

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

13 Real Party in Interest and  
14 Plaintiff.

Electronically Filed  
Nov 23 2015 02:01 p.m.  
Tracie K. Lindeman  
Clerk of Supreme Court

SUPREME COURT CASE NO.:  
69119

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

15 **REAL PARTY IN INTEREST/PLAINTIFF'S MOTION TO**  
16 **STRIKE REPLY AND SECOND SUPPLEMENTAL**  
17 **APPENDIX IN SUPPORT OF PETITION FOR**  
18 **WRIT OF MANDAMUS AS UNTIMELY**

19  
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1 B.E. Uno, LLC, as Real Party in Interest and Plaintiff ("Plaintiff"),  
2 files this motion to strike Petitioner's, Grupo Famsa, S.A. de C.V.'s  
3 ("Petitioner"), late-filed Reply in Support of Petition for Writ of Mandamus  
4 and Petitioner's Second Supplemental Appendix to Petition for Writ of  
5 Mandamus.

6 1. On November 6, 2015, Petitioner filed its Petition for Writ of  
7 Mandamus ("Writ") with this Court. [*Docket No. 15-33976*]

8 2. On November 12, 2015, this Court entered an Order  
9 Directing Answer ("Order"). [*Docket No. 15-34379*]

10 3. On November 17, 2015, Plaintiff filed its Answer to Petition  
11 for Writ of Mandamus ("Answer"). [*Docket No. 15-35133*]

12 4. On November 23, 2015, Petitioner filed its Reply in Support  
13 of Petition for Writ of Mandamus and Petitioner's Second Supplemental  
14 Appendix to Petition for Writ of Mandamus ("Reply"). [*Docket Nos. 15-*  
15 *35681 and 15-35686, respectfully.*]

16 Plaintiff moves to strike Petitioner's Reply as untimely. Pursuant to  
17 the Order as well as Nevada Rules of Appellant Procedure 26, Petitioner  
18 was required to file its Reply on or before Friday, **November 20, 2015**.<sup>1</sup> In  
19 particular, the Order required Petitioner to file any response within "3 days  
20 *from service of the answer.*" See Order, paragraph 2. As indicated above,  
21 Plaintiff filed its Answer to the Writ on Tuesday, November 17, 2015.  
22 Thus, Petitioner's reply was due no later than Friday, November 20, 2015  
23 (3-days later). Further, since Petitioner was served via the electronic filing  
24 system as a registered user under NRAP 26(c), 3 calendar dates are NOT  
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26 <sup>1</sup> Petitioner's Reply also indicates that it was served by both regular  
27 and electronic mail on November 20, 2015. As of the filing of this Motion  
28 to Strike, Plaintiff has not yet received a copy of the Reply in the U.S. Mail  
and thus cannot determine when the Reply may have actually been served.  
Further, the fact that the Reply is dated November 20, 2015, is irrelevant, as  
that does not indicate the "filing date," which is shown in the upper right  
hand corner as November 23, 2015.

1 required to be added following service. In particular, NRAP 26(c)  
2 provides:

3 “When a party is required or permitted to act within a  
4 prescribed period after a paper is served on that party, **3**  
5 **calendar days are added to the prescribed period** unless the  
6 paper is delivered on the date of service stated in the proof of  
7 service or unless the party being served is a registered user  
8 of the electronic filing system. Specific due dates set by court  
order or acts required to be taken within a time period set forth  
in the order are not subject to this additional 3-day allowance.”

9 NRAP 26(c) (emphasis added). Further, the last sentence of the above rule  
10 also instructs Petitioner that since specific due dates were set forth in the  
11 Order, the additional 3-days that could have applied if service was made  
12 solely by mail, would likewise not be applicable.

13 Thus, since Petitioner was served on Tuesday, November 17, 2015,  
14 and excluding the date of service (per NRAP 26(a)(1)), three days from  
15 service was Friday, November 20, 2015. Notwithstanding, Petitioner’s  
16 Reply was not filed until Monday, November 23, 2015 – six (6) days later  
17 and three (3) days after the Court-imposed deadline.

18 WHEREFORE, this Court should strike Petitioner’s Reply and  
19 Appendix.

20 DATED this 23<sup>rd</sup> day of November, 2015.

21 GOOLD PATTERSON

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