

1 IN THE SUPREME COURT OF THE STATE OF NEVADA  
2

3 FRANCHISE TAX BOARD OF THE STATE  
4 OF CALIFORNIA,

5 Appellant,

6 v.

7 GILBERT P. HYATT,

8 Respondent  
9

Supreme Court Case No. 53264

District Court Case No.: A382999

Notice of Appeal Filed March 4, 2009

Electronically Filed  
MOTION TO EXTEND TIME FOR  
RESPONDENT'S ANSWERING BRIEF  
Tracie K. Lindeman  
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*Attorneys for Respondent*

1 Respondent/Cross-Appellant Gilbert P. Hyatt (“Hyatt”), by and through his attorneys of  
2 record, respectfully moves this Court for an order extending the due date for filing Respondent’s  
3 Answering Brief. This Motion is based on NRAP 26(b), the points and authorities attached  
4 hereto, and all other papers and pleadings on file herein.<sup>1</sup>

## 5 POINTS AND AUTHORITIES

### 6 I. INTRODUCTION

7 Appellant’s 118-page Opening Brief was submitted on July 20, 2009, and accepted for filing  
8 as a brief in excess of thirty (30) pages on August 7, 2009. Respondent filed a motion on  
9 August 6, 2009, requesting additional time and extended pages, in the event the Court permitted  
10 Appellant’s extended brief to be filed. On August 21, 2009, this Court granted Respondent’s  
11 motion in part, giving Respondent 90 days from August 7, 2009 (November 5, 2009), as the due  
12 date for Respondent’s Answering Brief and allowing Respondent’s Answering Brief to be 20  
13 pages longer than Appellant’s Opening Brief.  
14

15 In this motion, Respondent requests that this Court grant an additional 45 days for  
16 Respondent’s Answering Brief to be served and filed, or through December 21, 2009.  
17 Respondent requests this additional time for several reasons: (i) as Respondent prepares his  
18 brief, addressing the Appellant’s Opening Brief and the *amici* briefs (those briefs totaling 25  
19 pages and 22 pages, respectively), as well as his own cross-appeal, he simply needs additional  
20 time to present his arguments as cogently as possible, especially in light of the overlap among  
21 the briefs of the Respondent and the two *amici*; and (ii) Respondent requires additional time to  
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27 <sup>1</sup> Respondent Gilbert P. Hyatt has also filed a cross-appeal, so he is a respondent and a cross-appellant, and  
28 appellant Franchise Tax Board is an appellant and a cross-respondent. Because FTB has been denominated the  
appellant in this matter, this Motion, for simplicity, references Hyatt as “Respondent” and FTB as “Appellant”,  
rather than using the respondent/cross-appellant and appellant/cross-respondent designations.

1 address his objections to the Appellant's 93-volume Appendix and to prepare his own  
2 Respondent's Appendix, to avoid duplication and otherwise comply with NRAP 30(b)(4).

3  
4 **II. LEGAL DISCUSSION**

5 Pursuant to NRAP 26(b), "[t]he court for good cause shown may upon motion enlarge the  
6 time prescribed by these rules or by its order for doing any act, or may permit an act to be done  
7 after the expiration of such time...." Respondent submits that good cause exists to extend the  
8 due date for Respondent's Answering Brief, as requested in this motion.

9  
10 Given the number of issues raised by Appellant's Opening Brief, the voluminous record, and  
11 the magnitude of the jury damage award, Respondent respectfully submits that additional time is  
12 appropriate for Respondent's brief. Specifically, Appellant is challenging in some fashion many  
13 if not all of the pretrial dispositive motions that were denied by the district court, many of the  
14 pretrial motions *in limine* ruled on by the court, and the sufficiency of the evidence as to all  
15 seven tort claims tried to a jury during a three-and-a-half-month trial. In essence, Appellant is  
16 appealing virtually every aspect of the case that was adjudicated in the district court. While  
17 Appellant sets forth certain issues and devotes many pages to them in its brief, Appellant also  
18 raises many other issues in only a few paragraphs or less, almost as an aside. But all of these  
19 issues must be fully rebutted by Respondent. In addition, Appellant has included in its  
20 Appendix many items that were not offered or admitted at trial, or that were withdrawn by  
21 Appellant at trial. Sorting through these takes considerable time to determine whether  
22 Appellant asserts that these should have been admitted or simply includes them to support its  
23 version of facts that were not presented to the jury. To do this in a complete but efficient  
24 manner, Respondent requires additional time. Responding to Appellant's *amici* briefs, and  
25 incorporating the response as part of the Answering Brief to Appellant's Opening Brief, again as  
26 efficiently as possible, takes additional time. It is simply taking Respondent's counsel longer to  
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1 address and synthesize all the issues raised by Appellant and its *amici* than was anticipated in  
2 August upon first receiving Appellant' s Opening Brief and the *amici* briefs.

3 Respondent has been working diligently on the Answering Brief and believes that the  
4 additional 45 days requested in this motion are necessary and will be beneficial in terms of the  
5 presentation of Respondent's arguments as clearly and concisely as possible.

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1 **III. CONCLUSION**

2 For the foregoing reasons, Hyatt respectfully requests that the Court grant his Motion to  
3 Extend Time for Respondent's Answering Brief and order that Respondent's Answering Brief  
4 be due forty-five (45) days after its current due date, moving the due date from November 5,  
5 2009, to December 21, 2009.

6 DATED: October 14, 2009

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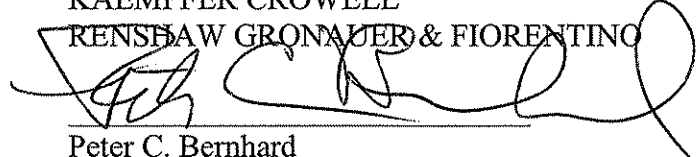
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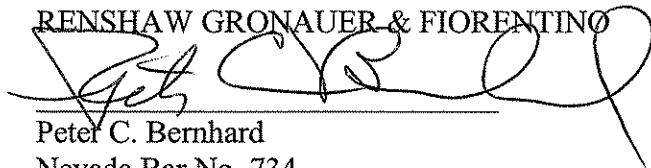
1 **CERTIFICATE OF COMPLIANCE**

2 I hereby certify that I have read this **MOTION TO EXTEND TIME FOR**  
3 **RESPONDENT'S ANSWERING BRIEF**, and to the best of my knowledge, information, and  
4 belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief  
5 complies with all applicable Nevada Rules of Appellate Procedure, and in particular NRAP  
6 28(e), which requires every assertion in the brief regarding matters in the record to be supported  
7 by a reference to the page of the transcript or appendix where the matter relied on is to be found.  
8 I understand that I may be subject to sanctions in the event that the accompanying brief is not in  
9 conformity with the requirements of the Nevada Rules of Appellate Procedure.  
10

11 DATED: October 14, 2009.

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CERTIFICATE OF SERVICE

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Pursuant to NRAP 25, I certify that I am an employee of **KAEMPFER CROWELL**

**RENSHAW GRONAUER & FIORENTINO** and that on this 14<sup>th</sup> day of October, 2009, I caused the above and foregoing document entitled **MOTION TO EXTEND TIME FOR RESPONDENT'S ANSWERING BRIEF** to be served by the method(s) indicated below:

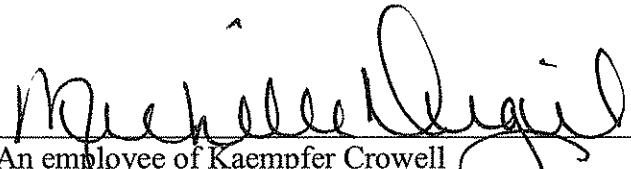
- \_\_\_\_\_ via U.S. mail, postage prepaid;
- X   via Federal Express;
- \_\_\_\_\_ via hand-delivery;
- \_\_\_\_\_ via Facsimile;

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