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10 **UNITED STATES DISTRICT COURT**

11 **DISTRICT OF NEVADA**

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

14 Plaintiffs,

15 vs.

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

18 Defendant.

Case No.: 2:25-cv-00892

**Response to CCSD's Motion to Set
Aside Entry of Default Pursuant to
FRCP 55(c)**

19 Plaintiffs American Civil Liberties Union of Nevada (ACLU) and Corie Humphrey, hereby
20 submit this Response to Defendant Clark County School District's Motion to Set Aside Entry of
21 Default Pursuant to FRCP 55(c). Plaintiffs' Response is supported by the following memorandum
22 of points and authorities, by the papers and pleadings on file in this action, and any oral argument
23 made in support of Plaintiffs' Response.

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On December 16, 2025, over two weeks after the Clerk of the Court entered default against Defendant Clark County School District (CCSD) and the day after Plaintiffs ACLU of Nevada and Corie Humphrey moved for default judgment, Defendant CCSD filed its Motion to Set Aside Entry of Default Pursuant to FRCP 55(c). However, good cause does not exist to justify setting aside the Clerk's Entry of Default. First, CCSD's default is the result of its culpable conduct: Defendant CCSD willfully failed to answer Plaintiffs' Summons and Complaint for over six months after proper service, even after the Plaintiffs told CCSD in early November it had not filed an answer, and even after CCSD had default entered against it in another case in October. Second, Defendant CCSD does not have a meritorious defense to Plaintiffs' claims, as it presents no specific facts which constitute a defense that would bar Plaintiffs' relief at trial. Finally, setting aside the Clerk's entry of default would prejudice Plaintiffs, as Defendant CCSD's unjustifiable delay has obstructed Plaintiffs' ability to efficiently resolve this matter, risking further violation of Plaintiff ACLU of Nevada's Emerging Leaders members' rights with Class of 2026 graduation ceremonies quickly approaching. Therefore, Plaintiffs respectfully ask this Court to deny Defendant CCSD's motion in its entirety.

II. STATEMENT OF FACTS AND RELEVANT PROCEDURAL HISTORY

A. Defendant CCSD's Failure to File a Responsive Pleading

On March 27, 2025, CCSD adopted Policy R-5129 ("Regalia Policy") regulating the attire, adornments, and decorations that students may wear to graduation. The Regalia Policy fails to provide equal accommodation for students' reasonable requests to adorn or decorate their graduation caps and gowns with religious, cultural, or personally significant items in violation of

1 the First Amendment of the United States Constitution, Article 1, Section 9 of the Nevada
2 Constitution, and NRS 388.915.

3 On May 15, 2025, Plaintiffs filed their Complaint challenging CCSD's Regalia Policy in
4 the Eighth Judicial District Court of Nevada in Clark County, Nevada. *See* Notice of Removal,
5 ECF No. 1, Ex. A. Defendant CCSD then removed Plaintiffs' case to this Court. ECF No. 1. On
6 May 23, 2025, Plaintiffs served Defendant CCSD with Plaintiffs' Complaint as contained in the
7 Notice of Removal (ECF No. 1, Ex. A), Plaintiffs' Motion for Temporary Restraining Order and
8 supporting documentation (ECF No. 6), Plaintiffs' Motion for Preliminary Injunction (ECF No.
9 8), and the Minute Order issued by the Hon. Judge Richard F. Boulware II (ECF No. 14) with a
10 civil summons. Proof of Service, ECF No. 15. The same day, service of these documents was also
11 effectuated on counsel for Defendant CCSD through priority mail and the Court's electronic filing
12 system, with courtesy copies emailed to counsel. Certificate of Service at 2:5–11, ECF No. 16. As
13 such, Defendant CCSD was required to respond by June 13, 2025. Fed. R. Civ. P. 12(a)(1)(A);
14 Fed. R. Civ. P. 81(c)(2).

15 The Parties have not entered into a stay during these proceedings. Rather, Parties have
16 agreed to multiple deadline extensions related to discovery. Stips. to Extend, ECF Nos. 34, 41
17 (granted ECF Nos. 35, 52). None of these stipulations contemplated staying or extending CCSD's
18 deadline to file an answer in this case. ECF Nos. 35, 52. The Parties entered into the first stipulation
19 to extend on July 9, 2025, more than 21 days after Plaintiffs served their Complaint on CCSD, and
20 more than 21 days after CCSD removed this matter to federal court. ECF No. 34. And, while
21 Parties' agreed-upon discovery deadlines did not contemplate extending CCSD's deadline to file
22 an answer, their stipulated Discovery Plan did contemplate the deadline to Amend the Pleadings:
23 October 22, 2025. ECF No. 41 (granted ECF No. 43).

After waiting for CCSD to file an answer for over five months, Plaintiffs emailed CCSD's counsel on November 3, 2025, and asked if CCSD intended to file a responsive pleading. Emails re Answer at 2, ECF No. 54-2. CCSD's counsel said CCSD would file an answer the following day due to being in trial. Emails re Answer at 1, ECF No. 54-2. Besides telling Plaintiffs via email that CCSD intended to file its answer on November 6, 2025, CCSD did not ask for any additional time to file an answer at any point or provide any explanation for why it had not filed an answer. *See* Emails re Answer at 1, ECF No. 54-2. CCSD did not file an answer on November 6, 2025, and it did not request any additional time to file an answer.

After waiting for an additional two weeks, Plaintiffs requested an entry of default on November 20, 2025. ECF No. 49. The Clerk of the Court entered default on December 1, 2025. ECF No. 53. Plaintiffs filed a motion for default judgment on December 15, 2025. ECF No. 54. Defendant CCSD then filed its Motion to Set Aside Entry of Default on December 16, 2025.

B. CCSD's Other Default in *C.W. v. Nev. Dept. Educ.*

This is not the only active matter in the United States District Court of Nevada where CCSD has failed to file a timely answer, resulting in Clerk's Entry of Default. CCSD also recently defaulted in *C.W. v. Nev. Dep't Educ.*, No. 2:24-cv-1800-GMN-DJA (D. Nev. filed September 25, 2024). In that matter, the clerk entered default against CCSD in October of 2025, shortly before Plaintiffs here notified CCSD it had not filed an answer in this case. *C.W.*, No. 2:24-cv-1800-GMN-DJA, ECF No. 115 (D. Nev. Oct. 21, 2025). There, CCSD filed its motion to set aside a day after the clerk entered default and before those plaintiffs filed a motion for default judgment. *C.W.*, No. 2:24-cv-1800-GMN-DJA, ECF No. 120 (D. Nev. Oct. 22, 2025).

III. LEGAL STANDARD

Fed. R. Civ. P. 55(c) provides that courts "may set aside an entry of default for good cause". The good cause analysis considers: (1) whether the defendant engaged in culpable conduct that led

1 to the default; (2) whether the defendant had a meritorious defense; or (3) whether setting aside
 2 the default would prejudice the plaintiff. *Franchise Holding II, LLC v. Huntington Rests. Grp.,*
 3 *Inc.*, 375 F.3d 922, 926 (9th Cir. 2004). These factors are “disjunctive, such that a finding that any
 4 one of these factors is true is sufficient reason for the district court to refuse to set aside the default.”
 5 *United States v. Mesle*, 615 F.3d 1085, 1091 (9th Cir. 2010).

6 **IV. ARGUMENT**

7 **A. CCSD Engaged in Culpable Conduct that Led to Default Being Entered**

8 The good cause analysis first considers “whether [the party seeking to set aside the default]
 9 engaged in culpable conduct that led to the default.” *Franchise Holding II*, 375 F.3d at 926. In
 10 *Franchise Holding II*, the court found the defendant’s failure to seek an extension of time for filing
 11 a responsive pleading and failure to file anything with the district court until after the plaintiff had
 12 moved for default judgement went to the defendant’s “culpable conduct.” *Id.* “If a defendant ‘has
 13 received actual or constructive notice of the filing of the action and failed to answer,’ its conduct
 14 is culpable.” *Id.* “When considering a legally sophisticated party’s culpability in a default, an
 15 understanding of the consequences of its actions may be assumed, and with it, intentionality.”
 16 *Mesle*, 615 F.3d at 1092–93.

17 Defendant CCSD’s failure to file an answer here was not an “inadvertent clerical error,” it
 18 was intentional, deliberate, and willful. In fact, Plaintiffs’ counsel avoided seeking default until it
 19 became clear that CCSD’s conduct was intentional. First, Plaintiffs waited almost six months after
 20 properly serving Defendant with their Complaint and Summons to see whether CCSD would file
 21 an answer. Instead of directly requesting a default, Plaintiffs contacted CCSD to see whether
 22 CCSD intended to file an answer without Court intervention; CCSD claimed that it would within
 23 24 hours. Emails re Answer at 1–2, ECF No. 54-2. And again, instead of seeking Court
 24 intervention, Plaintiffs waited for an additional two weeks to see whether CCSD would follow

1 through and file its answer or request additional time. Only after CCSD took no action for another
2 two weeks did Plaintiffs request the clerk enter default. Even after the clerk entered default,
3 Plaintiffs waited an additional two weeks to see if CCSD would reach out prior to Plaintiffs filing
4 a motion for default judgment. And, even after having undisputable notice from this Court's clerk
5 that it was in default, CCSD waited until Plaintiffs put in substantive work and moved this Court
6 for default judgment before moving to set aside the clerk's entry of default. Considering the
7 complaint in this matter was in fact properly served on CCSD, CCSD never requested an extension
8 of time to file the responsive pleading, Plaintiff provided courtesy notice to CCSD that it had not
9 filed a responsive pleading, CCSD actually acknowledged that it had not filed a responsive
10 pleading, and CCSD still waited until after the clerk entered default and Plaintiffs filed a motion
11 for default judgment before taking any steps to address the issue, it is clear that this is not an error
12 but an intentional course of conduct by CCSD.

13 CCSD's failure to file responsive pleadings is not limited to this case. As recently as
14 October 21, 2025, this Court's clerk entered default judgment against CCSD in case *C.W. v. Nev.*
15 *Dep't Educ.* for failing to file a responsive pleading after plaintiffs in that matter filed an amended
16 complaint. *C.W. v. Nev. Dep't Educ.*, No. 2:24-cv-1800-GMN-DJA, ECF No. 115 (D. Nev. Oct.
17 21, 2025). While that default judgement was set aside as plaintiffs did not oppose CCSD's motion
18 to set aside, that incident signals that the matter before this Court is not an isolated incident but
19 rather a symptom of a broader issue with CCSD. That said, the facts in this matter are more
20 egregious than in *C.W. v. Nev. Dep't Educ.* Plaintiffs here contacted CCSD about its failure to file
21 an answer in November after CCSD should have learned its lesson from what happened in case
22 *C.W. v. Nev. Dep't Educ.* Emails re Answer at 2, ECF No. 54-2. CCSD actually told Plaintiffs here
23 that it would file an answer by November 6, 2025, a statement that turned out to be untrue. Emails
24 re Answer at 1, ECF No. 54-2. Plaintiffs here gave CCSD an additional two weeks to respond

1 before seeking an entry of default from the Court's clerk. CCSD waited over two weeks after the
2 Clerk entered Default until Plaintiffs filed their motion for default judgment and proposed order
3 to show cause, ECF Nos. 54–55, to move to set aside the Clerk's entry of default. ECF No. 56.
4 CCSD's conduct here is not only intentional, it is part of a developing, worsening trend.

5 CCSD's excuses for its behavior are unavailing. First, CCSD is wrong when it says that
6 parties agreed to a stay at any point in this matter. Def.'s Mot. to Set Aside at 2:6-7; 3:9-12, ECF
7 No. 56. The parties have only agreed to discovery deadline extensions during these proceedings,
8 and none of those extensions contemplated extending CCSD's obligation to file a responsive
9 pleading. Second, CCSD claims that Ms. Nichols' medical situation in October interfered with its
10 ability to file an answer. Def.'s Mot. to Set Aside at 3:10–13, ECF No. 56. However, this excuse
11 does not explain why CCSD failed to file an answer at any time between May and October.
12 Furthermore, when Plaintiffs contacted Ms. Nichols in November, she did not say anything about
13 needing more time due to a medical condition or for any other reason, and it appears she was well
14 enough to participate in a trial at that time. Emails re Answer at 1, ECF No. 54-2. She was also
15 well enough as of mid October to file an answer in *C.W. v. Nev. Dep't Educ.* No. 2:24-cv-1800-
16 GMN-DJA, ECF No. 123 (D. Nev. Oct. 23, 2025). Third, CCSD claims that Ms. Nichols' trial
17 schedule interfered with its ability to file a timely answer. Def.'s Mot. to Set Aside at 2:3–6, ECF
18 No. 56. However, when Ms. Nichols responded to Plaintiffs' email regarding CCSD's failure to
19 answer on November 5, 2025, she stated then that the trial would only delay CCSD's answer by
20 one additional day. Emails re Answer at 1, ECF No. 54-2. And of course, CCSD is not just
21 represented by Ms. Nichols; Mr. Phillip N. Smith has also appeared as counsel in this matter.

22 CCSD's failure to respond to Plaintiffs' complaint, despite having undisputed notice of the
23 action, amounts to culpable conduct. CCSD's excuses do not explain its failure to meet the initial
24 deadline to file an answer, nor do they explain its failure to file an answer on November 6 as

1 promised. Considering that CCSD is clearly culpable for the default entered against it, this factor
 2 alone justifies denying CCSD's motion to set aside the default.

3 **B. CCSD Does Not Have a Meritorious Defense**

4 The good cause analysis next considers whether the defendant has a meritorious defense.
 5 *Franchise Holding II*, 375 F.3d at 926. This requires the defendant to present "specific facts that
 6 would constitute a defense." *Id.* "A 'mere general denial without facts to support it' is not enough
 7 to justify vacating a default" *Id.* (quoting *Madsen v. Bumb*, 419 F.2d 4, 6 (9th Cir. 1969)).
 8 Where a "defendant presents no meritorious defense, then nothing but pointless delay can result
 9 from reopening the judgment." *TCI Grp. Life Ins. Plan v. Knoebber*, 244 F.3d 691, 697 (9th Cir.
 10 2001) overruled on other grounds by *Egelhoff v. Egelhoff ex rel. Breiner*, 532 U.S. 141, 121 S. Ct.
 11 1322 (2001).

12 Defendant CCSD has not presented a meritorious defense. In its motion, Defendant fails to
 13 state specific facts which would constitute a defense. CCSD asserts that the policy is "not entirely
 14 unconstitutional." Def.'s Mot. to Set Aside at 4:19–20, ECF No. 56. This constitutes a "mere
 15 general denial" which is insufficient to justify vacating default, and in part recognizes that this
 16 Court did find CCSD's policy facially unconstitutional in violation of the First Amendment of the
 17 United States Constitution when issuing a preliminary injunction. *See* ECF No. 25. Interpreting
 18 Defendant CCSD's motion generously, the only fact CCSD presents is that Plaintiff Humphrey
 19 has graduated. Def.'s Mot. to Set Aside at 4:24–26, ECF No. 56. While Plaintiff Humphrey has
 20 graduated since the filing of this case, this fact does not change Plaintiff ACLU of Nevada's need
 21 for permanent injunctive relief to prevent the violation of the rights of future graduating ACLU of
 22 Nevada's Emerging Leaders members, nor does it bar Plaintiff Humphrey's recovery of nominal
 23 damages for the violation of her constitutional rights. Defendant CCSD's proposed answer
 24 similarly fails to show that CCSD has a meritorious defense to the action, as it largely responds to

1 Plaintiffs' claims by stating it does not have sufficient knowledge or information regarding
 2 Plaintiffs' allegations, and states mere general denials with no supporting facts. ECF No. 59.
 3 Because Defendant CCSD presents no specific facts that would constitute a meritorious defense
 4 to Plaintiffs' claims that CCSD's Regalia Policy is unconstitutional, this factor weighs against
 5 granting Defendant's Motion to Set Aside, as nothing but pointless delay can result from reopening
 6 the judgment.

7 **C. Vacating Default Would Prejudice the Plaintiffs**

8 The final good cause factor considers whether setting aside the default would prejudice the
 9 non-moving party. *Franchise Holding II*, 375 F.3d at 926. "To be prejudicial, the setting aside of
 10 a judgment must result in greater harm than simply delaying resolution of the case. Rather, 'the
 11 standard is whether [plaintiffs] ability to pursue his claim will be hindered.'" *TCI Grp. Life Ins.*
 12 *Plan*, 244 F.3d at 701.

13 CCSD's failure to answer has hindered Plaintiffs' ability to resolve their claims. CCSD's
 14 failure to file a responsive pleading by the deadline provided in the Federal Rules of Civil
 15 Procedure, or for the six months thereafter, has delayed resolution of this case and subjects
 16 Plaintiffs to the same risk of irreparable harm they faced ahead of the 2025 graduation ceremonies
 17 as the 2026 graduation ceremonies draw near. *See Elec. Frontier Found. v. Glob. Equity Mgmt.*
 18 *(SA) Pty Ltd*, 290 F. Supp. 3d 923, 941 (N.D. Cal. 2017) (finding prejudice to plaintiff where "it
 19 would be forced to operate under a restriction on, or shadow over, its First Amendment rights").
 20 *See also Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for
 21 even minimal periods of time, unquestionably constitutes irreparable injury.") This Court
 22 recognized such irreparable harm when it issued preliminary injunctive relief in this matter. *See*
 23 ECF No. 25. This threat to Plaintiffs' constitutional rights is ongoing and, due to Defendant's delay
 24 in filing an answer, is yet again imminent with the upcoming 2026 graduation ceremonies.

Vacating default would prejudice the Plaintiffs by unnecessarily continuing to subject them to CCSD's unconstitutional Regalia Policy.

V. CONCLUSION

"Good cause does not exist . . . when the party seeking to set aside the default 'engaged in culpable conduct' or failed to 'allege sufficient facts that, if true, would constitute a defense.'" *Molina v. Dempsey's Adult Care Homes, LLC.*, No. 22-15176, 2023 U.S. App. LEXIS 9587, at *2 (9th Cir. Apr. 21, 2023) (quoting *Mesle*, 615 F.3d at 1091, 1094). CCSD's failure to answer after being properly served with Plaintiffs' Summons and Complaint amounts to culpable conduct. CCSD's mere general denials without facts to support its defense is insufficient to justify vacating default. And Plaintiffs will suffer prejudice if default is vacated, as CCSD's conduct demonstrates a pattern of delay that not only hinders Plaintiffs' ability to resolve their claims, but also risks violation of their rights. As each factor of the good cause analysis weighs against vacating the default entered against CCSD, Plaintiffs respectfully ask this Court to deny Defendant CCSD's Motion to Set Aside Entry of Default in its entirety.

DATED: December 29, 2025.

AMERICAN CIVIL LIBERTIES UNION OF NEVADA

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CERTIFICATE OF SERVICE

I hereby certify that on December 29, 2025, I electronically filed a true and correct copy of the foregoing PLAINTIFFS' RESPONSE TO CCSD'S MOTION TO SET ASIDE ENTRY OF DEFAULT PURSUANT TO FRCP 55(c). I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished on all participants by:

- ☒ CM/ECF
- ☐ Electronic mail; or
- ☐ US Mail or Carrier Service

/s/ Samantha Kroner
SAMANTHA KRONER
An employee of the ACLU of Nevada