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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 REPLY TO PLAINTIFFS' RESPONSE TO MOTION TO SET ASIDE ENTRY OF DEFAULT**

Defendant, CLARK COUNTY SCHOOL DISTRICT ("CCSD"), by and through their counsel of record, Phillip N. Smith, Jr., Esq., of the law firm of WEINBERG, WHEELER, HUDGINS, GUNN & DIAL, LLC, hereby submit this Reply to Plaintiffs' Response to Motion to Set Aside Entry of Default ("Motion"). This Motion is made and based upon the following Memorandum of Legal Points and Authorities, and any arguments made by counsel at the time of any hearing.

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MEMORANDUM OF LEGAL POINTS AND AUTHORITIES

I. INTRODUCTION

On December 19, 2025, CCSD filed its Answer to Plaintiffs' Complaint. Plaintiffs base their response and arguments on the fact that the Answer was filed "over six months" after the Complaint. However, Plaintiffs neglect to include that the parties continue to participate in litigation. First, the lack of CCSD's Answer did not prevent Plaintiffs from participating in discovery efforts. Second, CCSD continues to defend against Plaintiffs' claims and participate in discovery. Finally, the Answer did not prejudice Plaintiffs as Parties have proceeded with discovery, extended discovery deadlines and scheduled an upcoming settlement conference. Therefore, the Court should grant Defendant's Motion to Set Aside Entry of Default.

II. LEGAL ARGUMENT

The Ninth Circuit has admonished that as a general matter, FRCP 60(b) (i.e., concerning a motion to set aside a default) is "***remedial in nature*** and … must be liberally applied." *Falk v. Allen*, 739 F.2d 461, 463 (9th Cir. 1984) (per curiam) (emphasis added). "Put another way, where there has been *no* merits decision, appropriate exercise of district court discretion under Rule 60(b) requires that the finality interest should give way fairly readily, to further the competing interest in reaching the merits of a dispute." *TCI Grp. Life Ins. Plan v. Knoebbe*r, 244 F.3d 691, 696 (9th Cir. 2001).

a. The Default Was Not the Result of Willful or Culpable Conduct.

A "defendant's neglectful failure to answer, without more, is typically not "culpable" unless "there is no explanation of the **default** inconsistent with a devious, willful, or bad faith failure to respond." *Francois & Co., LLC v. Nadeau*, 334 F.R.D. 588, 596 (C.D. Cal. 2020) (emphasis added). Although in *Franchise Holding II, Ltd. Liab. Co. v. Huntington Rests. Grp., Inc.*, 375 F.3d 922, 925 (9th Cir. 2004), the Court denied defendant's motion to set aside the entry of default, Plaintiffs fail to acknowledge that the lack of a filing of an Answer did not prevent or prejudice Plaintiffs from actively engaging in discovery. *See* ECF Nos. 40-46.

Plaintiffs ultimately rely on CCSD's "failure" to file an Answer to establish culpable conduct. In an essence, Plaintiffs attempt to recast an inadvertent delay as willful disregard for the

litigative process. That framing is legally and factually incorrect. CCSD's failure to respond arose during a period when the attorney primarily handling this matter underwent significant health issues. *See* ECF No. 57. In addition, an answering deadline had not been discussed. This is a classic example of excusable neglect, and a party cannot be said to have "willfully" defaulted when medical complications impaired their ability to timely answer a pleading. Beyond that, Plaintiffs' acknowledgment of a default in the matter *C.W. v. Nev. Dep't Educ.*, No. 2:24-cv-1800-GMN-DJA, further demonstrates that CCSD's conduct was not willful. Instead, this demonstrates how primary counsel's health conditions affected all her case work.

Plaintiffs rely on the mere fact that a deadline was missed, but CCSD submits that this does not establish culpable conduct where the surrounding circumstances show an honest mistake or unavoidable disruption. Serious illnesses such as that described in Exhibit A of CCSD's Motion to Set Aside Entry of Default ("Motion") are precisely the type of circumstances that justify relief under these circumstances.

Because the default resulted from a health-related disruption along with administrative uncertainty, the mitigated culpability factor weighs strongly in favor of setting aside the default.

b. CCSD Has Multiple Meritorious Defenses.

A "mere general denial without facts to support it" is not enough to justify vacating a default or default judgment. *Franchise Holding*, 375 F.3d at 926. Plaintiffs assert in their Response that CCSD failed to state specific facts in its Motion which would constitute a defense. This is incorrect. Since the inception of litigation, CCSD asserted various defenses against Plaintiffs' causes of actions. *See* ECF Nos. 19 and 20. CCSD explicitly argued, *inter alia*, that Plaintiff Corie Humphrey lacks standing as she has since graduated. See *ECF* No. 56. CCSD also asserted a defense citing to the First Amendment and relevant case law that would warrant a finding that the policy was not unconstitutional, which is beyond what is required to be proven at this juncture. *Id*.

Plaintiffs' oversight of these asserted defenses is significant, as Plaintiffs' own cited authority illustrates that what is needed is "specific facts that would constitute a defense." *See* ECF No. 61. As just discussed, CCSD did exactly that – complying with the standard Plaintiffs themselves cited to. As a result, this factor weighs strongly in favor of setting aside the default.

c. Vacating the Default Judgment Would Not Prejudice the Plaintiffs.

"No **prejudice** exists, however, where setting aside **default** merely delays resolution of the case." *Francois & Co., LLC*, 334 F.R.D. at 599 (emphasis added). Plaintiffs' assertion of prejudice is legally defective. Plaintiffs argue that vacating the default would be prejudicial by "unnecessarily continuing to subject them to Defendant's unconstitutional Regalia Policy." Plaintiffs do not allege, however, that evidence would be destroyed, evidence would be lost, or that there is an unavailability of witnesses. This indicates that Plaintiffs' argument rests on a flawed premise, as it relies on the assumption that the challenged policy is unconstitutional. That is the very issue this case exists to resolve. Plaintiffs are presupposing the answer to the merits question and using that assumption to argue against setting aside default. That is a circular argument. Plaintiffs essentially argue that because Plaintiffs allege the policy is unconstitutional, CCSD should be denied the opportunity to defend it. The constitutionality of the policy has not been adjudicated unless this case proceeds on the merits. Default cannot be used to short-circuit the very inquiry the Court must undertake.

As a result, Plaintiffs' effort to frame ongoing enforcement (without specifics) as prejudicial is nothing more than an attempt to avoid litigating this case on the merits. The prejudice analysis does not ask whether Plaintiffs prefer to win without proving its claims. Since Plaintiffs' argument relies on assuming the ultimate legal conclusion instead of demonstrating any real prejudice, it provides no basis to deny relief from default.

III. CONCLUSION

CCSD respectfully requests that the Court set aside the default judgment and permit this case to proceed on the merits.

Dated this 12th day of January, 2026.

/s/ Phillip N. Smith, Jr., Esq.
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CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of January, 2026, I served a true and correct copy of the foregoing **CCSD'S REPLY TO PLAINTIFFS' RESPONSE TO MOTION TO SET ASIDE ENTRY OF DEFAULT** by mailing a copy hereof, first class mail, postage prepaid to the following:

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