

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

2 * * *

3 FRANCHISE TAX BOARD)
4 OF THE STATE OF CALIFORNIA,)
5 Appellant/Cross-Respondent,)
6 vs.)
7 GILBERT P. HYATT,)
8 Respondent/Cross-Appellant.)
9

Case No. 53264

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Dec 22 2009 04:24 p.m.
Tracie K. Lindeman

10 **OPPOSITION TO HYATT'S THIRD MOTION FOR AN EXTENSION OF TIME**
11 **TO FILE RESPONDENT'S ANSWERING BRIEF**

12 Pursuant to NRAP 27, appellant/cross-respondent Franchise Tax Board of the
13 State of California ("FTB") submits its opposition to respondent/cross-appellant Gilbert
14 P. Hyatt's ("Hyatt") third motion for an extension of time in which to file his Answering
15 Brief/Opening Brief on Cross-Appeal. Hyatt's third motion for an extension of time was
16 filed at 2:29 pm on the afternoon that his brief was due.¹

17 In response to Hyatt's second motion for an extension of time, the court issued
18 the following order:

19 On October 14, 2009, respondent/cross-appellant filed a motion
20 requesting a second extension of time to file his combined answering brief
21 and opening brief on cross-appeal, which we grant. Respondent/cross-
22 appellant's brief shall be filed and served on or before December 21, 2009.
23 **No further extensions of time shall be permitted absent demonstration
of extreme and unforeseeable circumstances.** Counsel's caseload will
not be deemed such a circumstance. Varnum v. Grady, 90 Nev. 374, 528
P.2d 1027 (1974).

24 See Order dated November 6, 2009 (emphasis added). The reasons given by Hyatt for
25

26 ¹ FTB served Hyatt with the opening brief on July 20, 2009. Thus, Hyatt has had more
27 than five months in which to prepare his answering brief.
28

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1 his second request for extension of time were “the number of issues raised by
2 Appellant’s Opening Brief, the voluminous record, and the magnitude of the jury
3 damage award,” and the amicus briefs. See October 14, 2009 Motion p.3 ln.10-12, 26-
4 28. Notably these are the exact same reasons Hyatt now asserts in support of his third
5 request for extension, i.e. “but for reasons related solely to size and scope of this case
6 and the number of issues raised by Appellant in its 118 page Opening Brief, as well as
7 the issues raised in two amicus briefs[.]” See December 21, 2009 Motion p.2 ln.13-16.
8 Comparing these identical reasons, it is difficult to conclude that Hyatt has demonstrated
9 either “extreme or unforeseeable circumstances” entitling him to another extension.

10 FTB acknowledges that given Hyatt’s procedural manipulation he effectively gets
11 his third requested extension, notwithstanding his failure to demonstrate “extreme and
12 unforeseen circumstances” as required by this court’s November 6, 2009 Order. Hyatt
13 filed his third request for additional time in the afternoon of his due date and at the
14 beginning of the Christmas holiday week. By the likely time this court has the
15 opportunity to act upon his third request, the additional time Hyatt desires will have
16 passed and he will effectively be afforded the extension he requests.

17 As FTB pointed out in its limited opposition to Hyatt’s last request for an
18 extension of time, Hyatt understands this type of procedural manipulation, and in fact,
19 Hyatt has become very adept at manipulating procedural processes in a variety of
20 settings. Hyatt manipulated the U.S. Patent Office to obtain his microprocessor patent.
21 Hyatt manipulated the FTB’s audit and protest process to avoid payment of assessed
22 taxes. Hyatt manipulated discovery commissioner and district court orders in this case to
23 delay resolution of FTB’s appeal process and to unnecessarily “super seal” the district
24 court record. And now, Hyatt is attempting to manipulate this court.

25 Hyatt has three separate law firms acting as appellate counsel. All three are large
26 firms. In addition, Hyatt privately employs attorneys through his company National
27 LLC, and an accounting firm that too offers litigation support services. With a bit of
28 diligence by all these professionals it would seem that Hyatt should be able to cite check

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1 and proof his briefs (these are the only tasks which Hyatt claims remain outstanding) in a
2 few days.

3 Cite checking and proofreading are laudable activities. Yet Hyatt has not
4 explained why these activities still remain unfinished after five months since FTB served
5 Hyatt with the opening brief, and after this court ordered that no further extensions
6 would be granted absent extreme and unforeseeable circumstances. Surely the need to
7 cite check and proofread a brief is not an extreme and unforeseeable circumstance.

8 For these reasons, FTB opposes Hyatt's third request for an extension of time.

9 Dated this 22nd day of December, 2009.

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing **OPPOSITION TO HYATT'S THIRD MOTION FOR AN EXTENSION OF TIME TO FILE RESPONDENT'S ANSWERING BRIEF** was filed electronically with the Nevada Supreme Court on the 22nd day of December, 2009. Electronic Service of the foregoing document shall be made in accordance with the Master Service List as follows:

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