

1 IN THE SUPREME COURT OF THE STATE OF NEVADA

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3 FRANCHISE TAX BOARD OF
4 THE STATE OF CALIFORNIA,

5 Appellant,

6 v.

7 GILBERT P. HYATT,

8 Respondent

Electronically Filed
Jun 27 2012 11:04 a.m.
CASE NO: 53264
Tracie K. Lindeman
Clerk of Supreme Court

9 **APPELLANT'S MOTION FOR PERMISSION TO REPLY**
10 **TO RESPONDENT'S SUPPLEMENT**

11 Appellant FTB hereby requests permission to file a reply to "Respondent's Supplement
12 Provided at the Request of the Court," filed by respondent Hyatt on June 26, 2012, if the court
13 is inclined to consider his supplement.¹

14 At the oral argument on June 18, 2012, Justice Hardesty requested FTB's counsel to
15 provide the court with a supplement containing appendix citations to the record where FTB
16 sought dismissal of the intentional infliction of emotional distress (IIED) claim based upon the
17 statute of limitations. Justice Hardesty also indicated that "if [Hyatt's] counsel wants to point
18 out it's missing, let us know."

19 On June 22, 2012, FTB filed its supplement, providing the court with appendix citations
20 FTB believes were responsive to Justice Hardesty's request. FTB's supplement did not contain
21 points and authorities or legal arguments pertaining to the statute of limitations issue. Instead,
22 FTB's supplement consisted of approximately three and one-half pages of appendix citations
23 and brief descriptions of the documents located at the referenced appendix pages, showing
24 places in the record where FTB believes it sought dismissal of the IIED claim based upon the
25 statute of limitations.

26 On June 26, 2012, Hyatt filed his 8-page supplement, with 44 pages of exhibits.
27 Although Justice Hardesty's request was narrow and unambiguous, simply allowing Hyatt's

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¹In the present motion, FTB will refer to Hyatt's June 26, 2012 filing as "Hyatt's
supplement."

1 counsel to point out if FTB's argument for dismissal of the IIED claim is "missing" from the
2 record, Hyatt's supplement is far beyond the scope of Justice Hardesty's request.

3 For example, Hyatt's supplement contains arguments regarding the damages limitation
4 imposed by the discovery commissioner and the trial court. (Hyatt's supplement, page 2,
5 footnote 3.) Hyatt's supplement includes argument regarding jury instruction 24, dealing with
6 consideration of FTB's audit conclusions. (*Id.*) Hyatt's supplement also contains legal
7 arguments regarding appellate jurisprudence and preserving issues (Hyatt's supplement, pages
8 2-3, footnotes 5 and 6.), and extensive argument and citations to the record regarding the merits
9 of the statute of limitations issue (i.e., when the statute of limitations began to run). (Hyatt's
10 supplement, pages 5-7.)


11 Moreover, Hyatt's supplement contains exhibits, which include, among other things, RA
12 14113, which was an exhibit to Hyatt's opposition to a motion in limine (which did not deal
13 with the statute of limitations), and RA 000072, which was an exhibit attached to a discovery
14 motion in 1999 (which did not deal with the statute of limitations).

15 If the court is inclined to consider Hyatt's supplement, FTB should be given an
16 opportunity (1) to explain why these matters in Hyatt's supplement exceeded the scope of
17 Justice Hardesty's request; (2) to show that Hyatt has improperly used Justice Hardesty's narrow
18 request as a vehicle for more briefing on appellate issues; and (3) to provide a fair reply to
19 Hyatt's contentions in his supplement. This is particularly appropriate in light of the importance
20 of the statute of limitations issue relating to Hyatt's IIED claim. We simply request an
21 opportunity to reply, if the court is inclined to consider Hyatt's supplement.

22 If the court grants this motion, we request ten calendar days in which to file the reply.

23 DATED: June 27, 2012

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CERTIFICATE OF MAILING

I certify that I am an employee of Lemons, Grundy & Eisenberg and that on this date Appellant's Motion for Permission to Reply to Respondent's Supplement was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master list as follows:

- Carla Higginbotham
- Megan Starich
- Charles Howle
- Peter Bernhard
- Mark Hutchison
- Pat Lundvall
- Michael Wall
- Daniel Polsenberg

I further certify that on this date I served a copy, postage prepaid, by U.S. Mail to:

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DATED: 6/27/12

