

ORIGINAL

**In The Supreme Court Of The State Of Nevada**

FRANCHISE TAX BOARD OF THE STATE OF  
CALIFORNIA,

Appellant,

vs.

GILBERT P. HYATT,

Respondent.

No. 53264

**FILED**

FEB 23 2009

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

**DOCKETING STATEMENT  
CIVIL APPEALS**

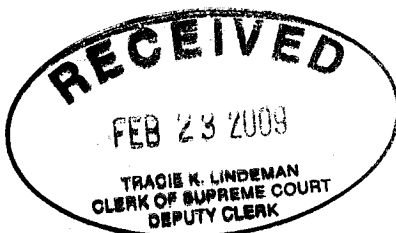
**GENERAL INFORMATION**

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

**WARNING**

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to attach documents as requested in this statement, completely fill out the statement, or to fail to file it in a timely manner, will constitute grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. *See Moran v. Bonneville Square Assocs.*, 117 Nev. 525, 25 P.3d 898 (2001); *KDI Sylvan Pools v. Workman*, 107 Nev. 340, 810 P.2d 1217 (1991). Please use tab dividers to separate any attached documents.



1. Judicial District 8<sup>th</sup> Judicial Department X County Clark  
Judge Jessie Walsh District Ct. Docket No. A 382999

2. **Attorney filing this docket statement:**

Attorney Pat Lundvall, Carla Higginbotham Telephone 775-788-2000  
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Client(s) Franchise Tax Board of the State of California

**If this is a joint statement completed on behalf of multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.**

3. **Attorney(s) representing respondent(s):**

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Santa Monica, CA 9040-4013  
Client(s) Gilbert P. Hyatt.

4. **Nature of disposition below (check all that apply):**

- |  |  |
|--|--|
| <input type="checkbox"/> Judgment after bench trial                    | <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief   |
| <input checked="" type="checkbox"/> <b>Judgment after jury verdict</b> | <input type="checkbox"/> Grant/Denial of injunction  |
| <input type="checkbox"/> Summary judgment                              | <input type="checkbox"/> Grant/Denial of declaratory relief  |
| <input type="checkbox"/> Default Judgment                              | <input type="checkbox"/> Review of agency determination  |
| <input type="checkbox"/> Dismissal                                     | <input type="checkbox"/> Divorce decree: <input type="checkbox"/> Original <input type="checkbox"/> Modification |

- |   |   |
|---|---|
| <input type="checkbox"/> Lack of jurisdiction     | <input type="checkbox"/> Other disposition (specify): |
| <input type="checkbox"/> Failure to state a claim |   |
| <input type="checkbox"/> Failure to prosecute     |   |
| <input type="checkbox"/> Other (specify) _____    |   |

5. **Does this appeal raise issues concerning any of the following: No**

Child custody	Termination of parental rights
Venue	Grant/denial of injunction or TRO
Adoption	Juvenile matters

6. **Pending and prior proceedings in this court.** List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

1. *Franchise Tax Board of the State of California v. Eighth Judicial District Court and Gilbert P. Hyatt, Real Party in Interest.* Docket. No. 35549
2. *Franchise Tax Board of the State of California v. Eighth Judicial District Court and Gilbert P. Hyatt, Real Party in Interest* Docket. No. 36390
3. *Gilbert P. Hyatt v. Eighth Judicial District Court and Franchise Tax Board of the State of California, Real Party In Interest.* Docket No. 47141

7. **Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

1. *Franchise Tax Board of the State of California v. Gilbert P. Hyatt and Eighth Judicial District Court of the State of Nevada*, 538 U.S. 488, 123 S.Ct. 1683 (2003). Case No. 02-42 in the Supreme Court of the United States. Date of Disposition: April 23, 2003
2. *State Franchise Tax Board v. Gilbert P. Hyatt*, 2003 WL 23100266 (Cal. App. 3d Dist. Dec. 31, 2003). Case No. C043627 in California Appellate Court. Date of Disposition: December 31, 2003
3. *In the Matter of the Appeal of Gilbert P. Hyatt*, Case No. 446509 & 435770 (Cal. State Board of Equalization). Administrative Appeal by Gilbert P. Hyatt to the California State Board of Equalization of the California Franchise Tax Board's audit findings and conclusions. Case Remains Pending.

8. **Nature of action.** Briefly describe the nature of the action, including a list of the causes of action pleaded, and the result below:

This is a tort action arising out of a tax audit of Gilbert Hyatt (Hyatt) by the Franchise Tax Board (FTB) of the State of California. In the early 1990s, Hyatt received more than \$150 million in income from the licensing of certain patents. In 1991, Hyatt, who had been a long-time California resident, claimed he moved to Clark County, Nevada. He filed a 1991 California income tax return representing that he was a "part-year" resident for 1991. He filed no 1992 California tax return. His 1991 part-year tax return claimed that he had ceased to be a resident of California -- and that he became a resident of Nevada -- shortly before he received huge income from the patent licensing business. The date of his

severance of his residency in California was critical in determining whether his income from the patent transactions was subject to California state income tax.

FTB commenced an audit to determine whether Hyatt had underpaid income taxes. The audit focused on Hyatt's residency. The audit included some FTB activities in Nevada. At the conclusion of the audit, FTB determined that Hyatt was a California resident until April of 1992, and accordingly, proposed that he owed income taxes for 1991 and 1992. FTB issued notices of proposed tax assessments and penalties for civil fraud. Hyatt protested the assessments and penalties through FTB's administrative process.

While the administrative protest was still pending, Hyatt filed this lawsuit in Nevada against FTB. In this lawsuit, Hyatt alleged that FTB had committed several torts against Hyatt in Nevada during audit – including invasions of his privacy and fraud. Hyatt also sought declaratory relief concerning his residency requested that the Nevada court determine, as a matter of law, that FTB came to the wrong conclusions during the audit regarding his residency status and the proposed tax assessments.

Early in this litigation, Hyatt's declaratory relief claim was dismissed by Judge Saitta, the district judge assigned to this matter. Judge Saitta specifically determined that the district court should not make determinations or adjudication of issues that were subject to the ongoing administrative proceedings in California between Hyatt and FTB. Based on this ruling, the district court expressly deferred jurisdiction to the State of California and its administrative agency on all issues related to Hyatt's residency and to any determinations that flowed from FTB's ultimate conclusion on that point, i.e., the correctness of FTB's proposed tax assessments, FTB's determination to impose fraud penalties, the accrual of interest, and amnesty penalties.

Approximately two years after the litigation commenced, FTB filed a motion for summary judgment challenging Hyatt's lawsuit on several grounds. Specifically, FTB asserted that the Nevada courts lacked subject matter jurisdiction to consider the claims pled in this case. The district court denied FTB's challenge.

FTB then filed a Writ of Mandamus/Prohibition with this Court. FTB argued that a writ of mandamus should be issued ordering the dismissal of Hyatt's case based entirely upon the contention that the district court should have given full faith and credit, or at a minimum comity, to California's statutory law providing FTB immunity. Ultimately, the Nevada Supreme Court granted the petition in part and denied it in part. This Court held that the district court properly asserted subject matter jurisdiction over all of Hyatt's claims, with the exception of the discretionary/negligence claim. See Hyatt v. Franchise Tax Board, 2002 Nev. LEXIS 57 (Nev. April 4, 2002).

In reaching this conclusion, this Court rejected FTB's argument that Nevada was required to give Full Faith and Credit to California's statute providing FTB with immunity. Id. However, this Court then considered whether the district court should have declined to assert jurisdiction over this litigation based on the doctrine of comity. Id. After comparing the governmental immunities that would be extended to a Nevada state agency under the facts of this case in contrast to the complete immunity extended to FTB under California law, this Court concluded that California and Nevada each provided their respective state agencies with immunity from suit for discretionary or negligent actions. Id. Thus, this Court concluded that Nevada's policies or interests would not be contravened by

applying California's sovereign immunity statute to the extent that statute provided FTB immunity for its discretionary conduct or negligent acts. Id. In effect, the Nevada Supreme Court determined that FTB should be given the same immunities, and treated in the same manner, as a similarly situated Nevada agency. Hyatt, 2002 Nev. LEXIS at \*10-11.

FTB appealed this decision to the United States Supreme Court, which granted certiorari. Franchise Tax Board v. Hyatt, 537 U.S. 946, 123 S.Ct. 409 (2002). Ultimately, the United States Supreme Court agreed, affirming the Nevada Supreme Court's Order in its entirety. Franchise Tax Board v. Hyatt, 538 U.S. 486, 499, 123 S.Ct. 1683 (2003).

Following these proceedings, the case was remanded back to the district court. In April 2006, Hyatt was granted leave to amend his complaint. In his Second Amended Complaint, Hyatt asserted the following eight claims:

- (1) Declaratory Relief;<sup>1</sup>
- (2) Intrusion Upon Seclusion;
- (3) Publicity of Private Facts;
- (4) False Light;
- (5) Abuse of Process;
- (6) Intentional Infliction of Emotional Distress;
- (7) Fraud; and
- (8) Breach of Confidential Relationship.

Additionally, Hyatt asserted that he was entitled to attorneys fees as special damages as well as punitive damages with respect to each of his pled claims.

On April 14, 2008, the case went to trial before the Honorable Jessie Walsh in the Eighth Judicial District Court. All claims pled in the Second Amended Complaint, with the exception of the Declaratory Relief claim, were tried to the jury. The trial lasted approximately four months. In spite of the various limitations placed on this litigation, the district court permitted the trial to be focused upon issues that had previously been dismissed from this action. For example, substantial evidence was presented to the jury related to whether FTB had reached the proper conclusions and/or determinations related to Hyatt's residency, the proposed tax assessments, and the determination to assess civil fraud penalties.

Ultimately, the jury returned a verdict in favor of Hyatt. Specifically, the jury awarded Hyatt the following compensatory damages: (1) \$85 million dollars for his alleged emotional distress; (2) \$52 million dollars for the alleged invasion of his privacy; and (3) approximately \$1.1 million in attorneys fees as special damages.

After the jury returned its verdict related on compensatory damages, Judge Walsh then allowed the trial to proceed to additional phases in order to determine whether FTB, a state government agency,

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<sup>1</sup> Although this claim was dismissed from this litigation in 1999, Hyatt re-pled this claim in his Second Amended Complaint in order to preserve his right to appeal the dismissal order.

should be held liable for punitive damages. Ultimately, the jury awarded Hyatt \$250 million in punitive damages. In total, the jury awarded Hyatt approximately \$388 million.

On September 8, 2008, the district court entered a judgment (including prejudgment interest) in this case in the total of \$490,421,013.81.

9. **Issues on appeal.** State concisely the principal issue(s) in this appeal:

See Exhibit 1, attached.

10. **Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceeding presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket number and identify the same or similar issues raised:

FTB is not aware of any other proceedings in this court that raise the same or similar issues to this appeal.

11. **Constitutional issues.** If this appeal challenges the constitutionality of any statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

N/A ☒ Yes \_\_\_\_\_ No \_\_\_\_\_

12. **Other issues.** Does this appeal involve any of the following issues?

- ☒ Reversal of well-settled Nevada precedent (on an attachment, identify the case(s))
- ☒ An issue arising under the United States and/or Nevada Constitutions
- ☒ A substantial issue of first-impression
- ☒ An issue of public policy
- ☒ An issue where en banc consideration is necessary to maintain uniformity of this court's decisions
- ☐ A ballot question

If so, explain: See Exhibit 2, attached.

13. **Trial.** If this action proceeded to trial, how many days did the trial last?

75 days

14. **Judicial disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal. If so, which Justice?

No. Pursuant to the Court's February 19, 2009, Justice Nancy Siatta voluntarily recused herself from this appeal.

## TIMELINESS OF NOTICE OF APPEAL

15. **Date of entry of written judgment or order appealed from:** 9/8/2008 and 2/3/2009 **Attach a copy. If more than one judgment or order is appealed from, attach copies of each judgment or order from which an appeal is taken.**

See Exhibits 3 & 4, attached.

- (a) If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

\_\_\_\_\_  
\_\_\_\_\_

16. **Date written notice of entry of judgment or order served** 9/8/2008 and 2/5/2009  
**Attach a copy, including proof of service, for each order or judgment appealed from.**

See Exhibits 3 & 4, attached.

- (a) Was service by delivery Exhibit 3, Hand Delivery or by mail Exhibit 4, sent by mail on 2/5/2009

17. **If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59),**

- (a) Specify the type of motion, and the date and method of service of the motion, and the date of filing.

NRCP 50(b) X Date served 9/22/2008 By delivery X or by mail \_\_\_\_\_ Date of filing 9/22/2008  
NRCP 52(b) \_\_\_\_\_ Date served \_\_\_\_\_ By delivery \_\_\_\_\_ or by mail \_\_\_\_\_ Date of filing \_\_\_\_\_  
NRCP 59 X Date served 9/22/2008 By delivery X or by mail \_\_\_\_\_ Date of filing 9/22/2008

18. **Date notice of appeal was filed** 2/10/2009.

- (a) If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal:

19. **Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a), NRS 155.190, or other** NRAP 4(a)(1) & (4).

20. **Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

NRAP 3A(b)(1) X NRS 155.190 \_\_\_\_\_ (specify subsection) \_\_\_\_\_  
NRAP 3A(b)(2) X NRS 38.205 \_\_\_\_\_ (specify subsection) \_\_\_\_\_  
NRAP 3A(b)(3) \_\_\_\_\_ NRS 703.376 \_\_\_\_\_  
Other (specify) \_\_\_\_\_

**Explain how each authority provides a basis for appeal from the judgment or order:**

- 1) NRAP 3A(b)(1) applies because FTB is appealing from a judgment rendered in an action commenced in the district court in. *See Exhibit 3, attached.*
- 2) NRAP 3A(b)(2) applies because FTB is appealing the district court's order which refused to grant a new trial. *See Exhibits 4, attached.*

**21. List all parties involved in the action in the district court:**

- Franchise Tax Board of the State of California -- Defendant
- Gilbert P. Hyatt – Plaintiff

(a) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

**22. Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims or third-party claims, and the trial court's disposition of each claim, and how each claim was resolved (*i.e.*, order, judgment, stipulation), and the date of disposition of each claim. Attach a copy of each disposition.**

Plaintiff Gilbert P. Hyatt's Claims:

	CLAIM	DISPOSITION	DATE	EXHIBIT
1	Declaratory Relief	Dismissed By District Court Order	4/16/1999	5
2	Intrusion Upon Seclusion	Judgment	9/8/2008	3
3	Unreasonable Publicity of Private Facts	Judgment	9/8/2008	3
4	False Light	Judgment	9/8/2008	3
5	Intentional Infliction of Emotional Distress (Outrage)	Judgment	9/8/2008	3
6	Abuse of Process	Judgment	9/8/2008	3
7	Fraud	Judgment	9/8/2008	3
8	Breach of Confidential Relationship	Judgment	9/8/2008	3
9	Negligent Infliction of Emotional Distress	Dismissed by Nevada Supreme Court Order	4/4/2002	6

**23. Attach copies of the last-filed version of all complaint, counterclaims, and/or cross-claims filed in the district court.**

*See Exhibit 7, attached.*

**24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the right and liability of ALL the parties to the action below:**

Yes   X   No



25. If you answered "No" to the immediately previous question, complete the following:

- (a) Specify the claims remaining pending below:
- (b) Specify the parties remaining below:
- (c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP54(b):  
Yes \_\_\_\_\_ No \_\_\_\_\_
- (d) Did the district court make an express determine, pursuant to NRCP 54(b), that there is not just reason for delay and an express direction for the entry of judgment:  
Yes \_\_\_\_\_ No \_\_\_\_\_

26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

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#### VERIFICATION

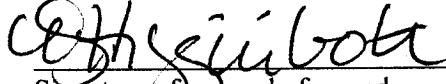
I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Franchise Tax Board of California  
Name of appellant

2/23/2009  
Date

Nevada, County of Washoe  
State and county where signed

Pat Lundvall, Carla Higginbotham, Robert Eisenberg  
Name of counsel of record

  
Signature of counsel of record


**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of McDonald Carano Wilson LLP, and that I served true and correct copies of the foregoing **APPELLANT'S CIVIL DOCKETING STATEMENT** on this 23<sup>rd</sup> day of February, 2009, by depositing said copies in the United States Mail, postage prepaid thereon, upon the following:

Peter C. Bernhard, Esq.  
Bullivant Houser Bailey PC  
3980 H. Hughes Parkway, No. 550  
Las Vegas, Nevada 89109

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

Donald Kula, Esq.  
Bingham McCutchen LLP  
355 South Grand Avenue, Suite 4400  
Los Angeles, California 90071-3106

  
\_\_\_\_\_  
Elaine Muhlebach



## **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 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 by permitting evidence of training presentation materials termed the "skull and crossbones" manual when it was undisputed that these materials were never used or referenced by any FTB employee working on Hyatt's audit?
8. Did the district court err when it failed to apply various privilege defenses to Hyatt's invasion of privacy claims?
9. 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?
10. 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?

11. 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 any "legal process" for an ulterior purpose in this case?
12. 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?
13. 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?
14. 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?
15. 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?
16. 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?
17. 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?
18. 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?
19. 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?
20. 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?
21. Did the district court err when it inconsistently applied its own pretrial orders and rulings during the trial?

22. 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?
23. 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?
24. Did district court err when it permitted the trial to proceed to a punitive damage phase of trial?
25. 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?
26. 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?
27. Did the district court err when it failed to reduce the \$138 million compensatory damage award which clearly based on the passion and prejudice of the jury?
28. Did the district court err when it awarded Hyatt pre-judgment interest?
29. Did the district court err when it failed to apply the doctrine of comity and reduce the compensatory and punitive damages awarded in this case?
30. Did the district court err when failed to strike Hyatt's damages based solely upon his claimed "invasion of privacy" where there was no evidence of any specific harm to Hyatt based on these invasions with the exception of Hyatt's claims of emotional distress which Hyatt had already been fully compensated for?
31. Did the district court err when it adopted the Nevada Protective Order in this litigation?
32. Did the district court err when it granted Hyatt's Motion to Strike the Answer based on his allegations that FTB spoliated evidence?
33. Did the district court err when it adopted a legally and factually inaccurate jury instruction related to FTB's alleged spoliation?
34. 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?

35. Did the district court err when it failed to grant FTB's pre-trial dispositive motions?
36. Did the district court err when it granted Hyatt's pre-trial motions in limine?
37. Did the district court err when it denied FTB's pre-trial motions in limine?
38. Did the district court err in its evidentiary rulings at trial?
39. Did the district court err in adopting various jury instructions which misstated Nevada law?
40. Did the district court err when it refused to adopt various jury instructions that correctly stated Nevada law?
41. 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?
42. 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?
43. Did the district court err by denying FTB's post-trial motions?
44. Did the district court err by denying FTB's motion to re-tax Hyatt's memorandum of costs?





## **Exhibit 2**

### **Question 12: Other issues.**

Below are explanations related to the answers provided on Question 12 of FTB's Docketing Statement.

#### **1. Reversal Of Previous Nevada Authority**

The following issue may be raised on appeal seeking the reversal of prior Nevada Supreme Court authority:

- A. Whether Falline v. GNLV Corp., 107 Nev. 1004, 823 P.2d 888 (1991) should be reversed to the extent that case held that NRS 41.032(2) does not prevent a governmental agency from liability for discretionary acts taken in bad faith.

#### **2. Issues Arising under the United States and/or Nevada Constitutions**

There are numerous issues arising under the United States Constitution and/or the Nevada Constitution that may be raised in this appeal. These issues include, but are not limited to, the following:

- A. Whether the Full Faith and Credit Clause of the United States Constitution was violated in the manner in which the district court permitted this case to be presented to the jury.
- B. Whether this Court should apply the "interstate immunity doctrine," as supported by the structure and the postulates of the U.S. Constitution and implicit in the Eleventh Amendment.
- C. Whether the grossly excessive punitive damage award in this case violated FTB's right to due process of law pursuant to the Fourteenth Amendment of the United States Constitution.
- D. Whether FTB's right to due process of law provided by the Constitutions of the United States and Nevada was violated when the district court: (1) refused to permit FTB to introduce any evidence of an alternate cause of Hyatt's emotional distress at trial; and (2) refused to permit FTB to present any evidence of establishing FTB's defense to Hyatt's claim of "bad faith delay."

#### **3. Substantial Issues Of First Impression**

There are numerous issues that may be raised in this appeal that will implicate substantial issues of first impression for this Court. These issues include, but are not limited to, the following:

- A. Whether a Nevada court can assert jurisdiction over issues that are under review by an out-of-state administrative agency.
- B. Whether a Nevada jury can sit as a court of appeal for the administrative processes and conduct of an out-of-state governmental agency.

- C. Whether Nevada common law permits the imposition of punitive damages against an out-of-state agency.
- D. If Nevada common law does permit the imposition of punitive damages against an out-of-state agency, whether Nevada will allow the imposition of punitive damages against a sister state agency, and reject the application of comity to the foreign state's statute prohibiting such awards, in spite of Nevada's own prohibition against punitive damages against a Nevada state agency.
- E. Whether Nevada will apply comity to a sister state's sovereign immunity statute prohibiting an imposition of compensatory damages against the foreign state's agency to the extent that statute is in alignment with Nevada's own compensatory statutory damage cap against Nevada state agencies.
- F. Whether a promissory fraud claim can be predicated on an alleged "promise" contained in a mission statement and/or a standard form to be "fair" and/or "impartial".
- G. Whether the necessary elements of an abuse of process claim can be supported by the use of "administrative process" rather than legal process.
- H. Whether a state agency's publication summarizing the litigation at question can be used against it to prove the necessary elements of claims contained in the complaint.
- I. Whether Nevada will recognize a common law cause of action for "invasion of informational privacy".
- J. Whether Nevada should adopt the "Required Publication Privilege" contained in the Restatement (Second) of Torts § 592A (1977) as a defense to invasion of privacy claims.
- K. Whether Nevada should adopt the "Inferior State Officer Qualified Privilege" contained in the Restatement (Second) of Torts § 598A (1977) as a defense to invasion of privacy claims.
- L. Whether the "special relationship" required supporting a claim for breach of confidential relationship can exist between a state governmental agency and a citizen.
- M. Whether the "republication" defense contained in Montesano v. Donrey Media Group, 99 Nev. 644, 668 P.2d 1081 (1983) applies to a plaintiff's personal information contained in public records related to such things as social security numbers, addresses, and/or names.
- N. Whether claims for both false light and publication of private, true facts can be submitted to the jury based on the identical facts and evidence.
- O. Whether proof and evidence establishing only garden variety emotional distress is sufficient to support the essential element of an intentional infliction of emotional distress claim requiring "severe" emotional distress.

- P. Whether a claim for intentional invasion of emotional distress is prohibited where the challenged conduct involved governmental actions that were of "social value".
- Q. Whether a fraud or misrepresentation claim is limited to only business and/or property damage and harms.
- R. Whether a plaintiff can rely upon "evidence" of out-of-state statutory laws to prove elements of Nevada common law tort claims.
- S. Whether attorneys fees as special damages can be recovered in cases alleging only common law tort claims.
- T. Whether a plaintiff asserting attorneys fees as special damages is required to provide evidentiary proof to the jury that the attorneys fees sought were reasonable and necessary before such damages can be awarded.
- U. Whether a plaintiff waives his right to punitive damages pursuant to NRS 42.005(3) when the plaintiff fails to request that a punitive damage instruction be given to the jury at the conclusion of trial.
- V. Whether an "invasion of privacy" is a separately compensable harm where there is no evidence that plaintiff suffered any specific loss or damage related to the invasion of privacy.
- W. Whether evidence of negligent conduct alone can be used to establish governmental bad faith.
- X. Whether evidence of alleged "bad faith" conduct can be used to supplant or satisfy the fraudulent intent essential element of a promissory fraud claim.
- Y. Whether an adverse party can be prohibited from referencing or pointing out during closing argument the failure of the opposing party to call a witness material to their presentation.
- Z. Whether a party can present evidence, argue, or make reference to a claim never pled in their complaint.

**4. Issue of Public Policy**

There are numerous issues in this appeal that will implicate serious public policy considerations for the State of Nevada. These issues include, but are not limited to, the following:

- A. Whether public policy considerations require Nevada to apply principles of "comity" to the laws of another state to the extent those laws are the same or identical to the laws of Nevada.
- B. Whether it is proper public policy to permit juries in the State of Nevada to sit as appellate courts for the administrative conduct of an out-of-state government agency.

- C. Whether Nevada's own state agencies and interests would be undermined by permitting the current verdict to stand which is based entirely upon the second guessing of an administrative investigation conducted by an out-of-state agency.
- D. Whether it would be proper public policy to permit a fraud claim to be sustained on alleged promises to be "fair and impartial" contained in a mission statement and/or standard form distributed by a government agency.
- E. Whether Nevada's public policy prohibits the imposition of punitive damages against an out-of-state governmental agency.
- F. Whether public policy considerations require that fraud claims be limited to only business and/or property harms and preclude such claims based exclusively upon personal injury.

**5. An Issue For En Banc Consideration**

The Franchise Tax Board of the State of California is a state governmental agency. This case presents numerous issues of first impression, substantial public policy considerations, and issues related to the interstate harmony and relations between the State of California and the State of Nevada. The jury awarded Plaintiff Gilbert P. Hyatt the following damages against FTB: (1) \$85 million for emotional distress damages; (2) \$52 million for invasion of privacy damages; (3) \$1,085,281.56 for attorneys fees as special damages; and \$250 million punitive damages. In addition, the district court awarded pre-judgment interest in this case. Thus, at the time the judgment was entered in this case, the total judgment amount equally close to \$500 million, or a half billion dollars. Post-judgment interest continues to accrue on this judgment on a daily basis. The district court refused to reduce these excessive damages in spite of specific requests to do so in post-trial motions. Based on the sheer magnitude of this verdict, coupled with the substantial issues on appeal, en banc consideration is compelled.



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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

10 *Attorneys for Plaintiff Gilbert P. Hyatt*

**FILED**

SEP. 8 3 54 PM '08

*Edmund FUS*  
 CLERK OF THE COURT

**DISTRICT COURT**  
**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)

BullivantHouserBailey PC  
 3883 Howard Hughes Pkwy., Ste. 550  
 Las Vegas, NV 89169  
 Telephone (702) 669-3600  
 Facsimile (702) 660-2995


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  
8 Suite 200  
9 Las Vegas, Nevada 89145

10 ~~BULLIVANT\_HOUSER\_BAILEY PC~~

11   
12 Peter C. Bernhard, Esq. (734)  
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14 Suite 550  
15 Las Vegas, Nevada 89169  
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17 Attorneys for Plaintiff Gilbert P. Hyatt

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RECEIPT OF COPY

RECEIPT OF COPY of NOTICE OF ENTRY OF JUDGMENT is hereby  
acknowledged this 8<sup>th</sup> 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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JGJV

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 12 Attorneys for Plaintiff Gilbert P. Hyatt

FILED

SEP 8 10 21 AM '08



CLERK OF THE COURT

DISTRICT COURT  
 CLARK COUNTY, NEVADA

GILBERT P. HYATT,

Plaintiff,

v.

FRANCHISE TAX BOARD OF THE STATE  
OF CALIFORNIA,

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, LLC, 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  
 27  
 28

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

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  
26  
27  
28

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

17 \\\

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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.

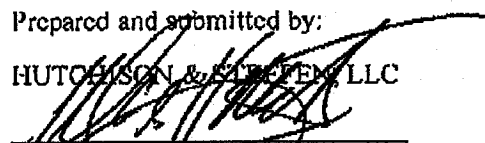
5  
6 JESSIE WALSH

7 DISTRICT JUDGE

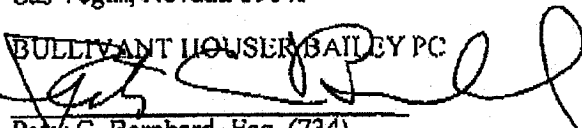
8 Prepared and submitted by:

9 Prepared and submitted by:

10 HUTCHINSON & STEFEN, LLC

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

16 BULLIVANT HOUSER BAILEY PC

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23 Attorneys for Plaintiff Gilbert P. Hyatt  
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14  
15 *Attorneys for Plaintiff Gilbert P. Hyatt*

DISTRICT COURT  
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 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

*[Signature]*  
CLERK OF DISTRICT COURT

Bullivant[Houser]Bailey PC  
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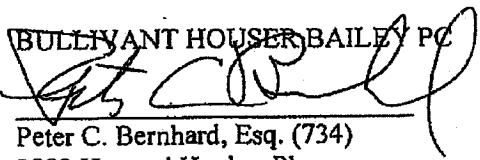
1 TO: ALL INTERESTED PARTIES AND THEIR COUNSEL

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.  
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9 Las Vegas, Nevada 89145

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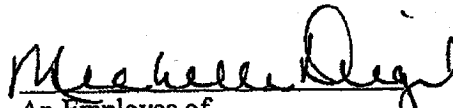
CERTIFICATE OF MAILING

I hereby certify that I am an employee of Bullivant Houser Bailey PC, and that on the  
5<sup>th</sup> 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  
10<sup>th</sup> 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

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)  
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10 Las Vegas, NV 89169  
11 Telephone: (702) 669-3600

12 *Attorneys for Plaintiff Gilbert P. Hyatt*

13 **DISTRICT COURT**  
14 **CLARK COUNTY, NEVADA**

15 **GILBERT P. HYATT,**

16 **Plaintiffs,**

17 **v.**

18 **FRANCHISE TAX BOARD OF THE STATE**  
19 **OF CALIFORNIA, and DOES 1-100 inclusive,**

20 **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)**

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

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

22 APPROVED AS TO FORM BY:

23 McDONALD CARANO WILSON

24 Pat Lundvall 1-30-09  
25 Pat Lundvall (3761)

26 100 West Liberty Street, 10<sup>th</sup> Floor  
27 Reno, NV 89505-2670

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



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ATTORNEYS AT LAW  
2300 WEST SAHARA AVENUE - NO. 10 SUITE 1000  
LAS VEGAS NEVADA 89102-4354  
(702) 873-4100

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Nevada State Bar # 1568  
MATTHEW C. ADDISON, ESQ.  
Nevada State Bar # 4201  
BRYAN R. CLARK, ESQ.  
Nevada State Bar #4442  
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Telephone (702) 873-4100  
Attorneys for Defendants

FILED

APR 20 4 23 PM '99

*Shirley B. Pangloss*  
CLERK

DISTRICT COURT

CLARK COUNTY, NEVADA

\*\*\*\*\*

GILBERT P. HYATT,

Plaintiff,

vs.

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

Defendants.

Case No. : A382999  
Dept. No. : XVIII  
Docket No. : F

Date of Hearing: 4/7/99  
Time of Hearing: 10:00 a.m.

**NOTICE OF ENTRY OF ORDER**

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD;

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that an Order was entered

...

...

...

...

...

1 in the above matter on the 19<sup>TH</sup> day of April, 1999, a copy of which is attached hereto.

2  
3 DATED this 20<sup>th</sup> day of April, 1999.

4 McDonald Carano Wilson McCune  
5 Bergin Frankovich & Hicks LLP

6  
7 By: *Bryan Clark*

8 THOMAS R. C. WILSON, ESQ.

9 Nevada State Bar # 1568

10 MATTHEW C. ADDISON, ESQ.

11 Nevada State Bar # 4201

12 BRYAN R. CLARK, ESQ.

13 Nevada State Bar #4442

14 2300 West Sahara Avenue, Suite 1000

15 Las Vegas, Nevada 89102

16 **CERTIFICATE OF SERVICE**

17 I hereby certify that I am an employee of McDonald Carano Wilson McCune Bergin  
18 Frankovich & Hicks LLP., and that I served a true and correct copy of the foregoing **NOTICE OF**  
19 **ENTRY OF ORDER** by U.S. Mail on this 20<sup>th</sup> day of April 1999, upon the following:

20 Thomas L. Steffen, Esq.  
21 Mark A. Hutchison, Esq.  
22 Hutchison & Steffen  
23 8831 W. Sahara Ave.  
24 Las Vegas, NV 89117

25 Felix Leatherwood, Esq.  
26 Deputy Attorney General  
27 Attorney General's Office  
28 300 South Spring Street  
Los Angeles, CA 90013

Thomas K. Bourke, Esq.  
601 W. Fifth Street, 8th Floor  
Los Angeles, CA 90071

*Karen A. Gushie*  
An Employee of McDonald Carano Wilson  
McCune Bergin Frankovich & Hicks LLP

McDONALD CARANO WILSON McCUNE BERGIN FRANKOVICH & HICKS LLP  
ATTORNEYS AT LAW  
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LAS VEGAS NEVADA 89102-4354  
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ORD  
THOMAS R. C. WILSON, ESQ.  
Nevada State Bar # 1568  
MATTHEW C. ADDISON, ESQ.  
Nevada State Bar # 4201  
BRYAN R. CLARK, ESQ.  
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Las Vegas, Nevada 89102  
Telephone (702) 873-4100

Attorneys for Defendant

**DISTRICT COURT**

**CLARK COUNTY, NEVADA**

\*\*\*\*\*

GILBERT P. HYATT,  
  
Plaintiff,

vs.

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

Case No. : A382999  
Dept. No. : XVIII  
Docket No. : F

**PARTIAL JUDGMENT  
ON THE PLEADINGS**

Date of Hearing: April 7, 1999  
Time of Hearing: 10:00 a.m.

The Defendant's Motion for Judgment on the Pleadings having come before the Court on the 7<sup>th</sup> day of April, 1999, the Defendant being represented by Thomas R. C. Wilson, Esq., James W. Bradshaw, Esq., Felix Leatherwood, Esq., and George Takenouchi, Esq. and the Plaintiff being present in court and represented by Thomas L. Steffen, Esq., John T. Steffen, Esq., Thomas K. Bourke, Esq., and Donald Kula, Esq., and the Court having considered the Defendant's Motion, the Plaintiff's Opposition, the Defendant's Reply, the Plaintiff's Surreply and the Defendant's Response to Surreply and the supporting authorities, as well as the oral arguments of counsel, and GOOD CAUSE APPEARING;

FILED

APR 13 5 00 PM '99

*Shirley M. [unclear]*  
CLERK

McDONALD CARANO WILSON McCUNE BERGIN FRANKOVICH & HICKS LLP  
ATTORNEYS AT LAW  
2300 WEST SAHARA AVENUE • NO. 10 SUITE 1000  
LAS VEGAS, NEVADA 89102-4354  
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1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant's Motion  
2 for Judgment on the Pleadings is granted as to the Plaintiff's First Cause of Action for  
3 Declaratory Relief, the Court lacking subject matter jurisdiction. The Motion is denied as  
4 to the Second through Eighth causes of action.

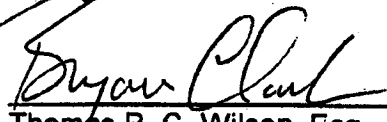
5 IT IS FURTHER ORDERED that the discovery stay is lifted and that the parties  
6 may proceed with discovery to commence within a reasonable time following the April 7,  
7 1999 hearing. The Defendant's responses to outstanding requests to admit facts and  
8 document requests served by the Plaintiff on February 22, 1999, prior to the stay of  
9 discovery, shall be served on or before April 19, 1999.

10 Dated this 16 day of April, 1999.

11  
12  
13 JAMES BRENNAN

14 \_\_\_\_\_  
15 DISTRICT COURT JUDGE  
16  
17

18  
19 Submitted by:  
20 McDonald Carano Wilson McCune  
21 Bergin Frankovich & Hicks, LLP

22   
23 Thomas R. C. Wilson, Esq.  
24 Matthew C. Addison, Esq.  
25 Bryan R. Clark, Esq.  
26 2300 West Sahara Avenue, Suite 1000  
27 Las Vegas, Nevada 89102  
28 Attorneys for Defendant

30314v1





## IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANCHISE TAX BOARD OF THE  
STATE OF CALIFORNIA,  
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK, AND THE HONORABLE  
NANCY M. SAITTA, DISTRICT JUDGE,  
Respondents,

and

GILBERT P. HYATT,  
Real Party in Interest.

No. 35549

**FILED**

APR 04 2002

by *[Signature]*  
JANET K. BROWN  
CLERK OF SUPREME COURT  
DISPUTY CLERK

FRANCHISE TAX BOARD OF THE  
STATE OF CALIFORNIA,  
Petitioner,

vs.

THE EIGHTH JUDICIAL DISTRICT  
COURT OF THE STATE OF NEVADA,  
IN AND FOR THE COUNTY OF  
CLARK, AND THE HONORABLE  
NANCY M. SAITTA, DISTRICT JUDGE,  
Respondents,

and

GILBERT P. HYATT,  
Real Party in Interest.

No. 36390

**ORDER GRANTING PETITION FOR REHEARING. VACATING  
PREVIOUS ORDER. GRANTING PETITION FOR A WRIT OF  
MANDAMUS IN PART IN DOCKET NO. 36390. AND GRANTING  
PETITION FOR A WRIT OF PROHIBITION IN PART  
IN DOCKET NO. 35549**

In Docket No. 35549, Franchise Tax Board petitioned this court for a writ of mandamus or prohibition, challenging the district

court's determination that certain documents were not protected by attorney-client, work product or deliberative process privileges, and its order directing Franchise Tax Board to release the documents to Gilbert Hyatt. In Docket No. 36390, Franchise Tax Board separately petitioned this court for a writ of mandamus, challenging the district court's denial of its motions for summary judgment or dismissal, and contending that the district court lacks subject matter jurisdiction over the underlying tort claims because Franchise Tax Board is immune from liability under California law. Alternatively, Franchise Tax Board sought a writ of prohibition or mandamus limiting the scope of the underlying case to its Nevada-related conduct.

On June 13, 2001, we granted the petition in Docket No. 36390 on the basis that Hyatt did not produce sufficient facts to establish the existence of a genuine dispute justifying denial of the summary judgment motion. Because our decision rendered the petition in Docket No. 35549 moot, we dismissed it. Hyatt petitioned for rehearing in Docket No. 36390 on July 5, 2001, and in response to our July 13, 2001 order, Franchise Tax Board answered on August 7, 2001. Having considered the parties' documents and the entire record before us, we grant Hyatt's petition for rehearing, vacate our June 13, 2001 order and issue this order in its place.

We conclude that the district court should have declined to exercise its jurisdiction over the underlying negligence claim under comity principles. Therefore, we grant the petition in Docket No. 36390 with respect to the negligence claim, and deny it with respect to the intentional tort claims. We also deny the alternative petition to limit the scope of trial. We further conclude that, except for document FTB No. 07381,

which is protected by the attorney work-product privilege, the district court did not exceed its jurisdiction by ordering Franchise Tax Board to release the documents at issue because Franchise Tax Board has not demonstrated that they were privileged. Therefore, we grant the petition for a writ of prohibition<sup>1</sup> in Docket No. 35549 with respect to FTB No. 07381, and deny the petition with respect to all the other documents.

### Background

The underlying tort action arises out of Franchise Tax Board's audit of Hyatt—a long-time California resident who moved to Clark County, Nevada—to determine whether Hyatt underpaid California state income taxes for 1991 and 1992. After the audit, Franchise Tax Board assessed substantial additional taxes and penalties against Hyatt. Hyatt formally protested the assessments in California through the state's administrative process, and sued Franchise Tax Board in Clark County District Court for several intentional torts and one negligent act allegedly committed during the audit.

During discovery in the district court case, Hyatt sought the release of all the documents Franchise Tax Board had used in the audit, but subsequently redacted or withheld. Franchise Tax Board opposed Hyatt's motion to compel on the basis that many of the documents were privileged. The district court, acting on a discovery commissioner's recommendation, concluded that most of the documents were not privileged and ordered Franchise Tax Board to release those documents.

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<sup>1</sup>Prohibition is a more appropriate remedy than mandamus for the prevention of improper discovery. Wardleigh v. District Court, 111 Nev. 345, 350, 891 P.2d 1180, 1183 (1995).

The district court also entered a protective order governing the parties' disclosure of confidential information. The writ petition in Docket No. 35549 challenges those decisions.

Franchise Tax Board then moved for summary judgment, or dismissal under NRCP 12(h)(3), arguing that the district court lacked subject matter jurisdiction because principles of sovereign immunity, full faith and credit, choice of law, comity and administrative exhaustion all required the application of California law, and under California law Franchise Tax Board is immune from all tort liability. The district court denied the motion. The writ petition in Docket No. 36390 challenges that decision. The Multistate Tax Commission has filed an amicus curiae brief in support of Franchise Tax Board's comity argument.

Propriety of Writ Relief

We may issue an extraordinary writ at our discretion to compel the district court to perform a required act,<sup>2</sup> or to control discretion exercised arbitrarily or capriciously,<sup>3</sup> or to arrest proceedings that exceed the court's jurisdiction.<sup>4</sup> An extraordinary writ is not available if petitioner has a plain, speedy and adequate remedy in the ordinary course of law.<sup>5</sup>

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<sup>2</sup>NRS 34.160 (mandamus).

<sup>3</sup>Round Hill Gen. Imp. Dist. v. Newman, 97 Nev. 601, 637 P.2d 534 (1981) (mandamus).

<sup>4</sup>NRS 34.320 (prohibition).

<sup>5</sup>NRS 34.170; NRS 34.330.

A petition for a writ of prohibition may be used to challenge a discovery order requiring the disclosure of privileged information.<sup>6</sup> A petition for a writ of mandamus may be used to challenge an order denying summary judgment or dismissal; however, we generally decline to consider such petitions because so few of them warrant extraordinary relief.<sup>7</sup> We may nevertheless choose to exercise our discretion and intervene, as we do here, to clarify an important issue of law and promote the interests of judicial economy.<sup>8</sup>

Docket No. 36390

Nevada and California have both generally waived their sovereign immunity from suit, but not their Eleventh Amendment immunity from suit in federal court, and have extended the waivers to their state agencies or public employees, except when state statutes expressly provide immunity.<sup>9</sup> Nevada has expressly provided its state agencies with immunity for discretionary acts, unless the acts are taken in bad faith, but not for operational or ministerial acts, or for intentional torts committed within the course and scope of employment.<sup>10</sup> California has expressly provided its state taxation agency, Franchise Tax Board,

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<sup>6</sup>Wardleigh, 111 Nev. at 350-51, 891 P.2d at 1183-84.

<sup>7</sup>Smith v. District Court, 113 Nev. 1343, 950 P.2d 280 (1997).

<sup>8</sup>Id.

<sup>9</sup>NRS 41.031; Cal. Const. Art. 3, § 5; Cal. Gov't Code § 820.

<sup>10</sup>See NRS 41.032(2); Foster v. Washoe County, 114 Nev. 936, 941, 964 P.2d 788, 791 (1998); State, Dep't Hum. Res. v. Jimenez, 113 Nev. 356, 364, 935 P.2d 274, 278 (1997); Falline v. GNLV Corp., 107 Nev. 1004, 1009, 823 P.2d 888, 892 (1991).

with complete immunity.<sup>11</sup> The fundamental question presented is which state's law applies, or should apply.

### Jurisdiction

Preliminarily, we reject Franchise Tax Board's arguments that the doctrines of sovereign immunity, full faith and credit, choice of law, or administrative exhaustion deprive the district court of subject matter jurisdiction over Hyatt's tort claims. First, although California is immune from Hyatt's suit in federal courts under the Eleventh Amendment, it is not immune in Nevada courts.<sup>12</sup> Second, the Full Faith and Credit Clause does not require Nevada to apply California's law in violation of its own legitimate public policy.<sup>13</sup> Third, the doctrines of sovereign immunity and full faith and credit determine the choice of law with respect to the district court's jurisdiction,<sup>14</sup> while Nevada law is presumed to govern with respect to the underlying torts.<sup>15</sup> Fourth, Hyatt's tort claims, although arising from the audit, are separate from the administrative proceeding, and the exhaustion doctrine does not apply. The district court has jurisdiction; however, we must decide whether it should decline to exercise its jurisdiction under the doctrine of comity.

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<sup>11</sup>See Cal. Gov't Code §860.2; Mitchell v. Franchise Tax Board, 228 Cal. Rptr. 750 (Ct. App. 1986).

<sup>12</sup>Nevada v. Hall, 440 U.S. 410, 414-21 (1979).

<sup>13</sup>Id. at 421-24.

<sup>14</sup>Id. at 414-21.

<sup>15</sup>Motenko v. MGM Dist., Inc., 112 Nev. 1038, 1041, 921 P.2d 933, 935 (1996).

### Comity

The doctrine of comity is an accommodation policy, under which the courts of one state voluntarily give effect to the laws and judicial decisions of another state out of deference and respect, to promote harmonious interstate relations.<sup>16</sup> In deciding whether to respect California's grant of immunity to a California state agency, a Nevada court should give due regard to the duties, obligations, rights and convenience of Nevada's citizens and persons within the court's protection, and consider whether granting California's law comity would contravene Nevada's policies or interests.<sup>17</sup> Here, we conclude that the district court should have refrained from exercising its jurisdiction over the negligence claim under the comity doctrine, but that it properly exercised its jurisdiction over the intentional tort claims.

### Negligent Acts

Although Nevada has not expressly granted its state agencies immunity for all negligent acts, California has granted the Franchise Tax Board such immunity.<sup>18</sup> We conclude that affording Franchise Tax Board statutory immunity for negligent acts does not contravene any Nevada interest in this case. An investigation is generally considered to be a discretionary function,<sup>19</sup> and Nevada provides its agencies with immunity

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<sup>16</sup>Nevada v. Hall, 440 U.S. at 424-27; Mianecki v. District Court, 99 Nev. 93, 98, 658 P.2d 422, 424-25 (1983).

<sup>17</sup>Mianecki, 99 Nev. at 98, 658 P.2d at 425.

<sup>18</sup>Cal. Gov't Code § 860.2; see Mitchell, 228 Cal. Rptr. at 752.

<sup>19</sup>Foster, 114 Nev. at 941-43, 964 P.2d at 792.



for the performance of a discretionary function even if the discretion is abused.<sup>20</sup> Thus, Nevada's and California's interests are similar with respect to Hyatt's negligence claim.

#### Intentional Torts

In contrast, we conclude that affording Franchise Tax Board statutory immunity for intentional torts does contravene Nevada's policies and interests in this case. As previously stated, Nevada does not allow its agencies to claim immunity for discretionary acts taken in bad faith, or for intentional torts committed in the course and scope of employment. Hyatt's complaint alleges that Franchise Tax Board employees conducted the audit in bad faith, and committed intentional torts during their investigation. We believe that greater weight is to be accorded Nevada's interest in protecting its citizens from injurious intentional torts and bad faith acts committed by sister states' government employees, than California's policy favoring complete immunity for its taxation agency.<sup>21</sup> Because we conclude that the district court properly exercised its jurisdiction over the intentional tort claims, we must decide whether our intervention is warranted to prevent the release of documents that Franchise Tax Board asserts are privileged.

#### Docket No. 35549

Franchise Tax Board invoked the deliberative process, attorney-client and work-product privileges as barriers to the discovery of various documents used or produced during its audit. The district court

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<sup>20</sup>NRS 41.032(2).

<sup>21</sup>See Mianecki, 99 Nev. at 98, 658 P.2d at 425.

decided that most of the documents were not protected by these privileges, and ordered Franchise Tax Board to release them. With one exception, we conclude that the district court did not exceed its jurisdiction by ordering Franchise Tax Board to release the documents.

The deliberative process privilege does not apply because the documents at issue were not predecisional; that is, they were not precursors to the adoption of agency policy, but were instead related to the enforcement of already-adopted policies.<sup>22</sup> And if the privilege were to apply, it would be overridden by Hyatt's demonstrated need for the documents based on his claims of fraud and government misconduct.<sup>23</sup>

The attorney-client privilege does not apply because Franchise Tax Board did not demonstrate (1) that in-house-counsel Jovanovich was acting as an attorney, providing legal opinions, rather than as an employee participating in the audit process,<sup>24</sup> or (2) that the communications between Ms. Jovanovich and other Franchise Tax Board employees were kept confidential within the agency.<sup>25</sup>

The work-product privilege does apply, however, to document FTB No. 07381. This memorandum documenting a telephone

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<sup>22</sup>See Coastal States Gas Corp. v. Department of Energy, 617 F.2d 854, 866-68 (D.C. Cir. 1980).

<sup>23</sup>See In re Sealed Case, 121 F.3d 729, 737-38 (D.C. Cir. 1997).

<sup>24</sup>See Upjohn Co. v. United States, 449 U.S. 383, 389-97 (1981); United States v. Chen, 99 F.3d 1495, 1501-02 (9th Cir. 1996); United States v. Rowe, 96 F.3d 1294, 1297 (9th Cir. 1996); Texaco Puerto Rico v. Department of Consumer Aff., 60 F.3d 867, 884 (1st Cir. 1995).

<sup>25</sup>See Coastal States, 617 F.2d at 862-64.

conversation between Franchise Tax Board attorneys Jovanovich and Gould should be protected from disclosure. When the memorandum was generated, Jovanovich was acting in her role as an attorney representing Franchise Tax Board, as was Gould. The memorandum expresses these attorneys' mental impressions and opinions regarding the possibility of legal action being taken by Franchise Tax Board or Hyatt. Thus, this one document is protected by the attorney work-product privilege.<sup>26</sup>

Finally, although Franchise Tax Board also challenges the district court's protective order, we decline to review the propriety of that discovery order in this writ proceeding. Although an extraordinary writ may be warranted to avoid the irreparable injury that would result from a discovery order requiring disclosure of privileged information, extraordinary writs are not generally available to review discovery orders.<sup>27</sup> Franchise Tax Board has a plain, speedy and adequate remedy; it may challenge the order on appeal if it is aggrieved by the district court's final judgment.

### Conclusion

We conclude that the district court should have declined to exercise jurisdiction over the negligence claim as a matter of comity. Accordingly, we grant the petition in Docket No. 36390 in part; the clerk of this court shall issue a writ of mandamus directing the district court to grant Franchise Tax Board's motion for summary judgment as to the negligence claim. We deny the petition in Docket No. 36390 with respect

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<sup>26</sup>See Wardleigh, 111 Nev. at 357, 891 P.2d at 1188.

<sup>27</sup>Clark County Liquor v. Clark, 102 Nev. 654, 659, 730 P.2d 443, 447 (1986).

to the intentional tort claims, and we deny the alternative petition to limit the scope of trial.

We conclude that the district court exceeded its jurisdiction by ordering the release of one privileged document, but that Franchise Tax Board has not demonstrated that the district court exceeded its jurisdiction by ordering it to release any of the other discovery documents at issue. Accordingly, we grant the petition in Docket No. 35549 in part; the clerk of this court shall issue a writ of prohibition prohibiting the district court from requiring Franchise Tax Board to release document FTB No. 07381. We deny the writ petition in Docket No. 35549 with respect to all other documents.

We vacate our stay of the district court proceedings.

It is so ORDERED.<sup>28</sup>

Maupin, C.J.  
Maupin

Young, J.  
Young

Agosti, J.  
Agosti

Shearing, J.  
Shearing

Leavitt, J.  
Leavitt

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<sup>28</sup>The Honorable Nancy Becker, Justice, voluntarily recused herself from participation in the decision of this matter.

cc: Hon. Nancy M. Saitta, District Judge  
California Attorney General  
McDonald Carano Wilson McCune Bergin Frankovich & Hicks  
LLP/Las Vegas  
McDonald Carano Wilson McCune Bergin Frankovich & Hicks  
LLP/Reno  
Bernhard & Leslie  
Hutchison & Steffen  
Riordan & McKenzie  
Thomas K. Bourke  
Marquis & Aurbach  
Clark County Clerk

ROSE, J., concurring in part and dissenting in part:

I would not grant comity to the petitioners in this case and would grant immunity only as given by the law of Nevada. In all other respects, I concur with the majority opinion.

In Mianecki v. District Court,<sup>1</sup> we were faced with a similar issue when the State of Wisconsin requested comity be granted by Nevada courts in order to recognize Wisconsin's sovereign immunity. In refusing to grant comity and recognize Wisconsin's sovereign immunity, we stated:


In general, comity is a principle whereby the courts of one jurisdiction may give effect to the laws and judicial decisions of another jurisdiction out of deference and respect. The principle is appropriately invoked according to the sound discretion of the court acting without obligation. "[I]n considering comity, there should be due regard by the court to the duties, obligations, rights and convenience of its own citizens and of persons who are within the protection of its jurisdiction." With this in mind, we believe greater weight is to be accorded Nevada's interest in protecting its citizens from injurious operational acts committed within its borders by employees of sister states, than Wisconsin's policy favoring governmental immunity. Therefore, we hold that the law of Wisconsin should not be granted comity where to do so would be contrary to the policies of this state.

Based on this very similar case, I would not grant comity to California, and I would extend immunity to the agents of California only to the extent that such immunity is given them by Nevada law. Denying a

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<sup>1</sup>99 Nev. 93, 98, 658 P.2d 422, 424-25 (1983) (internal citations omitted).

grant of comity is not uncommon, as California has denied comity to the state of Nevada in years past.<sup>2</sup>

  
\_\_\_\_\_. J.  
Rose

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<sup>2</sup>Nevada v. Hall, 440 U.S. 410, 418 (1979).





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*Attorneys for Plaintiff Gilbert P. Hyatt*

**DISTRICT COURT**  
**CLARK COUNTY, NEVADA**

**GILBERT P. HYATT,**

**Plaintiffs,**

**v.**

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

**Defendants.**

Case No.: A382999

Dept. No.: X

**SECOND AMENDED COMPLAINT**

**Jury Trial Demanded**

Exempt from Arbitration:  
Declaratory Relief, Significant  
Public Policy and Amount in Excess  
Of \$40,000

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

1 Plaintiff, Gilbert P. Hyatt, in this Second Amended Complaint, complains against  
2 defendants, and each of them, as follows:

3 PARTIES

4 1. Plaintiff resides in Clark County, Nevada and has done so since September 26,  
5 1991.

6 2. Defendant Franchise Tax Board of the State of California (hereinafter "FTB") is  
7 a governmental agency of the State of California with its principal office located in Sacramento,  
8 California, and a district office located in Los Angeles, California. The FTB's function is to  
9 ensure the collection of state income taxes from California residents and from income earned in  
10 California by non-residents.

11 3. The identity and capacities of the defendants designated as Does 1 through 100  
12 are so designated by plaintiff because of his intent by this complaint to include as named  
13 defendants every individual or entity who, in concert with the FTB as an employee,  
14 representative, agent or independent contractor, committed the tortious acts described in this  
15 complaint. The true names and capacities of these Doe defendants are presently known only to  
16 the FTB, who committed the tortious acts in Nevada with the assistance of said Doe defendants  
17 who are designated by fictitious names only until plaintiff is able, through discovery, to obtain  
18 their true identities and capacities; upon ascertaining the true names and capacities of these Doe  
19 defendants, plaintiff shall promptly amend this complaint to properly name them by their actual  
20 identities and capacities. For pleading purposes, whenever this complaint refers to  
21 "defendants," it shall refer to these Doe defendants, whether individuals, corporations or other  
22 forms of associations or entities, until their true names are added by amendment along with  
23 particularized facts concerning their conduct in the commission of the tortious acts alleged  
24 herein.

25 4. Plaintiff is informed and believes, and on that basis alleges, that defendants, in  
26 acting or omitting to act as alleged, acted or omitted to act within the course and scope of their  
27 employment or agency, and in furtherance of their employer's or principal's business, whether  
28

1 the employer or principal be the FTB or some other governmental agency or employer or  
2 principal whose identity is not yet known; and that FTB and defendants were otherwise  
3 responsible and liable for the acts and omissions alleged herein.

4 5. This action is exempt from the court-annexed arbitration program, pursuant to  
5 Rule 3, because: (1) this is an action for, inter alia, declaratory relief; (2) substantial issues of  
6 public policy are implicated concerning the sovereignty of the State of Nevada and the integrity  
7 of its territorial boundaries as opposed to governmental agencies of another state who enter  
8 Nevada in an effort to extraterritorially, arbitrarily and deceptively enforce their policies, rules  
9 and regulations on residents of Nevada in general, and plaintiff Gilbert P. Hyatt in particular;  
10 and (3) the sums of money and damages involved herein far exceed the \$40,000.00  
11 jurisdictional limit of the arbitration program.

12 6. Plaintiff hereby requests a jury trial for his Second, Third, Fourth, Fifth, Sixth,  
13 Seventh and Eighth Causes of Action.

#### 14 SUMMARY OF CLAIMS

15 7. Plaintiff, by this action, seeks: (1) declaratory relief under NRS 30.010 et seq. to  
16 confirm plaintiff's status as a Nevada resident effective as of September 26, 1991 and  
17 continuing to the present and, correspondingly, his non-residency during said period in  
18 California (FIRST CAUSE OF ACTION) — *re-pled in this Second Amended Complaint to*  
19 *preserve plaintiff's right to appeal the District Court's April 3, 1999 ruling dismissing this*  
20 *cause of action; this cause of action is therefore no longer at issue in the District Court;* (2)  
21 recovery of compensatory and punitive damages against the FTB and the defendants for  
22 invasion of plaintiff's right of privacy, including and in particular his informational privacy as  
23 well as the FTB's failure to abide by the confidential relationship created by the FTB's request  
24 for and receipt of Hyatt's highly personal and confidential information, resulting from their still  
25 ongoing investigation in Nevada of plaintiff's residency, domicile and place of abode and  
26 causing (a) an unreasonable intrusion upon plaintiff's seclusion (SECOND CAUSE OF  
27 ACTION); (b) an unreasonable publicity given to private facts (THIRD CAUSE OF ACTION);  
28

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1 (c) casting plaintiff in a false light (FOURTH CAUSE OF ACTION); (3) recovery of  
2 compensatory and punitive damages against the FTB and the defendants for their outrageous  
3 conduct in regard to their continuing investigation in Nevada of plaintiff's residency, domicile  
4 and place of abode, including but not limited to the FTB's failure to abide by the confidential  
5 relationship created by the FTB's request for and receipt of Hyatt's highly personal and  
6 confidential information (FIFTH CAUSE OF ACTION); (4) recovery of compensatory and  
7 punitive damages against the FTB and defendants for an abuse of process (SIXTH CAUSE OF  
8 ACTION); (5) recovery of compensatory and punitive damages against the FTB and defendants  
9 for fraud, including but not limited to the FTB's failure to abide by the confidential relationship  
10 created by the FTB's request for and receipt of Hyatt's highly personal and confidential  
11 information (SEVENTH CAUSE OF ACTION); and (6) recovery of compensatory and punitive  
12 damages against the FTB and defendants for breach of confidentiality in regard to the FTB's  
13 breach of its duty not to disclose Hyatt's personal and confidential information (EIGHTH  
14 CAUSE OF ACTION). The claims specified in this paragraph constitute EIGHT separate  
15 causes of action as hereinafter set forth in this complaint.

#### 16 FACTUAL BACKGROUND

##### 17 Plaintiff's Residency in Nevada

18 8. Plaintiff moved to the State of Nevada, County of Clark, and established full-  
19 time residency here on September 26, 1991 and has remained a full-time, permanent resident  
20 since that time. Prior to his relocation to Nevada, plaintiff resided in Southern California.  
21 Plaintiff is a highly successful inventor. Specifically, plaintiff has been granted numerous  
22 important patents for a wide range of inventions relating to computer technology. Plaintiff  
23 primarily works alone in the creation and development of his inventions and greatly values his  
24 privacy both in his personal life and business affairs. After certain of his important inventions  
25 were granted patents in 1990, plaintiff began receiving a great deal of unwanted and unsolicited  
26 publicity, notoriety and attention. To greater protect his privacy, to enjoy the social,  
27 recreational, and financial advantages Nevada has to offer, and to generally enhance the quality  
28

1 of his life and environment, plaintiff relocated to Nevada on September 26, 1991. This move  
2 took place after much consideration and almost an entire year of planning.

3 9. The following events are indicative of the fact that on September 26, 1991,  
4 plaintiff commenced both his residency and intent to remain in Nevada, and a continuation of  
5 both down to the present: (1) the sale of plaintiff's California home in October 1991; (2) his  
6 renting and residing at an apartment in Las Vegas commencing in October 1991 and continuing  
7 until April 1992 when plaintiff closed the purchase of a home in Las Vegas; (3) in November  
8 1991, plaintiff registered to vote in Nevada, obtained a Nevada driver's license, and joined a  
9 religious organization in Las Vegas; (4) plaintiffs' extensive search, commencing in early  
10 October 1991, for a new home in Las Vegas, and in the process utilizing the services of various  
11 real estate brokers; (5) during the process of finding a home to purchase, plaintiff made  
12 numerous offers to buy; (6) plaintiff's purchase of a new home in Las Vegas on April 3, 1992;  
13 (7) plaintiff maintained and expanded his business interests from Las Vegas; and (8) plaintiff  
14 has, through the years from September 26, 1991 and down to the present, contacted persons in  
15 high political office, in the professions, and other walks of life, as a true Nevada resident of  
16 some renown would, not concealing the fact of his Nevada residency. In sum, plaintiff has  
17 substantial evidence, both testimonial and documentary, in support of the fact of his full-time  
18 residency, domicile and place of abode in Nevada commencing on September 26, 1991 and  
19 continuing to the present.

20 The FTB and Defendants' Investigation of Plaintiff in Nevada

21 10. Because plaintiff was a resident of California for part of 1991, plaintiff filed a  
22 Part- Year state income tax return with the State of California for 1991 (the "1991 Return").  
23 Said return reflects plaintiff's payment of state income taxes to California for income earned  
24 during the period of January 1 through September 26, 1991.

25 11. In or about June of 1993 — 21 months after plaintiff moved to Nevada — for  
26 reasons that have never been specified, but are otherwise apparent, the FTB began an audit of  
27 the 1991 Return. In or about July of 1993, as part of its audit, the FTB began to investigate  
28

1 plaintiff by making or causing to be made numerous and continuous contacts directed at  
2 Nevada. Initially, the FTB sent requests to Nevada government agencies for information  
3 concerning plaintiff — a paper foray that continued for the next several years.

4 12. In or about January of 1995, FTB auditors began planning a trip to Las Vegas,  
5 the purpose of which was to enhance and expand the scope of their investigation of plaintiff. In  
6 March of 1995, the FTB and defendants commenced a “hands on” investigation of plaintiff that  
7 included unannounced confrontations and questioning about private details of plaintiff’s life.  
8 These intrusive activities were directed at numerous residents of Nevada, including plaintiff’s  
9 current and former neighbors, employees of businesses and stores frequented by plaintiff, and  
10 alas, even his trash collector!

11 13. Both prior and subsequent to the intrusive, “hands on” investigations described in  
12 paragraph 12, above, the FTB propounded to numerous Nevada business and professional  
13 entities and individual residents of Nevada “quasi-subpoenas” entitled “Demand to Furnish  
14 Information” which cited the FTB’s authority under California law to issue subpoenas and  
15 demanded that the recipients thereof produce the requested information concerning plaintiff.  
16 Plaintiff is informed and believes, and therefore alleges, that the FTB never sought permission  
17 from a Nevada court or any Nevada government agency to send such “quasi-subpoenas” into  
18 Nevada where, induced by the authoritative appearance of the inquisitions, many Nevada  
19 residents and business entities did respond with answers and information concerning plaintiff.

20 14. Subsequent to the documentary and “hands on” forays into Nevada by the FTB  
21 and defendants, the FTB also sent correspondence, rather than “quasi-subpoenas,” to Nevada  
22 Governor Bob Miller, Nevada Senator Richard Bryan and other government officials and  
23 agencies seeking information regarding plaintiff and his residency in Nevada. Plaintiff is  
24 further informed and believes, and therefore alleges, that the FTB intentionally sent  
25 unauthorized “quasi-subpoenas” (i.e., “Demand to Furnish Information”) to private individuals  
26 and businesses in a successful attempt to coerce their cooperation through deception and the  
27 pretense of an authoritative demand, while on the other hand, sending respectful letter requests  
28 for information to Nevada governmental agencies and officials who undoubtedly would have

1 recoiled at the attempt by the FTB to exercise extraterritorial authority in Nevada through the  
2 outrageous means of the bogus subpoenas.

3 15. Plaintiff neither authorized the FTB's aforementioned documentary and  
4 pretentious forays into Nevada, nor was plaintiff ever aware that such information was being  
5 sought in such a manner until well after the "quasi-subpoenas" had been issued and the  
6 responses received. Similarly, plaintiff had no knowledge of the FTB and defendants'  
7 excursions to Las Vegas to investigate plaintiff or the FTB's correspondence with Nevada  
8 government agencies and officials until well after such contacts had taken place. Upon  
9 information and belief, plaintiff alleges that all of the above-described activities were calculated  
10 to enable the FTB to develop a colorable basis for assessing a huge tax against plaintiff despite  
11 the obvious fact that the FTB was proceeding against a bona fide resident of Nevada.

12 Assessment for 1991

13 16. On April 23, 1996, after the FTB had completed its audit and investigation of the  
14 1991 Return, the FTB sent a Notice of Proposed Assessment (i.e., a formal notice that taxes are  
15 owed) to plaintiff in which the FTB claimed plaintiff was a resident of California — not Nevada  
16 — until April 3, 1992. The FTB therefore assessed plaintiff California state income tax for the  
17 period of September 26 through December 31 of 1991 in a substantial amount. Moreover, the  
18 FTB also assessed a penalty against plaintiff in an amount almost equal to the assessed tax after  
19 summarily concluding that plaintiff's non-payment of the assessed tax, based upon his asserted  
20 residency in Nevada and non-residency in California, was fraudulent.

21 17. Plaintiff, who demonstrably is and was at all times pertinent hereto, a bona fide  
22 resident of Nevada should not be forced into a California forum to seek relief from the bad faith,  
23 unjust and tortious attempts by the FTB to extort unlawful taxes from this Nevada resident.  
24 Plaintiff avers that liability for the bad faith actions of the FTB during the audits and continuing  
25 until the present in the still ongoing California tax proceedings should be determined in Nevada,  
26 the state of plaintiff's residence. The FTB is in effect attempting to impose an "exit tax" on  
27 plaintiff. The FTB has arbitrarily, maliciously and without support in law or fact, asserted that  
28

1 plaintiff remained a California resident until he purchased and closed escrow on a new home in  
2 Las Vegas on April 3, 1992. In a word, the FTB's prolonged and monumental efforts to find a  
3 way — any way — to effectively assess additional income taxes against plaintiff after he  
4 changed his residency from California to Nevada is based on governmental bad faith and greed  
5 arising from the FTB's eventual awareness of the financial success plaintiff has realized since  
6 leaving California and becoming a bona fide resident of the State of Nevada. The aforesaid date  
7 of Nevada residency accepted by the FTB with respect to the 1991 Report was not supported by  
8 the information gathered by the FTB's during its audits of plaintiff and was accepted by the  
9 FTB in bad faith as it was over six months after plaintiff moved to Nevada with the intent to  
10 stay and began, he thought, to enjoy all the privileges and advantages of residency in his new  
11 state.

12 The FTB's Continuing Pursuit of Plaintiff in Nevada

13 18. On or about April 1, 1996, plaintiff received formal notice that the FTB had  
14 commenced an investigation into the 1992 tax year and that its tentative determination was that  
15 plaintiff would also be assessed California state income taxes for the period of January 1  
16 through April 3 of 1992.

17 19. On or about April 10, 1997 and May 12, 1997 respectively, plaintiff received  
18 notices from the FTB that it would be issuing a formal "Notice of Proposed Assessment" in  
19 regard to the 1992 tax year in which it will seek back taxes from plaintiff for income earned  
20 during the period of January 1 through April 2, 1992 and in addition would seek penalties for  
21 plaintiff's failure to file a state income tax return for 1992.

22 20. Prior to the FTB sending the formal Notice of Proposed Assessment for the 1992  
23 tax year, a representative of the FTB stated to one of plaintiff's representatives that disputes  
24 over such assessments by the FTB always settle at this stage as taxpayers do not want to risk  
25 their personal financial information being made public. Plaintiff understood this statement to be  
26 a strong suggestion by the FTB that he settle the dispute by payment of some portion of the  
27 assessed taxes and penalties. Plaintiff refused, and continues to refuse to do so, as he has not  
28



1 been a resident of California since his move to Nevada on September 26, 1991, and it remains  
2 clear to him that the FTB is engaging in its highhanded tactics to extort "taxes and penalties"  
3 from him that he does not legally or morally owe.

4       21. On or about August 14, 1997, plaintiff received a formal Notice of Proposed  
5 Assessment for 1992. Despite the FTB's earlier written statements and findings that plaintiff  
6 became a Nevada resident at least as of April 3, 1992 and its statement in such Notice of  
7 Proposed Assessment that "We [the FTB] consider you to be a resident of this state [California]  
8 through April 2, 1992," such notice proceeded to assess California state income taxes on  
9 plaintiff's income for the entire year of 1992. Specifically, the FTB assessed plaintiff state  
10 income taxes for 1992 in an amount five times greater than that for 1991, assessed plaintiff a  
11 penalty almost as great as the assessed tax for alleged fraud in claiming he was a Nevada  
12 resident during 1992, and stated that interest accrued through August 14, 1997 (roughly the  
13 equivalent of the penalty) was also owed on the assessed tax and penalty. In short, the State of  
14 California, through the FTB, sent plaintiff a bill for the entire 1992 tax year, which was fourteen  
15 times the amount of tax it initially assessed for 1991, and in so doing asserted that plaintiff was  
16 "a California resident for the entire year." Without explanation the FTB ignored its earlier  
17 finding and written acknowledgment that plaintiff was a Nevada resident at least as of April 3,  
18 1992. This outrage is a transparent effort to extort substantial sums of money from a Nevada  
19 resident.

20       22. Plaintiff is informed and believes, and therefore alleges, that the FTB intends to  
21 engage in a repeat of the "hands on," extraterritorial investigations directed at plaintiff within  
22 the State of Nevada in an effort to conjure up a colorable basis for justifying its frivolous,  
23 extortionate Noticed of Proposed Assessment for the 1992 tax year.

24       23. Plaintiff is informed and believes, and therefore alleges, that the FTB may  
25 continue to assess plaintiff California state income taxes for the years 1993, 1994, 1995, 1996  
26 and beyond since the FTB has now disregarded its own conclusion regarding plaintiff's  
27 residency in Nevada as of April 3, 1992, and is bent on charging him with a staggering amount  
28 of taxes, penalties and interest irrespective of his status as a bona fide resident of Nevada. It

1 appears from its actions concerning plaintiff, that the FTB has embraced a new theory of  
2 liability that in effect declares "once a California resident always a California resident" as long  
3 as the victim continues to generate significant amounts of income. Thus, the FTB has raised an  
4 invisible equivalent of the iron curtain that prohibits such residents from ever leaving the taxing  
5 jurisdiction of the FTB.

#### 6 The FTB's Motive

7 24. Plaintiff is informed and believes, and therefore alleges, that the FTB has no  
8 credible, admissible evidence that plaintiff was a California resident at anytime after September  
9 of 1991, despite the FTB's exhaustive extraterritorial investigations in Nevada. The FTB has  
10 acknowledged in its own reports that plaintiff sold his California home on October 1, 1991, that  
11 plaintiff rented an apartment in Las Vegas from November 1991 until April 1992 and that  
12 plaintiff purchased a home in Las Vegas in April 1992.

13 25. Plaintiff is informed and believes, and therefore alleges, that the assessments by  
14 the FTB against plaintiff for 1991 and 1992 result from the fact that almost two years after  
15 plaintiff moved from California to Nevada an FTB investigator read a magazine article about  
16 plaintiff's wealth and the FTB thereafter launched its investigation in the hope of extracting a  
17 significant settlement from plaintiff. Plaintiff is further informed and believes, and therefore  
18 alleges, that the FTB has acted in bad faith and assessed a fraud penalty against plaintiff for the  
19 1991 tax year and issued a Notice of Proposed Assessment assessing plaintiff for the entire 1992  
20 tax year and a fraud penalty for the same year to intimidate plaintiff and coerce him into paying  
21 some significant amount of tax for income earned after September 26, 1991, despite its  
22 awareness that plaintiff actually became a Nevada resident at that time. Plaintiff alleges that the  
23 FTB's efforts to coerce plaintiff into sharing his hard-earned wealth despite having no lawful  
24 basis for doing so, constitutes malice and oppression.

#### 25 Jurisdiction

26 26. This Court has personal jurisdiction over the FTB pursuant to Nevada's "long-  
27 arm" statute, NRS 14.065 et seq., because of the FTB's tortious extraterritorial contacts and  
28

1 investigatory conduct within the State of Nevada ostensibly as part of its auditing efforts to  
2 undermine plaintiff's status as a Nevada resident, but in reality to create a colorable basis for  
3 maintaining that plaintiff continued his residency in California during the period September 26,  
4 1991 to December 31, 1991 and beyond.

5 27. Plaintiff is informed and believes, and therefore alleges, that the FTB has a  
6 pattern and practice of entering into Nevada to investigate Nevada residents who were formerly  
7 residents of California, and then assessing such residents California state income taxes for time  
8 periods subsequent to the date when such individuals moved to and established residency in  
9 Nevada.

#### 10 FIRST CAUSE OF ACTION

11 (For Declaratory Relief)

12 28. Plaintiff realleges and incorporates herein by reference each and every allegation  
13 contained in paragraphs 1 through 27 above, as though set forth herein verbatim. *This cause of*  
14 *action is re-pled in this Second Amended Complaint to preserve plaintiff's right to appeal the*  
15 *District Court's April 3, 1999 ruling dismissing this cause of action. This cause of action is*  
16 *therefore no longer at issue in the District Court.*

17 29. Pursuant to California law, in determining whether an individual was a resident  
18 of California for a certain time period thereby making such individual's income subject to  
19 California state income tax during such period, the individual must have been domiciled in  
20 California during such period for "other than a temporary or transitory purpose." See Cal. Rev.  
21 & Tax Code § 17014. The FTB's own regulations and precedents require that it apply certain  
22 factors in determining an individual's domicile and/or whether the individual's presence in  
23 California (or outside of California) was more than temporary or transitory.

24 a) Domicile.

25 Domicile is determined by the individual's physical presence in California with intent to stay or  
26 if absent temporarily from California an intent to return. Such intent is determined by the acts  
27 and conduct of the individual such as: (1) where the individual is registered to vote and votes;  
28

1 (2) location of the individual's permanent home; (3) comparative size of homes maintained by  
2 the individual in different states; (4) where the individual files federal income tax returns; (5)  
3 comparative time spent by the individual in different states; (6) cancellation of the individual's  
4 California homeowner's property tax exemption; (7) obtaining a driver's license from another  
5 state; (8) registering a car in another state; (9) joining religious, business and/or social  
6 organizations in another state; and (10) establishment of a successful business in another state  
7 by an individual who is self employed.  
8

9 (b) Temporary or Transitory Purpose.

10 The following contacts which are similar although not identical to those used to determine  
11 domicile are important in determining whether an individual was in California (or left  
12 California) for a temporary or transitory purpose: (1) physical presence of the individual in  
13 California in comparison to the other state or states; (2) establishment of a successful business in  
14 another state by an individual who is self employed; (3) extensive business interest outside of  
15 California and active participation in such business by the individual; (4) banking activity in  
16 California by the individual is given some, although not a great deal of, weight; (5) rental of  
17 property in another state by the individual; (6) cancellation of the individual's California  
18 homeowner's property tax exemption; (7) hiring professionals by the individual located in  
19 another state; (8) obtaining a driver's license from another state; (9) registering a car in another  
20 state; (10) joining religious, business and/or social organizations in another state; and (11)  
21 where the individual is registered to vote and votes.  
22  
23

24 30. The FTB's assessment of taxes and a penalty for 1991 is based on the FTB's  
25 conclusion in the first instance that plaintiff did not become a resident of Nevada until April 3,  
26 1992, the date on which plaintiff closed escrow on a new home in Las Vegas. In coming to such  
27 a conclusion, the FTB discounted or refused to consider a multitude of evidentiary facts which  
28

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1 contradicted the FTB's conclusion, and were the type of facts the FTB's own regulations and  
2 precedents require it to consider. Such facts include, but are not limited to, the following: (1)  
3 plaintiff sold his California home on October 1, 1991; (2) plaintiff rented an apartment in Las  
4 Vegas on or about October 7, 1991 and, after a brief period of necessary travel to the east coast,  
5 took possession of said apartment on or about October 22, 1991 and maintained his residence  
6 there until April of 1992; (3) plaintiff registered to vote, obtained a Nevada driver's license  
7 (relinquishing his California driver's license to the Nevada Department of Motor Vehicles), and  
8 joined a Las Vegas religious organization in November of 1991; (4) plaintiff terminated his  
9 California home owner's exemption effective October 1, 1991; (5) plaintiff began actively  
10 searching for a house to buy in Las Vegas, commencing in early October 1991, and submitted  
11 numerous offers on houses in Las Vegas beginning in December 1991; (6) one of plaintiff's  
12 offers to purchase a home in Las Vegas was accepted in March of 1992 and escrow on the  
13 transaction closed on April 3, 1992; and (7) plaintiff's new home in Las Vegas was substantially  
14 larger than the home in Southern California, which he sold in October of 1991.

15         31. An actual controversy exists as to whether plaintiff was a full-time resident of  
16 Nevada — not California — commencing on September 26, 1991 through December 31, 1991  
17 and continuing thereafter through the year 1992 and beyond. Plaintiff contends that under either  
18 Nevada or California law, or both, he was a full-time, bona fide resident of Nevada throughout  
19 the referenced periods and down to the present, and that the FTB ignored its own regulations  
20 and precedents in finding to the contrary, and that the FTB has no jurisdiction to impose a tax  
21 obligation on plaintiff during the contested periods. Plaintiff also contends that the FTB had no  
22 authority to conduct an extraterritorial investigation of plaintiff in Nevada and no authority to  
23 propound "quasi-subpoenas" to Nevada residents and businesses, thereby seeking to coerce the  
24 cooperation of said Nevada residents and businesses through an unlawful and tortious deception,  
25 to reveal information about plaintiff. Plaintiff is informed and believes, and therefore alleges,  
26 that the FTB contends in all respects to the contrary.

27         32. Plaintiff therefore requests judgment of this Court declaring and confirming  
28 plaintiff's status as a full-time, bona fide resident of the State of Nevada effective from

1 September 26, 1991 to the present; and for judgment declaring the FTB's extraterritorial  
2 investigatory excursions into Nevada, and the submission of "quasi-subpoenas" to Nevada  
3 residents without approval from a Nevada court or governmental agency, as alleged above, to be  
4 without authority and violative of Nevada's sovereignty and territorial integrity.

5 SECOND CAUSE OF ACTION

6 (For Invasion of Privacy — Unreasonable Intrusion Upon The  
7 Seclusion of Another, including Intrusion Upon Informational  
8 Privacy)

9  
10 33. Plaintiff realleges and incorporates herein by reference each and every allegation  
11 contained in paragraphs 1 through 32, above, as though set forth herein verbatim.

12 34. Plaintiff is informed and believes, and therefore alleges, that neighbors,  
13 businesses, government officials and others within Nevada with whom plaintiff has had and  
14 would reasonably expect in the future to have social or business interactions, were approached  
15 and questioned by the FTB and defendants who disclosed or implied that plaintiff was under  
16 investigation in California, and otherwise acted in such a manner as to cause doubts to arise  
17 concerning plaintiff's integrity and moral character. Moreover, as part of the audit/investigation  
18 in regard to the 1991 Return, plaintiff turned over to the FTB highly personal and confidential  
19 information with the understanding that it would remain confidential, thereby creating a  
20 confidential relationship in which the FTB was required not to disclose Hyatt's highly personal  
21 and confidential information. The FTB even noted in its own internal documentation that  
22 plaintiff had a significant concern in regard to the protection of his privacy in turning over such  
23 information. At the time this occurred, plaintiff was still hopeful that the FTB was actually  
24 operating in good faith, a proposition that, as noted throughout this complaint, proved to be  
25 utterly false.

26 35. Plaintiff is informed and believes, and therefore alleges, that the FTB and  
27 defendants nevertheless violated plaintiff's right to privacy in regard to such information by  
28 revealing it to third parties and otherwise conducting an investigation in Nevada, and continuing

1 to conduct such an investigation, through which the FTB and defendants revealed to third  
2 parties personal and confidential information, which plaintiff had every right to expect would  
3 not be revealed to such parties.

4 36. Plaintiff is informed and believes, and therefore alleges, that the FTB and  
5 defendants' extensive probing and investigation of plaintiff, including their actions both  
6 occurring within Nevada and directed to Nevada from California, were performed, and continue  
7 to be performed, with the intent to harass, annoy, vex, embarrass and intimidate plaintiff such  
8 that he would eventually enter into a settlement with the FTB concerning his residency during  
9 the disputed time periods and the taxes and penalties allegedly owed. Such conduct by the FTB  
10 and defendants did in fact, and continues to, harass, annoy, vex and embarrass Hyatt, and  
11 syphon his time and energies from the productive work in which he is engaged.

12 37. Plaintiff is informed and believes, and therefore alleges, that the FTB and  
13 defendants through their investigative actions, and in particular the manner in which they were  
14 carried out in Nevada, intentionally intruded, and continues to intentionally intrude, into the  
15 solitude and seclusion which plaintiff had specifically sought by moving to Nevada. The  
16 intrusion by the FTB and defendants was such that any reasonable person, including plaintiff,  
17 would find highly offensive.

18 38. As a direct, proximate, and foreseeable result of the FTB and defendants'  
19 aforementioned invasion of plaintiff's privacy, plaintiff has suffered actual and consequential  
20 damages in a total amount in excess of \$10,000.

21 39. Plaintiff is informed and believes, and therefore alleges, that said invasion of  
22 plaintiff's privacy was intentional, malicious, and oppressive in that such invasion was  
23 despicable conduct by the FTB and defendants entered into with a willful and conscious  
24 disregard of plaintiff's rights, and the efficacious intent to cause him injury. Plaintiff is  
25 therefore entitled to an award of punitive damages against the FTB and defendants in an amount  
26 sufficient to satisfy the purposes for which such damages are awarded.

27

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Claim for Attorneys' Fees as Special Damages Pursuant to NRCP 9 (g)

40. Plaintiff was drawn into the FTB's audit without choice and as an innocent party. As such, plaintiff had every right to expect that the FTB's demand for an audit would be processed in good faith, according to the law and the facts. Instead, he was subjected to, and continues to be subjected to, a determined and malicious bad-faith attempt to extort money from plaintiff under abuse and betrayal of the FTB's lawful taxing powers. The FTB's fraudulent and oppressive scheme includes the intimidating imposition of enormous, indefensible "fraud penalty" assessments designed to force plaintiff to yield to a major compromise or suffer significant financial and reputational destruction. The threatened (and consummated) tortious actions included the outrageously intrusive invasion of his privacy, as aforesaid, and the publicity of private facts that were expressly extracted from plaintiff under false promises of strict confidentiality. Plaintiff repeatedly relied on these promises to his extreme and permanent detriment.

41. Plaintiff was forced to disclose his private documents and information with the FTB under the duress of the FTB's unquestioned powers, but did so with the expectancy of a forthright, lawful audit. Instead, plaintiff became the intended victim of the FTB, thus forcing plaintiff to either: (1) succumb to tortious acts that would unlawfully deprive him permanently of his hard-earned personal property and right not to have his privacy invaded by the publication of his confidential, private facts as aforesaid; or (2) fight the FTB through the only means available, to wit: the employment of teams of legal and professional experts to vigorously defend himself in the audits and the continuing California tax proceedings.

42. It was highly foreseeable to the FTB that, absent the success of its scheme to unlawfully deprive plaintiff of his property through such acts of intimidation as the destruction of his privacy and the imposition of huge "fraud" penalties, as aforesaid, plaintiff's only alternative was to vigorously defend himself in the audits and the continuing California tax proceedings. This required the employment of a team of attorneys and other experts. The resulting attorneys' fees and other professional fees which plaintiff has incurred, and continues



1 to incur, were proximately and directly caused and necessitated by the FTB's course of tortious  
2 behavior.

3 43. Plaintiff's incurrence of attorneys' fees and other professional fees are highly  
4 foreseeable damages resulting directly from the FTB's tortious conduct against plaintiff in  
5 pursuit of unlawful objectives. Plaintiff's alternatives were to do nothing and be vanquished by  
6 the overwhelming power and resources of a tenacious and corrupt FTB, or vigorously defend  
7 himself in the audits and the continuing California tax proceedings. Plaintiff therefore claims,  
8 as special damages, his attorneys' fees in an amount in excess of \$10,000.00, the total amount  
9 thereof to be proved according to the evidence at trial.

10 THIRD CAUSE OF ACTION

11 (For Invasion of Privacy — Unreasonable Publicity Given To

12 Private Facts, Including Publicity Given to Matters Protected

13 Under the Concept of Informational Privacy)

14 44. Plaintiff realleges and incorporates herein by reference each and every allegation  
15 contained in paragraphs 1 through 43, above, as though set forth herein verbatim.

16 45. As set forth above, plaintiff revealed to the FTB highly personal and confidential  
17 information at the request of the FTB as an ostensible part of its audit and investigation into  
18 plaintiff's residency during the disputed time periods, thereby creating a confidential  
19 relationship in which the FTB was required not to disclose Hyatt's highly personal and  
20 confidential information. Plaintiff had a reasonable expectation that said information would be  
21 kept confidential and not revealed to third parties and the FTB and defendants knew and  
22 understood that said information was to be kept confidential and not revealed to third parties.

23 46. The FTB and defendants, without necessity or justification, nevertheless  
24 disclosed to third parties, and continue to disclose to third parties, in Nevada certain of  
25 plaintiff's personal and confidential information which had been cooperatively disclosed to the  
26 FTB by plaintiff only for the purposes of facilitating the FTB's legitimate auditing and  
27  
28

1 investigative efforts, or which the FTB had acquired via other means but was required by its  
2 own rules and regulations or state law not to disclose to third parties.

3 47. As a direct, proximate, and foreseeable result of the FTB's aforementioned  
4 invasion of plaintiff's privacy, plaintiff has suffered actual and consequential damages in a total  
5 amount in excess of \$10,000.

6 48. Plaintiff is informed and believes, and therefore alleges, that said invasion of  
7 plaintiff's privacy was intentional, malicious, and oppressive in that such invasion constituted  
8 despicable conduct by the FTB and defendants entered into with a willful and conscious  
9 disregard of the rights of plaintiff. Plaintiff is therefore entitled to an award of punitive or  
10 exemplary damages in an amount sufficient to satisfy the purposes for which such damages are  
11 awarded.

12 Claim for Attorneys' Fees as Special Damages Pursuant to NRCP 9 (g)

13 49. Plaintiff was drawn into the FTB's audit without choice and as an innocent party.  
14 As such, plaintiff had every right to expect that the FTB's demand for an audit would be  
15 processed in good faith, according to the law and the facts. Instead, he was subjected to, and  
16 continues to be subjected to, a determined and malicious bad-faith attempt to extort money from  
17 plaintiff under abuse and betrayal of the FTB's lawful taxing powers. The FTB's fraudulent and  
18 oppressive scheme includes the intimidating imposition of enormous, indefensible "fraud  
19 penalty" assessments designed to force plaintiff to yield to a major compromise or suffer  
20 significant financial and reputational destruction. The threatened (and consummated) tortious  
21 actions included the outrageously intrusive invasion of his privacy, as aforesaid, and the  
22 publicity of private facts that were expressly extracted from plaintiff under false promises of  
23 strict confidentiality. Plaintiff repeatedly relied on these promises to his extreme and permanent  
24 detriment.

25 50. Plaintiff was forced to disclose his private documents and information with the  
26 FTB under the duress of the FTB's unquestioned powers, but did so with the expectancy of a  
27 forthright, lawful audit. Instead, plaintiff became the intended victim of the FTB, thus forcing  
28

1 plaintiff to either: (1) succumb to tortious acts that would unlawfully deprive him permanently  
2 of his hard-earned personal property and right not to have his privacy invaded by the publication  
3 of his confidential, private facts as aforesaid; or (2) fight the FTB through the only means  
4 available, to wit: the employment of teams of legal and professional experts to vigorously  
5 defend himself in the audits and the continuing California tax proceedings.

6 51. It was highly foreseeable to the FTB that, absent the success of its scheme to  
7 unlawfully deprive plaintiff of his property through such acts of intimidation as the destruction  
8 of his privacy and the imposition of huge "fraud" penalties, as aforesaid, plaintiff's only  
9 alternative was to vigorously defend himself in the audits and the continuing California tax  
10 proceedings. This required the employment of a team of attorneys and other experts. The  
11 resulting attorneys' fees and other professional fees which plaintiff has incurred, and continues  
12 to incur, were proximately and directly caused and necessitated by the FTB's course of tortious  
13 behavior.

14 52. Plaintiff's incurrence of attorneys' fees and other professional fees are highly  
15 foreseeable damages resulting directly from the FTB's tortious conduct against plaintiff in  
16 pursuit of unlawful objectives. Plaintiff's alternatives were to do nothing and be vanquished by  
17 the overwhelming power and resources of a tenacious and corrupt FTB, or vigorously defend  
18 himself in the audits and the continuing California tax proceedings. Plaintiff therefore claims,  
19 as special damages, his attorneys' fees in an amount in excess of \$10,000.00, the total amount  
20 thereof to be proved according to the evidence at trial.

#### 21 FOURTH CAUSE OF ACTION

22 (For Invasion of Privacy — Casting Plaintiff in a False Light)

23 53. Plaintiff realleges and incorporates herein by reference each and every allegation  
24 contained in paragraphs 1 through 52, above, as if set forth herein verbatim.

25 54. By conducting interviews and interrogations of Nevada residents and by issuing  
26 unauthorized "Demands to Furnish Information" as part of their investigation in Nevada of  
27 plaintiff's residency, the FTB and defendants invaded plaintiff's right to privacy by stating or  
28

1 insinuating to said Nevada residents that plaintiff was under investigation in California, thereby  
2 falsely portraying plaintiff as having engaged in illegal and immoral conduct, and decidedly  
3 casting plaintiff's character in a false light.

4 55. The FTB and defendants' conduct in publicizing its investigation of plaintiff cast  
5 plaintiff in a false light in the public eye, thereby adversely compromising the attitude of those  
6 who know or would, in reasonable likelihood, come to know Gil Hyatt because of the nature  
7 and scope of his work. Such publicity of the investigation was offensive and objectionable to  
8 plaintiff and was carried out for other than honorable, lawful, or reasonable purposes. Said  
9 conduct by the FTB and the defendants was calculated to harm, vex, annoy and intimidate  
10 plaintiff, and was not only offensive and embarrassing to plaintiff, but would have been equally  
11 so to any reasonable person of ordinary sensibilities similarly situated, as the conduct could only  
12 serve to damage plaintiff's reputation.

13 56. As a direct, proximate, and foreseeable result of the FTB and defendants'  
14 aforementioned invasion of plaintiff's privacy, plaintiff has suffered actual and consequential  
15 damages in a total amount in excess of \$10,000.

16 57. Plaintiff is informed and believes, and therefore alleges, that said invasion of  
17 plaintiff's privacy was intentional, malicious, and oppressive in that such invasion of privacy  
18 was despicable conduct by the FTB and defendants, entered into with a willful and conscious  
19 disregard of the rights of plaintiff. Plaintiff is therefore entitled to an award of exemplary or  
20 punitive damages in an amount sufficient to satisfy the purposes for which such damages are  
21 awarded.

22 Claim for Attorneys' Fees as Special Damages Pursuant to NRCP 9 (g)

23 58. Plaintiff was drawn into the FTB's audit without choice and as an innocent  
24 party. As such, plaintiff had every right to expect that the FTB's demand for an audit would be  
25 processed in good faith, according to the law and the facts. Instead, he was subjected to, and  
26 continues to be subjected to, a determined and malicious bad-faith attempt to extort money from  
27 plaintiff under abuse and betrayal of the FTB's lawful taxing powers. The FTB's fraudulent and  
28

1 oppressive scheme includes the intimidating imposition of enormous, indefensible "fraud  
2 penalty" assessments designed to force plaintiff to yield to a major compromise or suffer  
3 significant financial and reputational destruction. The threatened (and consummated) tortious  
4 actions included the outrageously intrusive invasion of his privacy, as aforesaid, and the  
5 publicity of private facts that were expressly extracted from plaintiff under false promises of  
6 strict confidentiality. Plaintiff repeatedly relied on these promises to his extreme and permanent  
7 detriment.

8 59. Plaintiff was forced to disclose his private documents and information with the  
9 FTB under the duress of the FTB's unquestioned powers, but did so with the expectancy of a  
10 forthright, lawful audit. Instead, plaintiff became the intended victim of the FTB, thus forcing  
11 plaintiff to either: (1) succumb to tortious acts that would unlawfully deprive him permanently  
12 of his hard-earned personal property and right not to have his privacy invaded by the publication  
13 of his confidential, private facts as aforesaid; or (2) fight the FTB through the only means  
14 available, to wit: the employment of teams of legal and professional experts to vigorously  
15 defend himself in the audits and the continuing California tax proceedings.

16 60. It was highly foreseeable to the FTB that, absent the success of its scheme to  
17 unlawfully deprive plaintiff of his property through such acts of intimidation as the destruction  
18 of his privacy and the imposition of huge "fraud" penalties, as aforesaid, plaintiff's only  
19 alternative was to vigorously defend himself in the audits and the continuing California tax  
20 proceedings. This required the employment of a team of attorneys and other experts. The  
21 resulting attorneys' fees and other professional fees which plaintiff has incurred, and continues  
22 to incur, were proximately and directly caused and necessitated by the FTB's course of tortious  
23 behavior.

24 61. Plaintiff's incurrence of attorneys' fees and other professional fees are highly  
25 foreseeable damages resulting directly from the FTB's tortious conduct against plaintiff in  
26 pursuit of unlawful objectives. Plaintiff's alternatives were to do nothing and be vanquished by  
27 the overwhelming power and resources of a tenacious and corrupt FTB, or vigorously defend  
28 himself in the audits and the continuing California tax proceedings. Plaintiff therefore claims,

1 as special damages, his attorneys' fees in an amount in excess of \$10,000.00, the total amount  
2 thereof to be proved according to the evidence at trial.

3 FIFTH CAUSE OF ACTION

4 (For the Tort of Outrage)

5 62. Plaintiff realleges and incorporates herein by reference each and every allegation  
6 contained in paragraphs 1 through 61, above, as if set forth herein verbatim.

7 63. The clandestine and reprehensible manner in which the FTB and defendants  
8 carried out their investigation in Nevada of plaintiff's Nevada residency under the cloak of  
9 authority from the State of California, but without permission from the State of Nevada, and the  
10 FTB and defendants' clear intent to continue to investigate and assess plaintiff staggeringly high  
11 California state income taxes, interest, and penalties for the entire year of 1992 — and possibly  
12 continuing into future years — despite the FTB's own finding that plaintiff was a Nevada  
13 resident at least as of April of 1992, was, and continues to be, extreme, oppressive and  
14 outrageous conduct. The FTB has, in every sense, sought to hold plaintiff hostage in California,  
15 disdaining and abandoning all reason in its reprehensible, all-out effort to extort significant  
16 amounts of plaintiff's income without a basis in law or fact. Plaintiff is informed and believes,  
17 and therefore alleges, that the FTB and defendants carried out their investigation in Nevada for  
18 the ostensible purpose of seeking truth concerning his place of residency, but the true purpose of  
19 which was, and continue to be, to so harass, annoy, embarrass, and intimidate plaintiff, and to  
20 cause him such severe emotional distress and worry as to coerce him into paying significant  
21 sums to the FTB irrespective of his demonstrably bona fide residence in Nevada throughout the  
22 disputed periods. As a result of such extremely outrageous and oppressive conduct on the part  
23 of the FTB and defendants, plaintiff has indeed suffered fear, grief, humiliation, embarrassment,  
24 anger, and a strong sense of outrage that any honest and reasonably sensitive person would feel  
25 if subjected to equivalent unrelenting, outrageous personal threats and insults by such powerful  
26 and determined adversaries.

1           64. As a direct, proximate, and foreseeable result of the FTB and defendants'  
2           aforementioned extreme, unrelenting, and outrageous conduct, plaintiff has suffered actual and  
3           consequential damages in a total amount in excess of \$10,000.

4           65. Plaintiff is informed and believes, and therefore alleges, that said extreme,  
5           unrelenting, and outrageous conduct was intentional, malicious, and oppressive in that it was  
6           despicable conduct by the FTB and defendants, entered into with a willful and conscious  
7           disregard of plaintiff's rights. Plaintiff is therefore entitled to an award of exemplary or punitive  
8           damages in an amount sufficient to satisfy the purposes for which such damages are awarded.

9                     Claim for Attorneys' Fees as Special Damages Pursuant to NRCP 9 (g)

10          66. Plaintiff was drawn into the FTB's audit without choice and as an innocent party.  
11          As such, plaintiff had every right to expect that the FTB's demand for an audit would be  
12          processed in good faith, according to the law and the facts. Instead, he was subjected to, and  
13          continues to be subjected to, a determined and malicious bad-faith attempt to extort money from  
14          plaintiff under abuse and betrayal of the FTB's lawful taxing powers. The FTB's fraudulent and  
15          oppressive scheme includes the intimidating imposition of enormous, indefensible "fraud  
16          penalty" assessments designed to force plaintiff to yield to a major compromise or suffer  
17          significant financial and reputational destruction. The threatened (and consummated) tortious  
18          actions included the outrageously intrusive invasion of his privacy, as aforesaid, and the  
19          publicity of private facts that were expressly extracted from plaintiff under false promises of  
20          strict confidentiality. Plaintiff repeatedly relied on these promises to his extreme and permanent  
21          detriment.

22          67. Plaintiff was forced to disclose his private documents and information with the  
23          FTB under the duress of the FTB's unquestioned powers, but did so with the expectancy of a  
24          forthright, lawful audit. Instead, plaintiff became the intended victim of the FTB, thus forcing  
25          plaintiff to either: (1) succumb to tortious acts that would unlawfully deprive him permanently  
26          of his hard-earned personal property and right not to have his privacy invaded by the publication  
27          of his confidential, private facts as aforesaid; or (2) fight the FTB through the only means  
28

1 available, to wit: the employment of teams of legal and professional experts to vigorously  
2 defend himself in the audits and the continuing California tax proceedings.

3 68. It was highly foreseeable to the FTB that, absent the success of its scheme to  
4 unlawfully deprive plaintiff of his property through such acts of intimidation as the destruction  
5 of his privacy and the imposition of huge "fraud" penalties, as aforesaid, plaintiff's only  
6 alternative was to vigorously defend himself in the audits and the continuing California tax  
7 proceedings. This required the employment of a team of attorneys and other experts. The  
8 resulting attorneys' fees and other professional fees which plaintiff has incurred, and continues  
9 to incur, were proximately and directly caused and necessitated by the FTB's course of tortious  
10 behavior.

11 69. Plaintiff's incurrence of attorneys' fees and other professional fees are highly  
12 foreseeable damages resulting directly from the FTB's tortious conduct against plaintiff in  
13 pursuit of unlawful objectives. Plaintiff's alternatives were to do nothing and be vanquished by  
14 the overwhelming power and resources of a tenacious and corrupt FTB, or vigorously defend  
15 himself in the audits and the continuing California tax proceedings. Plaintiff therefore claims,  
16 as special damages, his attorneys' fees in an amount in excess of \$10,000.00, the total amount  
17 thereof to be proved according to the evidence at trial.

18 SIXTH CAUSE OF ACTION

19 (For Abuse of Process)

20 70. Plaintiff realleges and incorporates herein by reference each and every allegation  
21 contained in paragraphs 1 through 69, above, as if set forth herein verbatim.

22 71. Despite plaintiff's ongoing effort, both personally and through his professional  
23 representatives, to reasonably provide the FTB with every form of information it requested in  
24 order to convince the FTB that plaintiff has been a bona fide resident of the State of Nevada  
25 since September 26, 1991, the FTB has willfully sought to extort vast sums of money from  
26 plaintiff through administrative proceedings unrelated to the legitimate taxing purposes for  
27 which the FTB is empowered to act as an agency of the government of the State of California;  
28



1 said administrative proceedings have been lawlessly and abusively directed into the State of  
2 Nevada through means of administrative "quasi-subpoenas" that have been unlawfully utilized  
3 in the attempt to extort money from plaintiff as aforesaid.

4 72. The FTB, without authorization from any Nevada court or governmental agency,  
5 directed facially authoritative "DEMAND[S] TO FURNISH INFORMATION," also referred to  
6 herein by plaintiff as "quasi-subpoenas," to various Nevada residents, professionals and  
7 businesses, *requiring* specific information about plaintiff. The aforesaid "Demands" constituted  
8 an actionable abuse of process with respect to plaintiff for the following reasons:

9 (a) Despite the fact that each such "Demand" was without force of law, they were  
10 specifically represented to be "Authorized by California Revenue & Taxation Code Section  
11 19504 (formerly 19254 (a) and 26423 (a)), " sent out by the State of California, Franchise Tax  
12 Board on behalf of "The People of the State of California" to each specific recipient, and were  
13 prominently identified as relating to "*In the Matter of: Gilbert P. Hyatt*," Plaintiff was also  
14 identified by his social security number, and in certain instances by his actual home address in  
15 violation of express promises of confidentiality by the FTB; although the aforesaid "Demands"  
16 were not directed to plaintiff, the perversion of administrative process which they represented  
17 was motivated by the intent to make plaintiff both the target and the victim of the illicit  
18 documents;

19 (b) Each such "Demand" was unlawfully used in order to further the effort to extort  
20 monies from plaintiff that could not be lawfully and constitutionally assessed and collected  
21 because plaintiff was a bona fide resident of Nevada throughout the periods of time the FTB has  
22 sought to collect taxes from him, and plaintiff has not generated any California income during  
23 any of the pertinent time periods;

24 (c) Each such "Demand" was submitted to Nevada residents, professionals and  
25 businesses for the ulterior purpose of coercing plaintiff into paying extortionate sums of money  
26 to the FTB without factual or constitutional justification, and without the intent or prospect of  
27 resolving any legal dispute; indeed, as noted above, many of the "Demands" were used as  
28 vehicles for publicly violating express promises of confidentiality by the FTB, thus adding to

1 the pressure and anxiety felt by plaintiff as intended by the FTB in furtherance of its unlawful  
2 scheme;

3 (d) Although the FTB was allegedly investigating plaintiff for the audit years 1991 and  
4 1992, such audits were and are a "sham" asserted for the purposes of attempting to extort non-  
5 owed monies from plaintiff, as demonstrated by the fact that several of the "Demands" indicated  
6 that they were issued to secure information (about plaintiff) "for investigation, audit or  
7 collection purposes pertaining to the above-named taxpayer for the years indicated," and then  
8 proceeded to demand information pertaining to the years 1993, 1994, and 1995 "to present;"

9 (e) Sheila Cox, a tax auditor for the FTB who has invested hundreds of hours in  
10 attempting to gain unlawful access to plaintiff's wallet through means of extortion, was the  
11 "Authorized Representative" who issued these abusive, deceptive and outrageous "Demands;"  
12 and each of the "Demands" or quasi-subpoenas constituted legal or administrative process  
13 targeting plaintiff that was not proper in the regular conduct of the FTB's administrative  
14 proceedings against plaintiff;

15 (f) That each "Demand" was selectively, deliberately and calculatingly issued to Nevada  
16 recipients who Sheila Cox and the FTB thought would most likely respond to the authoritative  
17 nature and language of the documents, as opposed to courteous letters of inquiry that tax  
18 auditors and the FTB sent to certain governmental agencies and officials who were viewed as  
19 potential sources of criticism or trouble if confronted with the deceptive attempt to exact  
20 sensitive information from them through means of facially coercive documents purporting to  
21 have extraterritorial effect based upon the authority of California law;

22 (g) In conjunction with and in addition to the issuance of the aforesaid "Demands," and  
23 the personal, investigative forays into Nevada by FTB agents, as detailed above, a representative  
24 of the FTB, Anna Jovanovich, stated to plaintiff's tax counsel, Eugene Cowan, Esq., that at this  
25 "stage" of the proceedings, these types of disputes involving wealthy or well-known taxpayers  
26 over their contested assessments almost always settle because these taxpayers do not want to  
27 risk having their personal financial information being made public, thus the "suggestion" by Ms.  
28 Jovanovich concerning settlement was made with the implied threat that the FTB would release

1 highly confidential financial information concerning plaintiff if he refused to settle, another  
2 deceptive and improper abuse of the proceedings instigated by the FTB to coerce settlement by  
3 plaintiff;

4 (h) In conjunction with and in addition to the issuance of the aforesaid "Demands" and  
5 the other improper methods of exerting coercive pressure on plaintiff to pay the FTB money  
6 which it has sought to secure by extortion, and without justification in law or equity, the FTB  
7 compounded its abuse of its administrative powers by assessing plaintiff huge penalties based  
8 on patently false and frivolous accusations, including but not limited to, the concealment of  
9 assets to avoid taxes, plus the outrageous contention that plaintiff was fraudulently claiming  
10 Nevada residency;

11 (i) The FTB and Sheila Cox knew that they had no authority to issue "DEMAND[S] TO  
12 FURNISH INFORMATION" to any Nevada resident, business or entity, and that it was a gross  
13 abuse of Section 19504 of the California Revenue and Taxation Code, under which the aforesaid  
14 "Demands" were purportedly authorized; that the aforesaid section of the California Revenue  
15 and Taxation Code contains no provision that remotely purports to empower or authorize the  
16 FTB to issue such facially coercive documents to residents and citizens of Nevada in Nevada;  
17 and despite knowing that it was highly improper and unlawful to attempt to deceive Nevada  
18 citizens and businesses into believing that they were under a compulsion to respond to the  
19 "Demands" under pain of some type of punitive consequences, Sheila Cox and the FTB  
20 nevertheless deliberately and calculatingly abused the process authorized by the aforesaid  
21 section of the California Revenue and Taxation Code in order to promote their attempts to extort  
22 money from plaintiff;

23 (j) From the outset, the determination by Sheila Cox and the FTB to utilize the  
24 "DEMAND[S] TO FURNISH INFORMATION" in Nevada, constituted a deliberate, unlawful,  
25 and despicable decision to embark on a course of concealment in the effort to produce material,  
26 information, pressure and sources of distortion that would culminate in a combination of  
27 sufficient strength and adversity to force plaintiff to yield to the FTB's extortionate demands for  
28 money; and the course of concealment consisted of concealing from plaintiff the fact that the

1 aforesaid "Demands" were being sent to Nevada residents, professional persons and businesses,  
2 and in hiding from the recipients of the "Demands" the fact that despite their stated support in  
3 California law, the documents had no such support and were deceitful and bogus documents;  
4 and

5 (k) The FTB further abused its legal, administrative process by issuing the bogus quasi-  
6 subpoenas to Nevada residents, professionals, and businesses without providing plaintiff with  
7 notice of such discovery as required by the due process clause of Article 1, Section 8 of the  
8 Nevada Constitution and the applicable Nevada Rules of Civil Procedure.

9 73. As a direct, proximate and foreseeable result of the FTB and defendants'  
10 intentional and malicious abuse of the administrative processes, which the FTB initiated and  
11 unrelentingly pursued against plaintiff, as aforesaid, plaintiff has suffered actual and  
12 consequential damages, including but not limited to fear, anxiety, mental and emotional distress  
13 in an amount in excess of \$10,000.

14 74. Plaintiff is informed and reasonably believes, and therefore alleges, that said  
15 abuse of the administrative processes initiated and pursued against plaintiff was willful,  
16 intentional, malicious and oppressive in that it represented a deliberate effort to unlawfully  
17 extort substantial sums of money from plaintiff that could not be remotely justified by any  
18 honorable effort within the purview of the powers conferred upon the FTB by the State of  
19 California relating to all aspects of taxation, including the powers of investigation, assessment  
20 and collection. Plaintiff is therefore entitled to an award of exemplary or punitive damages in  
21 an amount sufficient to satisfy the purposes for which such damages are awarded.

22 Claim for Attorneys' Fees as Special Damages Pursuant to NRCP 9 (g)

23 75. Plaintiff was drawn into the FTB's audit without choice and as an innocent party.  
24 As such, plaintiff had every right to expect that the FTB's demand for an audit would be  
25 processed in good faith, according to the law and the facts. Instead, he was subjected to, and  
26 continues to be subjected to, a determined and malicious bad-faith attempt to extort money from  
27 plaintiff under abuse and betrayal of the FTB's lawful taxing powers. The FTB's fraudulent and  
28

1 oppressive scheme includes the intimidating imposition of enormous, indefensible "fraud  
2 penalty" assessments designed to force plaintiff to yield to a major compromise or suffer  
3 significant financial and reputational destruction. The threatened (and consummated) tortious  
4 actions included the outrageously intrusive invasion of his privacy, as aforesaid, and the  
5 publicity of private facts that were expressly extracted from plaintiff under false promises of  
6 strict confidentiality. Plaintiff repeatedly relied on these promises to his extreme and permanent  
7 detriment.

8         76. Plaintiff was forced to disclose his private documents and information with the  
9 FTB under the duress of the FTB's unquestioned powers, but did so with the expectancy of a  
10 forthright, lawful audit. Instead, plaintiff became the intended victim of the FTB, thus forcing  
11 plaintiff to either: (1) succumb to tortious acts that would unlawfully deprive him permanently  
12 of his hard-earned personal property and right not to have his privacy invaded by the publication  
13 of his confidential, private facts as aforesaid; or (2) fight the FTB through the only means  
14 available, to wit: the employment of teams of legal and professional experts to vigorously  
15 defend himself in the audits and the continuing California tax proceedings.

16         77. It was highly foreseeable to the FTB that, absent the success of its scheme to  
17 unlawfully deprive plaintiff of his property through such acts of intimidation as the destruction  
18 of his privacy and the imposition of huge "fraud" penalties, as aforesaid, plaintiff's only  
19 alternative was to vigorously defend himself in the audits and the continuing California tax  
20 proceedings. This required the employment of a team of attorneys and other experts. The  
21 resulting attorneys' fees and other professional fees which plaintiff has incurred, and continues  
22 to incur, were proximately and directly caused and necessitated by the FTB's course of tortious  
23 behavior.

24         78. Plaintiff's incurrence of attorneys' fees and other professional fees are highly  
25 foreseeable damages resulting directly from the FTB's tortious conduct against plaintiff in  
26 pursuit of unlawful objectives. Plaintiff's alternatives were to do nothing and be vanquished by  
27 the overwhelming power and resources of a tenacious and corrupt FTB, or vigorously defend  
28 himself in the audits and the continuing California tax proceedings. Plaintiff therefore claims,

1 as special damages, his attorneys' fees in an amount in excess of \$10,000.00, the total amount  
2 thereof to be proved according to the evidence at trial.

3 SEVENTH CAUSE OF ACTION

4 (For Fraud)

5 79. Plaintiff realleges and incorporates herein by reference each and every allegation  
6 contained in paragraphs 1 through 78, above, as if set forth herein verbatim.

7 80. Plaintiff, who prior to September 26, 1991 had been a long-standing resident and  
8 taxpayer of the State of California, placed trust and confidence in the bona fides of the FTB as  
9 the taxing authority of the State of California when the FTB first contacted him on or about June  
10 1993 regarding the 1991 audit of his California tax obligation; by the time of this first contact,  
11 plaintiff had become a recognized and prominent force in the computer electronics industry, and  
12 he was vitally interested in maintaining both his personal and business security, as well as the  
13 integrity of his reputation as a highly successful inventor and owner and licensor of significantly  
14 valuable patents.

15 81. During the course of seeking information and documents relating to the 1991  
16 "audit," and repeatedly thereafter, the FTB absolutely promised to (i) conduct an unbiased, good  
17 faith audit and (ii) maintain in the strictest of confidence, various aspects of plaintiff's  
18 circumstances, including, but not limited to, his personal home address and his business and  
19 financial transactions and status; and plaintiff's professional representatives took special  
20 measures to maintain the confidentiality of plaintiff's affairs, including and especially obtaining  
21 solemn commitments from FTB agents to maintain in the strictest of confidence (assured by  
22 supposedly secure arrangements) all of plaintiff's confidential information and documents; and  
23 the said confidential information and documents were given to the FTB in return for its solemn  
24 guarantees and assurances of confidentiality, as aforesaid, thereby creating a confidential  
25 relationship in which the FTB was required not to disclose Hyatt's highly personal and  
26 confidential information.

1           82.     Despite the aforesaid assurances and representations of (i) an unbiased, good  
2 faith audit and (ii) confidentiality by the FTB, said assurances and representations were false,  
3 and the FTB knew they were false or believed they were false, or were without a sufficient basis  
4 for making said assurances and representations. Even as the FTB and its agents were continuing  
5 to provide assurances of confidentiality to plaintiff and his professional representatives, and  
6 without notice to either, Sheila Cox and the FTB were in the process of sending the bogus  
7 "DEMAND[S] TO FURNISH INFORMATION" to the utility companies in Las Vegas which  
8 demonstrated that the aforesaid assurances and representations were false, as the FTB revealed  
9 plaintiff's personal home address in Las Vegas, thus making this highly sensitive and  
10 confidential information essentially available to the world through access to the databases  
11 maintained by the utility companies. Specific representative indices of the FTB's fraud include:

12           (a) In a letter by Eugene Cowan, Esq., a tax attorney representing plaintiff, dated  
13 November 1, 1993 and addressed to and received by Mr. Marc Shayer of the FTB, Mr. Cowan  
14 indicated that he was enclosing a copy of plaintiff's escrow instructions concerning the purchase  
15 of his Las Vegas residence, and that "[p]er our discussion, the address of the Las Vegas home  
16 has been deleted." Mr. Cowan ended his letter with the following sentence: "As we discussed,  
17 the enclosed materials are highly confidential and we do appreciate your utmost care in  
18 maintaining their confidentiality." This letter is contained within the files of the FTB, and the  
19 FTB noted in its chronological list of items, the receipt of the aforesaid escrow instructions with  
20 "Address deleted;"

21           (b) In the FTB's records concerning its Residency Audit 1991 of Gilbert P. Hyatt, the  
22 following pertinent excerpts of notations exist:

23           (i) 2/17/95 - "[Eugene Cowan] wants us to make as few copies as possible, as  
24 he is concerned for the privacy of the taxpayer. I [the FTB agent] explained that we will need  
25 copies, as the cases often take a long time to complete and that cases which go to protest can  
26 take several years to resolve[;]"

1 (ii) 2/21/95 - "LETTER FROM REPRESENTATIVE MIKE KERN Earlier document  
2 request was transferred to Eugene Cowan due to the sensitive and confidential nature of  
3 documentation[;]"

4 (iii) 2/23/95 - "Meeting [between Sheila Cox and] . . . Eugene Cowan . . . Mr.  
5 Cowan stressed that the taxpayer is very worried about his privacy and does not wish to give us  
6 copies of anything. I [Sheila Cox] discussed with him our Security and Disclosure policy. He  
7 said that the taxpayer is fearful of kidnapping." [sic] This latter reference to "kidnaping" is a  
8 fabrication by Sheila Cox in an apparent effort to downplay in the FTB's records, the  
9 importance of plaintiff's privacy concerns as those of an eccentric or paranoid; in reality, the  
10 FTB, Sheila Cox and other FTB agents knew that plaintiff had genuine cause for being  
11 concerned about industrial espionage and other risks associated with the magnitude of plaintiff's  
12 position in the computer electronics industry;

13 (iv) On February 28, 1995, Eugene Cowan, Esq. sent a letter to Sheila Cox of  
14 the FTB enclosing copies of various documents. He then stated: "As previously discussed with  
15 you and other Franchise Tax Board auditors, all correspondence and materials furnished to the  
16 Franchise Tax Board by the taxpayer are highly confidential. It is our understanding that you  
17 will retain these materials in locked facilities with limited access[;]" and

18 (v) 8/31/95 - In a letter sent to Eugene Cowan, Esq. by Sheila Cox on  
19 8/31/95 regarding the 1991 audit, Cox stated: "The FTB acknowledges that the taxpayer is a  
20 private person who puts a significant effort into protecting his privacy[;]"

21 (c) Despite the meeting Sheila Cox had with Mr. Cowan on February 23, 1995, and Mr.  
22 Cowan's expression of plaintiff's concern for his privacy, and the explanation by Cox of the  
23 FTB's stringent Security and Disclosure policy (the violation of which may subject the  
24 offending FTB employee to criminal sanctions or termination); and despite Mr. Cowan's letter  
25 to Sheila Cox of February 28, 1995, discussing the highly confidential nature of "all  
26 correspondence and materials furnished to the Franchise Tax Board" and his and plaintiff's  
27 "understanding that you will retain these materials in locked facilities with limited access"  
28 (thereby again underscoring the understanding that all information and documents provided to



1 the FTB would be confidential, including plaintiff's personal residence address), Sheila Cox  
2 sent a "DEMAND TO FURNISH INFORMATION" to the Las Vegas utility companies  
3 including Southwest Gas Corp., Silver State Disposal Service and Las Vegas Valley Water  
4 District, providing each such company with the plaintiff's personal home address, thereby  
5 demonstrating disdain for plaintiff, his privacy concerns and the FTB's assurances of  
6 confidentiality.

7 83. Plaintiff further alleges that from the very beginning of the FTB's notification to  
8 plaintiff and his professional representatives of its intention to audit his 1991 California taxes,  
9 express and implied assurances and representations were made to plaintiff through his  
10 representatives, that the audit was to be an objective, unbiased, and good faith inquiry into the  
11 status of his 1991 tax obligation; and that upon information and belief, based on the FTB's  
12 subsequent actions, the aforesaid representations were untrue, as the FTB and certain of its  
13 agents were determined to share in the highly successful produce of plaintiff's painstaking labor  
14 through means of truth-defying extortion. Indications of this aspect of the fraud perpetrated by  
15 the FTB include:

16 (a) Despite plaintiff's delivery of copies of documentary evidence of the sale of his  
17 California residence on October 1, 1991 to his business associate and confidant, Grace Jeng, to  
18 the FTB, the FTB has contended that the aforementioned sale was a sham, and therefore  
19 evidence of plaintiff's continued California residency and his attempt to evade California  
20 income tax by fraud;

21 (b) Plaintiff supplied evidence to the FTB that he declared his sale, and income and  
22 interest derived from the sale of his LaPalma, California home on his 1991 income tax return,  
23 factors that were ignored by the FTB as it concluded that since the grant deed on the home was  
24 not recorded until June, 1993, the sale was a sham, as aforesaid, and a major basis for assessing  
25 fraud penalties against plaintiff as a means of building the pressure for extortion;

1 (c) Plaintiff, aware of his own whereabouts and domicile, alleges that the FTB has no  
2 credible evidence, and can indeed provide none, that would indicate that plaintiff continued to  
3 own or occupy his former home in La Palma, California which he sold to his business associate  
4 and confidant, Grace Jeng on October 1, 1991;

5 (d) After declaring plaintiff's sale of his California home on October 1, 1991 a "sham,"  
6 the FTB later declined to compare the much less expensive California home with the home  
7 plaintiff purchased in Las Vegas, Nevada (a strong indication favoring Nevada residency)  
8 stating that: "Statistics (size, cost, etc.) comparing the taxpayer's La Palma home to his Las  
9 Vegas home will not be weighed in the determination [of residency], as the taxpayer sold the La  
10 Palma house on 10/1/91 before he purchased the house in Las Vegas during April of 1992."  
11 (Emphasis added.); and

12 (e) The FTB's gamesmanship, illustrated in part, above, constituted an ongoing  
13 misrepresentation of a bona fide audit of plaintiff's 1991 tax year, a factor compounded  
14 egregiously by the quasi-subpoenas sent to Nevada residents, professionals and businesses  
15 without prior notice to plaintiff, and concerning which a number of such official documents  
16 indicated that plaintiff was being investigated from January 1995 to the present, all with the  
17 intent of defrauding plaintiff into believing that he would owe an enormous tax obligation to the  
18 State of California.

19 84. The FTB and its agents intended to induce plaintiff and his professional  
20 representatives to act in reliance on the aforesaid false assurances and representations in order to  
21 acquire highly sensitive and confidential information from plaintiff and his professional  
22 representatives, and place plaintiff in a position where he would be vulnerable to the FTB's  
23 plans to extort large sums of money from him. The FTB was keenly aware of the importance  
24 plaintiff assigned to his privacy because of the danger of industrial espionage and other hazards  
25 involving the extreme need for security in plaintiff's work and place of residence. The FTB also  
26 knew that it would not be able to obtain (at least without the uncertain prospects of judicial  
27 intervention) the desired information and documents with which to develop colorable, ostensible  
28

1 tax assessments and penalties against plaintiff, without providing plaintiff and his professional  
2 representatives with solemn commitments of secure confidentiality.

3 85. Plaintiff, reasonably relying on the truthfulness of the aforesaid assurances and  
4 representations by the FTB and its agents, and having no reason to believe that an agency of the  
5 State of California would misrepresent its commitments and assurances, did agree both  
6 personally and through his authorized professional representatives to cooperate with the FTB  
7 and provide it with his highly sensitive and confidential information and documents; in fact,  
8 plaintiff relied on the false representations and assurances of the FTB and its agents to his  
9 extreme detriment.

10 86. Plaintiff's reasonable reliance on the misrepresentations of the FTB and its  
11 agents, as aforesaid, resulted in great damage to plaintiff, including damage of an extent and  
12 nature to be revealed only to the Court *in camera*, plus actual and consequential damages,  
13 including but not limited to fear, anxiety, mental and emotional distress, in a total amount in  
14 excess of \$10,000.

15 87. The aforesaid misrepresentations by the FTB and its agents were fraudulent,  
16 oppressive and malicious. Plaintiff is therefore entitled to an award of exemplary or punitive  
17 damages in an amount sufficient to satisfy the purposes for which such damages are awarded.

18 Claim for Attorneys' Fees as Special Damages Pursuant to NRCP 9 (g)

19 88. Plaintiff was drawn into the FTB's audit without choice and as an innocent party.  
20 As such, plaintiff had every right to expect that the FTB's demand for an audit would be  
21 processed in good faith, according to the law and the facts. Instead, he was subjected to, and  
22 continues to be subjected to, a determined and malicious bad-faith attempt to extort money from  
23 plaintiff under abuse and betrayal of the FTB's lawful taxing powers. The FTB's fraudulent and  
24 oppressive scheme includes the intimidating imposition of enormous, indefensible "fraud  
25 penalty" assessments designed to force plaintiff to yield to a major compromise or suffer  
26 significant financial and reputational destruction. The threatened (and consummated) tortious  
27 actions included the outrageously intrusive invasion of his privacy, as aforesaid, and the  
28

1 publicity of private facts that were expressly extracted from plaintiff under false promises of  
2 strict confidentiality. Plaintiff repeatedly relied on these promises to his extreme and permanent  
3 detriment.

4 89. Plaintiff was forced to disclose his private documents and information with the  
5 FTB under the duress of the FTB's unquestioned powers, but did so with the expectancy of a  
6 forthright, lawful audit. Instead, plaintiff became the intended victim of the FTB, thus forcing  
7 plaintiff to either: (1) succumb to tortious acts that would unlawfully deprive him permanently  
8 of his hard-earned personal property and right not to have his privacy invaded by the publication  
9 of his confidential, private facts as aforesaid; or (2) fight the FTB through the only means  
10 available, to wit: the employment of teams of legal and professional experts to vigorously  
11 defend himself in the audits and the continuing California tax proceedings.

12 90. It was highly foreseeable to the FTB that, absent the success of its scheme to  
13 unlawfully deprive plaintiff of his property through such acts of intimidation as the destruction  
14 of his privacy and the imposition of huge "fraud" penalties, as aforesaid, plaintiff's only  
15 alternative was to vigorously defend himself in the audits and the continuing California tax  
16 proceedings. This required the employment of a team of attorneys and other experts. The  
17 resulting attorneys' fees and other professional fees which plaintiff has incurred, and continues  
18 to incur, were proximately and directly caused and necessitated by the FTB's course of tortious  
19 behavior.

20 91. Plaintiff's incurrence of attorneys' fees and other professional fees are highly  
21 foreseeable damages resulting directly from the FTB's tortious conduct against plaintiff in  
22 pursuit of unlawful objectives. Plaintiff's alternatives were to do nothing and be vanquished by  
23 the overwhelming power and resources of a tenacious and corrupt FTB, or vigorously defend  
24 himself in the audits and the continuing California tax proceedings. Plaintiff therefore claims,  
25 as special damages, his attorneys' fees in an amount in excess of \$10,000.00, the total amount  
26 thereof to be proved according to the evidence at trial.

EIGHTH CAUSE OF ACTION

(For Breach of Confidentiality — Including Informational  
Privacy)

92. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 91, above, as though set forth herein verbatim.

93. As represented in its own manuals and policies, to obtain voluntary compliance by a taxpayer to produce information requested of the taxpayer during audits, the FTB seeks to gain the trust and confidence of the taxpayer by promising confidentiality and fairness. Moreover, in its position as an auditor, the FTB does gain, both voluntarily and by compulsion if necessary, possession of personal and confidential information concerning the taxpayer that a taxpayer would reasonably expect to be kept confidential and not disclosed to third parties. As a result, a confidential relationship exists between the FTB and the taxpayer during an audit, and continues to exist so long as the FTB maintains possession of the personal and confidential information, that places a duty of loyalty on the FTB to not disclose the highly personal and confidential information it obtains concerning the taxpayer.

94. As described above, in return and in response to the FTB's representations of confidentiality and fairness during the audits, plaintiff did reveal to the FTB highly personal and confidential information at the request of the FTB as an ostensible part of its audits and investigation into plaintiff's residency during the disputed time periods. The FTB, in its position as an auditor, also acquired personal and confidential information concerning plaintiff via other means. Based on its duty of loyalty and confidentiality in its role as auditor, the FTB was required to act in good faith and with due regard to plaintiff's interests of confidentiality and thereby not disclose to third parties plaintiff's personal and confidential information. The FTB, without necessity or justification, nevertheless breached its duty of loyalty and confidentiality by making disclosures to third parties, and continuing to make disclosures to third parties, of plaintiff's personal and confidential information that the FTB had a duty not to disclose.

1           95.     As a result of such extremely outrageous and oppressive conduct on the part of  
2 the FTB, plaintiff has indeed suffered fear, grief, humiliation, embarrassment, anger, and a  
3 strong sense of outrage that any honest and reasonably sensitive person would feel upon breach  
4 of confidentiality by a party in whom trust and confidence has been imposed based on that  
5 party's position.

6           96.     As a direct, proximate, and foreseeable result of the FTB's aforementioned  
7 invasion of plaintiff's privacy, plaintiff has suffered actual and consequential damages in a total  
8 amount in excess of \$10,000.

9           97.     Plaintiff is informed and believes, and therefore alleges, that said breach of  
10 confidentiality by the FTB was intentional, malicious, and oppressive in that such breach  
11 constituted despicable conduct by the FTB entered into with a willful and conscious disregard of  
12 the rights of plaintiff. Plaintiff is therefore entitled to an award of punitive or exemplary  
13 damages in an amount sufficient to satisfy the purposes for which such damages are awarded.

14                   Claim for Attorneys' Fees as Special Damages Pursuant to NRCP 9 (g)

15           98.     Plaintiff was drawn into the FTB's audit without choice and as an innocent party.  
16 As such, plaintiff had every right to expect that the FTB's demand for an audit would be  
17 processed in good faith, according to the law and the facts. Instead, he was subjected to, and  
18 continues to be subjected to, a determined and malicious bad-faith attempt to extort money from  
19 plaintiff under abuse and betrayal of the FTB's lawful taxing powers. The FTB's fraudulent and  
20 oppressive scheme includes the intimidating imposition of enormous, indefensible "fraud  
21 penalty" assessments designed to force plaintiff to yield to a major compromise or suffer  
22 significant financial and reputational destruction. The threatened (and consummated) tortious  
23 actions included the outrageously intrusive invasion of his privacy and breach of confidentiality,  
24 as aforesaid, and the publicity of private facts that were expressly extracted from plaintiff under  
25 false promises of strict confidentiality. Plaintiff repeatedly relied on these promises to his  
26 extreme and permanent detriment.

1           99. Plaintiff was forced to disclose his private documents and information with the  
2 FTB under the duress of the FTB's unquestioned powers, but did so with the expectancy of a  
3 forthright, lawful audit. Instead, plaintiff became the intended victim of the FTB, thus forcing  
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5 of his hard-earned personal property and right not to have his privacy invaded by the publication  
6 of his confidential, private facts as aforesaid; or (2) fight the FTB through the only means  
7 available, to wit: the employment of teams of legal and professional experts to vigorously  
8 defend himself in the audits and the continuing California tax proceedings.

9           100. It was highly foreseeable to the FTB that, absent the success of its scheme to  
10 unlawfully deprive plaintiff of his property through such acts of intimidation as the destruction  
11 of his privacy and the imposition of huge "fraud" penalties, as aforesaid, plaintiff's only  
12 alternative was to vigorously defend himself in the audits and the continuing California tax  
13 proceedings. This required the employment of a team of attorneys and other experts. The  
14 resulting attorneys' fees and other professional fees which plaintiff has incurred, and continues  
15 to incur, were proximately and directly caused and necessitated by the FTB's course of tortious  
16 behavior.

17           101. Plaintiff's incurrence of attorneys' fees and other professional fees are highly  
18 foreseeable damages resulting directly from the FTB's tortious conduct against plaintiff in  
19 pursuit of unlawful objectives. Plaintiff's alternatives were to do nothing and be vanquished by  
20 the overwhelming power and resources of a tenacious and corrupt FTB, or vigorously defend  
21 himself in the audits and the continuing California tax proceedings. Plaintiff therefore claims,  
22 as special damages, his attorneys' fees in an amount in excess of \$10,000.00, the total amount  
23 thereof to be proved according to the evidence at trial.  
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1 WHEREFORE, plaintiff respectfully prays for judgment against the FTB and defendants  
2 as follows:

3 FIRST CAUSE OF ACTION

4 1. For judgment declaring and confirming that plaintiff is a bona fide resident of the  
5 State of Nevada effective as of September 26, 1991 to the present;

6 2. For judgment declaring that the FTB has no lawful basis for continuing to  
7 investigate plaintiff in Nevada concerning his residency between September 26, 1991 through  
8 December 31, 1991 or any other subsequent period down to the present, and declaring that the  
9 FTB had no right or authority to propound or otherwise issue a "Demand to Furnish  
10 Information" or other quasi-subpoenas to Nevada residents and businesses seeking information  
11 concerning plaintiff;

12 3. For costs of suit; and

13 4. For such other and further relief as the Court deems just and proper.

14 SECOND CAUSE OF ACTION

15 1. For actual and consequential damages in a total amount in excess of \$10,000;

16 2. For punitive damages in an amount sufficient to satisfy the purposes for which  
17 such damages are awarded;

18 3. For costs of suit;

19 4. For provable attorneys' fees as special damages pursuant to NRCP 9(g); and

20 5. For such other and further relief as the Court deems just and proper.

21 THIRD CAUSE OF ACTION

22 1. For punitive damages in an amount sufficient to satisfy the purposes for which  
23 such damages are awarded;

24 2. For costs of suit;

25 3. For provable attorneys' fees as special damages pursuant to NRCP 9(g); and

26 4. For such other and further relief as the Court deems just and proper.  
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FOURTH CAUSE OF ACTION

- For actual and consequential damages in a total amount in excess of \$10,000;
- For punitive damages in an amount sufficient to satisfy the purposes for which such damages are awarded;
- For costs of suit;
- For provable attorneys' fees as special damages pursuant to NRCP 9(g); and
- For such other and further relief as the Court deems just and proper.

FIFTH CAUSE OF ACTION

1. For actual and consequential damages in a total amount in excess of \$10,000;
2. For punitive damages in an amount sufficient to satisfy the purposes for which such damages are awarded;
3. For costs of suit;
4. For provable attorneys' fees as special damages pursuant to NRCP 9(g); and
5. For such other and further relief as the Court deems just and proper.

SIXTH CAUSE OF ACTION

1. For actual and consequential damages in a total amount in excess of \$10,000;
2. For punitive damages in an amount sufficient to satisfy the purposes for which such damages are awarded;
3. For costs of suit;
4. For provable attorneys' fees as special damages pursuant to NRCP 9(g); and
5. For such other and further relief as the Court deems just and proper.

SEVENTH CAUSE OF ACTION

1. For actual and consequential damages in a total amount in excess of \$10,000;
2. For punitive damages in an amount sufficient to satisfy the purposes for which such damages are awarded;
3. For costs of suit;
4. For provable attorneys' fees as special damages pursuant to NRCP 9(g); and

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5. For such other and further relief as the Court deems just and proper.

EIGHTH CAUSE OF ACTION

1. For actual and consequential damages in a total amount in excess of \$10,000;

2. For punitive damages in an amount sufficient to satisfy the purposes for which such damages are awarded;

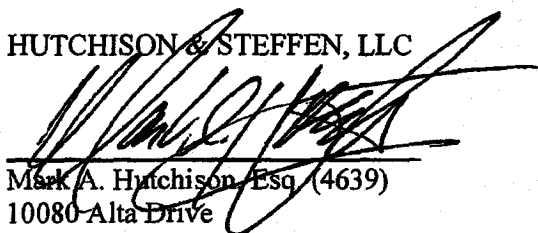
3. For costs of suit;

4. For provable attorneys' fees as special damages pursuant to NRCP 9(g); and

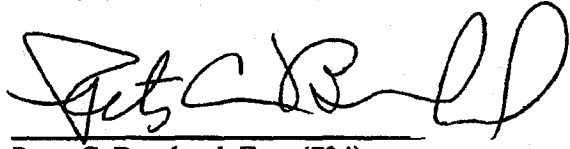
5. For such other and further relief as the Court deems just and proper.

Dated this 18th day of April, 2006.

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12 Las Vegas, NV 89109  
13 Telephone: (702) 650-6565  
14  
15 *Attorneys for Plaintiff Gilbert P. Hyatt*

**DISTRICT COURT**  
**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

**CERTIFICATE OF SERVICE OF SECOND  
AMENDED COMPLAINT**

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

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**CERTIFICATE OF SERVICE**

Pursuant to NRCP 5(b), I certify that I am an employee of BULLIVANT HOUSER  
BAILEY PC and that on this 18<sup>th</sup> day of April, 2006, I caused the above and foregoing  
document entitled SECOND AMENDED COMPLAINT to be served as follows:

[X] by placing same to be deposited for mailing via federal express, in a sealed  
envelope upon which postage was prepaid in Las Vegas Nevada; and/or

[X] Pursuant to EDCR 7.26, to be sent via facsimile; and/or

[X] to be hand-delivered;

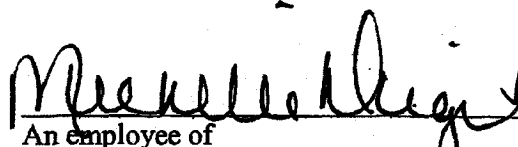
to the attorney(s) listed below at the address and/or facsimile number indicated below:

**via facsimile: (775) 788-2020**

James A. Bradshaw, Esq.  
McDonald Carano Wilson LLP  
100 West Liberty Street  
10<sup>th</sup> Floor  
Reno NV 89501

**via facsimile: 873-9966**

Jeffrey Silvestri, Esq.  
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An employee of  
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