

1 **IN THE SUPREME COURT OF THE STATE OF NEVADA**

2
3 **FRANCHISE TAX BOARD OF THE STATE**
4 **OF CALIFORNIA,**

5 Appellant/Cross-respondent,

6 v.

7 **GILBERT P. HYATT,**

8 Respondent/Cross-appellant.
9

Supreme Court Case No. 53264
District Court Case No. A382999
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Tracie K. Lindeman

Notice of Appeal Filed March 4, 2009

**MOTION FOR LEAVE TO FILE SUR-
REPLY OF 30 PAGES IN PARTIAL
RESPONSE TO THE FTB'S 145 PAGE
REPLY BRIEF**

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*Attorneys for Respondent/Cross-Appellant
Gilbert P. Hyatt*

1 Respondent/Cross-Appellant Gilbert P. Hyatt ("Hyatt"), by and through his attorneys of
2 record, respectfully moves this Court for an order granting leave to file a Sur-Reply of 30 pages
3 in partial response to Appellant/Cross-Respondent FTB's 145 Reply Brief. This Motion is based
4 on NRAP 28(c) (no additional briefs are allowed without leave of the Court), NRAP 27
5 (motions), the points and authorities attached hereto, and all other papers and pleadings on file
6 herein.

7 POINTS AND AUTHORITIES

8 I. INTRODUCTION

9 Hyatt moves this Court for an order granting him leave to file a 30 page sur-reply brief
10 in response to the FTB's 145 page reply brief. Hyatt requests leave to file the accompanying
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18 and address in his 182-page answering brief the issues affirmatively asserted by the FTB in its
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27 Hyatt limits his proposed sur-reply to these select issues and does not herein address the endless
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1 necessary, despite the hundreds of pages of briefing submitted thus far by the parties, so that
 2 Hyatt has the opportunity to address arguments the FTB deems material and dispositive but
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4 5 **II. ARGUMENT**

6 Pursuant to NRAP 28(c), “[a] reply brief . . . must be limited to answering any new matter
 7 set forth in the opposing brief.” Rather than answering Hyatt’s arguments in the answering
 8 brief, the FTB has raised new issues in the reply brief, and has greatly expanded its arguments
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21 The FTB knew full well that at trial Hyatt argued that intent was demonstrated by, among
 22 other evidence, the FTB’s bad faith.⁵ If the FTB wanted to argue, as it does in its reply, that
 23 Hyatt should not have been allowed to present evidence of bad faith at trial, the FTB should

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 25 ¹ FTB Opening Brief, at 52-54.

26 ² Hyatt’s Answering Brief, at 57-60.

27 ³ FTB Opening Brief, at 70, et seq.

28 ⁴ *Id.*, at 76.

⁵ RT: July 22, 2008, 39:22-41:20, July 23, 2008, 38:8-14; July 30, 2008, 30:5-20, 40:1-41:18, 60:16-61:11, 101:3-13.

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9 The FTB's reply cites 101 legal authorities not cited in its opening brief or Hyatt's answering
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 15 that was never before the jury and in some instances was never before the District Court except
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 28 Similarly the FTB uses its reply to argue and submit purported new evidence regarding its assertion that Hyatt and
 Ms. Jeng backdated the deed under which Hyatt sold her the LaPalma house. See FTB Reply, p. 12, fn. 10. The
 new evidence cited by the FTB consists of the notary's unsworn statement and her notary log. 34 ARA 8452, 8478-
 79. These documents were listed as pre-trial exhibits by the FTB (Trial Exhibits 2653 and 2654) but were never
 offered or admitted at trial nor put forth as part of the FTB's opening brief.

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 never offered or admitted at trial.

1
2 **III. CONCLUSION**

3 The FTB attempts to use its 145 page reply brief to unfair advantage by using expanded
4 briefing to inject new issues, arguments and authorities in its reply. Realizing the briefing must
5 end at some point, but also needing to address new and vastly expanded issues set forth by the
6 FTB in its reply, Hyatt seeks permission from this Court for leave to file the accompanying sur-
7 reply brief of up to 30 pages.

8 DATED: August 13, 2010

9
10 HUTCHISON & STEFFEN, LTD.

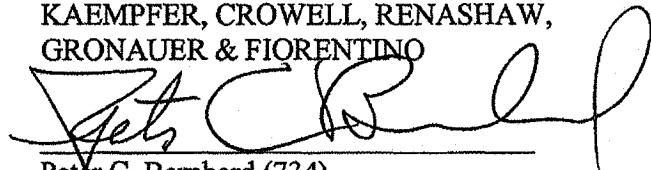
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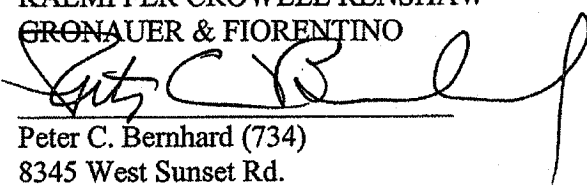
CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this **MOTION FOR LEAVE TO FILE SUR-REPLY OF 30 PAGES IN PARTIAL RESPONSE TO THE FTB'S 145 PAGE REPLY 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: August 13, 2010.

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I certify that I am an employee of **KAEMPFER CROWELL
RENSHAW GRONAUER & FIORENTINO** and that on this 13 day of August, 2010, I
caused the above and foregoing document entitled **MOTION FOR LEAVE TO FILE SUR-
REPLY OF 30 PAGES IN PARTIAL RESPONSE TO THE FTB'S 145 PAGE REPLY
BRIEF** to be served by the method(s) indicated below:


_____	via U.S. mail, postage prepaid;
<u> X </u>	via Federal Express;
_____	via hand-delivery;
_____	via Facsimile;

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

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An employee of Kaempfer Crowell
Renshaw Gronauer & Fiorentino

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2 **III. CONCLUSION**

3 The FTB attempts to use its 145 page reply brief to unfair advantage by using expanded
4 briefing to inject new issues, arguments and authorities in its reply. Realizing the briefing must
5 end at some point, but also needing to address new and vastly expanded issues set forth by the
6 FTB in its reply, Hyatt seeks permission from this Court for leave to file the accompanying sur-
7 reply brief of up to 30 pages.

8 DATED: August 13, 2010

9
10 HUTCHISON & STEFFEN, LTD.

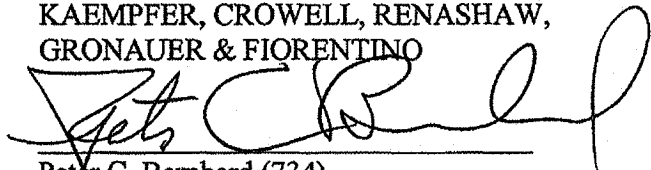
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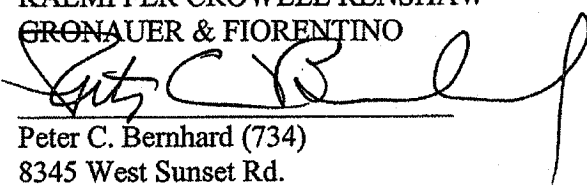
CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this **MOTION FOR LEAVE TO FILE SUR-REPLY OF 30 PAGES IN PARTIAL RESPONSE TO THE FTB'S 145 PAGE REPLY 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: August 13, 2010.

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I certify that I am an employee of **KAEMPFER CROWELL
RENSHAW GRONAUER & FIORENTINO** and that on this 13 day of August, 2010, I
caused the above and foregoing document entitled **MOTION FOR LEAVE TO FILE SUR-
REPLY OF 30 PAGES IN PARTIAL RESPONSE TO THE FTB'S 145 PAGE REPLY
BRIEF** to be served by the method(s) indicated below:


_____	via U.S. mail, postage prepaid;
<u> X </u>	via Federal Express;
_____	via hand-delivery;
_____	via Facsimile;

upon the following person(s):
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