

IN THE SUPREME COURT OF THE STATE OF NEVADA

STATE OF CALIFORNIA,)
Appellant/Cross-respondent,)
v.)
GILBERT P. HYATT,) Supreme Court 53264
Respondent/Cross-appellant.) District Case No. A382999

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APPEAL

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

**RESPONDENT GILBERT P. HYATT'S RESPONSE TO APPELLANT
FRANCHISE TAX BOARD OF CALIFORNIA'S SECOND REQUEST FOR
JUDICIAL NOTICE**

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RESPONSE TO SECOND REQUEST FOR JUDICIAL NOTICE

Respondent Gilbert P. Hyatt (“Respondent” or “Hyatt”) submits this Response to Appellant Franchise Tax Board of the State of California’s (“Appellant” or “FTB”) Second Request for Judicial Notice (“RJN”) submitted on April 19, 2017.¹

I. FTB’S SECOND REQUEST FOR JUDICIAL NOTICE IS BASED ON A MISREPRESENTATION OF HYATT’S BRIEFING IN THE CALIFORNIA ADMINISTRATIVE PROCEEDINGS, AND IS OVERLY BROAD.

As with FTB’s First Request For Judicial Notice, FTB’s Second Request for Judicial Notice misrepresents the California tax proceedings and Hyatt’s arguments there. To bolster its incorrect argument that Hyatt has not kept his Nevada tort action separate from the California tax proceeding, FTB asks this Court to take judicial notice of Respondent’s opposition to a motion filed in an appeal to the Ninth Circuit that is twenty pages in length, in order to place a single footnote in that document before this Court and to make inappropriate arguments from that footnote. FTB’s real motive, to attempt to create a connection between

¹ To the extent the Court treats FTB’s Request for Judicial Notice as a motion, Hyatt has timely filed this Objection and Response of no more than ten pages within seven court days of the filing of the motion. Nev. App. Rule 27.

the two cases to further its argument that the cases have not been kept separate, is apparent.

On page six of Hyatt's Opposition to FTB's Motion in the Ninth Circuit for that Court to take judicial notice of certain documents, Hyatt states, "Indeed, FTB's 11 year delay in completing the protests has already been adjudicated in favor of Mr. Hyatt." Hyatt supports this statement with a footnote, that states:

In *Franchise Tax Board of the State of California v. Hyatt*, 335 P.3d 125 (Case No. 53264, Nev. 2014) (the "Nevada Tort Case"), a judgment was entered against FTB and in favor of Mr. Hyatt in August 2008 in which one of the issues argued to the jury in the determinative fraud claim was whether FTB had delayed the protest process in bad faith. The jury decided the issue in Mr. Hyatt's favor. In confirming the portion of the judgment entered for Mr. Hyatt on his claims of fraud and intentional infliction of emotional distress, the Nevada Supreme Court specifically cited FTB's long delay in the protest process. Under Collateral estoppel, FTB is precluded from re-litigating the issue of delay. Mr. Hyatt also raised this issue in the district court in his objection to the Dunn declaration.

Id. at footnote 5.

This Court does not need to take judicial notice of the entire document in order to be informed that Hyatt did in fact make the argument set forth above on page six of the document.

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**II. FTB'S SECOND REQUEST FOR JUDICIAL NOTICE
INACCURATELY ASSERTS THAT HYATT HAS NOT KEPT THE
TWO PROCEEDINGS SEPARATE.**

FTB's Request for Judicial Notice continues FTB's erroneously assertion that Hyatt has not kept this Nevada tort case separate from the California tax proceedings. That is simply not true. Hyatt has consistently advocated, and still advocates, that this Nevada tort case and the California tax proceedings are separate proceedings to be decided by the respective courts and administrative board in each state. Giving notice to the Ninth Circuit or the administrative board in California of what has transpired in this proceeding in Nevada does not change the fact that there are two separate proceedings in which the result of one case does not compel or require a result in the other case. That has always been the approach, and is still the approach.

By the same token, the Ninth Circuit is free to consider and give whatever weight it deems appropriate to the results from this Nevada tort case. Hyatt therefore has made the Ninth Circuit aware of the 2014 decision, and has advocated that the Ninth Circuit should give consideration to findings from this Nevada case. The Ninth Circuit has given no indication whether it will or will not do so.

More importantly, and contrary to the FTB's implicit, if not explicit, argument that this Court should reconsider portions of the 2014 decision merely because Hyatt advocated a position in the tax proceeding and cited the 2014 decision in support thereof, this Court's decision on the FTB's request presently before the Court is and must be entirely independent of the proceedings in California. Any notice of this Court's 2014 decision by Hyatt or by anyone else to the Ninth Circuit should have no bearing on what this Court decides in this case.

III. HYATT DOES NOT OBJECT TO THE COURT TAKING JUDICIAL NOTICE OF PAGE SIX OF HYATT'S BRIEFING TO THE NINTH CIRCUIT IN THE CALIFORNIA TAX PROCEEDING.

FTB's specific request before the Court is to take judicial notice of a twenty-page document, one page of which FTB argues is relevant to this case. In fact, the twenty-page document is quite favorable to Hyatt. But it is utterly irrelevant to this case and the matter now before this Court. As a technical matter, Hyatt does not object to the Court taking judicial notice of that single page of the document, and of the argument Hyatt has made to the Ninth Circuit. But even that is irrelevant to this matter.

IV. CONCLUSION

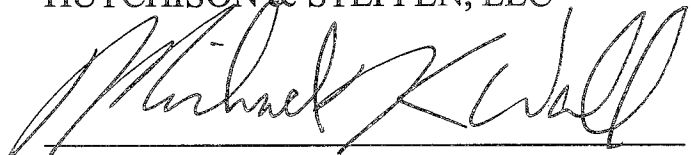
Based on the foregoing, Hyatt asks that the Court disregard the misstatements and misrepresentations made by FTB in its second request for

judicial notice, but then nonetheless take judicial notice of the single page six of the Opposition from the Ninth Circuit appeal in the California tax proceedings, as requested by FTB.

DATED: April 24, 2017.

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A handwritten signature in black ink, appearing to read "Michael K. Wall", written over a horizontal line.

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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 FRANCHISE TAX BOARD OF CALIFORNIA'S SECOND REQUEST FOR JUDICIAL NOTICE** was filed electronically with the Clerk of the Nevada Supreme Court, and therefore electronic service was made in

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DATED this 24th day of April, 2017



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