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16 *Attorneys for Defendants*

1 **CERTIFICATE OF SERVICE**

2 Pursuant to Nevada Rule of Appellate Procedure 25(c)(1), I hereby certify that I
3 am an employee of Fennemore Craig, P.C. and that on this 22nd day of October,
4 2015, I caused the foregoing **MOTION TO STRIKE B. E. UNO LLC'S**
5 **SUPPLEMENTAL AUTHORITIES AND SUPPLEMENTAL APPENDIX**
6 **FILED AFTER THE WRIT OF PROHIBITION HAD BEEN FULLY BRIEFED**
7 to be served by submission to the electronic filing service for the Nevada Supreme
8 Court upon the following to the email address on file and by depositing same for
9 mailing in the United States Mail, in a sealed envelope addressed to:

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16 District Court Judge Rob Bare
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18 Regional Justice Center
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22 _____
23 An employee of Fennemore Craig, P.C.
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