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IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANCHISE TAX BOARD OF THE STATE  
OF CALIFORNIA,

Appellant,

v.

GILBERT P. HYATT,

Respondent

Supreme Court Case No. 53264

District Court Case No. A-82999  
Electronically Filed  
Jan 05 2010 04:20 p.m.

Notice of Appeal Filed March 4, 2010  
Tia K. Lindeman

**MOTION TO PERMIT EXPANDED  
BRIEFING FOR RESPONDENT'S  
ANSWERING BRIEF AND OPENING  
CROSS APPEAL BRIEF**

**MOTION TO PERMIT EXPANDED BRIEFING FOR RESPONDENT'S  
ANSWERING BRIEF AND OPENING CROSS APPEAL 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 allowing Hyatt’s Answering Brief and  
3 Opening Cross Appeal Brief to exceed the previously-approved expanded length of 30 pages  
4 greater than that of the Franchise Tax Board’s Opening Brief, or 138 pages.<sup>1</sup> After diligent  
5 efforts to address, within 138 pages, all of the issues presented in Appellant’s 118-page brief,  
6 the briefs of the two *amicus curiae* allowed by the Court, and the issues on Respondent’s cross-  
7 appeal, Hyatt has prepared his proposed Respondent’s Brief, attached hereto as Exhibit “A”,  
8 containing 198 pages, which he believes is necessary to address adequately all of the issues.  
9 Therefore, he respectfully requests that this Court grant leave to file a brief containing 198  
10 pages, as attached hereto.

## 11 POINTS AND AUTHORITIES

### 12 I. INTRODUCTION

13  
14 On July 20, 2009, Appellant FTB served and filed its Motion for Permission to File an  
15 Opening Brief in Excess of Thirty Pages (the “FTB Motion”). Much of what the FTB recites in  
16 the FTB Motion applies to Respondent Hyatt’s request here: this case is “sufficiently  
17 extraordinary and compelling to justify” longer briefing; it “must surely be recognized as an  
18 extremely important case”; and the “sheer size and volume of the appellate record is  
19 unparalleled,” including petitions for extraordinary relief before this Court and one writ to the  
20 United States Supreme Court prior to trial.<sup>2</sup> The FTB Motion recites the statistics about the  
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23

24 <sup>1</sup> On July 20, 2009, FTB filed its proposed 118-page Opening Brief, with a motion for leave to file this brief in  
25 excess of thirty (30) pages. On August 6, 2009, Respondent filed his motion to extend time and permit expanded  
26 briefing, without knowing if the FTB’s 118-page brief would be accepted for filing. On the next day, August 7,  
27 2009, this Court granted the FTB’s motion, accepted its 118-page brief for filing. On August 21, 2009, this Court  
28 granted Respondent’s motion to file his Answering Brief and brief in support of cross-appeal, not to exceed 20  
pages more than Appellant’s brief, or 138 pages. Later, this Court extended the due date for Respondent’s brief to  
January 5, 2010, pursuant to its subsequent order dated December 28, 2009.

<sup>2</sup> FTB Motion, 1:15-16; 2:1; 2:14

1 record in this case: 154 witnesses were deposed, over 168,000 documents were exchanged,  
2 there are over 2,300 docket entries, including 23 dispositive motions and 60 motions in limine,  
3 74 trial days were needed (with a 13,000 page trial transcript), with more than 50 witnesses and  
4 thousands of pages of trial exhibits.<sup>3</sup> The FTB's Appendix consists of 93 volumes, and Hyatt's  
5 Appendix contains 101 volumes, which Hyatt believes is not materially duplicative of the FTB  
6 Appendix.

7  
8 In his earlier motion, Hyatt requested permission to file a brief of the same length as allowed  
9 to Appellant, plus thirty (30) additional pages. On August 21, 2009, this Court granted Hyatt's  
10 earlier request but reduced his requested 30-page expansion to 20 pages. Hyatt has now  
11 completed his brief, including cutting as much as possible without affecting adversely his ability  
12 to present his position, and the brief is 198 pages long.

## 13 **II. LEGAL DISCUSSION**

14 Under NRAP 28(g), briefs are not to exceed thirty (30) pages, "[e]xcept by permission of the  
15 court." Respondent submits that good cause exists to grant permission to file said brief in  
16 excess of the currently-approved 138 pages.

17  
18 As Hyatt's earlier motion noted, FTB's Legal Argument in its Opening Brief contains  
19 Subsections A-I, which include its issues on appeal. Each of those subsections include more  
20 sub-issues. In addition, Hyatt must address the briefs of two *amici curiae*, and under NRAP  
21 28(h), Hyatt must also include the issues and argument involved in his cross-appeal. Given the  
22 number of issues raised by Appellant's Opening Brief, the voluminous record, and the  
23 magnitude of the jury damage award, Respondent respectfully submits that additional pages are  
24 justified and will facilitate a full and complete presentation of Hyatt's position. Counsel has  
25

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28 <sup>3</sup> See, generally, the FTB Motion at 2:24-3:8.

1 edited Hyatt's responding brief, to be as concise as possible, but these additional pages are  
2 necessary to provide a complete presentation of Hyatt's positions on these issues.

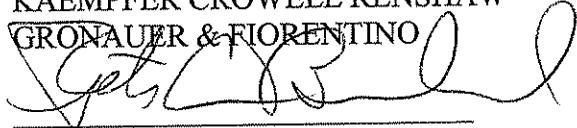
3 **III. CONCLUSION**

4 For the foregoing reasons, Hyatt respectfully requests that the Court grant his Motion to  
5 Permit Expanded Briefing for Respondent's Answering Brief and order that Respondent's  
6 Answering Brief containing one hundred ninety eight (198) pages be filed with the Court.

7  
8 DATED: January 5, 2010.

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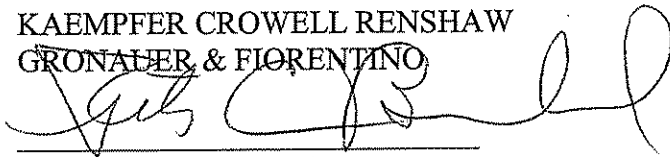
**CERTIFICATE OF COMPLIANCE**

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

DATED: January 5, 2010.

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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 2<sup>nd</sup> day of January, 2010, I  
4 caused the above and foregoing document entitled **MOTION TO PERMIT EXPANDED**  
5 **BRIEFING FOR RESPONDENT'S ANSWERING BRIEF AND OPENING CROSS-**  
6 **APPEAL BRIEF** to be served by the method(s) indicated below:

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

12 to the attorney(s) listed below at the address indicated:

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