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STIP
PAT LUNDVALL (NSBN 3761)
CARLA HIGGINBOTHAM (NSBN 8495)
McDONALD CARANO WILSON LLP
2300 West Sahara Avenue, Suite 1000
Las Vegas, Nevada 89102
Telephone No. (702) 873-4100

FILED
2008 NOV 21 P 2:26
Earl B. Smith
CLERK OF THE COURT

Attorneys for Defendant Franchise Tax Board of the State of California

DISTRICT COURT
CLARK COUNTY, NEVADA

GILBERT P. HYATT,

Plaintiff,

vs.

FRANCHISE TAX BOARD OF THE
STATE OF CALIFORNIA,

Defendant.

Case No. : A 382999
Dept. No. : X
Docket No. : R

STIPULATION AND ORDER RE:

(1) HEARING DATE FOR (a) FTB'S
MOTION TO RETAX COSTS, (b) FTB'S
PROVISIONAL MOTION FOR STAY
PENDING APPEAL WITHOUT BOND,
and (c) FTB'S MOTION FOR
JUDGMENT AS A MATTER OF LAW
OR ALTERNATIVELY, AND
CONDITIONALLY MOTION FOR NEW
TRIAL PURSUANT TO NRCP 50 AND
ALTERNATIVE MOTION FOR NEW
TRIAL AND OTHER RELIEF
PURSUANT TO NRCP 59; and

(2) EXTENSION, IF NECESSARY, OF
PRESENT STAY OF
EXECUTION/ENFORCEMENT OF
JUDGMENT WITHOUT BOND
PENDING POSSIBLE REVIEW BY
NEVADA SUPREME COURT

Hearing Date: n/a
Hearing Time: n/a

Plaintiff Gilbert P. Hyatt ("Hyatt") and defendant Franchise Tax Board of the State of
California ("FTB"), stipulate and agree as follows:

1 (1) ^{ju} ~~At the Court's request,~~ the November 19, 2008 hearings on FTB's (a) Motion to
2 Retax Costs, (b) Provisional Motion for Stay Pending Appeal Without Bond, and (c) Motion for
3 Judgment as a Matter of Law or Alternatively and Conditionally Motion for New Trial Pursuant
4 to NRCF 50, and Alternative Motion for New Trial and Other Relief Pursuant to NRCF 59
5 ("Post-Trial Motion"), may be scheduled for Wednesday, ^{January 14, 2009 @ 10am,} ~~December 17, 2008 at 9:00 am.~~

6 (2) If the Court denies FTB's Post-Trial Motion, either in whole or in part, and
7 FTB's Provisional Motion for a Stay Pending Appeal Without Bond, either in whole or in part,
8 then FTB may file its writ and/or motion with the Nevada Supreme Court seeking a stay of
9 execution/enforcement pending appeal without bond within 15 days after service of written
10 notice of entry of the district court's order denying FTB's Provisional Motion for a Stay
11 Pending Appeal Without Bond. Hyatt shall timely file an opposition, if any, and FTB may file a
12 reply brief, if allowed. If FTB files its writ and/or motion with the Nevada Supreme Court
13 within such time, the present stay of execution/enforcement of judgment without bond dated
14 September 16, 2008 shall remain in place until 10 days after service of written notice of entry of
15 the Nevada Supreme Court order(s) disposing of FTB's request for a stay pending appeal
16 without bond, or until further order of either the Nevada Supreme Court or the district court. If
17 FTB does not file its writ and/or motion with the Nevada Supreme Court within such time, then

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1 the present stay, if not yet expired, will continue in accord with the Court's September 16, 2008
2 Order. This stipulation is not intended to modify the September 16, 2008 Order; the sole
3 purpose of paragraph 2 of this stipulation concerns the timeframe after expiration of the stay
4 presently in force.

5 Dated: November 20, 2008
6 McDONALD CARANO WILSON LLP

7 Pat Lundvall
8 PAT LUNDVALL (NSBN 3761)
9 CARLA HIGGINBOTHAM (NSBN 8495)
10 2300 West Sahara Avenue, Suite 1000
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11 Attorneys for Defendant
12 Franchise Tax Board of the State of
California

Dated: November 20, 2008
BULLIVANT HOUSER BAILEY PC

Peter C. Bernhard
PETER C. BERNHARD (NSBN 734)
3883 H. Hughes Parkway, No. 550
Las Vegas, Nevada 89169
Telephone No. (702) 669-3600

Attorney for Plaintiff Gilbert P. Hyatt

13 ORDER

14 IT IS SO ORDERED.

15 Dated: 11-21-08

16 JESSIE WALSH

17 DISTRICT COURT JUDGE

McDONALD-CARANO-WILSON
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1 NOTC
2 JAMES W. BRADSHAW (NSBN 1638)
3 PAT LUNDVALL (NSBN 3761)
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9 LEMONS, GRUNDY, & EISENBERG
10 6005 Plumas Street, Suite 300
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14 rle@lge.net

12 Attorneys for Defendant Franchise Tax Board of the State of California

13 DISTRICT COURT
14 CLARK COUNTY, NEVADA

15 * * * *

16 GILBERT P. HYATT,
17 Plaintiff,
18 vs.

19 FRANCHISE TAX BOARD OF THE
20 STATE OF CALIFORNIA,
21 Defendant.

Case No. : A 382999
Dept. No. : X
Docket No. : R

NOTICE OF APPEAL
Hearing Date: N/A
Hearing Time: N/A

24 Notice is hereby given that Defendant Franchise Tax Board of the State of California
25 ("FTB") hereby appeals to the Supreme Court of Nevada from the following judgment and
26 orders:

- 27 1. Judgment entered upon jury verdict in favor of Plaintiff Gilbert P. Hyatt entered on
28 September 8, 2008 (Exhibit 1);

FILED

2009 FEB 10 A 10:06

Ed. [Signature]
CLERK OF THE COURT

- 1 2. Order denying FTB's Motion For Judgment as a Matter of Law or Alternatively And
2 Conditionally Motion for New Trial Pursuant to NRCP 50; and FTB's Alternative
3 Motion for New Trial and Other Relief Pursuant to NRCP 59 entered on February 5,
4 2009 (Exhibit 2); and
5 3. All other judgments and orders made final and appealable by the foregoing.

6 Dated this 9th day of February, 2009.

7 McDONALD CARANO WILSON LLP

8
9 By:

10 JAMES W. BRADSHAW (NSBN 1638)
11 PAT LUNDVALL (NSBN 3761)
12 CARLA HIGGINBOTHAM (NSBN 8495)
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17 Attorneys for Defendant
18 Franchise Tax Board of the State of California
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CERTIFICATE OF SERVICE

I hereby certify that I am an employee of McDonald Carano Wilson LLP, and that I served a true and correct copy of the foregoing NOTICE OF APPEAL on this 10th day of February, 2009 by hand delivery upon the following:

Peter C. Bernhard, Esq.
Bullivant Houser Bailey PC
3883 H. Hughes Parkway, No. 550
Las Vegas, Nevada 89169

I hereby certify that I am an employee of McDonald Carano Wilson LLP, and that I served true and correct copies of the foregoing NOTICE OF APPEAL on this 10th day of February, 2009 by depositing said copies in the United States Mail, postage prepaid thereon, upon the following:

Mark A. Hutchison, Esq.
Hutchison & Steffen
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, NV 89145

Donald Kula, Esq.
Perkins Coie
1620 - 26th Street
Sixth Floor, South Tower
Santa Monica, CA 90404-4013

Robert L. Eisenberg
Lemons, Grundy & Eisenberg
6005 Plumb Street, Suite 300
Reno, NV 89519

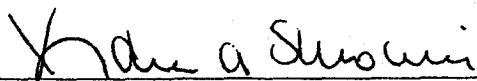

An Employee of McDonald Carano Wilson LLP

EXHIBIT "1"

EXHIBIT "1"

1 NEOJ
 2 Mark A. Hutchison (4639)
 3 Hutchison & Steffen
 4 10080 Alta Drive
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 7 (702) 385-2500

5 Peter C. Bernhard (734)
 6 Bullivant Houser Bailey PC
 7 3883 Howard Hughes Pkwy., Ste. 550
 8 Las Vegas, NV 89169
 9 Telephone: (702) 669-3600

8 Attorneys for Plaintiff Gilbert P. Hyatt

9
 10 DISTRICT COURT
 11 CLARK COUNTY, NEVADA

12 GILBERT P. HYATT,

13 Plaintiffs,

14 v.

15 FRANCHISE TAX BOARD OF THE STATE
 16 OF CALIFORNIA, and DOES 1-100 inclusive,

17 Defendants.

Case No.: A382999

Dept. No.: X

NOTICE OF ENTRY OF JUDGMENT

Date of Hearing: N/A

Time of Hearing: N/A

(filed under seal by order of the Discovery
 Commissioner dated February 22, 1999)

FILED

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Ernest FUS

CLERK OF THE COURT

BullivantHouserBailey PC
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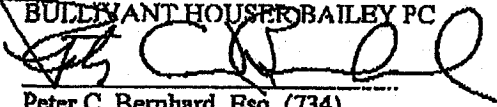
1 TO: ALL INTERESTED PARTIES AND THEIR COUNSEL

2 PLEASE TAKE NOTICE that a Judgment was entered in the above-entitled matter, on
3 the 8th day of September, 2008, a copy of which is attached hereto as Exhibit "A".

4 DATED this 8 day of September, 2008.

5 HUTCHISON & STEFFEN, LTD.
6 Mark A. Hutchison, Esq. (4639)
7 10080 Alta Drive
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9 Las Vegas, Nevada 89145

10 BULLIVANT_HOUSER_BAILEY PC

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12 Peter C. Bernhard, Esq. (734)
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17 Attorneys for Plaintiff Gilbert P. Hyatt

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Telephone: (702) 669-3600
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RECEIPT OF COPY

RECEIPT OF COPY of NOTICE OF ENTRY OF JUDGMENT is hereby
acknowledged this 8th of September, 2008.

McDonald Carano Wilson LLP

By: Karin L. Christman
2300 West Sahara Avenue, Suite 1000
Las Vegas, Nevada 89102

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 Telephone: (702) 669-3600
 7 Attorneys for Plaintiff Gilbert P. Hyatt

FILED

SEP 8 10 21 AM '08

CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

11 GILBERT P. HYATT,

12 Plaintiff,

13 v.

14 FRANCHISE TAX BOARD OF THE STATE
15 OF CALIFORNIA,

16 Defendant.

Case No.: A382999

Dept. No.: X

JUDGMENT

Date of Hearing: N/A

Time of Hearing: N/A

(filed under seal by order of the Discovery
 Commissioner dated February 22, 1999)

19 This matter came on for trial before the Court and a jury, beginning on April 14, 2008,
 20 and concluding with the verdicts of the jury on August 6, 2008 (liability for and amount of
 21 compensatory damages), on August 12, 2008 (liability for punitive damages), and on August 14,
 22 2008 (amount of punitive damages), the Honorable Jessie Walsh, District Judge, presiding.
 23 Plaintiff Gilbert P. Hyatt appeared with his counsel Mark A. Hutchison, Esq. of Hutchison &
 24 Steffen, L.L.C, Peter C. Bernhard, Esq. of Bullivant Houser Bailey, PC, and Donald J. Kula Esq.
 25 of Perkins Coie. Defendant Franchise Tax Board of the State of California appeared with its
 26
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 28

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1 representative and its counsel, Pat Lundvall Esq., and James Bradshaw Esq., of McDonald
2 Carano Wilson, L.P.

3 Testimony was taken under oath, and evidence was offered, introduced and admitted.
4 Counsel argued the merits of their clients' cases, the issues have been duly tried, and the jury
5 duly rendered its verdict. The jury rendered a verdict in favor of Plaintiff Gilbert P Hyatt and
6 against Franchise Tax Board on all causes of action presented to the jury, including Plaintiff's
7 second cause of action for invasion of privacy intrusion upon seclusion, third cause of action for
8 invasion of privacy publicity of private facts, fourth cause of action for invasion of privacy false
9 light, fifth cause of action for intentional infliction of emotional distress, sixth cause of action
10 for abuse of process, seventh cause of action for fraud and eighth cause of action for breach of
11 confidential relationship. This Court previously dismissed Plaintiff's first cause of action for
12 declaratory relief, and that cause of action was not presented to the jury.
13

14 The jury returned its verdict awarding Plaintiff Gilbert P. Hyatt compensatory damages
15 of EIGHTY-FIVE MILLION DOLLARS AND NO CENTS (\$85,000,000.00) for emotional
16 distress; compensatory damages of FIFTY-TWO MILLION DOLLARS AND NO CENTS
17 (\$52,000,000.00) for invasion of privacy; attorneys' fees as special damages of ONE MILLION,
18 EIGHTY-FIVE THOUSAND, TWO HUNDRED EIGHTY-ONE DOLLARS AND 56 CENTS
19 (\$1,085,281.56); and punitive damages of TWO HUNDRED FIFTY MILLION DOLLARS
20 AND NO CENTS (\$250,000,000.00).
21

22 At the conclusion of the verdict reached on August 6, 2008, the jury was polled, and
23 each juror responded that the verdict as read by the Clerk of the Court was the verdict of that
24 juror, resulting in a verdict of eight (8) in favor and zero (0) opposed, as to liability and the
25 amount of compensatory damages awarded on each of Plaintiff's seven claims. At the
26 conclusion of the verdict on punitive damages on August 12, 2008, the jury was polled, and
27
28

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1 each juror responded that the verdict as read by the Clerk of the Court was the verdict of that
2 juror, resulting in a verdict of eight (8) in favor and zero (0) opposed, as to whether the conduct
3 of the Defendant warranted punitive damages. At the conclusion of the verdict on punitive
4 damages on August 14, 2008, the jury was polled, and seven jurors responded that the verdict as
5 read by the Clerk of the Court was the verdict of that juror, with one juror responding in the
6 negative, resulting in a verdict of seven (7) in favor and one (1) opposed, as to the amount of
7 punitive damages awarded against Defendant.

8
9 NOW, THEREFORE, based on the foregoing, judgment upon the jury verdicts is entered
10 in favor of Plaintiff Gilbert P. Hyatt and against Defendant Franchise Tax Board, as follows:

11 IT IS ORDERED, ADJUDGED AND DECREED that Plaintiff Gilbert P. Hyatt is
12 awarded compensatory damages in the amount of EIGHTY-FIVE MILLION DOLLARS AND
13 NO CENTS (\$85,000,000.00) for emotional distress, plus prejudgment interest at the rate of
14 seven percent per annum (7%) (the applicable prejudgment statutory rate) in the amount of
15 \$63,184,110.12 from the date the Complaint was served (calculated through August 27, 2008,
16 and accruing from August 27, 2008 at the rate of \$ 16,301.37 per day until the date of this
17 Judgment), with interest continuing to accrue at the applicable postjudgment statutory rate from
18 the date of this Judgment until satisfied in full;

19
20 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff Gilbert P.
21 Hyatt is awarded compensatory damages in the amount of FIFTY-TWO MILLION DOLLARS
22 AND NO CENTS (\$52,000,000.00) for invasion of privacy, plus prejudgment interest at the rate
23 of seven percent per annum (7%) (the applicable prejudgment statutory rate) in the amount of
24 \$38,653,797.60 from the date the Complaint was served (calculated through August 27, 2008,
25 and accruing from August 27, 2008 at the rate of \$ 9,972.60 per day until the date of this
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1 Judgment), with interest continuing to accrue at the applicable postjudgment statutory rate from
2 the date of this Judgment until satisfied in full;

3 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff Gilbert P.
4 Hyatt is awarded attorneys' fees as special damages in the amount of ONE MILLION,
5 EIGHTY-FIVE THOUSAND, TWO HUNDRED EIGHTY-ONE DOLLARS AND 56 CENTS
6 (\$1,085,281.56), plus prejudgment interest at the rate of seven percent per annum (7%) (the
7 applicable prejudgment statutory rate) in the amount of \$497,824.53 from the dates the special
8 damages were incurred (calculated through August 27, 2008, and accruing from August 27,
9 2008 at the rate of \$ 208.14 per day until the date of this Judgment), with interest continuing to
10 accrue at the applicable postjudgment statutory rate from the date of this Judgment until
11 satisfied in full; and

12 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff Gilbert P.
13 Hyatt is awarded punitive damages in the amount of TWO HUNDRED FIFTY MILLION
14 DOLLARS AND NO/100 CENTS (\$250,000,000.00), with interest to accrue at the applicable
15 postjudgment statutory rate from the date of this Judgment until satisfied in full.
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1 IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Plaintiff Gilbert P.
 2 Hyatt is awarded costs in the amount of to be determined with interest to accrue at
 3 the applicable postjudgment statutory rate from the date of this Judgment until satisfied in full.

4 DATED this 5 day of Sept August, 2008.

5
6 JESSIE WALSH

7 DISTRICT JUDGE

8 Prepared and submitted by:

9 Prepared and submitted by:

10 HUTCHINSON & STEFFEN, LLC

11 Mark A. Hutchinson, Esq. (4639)
 12 10080 Alta Drive
 13 Suite 200
 14 Las Vegas, Nevada 89145

15 BULLIVANT_HOUSER_BAILEY PC

16 Peter C. Bernhard, Esq. (734)
 17 3883 Howard Hughes Pkwy.
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21 Attorneys for Plaintiff Gilbert P. Hyatt

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EXHIBIT "2"

EXHIBIT "2"

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7 Telephone: (702) 669-3600
8 *Attorneys for Plaintiff Gilbert P. Hyatt*

9
10 DISTRICT COURT
11 CLARK COUNTY, NEVADA

12 GILBERT P. HYATT,

13 Plaintiffs,

14 v.

15 FRANCHISE TAX BOARD OF THE STATE
OF CALIFORNIA, and DOES 1-100 inclusive,

16 Defendants.
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Case No.: A382999

Dept. No.: X

NOTICE OF ENTRY OF ORDER

Date of Hearing: N/A

Time of Hearing: N/A

(filed under seal by order of the Discovery
Commissioner dated February 22, 1999)

FILED

2009 FEB -5 P 2:18

E. J. Baird
CLERK OF THE COURT

BullivantHouserBailey PC

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Las Vegas, NV 89169
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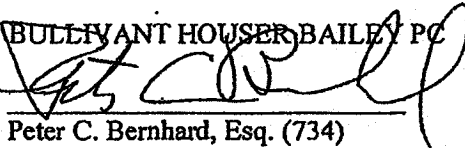
1 TO: ALL INTERESTED PARTIES AND THEIR COUNSEL

2 PLEASE TAKE NOTICE that an Order was entered in the above-entitled matter, on the
3 3rd day of February, 2009, a copy of which is attached hereto as Exhibit "A".

4 DATED this 5 day of February, 2009.

5 HUTCHISON & STEFFEN, LTD.
6 Mark A. Hutchison, Esq. (4639)
7 10080 Alta Drive
8 Suite 200
9 Las Vegas, Nevada 89145

10 ~~BULLIVANT HOUSER BAILEY PC~~

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12 Peter C. Bernhard, Esq. (734)
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17 Attorneys for Plaintiff Gilbert P. Hyatt

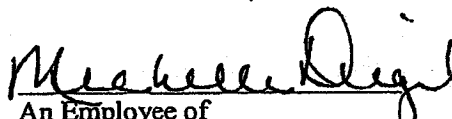
CERTIFICATE OF MAILING

I hereby certify that I am an employee of Bullivant Houser Bailey PC, and that on the 5th day of February, 2009, I caused to be deposited, postage fully prepaid, at Las Vegas, Nevada, a true copy if the foregoing, NOTICE OF ENTRY OF ORDER to all parties below.

James A. Bradshaw, Esq.
Pat Lundvall, Esq.
McDonald Carano Wilson LLP
100 West Liberty Street
10th Floor
Reno NV 89501

Jeffrey Silvestri, Esq.
McDonald Carano Wilson LLP
2300 West Sahara Avenue, Suite 1000
Las Vegas, Nevada 89102

Robert L. Eisenberg
Lemons, Grundy & Eisenberg
6005 Plumas Street, Suite 300
Reno, NV 89509


An Employee of
Bullivant Houser Bailey PC

BullivantHouserBailey PC

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ORIGINAL

1 **ORDER**

2 Mark A. Hutchison (4639)
3 Hutchison & Steffen
4 10080 Alta Drive, Suite 200
5 Las Vegas, NV 89145
6 (702) 385-2500

7 Peter C. Bernhard (734)
8 Bullivant Houser Bailey PC
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10 Las Vegas, NV 89169
11 Telephone: (702) 669-3600

12 *Attorneys for Plaintiff Gilbert P. Hyatt*

FILED

2009 FEB -3 A 9 50

[Signature]
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

11 GILBERT P. HYATT,

12 Plaintiffs,

13 v.

14 FRANCHISE TAX BOARD OF THE STATE
15 OF CALIFORNIA, and DOES 1-100 inclusive,

16 Defendants.

Case No.: A382999

Dept. No.: X

ORDER DENYING:

(1) FTB'S MOTION FOR JUDGMENT AS A
MATTER OF LAW OR ALTERNATIVELY,
AND CONDITIONALLY MOTION FOR
NEW TRIAL PURSUANT TO NRCP 50;
AND

(2) FTB'S ALTERNATIVE MOTION FOR
NEW TRIAL AND OTHER RELIEF
PURSUANT TO NRCP 59

DATE: January 29, 2009

TIME: 9:00 a.m.

(filed under seal by order of the Discovery
Commissioner dated February 22, 1999)

24 This matter having come before the Court on January 29, 2009, for hearing the
25 Defendant California Franchise Tax Board's ("FTB") Motion for Judgment as a Matter of Law
26 or Alternatively, and Conditionally Motion for New Trial Pursuant to NRCP 50 and FTB's
27 Alternative Motion for New Trial and Other Relief Pursuant to NRCP 59, Plaintiff having been
28

BullivantHouser Bailey PC

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1 represented by Mark A. Hutchison, Peter C. Bernhard, Donald J. Kula, and Michael K. Wall and
2 the Franchise Tax Board having been represented by Pat Lundvall, Carla Higginbotham, and
3 Robert L. Eisenberg; the Court having considered the papers submitted by counsel as well as
4 oral arguments at the hearing; and GOOD CAUSE APPEARING;

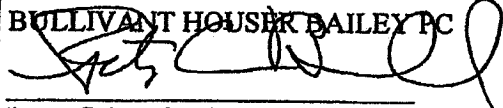
5
6 IT IS HEREBY ORDERED that the FTB's Motion for Judgment as a Matter of
7 Law or Alternatively, and Conditionally Motion for New Trial Pursuant to NRCP 50 and FTB's
8 Alternative Motion for New Trial and Other Relief Pursuant to NRCP 59 be and the same
9 hereby are denied.

10 DATED this 2 day of Feb, 2009

11
12 JESSIE WALSH

13 DISTRICT JUDGE

14 SUBMITTED BY:

15 BULLIVANT HOUSER BAILEY PC
16 

17 Peter C. Bernhard, Esq. (734)
18 3883 Howard Hughes Pkwy.
19 Suite 550
20 Las Vegas, Nevada 89109
(702) 669-3600
Attorneys for Plaintiff Gilbert P. Hyatt

21 APPROVED AS TO FORM BY:

22 McDONALD CARANO WILSON

23 Pat Lundvall 1-30-09
24 Pat Lundvall (3761)
25 100 West Liberty Street, 10th Floor
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9
10 **DISTRICT COURT**
11 **CLARK COUNTY, NEVADA**

12 GILBERT P. HYATT,
13 Plaintiff,

14 vs.

15 FRANCHISE TAX BOARD OF THE
16 STATE OF CALIFORNIA, and DOES 1-
17 100, inclusive,

18 Defendants.

Case No. : A 382999
Dept. No. : X
Docket No. : R

RECEIPT OF COPY

19
20 A receipt of copy of the **NOTICE OF APPEAL AND CASE APPEAL**
21 **STATEMENT** is hereby acknowledged this 10th day of February, 2009.

22 BULLIVANT HOUSER BAILEY PC

23 *Peter C. Bernhard*
24 Peter C. Bernhard, Esq.
25 3883 H. Hughes Parkway, No. 550
26 Las Vegas, Nevada 89169
27
28

Exhibit 1

Question 9: Issues on Appeal

The following is a list of issues that may be raised in this appeal. Although this list is lengthy the potential appellate issues that may be raised in this matter is not limited to only the issues listed below. Therefore, FTB reserves the right to raise additional issues in its appellate brief which are not listed herein.

1. Did the district court err by permitting the Nevada jury to sit as a court of appeal over the administrative investigation and conduct of the FTB, an out-of-state governmental agency?
2. Did the district court err in the manner in which it permitted Hyatt to present his case to the jury, thereby violating the Full Faith and Credit Clause of the United States Constitution?
3. Did the district court err by failing to apply the "law of the case doctrine" to this Court's previous rulings in this case?
4. Should the Nevada Supreme Court case of Falline v. GNLV Corp., 107 Nev. 1004, 823 P.2d 888 (1991) be overruled?
5. Did the district court err when it allowed Hyatt to pursue claims based upon the invasion of his informational privacy?
6. Did the district court err when it took judicial notice of the California and federal laws and permitted Hyatt to use these laws as evidence to establish the essential elements of his Nevada common law torts?
7. Did the district court err when it failed to apply various privilege defenses to Hyatt's invasion of privacy claims?
8. Did district court err when it failed to apply the "republication defense" contained in Montesano v. Donrey Media Group, 99 Nev. 644, 668, P.2d 1081 (1983) to Hyatt's invasion of privacy claims?
9. Did the district court err in admitting into evidence the "Litigation Roster," which was a list containing a summary of this litigation and other cases involving FTB and was published pursuant to a public records act request?
10. Did the district court err when it permitted Hyatt's abuse of process claim to be submitted to the jury when it was undisputed that FTB had not used of any "legal process" for an ulterior purpose in this case?

11. Did the district court err in permitting the jury to consider Hyatt's intentional infliction of emotional distress claim where there was no objective evidence that Hyatt suffered "severe" emotional distress?
12. Did the district court err by refusing to permit FTB to present any evidence of any alternative theory of causation for Hyatt's emotional distress?
13. Did district court err when it failed to dismiss Hyatt's intentional infliction of emotional distress because the governmental conduct complained of in this case had social value?
14. Did the district court err when it failed to dismiss Hyatt's fraud claim that was predicated upon FTB's alleged unenforceable promise to act "fairly and impartially" during the audit?
15. Did the district court err when it permitted Hyatt's claim for breach of confidential relationship claim to be submitted to the jury when the essential elements of this claim could not be satisfied in this case as a matter of law?
16. Did the district court err when it permitted Hyatt's claim for attorneys fees as special damages to be submitted to the jury when these damages were not recoverable as a matter of law?
17. Did the district court err when it permitted the jury to award punitive damages against FTB, a state governmental agency, when these damages were not recoverable as a matter of law?
18. Did district court err when it permitted the trial to proceed to a punitive damage phase of trial?
19. Did district court err when it permitted evidence of California's "net worth" -- as opposed to FTB's net worth -- to be presented to the jury in the punitive damage phase of trial?
20. Did the district court err when it failed to properly reduce the grossly excessive punitive damage awards in violation of FTB's right to due process of law pursuant to the Fourteenth Amendment of the United States Constitution?
21. Did the district court err when it failed to reduce the \$138 million compensatory damage award which clearly "shocks the conscious"?
22. Did the district court err when it awarded Hyatt pre-judgment interest?
23. Did the district court err when it struck Jury Instruction 24, replaced it with a new instruction, and provided a curative instruction which invited jury nullification?

24. Did the district court err when it inconsistently applied its own pretrial orders and rulings during the trial?
25. Did the district court err when it allowed various expert witnesses to usurp the Court's and the jury's roles by opining as to the law that applied to this case and how that law applied to the facts as determined by those experts?
26. Did the district court err in permitting the jury to consider evidence of California's Tax Amnesty program, which was a program created by the California Legislature that provided all California taxpayers that owed taxes to the State of California the opportunity to come forward and pay their delinquent taxes in return for a waiver of interest and penalties?
27. Did the district court err when it refused to permit FTB to present any evidence in defense of Hyatt's claim that FTB improperly delayed the California Administrative Protest Proceedings in this case in bad faith?
28. Did the district court err when it adopted the Nevada Protective Order in this litigation?
29. Did the district court err when it granted Hyatt's Motion to Strike the Complaint based on his allegations that FTB spoliated evidence?
30. Did the district court err when it adopted a legally and factually inaccurate jury instruction related to FTB's alleged spoliation?
31. Did the district court err by prohibiting FTB from presenting any evidence to the jury rebutting the inference that the alleged spoliated evidence was harmful to FTB?
32. Did the district court err when it failed to grant FTB's pre-trial dispositive motions?
33. Did the district court err when it granted Hyatt's pre-trial motions in limine?
34. Did the district court err when it denied FTB's pre-trial motions in limine?
35. Did the district court err in its evidentiary rulings at trial?
36. Did the district court err in adopting various jury instructions which misstated Nevada law?
37. Did the district court err when it refused to adopt various jury instructions that correctly stated Nevada law?

38. Did the district court err when it failed to grant FTB's Motion for Judgment as a Matter of law at the conclusion of Plaintiff's case-in-chief?
39. Did the district court err by granting Hyatt's Motion for Judgment as a matter of law at the conclusion of FTB's case-in-chief?
40. Did the district court err by denying FTB's post-trial motions?
41. Did the district court err by denying FTB's motion to re-tax Hyatt's memorandum of costs?

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANCHISE TAX BOARD OF
THE STATE OF CALIFORNIA,

Appellant,

v.

CASE NO: 53264

GILBERT P. HYATT,

Respondent

FILED

FEB 18 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY R. Malone
DEPUTY CLERK

APPENDIX
TO
MOTION FOR STAY PENDING APPEAL WITHOUT BOND

VOLUME 3

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09-04179

IN THE SUPREME COURT OF THE STATE OF NEVADA

*** * * * ***

**FRANCHISE TAX BOARD OF
THE STATE OF CALIFORNIA,**

Appellant,

v.

CASE NO: _____

GILBERT P. HYATT,

Respondent

**APPENDIX
TO
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GILBERT HYATT,
Plaintiff,
vs.
THE FRANCHISE TAX BOARD OF
THE STATE OF CALIFORNIA,
Defendant.

JANUARY 29, 2009

App. 469

1 PROCEEDINGS held at 200 Lewis Avenue, Courtroom
2 14B, Las Vegas, Nevada, on Thursday, January 29, 2009,
3 at 9:06 a.m., before Kimberly A. Farkas, Certified
4 Court Reporter, in and for the State of Nevada.
5

6 APPEARANCES:
7

8 For the Plaintiff:

9 MARK A. HUTCHISON, ESQ.
10 PETER C. BERNHARD, ESQ.
11 DONALD KULA, ESQ.
12 MICHAEL WALL, ESQ.

13 For the Defendant:

14 PATRICIA LUNDVALL, ESQ.
15 CARLA HIGGINBOTHAM, ESQ.
16 ROBERT L. EISENBERG, ESQ.
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1 LAS VEGAS, NEVADA, THURSDAY, JANUARY 29, 2009;

2 9:06 A.M.

3 -oOo-

4
5 THE COURT: We have a court reporter in the
6 courtroom. We should probably make a record of that.

7 Can we ask your name, please.

8 THE REPORTER: Kim Farkas.

9 THE CLERK: Case Number A382999, Gilbert
10 Hyatt versus California State Franchise Tax Board.

11 MS. LUNDVALL: Your Honor, Pat Lundvall
12 with McDonald, Carano, Wilson. With me here today is
13 Carla Higginbotham. Also Bob Eisenberg from the firm
14 of Lemons, Grundy & Eisenberg. Karen Sorwerck, our
15 paralegal, who is going to help me from a technical
16 standpoint. Have a client representative here with me
17 today, Scott DePeel from the FTB.

18 MR. HUTCHISON: Good morning, Your Honor.
19 Mark Hutchison on behalf of Mr. Hyatt. I think you
20 know everyone from our side. Mr. Kula is with us,
21 along with my client, Mr. Hyatt, is here at counsel
22 table. Pete Bernhard and Mike Wall also representing
23 Mr. Hyatt.

24 THE COURT: Very well. Thank you. All
25 right. There were several motions on calendar this

1 morning. Ms. Lundvall.

2 MS. LUNDVALL: Thank you, Your Honor.

3 There are three motions on calendar this morning. And
4 from the perspective of the FTB, what we approximated
5 is that the Court should hear the motion for judgment
6 as a matter of law or in the alternative for new
7 trial, basically the post-trial motion first, because
8 that will be -- the Court's resolution of that motion
9 will be dependent upon what happens to the motion for
10 retax costs and then whether or not we need to request
11 a stay pending appeal. And those are the three
12 motions before the Court. And I'm prepared to begin
13 then with our post-trial motion.

14 MR. HUTCHISON: Your Honor, my
15 understanding from our discussion with staff is that
16 we're limited to an hour and that's how we've arranged
17 our arguments is in anticipation of an hour a piece.
18 Is that correct?

19 THE COURT: Yes.

20 MS. LUNDVALL: I note that the Court has
21 large stacks, and I'm assuming that those are ours.
22 They look very familiar. And these motions are very
23 extensive.

24 I belong to a legal reporting service.
25 It's called Lawyers USA. And they're a fairly decent

1 legal reporting service. One of the things they do on
2 an annual basis is they report on jury verdicts and
3 they create a top 10 across the nation. So it's not
4 particular here to the State of Nevada, but it looks
5 across the nation. And when I got my January 14th
6 report and I looked, they have top legal news and it's
7 titled Top 10 Jury Verdicts of 2008, and the first one
8 that I looked there's like, wow, those numbers look
9 familiar.

10 When I clicked on the story that reported
11 then on the top, number 1 ,jury verdict across the
12 nation, this case is it. So then I got to thinking,
13 well, there's nine others that fall in the top 10, and
14 last year there was a report that reported as far as
15 on what the top 10 jury verdicts were.

16 So I got to digging around trying to figure
17 out a little bit across these last couple years what
18 happened to these 20 cases to try to figure out then
19 whether or not there's any rhyme or reason or any type
20 of a rhythm as to what happened with these top jury
21 verdicts.

22 One of the things that I learned is that
23 many of them have settled. Some of them are up on
24 appeal at this point in time. And some of them have
25 been remitted. In other words, through post-trial

1 motions very similar to what is in front of the Court
2 today, a Court has looked at the case and has said
3 that the jury verdict was too high and has granted
4 remittitur as well as other relief similar to what we
5 are asking for then pursuant to our motions.

6 In fact, there's even a couple decisions
7 then from the State of Nevada that have been subject
8 to remittitur. There was a decision in front of Judge
9 Mahan that was an insurance bad faith case, and Judge
10 Mahan granted remittitur. Also Judge Perry with the
11 Wyeth breast implant cases, he too granted remittitur
12 after taking a look at the jury verdict and said it
13 was too high.

14 None of these cases that I can discern have
15 gone all the way through the appeal process, and,
16 therefore, I can't report on what the appellate courts
17 have done with these after the post-trial phase. I'm
18 sure that we will look at it.

19 I bring this to the Court's attention for
20 this reason. Is that we sought remittitur from this
21 Court as well as various other forms of post-trial
22 relief then in our post-trial motion. Remittitur in
23 particular is a concept, it's a legal principle, that
24 obligates the Court to review the jury's verdict for
25 excessiveness. When I took a look at the cases that

1 are analyzing excessiveness, basically what this Court
2 is obligated to do is to look to determine whether or
3 not the jury treated the defendant fairly and
4 impartially. That's what the basic components are.
5 That's what the basic analysis is underlying the
6 excessiveness prong that the Court is obligated to
7 look at.

8 As part of our presentation to the Court,
9 we demonstrated that, in fact, the scarcity of
10 evidence presented by Mr. Hyatt at the time of trial
11 for which to provide a foundation for an \$85 million
12 emotional distress jury verdict. We also pointed out
13 the scarcity of the evidence in the record to support
14 a \$52 million invasion of privacy award.

15 And we compared it to other cases that have
16 been reported in this jurisdiction particularly. And
17 the comparison is done within the case law so the
18 Court can get some guidance. There are some
19 guidelines to try to determine whether or not the
20 jury's verdict has been a product of unfairness or
21 that there has been partiality that has been afforded
22 to one party versus another through the jury's
23 verdict.

24 Also, I'm an avid reader of the newspaper.
25 I couldn't help but from a recent comparison

1 standpoint I noticed the article that was in
2 yesterday's Review Journal about the jury verdict that
3 came down in the medical malpractice case where a
4 woman who was failed to be diagnosed with colon
5 cancer, had a 97 percent chance of survival had she
6 been properly diagnosed, but, in fact, she wasn't and
7 she died. And before she died she was subjected to
8 many, many types of surgeries for which there was an
9 emotional distress component associated with that as
10 well as the wrongful death analysis that is afforded
11 to her child as well as to her husband. And the jury
12 then awarded \$2.5 million in that particular
13 circumstance.

14 I also noted in Wednesday's New York Times.
15 The New York Times reported on the situation involving
16 the veterans who, in fact, had lost or there had been
17 a failure by the Veterans Administration to properly
18 maintain security over veterans' private information
19 that had been vested with the Veterans Affairs. In
20 other words, there were 26.5 million veterans who had
21 given their information to Veterans Affairs,
22 everything from names and addresses, Social Security
23 numbers and pay grades and things of that nature.
24 Well, the New York Times yesterday reported upon a
25 resolution of five class actions that had been brought

1 against the veterans associations in that particular
2 matter.

3 And what they reported on was this: That,
4 in fact, that the revolution of that case allows a
5 veteran to come before a special panel and to
6 demonstrate actual harm in the form of emotional
7 distress or costs associated with trying to monitor or
8 protect their privacy because of the disclosure that
9 was made by the Veterans Administration. In other
10 words, there was an invasion of privacy claim, and,
11 therefore, they could come forward, but their monetary
12 damages were capped at \$1,500. And that stands in
13 stark contrast to the \$52 million that was afforded to
14 Mr. Hyatt.

15 We challenged Mr. Hyatt in our brief to
16 come forward and to explain how the evidence supported
17 damages in the magnitude that the jury awarded. And
18 he was silent in response.

19 We laid out all of our reasons that
20 underlie our requests then for all of the post-trial
21 relief. We filed our motion then on September 22nd.
22 As the Court well knows, we were originally scheduled
23 to be before you in November and then in December and
24 then for various reasons then we got bumped from the
25 calendar and now we're here, and as I understand it,

1 the Court has limited us to a one hour period of time
2 then for purposes of all three of these motions.

3 Candidly, we object to that. And we think
4 that the information that is found within all of the
5 briefs is important information to be analyzed and it
6 cannot be done within an hour period of time. And,
7 therefore, unless the Court is willing to grant us
8 additional time for which to present the balance of
9 all of the reasons underlying our request for
10 post-trial relief, we will submit then the motions on
11 the briefs that have been filed before the Court.

12 THE COURT: Thank you.

13 MR. HUTCHISON: Good morning, Your Honor.
14 Your Honor, if I may just take counsel's last point
15 first. I can't remember what the last count was. I
16 think there were like 70 motions filed pretrial. I
17 think that the Court took extraordinary measures to
18 allow counsel every possible argument that we wanted
19 to make during the course of the 17 weeks in trial.
20 For counsel to somehow suggest that in the briefing
21 that you've received there are -- there's this
22 information that has not been seen before, there may
23 be a couple of arguments here and there. There may be
24 a couple of issues here and there that was not
25 presented in pretrial briefing ad nauseam, and that

1 was not presented over and over again at trial is
2 simply mischaracterization of the record. And any
3 Court that looked at the record would readily see
4 that.

5 Most of what we've seen in the post-trial
6 briefs are regurgitations and repeats of arguments
7 that have been presented over and over and over again
8 and rejected over and over and over again. So what
9 I'd like to do, Your Honor, is I don't want to take
10 any more time than the Court needs. There were a few
11 points that I wanted to make, but I would like to
12 direct my attention to any arguments and we'd like to
13 have our team direct our attention to any arguments
14 that you think would be helpful for you beyond what
15 we've already argued, beyond what we've already
16 briefed ad nauseam, and I'd like to direct my
17 attention there.

18 So I'll ask the Court, are there any
19 arguments that are presented in the briefs or that
20 counsel presented today that you would like to hear
21 from us?

22 THE COURT: Give me a moment to review my
23 notes, if you would, Mr. Hutchison. I don't think I
24 have any particular questions.

25 I think it's important to note for the

1 record that I think probably every single person in
2 this room knows, having briefed and argued these
3 multiple pretrial motions and having tried this very
4 lengthy trial, I think everybody in this room knows
5 that I prepare thoroughly, that I read everything,
6 that I consider carefully. So I think it's important
7 that I say that on the record.

8 MR. HUTCHISON: Thank you, Your Honor.
9 There were a couple points that I would like to just
10 make in response to the briefing. I think that the
11 characterization -- there have been two serious
12 mischaracterizations of legal doctrines. One is the
13 law of the case. That misapprehension of a legal
14 principle permeates the briefing by the Franchise Tax
15 Board. There is no law of the case that says that
16 Nevada must treat California the same as it treats
17 Nevada agencies or Nevada officials. That's just
18 absolutely untrue.

19 That was never said. It was never ruled
20 upon by the Nevada Supreme Court or by the
21 U.S. Supreme Court. The law of the case is a ruling
22 in the case. The relevant ruling in the case is that
23 there would be immunity granted to the State of
24 California for purposes of negligent actions. There
25 would not be immunity granted for purposes of

1 intentional torts. That's the ruling of the case.
2 That's the law of the case. There was no ruling or
3 law of the case where either Nevada Supreme Court or
4 the U.S. Supreme Court said, Nevada must treat
5 California agencies the same as it treats its own
6 agencies. On the contrary.

7 The concept of comity, which is the other
8 point that the FTB continually misrepresents, the
9 point of comity is in every exercise of comity a Court
10 takes on a case by case basis. It is a voluntary
11 discretionary act. There is no constitutional
12 mandate. There is no federal mandate that Nevada do
13 anything under comity. And the U.S. Supreme Court
14 recognized that and continues to recognize that over
15 and over again. Are there factors that are to be
16 considered? Of course. Are there starting points to
17 be used? Yes. But ultimately the Nevada system and
18 the Nevada judicial system here must decide what
19 interest the Nevada courts and the Nevada state
20 government has in protecting its citizens and in
21 upholding its own policies and whether or not the
22 exercise of comity would be consistent with those.

23 And to suggest otherwise is simply a
24 mischaracterization of that doctrine. I think that
25 the FTB has done that repeatedly in briefing, and I

1 would, for the record, like to correct what I think is
2 a serious, I'll say, misapprehension of that doctrine.

3 Your Honor, I want to repeat our Rule 50
4 motion. I stood up here for, I think an hour, hour
5 and a half, during trial at the close of our case and
6 defended the Rule 50 motion. For counsel to say that
7 there is a scarcity -- I can't remember exactly what
8 she said -- there's a scarcity of evidence to support
9 the verdict, I think is just ludicrous given this
10 record.

11 We've laid it out specifically in
12 opposition to the Rule 50 motion. There was lots of
13 evidence that came in after that as well. The jury
14 considered it. There were many egregious and
15 offensive actions taken by the Franchise Tax Board
16 that were brought before the jury. And to suggest the
17 jury came up with some verdict without looking at the
18 evidence I think is just a disservice and a dishonor
19 to what this jury did for 17 weeks.

20 I think we all looked at that jury and knew
21 what kind of a jury they were. This was not a jury
22 running around with passion and prejudice and some
23 crazy notion in their mind. They looked at the
24 evidence. They saw a huge volume of evidence that
25 supported each of the claims and supported the damage

1 assessments that they made at every level.

2 There are even -- just one point that I
3 might bring up. There have been exhibits attached to
4 the motions and arguments about the tax amnesty
5 program. There were issues related to that tax
6 amnesty program that were particularly egregious that
7 could alone support many of the findings by the jury,
8 and the jury had many, many more besides just that tax
9 amnesty program.

10 That tax amnesty program was only
11 applicable to due and payable tax assessments. Mr.
12 Hyatt's taxes were not due and payable at the time.
13 Yet, it was still applied to Mr. Hyatt. And the 50
14 percent interest penalty was applied to him. That
15 required him to drop the Nevada tort case and
16 litigation against the State of California, that was
17 never part of the bill by the legislature. The FTB
18 wanted to circumvent the Nevada judicial process by
19 using that program alone. That's just an example of
20 one of the many, many elements that the jury
21 considered.

22 We heard Candace Les' testimony. We heard
23 Sheila Cox on the stand for I don't know how many
24 days. Mr. Hyatt was on the stand for nine days.
25 There was just a lot of evidence that supported all of

1 the determinations by the jury.

2 The bottom line is the jury found that this
3 government agency was guilty of oppression, fraud
4 and/or malice, and the evidence supports that. And
5 the jury then carefully considered what it thought was
6 appropriate compensation to Mr. Hyatt, awarded that.
7 What it thought was appropriate punitive damages,
8 awarded that. It wasn't even a 2-to-1 ratio. Nevada
9 allows a 3-to-1 ratio.

10 Your Honor, those were just a couple of
11 comments that I wanted to put on the record. With
12 that, unless the Court has any questions or unless I
13 need to respond to what counsel will say in any
14 follow-up, we'll submit on the briefs. Thank you.

15 THE COURT: Ms. Lundvall.

16 MS. LUNDVALL: Very briefly, Your Honor.
17 We too would make the same inquiry of the Court
18 whether or not the Court has any questions of us that
19 you wish to address.

20 I disagree with the statements that
21 Mr. Hutchison made, but I don't think, with one
22 exception, that I need to make any response to that.
23 The one exception concerns this: The comment and the
24 argument that we made in our brief for which I
25 highlighted the scarcity of the evidence concerned the

1 amount of damages that were awarded to Mr. Hyatt.

2 And let me back up just a very brief bit
3 for something that's very elemental. There is
4 evidence that regards one's liability and then there
5 is evidence for the amount of one's damages. What
6 we've demonstrated in our post-trial brief is that
7 there is little to no evidence in the record by which
8 to support an \$85 million jury verdict for emotional
9 distress damages. There is no evidence to support an
10 invasion of privacy damage verdict to the tune of \$52
11 million.

12 And the point that we make is that we
13 challenged Mr. Hyatt to come forward and to say, show
14 us the evidence by which that supported the jury's
15 determination that that was the amount of your
16 damages. And he was silent in the face of that. And,
17 once again, he has been silent in the face of that.
18 And that is the point that underlies the remittitur
19 argument and the excessiveness argument that we
20 presented to the Court.

21 Now, that is just one component then of our
22 post-trial request for relief, and there are many
23 other requests that underlie our post-trial motion,
24 but that's the point that I wanted to highlight to the
25 Court.

1 THE COURT: I guess the only question, Ms.
2 Lundvall, that I would have for you is this: These
3 matters have been thoroughly briefed by both sides.
4 The Court has reviewed everything. So is there
5 anything that you want to say that's not contained in
6 the brief that the Court ought to hear at this time?

7 MS. LUNDVALL: No. We submitted to the
8 Court, if the Court will recall, as far as the
9 supplemental authorities. There were three Nevada
10 Supreme Court decisions that we believe weigh very
11 heavily and have an impact upon this case. And we
12 submitted those, so I'm assuming that the Court would
13 include that within the scope of the materials that
14 the Court has reviewed then in preparing or being
15 prepared then to issue its decision.

16 THE COURT: I suspect Mr. Hutchison may
17 want to be heard on this matter if I recall his
18 position with respect to the supplemental items.

19 MS. LUNDVALL: Okay. Thank you, Your
20 Honor.

21 MR. HUTCHISON: Your Honor, may I just stay
22 here?

23 THE COURT: Sure.

24 MR. HUTCHISON: I just want to point out, I
25 can't allowed the representation and, of course, the

1 record is going to speak for itself, but there is a
2 lot of evidence that supports the jury's verdict on
3 emotional distress as well as invasion of privacy.

4 Our system of government and the justice
5 system in this country allows jurors to make decisions
6 about damages. In an emotional distress case the more
7 egregious the conduct, the more serious the emotional
8 distress. There's a direct relationship between the
9 huge volume of evidence in terms of the egregiousness
10 of the conduct, who was directing their efforts
11 against whom in this case, the level of resources that
12 the government had.

13 This is a case that is different than many
14 others, no question about it. But as far as the
15 egregious nature of the conduct, the evidence is clear
16 there was a load of evidence; I'm not going to repeat
17 it here.

18 As far as the value in privacy interests,
19 that's what jurors do. They value privacy interests,
20 particularly a man like Mr. Hyatt. And all the
21 evidence they heard about it and why privacy is
22 important to him, and the promises that the FTB had
23 made regarding that, we spent so much time on that and
24 there was lots of evidence on that as well, Your
25 Honor. So I just didn't want to leave that unanswered

1 from counsel.

2 Now, there was one other matter that you
3 thought I would want to be heard on, Your Honor.

4 THE COURT: There were some supplemental --
5 there was a supplemental notice. I'm not quite sure
6 how Ms. Lundvall titled it.

7 MR. HUTCHISON: It was a 162-page document
8 that they said was notice of some analysis, I think,
9 of the cases.

10 MS. LUNDVALL: No. There were three
11 decisions that came down from the Nevada Supreme
12 Court, and we did a notice of supplemental authority.
13 That notice of supplemental authority was presented
14 then to the Court in support then of our post-trial
15 motion.

16 MR. HUTCHISON: Mr. Kula is going to handle
17 that one.

18 MR. KULA: I know the Ramsdell (phonetic)
19 case I think is what counsel is referring to is the
20 supplemental authority that the FTB submitted. The
21 basic issue in that case the Court was deciding is
22 this an administrative act or a discretionary act.
23 They're using tests to come up with that. That's not
24 the issue in our case.

25 Our case the Nevada Supreme Court said

1 discretionary acts taken in bad faith are not immune.
2 So the issue in our case was the FTB conducting its
3 investigation, was it acting in bad faith. It's not a
4 debate on whether we were acting in an administerial
5 fashion or a discretionary fashion. So that case does
6 not have application to this case. Doesn't change,
7 doesn't affect, the amnesty ruling in this case. So I
8 don't think that case has application, Your Honor.

9 MR. BERNHARD: Let me just add, all three
10 of the cases involved allegations of conduct that was
11 within the scope of employment but not intentional
12 misconduct of the individuals. In fact, in the third
13 case, the Boulder City case, the Nevada Supreme Court
14 made it very clear although there was an allegation of
15 an intentional interference with contract there was no
16 entitlement to a contract and there was no evidence
17 that the employee acted with any kind of bias or
18 prejudice directed at the victim. In this case, of
19 course, there was a lot of evidence of that that the
20 jury could rely on in making its findings. These
21 cases simply aren't applicable.

22 MS. LUNDVALL: Your Honor, we simply
23 disagree as far as the characterization. Our
24 submission then was found in our notice of
25 supplemental authority.

1 THE COURT: Anything else?

2 MS. LUNDVALL: No, Your Honor.

3 THE COURT: I'm going to step down for
4 about five minutes and then I'll give you my ruling.

5 MR. HUTCHISON: Thank you, Your Honor.

6 (Short recess)

7 THE COURT: Thank you for indulging me. I
8 appreciate it.

9 With respect to FTB's renewed motion for
10 judgment as a matter of law, FTB essentially relies on
11 previously unsuccessful arguments. So for all the
12 reasons that the Court considered previously and
13 cited, this motion is denied.

14 With respect to FTB's motion to alter or
15 amend judgment, first, the statutory damages cap. Key
16 comparison here is immunity, not the monetary limit.
17 In California FTB would have complete sovereign
18 immunity as it argues in its reply. In Nevada a state
19 agency has no immunity for intentional torts.
20 Therefore, applying California code would contravene
21 Nevada's public policy that state agencies are
22 answerable in Court for their intentional torts.

23 FTB stretches the law of the case by
24 arguing it has already been determined that FTB should
25 be granted comity on all issues. If that were true,

1 the Nevada Supreme Court or the U.S. Supreme Court
2 would have dismissed all of Hyatt's claims. The
3 decisions of the Nevada Supreme Court and the Supreme
4 Court reject FTB's assertion for sovereign immunity
5 against intentional torts.

6 Further, Nevada Supreme Court and the
7 Supreme Court holdings only briefly touched on the
8 issue of comity as it pertained to FTB's request for
9 immunity. Comity was not argued as justification for
10 the application of NRS 41.035, so it was improper for
11 FTB to argue that as the law of the case.

12 With respect to future damages, Mr. Hyatt
13 didn't request future damages. In fact, what I recall
14 is that Mr. Hyatt's counsel provided a detailed
15 analysis regarding the amount of the assessments,
16 particularly how much after FTB assessed fraud
17 penalties. Hyatt never tried to quantify damages such
18 as people thinking he's a fraud. FTB fails to provide
19 this Court with a better blueprint for identifying the
20 plaintiff's request for future damages.

21 This case is sufficiently distinguished
22 from Las Vegas-Tonopah. The damages in that case may
23 better be described as recurring while the damages in
24 this case would best be described as accruing. The
25 FTB never argued that Hyatt didn't suffer emotional

1 distress or invasion of privacy until after the date
2 of service. Hyatt already incurred damages from FTB's
3 conduct before the date of service, but FTB's
4 continued post-complaint tortious acts caused those
5 damages to continue.

6 On the other hand, the Nevada Supreme
7 Court's request for monthly invoices to prove
8 additional post-complaint damages in Las Vegas-Tonopah
9 shows that those damages were recurring and separable.
10 It would be impossible to quantify Hyatt's damages
11 between pre and post-complaint conduct. And FTB does
12 not sufficiently demonstrate that the jury must have
13 included future damages in its award.

14 With respect to the issue of remittitur and
15 new trial. Under the Countrywide case damages awarded
16 by the jury will not be upset so long as there's
17 sufficient evidentiary support for them. FTB spends
18 too much time comparing this judgment with previous
19 judgments instead of arguing that Hyatt's evidence was
20 insufficient. On the other hand, Hyatt leads this
21 Court through a great deal of evidence that he
22 presented and the jury relied upon. The lone fact
23 that the dollar amount is larger than other cases may
24 be a factor, but is not determinative without more
25 proof that the jury was influenced by passion or

1 prejudice.

2 Specifically, FTB's arguments for
3 remittitur and new trial for both categories of
4 Hyatt's compensatory damages, emotional distress, and
5 invasion of privacy are exclusively devoted to
6 comparing the size of this judgment to other Nevada
7 cases. FTB's only arguments regarding Hyatt's
8 evidence deal with garden variety emotional distress.

9 FTB discusses the discovery commissioner's
10 report that precluded Hyatt from presenting medical
11 records as evidence of his emotional distress damages,
12 but his only analysis was that Hyatt's recovery was
13 somehow limited by the discovery commissioner's
14 recommendation to the Court.

15 With respect to punitive damages. FTB does
16 not demonstrate that the jury's verdict warrants
17 remittitur or new trial. As Hyatt effectively argued
18 previously, Nevada has a strong public policy in
19 protecting its citizens from the intentional torts of
20 out-of-state agencies. This public policy supports
21 denying California comity because the state's
22 interests are not in line. Neither the Nevada Supreme
23 Court nor the Supreme Court ever ruled that FTB is to
24 be granted comity or treated like a Nevada state
25 agency in all respects.

1 Hyatt was allowed to bring his intentional
2 tort claims in Nevada State Court so FTB's arguments
3 for sovereign immunity fail.

4 With respect to the bifurcation order.
5 Mr. Hyatt did not waive his punitive damages claim.
6 If punitive damages were required to be omitted in the
7 first phase of the trial, how could the jury be
8 instructed on them. The purpose of the bifurcation
9 order was to prevent the jury from being improperly
10 prejudiced by arguments regarding punitive damages
11 before ever deciding if FTB was liable. This Court
12 separated liability from punitive damages and there is
13 no showing that the jury was prejudiced.

14 The jury carefully considered the evidence
15 and FTB cannot demonstrate the excessiveness of the
16 verdict beyond the assertion that it is larger than
17 previous verdicts. This is insufficient to overturn a
18 jury's verdict. And FTB cites no case law that
19 supports overturning a verdict on the sole basis that
20 it is larger than previous verdicts. The Court is
21 inclined to deny FTB's alternative request for new
22 trial.

23 With respect to Instruction Number 24, this
24 Court meticulously and painstakingly held several days
25 of hearings before concluding which instructions to

1 give the jury. Hyatt effectively argued that FTB's
2 proposed instruction was improper and this Court chose
3 not to adopt it. Whether FTB accidentally or
4 purposely included it in the final instructions and
5 closing arguments is unknown.

6 This Court ruled that Malcolm Jumelet's
7 testimony was admissible, and FTB argued to the jury
8 that it was not. The curative instruction was
9 necessary to prevent prejudice to Hyatt through FTB's
10 wrongdoing. If FTB was charged with preparing final
11 instructions, it bears the responsibility of errors in
12 those instructions. It cannot claim that Hyatt waived
13 his objection when FTB affirmatively represented that
14 Instruction 24 was the same as the preliminary
15 statement.

16 FTB's intentional torts were at issue
17 throughout this case, and it did not have immunity for
18 them. If FTB's discretionary authority was dismissed
19 along with Hyatt's negligence and declaratory relief
20 causes of action, what was Hyatt permitted to argue to
21 the jury constituted an intentional tort. Hyatt was
22 permitted to argue that FTB's discretionary analysis
23 was biased and predetermined to assess as many taxes
24 as possible. It was a difficult line to tow. Hyatt
25 did not argue that FTB's decision was wrong and it did

1 not argue the issue of residency.

2 With respect to Instruction Number 58.
3 This Court already determined twice that FTB
4 improperly failed to preserve evidence. FTB is wrong
5 that Hyatt didn't request the EMC tapes before they
6 were destroyed. Well before the tapes were destroyed
7 Hyatt requested emails and/or electronic data. Hyatt
8 had a right to inspect those tapes, and FTB prevented
9 that by its own affirmative acts. The determination
10 that FTB spoliated the evidence was proper and so was
11 Instruction Number 58.

12 Hyatt's counsel did mention Instruction 58
13 during closing arguments, but it was as a lead-in to
14 statements regarding the witnesses' testimony about
15 destruction of evidence. Hyatt never argued that
16 Instruction 58 warranted the implication that FTB
17 destroyed evidence other than the EMC backup tapes.
18 Each argument regarding evidence other than the EMC
19 tapes has been supported by witness testimony, not
20 Instruction 58.

21 After giving this issue a great deal of
22 thought, I'm not certain how FTB could have argued the
23 evidence on the EMC tapes wasn't adverse. But what I
24 do know is that what FTB sought to do focused on the
25 issue of whether or not it spoliated the evidence.

1 With respect to publicity of private facts
2 versus false light. The demand letters and litigation
3 roster contained both private facts and inaccurate
4 information. The jury considered these causes of
5 action and appreciated that they did not conflict.
6 The verdict should not be disturbed.

7 With respect to the issue of judicial
8 notice. FTB never explains how taking judicial notice
9 in this particular matter warrants a new trial. FTB's
10 manuals reference the California Information Practices
11 Act. That was the Court's understanding why Hyatt
12 argued FTB was required to comply with those laws.
13 It's not so much that FTB violated the law, but it
14 violated its own policies and procedures.

15 With respect to demands to furnish
16 information. FTB misstates Judge Seda's ruling which
17 was limited to the issue of Hyatt's residency. FTB
18 does not demonstrate that this issue was improperly
19 ruled upon or warrants a new trial.

20 With respect to the protective order. It's
21 apparent that FTB believes very strongly in its
22 position that the protective order was improper. That
23 is the law of the case, however. Hyatt exercised its
24 rights under the protective order by refusing to
25 provide evidence. FTB cites no improper action by

1 Hyatt in that refusal, and that refusal alone is
2 insufficient basis that Hyatt refused protective order
3 and caused FTB to delay the protests. Hyatt presented
4 substantial evidence that FTB consciously and
5 purposely delayed the protests, nothing to do with the
6 protective order.

7 With respect to tax amnesty legislation.
8 FTB does not really elucidate any basis for new trial
9 on these grounds.

10 With respect to luminous other evidentiary
11 arguments, it appears to the Court that FTB
12 essentially attempts to argue every evidentiary ruling
13 made throughout this litigation, and FTB is not
14 persuasive in any particular of these issues and there
15 are too many and too numerous for the Court to go
16 through on a case-by-case basis.

17 All right. I think we can move on to the
18 other two items that remain.

19 MS. LUNDVALL: Thank you, Your Honor. I'm
20 going to move on to FTB's motion to retax costs. And
21 I'm going continue to be sensitive to the time
22 limitations that we have.

23 One thing that I would observe up front is
24 that there is no limitation on what out-of-pocket
25 costs that an attorney can incur in trying to put

1 their case together for trial. Whatever outside
2 vendors you go to, whatever out-of-pocket costs that
3 you incur, whatever activities that you involve
4 yourself in, that's only limited by a trial attorney's
5 imagination. But what is not limited by one's
6 imagination is the amount of recoverable costs that
7 has been permitted both by our Nevada legislature in
8 adopting our costs statute as well as our judiciary in
9 determining interpreting that cost statute. And our
10 judiciary interpreting from our Nevada Supreme Court
11 interpreting that cost statute has instructed the
12 district courts then to interpret the cost statute
13 narrowly. Why? Because it's an exception to the
14 American rule, and it also requires meticulousness by
15 the trial court to ensure that each and every cost
16 that the trial court may award as part of a
17 post-judgment award of costs then has been properly
18 supported.

19 Our Nevada Supreme Court and our
20 legislature in conjunction then have created not only
21 a procedure by which counsel are supposed to bring
22 their requests for cost award to the Court's
23 attention, but also they have created the substantive
24 law by which they've identified what is recoverable.

25 I'm going to begin by noting that Mr. Hyatt

1 filed his memorandum of costs. And in that memorandum
2 of costs he originally sought \$2,597,830.20. That is
3 what was found in his original memorandum of costs.
4 And what he did do is he gave an itemization, an
5 attorney's itemization, of those costs. That
6 attorney's itemization though, our Nevada Supreme
7 Court has said, wrong, that's not what you give. That
8 is insufficient. That is not the process.

9 What you're supposed to do is you're
10 supposed to bring to the Court's attention the
11 underlying documentation, the bill, the receipt,
12 whatever as far as documentation that there exists
13 underlying that particular cost, and that is what is
14 supposed to be appended then to your memo of costs.

15 We pointed that out in our motion to retax.
16 And Mr. Hyatt then in response to that said, well,
17 wait a minute. Here's some invoices and here's some
18 receipts. What he failed to do is to present a
19 receipt for each and every one of the costs. And what
20 he also failed to do was to provide an explanation for
21 many of those costs.

22 Also what he did is he took his \$2.5
23 million cost award and he jacked it up to
24 \$3,092,736.90 and then he jacked it up a second time
25 to \$3,226,270.78, \$3.2 million. In my opinion, that's

1 a lot of money.

2 And in the estimate as far as of the Nevada
3 Supreme Court, counsel is supposed to come forward
4 with an explanation of what each one of those was for,
5 as well as documentation of each one of those costs.
6 Our basic position in this motion to retax is because
7 Mr. Hyatt's memo of costs, the very first document
8 that started this procedural process, contained an
9 itemization only and that is insufficient then under
10 the U.S. Labs case, that Mr. Hyatt is entitled to
11 zero.

12 If, in fact, the Court is inclined to say,
13 well, I'll look at the receipts, the invoices that he
14 gave in opposition to our motion to retax even though
15 they are untimely, then our position is that Mr. Hyatt
16 at best, at the very best, has given an explanation
17 for recoverable costs in the amount of \$53,563.80.

18 We gave a chart to the Court and put it in
19 a graph. And we spent a great deal of time trying to
20 make your job and probably Lucas' job a little bit
21 easier. What we tried to do is to put into that chart
22 where the analysis was and what Mr. Hyatt then had to
23 demonstrate so as to claim entitlement to an award of
24 costs.

25 The only opposition that we got back from

1 Mr. Hyatt to that is that he claimed one of our line
2 items was actually his Lexis bill. And he put that
3 before the Court and he said, well, this is my Lexis
4 bill so of course I should be able to keep recovery of
5 this because computerized research is recoverable as
6 far as an amendment to our costs statute. That came
7 as a result of a Nevada Supreme Court decision.

8 Well, he says that this is his Lexis bill.
9 However, this is my firm's Lexis bill for the same
10 period of time. And I don't understand why it is that
11 Lexis would be sending different bills to
12 Mr. Hutchison's law firm versus to my law firm. So to
13 the extent that we go back and we compare this, this
14 doesn't look anything like what Lexis was sending to
15 us and gave an itemization then. And this is what my
16 law firm then would have used to pay an invoice from
17 Lexis by which to substantiate then out-of-pocket
18 costs for computerized research.

19 So what I'm going to do is I'm going to go
20 through, because I can't highlight in the timeframe
21 that we have everything as far as for which we
22 contend, but I do want to bring to the Court's
23 attention a few of the things that Mr. Hyatt seeks
24 recovery upon. And it's our basic position that these
25 items illustrate that, in fact, Mr. Hyatt's gone too

1 far. And they invite -- Mr. Hyatt invites this Court
2 to abuse its discretion by awarding him everything
3 that he has asked for.

4 As an example, like I said, these are the
5 billings that my firm gets for Lexis, and this is the
6 exact same timeframe that Mr. Hutchison was contending
7 that that other single sheet was his Lexis bill.

8 All right, now, this one. I'm hoping that
9 the Court can see this. All of us as trial counsel
10 got fairly spoiled with the audiotron and being able
11 to blow things up. We don't have that ability by
12 which to do so anymore, but what I'm going to try to
13 do is to highlight on the Court's screen a couple of
14 the additional issues.

15 This is an order for photocopies. It's not
16 even in this case. It's a case that Mr. Hutchison's
17 firm was handling involving the Las Vegas Downtown
18 Redevelopment Agency and a gentleman by the name of
19 Paul Malden (phonetic). So they're asking for
20 photocopies in a case that has nothing to do with this
21 one.

22 And you go through these, and you end up as
23 far as within a receipt then from the County Clerk,
24 but this receipt from the County Clerk makes it clear
25 that it's for the Las Vegas downtown case. There's

1 another example that we bring to the attention of the
2 Court.

3 The costs statute permits recovery when, in
4 fact, you may have to travel and take depositions, but
5 these have to be reasonable and necessary. I looked
6 at a \$25 tip on a \$45 meal and there's no explanation
7 by Mr. Hyatt that that was somehow reasonable and
8 necessary.

9 There are many, many requests for
10 reimbursement of fees that are found in this format,
11 check request. These happen to be check requests, if
12 I can pick up from the initials, that this is an
13 internal check request by Mr. Ganley to the Hutchison
14 Steffen law firm. The one thing I kind of scratch my
15 head for as I looked at it and it's for August 28th of
16 '08. That's after trial had completed in this
17 particular case. And he identifies that he's seeking
18 a recovery for rental car, tolls and gas.

19 And there's many, many, many of these check
20 requests found within their invoices that they
21 submitted in their opposition, not in their original
22 bill of costs, but in their opposition and contending
23 that somehow these should be sufficient.

24 Well, the point I wanted to bring to the
25 Court's attention is from the Village Builders versus

1 U.S. Labs case. The counsel who lost in that
2 particular case argued those who are moving for costs
3 should not be required to provide justifying
4 documentation for each copy made or each call placed
5 or each invoice requested. That's what the argument
6 was that was made to the Nevada Supreme Court. But
7 the Nevada Supreme Court rejected that argument. And
8 I quote from that decision. This argument is
9 unpersuasive because such documentation is precisely
10 what is required under Nevada law to ensure that the
11 costs awarded are only those that are actually
12 incurred.

13 So when we look at all of these check
14 requests, you can see it was for airfare, cars, tolls,
15 food. That's what the notation is out there. We all
16 know from our common experience that, in fact, we get
17 bills for those. There's an invoice. There's a check
18 request. There's a credit card statement. There's
19 something by which then that will evidence, in fact,
20 if these were incurred and for what they were incurred
21 and the proper time frames.

22 I'll move forward a little bit with some of
23 these. One I found to be kind of interesting. Buried
24 in their request for transcript costs is an invoice
25 from a woman by the name of Donna Davidson. She did a

1 transcript in a case called Sierra Gateway Ventures
2 vs. Landmark Homes & Development. That case is
3 familiar to me. I represented Landmark Homes &
4 Development in that case. It was the last case that I
5 tried before I tried this one.

6 Mr. Hutchison ordered the transcripts of my
7 opening statement and my closing argument in that
8 case. And I think that's a great idea, but I looked
9 through the costs statute and I looked as far as
10 through the Nevada Supreme Court case, and I can't
11 find anything that says he's entitled to recover on
12 those.

13 What they did do is they buried this in
14 their transcripts request suggesting that it was a
15 transcript that came from this Court rather than from
16 some other case. And as I indicated, our Nevada
17 Supreme Court doesn't care what costs that an attorney
18 may incur, but they do care what costs may be
19 recoverable, and this isn't the type of cost that's
20 recoverable.

21 I'm going to go forward a little bit
22 relatively quickly. What the Court will also see is
23 you've got a whole bunch of invoices from a firm
24 called Kohler, Smoller & Freed (phonetic). They're a
25 law firm. There are legal charges associated with

1 this. If the Court will recall, Dr. Thompson who took
2 the witness stand. When Dr. Thompson's deposition was
3 being taken, Mr. Hyatt hired him an attorney. They're
4 saying we should be entitled to reimbursement of those
5 legal fees.

6 Same thing, he had a friend by of name of
7 Sid Kerns that was back East, and his deposition was
8 being taken. Mr. Hyatt hired him an attorney, and
9 those legal fees then are found within their bill of
10 costs as well. If you take a look at these all from
11 the Kohler firm, that's what this is as well.

12 This one, this is a \$20 charge, but this is
13 to me illustrative of the overreaching that is being
14 done in this bill of costs. You know what this is
15 for? Parking ticket. Somebody delivered lunch and
16 they got a parking ticket. They paid 20 bucks for the
17 parking ticket and they want us to pay for it.

18 With all due respect, I looked through the
19 bill of costs statute and also looked through the
20 Nevada Supreme Court decisions, and can't find that
21 that's recoverable. If they try to dump it into the
22 catchall phrase as to reasonable and necessary, they
23 provided no explanation as to why this parking ticket
24 was reasonable and necessary and why we should pick up
25 the tab.

1 In addition, moving forward, they bought a
2 bunch of books so as to be able to present their case.
3 A bunch of Nevada Revised Statutes, some evidentiary
4 books, and they want us to pay for those books now.

5 They had a bunch of private investigators
6 with no explanation whatsoever as to what these
7 private investigators were or what they were doing and
8 they want us to pay for these private investigators.

9 I'm going to try to get to the one -- this
10 is the one, too, that I find a little bit interesting.
11 Mr. Hyatt took a writ of your decision on the economic
12 damages. The Nevada Supreme Court awarded us costs
13 associated with that writ to the amount of \$250, but
14 now he wants us to pay that \$250.

15 Let me get to my favorite one in the
16 interest of time. These -- all of these invoices that
17 I've got highlighted up here, the bill of costs
18 statute says that you get one copy of a transcript.
19 In other words, if you go to a deposition and you ask
20 for a request for a transcript, you get one copy. And
21 that may be recoverable. What you see here is invoice
22 upon invoice upon invoice where Mr. Hutchison's firm
23 asked for a copy, Mr. Bernhard's firm asked for a
24 copy, and then even later on they asked for a copy
25 then for Mr. Kern so there are three separate.

1 They're not only duplicate billings but they're
2 triplicate billings as to what is recoverable.

3 And there are many, many, many of these. I
4 probably should have taken them out of this
5 presentation once it got shortened up. Let me get to
6 the one that I find interesting.

7 Remember Paul Sherbish (phonetic)? Paul
8 Sherbish was the expert witness that Mr. Hyatt
9 presented on wealth holders. His basic testimony was
10 that we didn't properly analyze the evidence
11 concerning wealth holders and how they live. Well,
12 Mr. Sherbish lived in Boston. He flew first class
13 here to Nevada. And his first class ticket then is
14 what they want us to pay without any explanation as to
15 why first class versus coach.

16 When Mr. Sherbish testified, he stayed at
17 the JW Marriott. And after he testified that day he
18 went and had a meal. And then about 9:45 he went down
19 and bought himself a cigar, paid \$14.01 for the cigar
20 and gave a tip to the amount of \$2, and presumably
21 smoked the cigar. And they want us to pay for that.
22 I don't think that that is a recoverable cost.

23 In sum, what we did is we tried to make the
24 Court's job as easy as possible. We gave you a chart
25 as to each and every cost that has been requested by

1 Mr. Hyatt. As I said before, we believe that he has
2 failed to adhere to the proper procedure, and,
3 therefore, should not be allowed any costs. But if
4 the Court is going to permit him to have the late
5 disclosure of these invoices, an analysis has to be
6 made of those invoices. We did that analysis on his
7 invoices and that recovery then is \$53,563.80. And we
8 believe that that is the maximum then that Mr. Hyatt
9 should be entitled to as recovery of costs based upon
10 what he has presented to this Court. Thank you.

11 THE COURT: Thank you.

12 MR. HUTCHISON: Your Honor, let me start
13 with counsel's suggestion that they provided a helpful
14 document or make the Court's job easier with this
15 chart. I think it was a 165-page document which they
16 called a notice of analysis and summary of costs.
17 Well, I'm like counsel. I like to take a look at the
18 rules and see what they say. There's nothing under
19 the local rules that allows for this filing. There's
20 a motion in opposition and reply. So we filed a
21 motion to strike.

22 It is not only a rogue document. It is not
23 only absolutely untimely. It's also completely
24 inaccurate and false. Counsel wanted to pick up a
25 little bit on that point, but she didn't go quite far

1 enough.

2 For example, the very first entry of that
3 so-called analysis and summary of costs states that,
4 Hyatt provided no invoice for the Lexis Westlaw
5 charges. It didn't say, we were unhappy with the
6 form. It says, provided no invoice for the Lexis
7 Westlaw charges incurred on July 31st, 1997. It also
8 states on that chart the charge is not specifically
9 recoverable under NRS 18.005. And it states that
10 Hyatt provided no explanation for the charge.

11 Well, contrary to the FTB assertions an
12 invoice for this charge was provided, Bates number
13 HS00386. The charges for computerized services for
14 legal research are expressly allowed under NRS
15 18.0017, subsection 17. And Hyatt did provide an
16 explanation for why the charge was reasonable and
17 necessary and it's on his opposition paper at page 10
18 lines 14 through 21. So that's an example.

19 And we have asked that the Court strike the
20 document. It's completely inaccurate, it's completely
21 rogue, and it's untimely.

22 I assume that counsel gave us her best
23 shot. Had a long time to go through and pick out any
24 little receipt that wasn't appropriate or something
25 that she thought, well, let's see if we can find a tip

1 that's excessive or a cigar that somebody smoked and
2 now we're paying for it. I suppose that she gave us
3 her best shot. And we have a total amount claimed of
4 a little over \$3.2 million. If you add up the
5 receipts that she gave you as her best shot example
6 of, I don't know, call it a thousand dollar, ten
7 thousand dollars, a hundred thousand dollars, it's
8 nowhere close to \$3.2 million.

9 Here's the point. You've got broad
10 discretion here. Everybody knows that. That's what
11 the case law is. You've got broad discretion to look
12 at and fashion an equitable relief and recovery here.
13 You can take a look at the documents we submitted.
14 You can take a look at the explanations that we
15 provided in the papers that we submitted to the Court.
16 We provided an itemization, no question about that.

17 The FTB then came back in their opposition
18 and said, oh, no, itemization isn't enough. You've
19 got to provide receipts and documentation. Matter of
20 fact, I think what they said on that point was, let me
21 just quote it for you, they said, You have to provide
22 invoices, statements, receipts, checks, et cetera to
23 support the costs.

24 So then we did that in our opposition,
25 which now we've been criticized for doing. Then the

1 reply we hear, no, you can't just attach the
2 statements and the receipts and invoices. What you
3 have to do is you have to have verifying receipts.
4 You have to do is have verifying receipts so that we
5 can verify that every charge was an actual charge.

6 But there's no case law that requires that,
7 Your Honor. This is a broad, discretionary act by the
8 Court in evaluating this case, evaluating how long
9 it's been going on, evaluating the massive amount of
10 documents, the massive number of depositions. I think
11 we took 100 depositions. We've taken -- we've
12 produced hundreds of thousands of pages of documents.
13 It's been going on for 10 years.

14 Counsel cites receipts, I think, those
15 check receipts in terms of what the dates were on
16 that. It was after the litigation. That was when
17 people began to compile their costs, and if there were
18 costs that were incurred for interviewing witnesses or
19 for taking depositions or for traveling out of state
20 that hadn't been submitted previously, then they were
21 submitted at that time. It wasn't the date that those
22 activities actually occurred, Your Honor.

23 So the bottom line is we could spend
24 seriously the next week going through this, or you can
25 decide in broad terms and under your broad discretion

1 how to fashion a remedy and how to provide a fair and
2 equitable reimbursement of costs, which Mr. Hyatt is
3 certainly entitled to.

4 We've provided every document that we've
5 got. I guarantee you if the roles were reversed, the
6 FTB doesn't have every single document they're asking
7 us for either. No law firm does. You always get down
8 to these kind of crazy arguments back and forth among
9 counsel depending on which show is on whose foot.

10 And the document we provided you is the
11 best we could do. It's everything that we've got over
12 a 10-year period of time to justify the charges. You
13 know this was a gigantic case. You know this was a
14 hard fought case. You know that we flew all over the
15 country. We took hundreds of depositions. Some of
16 those depositions lasted seven, eight, nine days.

17 And this was not a small, little case. I
18 agree with counsel that \$3.2 million is a lot of
19 money. It's also a lot of justified money for a case
20 of this size and of this nature.

21 So, Your Honor, unless there are specific
22 questions you have again, I just get back to can I be
23 helpful in any way with questions. If you have
24 specific questions for us, we'll certainly be happy to
25 do that. But to suggest that there is this fair chart

1 that you ought to look at is just not true and it's
2 not accurate.

3 Counsel keeps saying that there's no case
4 law, there's no statutory provision for allowing many
5 of these charges and many of these costs. Again,
6 within your broad discretion you can certainly award
7 any other reasonable and necessary expenses incurred
8 in connection with the action and then include any
9 reasonableness expenses for computerized legal
10 research. That's under Section 17 of NRS 18.005.

11 There are all kinds of examples that I can
12 go through as well, Your Honor. But, again, unless
13 the Court has specific questions, I think we'll submit
14 on the papers and the volumes of documents that we've
15 already provided to the Court.

16 THE COURT: Thank you. Ms. Lundvall.

17 MS. LUNDVALL: Very briefly, Your Honor.
18 Just two points I want to make to comments that
19 Mr. Hutchison made. First I want to address his very
20 last comment, and that is concerning the reasonable
21 and the necessary component. There is a catchall
22 phrase within the costs statute. But what that means
23 though or what the Nevada Supreme Court has said is
24 that counsel who is seeking recovery has to come
25 forward and to explain what is reasonable and

1 necessary. So, in fact, with many of the costs that
2 they put under this catchall phrase you've got to come
3 forward with your explanation.

4 What we did is very painstakingly went
5 through as far as their opposition papers to determine
6 whether or not there was some type of an explanation
7 when they put a cost category within that catchall
8 phrase. If there wasn't an explanation, then guess
9 what, they failed in their burden of proof.

10 This is a burden of proof issue. So from
11 the perspective of for them trying to say, well,
12 anything is reasonable and necessary, but they don't
13 have to explain how or why. Like they don't have to
14 justify or explain why it is that they spent almost a
15 million dollars on one expert witness, and when you
16 look at that close to a million dollars on one expert
17 witness what you see is almost \$200,000 of it is in
18 legal fees. They offered no explanation for that.
19 And for them to try to somehow jump outside then the
20 statute that only permits \$1,500 for an expert when
21 there's been no explanation for it, I believe that
22 that would be an abuse of this Court's discretion.

23 But the second and more important point
24 that I want to make is when you listen to
25 Mr. Hutchison, basically what he said is, jeez, it's

1 unreasonable for any law firm to keep all of these
2 little scraps of papers and all of these invoices,
3 especially across a case that's been going on for this
4 length of time. But you were here, you know what
5 happened, so just go ahead and give it to us. That's
6 what his argument is.

7 Well, on a recoverable cost award it
8 doesn't work that way. It's a burden of proof that
9 falls upon the party that is seeking recovery of those
10 costs. It was their burden of proof to bring that
11 evidence to the Court's attention. And they can't
12 say, well, we can't do this. Our Nevada Supreme Court
13 has expressly held that is an unpersuasive argument
14 and that it is not permitted by which to provide a
15 substitute then for proof of a recoverable cost.

16 Therefore, we stand by the chart that we
17 gave to the Court as to what is and has been
18 demonstrated by them and where they have possibly met
19 their burden of proof.

20 We also stand by our basic point and that
21 is this. I find their argument interesting on my
22 chart in this respect on one last point. They say,
23 well, it's late. She can't give it to you. It's too
24 late. Well, guess what, their opposition that
25 included all the invoices under the procedure that's

1 been established under the statute and under the
2 Nevada Supreme Court cases, that was late too. And,
3 therefore, we would submit.

4 THE COURT: I think both sides make very
5 good and valid arguments. This is a very important
6 issue to determine these actual costs, exactly what is
7 what and to determine further whether these costs were
8 reasonable and necessary. It's the Court's intention
9 to appoint a special master to assist it in being able
10 to sift through all this data. And with that in mind,
11 I'd asked Mr. Hall to be present this morning.

12 Mr. Hall, will you come forward for a
13 moment, please.

14 MR. HALL: Yes, Your Honor.

15 THE COURT: I've asked you to be present
16 for purposes of perhaps accepting an appointment as a
17 special master to assist the Court in combing through
18 all this data and trying to determine what's what and
19 what are reasonable and necessary costs.

20 MR. HALL: May I approach you so I could
21 hear?

22 THE COURT: Would counsel approach, please.
23 Mr. Hall has a hearing issue. It's my intent to seek
24 some assistance by way of a special master. What are
25 your thoughts?

1 MS. LUNDVALL: We think it's a great idea.

2 MR. HUTCHISON: I think it's a great idea.

3 We have absolutely no objections to Mr. Hall serving
4 as a special master. It's going to take some time to
5 go through the documentation. We're happy to assist
6 in any way we can.

7 MS. LUNDVALL: One comment that we would
8 make is we don't think there should be any supplement.
9 In other words, if, in fact, it's a review that should
10 be based upon the record that is presently in front of
11 the Court.

12 MR. HUTCHISON: Your Honor, I think we can
13 rely on Mr. Hall for that. If Mr. Hall feels there's
14 a need for additional information, let's get this
15 right.

16 THE COURT: I don't want to tie his hands.
17 I don't want to give him a job and then tie his hands
18 and not allow him to do whatever he's got to do.
19 Certainly there's already been provided vast amount of
20 invoices and data and documents. That's one reason
21 why the Court needs some assistance frankly. But I
22 think he's going to have to sit down with both sides.
23 And I'm going to allow you -- if you're all amenable
24 to Mr. Hall serving in this capacity.

25 MS. LUNDVALL: We are very amenable, but I

1 want to continue as far as on this particular point.
2 I am not amenable as far as to permitting
3 Mr. Hutchison or any of his representatives by which
4 to submit additional materials. For instance, their
5 opportunity and their time for submitting their
6 invoices and any argument as to what was reasonable
7 and what was necessary has come and gone. And,
8 therefore, what we would do is we would object, for
9 instance, if there's a line item that is found for
10 which there is no invoice, if Mr. Hall contacts
11 Mr. Hutchison and says, where is your invoice and he
12 now produces it, but has not produced it before, we
13 think the time if frame for doing that has expired.

14 MR. HUTCHISON: Judge, this is a broad
15 discretionary call by Your Honor. You have broad
16 discretion. That's what the statutes say. That's
17 what the case law allows. You've appointed a special
18 master to reach the right result or at least come as
19 close as you can to reach the right result. And we
20 think we've provided everything that we've got. But
21 if Mr. Hall finds something that particularly needs
22 more detail and he wants to see some documents, why
23 can't that happen? Why would that be an abuse of your
24 discretion for that to happen?

25 Counsel has already said they've already

1 done the analysis. I'm sure they're going to use
2 their little chart analysis with Mr. Hall. That was
3 untimely. We've ask that that be stricken. So if
4 they're going to use that, if they're going to be able
5 to put in their analysis that was late under the
6 briefing, it seems like it's got to go both ways, one
7 way or the other. But it seems to me within the
8 discretion of the Court we ought to get to the right
9 result as best we can. That seems to be the best way
10 to get there.

11 If there needs to be some additional
12 information to Mr. Hall, so be it. If there doesn't,
13 then he'll let you know. But he's an arm of the
14 Court. He's a special master.

15 MS. LUNDVALL: May I have one last comment?
16 I don't deny that the Court has broad discretion by
17 which to determine which are recoverable costs. But
18 the Court does not have broad discretion to alter the
19 procedure whereby parties are supposed to bring their
20 proof to you concerning what is recoverable or not.
21 That procedure is set out by statute by our Nevada
22 legislature. That procedure has been interpreted then
23 by our Nevada Supreme Court, and that procedure then
24 allows the Court the discretion once the procedure is
25 adhered to make your decisions, but it doesn't allow

1 you to say I'm going to put the time frames and the
2 procedure that was established just put it in the
3 trash can and come up with a new procedure.

4 THE COURT: Let me -- I thought you were
5 finished.

6 MS. LUNDVALL: I am. Thank you.

7 THE COURT: I think Ms. Lundvall's points
8 are well taken. I think Mr. Hutchison's points are
9 also well taken. I can't anticipate whatever it is
10 you may be thinking about in the back of your mind. I
11 don't know what may or may not transpire. I'm not
12 inclined to limit -- I'm not inclined to limit
13 Mr. Hall's ability in any way to ferret out whatever
14 information he's got to ferret out to get to the
15 bottom of the matter in as expeditious fashion as
16 possible.

17 I would think you would reserve your right
18 to object to any items that might suddenly appear that
19 haven't already been produced. I think you would
20 retain that right. On the other hand, I don't know
21 what we could be thinking of. It would seem to me
22 that whatever items plaintiff's counsel could get
23 their hands on were probably already produced. So
24 with that said, with respect to plaintiff's motion to
25 strike the chart, I'm not inclined to strike this

1 chart. I don't think this Court needs to look at
2 every single item. That's one of the reasons I'm
3 asking Mr. Hall to serve in this capacity. He can
4 sort through that information if it's helpful to him.
5 He can have some questions for both sides, I would
6 think.

7 MS. LUNDVALL: Thank you, Your Honor.

8 MR. HUTCHISON: Your Honor, as far as the
9 costs, I assume that will be split between the
10 parties?

11 THE COURT: I should think so.

12 MS. LUNDVALL: I assume that's not going to
13 end up being a recoverable cost such that I end up
14 picking up a hundred percent of the tab?

15 MR. HUTCHISON: I think Mr. Hall's fees are
16 reasonable and necessary.

17 THE COURT: I think we'll address that at a
18 later period of time.

19 MR. HALL: One comment that I want everyone
20 to know. Twenty something years ago I married this
21 attorney and her husband. I was a military chaplain.
22 I married them. I've known them for many years. I
23 have had no business dealings with them or with any of
24 you.

25 THE COURT: Any objection?

1 MR. HUTCHISON: No. I stand by my
2 commitment to Mr. Hall. I think he'll do a fine job.

3 THE COURT: I'm certain he will. I thank
4 you for willing.

5 MR. EISENBERG: Your Honor, do we
6 understand that he would submit a report to you and
7 then you would have a chance to review it and then you
8 would make your own independent determination?

9 THE COURT: Yes. Exactly. Counsel will be
10 provided a copy as well as the Court. He's served in
11 similar capacities in other courts. Counsel is
12 probably aware of that. Mr. Adams.

13 MR. ADAMS: I'll take care of that, Your
14 Honor and I would be.

15 MS. LUNDVALL: I would imagine that the
16 order would be Rule 53, concerning special masters,
17 and it would be in accord then with Rule 53?

18 MR. ADAMS: Yes.

19 MR. HUTCHISON: Your Honor, will there be a
20 discussion for time frames of reports and that kind of
21 thing or do you want to defer that for a later time?

22 THE COURT: I'm going to ask Mr. Hall what
23 he has in mind.

24 MR. HALL: I've done over 50 of these
25 receivership special masters for various courts, very

1 complex cases to less complex. Generally what I do is
2 take a good look initially at the case. Then I come
3 back to the Judge with an opinion, with a professional
4 opinion. As to the length based on the scope of the
5 work in terms of what we do and how we do it. I would
6 say this. That my fee is \$200 an hour. Mr. Adams, my
7 attorney, is \$200 an hour. He works as needed. I
8 have a forensic analysis who works with me at \$75 an
9 hour. He does most of the work.

10 I review the work. I scope the work with
11 him, if I need to do. I do that basically to cut
12 costs.

13 MR. HUTCHISON: Sounds fine.

14 THE COURT: I'm going to let you work out
15 the details then on when you will all get together and
16 also you will get back to me, I suppose, and let me
17 know what you need. The motion for retax, we'll
18 continue it until we have further information.

19 MR. HALL: If I might have an opportunity
20 to meet with either both parties at the same time or
21 the parties separately to see what information is
22 available that we might begin getting. It's a sealed
23 case. We have no information on the case.

24 MR. HUTCHISON: We'll get you that.

25 THE COURT: Why don't you take an

1 opportunity to do that. We can't go forward on the
2 remaining motion until we have information with
3 respect to this one.

4 MS. LUNDVALL: I believe that we can. And
5 the reason I say that, in fact, I think we have to for
6 purposes of I'm now flying by the seat of my pants. I
7 do not believe that a cost award or an attorney fee
8 award delays the entry of final judgment that starts
9 the timeframe then for filing a notice of appeal. So
10 to the extent then that we must go forward then with
11 the motion for stay so as to cover the time frames
12 that are going to be at issue pending the -- until the
13 timeframe then for the Nevada Supreme Court then
14 ultimately to rule on this, assuming that either side
15 does not like what the District Court does based upon
16 whatever the stipulation is.

17 I guess what I'm getting into is this. Is
18 that I do not believe that the cost award will push
19 off the argument for purposes of the stay motion that
20 we still have on calendar.

21 MR. EISENBERG: Your Honor, that's true
22 assuming that you intend to issue your order on the
23 post-trial motion for judgment as a matter of law
24 right away. That would trigger the time for the
25 appeal even if the costs order is not entered until

1 later. If you planned to delay the first order until
2 the costs order is also issued, then we wouldn't be
3 appealing for that. But we're not requesting you to
4 delay that. The interest obviously is a lot in this
5 case.

6 MR. WALL: Of course, the rule requires
7 that entry of judgment not be delayed for any taxing
8 of costs. So it would be appropriate for the Court to
9 go forward with the order denying the motion. At that
10 point the time limits will begin to run for the
11 appeal.

12 MR. EISENBERG: In that case we do need a
13 decision on the motion for a stay.

14 THE COURT: Then let me step down and give
15 you a chance to speak to Mr. Hall and Mr. Adams so we
16 don't delay them further. Then I'll come back with
17 you.

18 (Short recess)

19 THE COURT: Last but not least, Ms.
20 Lundvall.

21 MS. LUNDVALL: Thank you, Your Honor. We
22 originally captioned this motion a provisional motion
23 for stay because the timing of it was that it was
24 going to be heard and decided before the Court had
25 decided the post-trial motions. It's no longer

1 provisional. It's now as far as in place so to speak.
2 There is a stipulation between the parties concerning
3 this and there has been no discussion as to modifying
4 any of the stipulation than already exists as it talks
5 about review by either side by the Nevada Supreme
6 Court and how long the existing stay then will
7 continue in place.

8 This argument that we are presenting today
9 on this motion for the stay pending appeal deals with
10 the timeframe once the notice of appeal is filed and
11 the case then is -- the District Court is divested of
12 jurisdiction and the case goes to Nevada Supreme
13 Court. This argument is not intended to alter or
14 amend any of the parties' stipulation in any respect.

15 The Court will be asked as part of this
16 motion essentially to make two determinations. The
17 first determination is whether or not FTB is entitled
18 to a stay in the first place. And the second
19 determination we're asking the Court to make then is
20 whether or not that stay will be without bond. And as
21 to the second question, I think it's important to kind
22 of keep in mind, or at least the thing that I've kept
23 in mind, is that what we're talking about from a cost
24 standpoint.

25 Given the magnitude of the jury's verdict

1 and the judgment then that has been imposed against
2 the FTB, we're looking at an annual bond premium of
3 somewhere between 22 and 37 million dollars. That's
4 just the premium. That's just for one year. We don't
5 get that back if successful at the end. And if you
6 even assume that, I think best case scenario, that
7 this case is resolved within a two-year period of time
8 by our Nevada Supreme Court, you're looking at about
9 somewhere between 50 and 74 million dollars of costs
10 that may not be recoverable.

11 At the same time, the FTB then would have
12 to post a bond not only -- not a bond, but we would
13 have to post assets or a letter of credit for the full
14 amount then that a bonding company is going to be
15 asked to secure. In other words, we've got to take
16 assets aside, put them aside. And the amount then
17 that assets would have to be put aside or some type of
18 letter of credit would have to be created with the
19 bonding company to the tune of about \$790 million.

20 The way I look at that is there's an awful
21 lot of services to the State of California and to the
22 people that make up the State of California that they
23 will be deprived across the period of time that this
24 case is on appeal. Therefore, I'm going to begin my
25 argument then demonstrating why the FTB is entitled

1 first to a stay. There's no -- there is contest, but
2 it doesn't appear that there's any real contest.
3 But in the abundance of caution I'm going to very
4 briefly address the four factors associated with
5 whether or not the FTB is entitled to a stay pending
6 appeal.

7 Interestingly, the case law that examines
8 whether or not a party is entitled to a stay pending
9 appeal is factored upon appellate factors found in
10 Nevada Rule of Appellate Procedure 8. And the four
11 factors basically deal with whether or not the object
12 of the appeal will be defeated if a stay is denied, if
13 we will suffer irreparable harm, whether or not
14 Mr. Hyatt will suffer irreparable harm, and the
15 prevailing of the merits component.

16 Let me very briefly run through these
17 issues. Without -- as to the first one, without a
18 stay, Mr. Hyatt can begin executing upon his judgment,
19 and he can begin going and trying to capture assets or
20 bank accounts or whatever other methods that he would
21 seek for recovery and to be able to secure those
22 monies. And he would then be able to have the
23 enjoyment of those monies across the period of time
24 that the appeal is pending. And that it is possible
25 then that if, in fact, the Nevada Supreme Court looks

1 at this case differently than the District Court and
2 what the jury has done, we may not be able to recover
3 that. So that is one of the factors and I think it is
4 a factor then that merits the FTB being entitled to a
5 stay.

6 We also look at whether or not we will
7 suffer irreparable harm. As I indicated, Mr. Hyatt
8 would be entitled to go out and execute unless there
9 is a stay. This is monies that we've got to keep in
10 mind that we're talking about the FTB. And what
11 Mr. Hyatt's position is is that he can execute against
12 assets that belong to the State of California
13 generally. So, therefore, these are monies that would
14 be -- would be taken away from individuals who reside
15 in the State of California for which would be
16 receiving California services. So to the extent that
17 there is a irreparable harm in the form that these
18 individuals then would be denied services, everything
19 from schools to health care to public safety, those
20 types of issues for possibly no recovery of being able
21 to get those back. I think that that is an issue that
22 merits, warrants a stay being afforded to the FTB.

23 The third factor then is whether or not
24 Mr. Hyatt will suffer irreparable harm from a stay.
25 His own evidence that he presented at the time of

1 trial in support of his request for punitive damages
2 established that he is secure in being able to
3 ultimately execute upon a judgment if that judgment is
4 upheld, and that there is no issue then concerning him
5 being able to find that the FTB through the State of
6 California then is quote/unquote good for it.

7 The one comment that I would make is that
8 this case is significantly different than cases in
9 which maybe somebody has experienced some type of
10 physical harm and that they're needing medical
11 attention and they're looking to a judgment then to
12 provide them the money so that they can pay for that
13 medical attention. We're not looking at that type of
14 a case here at all. It was very affirmatively
15 established during the course of the trial that
16 Mr. Hyatt is very affluent, very wealthy man, and,
17 therefore, this is a factor we think, too, warrants a
18 stay then in favor of the FTB.

19 The last factor is then whether or not
20 there's a likelihood of prevailing on the merits.
21 It's a very high, high standard that the Nevada
22 Supreme Court under its case law has looked at. And
23 basically it would have to be demonstrated that
24 somehow an appeal would be frivolous or fruitless and
25 entirely futile. So to the extent that we submit that

1 that showing has not been made by Mr. Hyatt, and,
2 therefore, the FTB should be entitled to a stay.

3 The real -- the meaty question and the real
4 question for the Court's determination is whether or
5 not we have to post a bond by which to secure that
6 stay. And there are two different reasons why, in
7 fact, the FTB is entitled to a stay without bond. I'm
8 going to walk through the comity analysis, and I'm
9 going to keep my comments in mind based on the Court's
10 previous ruling on our post-trial motion. But also,
11 the Nelson vs. Heer factors.

12 I guess what I'm trying to impress upon the
13 Court is there's two different grounds for our request
14 to you to not permit Mr. Hyatt to request a bond from
15 us, in other words, for us not to be required to post
16 a bond. One of the grounds is a comity grounds and
17 the second ground is Nelson vs. Heer grounds. They're
18 not dependent upon each other. It's an either/or
19 analysis. If I lose on one, I can still win on the
20 other and still be able to demonstrate that the FTB
21 should not be required to post a bond.

22 I'm going to start with the comity
23 analysis. And the comity analysis, maybe in my simple
24 as far as way of trying to look at things, I look at
25 the comity analysis as a golden rule analysis. In

1 other words, you're going to do unto somebody else the
2 same that you either want or what is being done unto
3 you. That's a circumstance that you end up when a
4 request for comity is being made.

5 We are asking this Court to apply the
6 public policy of the State of California. And I'm
7 going to walk through both Nevada's public policy as
8 well as California's public policy and ask this Court
9 then to apply comity. Why? Because the public policy
10 on the issue of whether or not a government agency
11 needs to post a bond to secure a stay pending appeal
12 is identical. They match up perfectly.

13 You have to look at in your basic
14 determination is that when a party asks for comity to
15 be applied, is whether or not the law that they're
16 asking to be applied somehow offends the public policy
17 of the host jurisdiction or, in other words, of this
18 state. Does somehow that the law that I'm asking you
19 to apply to decide whether or not FTB must post a
20 bond, it's your analysis to determine what is the
21 public policy of the State of Nevada, and, therefore,
22 does this somehow offend that public policy of the
23 State of Nevada.

24 The analysis begins with taking a look at
25 what our own public policy is. Our public policy on

1 this particular point is found then in Rule 62(e).
2 Rule 62(e) very simply says, if you're a government
3 agency and you have a judgment that's imposed against
4 you and you're going to seek an appeal and you want a
5 stay, you do not have to post a bond.

6 That's the public policy of the State of
7 Nevada. That public policy is identical to the public
8 policy in the State of California. This is
9 California's civil code of procedure and it also then
10 sets forth the public policy of the State of
11 California. And the public policy in the State of
12 California is identical to Nevada's. If you are a
13 government agency and you have a judgment that's been
14 imposed against you and you intend to seek an appeal
15 of that judgment and you're asking for a stay, you do
16 not have to post a bond.

17 So what you end up with then is that the
18 public policy both in the State of Nevada as well as
19 in the State of California is identical. And what
20 we're asking the Court to do then is to apply the
21 public policy that is found in the California statute.
22 Why? Because it does not offend the public policy of
23 the State of Nevada.

24 The public policy -- we brought to the
25 Court's attention the case law then that speaks to

1 kind of why states do have these public policies. And
2 it talks about how one of the things that's
3 acknowledged is that the public entity is going to
4 have the ability ultimately to pay the judgment if it
5 is upheld. And that's, once again, back to the
6 evidence that we looked to and cited to that Mr. Hyatt
7 had cited in support then of his request for punitive
8 damages.

9 Additionally, a government agency is not
10 like a private party, whereby, its activities are
11 conducted in private. In fact, governments and their
12 agencies conduct their activities in the public. So
13 it's not as if we can hide something. It's not as if
14 we can sell the Golden Gate Bridge or one of the state
15 parks and try to hide that from Mr. Hyatt. It's not
16 as if we can take bank accounts and deplete those bank
17 accounts and hide that money somewhere in offshore
18 accounts in some fashion or another.

19 Government cannot engage in the type of
20 shenanigans that the fear is that private parties
21 might do if they end up with a judgment against them.
22 Why? Because a private party in large part conducts
23 its business in private.

24 In addition, the public policy both in the
25 State of Nevada as well as in the State of California

1 identifies then that the government and its taxpayers
2 and its people should not be saddled with unnecessary
3 expenses. That's why I pointed out up front what type
4 of costs we're talking about when it comes to posting
5 this bond.

6 I don't know if this is going to come up or
7 not, but this is, once again, back to my simple way of
8 trying to understand this. This photograph, if I were
9 on vacation now, this is what I would have seen two
10 days ago in southeast Asia. It was a lunar eclipse.
11 And what this lunar eclipse was is the moon literally
12 passing in front of the sun and blocking out the sun.

13 In our case we have a history, in fact, of
14 both the Nevada Supreme Court and the U.S. Supreme
15 Court finding that there was a partial eclipse of the
16 sun in California through the negligence cause of
17 action, but not a complete. And that's why this case
18 was permitted to go forward.

19 But when I match up in this motion that we
20 have in front of you the public policy of the State of
21 California and the public policy of the State of
22 Nevada, they are the same size. They are completely
23 -- they match up. So, therefore, that's why we
24 believe that the comity analysis is applicable here
25 and why the Court then may rely upon comity by which

1 to permit the State of California's law to be applied
2 and, therefore, for no bond to be required.

3 The four bases that we believe that the
4 comity is required. I heard the Court's analysis on
5 the law of the case and I'm not going to try to
6 quarrel with that. I'm not going to try to change
7 your mind. But the point I will try to make though is
8 this. Is that each time that the Court is given the
9 opportunity or a request is made for comity to be
10 applied to you, that our Nevada Supreme Court as well
11 as the U.S. Supreme Court has said that comity is a
12 doctrine by which creates harmonious relationships
13 between neighboring states. And it is an analysis and
14 a doctrine that has been applied previously in this
15 case.

16 Now, we believe that it constitutes law of
17 the case. The Court does not. But from this
18 standpoint at the very minimum the Court has
19 acknowledged that, in fact, the comity was applied.
20 There was a writ of mandamus that was issued to then
21 District Judge Seda telling her to dismiss the
22 negligence action. Why? On comity analysis. Why?
23 Because at that point in time the immunity that was
24 afforded to California was bigger than the immunity
25 that was afforded to the State of Nevada.

1 In other words, we had a partial eclipse.
2 And what was left as far as of the immunity that was
3 afforded in California, Nevada was not required then
4 to apply that here in this case. When I go back
5 though to the request that we're asking for in this
6 particular motion, they match up identically.

7 The other component that we believe that
8 also applies here is judicial estoppel. Mr. Hyatt in
9 his written briefs to the U.S. Supreme Court as well
10 as in his oral argument to the U.S. Supreme Court said
11 that comity should apply. And he described the comity
12 that should apply as affording the FTB the same
13 treatment that would be afforded to a Nevada agency.
14 That's how he described it. He did that both in his
15 written papers as well as in his oral presentation
16 then to the U.S. Supreme Court.

17 An he was successful on that argument. In
18 fact, he used language in his papers that talked about
19 how the benchmark that was applied by the Nevada
20 Supreme Court was how it treated its own state
21 agencies. And that very language that he had used in
22 his brief was adopted by the U.S. Supreme Court when
23 they talked about how that the State of Nevada had
24 sensitively applied the comity analysis using its own
25 treatment of its own state agencies as the benchmark

1 for the treatment that would be afforded to the FTB.

2 So in this particular factual circumstance,
3 we believe that that benchmark is found both as far as
4 within our state rule as well as in California's rule,
5 which are identical. And that Mr. Hyatt then is
6 judicially estopped to try to suggest otherwise.

7 In addition, we brought to the Court's
8 attention then -- the interesting thing about having a
9 case in front of the U.S. Supreme Court is it gets
10 published. People cite to it. And you can look to
11 see how other courts have interpreted that very
12 decision. And we brought to the Court's attention the
13 Sam vs. Sam case which was the New Mexico decision
14 that applied this comity analysis exactly like we had
15 described it to you. So, therefore, it's not as if
16 you have to write on a fresh slate when it comes to
17 how other courts have interpreted what happened in
18 this case. You have the New Mexico Supreme Court then
19 applying that same analysis. And that analysis was to
20 a statute of limitations issue. It's a very similar
21 procedural type of an issue as what we're talking
22 about then as to whether or not the FTB needs to post
23 a bond.

24 And the last is that Mr. Hyatt's argument
25 somehow -- I have a hard time articulating this

1 argument because it makes no sense to me. Mr. Hyatt
2 in response to our comity analysis in his papers has
3 said, well, Nevada will never apply comity. Why?
4 Because California didn't do so in the Nevada vs.
5 Hall case, a decision that happened over 30 years ago.
6 Well, that makes no sense. Comity was applied in this
7 case, in this case. So if there was going to be any
8 opportunity for some kind of retaliation against the
9 State of California, that argument has to be thrown by
10 the wayside. Why? Because in this very case comity
11 was applied. Why? So as to dismiss then the
12 negligence claim.

13 Bottom line, Your Honor, as far as on our
14 comity analysis, we say this: California statute and
15 Nevada's rule set forth what each state's public
16 policy is. And because those match up identically, we
17 would ask the Court then to apply and to not require
18 the FTB to post a bond to secure its stay pending
19 appeal.

20 The last analysis then is the Nelson vs.
21 Heer factors. Nelson vs. Heer is a decision that
22 talked a little bit about the purpose of the bond.
23 And they talk about the fact that, in fact, the
24 purpose of a bond is to try to afford a party some
25 security. That they know at the end of the day that

1 there may be funds that may be out there available so
2 that the judgment ultimately could be paid.

3 Mr. Hyatt's own evidence that he presented
4 at the time of trial demonstrates that security. His
5 expert in the form of Mr. Sjoberg then established --
6 went through as far as the analysis about how the
7 State of California was the eighth largest economic
8 entity as far as in the world. He went through as far
9 as the multi billions that it had in claimed net
10 worth. He went through multi billions that were
11 claimed in assets available for which to pay
12 judgments. He went through the multi millions, in
13 fact, that were secured by the FTB in tax revenue on a
14 daily basis. He has demonstrated then as far as that
15 very security and, therefore, does not need additional
16 security in the form of a bond.

17 The five factors that were supplied then by
18 the Nelson vs. Heer, and I'm going to go through those
19 quickly because of the interest of time. We brought
20 to the Court's attention then the affidavits then that
21 identified that the collection process in the state
22 against the FTB in the State of California is not
23 unusually complex. We explained that the FTB has the
24 funds. We explained if that fund is not sufficient
25 how appropriations are made. All of those were fully

1 explained and it does not demonstrate then that there
2 is some type of a complex collection process that
3 Mr. Hyatt must go through.

4 Also, one of the things that I took a look
5 at is when you look at the time required to obtain the
6 judgment after affirmance. That really is tied into
7 the first factor in how complex it is and whether or
8 not it's going to take a long time for a party. So
9 the same evidence that we presented concerning that
10 collection process would apply here.

11 The third factor is in the confidence in
12 the ability to pay the judgment. I cite back then to
13 Mr. Hyatt's own evidence that he presented in this
14 trial and that concerned then the testimony coming
15 from Mr. Sjoberg on California and its net worth and
16 its net assets and what income tax revenue was being
17 generated on a daily basis.

18 The fourth is whether or not it is a waste
19 of money on the cost of a bond because the judgment
20 debtor's ability to pay is plain.

21 I go back to as far as what I started on
22 this analysis to begin with. We're looking at
23 somewhere between 50 and 74 million dollars at minimum
24 that it's going to cost us just simply to secure the
25 bond in annual bond premiums. That's a lot of money.

1 And in addition, what we'll have to do is to post
2 assets then up to 100 percent. And that amount that
3 the affidavit that we provided then from the woman
4 with the bonding company then was probably about \$790
5 million.

6 So that is assets. That is money that the
7 State of California, its taxpayers, its citizens,
8 those that use public services in the State of
9 California will be deprived of during the pendency of
10 this appeal. Why? Mr. Hyatt's already secure. He
11 already has presented his own evidence then that the
12 FTB through the State of California has the ability to
13 pay.

14 And the last factor is the defendant's lack
15 of a precarious financial condition. And that factor
16 I look at is somewhat of a repeat then of what has
17 already been -- I've already mentioned as far as the
18 rest of the factors.

19 Bottom line is, Your Honor, I believe that
20 the FTB is entitled to a stay, pending appeal. And in
21 addition, we would ask the Court then to either apply
22 comity or to find under the Nelson vs. Heer factors
23 that we do not need to post a bond pending that
24 appeal. Thank you.

25 THE COURT: Thank you, Ms. Lundvall.

1 MR. WALL: Good morning, Your Honor.

2 Michael Wall on behalf of Mr. Hyatt. Your Honor, we
3 didn't hear anything here that wasn't in the papers
4 and that hasn't been addressed. There are some things
5 that hadn't been directly addressed that I would like
6 to address that were particularly in the reply that we
7 didn't have an opportunity to go through. But I do
8 need to go through quickly each of these things and
9 I'll try to be brief.

10 First, whether or not they're entitled to a
11 stay. The standard is set as to whether or not she
12 should get a stay, and there are the four factors that
13 they have to meet. The only thing I heard on whether
14 or not the object of the appeal will be defeated is
15 this will cost money because he'll start executing.
16 Generally, the fact that a party may begin executing
17 and that money may trade hands is not sufficient to
18 show that the object of the appeal will be defeated.
19 I've seen hundreds of orders from the Nevada Supreme
20 Court that say money is fungible and that doesn't
21 supply that basis.

22 Second, it's a weighing of the prejudice to
23 the parties. We didn't hear any prejudice
24 specifically to the FTB or even to California. But
25 more we talked about this, well, it's going to tie up

1 some of their funds. And I would suggest that that's
2 not irreparable prejudice to the FTB or the State of
3 California or to the citizens of California that is
4 required when you're talking about a weighing factor
5 of whether or not there should be a stay.

6 Then we heard, because the next part of
7 that is to weigh the prejudice to Mr. Hyatt. Well,
8 Mr. Hyatt's a wealthy man. If he doesn't collect his
9 money now or for however long it takes for all of the
10 processes to go through. It has taken 10 years to get
11 to trial. It's going to take years to get through the
12 rest of the process. There will be significant
13 prejudice to Mr. Hyatt. He's an individual. As
14 opposed to the prejudice to the State of California,
15 which was general. The prejudice to Mr. Hyatt is
16 direct.

17 And then the issue of whether they have to
18 -- they will or will not prevail on the merits.
19 They've try tried to shift the burden of proof there.
20 And they've taken some language from a couple of cases
21 where it said, well, we didn't think this case, that
22 the issue was frivolous and under the circumstances we
23 thought that a stay would be appropriate.

24 Of course, a stay is always within the
25 discretion of the Court. But the burden of proof is

1 upon the FTB to show that they are likely to prevail
2 on the merits, not to show that their appeal is not
3 frivolous or that it will necessarily be fruitless.
4 We don't have that burden. They have that burden and
5 they haven't even attempted to demonstrate to this
6 Court that they have a likelihood of a success on the
7 merits. And there's a good reason for that. Most of
8 the time the issue of whether or not a stay should be
9 granted turns on that issue alone because there's no
10 point in a stay if they haven't raised an issue on
11 which they're likely to prevail.

12 I'll move on to the issue of the bond.
13 Speaking of the issue of the bond, there's a number of
14 arguments. The first argument, it's going to cost
15 them some money to put up a bond. And the reason it's
16 going to cost them some money is because of the size
17 of the verdict. It costs every plaintiff, every
18 appellant, who puts up a bond money to put up that
19 bond. The fact that it's going to cost them some
20 money and it's going to tie up some money and they
21 could use that money to pay off some of those IOUs
22 that they're sending to their taxpayers in California
23 right now is not a basis for saying they shouldn't
24 have to post a bond. It simply doesn't address that
25 issue at all.

1 They say in order to get the bond they have
2 to post assets. Everybody has to post assets in order
3 to get a bond. There are other ways to secure a
4 judgment. They can explore what all of their options
5 are. But the State of California is in a position to
6 put up a bond. And the alleged cost of putting up
7 that bond and how that's going to hurt the taxpayers
8 in California is not a basis to ignore the purpose of
9 the rule that they have to put up a bond. And that
10 purpose is to protect Mr. Hyatt when it comes time to
11 collect.

12 Going first to the Nelson vs. Heer factors,
13 each of those things, the complexity of the process in
14 collecting, it's not complex to collect in California.
15 All you have to do is go there. The FTB says they've
16 got some money. I don't know how we're going to
17 attach that. Then we can get some money from the
18 legislature. That's exactly the process that we
19 should not have to rely upon, the process of going
20 through legislative sessions and legislative
21 assessments.

22 They cited a couple of cases where states
23 did not require other states to post bonds. And in
24 each of those cases there was a ready fund without
25 legislation being required from which the judgment

1 could be satisfied. Here there's no such thing.

2 We've talked about going out and executing
3 on assets in California. But that's not exactly how
4 it would happen and we all know that. The process is
5 complex. And our assuery of being paid and how
6 quickly we can be paid and how quickly Mr. Hyatt will
7 be compensated after the process of an appeal and
8 whatever else follows that is not, under those
9 standards, going to give Mr. Hyatt any peace of mind
10 at all that he's some day going to be able to collect
11 this judgment from the State of California.

12 So you weigh those factors. If it weren't
13 the State of California, if it were just somebody else
14 out there, those factors would never weigh in favor of
15 not requiring a bond. And the rulings of the Court
16 are that bonds should be required in almost every
17 case.

18 So the only issue that really addresses --
19 that we really need to address today as to whether or
20 not the State of California should not be required to
21 post a bond is comity. Because if they were a private
22 individual, they would be required to post a bond.

23 So we talk about comity. And I'm not going
24 to go through their complete lack of understanding of
25 the doctrine of comity in this case. Your Honor has

1 already ruled on that and ruled against them on that.

2 But I want to address this is what's wrong
3 with their entire argument. It's the first line, the
4 very first sentence of their reply to our opposition
5 in this motion. And that sentence is, Hyatt's
6 opposition encourages this Court to become hostile
7 toward a state agency of California by requesting that
8 this Court treat the FTB worse than it would treat a
9 similarly situated Nevada state agency.

10 That is wrong on so many levels it's almost
11 impossible to address, but I want to address a couple
12 of levels that it's wrong on. Hyatt has never asked
13 this Court to be hostile to the State of California.
14 Determining what the policy of this state is and how
15 that applies to protect a citizen of this state is not
16 hostility toward the State of California.

17 We have never argued that the FTB should be
18 treated worse than a Nevada agency. It's not a
19 question of better or worse. It's a question of the
20 same or different from. And it should be different
21 from.

22 The FTB is not similarly situated as a
23 Nevada agency for one, simple reason. It's in
24 California. It's not here. It's not located in
25 Nevada. It's not subject to Nevada law. It's not

1 subject to the Nevada legislature. It's not subject
2 to the Nevada police authority, and it's not subject
3 to the Nevada administrative control. That's why the
4 laws are so clear on this subject.

5 A Nevada resident is not in the same
6 position to collect against a foreign agency as that
7 Nevada resident is to collect against a Nevada agency.
8 It's simply a different situation.

9 Mr. Hyatt is asking this Court to protect
10 his rights and interests, to protect the rights and
11 interests of a Nevada citizen, and that's him.

12 Comity is a non-issue in this case. Comity
13 is applied in every case where a foreign law exists.
14 Comity is either applied by applying that foreign law
15 or determining that you won't apply that foreign law.
16 Comity is just a doctrine of the law.

17 The problem with the FTB's arguments on
18 comity is that they set up a false set of policies.
19 They state falsely that the policy of Nevada is that
20 government agencies generally should not have to post
21 bonds, and that that's the same policy they have in
22 California. So since we have the same policy, apply
23 that policy.

24 That's not the policy of Nevada and it's
25 not the policy of California. Incidentally,

1 California and Nevada have the same policy. It's very
2 clear. NRCP 62(e) says that a Nevada agency does not
3 have to post a bond. California law 995.220 says very
4 clearly, the State of California does not have to post
5 a bond.

6 There's a reason for those laws and we've
7 cited the case law. The federal courts have been
8 clear. Their rule is the same. If you get a judgment
9 in federal Court, you don't have to post a bond if
10 you're the federal government. But if you're the
11 County of Clark in Nevada, you do have to post a bond.
12 And we cited that authority. The policy of the State
13 of Nevada is that domestic agencies do not have to
14 post bonds. The policy of the State of California is
15 that domestic agencies do not have to post bonds.
16 There is no policy in California or in Nevada that
17 foreign agencies should not have to post a bond, and
18 there are very good reasons for them not having to
19 post a bond, for not requiring a bond from your own
20 agency but requiring a bond from somewhere else and
21 I've gone through those.

22 We can't protect our citizens against the
23 vagaries of the law of a foreign jurisdiction as we
24 can here. And when the rules were adopted and the
25 laws were adopted, they were to protect government

1 agencies and the fiscal interests of the state in
2 which they were adopted. Just as the federal one is
3 so clear, the federal rule, the counterpart of the
4 Nevada rule, absolutely clearly says federal
5 government doesn't have to post a bond, but everybody
6 else has to post a bond.

7 So the comity issue is a non-issue. If
8 we're going to apply comity, doesn't matter which law
9 we apply, California or ours, we reach the same
10 result. They are a foreign agency. They should be
11 required to post a bond so that we are secure.

12 Finally, the judicial estoppel argument is
13 absolutely absurd in my view, Your Honor. Mr. Farr on
14 behalf of Mr. Hyatt at the United States Supreme Court
15 never, ever made the argument that a California agency
16 has to be treated for all purposes the same as a
17 Nevada agency. The opinions have never been cited for
18 that proposition. The issue there was immunity, which
19 is not an issue that we have here. And what Mr. Farr
20 said was, remember, the United States Supreme Court
21 was reviewing to see whether or not the State of
22 Nevada in its exercise of comity violated some federal
23 law, the Constitution.

24 And they said that they hadn't done so.
25 That's all they decided. Mr. Farr simply said -- his

1 comments were in the context of that the Nevada
2 Supreme Court in that instance with respect to those
3 issues had sensitively applied comity because it had
4 treated under those circumstances a California agency
5 the same way it would have treated a Nevada agency.
6 No suggestion was made there or at any other time that
7 in every circumstance, no matter what the law is, a
8 Nevada agency and a California agency are the same
9 thing and should be treated the same.

10 Today we're looking at a situation where if
11 we don't have some kind of protections, then we are
12 looking at more years of litigation with no real
13 guarantee that at the end we will be able to collect
14 that judgment.

15 A bond is required from everybody who
16 appeals. An appeal is not a constitutional right.
17 It's a statutory right. And a party who accepts or
18 takes advantage of that statutory right has to secure
19 the other party.

20 THE COURT: Thank you, Mr. Wall. Ms.
21 Lundvall.

22 MS. LUNDVALL: Very briefly, Your Honor.
23 Mr. Wall in opposition to our comity argument says you
24 do not have to apply Nevada's rule of procedure
25 because it is special to Nevada agencies. In other

1 words, he says this. When you look at this rule of
2 procedure, it only applies to Nevada agencies. And
3 that's why you can't apply comity.

4 Well, if I had NRS 41.032 up here that
5 talks about whether or not Nevada agencies are immune
6 even from a case being filed against them, what the
7 Court would see is that that statute only talks about
8 Nevada agencies. Doesn't talk about foreign agencies.
9 Doesn't talk about out-of-state agencies.

10 Why am I bringing up this point? That
11 statute, the immunity that was found in that statute
12 was said to apply to us by the Nevada Supreme Court
13 and by the U.S. Supreme Court. And it makes no
14 mention whatsoever of a foreign agency. And so
15 Mr. Wall's argument on comity makes no sense
16 whatsoever, especially when you look at the most
17 concrete analysis that is in front of you.

18 What the comity analysis is is we're asking
19 you to apply the public policy that is found in the
20 statute of the State of California in this
21 circumstance that says a state agency, California,
22 doesn't have to post a bond. Why? Because it's
23 identical to our policy regarding government agencies
24 here in Nevada. It's the exact same analysis that was
25 applied for purposes of a negligence claim. It's the

1 exact same analysis that the New Mexico Supreme Court
2 did in the Sam vs. Sam case, and it applied a two-year
3 statute of limitations from Arizona in a New Mexico
4 case. And, therefore, I disagree with his argument.

5 Second thing is that he closed his remarks
6 by saying everybody who takes an appeal must post a
7 bond. Not so. It's a permissive language that is
8 found within the bond requirement. Moreover, if it's
9 not permissive, then why are we looking at the Nelson
10 vs. Heer factors? The Nelson vs. Heer case
11 particularly said that a bond is not required in every
12 circumstance.

13 And the last point I'm going to make is
14 this. He said, I don't think they've shown any
15 irreparable harm to FTB or the State of California so
16 as to be entitled to a stay in the first place. Well,
17 the irreparable harm that we identified to the Court
18 was this: Is that if we have to post a bond, we
19 talked about the costs and how much in assets we have
20 to segregate even put up some type of a letter of
21 credit. That's in excess, it's right at almost a
22 billion dollars. Public services that could be
23 afforded to the citizens of California while this case
24 is pending that appeal. And the testimony in this
25 trial was that ultimately the taxpayers of the State

1 of California are going to be paying for this judgment
2 if it is upheld.

3 So what you're talking about is the
4 deprivation of state services to the taxpayers of the
5 State of California that provides the irreparable
6 harm. If, in fact, a school district is not able to
7 fully afford some of the special programs, the child
8 who doesn't get the benefit of that program, that's
9 irreparable harm. They have to cut back on those
10 services and somebody experiences harm because of
11 that. That's irreparable harm. We have demonstrated
12 that to the Court.

13 And we would ask the Court then not only to
14 grant us a stay pending the appeal, but also to grant
15 us a stay without a bond. Thank you, Your Honor.

16 THE COURT: Thank you.

17 MR. WALL: Just one very quick point, if I
18 may. Ms. Lundvall argued out of both sides of her
19 mouth when she talks about her analogy she made to NRS
20 Chapter 41 and the application of that statute to the
21 FTB even though it doesn't say Nevada. I would remind
22 her that we didn't apply Nevada immunity to
23 California. We've applied to California California
24 immunity under the California statute to the extent it
25 was not inconsistent with Nevada law. That's exactly

1 what the comity argument is all about.

2 The statute, it's right there, within the
3 state. Their statute says the same thing, the State
4 of California. The policies are the same. Domestic
5 corporations are treated differently from foreign
6 agencies.

7 THE COURT: Any response?

8 MS. LUNDVALL: The response that I go back
9 as far as to our overall analysis, Your Honor. I'm
10 trying as hard as I can to be as respectful. This is
11 the statute that we're asking you to apply. This is
12 the California statute. Why? Because the public
13 policy reflected in that statute is identical to
14 Nevada's. And that's what the comity analysis is. Is
15 do unto others as you're going to do unto yourself.

16 So what is this Court going to do unto
17 California and the FTB is the same thing that we would
18 do unto ourselves. What would we do unto ourselves?
19 We wouldn't require a government agency to post a
20 bond. And that is identical then to what the State of
21 California applies as its public policy. That's what
22 we're asking this Court to apply under the comity
23 analysis. And as I go back before, because I don't
24 want anyone to think that we're hanging our hat on one
25 analysis versus another.

1 THE COURT: Thank you. I understand the
2 arguments and the parties' respective positions. The
3 Court is inclined to partially grant this motion. The
4 motion for stay ought to be granted. It is the
5 Court's opinion that FTB be required to post a
6 superceding bond.

7 It's interesting to me to note that FTB's
8 positions seem to be striking in their contradictory
9 nature. FTB now submits to this Court it has plenty
10 of money and that the judgment is a drop in the
11 bucket. Then it has plenty of money -- then FTB
12 argues that it would be irreparably harmed by a bond
13 because of the tremendous burdens it would suffer by
14 dealing with a bonding agent. Court notes FTB is not
15 required to appeal.

16 Mr. Hyatt has been fighting the FTB for
17 about 16 years. FTB's conduct throughout the audit
18 process and this 10-year litigation does not give this
19 Court any reason to believe that payment to Mr. Hyatt
20 will be swift if and when FTB loses this appeal. Even
21 as FTB attempts to reassure this Court of that fact,
22 it raises doubts. There is very clearly a politicized
23 process that must take place before this judgment is
24 paid. It's the Court's ruling.

25 MR. WALL: Thank you, Your Honor.

(Hearing adjourned at 11:54 a.m.)

1 CERTIFICATE OF REPORTER

2 STATE OF NEVADA)
3) SS:
4 COUNTY OF CLARK)

5 I, Kimberly A. Farkas, a duly commissioned Notary
6 Public, Clark County, State of Nevada, do hereby
7 certify: That I reported the taking of the
8 proceedings commencing on Thursday, January 29, 2009
9 at 9:06 a.m.

10 That I thereafter transcribed my said shorthand
11 notes into typewriting, and that the typewritten
12 transcript of said proceedings is a complete, true and
13 accurate transcription of said shorthand notes.

14 I further certify that I am not a relative or
15 employee of an attorney or counsel of any of the
16 parties, nor a relative or employee of an attorney or
17 counsel involved in said action, nor a person
18 financially interested in the action.

19 IN WITNESS WHEREOF, I have hereunto set my hand in
20 my office in the County of Clark, State of Nevada,
21 this 30th day of January, 2009.

22 _____
23 Kimberly A. Farkas, CCR 741
24
25

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[Signature]
CLERK OF THE COURT

DISTRICT COURT

CLARK COUNTY, NEVADA

11 GILBERT P. HYATT,

12 Plaintiffs,

13 v.

14 FRANCHISE TAX BOARD OF THE STATE
15 OF CALIFORNIA, and DOES 1-100 inclusive,

16 Defendants.

Case No.: A382999

Dept. No.: X

ORDER DENYING:

(1) FTB'S MOTION FOR JUDGMENT AS A
MATTER OF LAW OR ALTERNATIVELY,
AND CONDITIONALLY MOTION FOR
NEW TRIAL PURSUANT TO NRCP 50;
AND

(2) FTB'S ALTERNATIVE MOTION FOR
NEW TRIAL AND OTHER RELIEF
PURSUANT TO NRCP 59

DATE: January 29, 2009

TIME: 9:00 a.m.

(filed under seal by order of the Discovery
Commissioner dated February 22, 1999)

24 This matter having come before the Court on January 29, 2009, for hearing the
25 Defendant California Franchise Tax Board's ("FTB") Motion for Judgment as a Matter of Law
26 or Alternatively, and Conditionally Motion for New Trial Pursuant to NRCP 50 and FTB's
27 Alternative Motion for New Trial and Other Relief Pursuant to NRCP 59, Plaintiff having been
28

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1 represented by Mark A. Hutchison, Peter C. Bernhard, Donald J. Kula, and Michael K. Wall and
2 the Franchise Tax Board having been represented by Pat Lundvall, Carla Higginbotham, and
3 Robert L. Eisenberg; the Court having considered the papers submitted by counsel as well as
4 oral arguments at the hearing; and GOOD CAUSE APPEARING;

5
6 IT IS HEREBY ORDERED that the FTB's Motion for Judgment as a Matter of
7 Law or Alternatively, and Conditionally Motion for New Trial Pursuant to NRCP 50 and FTB's
8 Alternative Motion for New Trial and Other Relief Pursuant to NRCP 59 be and the same
9 hereby are denied.

10 DATED this 2 day of Feb, 2009

11
12 JESSIE WALSH

13
14 DISTRICT JUDGE

15 SUBMITTED BY:

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13 DISTRICT COURT
14 CLARK COUNTY, NEVADA

15 * * * *

16 GILBERT P. HYATT,
17 Plaintiff,

18 vs.

19 FRANCHISE TAX BOARD OF THE
20 STATE OF CALIFORNIA,

21 Defendant.

Case No. : A 382999
Dept. No. : X
Docket No. : R

ORDER GRANTING, IN PART, FTB'S
PROVISIONAL MOTION FOR STAY
PENDING APPEAL WITHOUT BOND

Hearing Date: January 29, 2009
Hearing Time: 9:00 a.m.

23
24 This matter came before the Court on January 29, 2009, for hearing on the Defendant
25 Franchise Tax Board of the State of California's ("FTB") Provisional Motion for Stay Pending
26 Appeal Without Bond. At this hearing, Plaintiff Gilbert P. Hyatt was represented by Mark
27 Hutchison, Peter C. Bernhard, Donald J. Kula, and Michael Wall. FTB was represented by Pat
28 Lundvall, Carla Higginbotham, and Robert L. Eisenberg. The Court having considered the

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E. J. [Signature]
CLERK OF THE COURT

1 papers submitted by counsel as well as oral arguments at the hearing; and GOOD CAUSE
2 APPEARING;

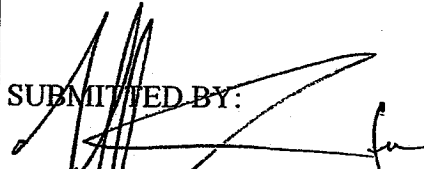
3 IT IS HEREBY ORDERED that FTB's Provisional Motion for Stay Pending Appeal
4 Without Bond is granted, in part. Upon the expiration of the current stay entered in this case
5 pursuant to express terms of the Stipulation and Order signed and entered on November 21,
6 2008, all proceedings to enforce the Judgment in this case shall be stayed pending FTB's appeal
7 of the Judgment upon FTB's posting of a supersedeas bond.

8 IT IS FURTHER ORDERED that this Order does not amend or modify the Stipulation
9 and Order signed and entered on November 21, 2008, a copy of which is attached hereto.

10 Dated this 8th day of Feb, 2009.

11
12
13 By: JESSIE WALSH
14 DISTRICT JUDGE

15
16 SUBMITTED BY:

17 
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19 Carla Higginbotham (NSBN 8495)
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