

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

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3 FRANCHISE TAX BOARD OF THE
4 STATE OF CALIFORNIA,

Case No.:

53264

Electronically Filed
Feb 01 2010 12:42 p.m.
Tracie K. Lindeman

5 Appellant/Cross-Respondent,

6 vs.

7 GILBERT P. HYATT,

8 Respondent/Cross-Appellant.
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11 **FTB'S MOTION TO EXTEND TIME TO FILE APPELLANT'S REPLY BRIEF**

12 Appellant/Cross-Respondent Franchise Tax Board of the State of California
13 ("FTB") moves this Court for an extension of time in which to file its combined reply
14 brief on the appeal and answering brief on the cross-appeal, which we believe is
15 currently due on February 26, 2010.¹ Specifically, FTB requests an extension of time
16 **until April 30, 2010**, approximately sixty (60) days after the brief would otherwise be
17 due.

18 This is an appeal of a judgment in favor of Hyatt, against FTB, in the total amount
19 of approximately \$490 million. This is complex case that has been litigated for ten years.
20 There are multiple issues on appeal that involve complex legal doctrines.
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23 ¹ Although Hyatt's brief was served on January 5, 2010, it was not filed until January 26,
24 pursuant to this court's order on that date. The court's order allowing Hyatt's brief to be filed
25 did not establish the due date for FTB's reply/answering brief. In a prior order of August 21,
26 2009, granting Hyatt a 90-day extension for his answering brief, the court calculated the new
27 due date from the date on which FTB's opening brief was actually filed, which was several days
28 after the brief had been served. Similarly, FTB is assuming that this court will calculate the due
date for FTB's reply brief in the same manner that the court calculated the due date for Hyatt's
answering brief, i.e., using the filing date of the previous brief as the starting date for the 30-day
calculation, rather than the date of service of the previous brief. Using this calculation, FTB
believes the reply brief is currently due on February 26, 2010.

1 On July 20, 2009, FTB submitted and served its 119 page opening brief. In
2 response, Hyatt filed a motion seeking a ninety day extension of time to file his
3 answering brief. The court granted Hyatt's request, establishing a due date of November
4 5, 2009. As the due date approached, Hyatt filed a second motion for an extension of
5 time seeking an additional 45 more days to file his brief. FTB filed a limited opposition
6 to Hyatt's second request wherein FTB specifically requested that the court entertain and
7 extend FTB similar extensions relative to its Reply Brief. In his reply in support of that
8 motion, Hyatt expressly indicated that he would agree to stipulate to any such reasonable
9 extension requests made by FTB. See Hyatt's Proposed Limited Reply in Support of
10 Motion for Extent Time for Respondent's Answering Brief, p. 2.

11 On January 5, 2009, following yet another extension, Hyatt submitted his 198
12 page answering brief, which this court allowed to be filed on January 26, 2010. As a
13 result of Hyatt's multiple extensions, he ended up with 151 days in which to file his
14 answering brief, measured from the date on which FTB's opening brief was filed (or 169
15 days if measured from the date of service of FTB's opening brief).

16 Hyatt's 198 page brief contains 720 footnotes, which contain extensive legal and
17 factual citations. FTB must review and analyze each of these citations in order to
18 properly respond to Hyatt's arguments and contentions. In addition, this brief contains
19 numerous legal issues and sub-issues which must be appropriately responded to by FTB.
20 This process will involve not only reviewing the case law and authorities relied upon by
21 Hyatt, but also conducting legal research to refute Hyatt's claims.

22 Hyatt also filed a Respondent's Appendix consisting of 101 volumes, which was
23 in addition to the 93-volume appendix already filed by FTB. His brief contains hundreds
24 of factual citations to the two appendixes, which will also need to be reviewed and
25 verified for accuracy and completeness. These are monumental tasks, which will take a
26 significant amount of time to complete. These tasks is particularly time consuming
27 because most of Hyatt's trial transcript citations do not provide references to appendix
28 volumes or pages; instead, his citations are to "RT" (reporter's transcript). In order to

1 locate these pages, the dates and pages of Hyatt’s “RT” citations need to be extrapolated
2 to the corresponding volumes and pages of the appendix. This is a laborious task that
3 will add to the time FTB needs for preparation of the reply brief.

4 NRAP 26(b) states that, “[t]he court for good cause shown may upon motion
5 enlarge the time prescribed by these rules or by its order for doing any act.” Good cause
6 exists to grant FTB’s current request. First, FTB is asking for an extension of time which
7 is less than the previous extensions granted to Hyatt to prepare and file his brief.
8 Moreover, given the scope, size and complexity of this case, FTB submits that the
9 additional time requested is both necessary and warranted to ensure that FTB is able to
10 provide this Court with all of the necessary information, both legal and factual, that it
11 needs to review and decide this appeal correctly.

12 The undersigned counsel has been diligently working on its combined
13 reply/answering brief since its receipt in early January. However, given the tasks
14 described above, it is apparent that FTB will require additional time to file its brief and
15 to prepare any necessary supplemental appendices that may be required.

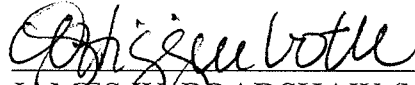
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1 This motion is made in good faith and without intent to delay this appeal
2 unnecessarily. Based on the foregoing, FTB believes that good cause exists to grant the
3 requested extension **until April 30, 2010** to file its combined reply and answering brief.

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5 Dated this 1st day of February, 2010.

6 McDONALD CARANO WILSON LLP

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8 By:



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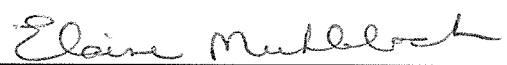
CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I hereby certify that I am an employee of McDonald Carano Wilson LLP, and that I served true and correct copies of the foregoing **FTB'S MOTION TO EXTEND TIME TO FILE APPELLANT'S REPLY BRIEF** on this 1st day of February 2010 by depositing said copies in the United States Mail, postage prepaid thereon, upon the following:

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