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UNITED STATES DISTRICT COURT

CLARK COUNTY, NEVADA

THE AMERICAN CIVIL LIBERTIES UNION
OF NEVADA, a domestic nonprofit
organization; CORIE HUMPHREY, an
individual,

Plaintiffs,

vs.

CLARK COUNTY SCHOOL DISTRICT, a
political subdivision of the State of Nevada,

Defendant.

Case No.: 2:25-cv-00892-RFB-MDC

(Removed from the District Court of Clark
County, Nevada, Case No. A-25-919151-C,
Dept. 16)

**CCSD'S MOTION TO SET ASIDE
ENTRY OF DEFAULT PURSUANT TO
FRCP 55(C)**

Defendant CLARK COUNTY SCHOOL DISTRICT ("CCSD"), by and through its
counsel of record, the law firm of WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC, hereby
submits this Motion to Set Aside Entry of Default Pursuant to FRCP 55(c) (the "Motion").

This Motion is made and based upon the following Memorandum of Legal Points and
Authorities, the Declaration of Jacqueline V. Nichols, and any arguments made by counsel at the
time of any hearing.

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MEMORANDUM OF LEGAL POINTS AND AUTHORITIES

I. INTRODUCTION

CCSD seeks to set aside the default that was entered on December 1, 2025, the attorney primarily handling this matter underwent significant health issues, which started on October 7, 2025, and then participated in a jury trial before the honorable Judge Miranda Du. *See* Declaration, **Exhibit A.**¹ Moreover, the parties agreed to stay the proceedings and never agreed on an answering deadline, including during the FRCP 26.1 conference.

The inadvertent clerical error referenced above combined with Mrs. Nichols' unexpected health issues constitute good cause to set aside the entry of default, pursuant to FRCP 55(c). What's more, Plaintiffs will not suffer any prejudice, as CCSD's participation in the litigation is not only clear from the record, but also through the extensive discovery conducted in this case to date. CCSD has responded to written discovery, the parties participated in meet and confer efforts and the parties further agreed to the continuance of discovery. Finally the parties are scheduled to participate in a settlement conference next month. For the reasons set forth below, CCSD requests that the Court set aside the entry of default.

II. DISCUSSION

"[J]udgment by default is a drastic step **appropriate only in extreme circumstances; a case should, whenever possible, be decided on the merits.**" *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984) (emphasis added). Under FRCP 55, a court has the discretion to set aside an entry of default for good cause. Fed. R. Civ. P. 55(c). "'Good cause' is a liberal and mutable standard. Because defaults are generally disfavored, courts resolve such motions so as to encourage a decision on the merits." *McMillen v. J.C. Penney Co.*, 205 F.R.D. 557, 558 (D. Nev. 2002). "Good cause" does not exist if one of the three factors are present: (1) the party seeking to set aside default engaged in culpable conduct that led to the default; (2) the defendant does not have a meritorious defense; or (3) reopening the default judgment would prejudice plaintiff." *United States v. Mesle*, 615 F.3d 1085, 1092 (9th Cir. 2010) (citing *Franchise Holding II*, 375 F.3d 922, 925-26 (9th Cir.

¹ Exhibit A will be filed under seal, contemporaneously with CCSD's Motion.



2004)). “Where timely relief is sought from a default . . . and the movant has a meritorious defense, doubt, if any, should be resolved in favor of the motion to set aside the default so that cases may be decided on their merits.” *O’Connor v. Nevada*, 27 F.3d 357, 364 (9th Cir. 1994) (quoting *Mendoza v. Wight Vineyard Management*, 783 F.2d 941, 945-45 (9th Cir. 1986)).

A. CCSD DID NOT ENGAGE IN CULPABLE CONDUCT THAT LED TO THE DEFAULT.

“Culpable conduct is intentional conduct.” *Bd. of Trs. Of the Teamsters Loc. 631 §. Fund for S. Nev. v. World Wide Exhibits, Inc.*, 770 F. Supp. 3d 1245, 1250 (D Nev. Mar. 14, 2025) (citing *Mesle*, 615 F.3d at 1092)). Here, for the reasons set forth in the declaration in support of the instant motion, CCSD’s conduct was not intentional, nor culpable. It was the result of an administrative error, including a stay of the proceedings agreed to by the parties, following and combined with several weeks of Mrs. Nichols’ health issues that unexpectedly arose, as well as no agreement on when an answering deadline was imminent. **Ex. A.**

B. CCSD HAS MERITORIOUS DEFENSES.

“A defendant seeking to vacate a default judgment must present specific facts that would constitute a defense.” *Bd of Trs. Of the Teamsters*, 770 F. Supp.3d at 1250. “But the burden on a party seeking to vacate a default judgment is not extraordinarily heavy.” *Id.* “A meritorious defense is one which, if proven at trial, will bar plaintiff’s recovery.” *Aristocrat Techs., Inc. v. High Impact Design & Entm’t*, 642 F.Supp. 2d 1228, 1233 (D. Nev. 2009). “The defendant is not required to prove beyond the shadow of a doubt that it will win at trial, but merely to show that it has a defense to the action which at least has merit on its face.” *Id.* *Aristocrat Techs., Inc.* involved a breach of contract, where entry of default against the defendant occurred. *Id.* There, the defendant argued that it had a meritorious defense because it performed under the terms of the agreement, among other reasons, and the court determined that these defenses at least had merits on their face. *Id.* Moreover, the district court is not required to decide the merits of the defenses; it need only be persuaded that a defense would be meritorious on its face.

In this case, Plaintiffs ask the Court to (1) enjoin CCSD from “enforcing provisions of the District’s Regulation R-5129” [ECF No. 6, pg 1:22-23]; and (2) order CCSD to allow Plaintiff



1 Corie Humphrey “wear the specific regalia as requested in [Plaintiffs] motion.” [ECF No. 6, pg.
2 2:2-4]. While students do not shed their constitutional rights of freedom of speech or expression
3 at the schoolhouse gate, the Constitution also “does not compel ‘teachers, parents, and elected
4 school officials to surrender control of the American public school system to public school
5 students.’” *Henery v. City of St. Charles*, 200 F3d 1128, 1131-1132 (8th Cir. 1999) The
6 constitutional rights of public school students “are not automatically coextensive with the rights
7 of adults in other settings, ... and a school need not tolerate speech that is inconsistent with its
8 pedagogical mission, even though the government could not suppress that speech outside the
9 schoolhouse.” *Id.* As such, “courts must analyze First Amendment violations alleged by students
10 ‘in light of the special characteristics of the school environment.’” *Id.*

11 The First Amendment protects not only verbal and written expression, but also symbols
12 and conduct that constitute symbolic speech. *Littlefield v. Forney Independent School Dist.*, 268
13 F.3d 275, 282 (5th Cir. 2001) (citing *Tinker v. Des Moines Indep. Cnty. Sch. Dist.*, 393 U.S. at
14 505–06 (1969)). The First Amendment inquiry is two-fold. *Zalewska v. County of Sullivan, New*
15 *York*, 316 F.3d 314, 319 (2d Cir. 2003). First, the Court must determine whether Plaintiff’s actions
16 would constitute expressive conduct to warrant First Amendment protection. *Id.* Second, the Court
17 must determine whether CCSD’s graduation regalia policy impermissibly denies protection to
18 Plaintiffs. *Id.* (citing *Texas v. Johnson*, 491 U.S. 397, 403. (1989)).

19 While this Court entered a preliminary injunction regarding a portion of CCSD’s regalia
20 policy, it did recognize that the policy was not entirely unconstitutional. Specifically, the Court
21 recognized the importance of ensuring that the school or CCSD provide approval of regalia that
22 could fall outside the policy to avoid disruptions and disappointments during ceremonies.
23 Furthermore, the parties stipulated to certain portions of the policy as reflected in a stipulation
24 submitted to this Court. ECF No. 24. It is also worth noting that Plaintiff Humphrie has since
25 graduated and no longer has standing to seek injunctive relief as she is no larger harmed by the
26 policy since graduating. Thus, there is a colorable argument regarding whether injunctive relief is
27 proper at this stage as Plaintiffs have no presented any evidence of actual harm, or even the
28 potential of harm, since last years graduation ceremony. Accordingly, CCSD have ample defenses

1 available to them that warrant the Court granting the instant motion. See also, CCSD's Response
2 to Motion for Temporary Restraining Order, ECF No. 19..

3 **C. PLAINTIFFS WOULD NOT SUFFER PREJUDICE IF ENTRY OF**
4 **DEFAULT WAS SET ASIDE.**

5 A party's ability to pursue a claim can be prejudiced by "loss of evidence, increased
6 difficulties of discovery, or greater opportunity for fraud or collusion." *Id.* None of those concerns
7 are present here. Moreover, "[p]rejudice exists if circumstances have changed since entry of the
8 default such that [a] plaintiff's ability to litigate its claim is not impaired in some material way or
9 if relevant evidence has become lost or unavailable." *Aristocrat Techs., Inc.*, 642 F.Supp. 2d at
10 1233. Here, CCSD has filed the instant motion as soon as practicable after the entry of default.

11 Plaintiff has suffered no prejudice from CCSD's delay in filing its Answer, since CCSD
12 has been involved in this matter for several months. Specifically, the parties have met and
13 conferred and submitted a stipulation before this Court. Moreover, Plaintiffs' ability to litigate
14 their claims has not changed in the last few weeks, and certainly not since the time the motion for
15 default was filed and this Court granting it. CCSD intends on filing its Answer to Plaintiffs'
16 Complaint no later than December 17, 2025. **Ex. A.** Conversely, if the entry of default is not set
17 aside, CCSD will suffer great prejudice, as it has significantly participated in this litigation since
18 its inception, and as outlined above, it has meritorious defenses.

19 CCSD's active participation in this litigation is not only apparent from the record, but also
20 its discovery efforts. CCSD has responded to discovery and met and conferred with opposing
21 counsel and is making continuing efforts to discuss discovery. The parties are also working on
22 conducting searches on emails and search terms to further discovery efforts prior to the upcoming
23 settlement conference.

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1 **III. CONCLUSION**

2 For the foregoing reasons, CCSD respectfully requests that this Court GRANT CCSD's
3 Motion and that the default entered against CCSD be set aside.

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5 Dated this 16th day of December, 2025.

6 /s/ Jacqueline v. Nichols
7 Phillip N. Smith, Jr., Esq.
8 Jacqueline V. Nichols, Esq.
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13 Attorneys for Defendant
14 Clark County School District

WEINBERG WHEELER
HUDGINS GUNN & DIAL



CERTIFICATE OF SERVICE

I hereby certify that on the 16th day of December, 2025, I served a true and correct copy of the foregoing **CCSD'S MOTION TO SET ASIDE ENTRY OF DEFAULT PURSUANT TO FRCP 55(C)** by e-service, in accordance with the Electronic Filing Procedures of the United States District Court, to the following:

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/s/ Victoria Gomez
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