

IN THE SUPREME COURT OF THE STATE OF NEVADA

Case No. 53264

FRANCHISE TAX BOARD OF THE STATE OF CALIFORNIA

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Elizabeth A. Brown
Clerk of Supreme Court

Appellant/Cross-Respondent
v.

GILBERT P. HYATT
Respondent/Cross-Appellant

APPEAL FROM JUDGMENT – EIGHTH JUDICIAL DISTRICT COURT
STATE OF NEVADA, CLARK COUNTY
HONORABLE JESSIE WALSH, DISTRICT JUDGE

**APPELLANT’S NOTICE OF SUPPLEMENTAL AUTHORITIES
FOLLOWING MANDATE FROM THE
SUPREME COURT OF THE UNITED STATES**

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Pursuant to NRAP 31(e), Appellant/Cross-Respondent Franchise Tax Board of the State of California (“FTB”) provides this notice of supplemental authorities. Supplemental authorities may be filed “[w]hen pertinent and significant authorities come to a party’s attention after the party’s brief has been filed, but before a decision....” *Id.* A notice of supplemental authorities must “state concisely and without argument the legal proposition for which each supplemental authority is cited” with “references to the page(s) of the brief that is being supplemented.” *Id.*

The following cases supplement pages 8-12 of FTB’s Supplemental Opening Brief Following Mandate From the Supreme Court of the United States and pages 10-11, 29-30, and 34 of FTB’s Supplemental Reply Brief Following Mandate From the Supreme Court of the United States. FTB offers these cases to support its argument that the Supreme Court’s vacatur of this Court’s judgment vacated the 2014 Opinion in its entirety such that the 2014 Opinion has no precedential or law-of-the-case effect.

1. *O’Connor v. Donaldson*, 422 U.S. 563, 577 n.12 (1975) (declaring, “Of necessity our decision vacating the judgment of the Court of Appeals deprives that court’s opinion of precedential effect, leaving this Court’s opinion and judgment as the sole law of the case).
2. *Durning v. Citibank, N.A.*, 950 F.2d 1419, 1424 n.2 (9th Cir. 1991) (citing *O’Connor* for the proposition that “[a] decision may be *reversed* on other grounds, but a decision that has been *vacated* has no precedential authority whatsoever”) (emphasis in the original).
3. *Johnson v. Bd. of Educ. of City of Chicago*, 457 U.S. 52, 53-54 (1982) (holding, “Because we have vacated the Court of Appeals’ judgments in this

case, the doctrine of the law of the case does not constrain either the District Court or ... the Court of Appeals.”).

4. *Brown v. Bryan County, OK*, 219 F.3d 450 n.1 (5th Cir. 2000) (declaring, “With this vacatur, our previous opinion is no longer the law of the case.”).

AFFIRMATION

Pursuant to NRS 239B.030, the undersigned does hereby affirm that the preceding document does not contain the social security number of any person.

Dated this 10th day of April, 2017.

McDONALD CARANO LLP

By: /s/ _____

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CERTIFICATE OF SERVICE

Pursuant to NRCPC 5(b), I certify that I am an employee of McDonald Carano LLP and on the 10th day of April, 2017, I certify that I electronically filed the foregoing with the Clerk of the Court by using the ECF system which served the following parties electronically:

Peter Bernhard
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Michael Wall
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I further certify that on this date I served a copy, postage prepaid, by U.S.

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