

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2
3 FRANCHISE TAX BOARD OF THE STATE
OF CALIFORNIA,

4 Appellant/Cross Respondent,

5 v.

6 GILBERT P. HYATT,

7 Respondent/Cross Appellant

Supreme Court Case No. 53264

District Court Case No. A38299

Notice of Appeal Filed March 4, 2009

MOTION TO EXTEND TIME FOR
RESPONDENT'S ANSWERING BRIEF

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1 Respondent/Cross-Appellant Gilbert P. Hyatt (“Hyatt”), by and through his attorneys of
2 record, respectfully moves this Court for an order extending the due date for filing Respondent’s
3 Answering Brief by 15 days, to and including January 5, 2010. This Motion is based upon
4 NRAP 26(b), on the points and authorities attached hereto, and on all other papers and pleadings
5 on file herein.¹
6

7 POINTS AND AUTHORITIES

8 I. INTRODUCTION

9 Respondent's Answering Brief and Opening Brief on Cross Appeal is currently due
10 December 21, 2009. Respondent hereby request an extension of 15 days, to and including
11 January 5, 2010. Respondent has worked diligently to complete his Answering Brief and
12 Opening Brief on Cross Appeal by current due date, but for reasons related solely to size and
13 scope of this case and the number of issues raised by Appellant in its 118 page Opening Brief,
14 as well as the issues raised in two amicus briefs filed on behalf of Appellant, totaling 22 and 25
15 pages, respectively, Respondent needs an additional 15 days to finalize and file his Answering
16 Brief and Opening Brief on Cross Appeal.
17

18 Respondent notes that, regrettably for Respondent, this requested 15 day period will fall
19 over the upcoming holiday period. But the requested extension should not inconvenience
20 Appellant as the filing will not take place until after the holiday season, and Appellant will have
21 sufficient time after the holidays to prepare its reply brief.
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23 For the Court's reference, Appellant’s 118-page Opening Brief was submitted on July 20,
24 2009, and accepted for filing as a brief in excess of thirty (30) pages on August 7, 2009.
25

26
27 ¹ Respondent Gilbert P. Hyatt has also filed a cross-appeal, so he is a respondent and a cross-appellant, and
28 appellant Franchise Tax Board is an appellant and a cross-respondent. Because FTB has been denominated the
appellant in this matter, this Motion, for simplicity, references Hyatt as “Respondent” and FTB as “Appellant”,
rather than using the respondent/cross-appellant and appellant/cross-respondent designations.

1 Respondent filed a motion on August 6, 2009, requesting additional time and extended pages, in
2 the event the Court permitted Appellant's extended brief to be filed. On August 21, 2009, this
3 Court granted Respondent's motion in part, giving Respondent 90 days from August 7, 2009
4 (November 5, 2009), as the due date for Respondent's Answering Brief and allowed
5 Respondent's Answering Brief to be 20 pages longer than the Appellant's Opening Brief.

6
7 On October 14, 2009, Respondent requested an additional 45 days for Respondent's
8 Answering Brief to be served and filed, or through December 21, 2009. On November 6, 2009,
9 the Court granted Respondent's motion, indicating that no further extensions would be filed
10 except for extreme and unforeseeable circumstances. Respondent's Answering Brief is nearly
11 ready for filing, but additional time would be well spent in cross-checking citations to the
12 record, finalizing case citations, and otherwise finalizing edits to the Brief, making review easier
13 for the FTB and the Court. This extension is sought solely because of the requirements of this
14 case, including the complexity of the issues and length of the trial, and not because of any other
15 caseload of counsel. Also, for the same reasons stated at the time of Respondent's previous
16 request, Respondent now requests this additional 15 day extension because: (i) as Respondent
17 prepares his brief, addressing the Appellant's Opening Brief and the *amici* briefs, as well as his
18 own cross-appeal, he simply needs additional time to finalize his brief including citing and cross
19 checking his citations to both Appellant's 93-volume Appendix and Respondent's 101-volume
20 Appendix that has been submitted on December 21, 2009, the current due date for his
21 Answering Brief; and (ii) Respondent requires additional time to proof the lengthy document
22 and cite check a large number of legal citations. Respondent is essentially at the proofing stage,
23 but requires some additional time to complete this task.
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1 **II. LEGAL DISCUSSION**

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

7 Prior extensions have been granted, but a short amount of additional time is needed to
8 finalize Answering Brief and Opening Brief on Cross Appeal. Respondent has been working
9 diligently, and long hours on the Answering Brief, now requires the additional 15 days
10 requested in this motion. Respondent asserts that this additional time will be beneficial in terms
11 of presenting Respondent’s arguments as clearly and concisely as possible.

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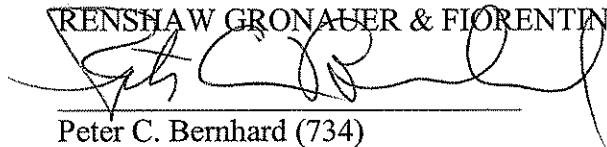
1 **III. CONCLUSION**

2 For the foregoing reasons, Hyatt respectfully requests that the Court grant his Motion to
3 Extend Time for Respondent's Answering Brief and order that Respondent's Answering Brief
4 be due fifteen (15) days after its current due date, moving the due date from December 21, 2009
5 to January 5, 2010.

6 DATED: December ²¹__, 2009

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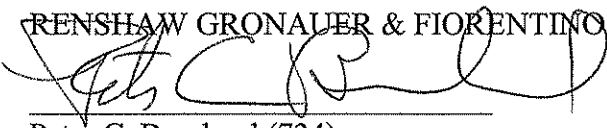
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1 **CERTIFICATE OF COMPLIANCE**

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

11 DATED: December 21, 2009.

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1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRAP 25, I certify that I am an employee of **KAEMPFER CROWELL**
3 **RENSHAW GRONAUER & FIORENTINO** and that on this 21st day of December, 2009, I
4 caused the above and foregoing document entitled **MOTION TO EXTEND TIME FOR**
5 **RESPONDENT'S ANSWERING BRIEF** to be served by the method(s) indicated below:
6

- 7 _____ via U.S. mail, postage prepaid;
- 8 X via Federal Express;
- 9 _____ via hand-delivery;
- 10 _____ via Facsimile;


11 upon the following person(s):

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