

ORIGINAL



In the Supreme Court of the State of Nevada

FILED

INDICATE FULL CAPTION:

FRANCHISE TAX BOARD OF THE STATE
OF CALIFORNIA,

Appellant(s),

vs.

GILBERT P. HYATT,

Respondent(s).

Cross-Appellant(s),

vs.

Cross-Respondent(s).

MAR 21 2002

JANETTE M. BLOOM
CLERK OF SUPREME COURT
BY S. Young
DEPUTY CLERK

No. ~~39274~~ 39312

DOCKETING STATEMENT
CIVIL APPEALS

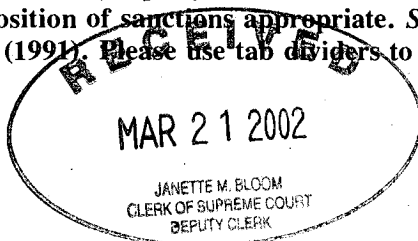
GENERAL INFORMATION

All appellants not in proper person must complete this docketing statement. NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, classifying cases for en banc, panel, or expedited treatment, compiling statistical information and identifying parties and their counsel.

WARNING

This statement must be completed fully, accurately and on time. NRAP 14(c). The Supreme Court may impose sanctions on counsel or appellant if it appears that the information provided is incomplete or inaccurate. *Id.* Failure to attach documents as requested in this statement, completely fill out the statement, or to fail to file it in a timely manner, will constitute grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

This court has noted that when attorneys do not take seriously their obligations under NRAP 14 to complete the docketing statement properly and conscientiously, they waste the valuable judicial resources of this court, making the imposition of sanctions appropriate. See *KDI Sylvan Pools v. Workman*, 107 Nev. 340, 344, 810 P.2d 1217, 1220 (1991). Please use tab dividers to separate any attached documents.



02-05036

1. Judicial District Eighth Department 18 County Clark
Judge Saitta District Ct. Docket No. A382999

2. Attorney filing this docket statement:

Attorney Thomas R.C. Wilson Telephone (775) 788-2000
Firm McDonald Carano Wilson McCune Bergin Frankovich & Hicks LLP
Address 241 Ridge St. Fourth Floor, P.O. Box 2670
Reno, Nevada 89505-2670
Client(s) Franchise Tax Board of the State of California ("FTB")

If this is a joint statement completed on behalf of multiple appellants, add the names and addresses of other counsel and the names of their clients on an additional sheet accompanied by a certification that they concur in the filing of this statement.

3. Attorney(s) representing respondent(s):

Attorney Peter C. Bernhard Telephone (702) 650-6565
Firm Bernhard & Bradley
Address 3980 Howard Hughes Parkway, Suite 550
Las Vegas, Nevada 89109
Client(s) Gilbert P. Hyatt

Attorney Mark A. Hutchison Telephone (702) 385-2500
Firm Hutchinson & Steffen
Address 8831 W. Sahara Avenue
Las Vegas, Nevada 89117
Client(s) Gilbert P. Hyatt

(List additional counsel on separate sheet if necessary)

4. Nature of disposition below (check all that apply):

- | | |
|--|---|
| <input type="checkbox"/> Judgment after bench trial | <input type="checkbox"/> Grant/Denial of NRCP 60(b) relief |
| <input type="checkbox"/> Judgment after jury verdict | <input type="checkbox"/> Grant/Denial of injunction |
| <input type="checkbox"/> Summary judgment | <input type="checkbox"/> Grant/Denial of declaratory relief |
| <input type="checkbox"/> Default judgment | <input type="checkbox"/> Review of agency determination |
| <input type="checkbox"/> Dismissal | <input type="checkbox"/> Divorce decree: |
| <input type="checkbox"/> Lack of jurisdiction | <input type="checkbox"/> Original <input type="checkbox"/> Modification |
| <input type="checkbox"/> Failure to state a claim | <input checked="" type="checkbox"/> Other disposition (specify) <u>Denial of Motion</u> |
| <input type="checkbox"/> Failure to prosecute | <u>To Vacate Protective Order Following</u> |
| <input type="checkbox"/> Other (specify)..... | <u>Summary Judgment</u> |

5. Does this appeal raise issues concerning any of the following:

- | | |
|--|--|
| <input type="checkbox"/> Child custody | <input type="checkbox"/> Termination of parental rights |
| <input type="checkbox"/> Venue | <input type="checkbox"/> Grant/denial of injunction or TRO |
| <input type="checkbox"/> Adoption | <input type="checkbox"/> Juvenile matters |

6. Pending and prior proceedings in this court. List the case name and docket number of all appeals or original proceedings presently or previously pending before this court which are related to this appeal:

See Tab A

7. **Pending and prior proceedings in other courts.** List the case name, number and court of all pending and prior proceedings in other courts which are related to this appeal (e.g., bankruptcy, consolidated or bifurcated proceedings) and their dates of disposition:

None

8. **Nature of the action.** Briefly describe the nature of the action, including a list of the causes of action pleaded, and the result below:

See Tab B

9. **Issues on appeal.** State concisely the principal issue(s) in this appeal:

See Tab C

10. **Pending proceedings in this court raising the same or similar issues.** If you are aware of any proceeding presently pending before this court which raises the same or similar issues raised in this appeal, list the case name and docket number and identify the same or similar issues raised:

None.

11. **Constitutional issues.** If this appeal challenges the constitutionality of a statute, and the state, any state agency, or any officer or employee thereof is not a party to this appeal, have you notified the clerk of this court and the attorney general in accordance with NRAP 44 and NRS 30.130?

N/A XX Yes.....No.....

If not, explain.....

12. **Other issues.** Does this appeal involve any of the following issues?

- Reversal of well-settled Nevada precedent (on an attachment, identify the case(s))
- An issue arising under the United States and/or Nevada Constitutions
- A substantial issue of first-impression
- An issue of public policy
- An issue where en banc consideration is necessary to maintain uniformity of this court's decisions
- A ballot question

If so, explain..... See Tab D

13. **Trial.** If this action proceeded to trial, how many days did the trial last? N/A

Was it a bench or jury trial? This Court ordered the district court to enter summary judgment.

14. **Judicial disqualification.** Do you intend to file a motion to disqualify or have a justice recuse him/herself from participation in this appeal. If so, which Justice?

N/A

TIMELINESS OF NOTICE OF APPEAL

15. Date of entry of written judgment or order appealed from January 8, 2002. Attach a copy. If more than one judgment or order is appealed from, attach copies of each judgment or order from which an appeal is taken. See Tab E.

(a) If no written judgment or order was filed in the district court, explain the basis for seeking appellate review:

.....
.....

16. Date written notice of entry of judgment or order served February 19, 2002. Attach a copy, including proof of service, for each order or judgment appealed from. (See Tab E)

(a) Was service by delivery.....or by mail X.....(specify).

17. If the time for filing the notice of appeal was tolled by a post-judgment motion (NRCP 50(b), 52(b), or 59),

(a) Specify the type of motion, and the date and method of service of the motion, and date of filing.

NRCP 50(b).....Date served.....By delivery.....or by mail.....Date of filing.....
NRCP 52(b).....Date served.....By delivery.....or by mail.....Date of filing.....
NRCP 59.....Date served.....By delivery.....or by mail.....Date of filing.....

Attach copies of all post-trial tolling motions.

NOTE: Motions made pursuant to NRCP 60 or motions for rehearing or reconsideration do not toll the time for filing a notice of appeal.

(b) Date of entry of written order resolving tolling motion..... Attach a copy.

(c) Date written notice of entry of order resolving motion served..... Attach a copy, including proof of service.

(i) Was service by delivery.....or by mail.....(specify).

18. Date notice of appeal was filed March 4, 2002

(a) If more than one party has appealed from the judgment or order, list date each notice of appeal was filed and identify by name the party filing the notice of appeal:

19. Specify statute or rule governing the time limit for filing the notice of appeal, e.g., NRAP 4(a), NRS 155.190, or other NRAP Rule 4(a)(1)

SUBSTANTIVE APPEALABILITY

20. **Specify the statute or other authority granting this court jurisdiction to review the judgment or order appealed from:**

NRAP 3A(b)(1).....NRS 155.190.....(specify subsection).....
NRAP 3A(b)(2).....NRS 38.205.....(specify subsection).....
NRAP 3A(b)(3).....NRS 703.376.....
Other (specify)..... See Tab F.....

Explain how each authority provides a basis for appeal from the judgment or order:

See Tab F.....
.....
.....
.....
.....

COMPLETE THE FOLLOWING SECTION ONLY IF MORE THAN ONE CLAIM FOR RELIEF WAS PRESENTED IN THE ACTION (WHETHER AS A CLAIM, COUNTERCLAIM, CROSS-CLAIM, OR THIRD-PARTY CLAIM) OR IF MULTIPLE PARTIES WERE INVOLVED IN THE ACTION. Attach separate sheets as necessary.

21. **List all parties involved in the action in the district court:**

Plaintiff: Gilbert P. Hyatt
Defendant: Franchise Tax Board of the State of California

(a) If all parties in the district court are not parties to this appeal, explain in detail why those parties are not involved in this appeal, *e.g.*, formally dismissed, not served, or other:

22. **Give a brief description (3 to 5 words) of each party's separate claims, counterclaims, cross-claims or third-party claims, and the trial court's disposition of each claim, and how each claim was resolved (*i.e.*, order, judgment, stipulation), and the date of disposition of each claim. Attach a copy of each disposition.**

See Tab G

23. Attach copies of the last-filed version of all complaints, counterclaims, and/or cross-claims filed in the district court. See Tab H
24. Did the judgment or order appealed from adjudicate ALL the claims alleged below and the rights and liabilities of ALL the parties to the action below:
 Yes.....No.....XX
25. If you answered "No" to the immediately previous question, complete the following:
- (a) Specify the claims remaining pending below: See Tab I
- (b) Specify the parties remaining below:
- (c) Did the district court certify the judgment or order appealed from as a final judgment pursuant to NRCP 54(b):
 Yes.....No.....XX If "Yes," attach a copy of the certification or order, including any notice of entry and proof of service.
- (d) Did the district court make an express determination, pursuant to NRCP 54(b), that there is no just reason for delay and an express direction for the entry of judgment:
 Yes.....No.....XX
26. If you answered "No" to any part of question 25, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)):

See Tab F

VERIFICATION

I declare under penalty of perjury that I have read this docketing statement, that the information provided in this docketing statement is true and complete to the best of my knowledge, information and belief, and that I have attached all required documents to this docketing statement.

Franchise Tax Board of the State of California

 Name of appellant

March 20, 2002

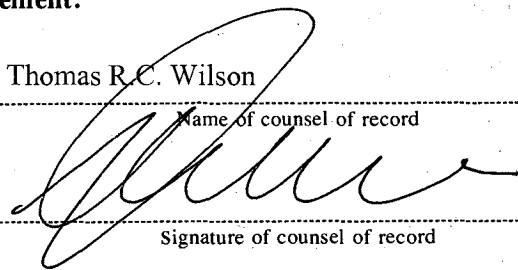
 Date

Washoe County, Nevada

 State and county where signed

Thomas R.C. Wilson

 Name of counsel of record



 Signature of counsel of record

CERTIFICATE OF SERVICE

I certify that on the 21 day of March, 2002, I served a copy of this completed docketing statement upon all counsel of record:

- By personally serving it upon him/her; or
- By mailing it by first class mail with sufficient postage prepaid to the following address(es):

PLEASE REFER TO EXHIBIT 1 ATTACHED REGARDING RECIPIENTS

Dated this 21 day of March, 2002.

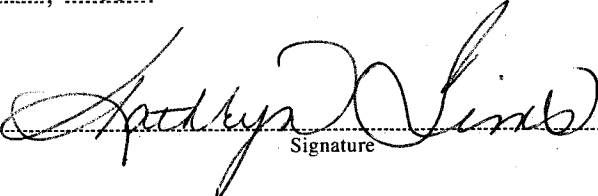

Signature

Exhibit 1

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Los Angeles, CA 90071

Donald J. Kula, Esq.
Riordan & McKinzie
300 South Grand Ave., 29th Floor
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Mark A. Hutchison, Esq.
Hutchison & Steffen
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Las Vegas, NV 89117

Peter C. Bernhard, Esq.
Bernhard & Bradley
3980 Howard Hughes Parkway
Suite 550
Las Vegas, NV 89109

Honorable Nancy Saitta
Eighth Judicial District Court
of the State of Nevada,
in and for the County of Clark
200 S. Third Street
Las Vegas, NV 89155



TAB A

PENDING AND PRIOR PROCEEDING IN THE NEVADA SUPREME COURT

1. Franchise Tax Board of the State of California's Petition for Writ of Mandamus, or in the alternative, for Writ of Prohibition (the "Discovery Writ") filed January 25, 2000, Case No. 35549;
2. Franchise Tax Board of the State of California's Motion for Stay Pending Adjudication of Petition for Writ of Mandamus, or in the alternative, for Writ of Prohibition, filed April 13, 2000, Case No. 35549;
3. June 7, 2000, Order Directing Answer, Temporarily Staying District Court Proceedings and Directing Clarification of Documents in Case No. 35549;
4. Gilbert P. Hyatt's Motion for Clarification of Stay Order of June 7, 2000, filed June 13, 2000 in Case No. 35549;
5. Franchise Tax Board of the State of California's Petition for a Writ of Mandamus Ordering Dismissal, or alternatively, for Writ of Prohibition and Mandamus Limiting the Scope of this Case (the "Jurisdiction Writ") filed July 7, 2000, Case NO. 36390;
6. September 13, 2000 Order Consolidating Petitions in Docket Nos. 35549 and 36390, Directing an Answer in Docket No. 36390 and Clarifying Order Granting Temporary Stay in Docket No. 35549;
7. On June 13, 2001, this Court filed its Order Granting Petition (Docket No. 36390) and Dismissing Petition (Docket No. 35549), ordering the district court to enter summary judgment in favor of FTB on the merits and dismissing the Discovery Writ as moot;

8. On July 5, 2001, the real party in interest, Gilbert P. Hyatt, filed a petition for reconsideration of this Court's June 13, 2001, and he was allowed to file a supplemental petition on July 23, 2001;

9. On August 7, 2001, FTB filed its Answer to Hyatt's Petition for Reconsideration and a response to Hyatt's Errata on August 22, 2001;

10. As of the date of preparation of this Docketing Statement (March 18, 2002), this Court had not ruled on Hyatt's Petition for Reconsideration;

11. Concurrently with filing the Notice of Appeal in this case, FTB also filed a new writ petition with the Nevada Supreme Court based upon the same district court order from which this appeal is taken. The new writ is entitled: Franchise Tax Board of the State of California's Petition for Writ of Mandamus, or in the Alternative, for Writ of Prohibition Re: Protective Order (the "Protective Order Writ"), filed March 4, 2002, Case No. 39274.



TAB B

NATURE OF ACTION

Pursuant to its inherent sovereign powers, the State of California imposes a personal income tax upon the income of its residents. The appellant in this appeal, and defendant below, is the Franchise Tax Board of the State of California (“FTB”). The FTB is the California state agency charged with the public duty of implementing and enforcing the California state income tax. As such, it is the alter ego of the sovereign State of California.

The respondent in this appeal, and Plaintiff below, Gilbert P. Hyatt, is a former long-time resident of the State of California who filed a claim with FTB asserting he had terminated his California residency and moved to Nevada just before certain companies paid \$40 million cash in “patent licensing fees” for a patent he had obtained while a resident of California. Hyatt did not report the \$40 million as California income subject to the state income tax. The FTB conducted an audit investigation into his claim. While that administrative matter is still proceeding in California, Hyatt filed suit against FTB in the Eighth Judicial District Court, Clark County.

The Complaint sought declaratory relief that Hyatt was a Nevada resident and not subject to California personal income tax. He also sought “hundreds of millions of dollars” in damages based upon the common law torts of: 1) Unreasonable Intrusion Upon the Seclusion of Another; 2) Unreasonable Publicity Given to Private Facts; 3) Casting Plaintiff in a False Light; 4) Outrage; 5) Abuse of Process; 6) Fraud; and 7) Negligent Misrepresentation.

The request for declaratory relief was dismissed by the district court on FTB’s motion for judgment on the pleadings for lack of subject matter jurisdiction. But, Hyatt was allowed to proceed

with his tort claims.

The district court entered the Protective Order at issue in this appeal, and directed FTB to produce certain documents. That resulted in FTB filing its first writ with this Court, the Discovery Writ in Case No. 35549.

FTB also filed a motion for summary judgment on the remaining tort claims. That motion was denied, and FTB filed its Jurisdiction Writ in Case No. 36390.

On June 13, 2001, this Court granted the Jurisdiction Writ and ordered the district court to enter summary judgment in favor of FTB. The Discovery Writ was dismissed as moot.

After the district court entered summary judgment, FTB filed a motion to vacate the Protective Order. The Motion was based on several grounds. The Motion explained that while the FTB has prevailed in defending against all of Hyatt's claims, the FTB is still conducting its administrative audit review in California to determine whether Hyatt owes additional taxes for 1991 and 1992. The Motion also noted that through this litigation, FTB obtained possession of documents which are relevant to (1) its determination of Hyatt's residency in 1991 and 1992; and (2) whether Hyatt deliberately and knowingly failed to pay taxes which he knew were due, which would result in the imposition of additional monetary penalties for fraud. The FTB's trial counsel on this case, however, have not delivered those document to the FTB personnel conducting the audit review because Hyatt has stamped those documents as "Confidential - NV Protective Order" pursuant to the terms of the Protective Order.

The FTB believes that the Protective Order is no longer operative because on June 7, 2000 and then again on September 13, 2000, this Court stayed the order imposing the Protective Order, and never lifted that stay. The effect of this Court's stay order was to place the parties in the position

they were in just before the order imposing the Protective Order was entered. Out of deference and respect for the district court, however, FTB's litigation team sought that court's concurrence that the Protective Order is inoperative by filing the motion to vacate the Protective Order before delivering the subject documents to the FTB Protest Officer.

FTB also argued in the alternative that if the district court disagreed that this Court's orders had rendered the Protective Order inoperative, then the district court should vacate the Protective Order because: 1) all or most of the evidence produced in discovery concerns Hyatt's alleged move to Nevada which is not entitled to protection under *Nev. R. Civ. Pro. Rule 26* and, therefore, the Protective Order exceeds the district court's authority; and 2) the Protective order unconstitutionally interferes with the State of California's inherent sovereign function of tax collection and is beyond the constitutional power of a Nevada state court.

FTB also argued that the Protective Order is vague and ambiguous because it fails to identify or define the information coming within the terms of the Protective Order, but leaves it instead to the parties themselves. And finally, FTB showed that Hyatt had abused the Protective Order by labeling as "Confidential – NV Protective Order" items that are not protectible under Rule 26, which governs the Protective Order. Because of Hyatt's abuse of the Protective Order, FTB argued it should be vacated as a sanction pursuant to the Protective Order itself.

The district court denied the motion to vacate the Protective Order, and FTB has appealed. Because it is not clear if the district court's order is appealable, FTB also filed a writ petition concurrently with filing the notice of appeal.



TAB C

ISSUES ON APPEAL

FTB appeals from the district court's denial of FTB's motion to vacate the Protective Order.

The issues on appeal are:

1. Whether the district court erred and exceeded its jurisdiction by ruling that the Protective Order was not stayed by this Court's June 7, 2000 and September 13, 2000 Orders;

2. Whether the district court erred in not otherwise vacating the Protective Order for any or all of the following reasons:

- a. The Protective Order is vague and ambiguous;
- b. The Protective Order exceeds the district court's authority under Nev. R. Civ. Pro. Rule 26 because it protects the facts and circumstances of Hyatt's alleged move, which are not entitled to protection;
- c. The Protective Order exceeds the district court's constitutional authority by interfering with the state of California's inherent sovereign function of taxation; and/or
- d. Hyatt has abused the Protective Order.



TAB D

EN BANC CONSIDERATION

Some of the issues raised in this appeal concern the constitutional authority of a Nevada state court to interfere with the State of California's exercise of its inherent sovereign power of taxation. *See generally, Nevada vs. Hall, 440 U.S. 410, 424 N. 24 (1979), reh'g. denied, 441 U.S. 917 (1979).* The Protective Order entered by the district court raises substantial issues of first impression, as well as public policy issues. The district court's order denying FTB's motion to vacate the Protective Order also raises issues concerning a district court's disregard of previous orders of this Court on this identical subject matter in this same case. This Court gave the prior writs in this case *en banc* consideration, and, as discussed in Tab A, Hyatt's petition for reconsideration of the Court's June 13, 2001 *en banc* decision is still pending as of the date of preparation of this Docketing Statement.

This appeal is appropriate for its own *en banc* consideration.



TAB E

Copy of Order and Notice of Order from which appeal is taken.

1 **NOEJ**

2 Mark A. Hutchison (4639)
3 HUTCHISON & STEFFEN
4 Lakes Business Park
5 8831 West Sahara Avenue
6 Las Vegas, NV 89117
7 (702) 385-2500

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FEB 21 2002
BY: _____

5 Peter C. Bernhard (734)
6 BERNHARD & BRADLEY
7 3980 Howard Hughes Parkway
8 Suite 550
9 Las Vegas, NV 89109
10 (702) 650-6565
11 Attorneys for Plaintiff

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14 GILBERT P. HYATT,
15 Plaintiff,

16 vs.

17 FRANCHISE TAX BOARD OF THE STATE
18 OF CALIFORNIA, and DOES 1-100, inclusive,
19 Defendants.

Case No.: A382999
Dept No.: XVIII

Date of Hearing: January 17, 2002
Time of Hearing: 9:00 A.M.

20 **NOTICE OF ENTRY OF ORDER**
21 **DENYING FTB'S MOTION TO VACATE PROTECTIVE ORDER**


22 TO: ALL PARTIES IN INTEREST; and

23 TO: Their attorneys of Record:

24 NOTICE IS HEREBY GIVEN that an Order Denying FTB's Motion to Vacate Protective
25 Order was entered in the above-referenced matter on the 31st day of January, 2002. A copy of said
26 Stipulation and Order is attached hereto.

27 DATED this 19 day of February, 2002.

28 BERNHARD & BRADLEY, CHTD.

By: 
PETER C. BERNHARD, ESQ.
Nevada Bar No. 000734
3980 Howard Hughes Pkwy.
Suite 550
Las Vegas, NV 89109

ORIGINAL

FILED

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Shirley E. Rungius
CLERK

1 **ORD**
Thomas L. Steffen
2 Nevada Bar No. 1300
Mark A. Hutchison
3 Nevada Bar No. 4639
John Steffen
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11 *Attorneys for Plaintiff*

12 **DISTRICT COURT**
13 **CLARK COUNTY, NEVADA**

14 GILBERT P. HYATT,
15 Plaintiff,

Case No.: A382999
Dept. No.: XVIII
Docket No.: F

16 vs.

17 FRANCHISE TAX BOARD OF
18 THE STATE OF CALIFORNIA,
and DOES 1-100, inclusive,

Date of Hearing: January 17, 2002
Time of Hearing: 9:00 A.M.

19 Defendants.

20
21 **ORDER DENYING FTB'S MOTION TO VACATE PROTECTIVE ORDER**

22 This matter having come before the Court for hearing the FTB's Motion to Vacate Protective
23 Order (the "Motion") on January 17, 2002, and the parties having appeared by and through their
24 counsel of record, and the Court having received and reviewed the Motion and the points and
authorities and exhibits submitted in support of and in opposition to the Motion, and the Court
having heard the arguments of counsel, and good cause appearing therefor,

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BE & BRADLEY, CHIT
Attorneys at Law
80 Howard Hughes Pkwy
Suite 550
Las Vegas, NV 89109
(702) 650-6565

S 875

1 IT IS HEREBY ORDERED THAT the FTB's Motion to Vacate Protective Order be and the
2 same hereby is denied.

3 DATED: Jan 30, 2002

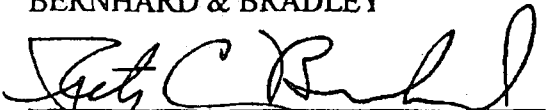
4
5 
6 DISTRICT JUDGE

7 Prepared and submitted by:

8 HUTCHISON & STEFFEN

9 Thomas L. Steffen
10 Nevada Bar No. 1300
11 Mark A. Hutchison
12 Nevada Bar No. 4639
13 John Steffen
14 Nevada Bar No. 4390
15 8831 West Sahara Avenue
16 Las Vegas, Nevada 89101

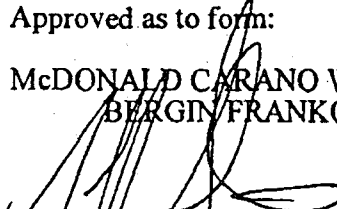
17 BERNHARD & BRADLEY

18 

19 Peter C. Bernhard
20 Nevada Bar No. 0734
21 3980 Howard Hughes Parkway
22 Suite 550
23 Las Vegas, NV 89109
24 Attorneys for Plaintiff

25 Approved as to form:

26 McDONALD CARANO WILSON McCUNE
27 BERGIN FRANKOVICH & HICKS LLP

28 
Jeffrey Silvestri, Esq.
Nevada Bar No. 5779
2300 West Sahara Avenue, Suite 1000
Las Vegas, NV 89102
Attorneys for Franchise Tax Board



TAB F

APPEALABILITY OF DISTRICT COURT'S ORDER

It is not clear if the district court's order denying FTB's motion to vacate the Protective Order is appealable or not. That is why FTB filed its new writ petition concurrently with filing the notice of appeal.

The order appealed from is not a "final judgment" in the ordinary interpretation of Nev. R. App. Pro. Rule 3A(b)(1). It appears, however, that this Court might have the discretion to treat the district court's order as "final" and therefore appealable under the collateral order doctrine.

In this respect, the Protective Order could be considered a type of injunction. As FTB has shown in Tab B, the FTB litigation team in Hyatt's case has not forwarded certain documentation and information to the FTB personnel working on Hyatt's tax protest in the on-going California administrative process because Hyatt has labeled the documents "Confidential - NV Protective Order" pursuant to the Protective Order. Accordingly, the order denying FTB's motion to vacate the Protective Order could be treated by this Court as "an order . . . refusing to dissolve an injunction . . ." under Rule 3A(b)(2).

Most of FTB's challenges to the district court's order, however, are jurisdictional. The district court's authority to issue the Protective Order is limited by the Nevada Supreme Court's June 7, 2000 stay order, the Court's September 13, 2000 Order confirming the stay order, as well as Nev. R. Civ. Pro. Rule 26 and the constitutional principles of sister-state federalism upon which the U.S. Constitution is based. A lack of subject matter jurisdiction may be raised at any time and in almost any manner. Nev. R. Civ. Pro. Rule 12(h)(3).

Where a district court exceeds its jurisdiction, the usual review process is by a writ proceeding. See, e.g., *Guerin vs. Guerin*, 114 Nev. 127, 131, 953 P.2d 716, 719 (1998); *Widdis vs. Second Judicial District Court*, 114 Nev. 1224, 1227, 968 P.2d 1165, 1167 (1998).

While FTB recognizes the possibility that the district court's order could be treated as appealable, it believes the proper course of review should be by the writ petition it has filed concurrently with the notice of appeal.

Should the Court decide this matter should proceed by appeal, however, then FTB requests that its writ petition be considered as the opening appellate brief pursuant to Nev. R. App. Pro. Rule 2.



TAB G

DESCRIPTION OF CLAIMS AND DISPOSITION BELOW

Plaintiff's claims:

1. Declaratory relief that Plaintiff was a Nevada resident and not subject to California income tax;

District court granted FTB's motion for judgment on the pleadings as to this claim and dismissed it for lack of subject matter jurisdiction on April 16, 1999 (copy attached).

2. Invasion of privacy - unreasonable publicity given to private facts;

3. Invasion of privacy - unreasonable publicity given to private facts;

4. Invasion of privacy - casting plaintiff in a false light;

5. Outrage;

6. Abuse of process;

7. Fraud; and

8. Negligent misrepresentation.

This Court ordered the district court to grant FTB summary judgment on all of Hyatt's tort claims in its June 13, 2001 order, which the district court did on July 16, 2001. (Copy attached).

Hyatt filed a petition for reconsideration of this Court's June 13, 2001 decision on July 5, 2001 and a supplement on July 23, 2001. As of the date of the preparation of this Docketing Statement, this Court had not yet ruled on the reconsideration petition.

McDONALD CARANO WILSON M...INE BERGIN FRANKOVICH & HICKS LLP
AT
2300 WEST SAHARA AVENUE • NO. 10 SUITE 1000
LAS VEGAS NEVADA 89102-4354
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NEOJ
THOMAS R. C. WILSON, ESQ.
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2300 West Sahara Avenue, Suite 1000
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Attorneys for Defendants

FILED
APR 20 4 23 PM '99
Shirley B. Paragius
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

GILBERT P. HYATT,

Plaintiff,

vs.

FRANCHISE TAX BOARD OF THE
STATE OF CALIFORNIA, and DOES 1-
100, inclusive

Defendants.

Case No. : A382999
Dept. No. : XVIII
Docket No. : F

Date of Hearing: 4/7/99
Time of Hearing: 10:00 a.m.

NOTICE OF ENTRY OF ORDER

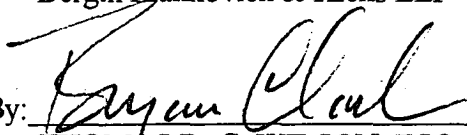
TO: ALL PARTIES AND THEIR COUNSEL OF RECORD;

YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that an Order was entered

1 in the above matter on the 19TH day of April, 1999, a copy of which is attached hereto.

2
3 DATED this 20th day of April, 1999.

4 McDonald Carano Wilson McCune
5 Bergin Frankovich & Hicks LLP

6 By: 

7 THOMAS R. C. WILSON, ESQ.
8 Nevada State Bar # 1568
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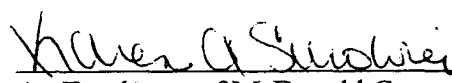
15 **CERTIFICATE OF SERVICE**

16 I hereby certify that I am an employee of McDonald Carano Wilson McCune Bergin
17 Frankovich & Hicks LLP., and that I served a true and correct copy of the foregoing **NOTICE OF**
18 **ENTRY OF ORDER** by U.S. Mail on this 20th day of April 1999, upon the following:

19 Thomas L. Steffen, Esq.
20 Mark A. Hutchison, Esq.
21 Hutchison & Steffen
22 8831 W. Sahara Ave.
23 Las Vegas, NV 89117

24 Felix Leatherwood, Esq.
25 Deputy Attorney General
26 Attorney General's Office
27 300 South Spring Street
28 Los Angeles, CA 90013

Thomas K. Bourke, Esq.
601 W. Fifth Street, 8th Floor
Los Angeles, CA 90071


An Employee of McDonald Carano Wilson
McCune Bergin Frankovich & Hicks LLP

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1 **ORD**
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4 MATTHEW C. ADDISON, ESQ.
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10 2300 West Sahara Avenue, Suite 1000
11 Las Vegas, Nevada 89102
12 Telephone (702) 873-4100

13 Attorneys for Defendant

14 **DISTRICT COURT**

15 **CLARK COUNTY, NEVADA**

16 *****

17 GILBERT P. HYATT,
18
19 Plaintiff,

20 vs.

21 FRANCHISE TAX BOARD OF THE
22 STATE OF CALIFORNIA, and DOES 1-
23 100, inclusive
24
25 Defendants.

26 Case No. : A382999
27 Dept. No. : XVIII
28 Docket No. : F

**PARTIAL JUDGMENT
ON THE PLEADINGS**

Date of Hearing: April 7, 1999
Time of Hearing: 10:00 a.m.

29 The Defendant's Motion for Judgment on the Pleadings having come before the
30 Court on the 7th day of April, 1999, the Defendant being represented by Thomas R. C.
31 Wilson, Esq., James W. Bradshaw, Esq., Felix Leatherwood, Esq., and George
32 Takenouchi, Esq. and the Plaintiff being present in court and represented by Thomas L.
33 Steffen, Esq., John T. Steffen, Esq., Thomas K. Bourke, Esq., and Donald Kula, Esq., and
34 the Court having considered the Defendant's Motion, the Plaintiff's Opposition, the
35 Defendant's Reply, the Plaintiff's Surreply and the Defendant's Response to Surreply and
36 the supporting authorities, as well as the oral arguments of counsel, and GOOD CAUSE
37 APPEARING;

FILED

APR 13 9 00 PM '99

Christina M. Jones
CLERK

1 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Defendant's Motion
2 for Judgment on the Pleadings is granted as to the Plaintiff's First Cause of Action for
3 Declaratory Relief, the Court lacking subject matter jurisdiction. The Motion is denied as
4 to the Second through Eighth causes of action.

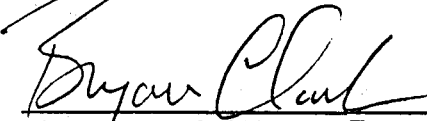
5 IT IS FURTHER ORDERED that the discovery stay is lifted and that the parties
6 may proceed with discovery to commence within a reasonable time following the April 7,
7 1999 hearing. The Defendant's responses to outstanding requests to admit facts and
8 document requests served by the Plaintiff on February 22, 1999, prior to the stay of
9 discovery, shall be served on or before April 19, 1999.

10 Dated this 16 day of April, 1999.

11
12
13 JAMES BRENNAN

14 _____
DISTRICT COURT JUDGE

15
16
17
18
19 Submitted by:
20 McDonald Carano Wilson McCune
21 Bergin Frankovich & Hicks, LLP

22 

23 Thomas R. C. Wilson, Esq.
24 Matthew C. Addison, Esq.
25 Bryan R. Clark, Esq.
26 2300 West Sahara Avenue, Suite 1000
27 Las Vegas, Nevada 89102
28 Attorneys for Defendant

30314v1

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NEOJ
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DAVID S. CHANEY
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Attorneys for Defendants

DISTRICT COURT
CLARK COUNTY, NEVADA

GILBERT P. HYATT,

Plaintiff,

vs.

FRANCHISE TAX BOARD OF THE
STATE OF CALIFORNIA, and DOES 1-100,
inclusive

Defendants.

Case No. : A382999
Dept. No. : XVIII

NOTICE OF ENTRY OF ORDER

TO: ALL PARTIES AND THEIR COUNSEL OF RECORD;
YOU, AND EACH OF YOU, WILL PLEASE TAKE NOTICE that an Order was entered
...

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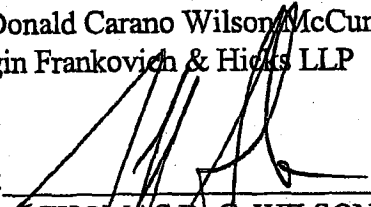
JUL 17 11 30 AM '01

Shelly S. Pangione
CLERK

in the above matter on the 16TH day of July, 2001, a copy of which is attached hereto.

DATED this 17^L day of July, 1999.

McDonald Carano Wilson McCune
Bergin Frankovich & Hicks LLP

By: 

THOMAS R. C. WILSON, ESQ.
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Nevada State Bar # 4201
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Las Vegas, Nevada 89102
Attorneys for Defendants

RECEIPT OF COPY

RECEIPT OF A COPY of the foregoing NOTICE OF ENTRY OF ORDER is hereby
acknowledged this 17 day of July, 2001.

Hutchison & Steffen

Bernhard & Leslie, Chtd.

By: Mark A. Hutchison, Esq.
Mark A. Hutchison, Esq.
8831 W. Sahara Ave.
Las Vegas, NV 89117
7-17-01 9:55 AM

By: Peter C. Bernhard / MRO
Peter C. Bernhard, Chtd.
3980 Howard Hughes Parkway
Suite 550
Las Vegas, Nevada 89109

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CERTIFICATE OF MAILING

I hereby certify that I am an employee of McDonald Carano Wilson McCune Bergin Frankovich & Hicks LLP., and that I served a true and correct copy of the foregoing **NOTICE OF ENTRY OF ORDER** on this 17TH day of July, 2001, by depositing same in the United States Mail, postage prepaid thereon to the addresses noted below, upon the following:

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Attorney General's Office
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Los Angeles, CA 90013

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Riordan & McKenzie
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Los Angeles, CA 90071-3109

Kara A. Serrano
An Employee of McDonald Carano Wilson
McCune Bergin Frankovich & Hicks LLP

1 **ORDR**

2 **BILL LOCKYER**

3 Attorney General of the State of California

4 **DAVID S. CHANEY**

5 Supervising Deputy Attorney General

6 **FELIX E. LEATHERWOOD**, State Bar No. 103929

7 **GEORGE M. TAKENOUCI**, State Bar No. 157963

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13 **THOMAS R. C. WILSON, ESQ.**

14 Nevada State Bar # 1568

15 **JAMES C. GIUDICI, ESQ.**

16 Nevada State Bar # 224

17 **BRYAN R. CLARK, ESQ.**

18 Nevada State Bar #4442

19 **McDONALD CARANO WILSON McCUNE**

20 **BERGIN FRANKOVICH & HICKS LLP**

21 2300 West Sahara Avenue, Suite 1000

22 Las Vegas, Nevada 89102

23 (702) 873-4100

24 Attorneys for Franchise Tax Board

25 **DISTRICT COURT**

26 **CLARK COUNTY, NEVADA**

27 ********

28 **GILBERT P. HYATT,**

Plaintiff,

vs.

**FRANCHISE TAX BOARD OF THE
STATE OF CALIFORNIA, and DOES 1-100,
inclusive**

Defendants.

Case No. : A382999

Dept. No. : XVIII

REVISED ORDER

FILED

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Shirley S. Maguire
CLERK

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On June 13, 2001, the Nevada Supreme Court entered an Order granting the Franchise Tax Board of the State of California's Petition for Writ of Mandamus and directing the Clerk of the Court to issue a Writ of Mandamus instructing this Court to grant the Franchise Tax Board of the State of California's Motion for Summary Judgment in light of the lack of evidence presented by Plaintiff Gilbert P. Hyatt. On June 13, 2001, the Clerk of the Nevada Supreme Court issued a Writ of Mandamus instructing this Court to grant Franchise Tax Board of the State of California's Motion for Summary Judgment in light of the lack of evidence presented.

On June 29, 2001, the Franchise Tax Board of the State of California served on this Court the Order and the Writ of Mandamus entered by the Nevada Supreme Court on June 13, 2001, pursuant to the Writ of Mandamus.

IT IS HEREBY ORDERED that the Franchise Tax Board of the State of California's Motion for Summary Judgment on all claims presented by Plaintiff Gilbert P. Hyatt is GRANTED.

This Order shall supercede the Court's earlier Order of July 3, 2001, which was filed on July 12, 2001.

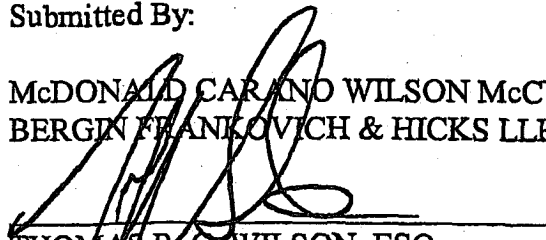
DATED this 12th day of July, 2001.

NANCY M. SAITTA

DISTRICT COURT JUDGE

Submitted By:

MCDONALD CARANO WILSON McCUNE
BERGIN FRANKOVICH & HICKS LLP



THOMAS R. C. WILSON, ESQ.

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(702) 873-4100
Attorneys for Franchise Tax Board
43748.1



TAB H

Copies of the last-filed version of all complaints, counterclaims and/or cross-claims filed in the district court.

1 COMP
2 Thomas L. Steffen (1300)
3 Mark A. Hutchison (4639)
4 HUTCHISON & STEFFEN
5 530 South Fourth Street
6 Las Vegas, NV 89101
7 (702) 385-2500

8 Attorneys for Plaintiff

FILED
JUN 12 4 10 PM '98

Janita L. Luman
CLERK

DISTRICT COURT
CLARK COUNTY, NEVADA

9 GILBERT P. HYATT,
10 Plaintiff,

11 v.

12 FRANCHISE TAX BOARD OF THE
13 STATE OF CALIFORNIA, and DOES
14 1-100, inclusive,
15 Defendants.

Case No. A382999
Dept. No. X
Docket No. R

FIRST AMENDED COMPLAINT

Jury Trial Demanded

**Exempt from Arbitration:
Declaratory Relief, Significant
Public Policy and Amount in Excess
Of \$40,000**

16
17 Plaintiff, Gilbert P. Hyatt, in this First Amended Complaint, complains against
18 defendants, and each of them, as follows:

19 **PARTIES**

- 20 1. Plaintiff resides in Clark County, Nevada and has done so since September 26, 1991.
- 21 2. Defendant Franchise Tax Board of the State of California (hereinafter "FTB") is a
22 governmental agency of the State of California with its principal office located in Sacramento,
23 California, and a district office located in Los Angeles, California. The FTB's function is to
24 ensure the collection of state income taxes from California residents and from income earned in
25 California by non-residents.
- 26 3. The identity and capacities of the defendants designated as Does 1 through 100 are
27 so designated by plaintiff because of his intent by this complaint to include as named
28 defendants every individual or entity who, in concert with the FTB as an employee,
representative, agent or independent contractor, committed the tortious acts described in this

1 complaint. The true names and capacities of these Doe defendants are presently known only to
2 the FTB, who committed the tortious acts in Nevada with the assistance of said Doe defendants
3 who are designated by fictitious names only until plaintiff is able, through discovery, to obtain
4 their true identities and capacities; upon ascertaining the true names and capacities of these Doe
5 defendants, plaintiff shall promptly amend this complaint to properly name them by their actual
6 identities and capacities. For pleading purposes, whenever this complaint refers to
7 "defendants," it shall refer to these Doe defendants, whether individuals, corporations or other
8 forms of associations or entities, until their true names are added by amendment along with
9 particularized facts concerning their conduct in the commission of the tortious acts alleged
10 herein.

11 4. Plaintiff is informed and believes, and on that basis alleges, that defendants, in acting
12 or omitting to act as alleged, acted or omitted to act within the course and scope of their
13 employment or agency, and in furtherance of their employer's or principal's business, whether
14 the employer or principal be the FTB or some other governmental agency or employer or
15 principal whose identity is not yet known; and that FTB and defendants were otherwise
16 responsible and liable for the acts and omissions alleged herein.

17 5. This action is exempt from the court-annexed arbitration program, pursuant to Rule
18 3, because: (1) this is an action for, *inter alia*, declaratory relief; (2) substantial issues of public
19 policy are implicated concerning the sovereignty of the State of Nevada and the integrity of its
20 territorial boundaries as opposed to governmental agencies of another state who enter Nevada
21 in an effort to extraterritorially, arbitrarily and deceptively enforce their policies, rules and
22 regulations on residents of Nevada in general, and plaintiff Gilbert P. Hyatt in particular; and
23 (3) the sums of money and damages involved herein far exceed the \$40,000.00 jurisdictional
24 limit of the arbitration program.

25 6. Plaintiff hereby requests a jury trial for his Second, Third, Fourth, Fifth, Sixth,
26 Seventh and Eighth Causes of Action.

27 **SUMMARY OF CLAIMS**

28 7. Plaintiff, by this action, seeks: (1) declaratory relief under NRS 30.010 *et seq.* to

1 confirm plaintiff's status as a Nevada resident effective as of September 26, 1991 and
2 continuing to the present and, correspondingly, his non-residency during said period in
3 California (FIRST CAUSE OF ACTION); (2) recovery of compensatory and punitive damages
4 against the FTB and the defendants for invasion of plaintiff's right of privacy resulting from
5 their investigation in Nevada of plaintiff's residency, domicile and place of abode and causing
6 (a) an unreasonable intrusion upon plaintiff's seclusion (SECOND CAUSE OF ACTION); (b)
7 an unreasonable publicity given to private facts (THIRD CAUSE OF ACTION); (c) casting
8 plaintiff in a false light (FOURTH CAUSE OF ACTION); (3) recovery of compensatory and
9 punitive damages against the FTB and the defendants for their outrageous conduct in regard to
10 their investigation in Nevada of plaintiff's residency, domicile and place of abode (FIFTH
11 CAUSE OF ACTION); (4) recovery of compensatory and punitive damages against the FTB
12 and defendants for an abuse of process (SIXTH CAUSE OF ACTION); (5) recovery of
13 compensatory and punitive damages against the FTB and defendants for fraud (SEVENTH
14 CAUSE OF ACTION); and (6) for compensatory damages against the FTB and defendants for
15 negligent misrepresentation (EIGHTH CAUSE OF ACTION). The claims specified in this
16 paragraph constitute EIGHT separate causes of action as hereinafter set forth in this complaint.

17 FACTUAL BACKGROUND

18 Plaintiff's Residency in Nevada

19 8. Plaintiff moved to the State of Nevada, County of Clark, and established full-time
20 residency here on September 26, 1991 and has remained a full-time, permanent resident since
21 that time. Prior to his relocation to Nevada, plaintiff resided in Southern California. Plaintiff is
22 a highly successful inventor. Specifically, plaintiff has been granted numerous important
23 patents for a wide range of inventions relating to computer technology. Plaintiff primarily
24 works alone in the creation and development of his inventions and greatly values his privacy
25 both in his personal life and business affairs. After certain of his important inventions were
26 granted patents in 1990, plaintiff began receiving a great deal of unwanted and unsolicited
27 publicity, notoriety and attention. To greater protect his privacy, to enjoy the social,
28 recreational, and financial advantages Nevada has to offer, and to generally enhance the quality

1 of his life and environment, plaintiff relocated to Nevada on September 26, 1991. This move
2 took place after much consideration and almost an entire year of planning.

3 9. The following events are indicative of the fact that on September 26, 1991, plaintiff
4 commenced both his residency and intent to remain in Nevada, and a continuation of both down
5 to the present: (1) the sale of plaintiff's California home in October 1991; (2) his renting and
6 residing at an apartment in Las Vegas commencing in October 1991 and continuing until April
7 1992 when plaintiff closed the purchase of a home in Las Vegas; (3) in November 1991,
8 plaintiff registered to vote in Nevada, obtained a Nevada driver's license, and joined a religious
9 organization in Las Vegas; (4) plaintiffs' extensive search, commencing in early October 1991,
10 for a new home in Las Vegas, and in the process utilizing the services of various real estate
11 brokers; (5) during the process of finding a home to purchase, plaintiff made numerous offers to
12 buy; (6) plaintiff's purchase of a new home in Las Vegas on April 3, 1992; (7) plaintiff
13 maintained and expanded his business interests from Las Vegas; and (8) plaintiff has, through
14 the years from September 26, 1991 and down to the present, contacted persons in high political
15 office, in the professions, and other walks of life, as a true Nevada resident of some renown
16 would, not concealing the fact of his Nevada residency. In sum, plaintiff has substantial
17 evidence, both testimonial and documentary, in support of the fact of his full-time residency,
18 domicile and place of abode in Nevada commencing on September 26, 1991 and continuing to
19 the present.

20 **The FTB and Defendants' Investigation of Plaintiff in Nevada**

21 10. Because plaintiff was a resident of California for part of 1991, plaintiff filed a Part-
22 Year state income tax return with the State of California for 1991 (the "1991 Return"). Said
23 return reflects plaintiff's payment of state income taxes to California for income earned during
24 the period of January 1 through September 26, 1991.

25 11. In or about June of 1993 — 21 months after plaintiff moved to Nevada — for
26 reasons that have never been specified, but are otherwise apparent, the FTB began an audit of
27 the 1991 Return. In or about July of 1993, as part of its audit, the FTB began to investigate
28 plaintiff by making or causing to be made numerous and continuous contacts directed at

1 Nevada. Initially, the FTB sent requests to Nevada government agencies for information
2 concerning plaintiff — a paper foray that continued for the next several years.

3 12. In or about January of 1995, FTB auditors began planning a trip to Las Vegas, the
4 purpose of which was to enhance and expand the scope of their investigation of plaintiff. In
5 March of 1995, the FTB and defendants commenced a “hands on” investigation of plaintiff that
6 included unannounced confrontations and questioning about private details of plaintiff’s life.
7 These intrusive activities were directed at numerous residents of Nevada, including plaintiff’s
8 current and former neighbors, employees of businesses and stores frequented by plaintiff, and
9 alas, even his trash collector!

10 13. Both prior and subsequent to the intrusive, “hands on” investigations described in
11 paragraph 12, above, the FTB propounded to numerous Nevada business and professional
12 entities and individual residents of Nevada “quasi-subpoenas” entitled “Demand to Furnish
13 Information” which cited the FTB’s authority **under California law** to issue subpoenas and
14 demanded that the recipients thereof produce the requested information concerning plaintiff.
15 Plaintiff is informed and believes, and therefore alleges, that the FTB never sought permission
16 from a Nevada court or any Nevada government agency to send such “quasi-subpoenas” into
17 Nevada where, induced by the authoritative appearance of the inquisitions, many Nevada
18 residents and business entities did respond with answers and information concerning plaintiff.

19 14. Subsequent to the documentary and “hands on” forays into Nevada by the FTB and
20 defendants, the FTB also sent correspondence, rather than “quasi-subpoenas,” to Nevada
21 Governor Bob Miller, Nevada Senator Richard Bryan and other government officials and
22 agencies seeking information regarding plaintiff and his residency in Nevada. Plaintiff is
23 further informed and believes, and therefore alleges, that the FTB intentionally sent
24 unauthorized “quasi-subpoenas” (i.e., “Demand to Furnish Information”) to private individuals
25 and businesses in a successful attempt to coerce their cooperation through deception and the
26 pretense of an authoritative demand, while on the other hand, sending respectful letter requests
27 for information to Nevada governmental agencies and officials who undoubtedly would have
28 recoiled at the attempt by the FTB to exercise extraterritorial authority in Nevada through the

1 outrageous means of the bogus subpoenas.

2 15. Plaintiff neither authorized the FTB's aforementioned documentary and pretentious
3 forays into Nevada, nor was plaintiff ever aware that such information was being sought in such
4 a manner until well after the "quasi-subpoenas" had been issued and the responses received.
5 Similarly, plaintiff had no knowledge of the FTB and defendants' excursions to Las Vegas to
6 investigate plaintiff or the FTB's correspondence with Nevada government agencies and
7 officials until well after such contacts had taken place. Upon information and belief, plaintiff
8 alleges that all of the above-described activities were calculated to enable the FTB to develop a
9 colorable basis for assessing a huge tax against plaintiff despite the obvious fact that the FTB
10 was proceeding against a bona fide resident of Nevada.

11 **Assessment for 1991**

12 16. On April 23, 1996, after the FTB had completed its audit and investigation of the
13 1991 Return, the FTB sent a Notice of Proposed Assessment (i.e., a formal notice that taxes are
14 owed) to plaintiff in which the FTB claimed plaintiff was a resident of California — not
15 Nevada — until April 3, 1992. The FTB therefore assessed plaintiff California state income tax
16 for the period of September 26 through December 31 of 1991 in a substantial amount.
17 Moreover, the FTB also assessed a penalty against plaintiff in an amount almost equal to the
18 assessed tax after summarily concluding that plaintiff's non-payment of the assessed tax, based
19 upon his asserted residency in Nevada and non-residency in California, was fraudulent.

20 17. Plaintiff, who demonstrably is and was at all times pertinent hereto, a bona fide
21 resident of Nevada should not be forced into a California forum to seek relief from the unjust
22 and tortious attempts by the FTB to extort unlawful taxes from this Nevada resident. Plaintiff
23 avers that the manufactured issue of his residency in Nevada for the period of September 26
24 through December 31 of 1991 should be determined in Nevada, the state of plaintiff's
25 residence. The FTB is in effect attempting to impose an "exit tax" on plaintiff by coercing him
26 into administrative procedures and possible future court action in California. The FTB has
27 arbitrarily, maliciously and without support in law or fact, asserted that plaintiff remained a
28 California resident until he purchased and closed escrow on a new home in Las Vegas on April

1 3, 1992. In a word, the FTB's prolonged and monumental efforts to find a way — any way —
2 to effectively assess additional income taxes against plaintiff after he changed his residency
3 from California to Nevada is based on governmental greed arising from the FTB's eventual
4 awareness of the financial success plaintiff has realized since leaving California and becoming
5 a bona fide resident of the State of Nevada. The aforesaid date of Nevada residency accepted
6 by the FTB with respect to the 1991 Report is over six months after plaintiff moved to Nevada
7 with the intent to stay and began, he thought, to enjoy all the privileges and advantages of
8 residency in his new state.

9 **The FTB's Continuing Pursuit of Plaintiff in Nevada**

10 18. On or about April 1, 1996, plaintiff received formal notice that the FTB had
11 commenced an investigation into the 1992 tax year and that its tentative determination was that
12 plaintiff would also be assessed California state income taxes for the period of January 1
13 through April 3 of 1992.

14 19. On or about April 10, 1997 and May 12, 1997 respectively, plaintiff received
15 notices from the FTB that it would be issuing a formal "Notice of Proposed Assessment" in
16 regard to the 1992 tax year in which it will seek back taxes from plaintiff for income earned
17 during the period of January 1 through April 2, 1992 and in addition would seek penalties for
18 plaintiff's failure to file a state income tax return for 1992.

19 20. Prior to the FTB sending the formal Notice of Proposed Assessment for the 1992
20 tax year, a representative of the FTB stated to one of plaintiff's representatives that disputes
21 over such assessments by the FTB always settle at this stage as taxpayers do not want to risk
22 their personal financial information being made public. Plaintiff understood this statement to
23 be a strong suggestion by the FTB that he settle the dispute by payment of some portion of the
24 assessed taxes and penalties. Plaintiff refused, and continues to refuse to do so, as he has not
25 been a resident of California since his move to Nevada on September 26, 1991, and it remains
26 clear to him that the FTB is engaging in its highhanded tactics to extort "taxes and penalties"
27 from him that he does not legally or morally owe.

28 21. On or about August 14, 1997, plaintiff received a formal Notice of Proposed

1 Assessment for 1992. Despite the FTB's earlier written statements and findings that plaintiff
2 became a Nevada resident at least as of April 3, 1992 and its statement in such Notice of
3 Proposed Assessment that "We [the FTB] consider you to be a resident of this state [California]
4 through April 2, 1992," such notice proceeded to assess California state income taxes on
5 plaintiff's income for the **entire year of 1992**. Specifically, the FTB assessed plaintiff state
6 income taxes for 1992 in an amount five times greater than that for 1991, assessed plaintiff a
7 penalty almost as great as the assessed tax for alleged fraud in claiming he was a Nevada
8 resident during 1992, and stated that interest accrued through August 14, 1997 (roughly the
9 equivalent of the penalty) was also owed on the assessed tax and penalty. In short, the State of
10 California, through the FTB, sent plaintiff a bill for the entire 1992 tax year, which was
11 fourteen times the amount of tax it initially assessed for 1991, and in so doing asserted that
12 plaintiff was "a California resident for the entire year." Without explanation the FTB ignored
13 its earlier finding and written acknowledgment that plaintiff was a Nevada resident at least as of
14 April 3, 1992. This outrage is a transparent effort to extort substantial sums of money from a
15 Nevada resident.

16 22. Plaintiff is informed and believes, and therefore alleges, that the FTB intends to
17 engage in a repeat of the "hands on," extraterritorial investigations directed at plaintiff within
18 the State of Nevada in an effort to conjure up a colorable basis for justifying its frivolous,
19 extortionate Noticed of Proposed Assessment for the 1992 tax year.

20 23. Plaintiff is informed and believes, and therefore alleges, that the FTB may continue
21 to assess plaintiff California state income taxes for the years 1993, 1994, 1995, 1996 and
22 beyond since the FTB has now disregarded its own conclusion regarding plaintiff's residency in
23 Nevada as of April 3, 1992, and is bent on charging him with a staggering amount of taxes,
24 penalties and interest irrespective of his status as a bona fide resident of Nevada. It appears
25 from its actions concerning plaintiff, that the FTB has embraced a new theory of liability that in
26 effect declares "once a California resident always a California resident" as long as the victim
27 continues to generate significant amounts of income. Thus, the FTB has raised an invisible
28 equivalent of the iron curtain that prohibits such residents from ever leaving the taxing

1 jurisdiction of the FTB.

2 **The FTB's Motive**

3 24. Plaintiff is informed and believes, and therefore alleges, that the FTB has no
4 credible, admissible evidence that plaintiff was a California resident at anytime after September
5 of 1991, despite the FTB's exhaustive extraterritorial investigations in Nevada. The FTB has
6 acknowledged in its own reports that plaintiff sold his California home on October 1, 1991, that
7 plaintiff rented an apartment in Las Vegas from November 1991 until April 1992 and that
8 plaintiff purchased a home in Las Vegas in April 1992.

9 25. Plaintiff is informed and believes, and therefore alleges, that the assessments by the
10 FTB against plaintiff for 1991 and 1992 result from the fact that almost two years after plaintiff
11 moved from California to Nevada an FTB investigator read a magazine article about plaintiff's
12 wealth and the FTB thereafter launched its investigation in the hope of extracting a significant
13 settlement from plaintiff. Plaintiff is further informed and believes, and therefore alleges, that
14 the FTB has assessed a fraud penalty against plaintiff for the 1991 tax year and issued a Notice
15 of Proposed Assessment assessing plaintiff for the entire 1992 tax year and a fraud penalty for
16 the same year to intimidate plaintiff and coerce him into paying some significant amount of tax
17 for income earned after September 26, 1991, despite its awareness that plaintiff actually became
18 a Nevada resident at that time. Plaintiff alleges that the FTB's efforts to coerce plaintiff into
19 sharing his hard-earned wealth despite having no lawful basis for doing so, constitutes malice
20 and oppression.

21 **Jurisdiction**

22 26. This Court has personal jurisdiction over the FTB pursuant to Nevada's "long-arm"
23 statute, NRS 14.065 et seq., because of the FTB's tortious extraterritorial contacts and
24 investigatory conduct within the State of Nevada ostensibly as part of its auditing efforts to
25 undermine plaintiff's status as a Nevada resident, but in reality to create a colorable basis for
26 maintaining that plaintiff continued his residency in California during the period September 26,
27 1991 to December 31, 1991 and beyond.

28 27. Plaintiff is informed and believes, and therefore alleges, that the FTB has a pattern

1 and practice of entering into Nevada to investigate Nevada residents who were formerly
2 residents of California, and then assessing such residents California state income taxes for time
3 periods subsequent to the date when such individuals moved to and established residency in
4 Nevada.

5 **FIRST CAUSE OF ACTION**

6 **(For Declaratory Relief)**

7 28. Plaintiff realleges and incorporates herein by reference each and every allegation
8 contained in paragraphs 1 through 27 above, as though set forth herein verbatim.

9 29. Pursuant to California law, in determining whether an individual was a resident of
10 California for a certain time period thereby making such individual's income subject to
11 California state income tax during such period, the individual must have been domiciled in
12 California during such period for "other than a temporary or transitory purpose." See Cal. Rev.
13 & Tax Code § 17014. The FTB's own regulations and precedents require that it apply certain
14 factors in determining an individual's domicile and/or whether the individual's presence in
15 California (or outside of California) was more than temporary or transitory.

16 (a) Domicile.

17 Domicile is determined by the individual's physical presence in California with
18 **intent to stay** or if absent temporarily from California an **intent to return**. Such intent
19 is determined by the acts and conduct of the individual such as: (1) where the individual
20 is registered to vote and votes; (2) location of the individual's permanent home; (3)
21 comparative size of homes maintained by the individual in different states; (4) where
22 the individual files federal income tax returns; (5) comparative time spent by the
23 individual in different states; (6) cancellation of the individual's California
24 homeowner's property tax exemption; (7) obtaining a driver's license from another
25 state; (8) registering a car in another state; (9) joining religious, business and/or social
26 organizations in another state; and (10) establishment of a successful business in another
27 state by an individual who is self employed.

28

1 (b) Temporary or Transitory Purpose.

2 The following contacts which are similar although not identical to those used to
3 determine domicile are important in determining whether an individual was in
4 California (or left California) for a temporary or transitory purpose: (1) physical
5 presence of the individual in California in comparison to the other state or states; (2)
6 establishment of a successful business in another state by an individual who is self
7 employed; (3) extensive business interest outside of California and active participation
8 in such business by the individual; (4) banking activity in California by the individual is
9 given some, although not a great deal of, weight; (5) rental of property in another state
10 by the individual; (6) cancellation of the individual's California homeowner's property
11 tax exemption; (7) hiring professionals by the individual located in another state; (8)
12 obtaining a driver's license from another state; (9) registering a car in another state; (10)
13 joining religious, business and/or social organizations in another state; and (11) where
14 the individual is registered to vote and votes.

15 30. The FTB's assessment of taxes and a penalty for 1991 is based on the FTB's
16 conclusion in the first instance that plaintiff did not become a resident of Nevada until April 3,
17 1992, the date on which plaintiff closed escrow on a new home in Las Vegas. In coming to
18 such a conclusion, the FTB discounted or refused to consider a multitude of evidentiary facts
19 which contradicted the FTB's conclusion, and were the type of facts the FTB's own regulations
20 and precedents require it to consider. Such facts include, but are not limited to, the following:
21 (1) plaintiff sold his California home on October 1, 1991; (2) plaintiff rented an apartment in
22 Las Vegas on or about October 7, 1991 and, after a brief period of necessary travel to the east
23 coast, took possession of said apartment on or about October 22, 1991 and maintained his
24 residence there until April of 1992; (3) plaintiff registered to vote, obtained a Nevada driver's
25 license (relinquishing his California driver's license to the Nevada Department of Motor
26 Vehicles), and joined a Las Vegas religious organization in November of 1991; (4) plaintiff
27 terminated his California home owner's exemption effective October 1, 1991; (5) plaintiff
28 began actively searching for a house to buy in Las Vegas, commencing in early October 1991,

1 and submitted numerous offers on houses in Las Vegas beginning in December 1991; (6) one
2 of plaintiff's offers to purchase a home in Las Vegas was accepted in March of 1992 and
3 escrow on the transaction closed on April 3, 1992; and (7) plaintiff's new home in Las Vegas
4 was substantially larger than the home in Southern California, which he sold in October of
5 1991.

6 31. An actual controversy exists as to whether plaintiff was a full-time resident of
7 Nevada — not California — commencing on September 26, 1991 through December 31, 1991
8 and continuing thereafter through the year 1992 and beyond. Plaintiff contends that under
9 either Nevada or California law, or both, he was a full-time, bona fide resident of Nevada
10 throughout the referenced periods and down to the present, and that the FTB ignored its own
11 regulations and precedents in finding to the contrary, and that the FTB has no jurisdiction to
12 impose a tax obligation on plaintiff during the contested periods. Plaintiff also contends that
13 the FTB had no authority to conduct an extraterritorial investigation of plaintiff in Nevada and
14 no authority to propound "quasi-subpoenas" to Nevada residents and businesses, thereby
15 seeking to coerce the cooperation of said Nevada residents and businesses through an unlawful
16 and tortious deception, to reveal information about plaintiff. Plaintiff is informed and believes,
17 and therefore alleges, that the FTB contends in all respects to the contrary.

18 32. Plaintiff therefore requests judgment of this Court declaring and confirming
19 plaintiff's status as a full-time, bona fide resident of the State of Nevada effective from
20 September 26, 1991 to the present; and for judgment declaring the FTB's extraterritorial
21 investigatory excursions into Nevada, and the submission of "quasi-subpoenas" to Nevada
22 residents without approval from a Nevada court or governmental agency, as alleged above, to
23 be without authority and violative of Nevada's sovereignty and territorial integrity.

24 **SECOND CAUSE OF ACTION**

25 **(For Invasion of Privacy — Unreasonable Intrusion Upon The Seclusion of Another)**

26 33. Plaintiff realleges and incorporates herein by reference each and every allegation
27 contained in paragraphs 1 through 27, and 29 through 31, above, as though set forth herein
28 verbatim.

1 34. Plaintiff is informed and believes, and therefore alleges, that neighbors, businesses,
2 government officials and others within Nevada with whom plaintiff has had and would
3 reasonably expect in the future to have social or business interactions, were approached and
4 questioned by the FTB and defendants who disclosed or implied that plaintiff was under
5 investigation in California, and otherwise acted in such a manner as to cause doubts to arise
6 concerning plaintiff's integrity and moral character. Moreover, as part of the
7 audit/investigation in regard to the 1991 Return, plaintiff turned over to the FTB highly
8 personal and confidential information with the understanding that it would remain confidential.
9 The FTB even noted in its own internal documentation that plaintiff had a significant concern
10 in regard to the protection of his privacy in turning over such information. At the time this
11 occurred, plaintiff was still hopeful that the FTB was actually operating in good faith, a
12 proposition that, as noted throughout this complaint, proved to be utterly false.

13 35. Plaintiff is informed and believes, and therefore alleges, that the FTB and
14 defendants nevertheless violated plaintiff's right to privacy in regard to such information by
15 revealing it to third parties and otherwise conducting an investigation in Nevada through which
16 the FTB and defendants revealed to third parties personal and confidential information, which
17 plaintiff had every right to expect would not be revealed to such parties.

18 36. Plaintiff is informed and believes, and therefore alleges, that the FTB and
19 defendants' extensive probing and investigation of plaintiff, including their actions both
20 occurring within Nevada and directed to Nevada from California, were performed with the
21 intent to harass, annoy, vex, embarrass and intimidate plaintiff such that he would eventually
22 enter into a settlement with the FTB concerning his residency during the disputed time periods
23 and the taxes and penalties allegedly owed. Such conduct by the FTB and defendants did in
24 fact harass, annoy, vex and embarrass Hyatt, and syphon his time and energies from the
25 productive work in which he is engaged.

26 37. Plaintiff is informed and believes, and therefore alleges, that the FTB and
27 defendants through their investigative actions, and in particular the manner in which they were
28 carried out in Nevada, intentionally intruded into the solitude and seclusion which plaintiff had

1 specifically sought by moving to Nevada. The intrusion by the FTB and defendants was such
2 that any reasonable person, including plaintiff, would find highly offensive.

3 38. As a direct, proximate, and foreseeable result of the FTB and defendants'
4 aforementioned invasion of plaintiff's privacy, plaintiff has suffered actual and consequential
5 damages in a total amount in excess of \$10,000.

6 39. Plaintiff is informed and believes, and therefore alleges, that said invasion of
7 plaintiff's privacy was intentional, malicious, and oppressive in that such invasion was
8 despicable conduct by the FTB and defendants entered into with a willful and conscious
9 disregard of plaintiff's rights, and the efficacious intent to cause him injury. Plaintiff is
10 therefore entitled to an award of punitive damages against the FTB and defendants in an
11 amount sufficient to satisfy the purposes for which such damages are awarded.

12 **THIRD CAUSE OF ACTION**

13 **(For Invasion of Privacy — Unreasonable Publicity Given To Private Facts)**

14 40. Plaintiff realleges and incorporates herein by reference each and every allegation
15 contained in paragraphs 1 through 27, 29 through 31, and 34 through 37, above, as though set
16 forth herein verbatim.

17 41. As set forth above, plaintiff revealed to the FTB highly personal and confidential
18 information at the request of the FTB as an ostensible part of its audit and investigation into
19 plaintiff's residency during the disputed time periods. Plaintiff had a reasonable expectation
20 that said information would be kept confidential and not revealed to third parties and the FTB
21 and defendants knew and understood that said information was to be kept confidential and not
22 revealed to third parties.

23 42. The FTB and defendants, without necessity or justification, nevertheless disclosed
24 to third parties in Nevada certain of plaintiff's personal and confidential information which had
25 been cooperatively disclosed to the FTB by plaintiff only for the purposes of facilitating the
26 FTB's legitimate auditing and investigative efforts.

27 43. As a direct, proximate, and foreseeable result of the FTB's aforementioned invasion
28 of plaintiff's privacy, plaintiff has suffered actual and consequential damages in a total amount

1 in excess of \$10,000.

2 44. Plaintiff is informed and believes, and therefore alleges, that said invasion of
3 plaintiff's privacy was intentional, malicious, and oppressive in that such invasion constituted
4 despicable conduct by the FTB and defendants entered into with a willful and conscious
5 disregard of the rights of plaintiff. Plaintiff is therefore entitled to an award of punitive or
6 exemplary damages in an amount sufficient to satisfy the purposes for which such damages are
7 awarded.

8 **FOURTH CAUSE OF ACTION**

9 **(For Invasion of Privacy — Casting Plaintiff in a False Light)**

10 45. Plaintiff realleges and incorporates herein by reference each and every allegation
11 contained in paragraphs 1 through 27, 29 through 31, 34 through 37, and 41 and 42, above, as if
12 set forth herein verbatim.

13 46. By conducting interviews and interrogations of Nevada residents and by issuing
14 unauthorized "Demands to Furnish Information" as part of their investigation in Nevada of
15 plaintiff's residency, the FTB and defendants invaded plaintiff's right to privacy by stating or
16 insinuating to said Nevada residents that plaintiff was under investigation in California, thereby
17 falsely portraying plaintiff as having engaged in illegal and immoral conduct, and decidedly
18 casting plaintiff's character in a false light.

19 47. The FTB and defendants' conduct in publicizing its investigation of plaintiff cast
20 plaintiff in a false light in the public eye, thereby adversely compromising the attitude of those
21 who know or would, in reasonable likelihood, come to know Gil Hyatt because of the nature
22 and scope of his work. Such publicity of the investigation was offensive and objectionable to
23 plaintiff and was carried out for other than honorable, lawful, or reasonable purposes. Said
24 conduct by the FTB and the defendants was calculated to harm, vex, annoy and intimidate
25 plaintiff, and was not only offensive and embarrassing to plaintiff, but would have been equally
26 so to any reasonable person of ordinary sensibilities similarly situated, as the conduct could
27 only serve to damage plaintiff's reputation.

28 48. As a direct, proximate, and foreseeable result of the FTB and defendants'

1 disputed periods. As a result of such extremely outrageous and oppressive conduct on the part
2 of the FTB and defendants, plaintiff has indeed suffered fear, grief, humiliation,
3 embarrassment, anger, and a strong sense of outrage that any honest and reasonably sensitive
4 person would feel if subjected to equivalent unrelenting, outrageous personal threats and insults
5 by such powerful and determined adversaries.

6 52. As a direct, proximate, and foreseeable result of the FTB and defendants'
7 aforementioned extreme, unrelenting, and outrageous conduct, plaintiff has suffered actual and
8 consequential damages in a total amount in excess of \$10,000.

9 53. Plaintiff is informed and believes, and therefore alleges, that said extreme,
10 unrelenting, and outrageous conduct was intentional, malicious, and oppressive in that it was
11 despicable conduct by the FTB and defendants, entered into with a willful and conscious
12 disregard of plaintiff's rights. Plaintiff is therefore entitled to an award of exemplary or
13 punitive damages in an amount sufficient to satisfy the purposes for which such damages are
14 awarded.

15 SIXTH CAUSE OF ACTION

16 (For Abuse of Process)

17 54. Plaintiff realleges and incorporates herein by reference each and every allegation
18 contained in paragraphs 1 through 27, 29 through 31, 34 through 37, 41 and 42, 46 and 47, and
19 51 and 53, above, as if set forth herein verbatim.

20 55. Despite plaintiff's ongoing effort, both personally and through his professional
21 representatives, to reasonably provide the FTB with every form of information it requested in
22 order to convince the FTB that plaintiff has been a bona fide resident of the State of Nevada
23 since September 26, 1991, the FTB has willfully sought to extort vast sums of money from
24 plaintiff through administrative proceedings unrelated to the legitimate taxing purposes for
25 which the FTB is empowered to act as an agency of the government of the State of California;
26 said administrative proceedings have been lawlessly and abusively directed into the State of
27 Nevada through means of administrative "quasi-subpoenas" that have been unlawfully utilized
28 in the attempt to extort money from plaintiff as aforesaid.

1 56. The FTB, without authorization from any Nevada court or governmental agency,
2 directed facially authoritative "DEMAND[S] TO FURNISH INFORMATION," also referred
3 to herein by plaintiff as "quasi-subpoenas," to various Nevada residents, professionals and
4 businesses, *requiring* specific information about plaintiff. The aforesaid "Demands"
5 constituted an actionable abuse of process with respect to plaintiff for the following reasons:

6 (a) Despite the fact that each such "Demand" was without force of law, they were
7 specifically represented to be "Authorized by California Revenue & Taxation Code Section
8 19504 (formerly 19254 (a) and 26423 (a)[]," sent out by the State of California, Franchise Tax
9 Board on behalf of "The People of the State of California" to each specific recipient, and were
10 prominently identified as relating to "*In the Matter of: Gilbert P. Hyatt;*" Plaintiff was also
11 identified by his social security number, and in certain instances by **his actual home address**
12 in violation of express promises of confidentiality by the FTB; although the aforesaid
13 "Demands" were not directed to plaintiff, the perversion of administrative process which they
14 represented was motivated by the intent to make plaintiff both the target and the victim of the
15 illicit documents;

16 (b) Each such "Demand" was unlawfully used in order to further the effort to extort
17 monies from plaintiff that could not be lawfully and constitutionally assessed and collected
18 because plaintiff was a bona fide resident of Nevada throughout the periods of time the FTB
19 has sought to collect taxes from him, and plaintiff has not generated any California income
20 during any of the pertinent time periods;

21 (c) Each such "Demand" was submitted to Nevada residents, professionals and
22 businesses for the ulterior purpose of coercing plaintiff into paying extortionate sums of money
23 to the FTB without factual or constitutional justification, and without the intent or prospect of
24 resolving any legal dispute; indeed, as noted above, many of the "Demands" were used as
25 vehicles for publicly violating express promises of confidentiality by the FTB, thus adding to
26 the pressure and anxiety felt by plaintiff as intended by the FTB in furtherance of its unlawful
27 scheme;

28 (d) Although the FTB was allegedly investigating plaintiff for the audit years 1991 and

1 1992, such audits were and are a "sham" asserted for the purposes of attempting to extort non-
2 owed monies from plaintiff, as demonstrated by the fact that several of the "Demands"
3 indicated that they were issued to secure information (about plaintiff) "for investigation, audit
4 or collection purposes pertaining to the above-named taxpayer for the years indicated," and
5 then proceeded to demand information pertaining to the years 1993, 1994, and 1995 "to
6 present;"

7 (e) Sheila Cox, a tax auditor for the FTB who has invested hundreds of hours in
8 attempting to gain unlawful access to plaintiff's wallet through means of extortion, was the
9 "Authorized Representative" who issued these abusive, deceptive and outrageous "Demands;"
10 and each of the "Demands" or quasi-subpoenas constituted legal or administrative process
11 targeting plaintiff that was not proper in the regular conduct of the FTB's administrative
12 proceedings against plaintiff;

13 (f) That each "Demand" was selectively, deliberately and calculatingly issued to Nevada
14 recipients who Sheila Cox and the FTB thought would most likely respond to the authoritative
15 nature and language of the documents, as opposed to courteous letters of inquiry that tax
16 auditors and the FTB sent to certain governmental agencies and officials who were viewed as
17 potential sources of criticism or trouble if confronted with the deceptive attempt to exact
18 sensitive information from them through means of facially coercive documents purporting to
19 have extraterritorial effect based upon the authority of California law;

20 (g) In conjunction with and in addition to the issuance of the aforesaid "Demands," and
21 the personal, investigative forays into Nevada by FTB agents, as detailed above, a
22 representative of the FTB, Anna Jovanovich, stated to plaintiff's tax counsel, Eugene Cowan,
23 Esq., that at this "stage" of the proceedings, these types of disputes involving wealthy or well-
24 known taxpayers over their contested assessments almost always settle because these taxpayers
25 do not want to risk having their personal financial information being made public, thus the
26 "suggestion" by Ms. Jovanovich concerning settlement was made with the implied threat that
27 the FTB would release highly confidential financial information concerning plaintiff if he
28 refused to settle, another deceptive and improper abuse of the proceedings instigated by the

1 FTB to coerce settlement by plaintiff;

2 (h) In conjunction with and in addition to the issuance of the aforesaid "Demands" and
3 the other improper methods of exerting coercive pressure on plaintiff to pay the FTB money
4 which it has sought to secure by extortion, and without justification in law or equity, the FTB
5 compounded its abuse of its administrative powers by assessing plaintiff huge penalties based
6 on patently false and frivolous accusations, including but not limited to, the concealment of
7 assets to avoid taxes, plus the outrageous contention that plaintiff was fraudulently claiming
8 Nevada residency;

9 (i) The FTB and Sheila Cox knew that they had no authority to issue "**DEMAND[S]**
10 **TO FURNISH INFORMATION**" to any Nevada resident, business or entity, and that it was
11 a gross abuse of Section 19504 of the California Revenue and Taxation Code, under which the
12 aforesaid "Demands" were purportedly authorized; that the aforesaid section of the California
13 Revenue and Taxation Code contains no provision that remotely purports to empower or
14 authorize the FTB to issue such facially coercive documents to residents and citizens of Nevada
15 in Nevada; and despite knowing that it was highly improper and unlawful to attempt to deceive
16 Nevada citizens and businesses into believing that they were under a compulsion to respond to
17 the "Demands" under pain of some type of punitive consequences, Sheila Cox and the FTB
18 nevertheless deliberately and calculatingly abused the process authorized by the aforesaid
19 section of the California Revenue and Taxation Code in order to promote their attempts to
20 extort money from plaintiff;

21 (j) From the outset, the determination by Sheila Cox and the FTB to utilize the
22 "**DEMAND[S] TO FURNISH INFORMATION**" in Nevada, constituted a deliberate,
23 unlawful, and despicable decision to embark on a course of concealment in the effort to
24 produce material, information, pressure and sources of distortion that would culminate in a
25 combination of sufficient strength and adversity to force plaintiff to yield to the FTB's
26 extortionate demands for money; and the course of concealment consisted of concealing from
27 plaintiff the fact that the aforesaid "Demands" were being sent to Nevada residents,
28 professional persons and businesses, and in hiding from the recipients of the "Demands" the

1 fact that despite their stated support in California law, the documents had no such support and
2 were deceitful and bogus documents; and

3 (k) The FTB further abused its legal, administrative process by issuing the bogus quasi-
4 subpoenas to Nevada residents, professionals, and businesses without providing plaintiff with
5 notice of such discovery as required by the due process clause of Article 1, Section 8 of the
6 Nevada Constitution and the applicable Nevada Rules of Civil Procedure.

7 57. As a direct, proximate and foreseeable result of the FTB and defendants' intentional
8 and malicious abuse of the administrative processes, which the FTB initiated and unrelentingly
9 pursued against plaintiff, as aforesaid, plaintiff has suffered actual and consequential damages,
10 including but not limited to fear, anxiety, mental and emotional distress in an amount in excess
11 of \$10,000.

12 58. Plaintiff is informed and reasonably believes, and therefore alleges, that said abuse
13 of the administrative processes initiated and pursued against plaintiff was willful, intentional,
14 malicious and oppressive in that it represented a deliberate effort to unlawfully extort
15 substantial sums of money from plaintiff that could not be remotely justified by any honorable
16 effort within the purview of the powers conferred upon the FTB by the State of California
17 relating to all aspects of taxation, including the powers of investigation, assessment and
18 collection. Plaintiff is therefore entitled to an award of exemplary or punitive damages in an
19 amount sufficient to satisfy the purposes for which such damages are awarded.

20 **SEVENTH CAUSE OF ACTION**

21 **(For Fraud)**

22 59. Plaintiff realleges and incorporates herein by reference each and every allegation
23 contained in paragraphs 1 through 27, 29 through 31, 34 through 37, 41 and 42, 46 and 47, 51
24 and 53, 54 through 56, including subparagraphs (a) through (k) of the latter paragraph, above,
25 as if set forth herein verbatim.

26 60. Plaintiff, who prior to September 26, 1991 had been a long-standing resident and
27 taxpayer of the State of California, placed trust and confidence in the bona fides of the FTB as
28 the taxing authority of the State of California when the FTB first contacted him on or about

1 June 1993 regarding the 1991 audit of his California tax obligation; by the time of this first
2 contact, plaintiff had become a recognized and prominent force in the computer electronics
3 industry, and he was vitally interested in maintaining both his personal and business security, as
4 well as the integrity of his reputation as a highly successful inventor and owner and licensor of
5 significantly valuable patents.

6 61. During the course of seeking information and documents relating to the 1991
7 "audit," and repeatedly thereafter, the FTB absolutely promised to maintain in the strictest of
8 confidence, various aspects of plaintiff's circumstances, including, but not limited to, his
9 personal home address and his business and financial transactions and status; and plaintiff's
10 professional representatives took special measures to maintain the confidentiality of plaintiff's
11 affairs, including and especially obtaining solemn commitments from FTB agents to maintain
12 in the strictest of confidence (assured by supposedly secure arrangements) all of plaintiff's
13 confidential information and documents; and the said confidential information and documents
14 were given to the FTB in return for its solemn guarantees and assurances of confidentiality, as
15 aforesaid.

16 62. Despite the aforesaid assurances and representations of confidentiality by the FTB,
17 said assurances and representations were false, and the FTB knew they were false or believed
18 they were false, or were without a sufficient basis for making said assurances and
19 representations. Even as the FTB and its agents were continuing to provide assurances of
20 confidentiality to plaintiff and his professional representatives, and without notice to either,
21 Sheila Cox and the FTB were in the process of sending the bogus **"DEMAND[S] TO**
22 **FURNISH INFORMATION"** to the utility companies in Las Vegas which demonstrated that
23 the aforesaid assurances and representations were false, as the FTB revealed plaintiff's personal
24 home address in Las Vegas, thus making this highly sensitive and confidential information
25 essentially available to the world through access to the databases maintained by the utility
26 companies. Specific representative indices of the FTB's fraud include:

27 (a) In a letter by Eugene Cowan, Esq., a tax attorney representing plaintiff, dated
28 November 1, 1993 and addressed to and received by Mr. Marc Shayer of the FTB, Mr. Cowan

1 indicated that he was enclosing a copy of plaintiff's escrow instructions concerning the
2 purchase of his Las Vegas residence, and that "[p]er our discussion, the address of the Las
3 Vegas home has been deleted." Mr. Cowan ended his letter with the following sentence: "As
4 we discussed, the enclosed materials are highly confidential and we do appreciate your
5 utmost care in maintaining their confidentiality." This letter is contained within the files of
6 the FTB, and the FTB noted in its chronological list of items, the receipt of the aforesaid
7 escrow instructions with "Address deleted;"

8 (b) In the FTB's records concerning its Residency Audit 1991 of Gilbert P. Hyatt, the
9 following pertinent excerpts of notations exist :

10 (I) 2/17/95 - "[Eugene Cowan] wants us to make as few copies as possible, as he is
11 concerned for the privacy of the taxpayer. I [the FTB agent] explained that we will need
12 copies, as the cases often take a long time to complete and that cases which go to protest can
13 take several years to resolve[;]"

14 (ii) 2/21/95 - "LETTER FROM REPRESENTATIVE MIKE KERN Earlier
15 document request was transferred to Eugene Cowan due to the sensitive and confidential nature
16 of documentation[;]"

17 (iii) 2/23/95 - "Meeting [between Sheila Cox and] . . . Eugene Cowan . . . Mr. Cowan
18 stressed that the taxpayer is very worried about his privacy and does not wish to give us copies
19 of anything. I [Sheila Cox] discussed with him our Security and Disclosure policy. He said
20 that the taxpayer is fearful of kidnapping." [sic] This latter reference to "kidnaping" is a
21 fabrication by Sheila Cox in an apparent effort to downplay in the FTB's records, the
22 importance of plaintiff's privacy concerns as those of an eccentric or paranoid; in reality, the
23 FTB, Sheila Cox and other FTB agents knew that plaintiff had genuine cause for being
24 concerned about industrial espionage and other risks associated with the magnitude of
25 plaintiff's position in the computer electronics industry;

26 (iv) On February 28, 1995, Eugene Cowan, Esq. sent a letter to Sheila Cox of the
27 FTB enclosing copies of various documents. He then stated: "As previously discussed with
28 you and other Franchise Tax Board auditors, all correspondence and materials furnished to the

1 Franchise Tax Board by the taxpayer are highly confidential. It is our understanding that you
2 will retain these materials in locked facilities with limited access[;]" and

3 (v) 8/31/95 - In a letter sent to Eugene Cowan, Esq. by Sheila Cox on 8/31/95
4 regarding the 1991 audit, Cox stated: "The FTB acknowledges that the taxpayer is a private
5 person who puts a significant effort into protecting his privacy[;]"

6 (c) Despite the meeting Sheila Cox had with Mr. Cowan on February 23, 1995, and Mr.
7 Cowan's expression of plaintiff's concern for his privacy, and the explanation by Cox of the
8 FTB's stringent Security and Disclosure policy (the violation of which may subject the
9 offending FTB employee to criminal sanctions or termination); and despite Mr. Cowan's letter
10 to Sheila Cox of February 28, 1995, discussing the highly confidential nature of "all
11 correspondence and materials furnished to the Franchise Tax Board" and his and plaintiff's
12 "understanding that you will retain these materials in locked facilities with limited access"
13 (thereby again underscoring the understanding that all information and documents provided to
14 the FTB would be confidential, including plaintiff's personal residence address), Sheila Cox
15 sent a "DEMAND TO FURNISH INFORMATION" to the Las Vegas utility companies
16 including Southwest Gas Corp., Silver State Disposal Service and Las Vegas Valley Water
17 District, providing each such company with the plaintiff's personal home address, thereby
18 demonstrating disdain for plaintiff, his privacy concerns and the FTB's assurances of
19 confidentiality.

20 63. Plaintiff further alleges that from the very beginning of the FTB's notification to
21 plaintiff and his professional representatives of its intention to audit his 1991 California taxes,
22 express and implied assurances and representations were made to plaintiff through his
23 representatives, that the audit was to be an objective inquiry into the status of his 1991 tax
24 obligation; and that upon information and belief, based on the FTB's subsequent actions, the
25 aforesaid representations were untrue, as the FTB and certain of its agents were determined to
26 share in the highly successful produce of plaintiff's painstaking labor through means of truth-
27 defying extortion. Indications of this aspect of the fraud perpetrated by the FTB include:

28 (a) Despite plaintiff's delivery of copies of documentary evidence of the sale of his

1 California residence on October 1, 1991 to his business associate and confidant, Grace Jeng, to
2 the FTB, the FTB has contended that the aforementioned sale was a sham, and therefore
3 evidence of plaintiff's continued California residency and his attempt to evade California
4 income tax by fraud;

5 (b) Plaintiff supplied evidence to the FTB that he declared his sale, and income and
6 interest derived from the sale of his LaPalma, California home on his 1991 income tax return,
7 factors that were ignored by the FTB as it concluded that since the grant deed on the home was
8 not recorded until June, 1993, the sale was a sham, as aforesaid, and a major basis for assessing
9 fraud penalties against plaintiff as a means of building the pressure for extortion;

10 (c) Plaintiff, aware of his own whereabouts and domicile, alleges that the FTB has no
11 credible evidence, and can indeed provide none, that would indicate that plaintiff continued to
12 own or occupy his former home in La Palma, California which he sold to his business associate
13 and confidant, Grace Jeng on October 1, 1991;

14 (d) After declaring plaintiff's sale of his California home on October 1, 1991 a "sham,"
15 the FTB later declined to compare the much less expensive California home with the home
16 plaintiff purchased in Las Vegas, Nevada (a strong indication favoring Nevada residency)
17 stating that: "Statistics (size, cost, etc.) comparing the taxpayer's La Palma home to his Las
18 Vegas home will not be weighed in the determination [of residency], as the taxpayer sold the
19 La Palma house on 10/1/91 before he purchased the house in Las Vegas during April of
20 1992." (Emphasis added.); and

21 (e) The FTB's gamesmanship, illustrated in part, above, constituted an ongoing
22 misrepresentation of a bona fide audit of plaintiff's 1991 tax year, a factor compounded
23 egregiously by the quasi-subpoenas sent to Nevada residents, professionals and businesses
24 without prior notice to plaintiff, and concerning which a number of such official documents
25 indicated that plaintiff was being investigated from January 1995 to the present, all with the
26 intent of defrauding plaintiff into believing that he would owe an enormous tax obligation to
27 the State of California.

28 64. The FTB and its agents intended to induce plaintiff and his professional

1 representatives to act in reliance on the aforesaid false assurances and representations in order
2 to acquire highly sensitive and confidential information from plaintiff and his professional
3 representatives, and place plaintiff in a position where he would be vulnerable to the FTB's
4 plans to extort large sums of money from him. The FTB was keenly aware of the importance
5 plaintiff assigned to his privacy because of the danger of industrial espionage and other hazards
6 involving the extreme need for security in plaintiff's work and place of residence. The FTB
7 also knew that it would not be able to obtain (at least without the uncertain prospects of judicial
8 intervention) the desired information and documents with which to develop colorable,
9 ostensible tax assessments and penalties against plaintiff, without providing plaintiff and his
10 professional representatives with solemn commitments of secure confidentiality.

11 65. Plaintiff, reasonably relying on the truthfulness of the aforesaid assurances and
12 representations by the FTB and its agents, and having no reason to believe that an agency of the
13 State of California would misrepresent its commitments and assurances, did agree both
14 personally and through his authorized professional representatives to cooperate with the FTB
15 and provide it with his highly sensitive and confidential information and documents; in fact,
16 plaintiff relied on the false representations and assurances of the FTB and its agents to his
17 extreme detriment.

18 66. Plaintiff's reasonable reliance on the misrepresentations of the FTB and its agents,
19 as aforesaid, resulted in great damage to plaintiff, including damage of an extent and nature to
20 be revealed only to the Court *in camera*, plus actual and consequential damages, including but
21 not limited to fear, anxiety, mental and emotional distress, in a total amount in excess of
22 \$10,000.

23 67. The aforesaid misrepresentations by the FTB and its agents were fraudulent,
24 oppressive and malicious. Plaintiff is therefore entitled to an award of exemplary or punitive
25 damages in an amount sufficient to satisfy the purposes for which such damages are awarded.
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1 **EIGHTH CAUSE OF ACTION**

2 **(For Negligent Misrepresentation)**

3 68. Plaintiff realleges and incorporates herein by reference each and every allegation
4 contained in paragraphs 1 through 27, 29 through 31, 34 through 37, 41 and 42, 46 and 47, 51
5 and 53, 54 through 56, including subparagraphs (a) through (k) of the latter paragraph, and 60
6 through 65, above, as if set forth herein verbatim.

7 69. The FTB, in providing plaintiff and his professional representatives assurances of
8 strict confidentiality with respect to the sensitive and highly confidential information and
9 documents it sought to obtain from plaintiff concerning, allegedly, its 1991 tax year audit of
10 plaintiff, as detailed above, owed a duty to plaintiff to inform him that the FTB, through its
11 agents, may not have been able to maintain, or otherwise would not maintain, the strict
12 confidentiality it had promised plaintiff in order to secure confidential information and
13 documentation from him.

14 70. When the FTB revealed to public sources and third persons the highly sensitive and
15 confidential information and documentation it had promised to retain under conditions of strict
16 confidentiality, it breached its duty to plaintiff as described in paragraph 68, above.

17 71. The relationship between the FTB and plaintiff, was in every sense one of business
18 and trust, as plaintiff was required to employ professional tax attorneys and accountants in
19 order to deal with the FTB's demands, and the FTB's interest was in determining means and
20 methods whereby it could secure revenue from plaintiff. Although plaintiff was forced to deal
21 with the FTB as a matter of law, it was clear that the asserted purpose for the mutual intercourse
22 was a determination as to whether plaintiff may have owed additional taxes for calendar year
23 1991 for which he had enjoyed the benefits provided to him by the State of California. The
24 negotiations that occurred between plaintiff, through his professional representatives, and the
25 FTB and its agents, over terms under which information and documentation would be made
26 available to the FTB were also part of what must assuredly be viewed as a business
27 relationship.

28 72. As a direct, proximate and foreseeable result of the FTB's breach of duty to

1 plaintiff, as alleged above, plaintiff has sustained great damage, including damage of an extent
2 and nature to be revealed only to the Court *in camera*, plus actual and consequential damages,
3 including but not limited to fear, anxiety, mental and emotional distress, in a total amount in
4 excess of \$10,000.

5 WHEREFORE, plaintiff respectfully prays for judgment against the FTB and
6 defendants as follows:

7 **FIRST CAUSE OF ACTION**

- 8 1. For judgment declaring and confirming that plaintiff is a bona fide resident of the
9 State of Nevada effective as of September 26, 1991 to the present;
- 10 2. For judgment declaring that the FTB has no lawful basis for continuing to investigate
11 plaintiff in Nevada concerning his residency between September 26, 1991 through December
12 31, 1991 or any other subsequent period down to the present, and declaring that the FTB had no
13 right or authority to propound or otherwise issue a "Demand to Furnish Information" or other
14 quasi-subpoenas to Nevada residents and businesses seeking information concerning plaintiff;
- 15 3. For costs of suit;
- 16 4. For reasonable attorneys' fees; and
- 17 5. For such other and further relief as the Court deems just and proper.

18 **SECOND CAUSE OF ACTION**

- 19 1. For actual and consequential damages in a total amount in excess of \$10,000;
- 20 2. For punitive damages in an amount sufficient to satisfy the purposes for which such
21 damages are awarded;
- 22 3. For costs of suit;
- 23 4. For reasonable attorneys' fees; and
- 24 5. For such other and further relief as the Court deems just and proper.

25 **THIRD CAUSE OF ACTION**

- 26 1. For actual and consequential damages in a total amount in excess of \$10,000;
- 27 2. For punitive damages in an amount sufficient to satisfy the purposes for which such
28 damages are awarded;

- 1 3. For costs of suit;
2 4. For reasonable attorneys fees; and
3 5. For such other and further relief as the Court deems just and proper.

4 **FOURTH CAUSE OF ACTION**

- 5 1. For actual and consequential damages in a total amount in excess of \$10,000;
6 2. For punitive damages in an amount sufficient to satisfy the purposes for which such
7 damages are awarded;
8 3. For costs of suit;
9 4. For reasonable attorneys fees; and
10 5. For such other and further relief as the Court deems just and proper.

11 **FIFTH CAUSE OF ACTION**

- 12 1. For actual and consequential damages in a total amount in excess of \$10,000;
13 2. For punitive damages in an amount sufficient to satisfy the purposes for which such
14 damages are awarded;
15 3. For costs of suit;
16 4. For reasonable attorneys' fees; and
17 5. For such other and further relief as the Court deems just and proper.

18 **SIXTH CAUSE OF ACTION**

- 19 1. For actual and consequential damages in a total amount in excess of \$10,000;
20 2. For punitive damages in an amount sufficient to satisfy the purposes for which such
21 damages are awarded;
22 3. For costs of suit;
23 4. For reasonable attorneys' fees; and
24 5. For such other and further relief as the Court deems just and proper.

25 **SEVENTH CAUSE OF ACTION**

- 26 1. For actual and consequential damages in a total amount in excess of \$10,000;
27 2. For punitive damages in an amount sufficient to satisfy the purposes for which such
28 damages are awarded;

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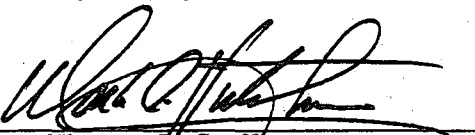
- 3. For costs of suit;
- 4. For reasonable attorneys' fees; and
- 5. For such other and further relief as the Court deems just and proper.

EIGHTH CAUSE OF ACTION

- 1. For actual and consequential damages in a total amount in excess of \$10,000;
- 2. For costs of suit;
- 3. For reasonable attorneys' fees; and
- 4. For such other and further relief as the Court deems just and proper.

DATED this 17th day of June 1998.

HUTCHISON & STEFFEN

By: 

Thomas J. Steffen
Mark A. Hutchison
530 South 4th Street
Las Vegas, Nevada 89101

Attorneys for Plaintiff



TAB I

REMAINING CLAIMS AND ISSUES

On July 16, 2001, the district court entered its order granting FTB summary judgment on all of Hyatt's tort claims as directed by this Court in its June 13th Order. FTB then filed its motion to vacate the Protective Order, which was denied by the district court. FTB has now appealed the district court's refusal to vacate the Protective Order.

At this time, Hyatt's petition for reconsideration of this Court's June 13th Order is still pending.

FTB filed a memorandum of and motion for award of costs on July 20, 2001. Hyatt filed a motion to retax costs on August 22, 2001. Resolution of FTB's costs is still pending before the district court.

Finally, FTB has notified Hyatt that once his petition for reconsideration is decided by this Court, FTB intends to move for attorney fees, further expenses and sanctions.