

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

Electronically Filed  
Nov 03 2015 04:12 p.m.  
DISTRICT COURT CLERK  
A-14-706336-0  
Clerk of Supreme Court

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

19   **FENNEMORE CRAIG, P.C.**

20   Christopher Byrd, Esq. (No. 1633)

21   Daniel Nubel, Esq. (No. 13553)

22   300 S. Fourth Street Suite 1400

23   Las Vegas, NV 89101

24   Telephone: (702) 692-8000

25   Facsimile: (702) 692-8099

26   E-Mail: [cbyrd@fclaw.com](mailto:cbyrd@fclaw.com)

27                   [dnubel@fclaw.com](mailto:dnubel@fclaw.com)

28   -and-

29   **LEVINSON ARSHONSKY & KURTZ, LLP**

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

31   15303 Ventura Blvd., Suite 1650

32   Sherman Oaks, CA 91403

33   Telephone: (818) 382-3434

34   Facsimile: (818) 382-3433

35   E-Mail: [rarshonsky@laklawyers.com](mailto:rarshonsky@laklawyers.com)

36   *Attorneys for Defendant and Petitioner*

37   *Grupo FAMSA, S.A. de C.V.*

1       Petitioner GRUPO FAMSA, S.A. DE C.V. (“Grupo”) hereby submits its reply  
2 to its Motion to Strike (the “Motion”) B.E. UNO, LLC’s (“Uno”) Supplemental  
3 Authorities to Real Party in Interest’s Answer to Petition for Writ of Prohibition and  
4 the Supplemental Appendix in Support of Supplemental Authorities (collectively  
5 “Supplemental Authorities”).

6       In its Opposition to the Motion, Uno attempts to argue that its Supplemental  
7 Authorities do not “introduce new evidence,” but rather provide “the entire history  
8 and background of the extensive steps taken by Plaintiff to serve Petitioner.”  
9 Opposition p. 2. Uno states that the Supplemental Authorities “go to the heart of the  
10 matter” as a justification for introducing new factual evidence at the appellate level.  
11 Opposition p. 3. No matter how Uno wants to phrase it, the purpose of these  
12 Supplemental Authorities is to introduce new factual evidence at the appellate level to  
13 affect the result of the pending Writ. Uno had ample opportunity to make these  
14 arguments to the district court, but elected not to do so, allegedly because of cost.  
15 Opposition p. 4. None of this is a plausible explanation for Uno’s delay.

16       Further, Uno argues that Grupo faces no prejudice by the introduction of this  
17 new material. Grupo has not had the opportunity to verify any of this new evidence,  
18 nor has it been able to determine the quality of the translation that the Supplemental  
19 Authorities purports to provide. Uno also makes additional arguments based upon  
20 these new documents. Uno is now attempting to raise new matters not addressed to  
21 the district court, which is clearly improper. *Toigo v. Toigo*, 109 Nev. 350, 350, 849  
22 P.2d 259, 259 (1993) (“an appellate court must confine its consideration to the facts  
23 reflected in the record and the necessary and reasonable inferences that may be drawn  
24 therefrom”).

25       Uno attempts to re-write the record below and makes new arguments about the  
26 status of the person served, Ms. Martinez. Opposition p. 3-4. Uno accuses Grupo of  
27 concocting a story to avoid service. *Id.* Uno takes a phrase from Grupo’s Motion to  
28 Quash out of context, implying that Grupo claimed Ms. Martinez did not work for

1 Grupo. Opposition p.4. In its Motion to Quash, Grupo argued that Ms. Martinez was  
2 “unrelated to Grupo” for purposes of service because did not have authority to accept  
3 legal documents on behalf of Grupo. Grupo’s Motion to Quash repeats Ms. Martinez  
4 lack of authority to accept service multiple times throughout the motion; but never  
5 claims she was not an employee of Grupo. Appendix 41 lines 1 and 2; 43 lines 15-17  
6 and 47 lines 27-28. In addition, Grupo’s legal director, Humberto Loza, testified in  
7 his declarations that Claudia Palomo Martinez “did not have authority to legal  
8 documents” and that she was employed by Grupo as “a hostess to greet individuals  
9 coming into the store.” 47 lines 27-28 and App. 77 lines 2-3. Thus, there has been no  
10 effort to manipulate the facts by Grupo, as Uno suggests.

11 On the other hand, a brief review of Uno’s Supplemental Authorities reveals  
12 that Plaintiff’s counsel, Celso Najera, influenced the Mexican authorities to alter their  
13 position on where service should properly occur. Uno’s Counsel intervened and  
14 convinced the Clerk to permit service at the location for an entity called Grupo  
15 Mexico. Supplemental App. p. 155. Uno’s counsel submitted a Notice of  
16 Shareholders meeting for Group Famsa S.A.B DE C.V., not Grupo Famsa, S.A. DE  
17 C.V. Initially, the clerk rejected the request; but, counsel for Uno persisted.  
18 Supplemental App. p. 161 and 162. Thus, whether the address for Grupo Famsa, S.A.  
19 DE C.V. is correct in the service documents is now open to question as is the extent  
20 of the influence of Uno’s counsel in that determination.

21 The Supplemental Appendix also makes clear that the Clerk directed service be  
22 made on Grupo Famsa “by conduct of its manager or legal representative”, not a  
23 hostess. Supplemental App., p. 165, second to last paragraph. The Instruction for the  
24 Letters Rogatory contains the same instruction. Supplemental App., p. 168. The  
25 process server knew about the requirement to serve a manager or legal representative  
26 because he admits no manager or legal representative was present when he went to the  
27 address, which Uno’s counsel convinced the clerk was the proper location.  
28 Supplemental App., p. 170. All of this confirms what Grupo has been arguing all

1 along: service on a hostess, under Mexican law and the instructions for the Letters  
2 Rogatory was improper because Ms. Martinez was not a manager or legal  
3 representative of Grupo, she was a hostess. Regardless, Grupo would clearly be  
4 prejudiced by Uno's introduction of evidence at this late stage with no opportunity to  
5 verify or rebut this new evidence.

## 6 CONCLUSION

7 For these reasons, the Court should strike Uno's Supplemental Authorities to  
8 Real Party in Interest's Answer to Petition for Writ of Prohibition and the  
9 Supplemental Appendix in Support of Supplemental Authorities.

10 Dated this 3rd day of November, 2015.

11 FENNEMORE CRAIG, P.C.

12   
13 Christopher Byrd, Esq. (No. 11633)

14 300 S. Fourth Street Suite 1400  
15 Las Vegas, NV 89101

16 Telephone: (702) 692-8000

17 Facsimile: (702) 692-8099

18 E-Mail: [cbyrd@fclaw.com](mailto:cbyrd@fclaw.com)

19 -and-

20 LEVINSON ARSHONSKY & KURTZ, LLP

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

22 15303 Ventura Blvd., Suite 1650

23 Sherman Oaks, CA 91403

24 Telephone: (818) 382-3434

25 Facsimile: (818) 382-3433

26 E-Mail: [rarshonsky@laklawyers.com](mailto:rarshonsky@laklawyers.com)

27 *Attorneys for Defendants*  
28

1 **CERTIFICATE OF COMPLIANCE**

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

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

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

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

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

15 [ ] Monospaced, has 10.5 or fewer characters per inch, and contains  
16 \_\_\_\_\_ words or \_\_\_\_\_ lines of text; or

17 [X] Does not exceed 10 pages.

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

27 ///

28 ///

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 3<sup>rd</sup> day of November, 2015.

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

5   
6 Christopher Byrd, Esq. (No. 1633)

7 300 S. Fourth Street Suite 1400

8 Las Vegas, NV 89101

9 Telephone: (702) 692-8000

Facsimile: (702) 692-8099

E-Mail: [cbyrd@fclaw.com](mailto:cbyrd@fclaw.com)

-and-

10 **LEVINSON ARSHONSKY & KURTZ, LLP**

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

12 15303 Ventura Blvd., Suite 1650

13 Sherman Oaks, CA 91403

14 Telephone: (818) 382-3434

15 Facsimile: (818) 382-3433

16 E-Mail: [rarshonsky@laklawyers.com](mailto:rarshonsky@laklawyers.com)

17 *Attorneys for Defendants*

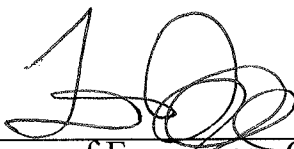
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**CERTIFICATE OF SERVICE**

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 3<sup>rd</sup> day of November, 2015, I caused the foregoing **REPLY IN SUPPORT OF MOTION TO STRIKE B. E. UNO LLC'S SUPPLEMENTAL AUTHORITIES AND SUPPLEMENTAL APPENDIX FILED AFTER THE WRIT OF PROHIBITION HAD BEEN FULLY BRIEFED** 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  
Respondent

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