

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

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

4 Appellant/Cross-respondent,

5 v.

6 **GILBERT P. HYATT,**

7 Respondent/Cross-appellant.
8

Supreme Court Case No. 53264

District Court Case No. 03-0099
Notice of Cross-Appeal filed 11/11/09
2009
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Clerk of Supreme Court

9 **APPEAL**

10 from the Eighth Judicial District Court, Clark County
11 **THE HONORABLE JESSIE WALSH, District Judge**

12
13 **RESPONDENT GILBERT P. HYATT'S PETITION FOR REHEARING**
14

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PETITION FOR REHEARING

Pursuant to NRAP 40, Respondent Gilbert P. Hyatt ("Respondent" or "Hyatt") submits this Petition for Rehearing in response to the Court's September 18, 2014, Opinion that affirmed in part and reversed in part the underlying district court judgment and remanded the matter to the district court for further proceedings.

I. Issues presented:

- A. **Did the Court overlook or misapprehend the evidentiary record from the underlying trial when it concluded that Hyatt's *Nevada address* had been disclosed in public records and was publicly available prior to the FTB's public dissemination of the address?**
- B. **Did the Court overlook or misapprehend the law when it concluded that the FTB's mass public dissemination of Hyatt's social security number was not actionable because it was contained in decades-old court records?**
- C. **Should the Court therefore grant a rehearing on the issue of whether Hyatt established the necessary requirements for his invasion of privacy claims of intrusion upon seclusion and public disclosure of private facts?**

II. Summary of argument and relief requested.

Nevada "address" not in the public record.

The Court reversed the jury verdict and resulting judgment in Hyatt's favor on his claims for intrusion upon seclusion and public disclosure of private facts on the basis that Hyatt's "address" was part of the public record from long-ago California divorce and probate cases and one business license application. But the Court referenced evidence pertaining to Hyatt's *California address* before he moved to Nevada (identified in the decades-old court records) and his accountant's office address in Nevada on Charleston Blvd. (identified in a business license application) that was used by Hyatt for meetings and for the business license application. The

1 FTB wrongly cited this evidence in arguing Hyatt's "address" was in the public
2 record. (FTB Opening Brief, at 74-75, 81.)¹ The Court then referenced this evidence
3 in its Opinion finding that Hyatt's "address" was in the public record. (Opinion, at 6-
4 27.)

5 The Court did not reference evidence pertaining to Hyatt's private and
6 confidential home/office *Nevada address* on Tara that he purchased in April of 1992
7 specifically for privacy and security. But it was Hyatt's private *Nevada address* on
8 Tara that was the subject of his claims for intrusion upon seclusion and public
9 disclosure of private facts. Hyatt's briefing and the evidence cited therein addressed
10 this point. (Hyatt's Answering Brief, at 10-11, 36, 38, 94-95, 105.) The Court
11 therefore overlooked or misapprehended the evidence regarding Hyatt's private and
12 confidential Nevada address on Tara, which was not publicly available prior to the
13 FTB's disclosures thereof.

14 In this regard, at trial it was demonstrated that upon moving to Nevada in 1991
15 and purchasing his first house there on Tara in April 1992, Hyatt took significant
16 steps to maintain the privacy and confidentiality of that address. The evidence
17 demonstrated that Hyatt purchased the Nevada property on Tara through a trust so
18 that he could not be identified with that Nevada address in the County Recorder and
19 County Assessor's offices. Similarly, utilities for the Nevada property were opened
20 by and put in the names of third parties, further concealing the fact of his ownership
21 and use of the premises. This was important because Hyatt was an independent
22 inventor who did his research and development work in this Nevada property, which
23 was his home/office. The evidence also demonstrated that Hyatt's Nevada property
24 had three security systems and that Hyatt had significant concerns about industrial
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26 ¹ The documents cited in the FTB's briefing and the addresses listed therein are self-
27 evident. The purpose and use of the Charleston Blvd. address was clearly explained
28 by Hyatt with no contradiction by the FTB at trial. (RT: April 28, 88:17-93:21.)

1 espionage, as he maintained highly confidential and valuable information relating to
2 his research and development work, his patents and his pending patent applications at
3 that private and confidential Nevada property.

4 It was Hyatt's private Nevada address on Tara therefore that he asked the FTB
5 at the outset of the audit to keep confidential. The FTB agreed but failed to keep its
6 promise. This private and confidential Tara address was the issue in regard to
7 Hyatt's "address" in the two invasion of privacy causes of action.

8 The Court therefore overlooked or misapprehended the evidence when it held
9 that Hyatt failed to establish the requirements for his intrusion upon seclusion and
10 public disclosure of private facts claims. In fact, the Nevada address on Tara was not
11 connected to Hyatt in the public record, and Hyatt had every expectation of privacy
12 in this address when it was publically disclosed by the FTB.

13 *Mass dissemination of social security number*

14 The Court also overlooked or misapprehended the legal authority that holds
15 when private information such as a social security number is widely disseminated,
16 even if this private information is "publicly" available in decades-old court records or
17 by narrow and discreet searches of public records, the mass publication is still an
18 invasion of privacy. A person has a reasonable expectation of privacy in his or her
19 social security number even though it may have been disclosed in certain
20 circumstances, because almost everyone's social security number is in some kind of
21 public record. Courts therefore have consistently held that social security numbers
22 are private information and that the mass dissemination of them is actionable.

23 The Court's ruling on this point is to the contrary and implicates serious public
24 policy issues, since it means that virtually no Nevada citizen has an expectation of
25 privacy in his or her social security number. Almost everyone's social security
26 number is contained somewhere in a "public" record, but according to the Court's
27 ruling, a third party can engage in mass re-publication of anyone's social security
28

1 number with impunity, since no one can have an objective expectation of privacy in
2 his or her social security number. This is wrong, and it cannot and should not be the
3 law in Nevada.²

4 The Court therefore overlooked or misapprehended the law when it held that
5 Hyatt failed to establish the requirements for his intrusion upon seclusion and public
6 disclosure of private facts claims simply because, like almost every Nevada citizen,
7 his social security number was contained in decades-old government records.

8 ***Relief requested***

9 Two separate grounds exist to grant this petition for rehearing on the issue of
10 whether the jury's verdict and the resulting judgment in favor of Hyatt on his claims
11 for intrusion upon seclusion and public disclosure of private facts should be affirmed
12 instead of reversed, as this Court ruled in its September 18, 2014 Opinion. Hyatt
13 therefore seeks a rehearing on the issue of whether he established at trial, as the jury
14 determined, the requirements for his claims for intrusion upon seclusion and public
15 disclosure of private facts. Further, if a rehearing is granted, after which it is
16 determined that in fact Hyatt did establish the requirements for these two invasion of
17 privacy claims, the jury's award of damages for invasion of privacy should be
18 reinstated or, at a minimum, a new trial on damages for these invasion of privacy
19 claims should be ordered — similar to the Court's ruling ordering a new trial on
20 damages for Hyatt's intentional infliction of emotional distress claim.

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24 ² This Court held *in this case* in 2002 that “We believe that greater weight is to be
25 accorded Nevada’s interest in protecting its citizens from injurious intentional torts
26 and bad faith acts committed by sister states’ government employees . . .” in
27 allowing Hyatt’s intentional tort claims to proceed to trial. (5 AA 01190.) For that
28 same reason, the Court should grant this Petition for Rehearing on the issue of the
FTB’s mass dissemination of Hyatt’s social security number.

1 **III. The Court overlooked or misapprehended the evidence in regard to**
2 **whether Hyatt’s “Nevada” address was in the public record prior to**
3 **disclosures by the FTB.**

4 **A. The Court’s ruling relative to Hyatt’s “address” was based on the**
5 **FTB’s inaccurate citation to evidence of Hyatt’s prior California**
6 **address being in the public record.**

7 In its September 18, 2014 Opinion, the Court concluded that Hyatt’s “name,
8 address, and social security number” had been publicly disclosed in decades-old
9 California court records before being disclosed by the FTB, and his address had been
10 disclosed in a business license application by Hyatt. (Opinion, at 26-27.)³ The Court
11 therefore held that this information, including Hyatt’s “address,” was in the public
12 record and Hyatt lacked an objective expectation of privacy in that information. *Id.*
13 As a result, the Court found that Hyatt “cannot meet the necessary requirements to
14 establish his invasion of privacy causes of action for intrusion upon seclusion and
15 public disclosure of private facts” and reversed the judgment in Hyatt’s favor on
16 those two claims.

17 The premise of the Court’s reversal of the judgment on the two privacy claims
18 is wrong. As the evidence from the trial established, it was Hyatt’s new address *in*
19 *Nevada* on Tara, after moving from California, for which Hyatt took painstaking
20 measures to protect and did not publicly disclose. It was the FTB’s disclosures of
21 Hyatt’s private address *in Nevada* on Tara, *not* his old address in California or his
22 accountant’s office on Charleston Blvd. used by Hyatt for meetings and for his
23 business license, upon which Hyatt based his claims for intrusion upon seclusion and
24 public disclosure of private facts. The Court has overlooked or misapprehended the
25 evidence on this point.

26
27 ³ The FTB made these arguments on pages 74-75 and 81 of its Opening Brief (citing
28 78AA19346-48, 19369-78, 19393, 1940, 19425 and then 78 AA19429).

1 **B. Hyatt’s “Nevada” address on Tara was not in the public records,**
2 **until the FTB directly and publicly disclosed it, and he therefore had**
3 **a reasonable expectation of privacy in the Tara address at the time**
4 **the FTB disclosed it.**

5 At trial and in the briefing that was submitted to this Court on the issue of
6 whether Hyatt established the requirements for his claim of intrusion upon seclusion
7 and public disclosure of private facts, Hyatt was precise and consistent in asserting
8 and establishing that it was his private *Nevada* address on Tara that was at issue and
9 in which he had a reasonable expectation of privacy, until it was improperly
10 disseminated by the FTB. (Hyatt’s Answering Brief, at 36, 38, 100-101.)⁴

11 Yet, the FTB, in its briefing to this Court, confused and conflated these facts
12 arguing that Hyatt’s “address” was contained in old California court records and a
13 business license application. (FTB Opening Brief, at 74-75, 81.) But the FTB failed
14 to cite evidence that Hyatt’s Nevada address on Tara was in the public record. Citing
15 evidence that *other* addresses were in the public record is not relevant to and does not
16 support a position that Hyatt’s Nevada address on Tara, the address at issue, was in
17 the public record. It was not.

18 The FTB made other arguments regarding Hyatt’s address being in the public
19 record that were correctly not adopted by the Court. (FTB Opening Brief, at 74-75.)
20 For example, the FTB cited Hyatt’s voter registration in November 1991 (before
21 Hyatt had purchased the Tara property) and in 1994, but neither listed the Tara
22 property address. (RA 77 AA19100 - 02.) The FTB also cited a 1999 voter
23 registration, but this was years after the FTB disclosures during the audits between
24 1993 and 1995. The FTB also referenced a visit to Hyatt’s *California* home by
25 reporters before Hyatt moved to Nevada. The FTB wrongly implied that the

26 ⁴ Indeed, during the audit the FTB could not find any connection between Hyatt and
27 the Tara property address. The FTB knew Hyatt kept it confidential and out of the
28 public record. (See 68 AA16796.)

1 reporters disclosed in the press Hyatt's address, and that this put the address in the
2 public record. (FTB Opening Brief, at 81-82.) But the cited evidence again
3 addressed Hyatt's California address,⁵ not Hyatt's Nevada address on Tara, which is
4 the one at issue in regard to Hyatt's privacy claims.

5 There was substantial evidence from which the jury could have concluded, and
6 did conclude, that Hyatt's private Nevada address on Tara, which he took great effort
7 to keep private and confidential, was not available in the public record before its
8 direct and public disclosure by the FTB. (Hyatt's Answering Brief, at 36, 38; 83RA
9 020746 - 751; RT: April 24, 180:24-182:8; May 14, 163:8-17.)

10 There was also clear, unrefuted evidence that the FTB disclosed Hyatt's
11 confidential Nevada address on Tara multiple times in violation of its commitments
12 to Hyatt to keep it confidential. Hyatt's private Nevada address on Tara was
13 disclosed in demand letters sent by the FTB to third parties. (RA 020746 - 84 RA
14 020751.) This was despite the fact that Hyatt had taken significant steps to protect
15 the secrecy of this address and the FTB had promised to keep it private and
16 confidential.

17 For example, the evidence demonstrated that Hyatt purchased his Nevada
18 house on Tara through a trust so that his name was not on the property records and he
19 could not be identified with the Nevada address on Tara. (RT: April 24, 180:24-
20 182:8; May 14, 163:8-17.) Similarly, utilities for the Nevada house were *not put in*
21 *his name*, further protecting his ownership and use of the premises from the public

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23 ⁵ The only document cited by the FTB that even remotely linked Hyatt to the Tara
24 property was a copy of a check from Hyatt paying the property taxes, but this is a
25 check deep in the County Treasurer's files that the FTB obtained during the
26 litigation. It is hardly readily accessible to the public. (63 AA 25717-21.) And even
27 that check did not list, state or identify the Tara address as Hyatt's address.
28 Furthermore, the check could not be found by searching the public record per se, it
was only found by FTB because FTB knew the address and accessed the files
already knowing Hyatt had purchased the property in a trust.

1 eye. (RT: May 13, 58:19-59:15, May 15, 162:10-13.) The evidence further
2 demonstrated that Hyatt’s Nevada address on Tara had three security systems and
3 that Hyatt had concerns about industrial espionage, and it was also his office in
4 which he maintained highly confidential and valuable information relating to his
5 research and development work, his patents and his pending patent applications.
6 (RT: April 24, 180:24-182:8; May 14, 163:8-17.)

7 The jury found that the FTB, after promising to keep Hyatt's information, such
8 as his Nevada address on Tara, private and confidential, and knowing that Hyatt did
9 not expect or intend to have his private information disseminated, then intentionally
10 widely published Hyatt's personal identifying information — information the FTB
11 had explicitly agreed (RT: April 29, 176:4-177:3, 179:23-181:1, 182:16-184:18;
12 April 30, 69:3-9, 162:8-14, 163:16-164:4), and was bound by law, to keep private
13 and confidential. (82 RA 020473; 56 AA 13913-13929; 60 AA 14975-14976) Hyatt
14 therefore established a reasonable expectation of privacy in his Nevada Tara address.

15 The Court therefore overlooked or misapprehended the evidence in regard to
16 Hyatt’s Nevada address.

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18 **IV. The Court overlooked or misapprehended the law when it concluded**
19 **that the FTB’s mass public dissemination of Hyatt’s social security**
20 **number was not actionable because it was contained in decades-old court**
21 **records.**

22 In its September 18, 2014 Opinion, the Court concluded that Hyatt’s “name,
23 address, and social security number” had been publicly disclosed in old California
24 court records before being disclosed by the FTB. (Opinion, at 26-27.) Relative to
25 Hyatt’s evidence of a mass dissemination of his social security number by the FTB,
26 the Court reversed the judgment in Hyatt’s favor on his claims of intrusion upon
27 seclusion and public disclosure of private facts, holding that the Court had “never
28 limited the application of the public records defense based on the length of time
between the public disclosure and the alleged invasion of privacy.” *Id.*

1 In so ruling, the Court overlooked or misapprehended the authority finding a
 2 reasonable expectation of privacy does exist in an individual’s social security number
 3 even if there was a prior limited or isolated disclosure. Privacy of a social security
 4 number “is so obvious as to be hardly open to debate.” *Thomas v. Smith*, 882 So. 2d
 5 1037, 1045 (Fla. Dist. Ct. App. 2d Dist. 2004).

6 Courts consistently hold that a person has a reasonable expectation of privacy
 7 in her social security number even though it may have been disclosed in certain
 8 circumstances. *Remsburg v. Docusearch, Inc.*, 816 A.2d 1001, 1008 (N.H. 2003)
 9 (explicitly recognizing SSNs as private, notwithstanding the court's recognition that
 10 "SSNs are available in a wide variety of contexts" . . . Thus, while a SSN must be
 11 disclosed in certain circumstances, a person may reasonably expect that the number
 12 will remain private.”); *see also Burnett v. County of Bergen*, 198 N.J. 408, 968 A.2d
 13 1151 (2009) (holding that balancing analysis applies in determining if privacy
 14 interests exist to prevent further disclosure of social security data contained on public
 15 real estate records, one such factor being potential harm from subsequent disclosure);
 16 *see cf. Benz v. Washington Newspaper Publ. Co.*, 2006 U.S. Dist. LEXIS 71827, *26
 17 (D. D.C. 2006) (“Although plaintiff’s phone numbers and addresses may be available
 18 to the public on the internet and in phone books, that does not negate the fact that the
 19 information are nonetheless private facts. Individuals have a privacy interest in their
 20 home addresses and phone numbers. . . .”).⁶

21 In this regard, almost everyone's social security number is in some kind of
 22 public record. In Nevada social security numbers were on individual driver’s
 23 licenses for a long time until the federal government, based on concerns of privacy,
 24 required the State to end that practice. Nevertheless, and consistent with the law as
 25 presented in Hyatt’s Answering Brief, Nevada citizens have an expectation of
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27 ⁶ *Remsburg* and *Benz* are cited on pages 99 and 100 of Hyatt’s Answering Brief.
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1 privacy with respect to their social security numbers, as courts have repeatedly,
2 consistently and increasingly held that social security numbers are private
3 information. *See Greidinger v. Davis*, 988 F.2d 1344, 1353-54 (4th Cir. 1993)(“ an
4 individual's concern over his [social security number's] confidentiality and misuse
5 has become significantly more compelling. . . . armed with one's [social security
6 number], an unscrupulous individual could obtain a person's welfare benefits or
7 Social Security benefits, order new checks at a new address on that person's checking
8 account, obtain credit cards, or even obtain a person's paycheck. . . . the harm that can
9 be inflicted from the disclosure of a [social security number] to an unscrupulous
10 individual is alarming and potentially financially ruinous”); *Data Tree, LLC v. Meek*,
11 279 Kan. 445, 109 P.3d 1226 (2005) (disclosure of mothers' maiden names, social
12 security numbers and birth dates "would constitute a clearly unwarranted invasion of
13 personal privacy"); *Sherman v. U.S. Dept. of Army*, 244 F.3d 357, 365 (5th Cir. 2001)
14 (“The privacy concern at issue is not, of course, that an individual will be
15 embarrassed or compromised by the particular SSN... the concern is that the
16 simultaneous disclosure of an individual's name and confidential SSN exposes that
17 individual to a heightened risk of identity theft”).

18 In this age of identity theft, old conceptions of when it is okay to disclose an
19 individual’s social security number must be revised for a modern age. This evidence
20 was presented to the jury at trial (RT May 21, 42:24 - 49:18), and the jury determined
21 that Hyatt had a reasonable expectation of privacy in his social security number as
22 evidenced by its verdict awarding \$52 million in damages for invasion of privacy.
23 The Court’s holding that the FTB’s mass dissemination of Hyatt’s social security
24 number was not actionable because the number was contained in decades-old court
25 records therefore overlooked or misapprehended the law.
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1 Further, the Court’s Opinion is bad public policy.⁷ The Court’s ruling on this
2 point means that Nevadans do not have any privacy rights in the confidentiality of
3 addresses and social security numbers. It gives carte blanche to government
4 agencies, businesses and individuals to intentionally and widely distribute any and
5 every social security number that can be found *anywhere* in the public record.
6 Indeed, in this case the disclosure was willful, with the FTB expressly aware that
7 Hyatt had great sensitivity to disclosure of his private facts.

8 The Court therefore overlooked or misapprehended the law on the FTB’s mass
9 dissemination of Hyatt’s social security number.

10
11 **V. Because the Court overlooked or misapprehended the evidence and the**
12 **law on Hyatt’s invasion of privacy claims for intrusion upon seclusion**
13 **and public disclosure of private facts, this petition should be granted as to**
14 **those claims.**

15 The Court’s Opinion reversed the judgment and jury verdict in Hyatt’s favor
16 on the invasion of privacy claims for intrusion upon seclusion and public disclosure
17 of private facts. This Court should rehear the arguments on these claims in light of
18 the evidence in the record regarding Hyatt’s private Nevada address on Tara not
19 being in the public records and in light of the authorities that protect an individual
20 from mass disclosure of his or her private information, such as his or her social
21 security number. Upon rehearing these arguments, the jury’s award of damages for
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24 ⁷ Nevada, as a matter of policy, should recognize what other courts and legislatures
25 have done to recognize and protect the confidentiality of social security numbers,
26 See, e.g., Cal. Civil Code § 1798.81.15 (it was recently passed and provides
27 additional protections for social security numbers and other personal information).
28 Other states are therefore increasing protection for social security numbers, while
Nevada here is acting to the contrary.

1 invasion of privacy should be reinstated or, at a minimum, a new trial on damages for
2 these claims should be ordered.

3 DATED: October 6, 2014.

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KAEMPFER CROWELL RENSHAW GRONAUER & FIORENTINO

1 **CERTIFICATE OF COMPLIANCE PURSUANT TO NRAP 40(b)(3)**

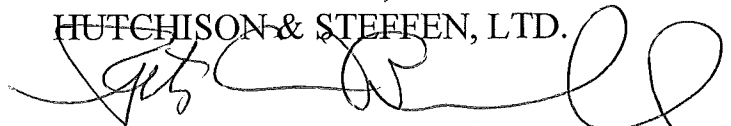
2 **I certify that:**

3
4 **Pursuant to NRAP 40(b)(3), the attached Petition for Rehearing is**
5 **proportionately spaced, has a typeface of 14 points or more and contains 4,087**
6 **words.**

7
8 **DATED this 6th day of October, 2014.**

9
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KAEMPFER CROWELL RENSHAW GRONAUER & FIORENTINO

1 **CERTIFICATE OF SERVICE**

2 Pursuant to NRAP 25, I certify that I am an employee of KAEMPFER
3 CROWELL RENSHAW GRONAUER & FIORENTINO and that on this 6th day of
4 October, I caused the above and foregoing document entitled **RESPONDENT**
5 **GILBERT P. HYATT'S PETITION FOR REHEARING** to be served by the
6 method(s) indicated below:
7

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

12 upon the following person(s):
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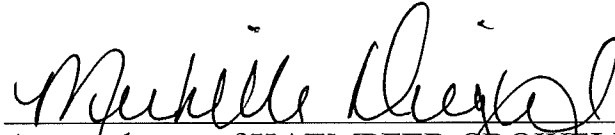
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