

IN THE SUPREME COURT OF THE STATE OF NEVADA

FRANCHISE TAX BOARD OF THE
STATE OF CALIFORNIA,

Appellant/Cross-respondent,

v.

GILBERT P. HYATT,

Respondent/Cross-appellant.

Supreme Court Case No. 53264

District Court Case No. A382999
Electronically Filed
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Notice of Cross-Appeal Filed March 11, 2009
Tracie K. Lindeman
Clerk of Supreme Court

APPEAL

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

**RESPONDENT GILBERT P. HYATT'S RESPONSE TO APPELLANT'S
MOTION FOR PERMISSION TO FILE MOTION IN
EXCESS OF 10 PAGES**

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Respondent Gilbert Hyatt (“Hyatt”) submits this response to Appellant Franchise Tax Board of the State of California’s (“FTB”) May 23, 2016 Motion for Permission to File Motion in Excess of 10 Pages (“Page Limit Motion”).

FTB’s Page Limit Motion references the decision of the United States Supreme Court from this case, *Franchise Tax Bd. of Calif. v. Hyatt*, 578 U.S. ___, 136 S.Ct. 1277, 1283 (2016) (“*Hyatt I*”), and argues that additional pages are needed for FTB’s Motion for Supplemental Briefing Following Mandate from the Supreme Court of the United States (“Mandate Motion”) because the *Hyatt II* decision “vacated this Court’s judgment as unconstitutional.” (FTB Motion, at 1).

In so arguing, FTB’s Page Limit Motion neglects to clarify that *Hyatt II* addressed only a narrow damages issue and did not address or alter the liability findings or any other portion of the judgment in this case. Specifically, *Hyatt II* held that Nevada cannot award more damages against a California agency for intentional misconduct than Nevada allows against its own agencies. *Hyatt II*, at

1218-83. That is the only error that the United States Supreme Court found with this Court's judgment.¹

FTB's Page Limit Motion therefore incorrectly implies that *Hyatt II* nullified additional findings and conclusions in the judgment entered in this case such that additional pages of briefing are needed for its proposed Mandate Motion. But the holding from *Hyatt II* that this Court's judgment was unconstitutional was singularly focused on the amount of damages that Nevada awarded against FTB, a California agency, and did not affect or reverse the myriad of other findings against FTB that are set forth in this Court's judgment.

While a new final judgment will have to be issued reflecting the more limited damages allowed under *Hyatt II*, the resulting decision in *Hyatt II* does not require oversized briefing to argue the effect of the decision on the new judgment. Hyatt therefore respectfully requests that the Court deny FTB's Page Limit Motion and limit FTB's Mandate Motion – to the extent the Court allows the motion at all

¹ *Hyatt II* also affirmed *Nevada v. Hall*, 440 U.S. 410 (1979). This issue was not addressed in this Court's judgment.

– to ten pages. To the extent the Court grants permission to FTB to file an oversized brief for the Mandate Motion, Hyatt requests that he be granted permission to file a responsive brief of the same size as that of FTB’s brief.

DATED: June 1, 2016.



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CERTIFICATE OF SERVICE

I certify that I am an employee of HUTCHISON & STEFFEN, LLC

and that on this date **RESPONDENT GILBERT P. HYATT'S RESPONSE TO APPELLANT'S MOTION FOR PERMISSION TO FILE MOTION IN EXCESS OF 10 PAGES** was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in accordance with the master service list as follows:

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DATED this 1st day of June, 2016.


An employee of Hutchison & Steffen, LLC