

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.: A382999

Notice of Appeal Filed March 4, 2009

MOTION TO EXTEND TIME AND PERMIT EXPANDED BRIEFING FOR RESPONDENT'S ANSWERING BRIEF

FILED

AUG 06 2009

TRACIE K. LINDEMAN
CLERK OF SUPREME COURT
BY *[Signature]*
DEPUTY CLERK

MOTION TO EXTEND TIME AND PERMIT EXPANDED BRIEFING FOR RESPONDENT'S ANSWERING BRIEF

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09-19221

1 Respondent Gilbert P. Hyatt (“Hyatt”), by and through his attorneys of record,
2 respectfully moves this Court for an order setting a briefing schedule for filing Respondent’s
3 Answering Brief and for allowing said brief to exceed thirty (30) pages. This Motion is based
4 upon NRAP 26(b), on the points and authorities attached hereto, and on all other papers and
5 pleadings on file herein.¹

6 **POINTS AND AUTHORITIES**

7 **I. INTRODUCTION**

8 Appellant’s proposed 118-page Opening Brief was submitted on July 20, 2009, attached to
9 Appellant’s motion for permission to file its brief in excess of thirty (30) pages. Respondent is
10 not aware if Appellant’s motion has been ruled upon, or if Appellant’s brief has been accepted
11 for filing. Under NRAP 31, Respondent’s Answering Brief is due thirty (30) days after service
12 of appellant’s opening brief. Therefore, if Appellant’s Opening Brief is accepted for filing by
13 the Court, and if it is deemed served on July 20, 2009, then Respondent’s Answering Brief
14 would be due on or before August 19, 2009. Without knowing whether Appellant will be
15 entitled to file its 118-page brief, and without knowing what Appellant’s brief will include, if this
16 Court determines that fewer than 118 pages will be allowed, Respondent is concerned that he
17 may not have sufficient time to file his answering brief by August 19.

18 In this motion, then, Respondent requests that this Court enter a separate scheduling order
19 that Respondent’s Answering Brief be due ninety (90) days after Appellant serves and files its
20 opening brief, once it is permitted to be filed in compliance with the order of this Court deciding
21 Appellant’s motion for permission to file a brief in excess of thirty (30) pages. Respondent
22

23 ¹ Respondent Gilbert P. Hyatt has also filed a cross-appeal, so he is a respondent and a cross-appellant,
and 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”

1 requests ninety (90) days for several reasons: (i) the Judgment from which this appeal was taken
2 was entered on September 8, 2008, and the Notice of Appeal to this Court was served and filed
3 on February 10, 2009. Therefore, Appellant had approximately 315 days from the entry of
4 judgment and 160 days from its Notice of Appeal to prepare its Opening Brief. Depending on
5 the date the Opening Brief is served and filed, an additional 90 days for Respondent would allow
6 him 110-120 days from July 20, 2009, to serve and file his brief; (ii) the Appellant's Appendix
7 contains more than 23,000 pages, and because Appellant did not consult with Respondent on a
8 Joint Appendix, Respondent must also prepare any objections to Appellant's Appendix, as well
9 as Respondent's Appendix for service along with his brief; (iii) Respondent may have to address
10 issues and arguments presented by the proposed *amici*; (iv) although Respondent believes that
11 the appellate issues are fairly straight-forward, the proposed Opening Brief raises constitutional
12 and policy issues that must be addressed, even if not necessary to resolution of the appeal; and
13 (v) the proposed Opening Brief includes an extensive statement of facts, which include "facts"
14 that simply must have been rejected by the jury, in order to reach its verdict.

15 In addition, Respondent requests that this Court include in any such scheduling order
16 permission for Respondent to file an answering brief in excess of thirty (30) pages. Respondent
17 suggests that he be granted permission to file a brief of the same length as allowed to Appellant,
18 plus thirty (30) additional pages. Respondent requests the additional thirty (30) pages because,
19 under NRAP 28(h), Respondent must present his issues and argument involved in his cross-
20 appeal, as well as his answer to the brief of the appellant. Also, two motions are currently
21 pending to allow *amicus* briefs in support of Appellant, and Respondent will need additional
22 pages to answer the *amici*, if those motions are granted and the proposed *amici* briefs are filed.
23

24 and FTB as "Appellant", rather than using the respondent/cross-appellant and appellant/cross-respondent designations.

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...” Under NRAP 28(g), briefs are not to exceed thirty (30)
5 pages, “[e]xcept by permission of the court.” Respondent submits that good cause exists to
6 extend the due date for Respondent’s Answering Brief, as requested in this motion, and that this
7 Court can and should grant permission to file said brief in excess of thirty (30) pages.

8 In its proposed Opening Brief, FTB’s Legal Argument contains Subsections A-I, which
9 include its issues on appeal. Each of those subsections include more sub-issues. These
10 challenge virtually every pre-trial, trial, and post-trial ruling of the district court, including a
11 challenge to the viability of each of Respondent’s claims for relief, an argument that comity
12 requires a decision in Appellant’s favor, and various other issues claimed to be dispositive in
13 Appellant’s favor. With this shotgun approach taken by Appellant, Respondent must address
14 and refute each of these issues, requiring additional time and briefing to address adequately. The
15 Appellant’s Appendix includes 93 volumes, containing 23,245 bates-numbered pages. In
16 addition, under NRAP 28(h), Respondent’s answering brief must also include the issues and
17 argument involved in Respondent’s cross-appeal. Given the number of issues raised by
18 Appellant’s proposed Opening Brief, the voluminous record, and the magnitude of the jury
19 damage award, Respondent respectfully submits that additional time and volume is appropriate
20 for Respondent’s brief.

21 **III. CONCLUSION**

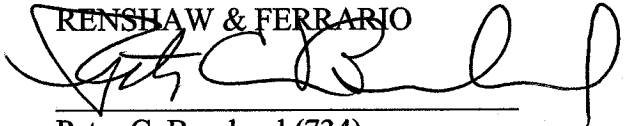
22 For the foregoing reasons, Hyatt respectfully requests that the Court grant his Motion to
23 Extend Time and Permit Expanded Briefing for Respondent’s Answering Brief and order that
24 Respondent’s Answering Brief be due ninety (90) days after service and filing of Appellant’s

1 Opening Brief, and that Respondent's Answering Brief may contain not more than thirty (30)
2 pages, in addition to the length permitted for Appellant's Opening Brief.

3 DATED: August 5, 2009

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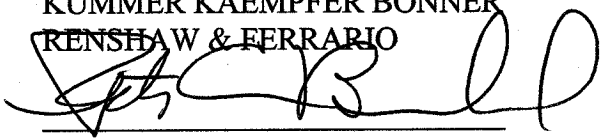
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CERTIFICATE OF COMPLIANCE

I hereby certify that I have read this **MOTION TO EXTEND TIME AND PERMIT EXPANDED BRIEFING FOR RESPONDENT'S ANSWERING 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 5, 2009.

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CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I certify that I am an employee of KUMMER KAEMPFER
BONNER RENSHAW & FERRARIO and that on this 5th day of August, 2009, I caused the
above and foregoing document entitled **MOTION TO EXTEND TIME AND PERMIT
EXPANDED BRIEFING FOR RESPONDENT'S ANSWERING BRIEF** to be served by the
method(s) indicated below:

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

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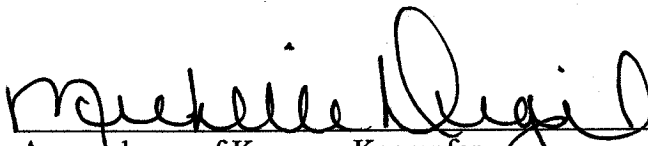
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