

IN THE SUPREME COURT OF THE STATE OF NEVADA

* * * * *

FRANCHISE TAX BOARD OF THE
STATE OF CALIFORNIA,

Appellant,

vs.

GILBERT P. HYATT,

Respondent.

Supreme Court No. 80884
District Court Case No. A382998
Electronically Filed
Apr 22 2020 02:17 p.m.
Elizabeth A. Brown
Clerk of Supreme Court

**DOCKETING STATEMENT
CIVIL APPEALS**

GENERAL INFORMATION

Appellants must complete this docketing statement in compliance with NRAP 14(a). The purpose of the docketing statement is to assist the Supreme Court in screening jurisdiction, identifying issues on appeal, assessing presumptive assignment to the Court of Appeals under NRAP 17, scheduling cases for oral argument and settlement conferences, classifying cases for expedited treatment and assignment to the Court of Appeals, and compiling statistical information.

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 fill out the statement completely or to file it in a timely manner constitutes grounds for the imposition of sanctions, including a fine and/or dismissal of the appeal.

A complete list of the documents that must be attached appears as Question 27 on this docketing statement. Failure to attach all required documents will result in the delay of your appeal and may result in the imposition of sanctions.

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 Moran v. Bonneville Square Assocs., 117 Nev. 525, 25 P.3d 898 (2001); KDI Sylvan Pools v. Workman, 107 Nev. 340, 810 P.2d 1217 (1991). Please use tab dividers to separate any attached documents.

1. Judicial District: Eighth Department: X
County: Clark Judge: Tierra Jones
District Court Docket No.: 98A382999

2. Attorney filing this docketing statement:

Attorney Pat Lundvall Telephone (702) 873-4100
Firm McDonald Carano LLP
Address 2300 West Sahara Avenue, Suite 1200
Las Vegas, Nevada 89102

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. N/A

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

Attorney Mark A Hutchison Telephone (702) 385-2500
Firm Hutchison & Steffen, PLLC
Address 10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145

Attorney Peter Bernhard Telephone (702) 792-7000
Firm Kaempfer Crowell
Address 1980 Festival Plaza Drive, Suite 650
Las Vegas, Nevada 89135

Client(s) Gilbert P. Hyatt

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

X	Judgment after bench trial	Grant/Denial of NRCP 60(b) relief
	Judgment after jury verdict	Grant/Denial of injunction
	Summary judgment	Grant/Denial of declaratory relief
	Default Judgment	Review of agency determination
	Dismissal	Divorce decree:
	Lack of jurisdiction	Original Modification
	Failure to state a claim	Other disposition (specify)
	Failure to prosecute	
	Other	

5. Does this appeal raise issues concerning any of the following: No.

Child custody
Venue
Termination of Parental Rights

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:

- Franchise Tax Board of the State of California v. Eighth Judicial District Court (Case No. 35549 consolidated with Case No. 36390) (2000);
- Franchise Tax Board of the State of California v. Gilbert Hyatt (Case No. 39312) (2002);
- Franchise Tax Board of the State of California v. Eighth Judicial District Court (Case No. 39274) (2002);
- Gilbert Hyatt v. Eighth Judicial District Court (Case No. 47141) (2006); and
- Franchise Tax Board of the State of California v. Gilbert Hyatt (Case No. 53264) (2009).

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:

- Franchise Tax Board of California v. Hyatt, 538 U.S. 488 (2003);
- Franchise Tax Board of California v. Hyatt, 578 U.S. ____ (2016); and
- Franchise Tax Board of California v. Hyatt, 587 U.S. ____ (2019).

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:

This case is not foreign to the Court, having been on appeal several times and remanded from the Supreme Court of the United States to this Court several times as well. A full recitation of this multi-decade case would result in substantial volumes of this case appeal statement. As such, FTB provides only those facts relevant to the most recent actions.

On May 13, 2019, the Supreme Court of the United States issued a decision that reversed *Nevada v. Hall*, resulting in a complete victory for FTB based on principles of jurisdiction and sovereign immunity. The Supreme Court of the United States held that, unless they consent, states such as California have sovereign immunity from the types of suits filed by Hyatt in courts of another state. FTB had argued these very points in its defense since Hyatt filed his Complaint back in 1998. In fact, the United States Supreme Court expressly rejected Hyatt’s argument that FTB had waived any argument about sovereign immunity because it purportedly did not raise *Nevada v. Hall* sooner on appeal: “We also reject Hyatt’s argument that the Board waived its immunity. The Board has raised an immunity-based argument from the suit’s inception[.]” 139 S.Ct. 1485, 1491, n.1 (2019). As a result, FTB was the party in whose favor judgment was ultimately entered. Because FTB served a prior offer of judgment (the “Offer”) in the amount of

\$110,000 upon Hyatt, which Hyatt rejected, the Supreme Court of the United States' decision meant that Hyatt did not beat the Offer under NRCp 68.

On August 5, 2019, this Court remanded the case back to the district court, ordering that it vacate the prior judgment in Hyatt's favor and take any further necessary action consistent with the Supreme Court of the United States' decision.

The district court held a status conference on September 3, 2019 to discuss how to proceed. Upon the suggestion of Hyatt's counsel, and without any motion for attorney's fees or costs pending, the district court ordered supplemental briefing on two issues: (1) whether a judgment should issue in FTB's favor; and (2) whether there is a prevailing party in the action. In doing so, the district court required the parties to submit a single blind brief without any opportunity to reply to the other's brief.

After the parties timely submitted their blind briefs and without a hearing on the same, the district court issued an order, improperly labeled as a "Judgment." The district court made two findings: first, that the matter should be dismissed, judgment should be entered in FTB's favor, and that Hyatt take nothing by way of any of the claims for relief asserted in the action; and second, that neither party was a prevailing party and therefore neither party was entitled to recover fees or costs. In support of its second holding, a key component to the district court's determination that FTB was not a prevailing party expressly contradicted the United States Supreme Court. To the extent the district court's February 21, 2020 order is construed as a judgment pursuant to NRAP 3(a), FTB appeals from the second finding made by the district court. Presently pending before the district court is FTB's Verified Memorandum of Costs and FTB's Motion for Attorney's Fees Pursuant to NRCp 68.

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

FTB appeals from the district court's order, improperly labeled as a "Judgment," on the following issues:

- (a) Whether the district court erred in entering its order on attorney's fees and costs without a hearing, without a pending memorandum of cost, without a pending motion for fees and costs, and without permitting the parties to file replies to the other's arguments;
- (b) Whether the district court's order contained factual errors and directly contradicted the United States Supreme Court in claiming that FTB did not challenge *Nevada v. Hall* or the issues of jurisdiction and sovereign immunity until 2015, thus leading to legal errors in the district court's conclusion on attorney's fees and costs;
- (c) Whether the district court erred in finding that there was no prevailing party in this case for the purposes of attorney's fees or costs under NRS Chapter 18;

TIMELINESS OF NOTICE OF APPEAL

16. Date of entry of written judgment or order appealed from

FTB appeals the following Judgment:¹

- Judgment: February 21, 2020.

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

17. Date written notice of entry of judgment or order served

- Judgment: February 26, 2020.

(a) Was service by delivery _____ or by mail/electronic/fax Electronic and Mail

18. 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 the date of filing. N/A.

NOTE: Motions made pursuant to NRCp 60 or motions for rehearing or reconsideration may toll the time for filing a notice of appeal. See AA Primo Builders v. Washington, 126 Nev. ___, 245 P.3d 1190 (2010).

- (b) Date of entry of written order resolving tolling motion N/A.
(c) Date written notice of entry of order resolving tolling motion was served N/A.
Was service by: Delivery _____ or Mail _____

19. Date notice of appeal was filed March 20, 2020.

If more than one party has appealed from the judgment or order, list the date each notice of appeal was filed and identify by name the party filing the notice of appeal: No related appeal at this time.

20. 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 4(a).

¹ Pending before the district court are FTB's Memorandum of Costs, Hyatt's Motion to Strike or Retax the same, and FTB's Motion for Attorney's Fees. If the district court denies FTB's motions, FTB will likely appeal the orders on the same.

SUBSTANTIVE APPEALABILITY

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

(a)

NRAP 3A(b)(1) X NRS 38.205 _____ (specify subsection) _____

NRAP 3A(b)(2) _____ NRS 233B.150 _____ (specify subsection) _____

NRAP 3A(b)(3) _____ NRS 703.376 _____

Other (specify) _____

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

NRAP 3A(b)(1) provides that an appeal may be taken from “a final judgment entered in an action or proceeding commenced in the court in which the judgment is rendered.” The Judgment identified above in questions 16 and 17 is the final judgment in this action.

22. List all parties involved in the action in the district court:

(a) Parties:

Plaintiffs: Gilbert P. Hyatt.

Defendant: Franchise Tax Board of the State of California.

(b) 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:

All parties in the district court are parties to this appeal.

23. Give a brief description (3 to 5 words) of each party’s separate claims, counterclaims, cross-claims or third-party claims and the date of formal disposition of each claim.

Hyatt alleged causes of action for declaratory relief, invasion of privacy (unreasonable intrusion into the seclusion of another, unreasonable publicity given to private facts, false light), intentional infliction of emotional distress, abuse of process, fraud, negligent misrepresentation, and breach of confidential relationship.

All causes of action ended in FTB's favor. The district court granted judgment on the pleadings in FTB's favor on Hyatt's declaratory relief claim. This Court dismissed Hyatt's claim for negligent misrepresentation. This Court also vacated the prior jury award and ruled in FTB's favor on the invasion of privacy claims, abuse of process, and breach of confidential relationship. After FTB appealed to the Supreme Court of the United States, the Supreme Court of the United States ruled that the district court does not have jurisdiction over FTB, thereby giving FTB victory on all causes of action.

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 or consolidated actions below?

Yes X No

The Judgment referenced in questions 16 and 17 resolved all claims and the rights and liabilities of all parties.

25. If you answered "No" to question 23, complete the following: N/A

- (a) Specify the claims remaining pending below:
- (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
- (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

26. If you answered "No" to any part of question 24, explain the basis for seeking appellate review (e.g., order is independently appealable under NRAP 3A(b)): N/A

27. Attach file-stamped copies of the following documents:

- The latest-filed complaint, counterclaims, cross-claims, and third-party claims
- Any tolling motion(s) and order(s) resolving tolling motion(s)
- Orders of NRCP 41(a) dismissals formally resolving each claim, counterclaims, cross-claims, and/or third-party claims asserted in the action or consolidated action below, even if not at issue on appeal
- Any other order challenged on appeal
- Notices of entry for each attached order

At the end of this Docketing Statement, FTB has provided an index and a file-stamped copy of each document listed above.

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

Pat Lundvall, Esq.
Name of counsel of record

April 22, 2020
Date

/s/ Pat Lundvall
Signature of counsel of record

Clark County, Nevada
State and county where signed

CERTIFICATE OF SERVICE

I certify that on April 22, 2020, 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:

Mark A. Hutchison
Hutchison & Steffen, PLLC
Peccole Professional Park
10080 West Alta Drive, Suite 200
Las Vegas, Nevada 89145

Attorneys for Plaintiff

Peter C. Bernhard
Kaempfer Crowell
1980 Festival Plaza Drive, Suite 650
Las Vegas, Nevada 89135

Attorneys for Plaintiff

/s/ Beau Nelson
An employee of McDonald Carano LLP

Index of Filings

Exhibit A: Hyatt's Second Amended Complaint

Exhibit B: Judgment Dated February 21, 2020

Exhibit C: Notice of Entry of Judgment Dated February 26, 2020

EXHIBIT A

ORIGINAL

FILED

APR 18 3 22 PM '06

Shirley L. Dominguez
CLERK

1 **COMP**
2 Mark A. Hutchison (4639)
3 Hutchison & Steffen
4 10080 Alta Drive
5 Suite 200
6 Las Vegas, NV 89145
7 (702) 385-2500
8
9 Peter C. Bernhard (734)
10 Bullivant Houser Bailey PC
11 3980 Howard Hughes Pkwy., Ste. 550
12 Las Vegas, NV 89109
13 Telephone: (702) 650-6565
14 Facsimile: (702) 650-2995
15
16 *Attorneys for Plaintiff Gilbert P. Hyatt*

9 **DISTRICT COURT**
10 **CLARK COUNTY, NEVADA**

11 GILBERT P. HYATT,
12
13 Plaintiffs,
14
15 v.
16 FRANCHISE TAX BOARD OF THE STATE
17 OF CALIFORNIA, and DOES 1-100 inclusive,
18
19 Defendants.

Case No.: A382999
Dept. No.: X
SECOND AMENDED COMPLAINT
Jury Trial Demanded
Exempt from Arbitration:
Declaratory Relief, Significant
Public Policy and Amount in Excess
Of \$40,000
**(filed under seal by order of the Discovery
Commissioner dated February 22, 1999)**

BullivantHouserBailey PC
3980 Howard Hughes Pkwy., Ste. 550
Las Vegas, NV 89109
Telephone: (702) 650-6565
Facsimile: (702) 650-2995

COUNTY CLERK
APR 18 2006
RECEIVED

1 Plaintiff, Gilbert P. Hyatt, in this Second Amended Complaint, complains against
2 defendants, and each of them, as follows:

3 PARTIES

4 1. Plaintiff resides in Clark County, Nevada and has done so since September 26,
5 1991.

6 2. Defendant Franchise Tax Board of the State of California (hereinafter "FTB") is
7 a governmental agency of the State of California with its principal office located in Sacramento,
8 California, and a district office located in Los Angeles, California. The FTB's function is to
9 ensure the collection of state income taxes from California residents and from income earned in
10 California by non-residents.

11 3. The identity and capacities of the defendants designated as Does 1 through 100
12 are so designated by plaintiff because of his intent by this complaint to include as named
13 defendants every individual or entity who, in concert with the FTB as an employee,
14 representative, agent or independent contractor, committed the tortious acts described in this
15 complaint. The true names and capacities of these Doe defendants are presently known only to
16 the FTB, who committed the tortious acts in Nevada with the assistance of said Doe defendants
17 who are designated by fictitious names only until plaintiff is able, through discovery, to obtain
18 their true identities and capacities; upon ascertaining the true names and capacities of these Doe
19 defendants, plaintiff shall promptly amend this complaint to properly name them by their actual
20 identities and capacities. For pleading purposes, whenever this complaint refers to
21 "defendants," it shall refer to these Doe defendants, whether individuals, corporations or other
22 forms of associations or entities, until their true names are added by amendment along with
23 particularized facts concerning their conduct in the commission of the tortious acts alleged
24 herein.

25 4. Plaintiff is informed and believes, and on that basis alleges, that defendants, in
26 acting or omitting to act as alleged, acted or omitted to act within the course and scope of their
27 employment or agency, and in furtherance of their employer's or principal's business, whether
28

1 the employer or principal be the FTB or some other governmental agency or employer or
2 principal whose identity is not yet known; and that FTB and defendants were otherwise
3 responsible and liable for the acts and omissions alleged herein.

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

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

14 SUMMARY OF CLAIMS

15 7. Plaintiff, by this action, seeks: (1) declaratory relief under NRS 30.010 et seq. to
16 confirm plaintiff's status as a Nevada resident effective as of September 26, 1991 and
17 continuing to the present and, correspondingly, his non-residency during said period in
18 California (FIRST CAUSE OF ACTION) — *re-pled in this Second Amended Complaint to*
19 *preserve plaintiff's right to appeal the District Court's April 3, 1999 ruling dismissing this*
20 *cause of action; this cause of action is therefore no longer at issue in the District Court;* (2)
21 recovery of compensatory and punitive damages against the FTB and the defendants for
22 invasion of plaintiff's right of privacy, including and in particular his informational privacy as
23 well as the FTB's failure to abide by the confidential relationship created by the FTB's request
24 for and receipt of Hyatt's highly personal and confidential information, resulting from their still
25 ongoing investigation in Nevada of plaintiff's residency, domicile and place of abode and
26 causing (a) an unreasonable intrusion upon plaintiff's seclusion (SECOND CAUSE OF
27 ACTION); (b) an unreasonable publicity given to private facts (THIRD CAUSE OF ACTION);
28

(c) casting plaintiff in a false light (FOURTH CAUSE OF ACTION); (3) recovery of compensatory and punitive damages against the FTB and the defendants for their outrageous conduct in regard to their continuing investigation in Nevada of plaintiff's residency, domicile and place of abode, including but not limited to the FTB's failure to abide by the confidential relationship created by the FTB's request for and receipt of Hyatt's highly personal and confidential information (FIFTH CAUSE OF ACTION); (4) recovery of compensatory and punitive damages against the FTB and defendants for an abuse of process (SIXTH CAUSE OF ACTION); (5) recovery of compensatory and punitive damages against the FTB and defendants for fraud, including but not limited to the FTB's failure to abide by the confidential relationship created by the FTB's request for and receipt of Hyatt's highly personal and confidential information (SEVENTH CAUSE OF ACTION); and (6) recovery of compensatory and punitive damages against the FTB and defendants for breach of confidentiality in regard to the FTB's breach of its duty not to disclose Hyatt's personal and confidential information (EIGHTH CAUSE OF ACTION). The claims specified in this paragraph constitute EIGHT separate causes of action as hereinafter set forth in this complaint.

FACTUAL BACKGROUND

Plaintiff's Residency in Nevada

8. Plaintiff moved to the State of Nevada, County of Clark, and established full-time residency here on September 26, 1991 and has remained a full-time, permanent resident since that time. Prior to his relocation to Nevada, plaintiff resided in Southern California. Plaintiff is a highly successful inventor. Specifically, plaintiff has been granted numerous important patents for a wide range of inventions relating to computer technology. Plaintiff primarily works alone in the creation and development of his inventions and greatly values his privacy both in his personal life and business affairs. After certain of his important inventions were granted patents in 1990, plaintiff began receiving a great deal of unwanted and unsolicited publicity, notoriety and attention. To greater protect his privacy, to enjoy the social, 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,
4 plaintiff commenced both his residency and intent to remain in Nevada, and a continuation of
5 both down to the present: (1) the sale of plaintiff's California home in October 1991; (2) his
6 renting and residing at an apartment in Las Vegas commencing in October 1991 and continuing
7 until April 1992 when plaintiff closed the purchase of a home in Las Vegas; (3) in November
8 1991, plaintiff registered to vote in Nevada, obtained a Nevada driver's license, and joined a
9 religious organization in Las Vegas; (4) plaintiffs' extensive search, commencing in early
10 October 1991, for a new home in Las Vegas, and in the process utilizing the services of various
11 real estate brokers; (5) during the process of finding a home to purchase, plaintiff made
12 numerous offers to buy; (6) plaintiff's purchase of a new home in Las Vegas on April 3, 1992;
13 (7) plaintiff maintained and expanded his business interests from Las Vegas; and (8) plaintiff
14 has, through the years from September 26, 1991 and down to the present, contacted persons in
15 high political office, in the professions, and other walks of life, as a true Nevada resident of
16 some renown would, not concealing the fact of his Nevada residency. In sum, plaintiff has
17 substantial evidence, both testimonial and documentary, in support of the fact of his full-time
18 residency, domicile and place of abode in Nevada commencing on September 26, 1991 and
19 continuing to 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
22 Part- Year state income tax return with the State of California for 1991 (the "1991 Return").
23 Said return reflects plaintiff's payment of state income taxes to California for income earned
24 during 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

1 plaintiff by making or causing to be made numerous and continuous contacts directed at
2 Nevada. Initially, the FTB sent requests to Nevada government agencies for information
3 concerning plaintiff — a paper foray that continued for the next several years.

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

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

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

1 recoiled at the attempt by the FTB to exercise extraterritorial authority in Nevada through the
2 outrageous means of the bogus subpoenas.

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

12 Assessment for 1991

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

21 17. Plaintiff, who demonstrably is and was at all times pertinent hereto, a bona fide
22 resident of Nevada should not be forced into a California forum to seek relief from the bad faith,
23 unjust and tortious attempts by the FTB to extort unlawful taxes from this Nevada resident.
24 Plaintiff avers that liability for the bad faith actions of the FTB during the audits and continuing
25 until the present in the still ongoing California tax proceedings should be determined in Nevada,
26 the state of plaintiff's residence. The FTB is in effect attempting to impose an "exit tax" on
27 plaintiff. The FTB has arbitrarily, maliciously and without support in law or fact, asserted that
28

1 plaintiff remained a California resident until he purchased and closed escrow on a new home in
2 Las Vegas on April 3, 1992. In a word, the FTB's prolonged and monumental efforts to find a
3 way — any way — to effectively assess additional income taxes against plaintiff after he
4 changed his residency from California to Nevada is based on governmental bad faith and greed
5 arising from the FTB's eventual awareness of the financial success plaintiff has realized since
6 leaving California and becoming a bona fide resident of the State of Nevada. The aforesaid date
7 of Nevada residency accepted by the FTB with respect to the 1991 Report was not supported by
8 the information gathered by the FTB's during its audits of plaintiff and was accepted by the
9 FTB in bad faith as it was over six months after plaintiff moved to Nevada with the intent to
10 stay and began, he thought, to enjoy all the privileges and advantages of residency in his new
11 state.

12 The FTB's Continuing Pursuit of Plaintiff in Nevada

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

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

22 20. Prior to the FTB sending the formal Notice of Proposed Assessment for the 1992
23 tax year, a representative of the FTB stated to one of plaintiff's representatives that disputes
24 over such assessments by the FTB always settle at this stage as taxpayers do not want to risk
25 their personal financial information being made public. Plaintiff understood this statement to be
26 a strong suggestion by the FTB that he settle the dispute by payment of some portion of the
27 assessed taxes and penalties. Plaintiff refused, and continues to refuse to do so, as he has not
28

1 been a resident of California since his move to Nevada on September 26, 1991, and it remains
2 clear to him that the FTB is engaging in its highhanded tactics to extort "taxes and penalties"
3 from him that he does not legally or morally owe.

4 21. On or about August 14, 1997, plaintiff received a formal Notice of Proposed
5 Assessment for 1992. Despite the FTB's earlier written statements and findings that plaintiff
6 became a Nevada resident at least as of April 3, 1992 and its statement in such Notice of
7 Proposed Assessment that "We [the FTB] consider you to be a resident of this state [California]
8 through April 2, 1992," such notice proceeded to assess California state income taxes on
9 plaintiff's income for the entire year of 1992. Specifically, the FTB assessed plaintiff state
10 income taxes for 1992 in an amount five times greater than that for 1991, assessed plaintiff a
11 penalty almost as great as the assessed tax for alleged fraud in claiming he was a Nevada
12 resident during 1992, and stated that interest accrued through August 14, 1997 (roughly the
13 equivalent of the penalty) was also owed on the assessed tax and penalty. In short, the State of
14 California, through the FTB, sent plaintiff a bill for the entire 1992 tax year, which was fourteen
15 times the amount of tax it initially assessed for 1991, and in so doing asserted that plaintiff was
16 "a California resident for the entire year." Without explanation the FTB ignored its earlier
17 finding and written acknowledgment that plaintiff was a Nevada resident at least as of April 3,
18 1992. This outrage is a transparent effort to extort substantial sums of money from a Nevada
19 resident.

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

24 23. Plaintiff is informed and believes, and therefore alleges, that the FTB may
25 continue to assess plaintiff California state income taxes for the years 1993, 1994, 1995, 1996
26 and beyond since the FTB has now disregarded its own conclusion regarding plaintiff's
27 residency in Nevada as of April 3, 1992, and is bent on charging him with a staggering amount
28 of taxes, penalties and interest irrespective of his status as a bona fide resident of Nevada. It

1 appears from its actions concerning plaintiff, that the FTB has embraced a new theory of
2 liability that in effect declares "once a California resident always a California resident" as long
3 as the victim continues to generate significant amounts of income. Thus, the FTB has raised an
4 invisible equivalent of the iron curtain that prohibits such residents from ever leaving the taxing
5 jurisdiction of the FTB.

6 The FTB's Motive

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

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

25 Jurisdiction

26 26. This Court has personal jurisdiction over the FTB pursuant to Nevada's "long-
27 arm" statute, NRS 14.065 et seq., because of the FTB's tortious extraterritorial contacts and
28

1 investigatory conduct within the State of Nevada ostensibly as part of its auditing efforts to
2 undermine plaintiff's status as a Nevada resident, but in reality to create a colorable basis for
3 maintaining that plaintiff continued his residency in California during the period September 26,
4 1991 to December 31, 1991 and beyond.

5 27. Plaintiff is informed and believes, and therefore alleges, that the FTB has a
6 pattern and practice of entering into Nevada to investigate Nevada residents who were formerly
7 residents of California, and then assessing such residents California state income taxes for time
8 periods subsequent to the date when such individuals moved to and established residency in
9 Nevada.

10 FIRST CAUSE OF ACTION

11 (For Declaratory Relief)

12 28. Plaintiff realleges and incorporates herein by reference each and every allegation
13 contained in paragraphs 1 through 27 above, as though set forth herein verbatim. *This cause of*
14 *action is re-pled in this Second Amended Complaint to preserve plaintiff's right to appeal the*
15 *District Court's April 3, 1999 ruling dismissing this cause of action. This cause of action is*
16 *therefore no longer at issue in the District Court.*

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

24 a) Domicile.

25 Domicile is determined by the individual's physical presence in California with intent to stay or
26 if absent temporarily from California an intent to return. Such intent is determined by the acts
27 and conduct of the individual such as: (1) where the individual is registered to vote and votes;
28

(2) location of the individual's permanent home; (3) comparative size of homes maintained by the individual in different states; (4) where the individual files federal income tax returns; (5) comparative time spent by the individual in different states; (6) cancellation of the individual's California homeowner's property tax exemption; (7) obtaining a driver's license from another state; (8) registering a car in another state; (9) joining religious, business and/or social organizations in another state; and (10) establishment of a successful business in another state by an individual who is self employed.

(b) Temporary or Transitory Purpose.

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

30. The FTB's assessment of taxes and a penalty for 1991 is based on the FTB's conclusion in the first instance that plaintiff did not become a resident of Nevada until April 3, 1992, the date on which plaintiff closed escrow on a new home in Las Vegas. In coming to such a conclusion, the FTB discounted or refused to consider a multitude of evidentiary facts which

contradicted the FTB's conclusion, and were the type of facts the FTB's own regulations and precedents require it to consider. Such facts include, but are not limited to, the following: (1) plaintiff sold his California home on October 1, 1991; (2) plaintiff rented an apartment in Las Vegas on or about October 7, 1991 and, after a brief period of necessary travel to the east coast, took possession of said apartment on or about October 22, 1991 and maintained his residence there until April of 1992; (3) plaintiff registered to vote, obtained a Nevada driver's license (relinquishing his California driver's license to the Nevada Department of Motor Vehicles), and joined a Las Vegas religious organization in November of 1991; (4) plaintiff terminated his California home owner's exemption effective October 1, 1991; (5) plaintiff began actively searching for a house to buy in Las Vegas, commencing in early October 1991, and submitted numerous offers on houses in Las Vegas beginning in December 1991; (6) one of plaintiff's offers to purchase a home in Las Vegas was accepted in March of 1992 and escrow on the transaction closed on April 3, 1992; and (7) plaintiff's new home in Las Vegas was substantially larger than the home in Southern California, which he sold in October of 1991.

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

32. Plaintiff therefore requests judgment of this Court declaring and confirming plaintiff's status as a full-time, bona fide resident of the State of Nevada effective from

September 26, 1991 to the present; and for judgment declaring the FTB's extraterritorial investigatory excursions into Nevada, and the submission of "quasi-subpoenas" to Nevada residents without approval from a Nevada court or governmental agency, as alleged above, to be without authority and violative of Nevada's sovereignty and territorial integrity.

SECOND CAUSE OF ACTION

(For Invasion of Privacy — Unreasonable Intrusion Upon The
Seclusion of Another, including Intrusion Upon Informational
Privacy)

33. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 32, above, as though set forth herein verbatim.

34. Plaintiff is informed and believes, and therefore alleges, that neighbors, businesses, government officials and others within Nevada with whom plaintiff has had and would reasonably expect in the future to have social or business interactions, were approached and questioned by the FTB and defendants who disclosed or implied that plaintiff was under investigation in California, and otherwise acted in such a manner as to cause doubts to arise concerning plaintiff's integrity and moral character. Moreover, as part of the audit/investigation in regard to the 1991 Return, plaintiff turned over to the FTB highly personal and confidential information with the understanding that it would remain confidential, thereby creating a confidential relationship in which the FTB was required not to disclose Hyatt's highly personal and confidential information. The FTB even noted in its own internal documentation that plaintiff had a significant concern in regard to the protection of his privacy in turning over such information. At the time this occurred, plaintiff was still hopeful that the FTB was actually operating in good faith, a proposition that, as noted throughout this complaint, proved to be utterly false.

35. Plaintiff is informed and believes, and therefore alleges, that the FTB and defendants nevertheless violated plaintiff's right to privacy in regard to such information by revealing it to third parties and otherwise conducting an investigation in Nevada, and continuing

1 to conduct such an investigation, through which the FTB and defendants revealed to third
2 parties personal and confidential information, which plaintiff had every right to expect would
3 not be revealed to such parties.

4 36. Plaintiff is informed and believes, and therefore alleges, that the FTB and
5 defendants' extensive probing and investigation of plaintiff, including their actions both
6 occurring within Nevada and directed to Nevada from California, were performed, and continue
7 to be performed, with the intent to harass, annoy, vex, embarrass and intimidate plaintiff such
8 that he would eventually enter into a settlement with the FTB concerning his residency during
9 the disputed time periods and the taxes and penalties allegedly owed. Such conduct by the FTB
10 and defendants did in fact, and continues to, harass, annoy, vex and embarrass Hyatt, and
11 syphon his time and energies from the productive work in which he is engaged.

12 37. Plaintiff is informed and believes, and therefore alleges, that the FTB and
13 defendants through their investigative actions, and in particular the manner in which they were
14 carried out in Nevada, intentionally intruded, and continues to intentionally intrude, into the
15 solitude and seclusion which plaintiff had specifically sought by moving to Nevada. The
16 intrusion by the FTB and defendants was such that any reasonable person, including plaintiff,
17 would find highly offensive.

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

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

Claim for Attorneys' Fees as Special Damages Pursuant to NRCP 9 (g)

40. Plaintiff was drawn into the FTB's audit without choice and as an innocent party. As such, plaintiff had every right to expect that the FTB's demand for an audit would be processed in good faith, according to the law and the facts. Instead, he was subjected to, and continues to be subjected to, a determined and malicious bad-faith attempt to extort money from plaintiff under abuse and betrayal of the FTB's lawful taxing powers. The FTB's fraudulent and oppressive scheme includes the intimidating imposition of enormous, indefensible "fraud penalty" assessments designed to force plaintiff to yield to a major compromise or suffer significant financial and reputational destruction. The threatened (and consummated) tortious actions included the outrageously intrusive invasion of his privacy, as aforesaid, and the publicity of private facts that were expressly extracted from plaintiff under false promises of strict confidentiality. Plaintiff repeatedly relied on these promises to his extreme and permanent detriment.

41. Plaintiff was forced to disclose his private documents and information with the FTB under the duress of the FTB's unquestioned powers, but did so with the expectancy of a forthright, lawful audit. Instead, plaintiff became the intended victim of the FTB, thus forcing plaintiff to either: (1) succumb to tortious acts that would unlawfully deprive him permanently of his hard-earned personal property and right not to have his privacy invaded by the publication of his confidential, private facts as aforesaid; or (2) fight the FTB through the only means available, to wit: the employment of teams of legal and professional experts to vigorously defend himself in the audits and the continuing California tax proceedings.

42. It was highly foreseeable to the FTB that, absent the success of its scheme to unlawfully deprive plaintiff of his property through such acts of intimidation as the destruction of his privacy and the imposition of huge "fraud" penalties, as aforesaid, plaintiff's only alternative was to vigorously defend himself in the audits and the continuing California tax proceedings. This required the employment of a team of attorneys and other experts. The resulting attorneys' fees and other professional fees which plaintiff has incurred, and continues

1 to incur, were proximately and directly caused and necessitated by the FTB's course of tortious
2 behavior.

3 43. Plaintiff's incurrence of attorneys' fees and other professional fees are highly
4 foreseeable damages resulting directly from the FTB's tortious conduct against plaintiff in
5 pursuit of unlawful objectives. Plaintiff's alternatives were to do nothing and be vanquished by
6 the overwhelming power and resources of a tenacious and corrupt FTB, or vigorously defend
7 himself in the audits and the continuing California tax proceedings. Plaintiff therefore claims,
8 as special damages, his attorneys' fees in an amount in excess of \$10,000.00, the total amount
9 thereof to be proved according to the evidence at trial.

10 THIRD CAUSE OF ACTION

11 (For Invasion of Privacy — Unreasonable Publicity Given To
12 Private Facts, Including Publicity Given to Matters Protected
13 Under the Concept of Informational Privacy)
14

15 44. Plaintiff realleges and incorporates herein by reference each and every allegation
16 contained in paragraphs 1 through 43, above, as though set forth herein verbatim.

17 45. 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, thereby creating a confidential
20 relationship in which the FTB was required not to disclose Hyatt's highly personal and
21 confidential information. Plaintiff had a reasonable expectation that said information would be
22 kept confidential and not revealed to third parties and the FTB and defendants knew and
23 understood that said information was to be kept confidential and not revealed to third parties.

24 46. The FTB and defendants, without necessity or justification, nevertheless
25 disclosed to third parties, and continue to disclose to third parties, in Nevada certain of
26 plaintiff's personal and confidential information which had been cooperatively disclosed to the
27 FTB by plaintiff only for the purposes of facilitating the FTB's legitimate auditing and
28

1 investigative efforts, or which the FTB had acquired via other means but was required by its
2 own rules and regulations or state law not to disclose to third parties.

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

6 48. 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 constituted
8 despicable conduct by the FTB and defendants entered into with a willful and conscious
9 disregard of the rights of plaintiff. Plaintiff is therefore entitled to an award of punitive or
10 exemplary damages in an amount sufficient to satisfy the purposes for which such damages are
11 awarded.

12 Claim for Attorneys' Fees as Special Damages Pursuant to NRCP 9 (g)

13 49. Plaintiff was drawn into the FTB's audit without choice and as an innocent party.
14 As such, plaintiff had every right to expect that the FTB's demand for an audit would be
15 processed in good faith, according to the law and the facts. Instead, he was subjected to, and
16 continues to be subjected to, a determined and malicious bad-faith attempt to extort money from
17 plaintiff under abuse and betrayal of the FTB's lawful taxing powers. The FTB's fraudulent and
18 oppressive scheme includes the intimidating imposition of enormous, indefensible "fraud
19 penalty" assessments designed to force plaintiff to yield to a major compromise or suffer
20 significant financial and reputational destruction. The threatened (and consummated) tortious
21 actions included the outrageously intrusive invasion of his privacy, as aforesaid, and the
22 publicity of private facts that were expressly extracted from plaintiff under false promises of
23 strict confidentiality. Plaintiff repeatedly relied on these promises to his extreme and permanent
24 detriment.

25 50. Plaintiff was forced to disclose his private documents and information with the
26 FTB under the duress of the FTB's unquestioned powers, but did so with the expectancy of a
27 forthright, lawful audit. Instead, plaintiff became the intended victim of the FTB, thus forcing
28

1 plaintiff to either: (1) succumb to tortious acts that would unlawfully deprive him permanently
2 of his hard-earned personal property and right not to have his privacy invaded by the publication
3 of his confidential, private facts as aforesaid; or (2) fight the FTB through the only means
4 available, to wit: the employment of teams of legal and professional experts to vigorously
5 defend himself in the audits and the continuing California tax proceedings.

6 51. It was highly foreseeable to the FTB that, absent the success of its scheme to
7 unlawfully deprive plaintiff of his property through such acts of intimidation as the destruction
8 of his privacy and the imposition of huge "fraud" penalties, as aforesaid, plaintiff's only
9 alternative was to vigorously defend himself in the audits and the continuing California tax
10 proceedings. This required the employment of a team of attorneys and other experts. The
11 resulting attorneys' fees and other professional fees which plaintiff has incurred, and continues
12 to incur, were proximately and directly caused and necessitated by the FTB's course of tortious
13 behavior.

14 52. Plaintiff's incurrence of attorneys' fees and other professional fees are highly
15 foreseeable damages resulting directly from the FTB's tortious conduct against plaintiff in
16 pursuit of unlawful objectives. Plaintiff's alternatives were to do nothing and be vanquished by
17 the overwhelming power and resources of a tenacious and corrupt FTB, or vigorously defend
18 himself in the audits and the continuing California tax proceedings. Plaintiff therefore claims,
19 as special damages, his attorneys' fees in an amount in excess of \$10,000.00, the total amount
20 thereof to be proved according to the evidence at trial.

21 FOURTH CAUSE OF ACTION

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

23 53. Plaintiff realleges and incorporates herein by reference each and every allegation
24 contained in paragraphs 1 through 52, above, as if set forth herein verbatim.

25 54. By conducting interviews and interrogations of Nevada residents and by issuing
26 unauthorized "Demands to Furnish Information" as part of their investigation in Nevada of
27 plaintiff's residency, the FTB and defendants invaded plaintiff's right to privacy by stating or
28

1 insinuating to said Nevada residents that plaintiff was under investigation in California, thereby
2 falsely portraying plaintiff as having engaged in illegal and immoral conduct, and decidedly
3 casting plaintiff's character in a false light.

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

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

16 57. Plaintiff is informed and believes, and therefore alleges, that said invasion of
17 plaintiff's privacy was intentional, malicious, and oppressive in that such invasion of privacy
18 was despicable conduct by the FTB and defendants, entered into with a willful and conscious
19 disregard of the rights of plaintiff. Plaintiff is therefore entitled to an award of exemplary or
20 punitive damages in an amount sufficient to satisfy the purposes for which such damages are
21 awarded.

22 Claim for Attorneys' Fees as Special Damages Pursuant to NRCP 9 (g)

23 58. Plaintiff was drawn into the FTB's audit without choice and as an innocent
24 party. As such, plaintiff had every right to expect that the FTB's demand for an audit would be
25 processed in good faith, according to the law and the facts. Instead, he was subjected to, and
26 continues to be subjected to, a determined and malicious bad-faith attempt to extort money from
27 plaintiff under abuse and betrayal of the FTB's lawful taxing powers. The FTB's fraudulent and
28

1 oppressive scheme includes the intimidating imposition of enormous, indefensible "fraud
2 penalty" assessments designed to force plaintiff to yield to a major compromise or suffer
3 significant financial and reputational destruction. The threatened (and consummated) tortious
4 actions included the outrageously intrusive invasion of his privacy, as aforesaid, and the
5 publicity of private facts that were expressly extracted from plaintiff under false promises of
6 strict confidentiality. Plaintiff repeatedly relied on these promises to his extreme and permanent
7 detriment.

8 59. Plaintiff was forced to disclose his private documents and information with the
9 FTB under the duress of the FTB's unquestioned powers, but did so with the expectancy of a
10 forthright, lawful audit. Instead, plaintiff became the intended victim of the FTB, thus forcing
11 plaintiff to either: (1) succumb to tortious acts that would unlawfully deprive him permanently
12 of his hard-earned personal property and right not to have his privacy invaded by the publication
13 of his confidential, private facts as aforesaid; or (2) fight the FTB through the only means
14 available, to wit: the employment of teams of legal and professional experts to vigorously
15 defend himself in the audits and the continuing California tax proceedings.

16 60. It was highly foreseeable to the FTB that, absent the success of its scheme to
17 unlawfully deprive plaintiff of his property through such acts of intimidation as the destruction
18 of his privacy and the imposition of huge "fraud" penalties, as aforesaid, plaintiff's only
19 alternative was to vigorously defend himself in the audits and the continuing California tax
20 proceedings. This required the employment of a team of attorneys and other experts. The
21 resulting attorneys' fees and other professional fees which plaintiff has incurred, and continues
22 to incur, were proximately and directly caused and necessitated by the FTB's course of tortious
23 behavior.

24 61. Plaintiff's incurrence of attorneys' fees and other professional fees are highly
25 foreseeable damages resulting directly from the FTB's tortious conduct against plaintiff in
26 pursuit of unlawful objectives. Plaintiff's alternatives were to do nothing and be vanquished by
27 the overwhelming power and resources of a tenacious and corrupt FTB, or vigorously defend
28 himself in the audits and the continuing California tax proceedings. Plaintiff therefore claims,

1 as special damages, his attorneys' fees in an amount in excess of \$10,000.00, the total amount
2 thereof to be proved according to the evidence at trial.

3 FIFTH CAUSE OF ACTION

4 (For the Tort of Outrage)

5 62. Plaintiff realleges and incorporates herein by reference each and every allegation
6 contained in paragraphs 1 through 61, above, as if set forth herein verbatim.

7 63. The clandestine and reprehensible manner in which the FTB and defendants
8 carried out their investigation in Nevada of plaintiff's Nevada residency under the cloak of
9 authority from the State of California, but without permission from the State of Nevada, and the
10 FTB and defendants' clear intent to continue to investigate and assess plaintiff staggeringly high
11 California state income taxes, interest, and penalties for the entire year of 1992 — and possibly
12 continuing into future years — despite the FTB's own finding that plaintiff was a Nevada
13 resident at least as of April of 1992, was, and continues to be, extreme, oppressive and
14 outrageous conduct. The FTB has, in every sense, sought to hold plaintiff hostage in California,
15 disdaining and abandoning all reason in its reprehensible, all-out effort to extort significant
16 amounts of plaintiff's income without a basis in law or fact. Plaintiff is informed and believes,
17 and therefore alleges, that the FTB and defendants carried out their investigation in Nevada for
18 the ostensible purpose of seeking truth concerning his place of residency, but the true purpose of
19 which was, and continue to be, to so harass, annoy, embarrass, and intimidate plaintiff, and to
20 cause him such severe emotional distress and worry as to coerce him into paying significant
21 sums to the FTB irrespective of his demonstrably bona fide residence in Nevada throughout the
22 disputed periods. As a result of such extremely outrageous and oppressive conduct on the part
23 of the FTB and defendants, plaintiff has indeed suffered fear, grief, humiliation, embarrassment,
24 anger, and a strong sense of outrage that any honest and reasonably sensitive person would feel
25 if subjected to equivalent unrelenting, outrageous personal threats and insults by such powerful
26 and determined adversaries.

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

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

Claim for Attorneys' Fees as Special Damages Pursuant to NRCP 9 (g)

66. Plaintiff was drawn into the FTB's audit without choice and as an innocent party. As such, plaintiff had every right to expect that the FTB's demand for an audit would be processed in good faith, according to the law and the facts. Instead, he was subjected to, and continues to be subjected to, a determined and malicious bad-faith attempt to extort money from plaintiff under abuse and betrayal of the FTB's lawful taxing powers. The FTB's fraudulent and oppressive scheme includes the intimidating imposition of enormous, indefensible "fraud penalty" assessments designed to force plaintiff to yield to a major compromise or suffer significant financial and reputational destruction. The threatened (and consummated) tortious actions included the outrageously intrusive invasion of his privacy, as aforesaid, and the publicity of private facts that were expressly extracted from plaintiff under false promises of strict confidentiality. Plaintiff repeatedly relied on these promises to his extreme and permanent detriment.

67. Plaintiff was forced to disclose his private documents and information with the FTB under the duress of the FTB's unquestioned powers, but did so with the expectancy of a forthright, lawful audit. Instead, plaintiff became the intended victim of the FTB, thus forcing plaintiff to either: (1) succumb to tortious acts that would unlawfully deprive him permanently of his hard-earned personal property and right not to have his privacy invaded by the publication of his confidential, private facts as aforesaid; or (2) fight the FTB through the only means

1 available, to wit: the employment of teams of legal and professional experts to vigorously
2 defend himself in the audits and the continuing California tax proceedings.

3 68. It was highly foreseeable to the FTB that, absent the success of its scheme to
4 unlawfully deprive plaintiff of his property through such acts of intimidation as the destruction
5 of his privacy and the imposition of huge "fraud" penalties, as aforesaid, plaintiff's only
6 alternative was to vigorously defend himself in the audits and the continuing California tax
7 proceedings. This required the employment of a team of attorneys and other experts. The
8 resulting attorneys' fees and other professional fees which plaintiff has incurred, and continues
9 to incur, were proximately and directly caused and necessitated by the FTB's course of tortious
10 behavior.

11 69. Plaintiff's incurrence of attorneys' fees and other professional fees are highly
12 foreseeable damages resulting directly from the FTB's tortious conduct against plaintiff in
13 pursuit of unlawful objectives. Plaintiff's alternatives were to do nothing and be vanquished by
14 the overwhelming power and resources of a tenacious and corrupt FTB, or vigorously defend
15 himself in the audits and the continuing California tax proceedings. Plaintiff therefore claims,
16 as special damages, his attorneys' fees in an amount in excess of \$10,000.00, the total amount
17 thereof to be proved according to the evidence at trial.

18 SIXTH CAUSE OF ACTION

19 (For Abuse of Process)

20 70. Plaintiff realleges and incorporates herein by reference each and every allegation
21 contained in paragraphs 1 through 69, above, as if set forth herein verbatim.

22 71. Despite plaintiff's ongoing effort, both personally and through his professional
23 representatives, to reasonably provide the FTB with every form of information it requested in
24 order to convince the FTB that plaintiff has been a bona fide resident of the State of Nevada
25 since September 26, 1991, the FTB has willfully sought to extort vast sums of money from
26 plaintiff through administrative proceedings unrelated to the legitimate taxing purposes for
27 which the FTB is empowered to act as an agency of the government of the State of California;
28

1 said administrative proceedings have been lawlessly and abusively directed into the State of
2 Nevada through means of administrative "quasi-subpoenas" that have been unlawfully utilized
3 in the attempt to extort money from plaintiff as aforesaid.

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

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

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

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

1 the pressure and anxiety felt by plaintiff as intended by the FTB in furtherance of its unlawful
2 scheme;

3 (d) Although the FTB was allegedly investigating plaintiff for the audit years 1991 and
4 1992, such audits were and are a "sham" asserted for the purposes of attempting to extort non-
5 owed monies from plaintiff, as demonstrated by the fact that several of the "Demands" indicated
6 that they were issued to secure information (about plaintiff) "for investigation, audit or
7 collection purposes pertaining to the above-named taxpayer for the years indicated," and then
8 proceeded to demand information pertaining to the years 1993, 1994, and 1995 "to present;"

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

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

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

1 highly confidential financial information concerning plaintiff if he refused to settle, another
2 deceptive and improper abuse of the proceedings instigated by the FTB to coerce settlement by
3 plaintiff;

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

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

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

1 aforesaid "Demands" were being sent to Nevada residents, professional persons and businesses,
2 and in hiding from the recipients of the "Demands" the fact that despite their stated support in
3 California law, the documents had no such support and were deceitful and bogus documents;
4 and

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

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

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

22 Claim for Attorneys' Fees as Special Damages Pursuant to NRCP 9 (g)

23 75. Plaintiff was drawn into the FTB's audit without choice and as an innocent party.
24 As such, plaintiff had every right to expect that the FTB's demand for an audit would be
25 processed in good faith, according to the law and the facts. Instead, he was subjected to, and
26 continues to be subjected to, a determined and malicious bad-faith attempt to extort money from
27 plaintiff under abuse and betrayal of the FTB's lawful taxing powers. The FTB's fraudulent and
28

1 oppressive scheme includes the intimidating imposition of enormous, indefensible "fraud
2 penalty" assessments designed to force plaintiff to yield to a major compromise or suffer
3 significant financial and reputational destruction. The threatened (and consummated) tortious
4 actions included the outrageously intrusive invasion of his privacy, as aforesaid, and the
5 publicity of private facts that were expressly extracted from plaintiff under false promises of
6 strict confidentiality. Plaintiff repeatedly relied on these promises to his extreme and permanent
7 detriment.

8 76. Plaintiff was forced to disclose his private documents and information with the
9 FTB under the duress of the FTB's unquestioned powers, but did so with the expectancy of a
10 forthright, lawful audit. Instead, plaintiff became the intended victim of the FTB, thus forcing
11 plaintiff to either: (1) succumb to tortious acts that would unlawfully deprive him permanently
12 of his hard-earned personal property and right not to have his privacy invaded by the publication
13 of his confidential, private facts as aforesaid; or (2) fight the FTB through the only means
14 available, to wit: the employment of teams of legal and professional experts to vigorously
15 defend himself in the audits and the continuing California tax proceedings.

16 77. It was highly foreseeable to the FTB that, absent the success of its scheme to
17 unlawfully deprive plaintiff of his property through such acts of intimidation as the destruction
18 of his privacy and the imposition of huge "fraud" penalties, as aforesaid, plaintiff's only
19 alternative was to vigorously defend himself in the audits and the continuing California tax
20 proceedings. This required the employment of a team of attorneys and other experts. The
21 resulting attorneys' fees and other professional fees which plaintiff has incurred, and continues
22 to incur, were proximately and directly caused and necessitated by the FTB's course of tortious
23 behavior.

24 78. Plaintiff's incurrence of attorneys' fees and other professional fees are highly
25 foreseeable damages resulting directly from the FTB's tortious conduct against plaintiff in
26 pursuit of unlawful objectives. Plaintiff's alternatives were to do nothing and be vanquished by
27 the overwhelming power and resources of a tenacious and corrupt FTB, or vigorously defend
28 himself in the audits and the continuing California tax proceedings. Plaintiff therefore claims,

1 as special damages, his attorneys' fees in an amount in excess of \$10,000.00, the total amount
2 thereof to be proved according to the evidence at trial.

3 SEVENTH CAUSE OF ACTION

4 (For Fraud)

5 79. Plaintiff realleges and incorporates herein by reference each and every allegation
6 contained in paragraphs 1 through 78, above, as if set forth herein verbatim.

7 80. Plaintiff, who prior to September 26, 1991 had been a long-standing resident and
8 taxpayer of the State of California, placed trust and confidence in the bona fides of the FTB as
9 the taxing authority of the State of California when the FTB first contacted him on or about June
10 1993 regarding the 1991 audit of his California tax obligation; by the time of this first contact,
11 plaintiff had become a recognized and prominent force in the computer electronics industry, and
12 he was vitally interested in maintaining both his personal and business security, as well as the
13 integrity of his reputation as a highly successful inventor and owner and licensor of significantly
14 valuable patents.

15 81. During the course of seeking information and documents relating to the 1991
16 "audit," and repeatedly thereafter, the FTB absolutely promised to (i) conduct an unbiased, good
17 faith audit and (ii) maintain in the strictest of confidence, various aspects of plaintiff's
18 circumstances, including, but not limited to, his personal home address and his business and
19 financial transactions and status; and plaintiff's professional representatives took special
20 measures to maintain the confidentiality of plaintiff's affairs, including and especially obtaining
21 solemn commitments from FTB agents to maintain in the strictest of confidence (assured by
22 supposedly secure arrangements) all of plaintiff's confidential information and documents; and
23 the said confidential information and documents were given to the FTB in return for its solemn
24 guarantees and assurances of confidentiality, as aforesaid, thereby creating a confidential
25 relationship in which the FTB was required not to disclose Hyatt's highly personal and
26 confidential information.

27
28

82. Despite the aforesaid assurances and representations of (i) an unbiased, good faith audit and (ii) confidentiality by the FTB, said assurances and representations were false, and the FTB knew they were false or believed they were false, or were without a sufficient basis for making said assurances and representations. Even as the FTB and its agents were continuing to provide assurances of confidentiality to plaintiff and his professional representatives, and without notice to either, Sheila Cox and the FTB were in the process of sending the bogus "DEMAND[S] TO FURNISH INFORMATION" to the utility companies in Las Vegas which demonstrated that the aforesaid assurances and representations were false, as the FTB revealed plaintiff's personal home address in Las Vegas, thus making this highly sensitive and confidential information essentially available to the world through access to the databases maintained by the utility companies. Specific representative indices of the FTB's fraud include:

(a) In a letter by Eugene Cowan, Esq., a tax attorney representing plaintiff, dated November 1, 1993 and addressed to and received by Mr. Marc Shayer of the FTB, Mr. Cowan indicated that he was enclosing a copy of plaintiff's escrow instructions concerning the purchase of his Las Vegas residence, and that "[p]er our discussion, the address of the Las Vegas home has been deleted." Mr. Cowan ended his letter with the following sentence: "As we discussed, the enclosed materials are highly confidential and we do appreciate your utmost care in maintaining their confidentiality." This letter is contained within the files of the FTB, and the FTB noted in its chronological list of items, the receipt of the aforesaid escrow instructions with "Address deleted;"

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

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

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

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

13 (iv) On February 28, 1995, Eugene Cowan, Esq. sent a letter to Sheila Cox of
14 the FTB enclosing copies of various documents. He then stated: "As previously discussed with
15 you and other Franchise Tax Board auditors, all correspondence and materials furnished to the
16 Franchise Tax Board by the taxpayer are highly confidential. It is our understanding that you
17 will retain these materials in locked facilities with limited access[;]" and

18 (v) 8/31/95 - In a letter sent to Eugene Cowan, Esq. by Sheila Cox on
19 8/31/95 regarding the 1991 audit, Cox stated: "The FTB acknowledges that the taxpayer is a
20 private person who puts a significant effort into protecting his privacy[;]"

21 (c) Despite the meeting Sheila Cox had with Mr. Cowan on February 23, 1995, and Mr.
22 Cowan's expression of plaintiff's concern for his privacy, and the explanation by Cox of the
23 FTB's stringent Security and Disclosure policy (the violation of which may subject the
24 offending FTB employee to criminal sanctions or termination); and despite Mr. Cowan's letter
25 to Sheila Cox of February 28, 1995, discussing the highly confidential nature of "all
26 correspondence and materials furnished to the Franchise Tax Board" and his and plaintiff's
27 "understanding that you will retain these materials in locked facilities with limited access"
28 (thereby again underscoring the understanding that all information and documents provided to

1 the FTB would be confidential, including plaintiff's personal residence address), Sheila Cox
2 sent a "DEMAND TO FURNISH INFORMATION" to the Las Vegas utility companies
3 including Southwest Gas Corp., Silver State Disposal Service and Las Vegas Valley Water
4 District, providing each such company with the plaintiff's personal home address, thereby
5 demonstrating disdain for plaintiff, his privacy concerns and the FTB's assurances of
6 confidentiality.

7 83. Plaintiff further alleges that from the very beginning of the FTB's notification to
8 plaintiff and his professional representatives of its intention to audit his 1991 California taxes,
9 express and implied assurances and representations were made to plaintiff through his
10 representatives, that the audit was to be an objective, unbiased, and good faith inquiry into the
11 status of his 1991 tax obligation; and that upon information and belief, based on the FTB's
12 subsequent actions, the aforesaid representations were untrue, as the FTB and certain of its
13 agents were determined to share in the highly successful produce of plaintiff's painstaking labor
14 through means of truth-defying extortion. Indications of this aspect of the fraud perpetrated by
15 the FTB include:

16 (a) Despite plaintiff's delivery of copies of documentary evidence of the sale of his
17 California residence on October 1, 1991 to his business associate and confidant, Grace Jeng, to
18 the FTB, the FTB has contended that the aforementioned sale was a sham, and therefore
19 evidence of plaintiff's continued California residency and his attempt to evade California
20 income tax by fraud;

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

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

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

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

19 84. The FTB and its agents intended to induce plaintiff and his professional
20 representatives to act in reliance on the aforesaid false assurances and representations in order to
21 acquire highly sensitive and confidential information from plaintiff and his professional
22 representatives, and place plaintiff in a position where he would be vulnerable to the FTB's
23 plans to extort large sums of money from him. The FTB was keenly aware of the importance
24 plaintiff assigned to his privacy because of the danger of industrial espionage and other hazards
25 involving the extreme need for security in plaintiff's work and place of residence. The FTB also
26 knew that it would not be able to obtain (at least without the uncertain prospects of judicial
27 intervention) the desired information and documents with which to develop colorable, ostensible
28

1 tax assessments and penalties against plaintiff, without providing plaintiff and his professional
2 representatives with solemn commitments of secure confidentiality.

3 85. Plaintiff, reasonably relying on the truthfulness of the aforesaid assurances and
4 representations by the FTB and its agents, and having no reason to believe that an agency of the
5 State of California would misrepresent its commitments and assurances, did agree both
6 personally and through his authorized professional representatives to cooperate with the FTB
7 and provide it with his highly sensitive and confidential information and documents; in fact,
8 plaintiff relied on the false representations and assurances of the FTB and its agents to his
9 extreme detriment.

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

15 87. The aforesaid misrepresentations by the FTB and its agents were fraudulent,
16 oppressive and malicious. Plaintiff is therefore entitled to an award of exemplary or punitive
17 damages in an amount sufficient to satisfy the purposes for which such damages are awarded.

18 Claim for Attorneys' Fees as Special Damages Pursuant to NRCP 9 (g)

19 88. Plaintiff was drawn into the FTB's audit without choice and as an innocent party.
20 As such, plaintiff had every right to expect that the FTB's demand for an audit would be
21 processed in good faith, according to the law and the facts. Instead, he was subjected to, and
22 continues to be subjected to, a determined and malicious bad-faith attempt to extort money from
23 plaintiff under abuse and betrayal of the FTB's lawful taxing powers. The FTB's fraudulent and
24 oppressive scheme includes the intimidating imposition of enormous, indefensible "fraud
25 penalty" assessments designed to force plaintiff to yield to a major compromise or suffer
26 significant financial and reputational destruction. The threatened (and consummated) tortious
27 actions included the outrageously intrusive invasion of his privacy, as aforesaid, and the
28

1 publicity of private facts that were expressly extracted from plaintiff under false promises of
2 strict confidentiality. Plaintiff repeatedly relied on these promises to his extreme and permanent
3 detriment.

4 89. Plaintiff was forced to disclose his private documents and information with the
5 FTB under the duress of the FTB's unquestioned powers, but did so with the expectancy of a
6 forthright, lawful audit. Instead, plaintiff became the intended victim of the FTB, thus forcing
7 plaintiff to either: (1) succumb to tortious acts that would unlawfully deprive him permanently
8 of his hard-earned personal property and right not to have his privacy invaded by the publication
9 of his confidential, private facts as aforesaid; or (2) fight the FTB through the only means
10 available, to wit: the employment of teams of legal and professional experts to vigorously
11 defend himself in the audits and the continuing California tax proceedings.

12 90. It was highly foreseeable to the FTB that, absent the success of its scheme to
13 unlawfully deprive plaintiff of his property through such acts of intimidation as the destruction
14 of his privacy and the imposition of huge "fraud" penalties, as aforesaid, plaintiff's only
15 alternative was to vigorously defend himself in the audits and the continuing California tax
16 proceedings. This required the employment of a team of attorneys and other experts. The
17 resulting attorneys' fees and other professional fees which plaintiff has incurred, and continues
18 to incur, were proximately and directly caused and necessitated by the FTB's course of tortious
19 behavior.

20 91. Plaintiff's incurrence of attorneys' fees and other professional fees are highly
21 foreseeable damages resulting directly from the FTB's tortious conduct against plaintiff in
22 pursuit of unlawful objectives. Plaintiff's alternatives were to do nothing and be vanquished by
23 the overwhelming power and resources of a tenacious and corrupt FTB, or vigorously defend
24 himself in the audits and the continuing California tax proceedings. Plaintiff therefore claims,
25 as special damages, his attorneys' fees in an amount in excess of \$10,000.00, the total amount
26 thereof to be proved according to the evidence at trial.

EIGHTH CAUSE OF ACTION

(For Breach of Confidentiality — Including Informational
Privacy)

92. Plaintiff realleges and incorporates herein by reference each and every allegation contained in paragraphs 1 through 91, above, as though set forth herein verbatim.

93. As represented in its own manuals and policies, to obtain voluntary compliance by a taxpayer to produce information requested of the taxpayer during audits, the FTB seeks to gain the trust and confidence of the taxpayer by promising confidentiality and fairness. Moreover, in its position as an auditor, the FTB does gain, both voluntarily and by compulsion if necessary, possession of personal and confidential information concerning the taxpayer that a taxpayer would reasonably expect to be kept confidential and not disclosed to third parties. As a result, a confidential relationship exists between the FTB and the taxpayer during an audit, and continues to exist so long as the FTB maintains possession of the personal and confidential information, that places a duty of loyalty on the FTB to not disclose the highly personal and confidential information it obtains concerning the taxpayer.

94. As described above, in return and in response to the FTB's representations of confidentiality and fairness during the audits, plaintiff did reveal to the FTB highly personal and confidential information at the request of the FTB as an ostensible part of its audits and investigation into plaintiff's residency during the disputed time periods. The FTB, in its position as an auditor, also acquired personal and confidential information concerning plaintiff via other means. Based on its duty of loyalty and confidentiality in its role as auditor, the FTB was required to act in good faith and with due regard to plaintiff's interests of confidentiality and thereby not disclose to third parties plaintiff's personal and confidential information. The FTB, without necessity or justification, nevertheless breached its duty of loyalty and confidentiality by making disclosures to third parties, and continuing to make disclosures to third parties, of plaintiff's personal and confidential information that the FTB had a duty not to disclose.

1 95. As a result of such extremely outrageous and oppressive conduct on the part of
2 the FTB, plaintiff has indeed suffered fear, grief, humiliation, embarrassment, anger, and a
3 strong sense of outrage that any honest and reasonably sensitive person would feel upon breach
4 of confidentiality by a party in whom trust and confidence has been imposed based on that
5 party's position.

6 96. As a direct, proximate, and foreseeable result of the FTB's aforementioned
7 invasion of plaintiff's privacy, plaintiff has suffered actual and consequential damages in a total
8 amount in excess of \$10,000.

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

14 Claim for Attorneys' Fees as Special Damages Pursuant to NRCP 9 (g)

15 98. Plaintiff was drawn into the FTB's audit without choice and as an innocent party.
16 As such, plaintiff had every right to expect that the FTB's demand for an audit would be
17 processed in good faith, according to the law and the facts. Instead, he was subjected to, and
18 continues to be subjected to, a determined and malicious bad-faith attempt to extort money from
19 plaintiff under abuse and betrayal of the FTB's lawful taxing powers. The FTB's fraudulent and
20 oppressive scheme includes the intimidating imposition of enormous, indefensible "fraud
21 penalty" assessments designed to force plaintiff to yield to a major compromise or suffer
22 significant financial and reputational destruction. The threatened (and consummated) tortious
23 actions included the outrageously intrusive invasion of his privacy and breach of confidentiality,
24 as aforesaid, and the publicity of private facts that were expressly extracted from plaintiff under
25 false promises of strict confidentiality. Plaintiff repeatedly relied on these promises to his
26 extreme and permanent detriment.

1 99. Plaintiff was forced to disclose his private documents and information with the
2 FTB under the duress of the FTB's unquestioned powers, but did so with the expectancy of a
3 forthright, lawful audit. Instead, plaintiff became the intended victim of the FTB, thus forcing
4 plaintiff to either: (1) succumb to tortious acts that would unlawfully deprive him permanently
5 of his hard-earned personal property and right not to have his privacy invaded by the publication
6 of his confidential, private facts as aforesaid; or (2) fight the FTB through the only means
7 available, to wit: the employment of teams of legal and professional experts to vigorously
8 defend himself in the audits and the continuing California tax proceedings.

9 100. It was highly foreseeable to the FTB that, absent the success of its scheme to
10 unlawfully deprive plaintiff of his property through such acts of intimidation as the destruction
11 of his privacy and the imposition of huge "fraud" penalties, as aforesaid, plaintiff's only
12 alternative was to vigorously defend himself in the audits and the continuing California tax
13 proceedings. This required the employment of a team of attorneys and other experts. The
14 resulting attorneys' fees and other professional fees which plaintiff has incurred, and continues
15 to incur, were proximately and directly caused and necessitated by the FTB's course of tortious
16 behavior.

17 101. Plaintiff's incurrence of attorneys' fees and other professional fees are highly
18 foreseeable damages resulting directly from the FTB's tortious conduct against plaintiff in
19 pursuit of unlawful objectives. Plaintiff's alternatives were to do nothing and be vanquished by
20 the overwhelming power and resources of a tenacious and corrupt FTB, or vigorously defend
21 himself in the audits and the continuing California tax proceedings. Plaintiff therefore claims,
22 as special damages, his attorneys' fees in an amount in excess of \$10,000.00, the total amount
23 thereof to be proved according to the evidence at trial.

24
25
26
27
28

1 WHEREFORE, plaintiff respectfully prays for judgment against the FTB and defendants
2 as follows:

3 FIRST CAUSE OF ACTION

4 1. For judgment declaring and confirming that plaintiff is a bona fide resident of the
5 State of Nevada effective as of September 26, 1991 to the present;

6 2. For judgment declaring that the FTB has no lawful basis for continuing to
7 investigate plaintiff in Nevada concerning his residency between September 26, 1991 through
8 December 31, 1991 or any other subsequent period down to the present, and declaring that the
9 FTB had no right or authority to propound or otherwise issue a "Demand to Furnish
10 Information" or other quasi-subpoenas to Nevada residents and businesses seeking information
11 concerning plaintiff;

12 3. For costs of suit; and

13 4. For such other and further relief as the Court deems just and proper.

14 SECOND CAUSE OF ACTION

15 1. For actual and consequential damages in a total amount in excess of \$10,000;

16 2. For punitive damages in an amount sufficient to satisfy the purposes for which
17 such damages are awarded;

18 3. For costs of suit;

19 4. For provable attorneys' fees as special damages pursuant to NRCP 9(g); and

20 5. For such other and further relief as the Court deems just and proper.

21 THIRD CAUSE OF ACTION

22 1. For punitive damages in an amount sufficient to satisfy the purposes for which
23 such damages are awarded;

24 2. For costs of suit;

25 3. For provable attorneys' fees as special damages pursuant to NRCP 9(g); and

26 4. For such other and further relief as the Court deems just and proper.
27
28

FOURTH CAUSE OF ACTION

For actual and consequential damages in a total amount in excess of \$10,000;
For punitive damages in an amount sufficient to satisfy the purposes for which such damages are awarded;
For costs of suit;
For provable attorneys' fees as special damages pursuant to NRCP 9(g); and
For such other and further relief as the Court deems just and proper.

FIFTH CAUSE OF ACTION

1. For actual and consequential damages in a total amount in excess of \$10,000;
2. For punitive damages in an amount sufficient to satisfy the purposes for which such damages are awarded;
3. For costs of suit;
4. For provable attorneys' fees as special damages pursuant to NRCP 9(g); and
5. For such other and further relief as the Court deems just and proper.

SIXTH CAUSE OF ACTION

1. For actual and consequential damages in a total amount in excess of \$10,000;
2. For punitive damages in an amount sufficient to satisfy the purposes for which such damages are awarded;
3. For costs of suit;
4. For provable attorneys' fees as special damages pursuant to NRCP 9(g); and
5. For such other and further relief as the Court deems just and proper.

SEVENTH CAUSE OF ACTION

1. For actual and consequential damages in a total amount in excess of \$10,000;
2. For punitive damages in an amount sufficient to satisfy the purposes for which such damages are awarded;
3. For costs of suit;
4. For provable attorneys' fees as special damages pursuant to NRCP 9(g); 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 punitive damages in an amount sufficient to satisfy the purposes for which such damages are awarded;

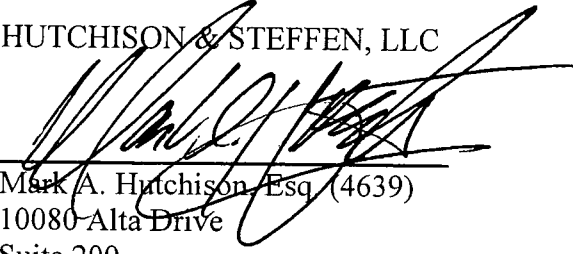
3. For costs of suit;

4. For provable attorneys' fees as special damages pursuant to NRCP 9(g); and

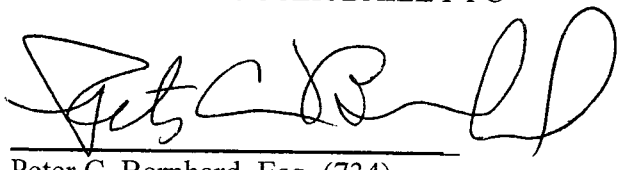
5. For such other and further relief as the Court deems just and proper.

Dated this 18th day of April, 2006.

HUTCHISON & STEFFEN, LLC


Mark A. Hutchison, Esq. (4639)
10080 Alta Drive
Suite 200
Las Vegas, Nevada 89145

BULLIVANT HOUSER BAILEY PC


Peter C. Bernhard, Esq. (734)
3980 Howard Hughes Pkwy.
Suite 550
Las Vegas, Nevada 89109
(702) 650-6565

Attorneys for Plaintiff Gilbert P. Hyatt

Bullivant|Houser|Bailey PC
3980 Howard Hughes Pkwy., Ste. 550
Las Vegas, NV 89109
Telephone: (702) 650-6565
Facsimile: (702) 650-2995

BullivantHouserBailey PC
3980 Howard Hughes Pkwy., Ste. 550
Las Vegas, NV 89109
Telephone: (702) 650-6565
Facsimile: (702) 650-2995

1 **COS**

Mark A. Hutchison (4639)
Hutchison & Steffen
10080 Alta Drive
Suite 200
Las Vegas, NV 89145
(702) 385-2500

Peter C. Bernhard (734)
Bullivant Houser Bailey PC
3980 Howard Hughes Pkwy., Ste. 550
Las Vegas, NV 89109
Telephone: (702) 650-6565

Attorneys for Plaintiff Gilbert P. Hyatt

DISTRICT COURT
CLARK COUNTY, NEVADA

GILBERT P. HYATT,

Plaintiffs,

v.

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

Defendants.

Case No.: A382999

Dept. No.: X

**CERTIFICATE OF SERVICE OF SECOND
AMENDED COMPLAINT**

**(filed under seal by order of the Discovery
Commissioner dated February 22, 1999)**

CERTIFICATE OF SERVICE

Pursuant to NRCP 5(b), I certify that I am an employee of BULLIVANT HOUSER
BAILEY PC and that on this 18th day of April, 2006, I caused the above and foregoing
document entitled SECOND AMENDED COMPLAINT to be served as follows:

[X] by placing same to be deposited for mailing via federal express, in a sealed
envelope upon which postage was prepaid in Las Vegas Nevada; and/or

[X] Pursuant to EDCR 7.26, to be sent via facsimile; and/or

[X] to be hand-delivered;

to the attorney(s) listed below at the address and/or facsimile number indicated below:

via facsimile: (775) 788-2020

James A. Bradshaw, Esq.
McDonald Carano Wilson LLP
100 West Liberty Street
10th Floor
Reno NV 89501

via facsimile: 873-9966

Jeffrey Silvestri, Esq.
McDonald Carano Wilson LLP
2300 West Sahara Avenue, Suite 1000
Las Vegas, Nevada 89102

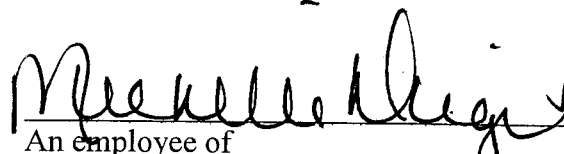
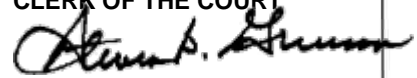

An employee of
Bullivant Houser Bailey PC

EXHIBIT B



1 JUDGE

2 EIGHTH JUDICIAL DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5)
6)
7 GILBERT P. HYATT,
8)

9 Plaintiff,
10)

11 vs.
12)

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

16 Defendants.
17)
18)
19)
20)

21 JUDGMENT

22 This case has been remanded back to this Court by order of the Nevada Supreme
23 Court dated August 5, 2019 for proceedings consistent with its order and consistent with
24 the United States Supreme Court decision in this case, *Franchise Tax Board of California*
25 *v. Hyatt*, 587 U.S. 139 S. Ct. 1485, 1499 (2019). In accordance with those instructions, the
26 Court enters judgment in this action as follows:
27

28 CASE PROCEDURAL HISTORY

Complaint

Plaintiff Gilbert Hyatt ("Hyatt") filed this action against Defendant California Franchise Tax Board ("FTB") on January 6, 1998, alleging: First Cause of Action – Declaratory Relief; Second Cause of Action – Invasion of Privacy, Unreasonable Intrusion Upon the Seclusion of Another; Third Cause of Action – Invasion of Privacy – Unreasonable Publicity Given to Private Facts; Fourth Cause of Action – Invasion of Privacy – Casing Plaintiff in a False Light; and Fifth Cause of Action – Tort of Outrage.

1 On June 11, 1998, Hyatt filed a First Amended Complaint, which added three
2 causes of action: Sixth Cause of Action – Abuse of Process; Seventh Cause of Action –
3 Fraud; and Eighth Cause of Action – Negligent Misrepresentation.

4
5 Franchise Tax Board's Motion for Judgment on the Pleadings

6 On February 9, 1999, the FTB filed a Motion for Judgment on the pleadings. The
7 FTB argued its motion that this Court should dismiss the case in its entirety as a matter of
8 comity in order to give full faith and credit to California's immunity laws that protect the FTB
9 from suit in California. The FTB cited Nevada v. Hall, 440 U.S. 410 (1979) and argued that
10 its holding was not applicable in this case because the FTB's taxing power was a sovereign
11 function. The FTB did not argue that Nevada v. Hall was wrongly decided and should be
12 reversed. Hyatt argued that the Court could and should hear this case citing Nevada v.
13 Hall, which held that a state court has jurisdiction over an agency from a sister state and is
14 not required to provide immunity to the sister state but can decide whether to grant
15 immunity to the sister state as a matter of comity.

16 On April 7, 1999, this Court, the Honorable Nancy Saitta, District Judge, presiding,
17 denied the FTB's motion for judgment on the pleadings as to Hyatt's tort claims, while only
18 granting the FTB's motion as to Hyatt's claim for declaratory relief.

19
20 Franchise Tax Board's Motion for Summary Judgment

21 On January 27, 2000, the FTB filed a Motion for Summary Judgment. The FTB
22 argued in its motion, among other arguments, that this Court should dismiss the case in
23 order to give full faith and credit to California's immunity laws that protect the FTB from suit
24 in California. The FTB again cited Nevada v. Hall, 440 U.S. 410 (1979) and again argued
25 that its holding was not applicable in this case because the FTB's taxing power was a
26 sovereign function. The FTB again did not argue that Nevada v. Hall was wrongly decided
27 and should be reversed. Hyatt again argued that the Court has jurisdiction over the FTB

1 and could and should hear this case, again citing Nevada v. Hall.

2 On May 31, 2000, this Court, the Honorable Nancy Saitta, District Judge, presiding,
3 denied the FTB's Motion for Summary Judgment.

4
5 First Writ Proceeding in the Nevada Supreme Court

6 On July 7, 2000, the FTB filed a petition for a writ of mandamus seeking review of
7 this Court's order denying the FTB's motion for summary judgment. On September 13,
8 2000, the Nevada Supreme Court accepted review of the FTB's petition for writ of
9 mandamus. The FTB's petition again argued that this Court should dismiss the case in
10 order to give full faith and credit to California's immunity laws that protect the FTB from suit
11 in California. The FTB again cited Nevada v. Hall, 440 U.S. 410 (1979) and again argued
12 that its holding was not applicable in this case because the FTB's taxing power was a
13 sovereign function.

14 On June 13, 2001, the Nevada Supreme Court issued an order granting the FTB's
15 petition for a writ of mandamus regarding this Court's order denying the FTB's summary
16 judgment motion on the basis that Hyatt did not put forth sufficient evidence to establish his
17 alleged tort claims.

18 On July 2, 2001, Hyatt filed a petition for rehearing of the Nevada Supreme Court's
19 June 13, 2001 order dismissing the case. Hyatt argued that the FTB's petition had not
20 raised the issue of the sufficiency of the evidence to support Hyatt's tort claims, that the
21 parties had not briefed that issue, and that Hyatt had sufficient evidence to establish each
22 tort claim. On July 13, 2001, the Nevada Supreme Court ordered additional briefing from
23 both sides on Hyatt's petition for rehearing.

24 On April 4, 2002, the Nevada Supreme Court granted Hyatt's petition for rehearing
25 and reversed its prior order dismissing the case, concluding that Nevada has jurisdiction to
26 hear Hyatt's intentional tort claims against the FTB under Nevada v. Hall and that Nevada
27 would not dismiss those claims on the ground of comity because the State of Nevada
28

1 allows its state agencies to be sued in Nevada District Court for intentional torts. The
2 Nevada Supreme Court, however, dismissed Hyatt's Eighth Cause of Action – Negligent
3 Misrepresentation against the FTB on the ground of comity because the State of Nevada
4 does not allow its state agencies to be sued in Nevada District Court for negligence.

5
6 First Review by the United States Supreme Court

7 On October 15, 2002, the United States Supreme Court granted the FTB's petition
8 for certiorari, which sought review of the Nevada Supreme Court's April 4, 2002 order. The
9 FTB's petition for review and its briefing on the merits did not assert for seek review on the
10 issue of whether Nevada v. Hall was wrongly decided and should be reversed, but rather
11 again argued that an exception to Nevada v. Hall should be established, so that certain
12 "sovereign" functions, such as taxing activities, be exempted from the holding in Nevada v.
13 Hall. Hyatt opposed the FTB's arguments, again citing Nevada v. Hall.

14 On April 23, 2003, the United States Supreme Court issued a decision denying the
15 FTB's appeal in a unanimous 9 to 0 decision that cited Nevada v. Hall, rejected the FTB's
16 asserted exception to Nevada v. Hall, and concluded that the Nevada Supreme Court had
17 appropriately applied comity by allowing Hyatt's intentional tort claims to proceed in
18 Nevada state court while dismissing Hyatt's negligence claim. Franchise Tax Board of
19 California v. Hyatt, 538 U.S. 488 (2003) ("*Hyatt I*"). On May 23, 2003, the United States
20 Supreme Court issued the mandate returning this case to Nevada state court.

21
22 Second Amended Complaint

23 On April 18, 2006, after obtaining leave of court, Hyatt filed a Second Amended
24 Complaint that added a single cause of action: Eighth Cause of Action – Breach of
25 Confidentiality.

26 //

27 //

1 Franchise Tax Board's Offer of Judgment

2 On November 26, 2007, the FTB made an offer of judgment to Hyatt under Nevada
3 Rules of Civil Procedure 68 and former Nevada Revised Statute 17.115 in the amount of
4 \$110,000, inclusive of costs and fees. Hyatt did not respond to the offer within the Rule's
5 10-day period, so it expired.

6
7 Trial, Verdict, and Judgment

8 On April 14, 2008, this matter came on for trial before this Court, the Honorable
9 Jessie Walsh, District Judge, presiding, and a jury, concluding with the verdicts of the jury
10 on August 6, 2008 (*liability for and amount of compensatory damages*), on August 11, 2008
11 (*liability for punitive damages*), and on August 14, 2008 (*amount of punitive damages*).
12 The jury rendered a verdict in favor of Hyatt and against the FTB on all causes of action
13 presented to the jury, specifically Hyatt's second cause of action for invasion of privacy
14 (*intrusion upon seclusion*), third cause of action for invasion of privacy (*publicity of private*
15 *facts*), fourth cause of action for invasion of privacy (*false light*), fifth cause of action for
16 intentional infliction of emotional distress, sixth cause of action for abuse of process,
17 seventh cause of action for fraud, and eighth cause of action for breach of confidential
18 relationship. The jury awarded Hyatt compensatory damages of \$85,000,000 for emotional
19 distress; compensatory damages of \$52,000,000 for invasion of privacy; attorney's fees as
20 special damages of \$1,085,281.56; and punitive damages of \$250,000,000.

21 On September 8, 2008, this Court entered a judgment consistent with the jury's
22 verdicts. On January 4, 2010, this Court awarded Hyatt costs in the amount of
23 \$2,539,068.65 as the prevailing party in the case.

24
25 Appeal of the Judgment

26 On February 10, 2009, the FTB filed a notice of appeal from the judgment with the
27 Nevada Supreme Court, and thereafter the FTB and Hyatt filed their respective briefs for
28

1 the appeal. The FTB filed an opening brief on August 7, 2009. The FTB noted in footnote
2 80 that "it is questionable whether there is still validity to "Nevada v. Hall and that the
3 Nevada Supreme Court "may evaluate the continuing validity of an old United States
4 Supreme Court opinion."

5 On September 18, 2014, the Nevada Supreme Court affirmed in part and reversed
6 in part the judgment entered by this Court on September 8, 2009, without any reference to
7 or discussion of Nevada v. Hall. The Nevada Supreme Court affirmed the portion of the
8 judgment in favor of Hyatt on his cause of action for fraud and the award of \$1,085,281.56
9 in damages and affirmed specific findings as to the evidence that supported the fraud
10 claim. The Nevada Supreme Court also affirmed the portion of the judgment in favor of
11 Hyatt as to liability on his cause of action for intentional infliction of emotional distress while
12 ordering a new trial as to the amount of damages for that claim. The Nevada Supreme
13 Court reversed the judgment in favor of Hyatt on his other claims for invasion of privacy
14 (*intrusion upon seclusion*), invasion of privacy (*publicity of private facts*), invasion of privacy
15 (*false light*), abuse of process and breach of confidential relationship, ordering Hyatt to take
16 nothing for those claims and ordering the award of costs to be re-determined.

17 18 Second Review by the United States Supreme Court

19 On June 30, 2015, the United States Supreme Court granted the FTB's petition for
20 certiorari, which sought review of the Nevada Supreme Court's September 18, 2014
21 decision. The FTB's petition for review and then briefing on the merits argued that Nevada
22 v. Hall should be reversed on the grounds that a state court has no jurisdiction over a sister
23 state or its agencies or, alternatively, that the award of damages in favor of Hyatt must be
24 limited to \$50,000 per claim in accord with Nevada law applicable to claims made against
25 Nevada state agencies. Hyatt opposed the FTB on both grounds.

26 On April 19, 2016, the United States Supreme Court in a 4 to 4 vote denied the
27 FTB's request to reverse Nevada v. Hall, but granted the FTB's alternative request for relief

1 and ordered that the FTB must be treated the same as a Nevada state agency in regard to
2 damage limitations. The United States Supreme Court ordered the case remanded to the
3 Nevada state court for treatment consistent with the Court's ruling. Franchise Tax Board of
4 California v. Hyatt, 163 S. Ct. 1271 (1016) ("*Hyatt II*"). On May 23, 2016, the United States
5 Supreme court issued the mandate returning the case to Nevada Supreme Court.

6
7 *Revised Decision from the Nevada Supreme Court*

8 On December 26, 2017, the Nevada Supreme Court issued a decision ordering that
9 Hyatt's recovery for his fraud claim and his intentional infliction of emotional distress claim
10 be limited to \$50,000 each and remanded the case to this Court to decide the issue of
11 costs.

12
13 *Third Review by the United States Supreme Court*

14 On June 29, 2018, the United States Supreme Court granted the FTB's petition for
15 certiorari, which sought review of the Nevada Supreme Court's December 26, 2017
16 decision. The FTB's petition for review and then briefing on the merits again argued that
17 the Nevada v. Hall should be reversed on the ground that a state court has no jurisdiction
18 over a sister state or its agencies. Hyatt again opposed the FTB's appeal on this ground.

19 On May 13, 2019, the United State Supreme Court in a 5 to 4 decision reversed
20 Nevada v. Hall and remanded the case to the Nevada state court for treatment consistent
21 with the Court opinion. Franchise Tax Board of California, 139 S. Ct. 1485 (2019) ("*Hyatt*
22 *III*"). On June 17, 2019, the United States Supreme Court issued the mandate returning
23 the case to the Nevada Supreme Court.

24
25 *Remand to this Court*

26 On August 5, 2019, the Nevada Supreme Court issued a remittitur returning the
27 case to this Court ordering that it vacate the judgment in favor of Hyatt and take any further
28

1 necessary action consistent with its order and the United States Supreme Court's order.
2 On September 3, 2019, this Court vacated the prior judgment in favor of Hyatt and ordered
3 both Hyatt and the FTB to submit briefing by no later than October 15, 2019, to address the
4 form of judgment to be entered in this action and who, if either party, is the prevailing party
5 in this action.

6 7 JUDGMENT

8 NOW, THEREFORE, and based on the foregoing, this Court has reviewed and
9 considered the procedural history in this case, including the decisions and orders in this
10 case issued by the United States Supreme Court and the Nevada Supreme Court, and the
11 recent briefing submitted by the parties in the form of judgment to be entered in this case
12 and who, if either party, is the prevailing party.

13 IT IS ORDERED, ADJUDGED AND DECREED that (i) this case is dismissed and
14 Hyatt take nothing from any of the causes of action he asserted in this action, and (ii)
15 neither party is deemed the prevailing party for the purpose of awarding costs or attorney's
16 fees, and neither party is therefore awarded costs or attorney's fees in this action.

17 Hyatt brought this action in good faith in reliance on the United States Supreme
18 Court precedent Nevada v. Hall. During the last 21 years while relying on Nevada v. Hall,
19 Hyatt prevailed in both the Nevada Supreme Court (2002) and the United States Supreme
20 Court in 2003 (*Hyatt I*) and then obtained a large jury verdict and final judgment against the
21 FTB (2008), which the Nevada Supreme Court affirmed in part (2014). The United States
22 Supreme Court's reversal of its long-standing Nevada v. Hall precedent in Hyatt III in 2019
23 stripping this Court of jurisdiction over the FTB could not have been anticipated by Hyatt.

24 Hyatt also had a good faith belief that he would prevail at trial on his claims and
25 recover in excess of the \$110,000 offer of judgment made by the FTB in 2007. Hyatt did
26 obtain a verdict and final judgment well in excess of that amount. The damages limitation
27 to Hyatt's claims was not decided and imposed until 2016 in *Hyatt II*. It was therefore not
28

1 grossly unreasonable or in bad faith for Hyatt to not accept the FTB's offer of judgment of
2 the \$110,000 in 2007. The FTB may have believed when it served its offer of judgment
3 that the offer was reasonable in its amount or timing and would be accepted by Hyatt, but
4 Hyatt was relying on Nevada v. Hall, which had been the law since 1979. As of 2007, the
5 FTB had not asserted any argument or taken any action to reverse the Nevada v. Hall
6 precedent. Further, as of 2007, this case had been reviewed by both the Nevada Supreme
7 Court (2002) and the United States Supreme Court (2003), and the FTB had not argued
8 that Nevada v. Hall was wrongly decided and should be reversed. The FTB did not assert
9 that argument or seek that relief with the United States Supreme Court until 2015 after
10 ruling by this Court and exhausting all appeals in the Nevada Supreme Court.

11 The Court therefore concludes that based on the orders of the United States
12 Supreme Court and the Nevada Supreme Court, this case is dismissed. This Court further
13 concludes that consistent with the orders of the higher courts, as a matter of law and
14 equity, there is no prevailing party in this action and neither party is entitled to an award of
15 costs or attorney's fees.

16 IT IS SO ORDERED.

17
18 DATED this 21st day of February, 2020.

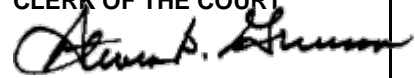
19
20 
21 TIERRA JONES
22 DISTRICT COURT JUDGE
23
24
25
26
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Electronically served on all parties as noted in the Court's Master Service List and/or mailed to any party in proper person.


Tess Driver
Judicial Executive Assistant
Department 10

EXHIBIT C



1 **NJUD**

2 Pat Lundvall (NSBN 3761)
3 McDONALD CARANO LLP
4 2300 West Sahara Avenue, Suite 1200
5 Las Vegas, Nevada 89102
6 Telephone: (702) 873-4100
7 Facsimile: (702) 873-9966
8 lundvall@mcdonaldcarano.com

9 *Attorneys for Defendant*
10 *Franchise Tax Board of the State of California*

11 **DISTRICT COURT**

12 **CLARK COUNTY, NEVADA**

13 GILBERT P. HYATT,

14 Plaintiff,

15 vs.

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

18 Defendants.

Case No.: 98A382999

Dept. No.: X

19 **NOTICE OF ENTRY OF JUDGMENT**

20 PLEASE TAKE NOTICE that the Judgment was entered in the above-captioned
21 case on the 21st day of February, 2020, a copy of which is attached hereto.

22 Dated this 26th day of February, 2020.

23 McDONALD CARANO LLP

24 By: /s/ Pat Lundvall

25 Pat Lundvall (NSBN 3761)
26 2300 West Sahara Avenue, Suite 1200
27 Las Vegas, Nevada 89102
28 Telephone: (702) 873-4100
Facsimile: (702) 873-9966
lundvall@mcdonaldcarano.com

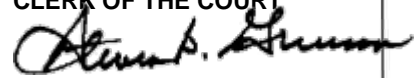
Attorneys for Defendant
Franchise Tax Board of the State of
California

CERTIFICATE OF SERVICE

I certify that I am an employee of McDONALD CARANO, LLP and that on the 26th day of February, 2020, a true and correct copy of the foregoing NOTICE OF ENTRY OF JUDGMENT was electronically filed and e-served on all registered parties to the Eighth Judicial District Court's electronic filing system.

/s/ Beau Nelson

An employee of McDonald Carano LLP



1 JUDGE

2 EIGHTH JUDICIAL DISTRICT COURT
3 CLARK COUNTY, NEVADA
4

5) CASE NO.: 98A382999
6)
7 GILBERT P. HYATT,
8)

9 Plaintiff,
10)

11 vs.
12)

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

16 Defendants.
17)
18)
19)
20)

21 JUDGMENT

22 This case has been remanded back to this Court by order of the Nevada Supreme
23 Court dated August 5, 2019 for proceedings consistent with its order and consistent with
24 the United States Supreme Court decision in this case, *Franchise Tax Board of California*
25 *v. Hyatt*, 587 U.S. 139 S. Ct. 1485, 1499 (2019). In accordance with those instructions, the
26 Court enters judgment in this action as follows:
27

28 CASE PROCEDURAL HISTORY

Complaint

Plaintiff Gilbert Hyatt ("Hyatt") filed this action against Defendant California Franchise Tax Board ("FTB") on January 6, 1998, alleging: First Cause of Action – Declaratory Relief; Second Cause of Action – Invasion of Privacy, Unreasonable Intrusion Upon the Seclusion of Another; Third Cause of Action – Invasion of Privacy – Unreasonable Publicity Given to Private Facts; Fourth Cause of Action – Invasion of Privacy – Casing Plaintiff in a False Light; and Fifth Cause of Action – Tort of Outrage.

1 On June 11, 1998, Hyatt filed a First Amended Complaint, which added three
2 causes of action: Sixth Cause of Action – Abuse of Process; Seventh Cause of Action –
3 Fraud; and Eighth Cause of Action – Negligent Misrepresentation.

4
5 Franchise Tax Board's Motion for Judgment on the Pleadings

6 On February 9, 1999, the FTB filed a Motion for Judgment on the pleadings. The
7 FTB argued its motion that this Court should dismiss the case in its entirety as a matter of
8 comity in order to give full faith and credit to California's immunity laws that protect the FTB
9 from suit in California. The FTB cited Nevada v. Hall, 440 U.S. 410 (1979) and argued that
10 its holding was not applicable in this case because the FTB's taxing power was a sovereign
11 function. The FTB did not argue that Nevada v. Hall was wrongly decided and should be
12 reversed. Hyatt argued that the Court could and should hear this case citing Nevada v.
13 Hall, which held that a state court has jurisdiction over an agency from a sister state and is
14 not required to provide immunity to the sister state but can decide whether to grant
15 immunity to the sister state as a matter of comity.

16 On April 7, 1999, this Court, the Honorable Nancy Saitta, District Judge, presiding,
17 denied the FTB's motion for judgment on the pleadings as to Hyatt's tort claims, while only
18 granting the FTB's motion as to Hyatt's claim for declaratory relief.

19
20 Franchise Tax Board's Motion for Summary Judgment

21 On January 27, 2000, the FTB filed a Motion for Summary Judgment. The FTB
22 argued in its motion, among other arguments, that this Court should dismiss the case in
23 order to give full faith and credit to California's immunity laws that protect the FTB from suit
24 in California. The FTB again cited Nevada v. Hall, 440 U.S. 410 (1979) and again argued
25 that its holding was not applicable in this case because the FTB's taxing power was a
26 sovereign function. The FTB again did not argue that Nevada v. Hall was wrongly decided
27 and should be reversed. Hyatt again argued that the Court has jurisdiction over the FTB

1 and could and should hear this case, again citing Nevada v. Hall.

2 On May 31, 2000, this Court, the Honorable Nancy Saitta, District Judge, presiding,
3 denied the FTB's Motion for Summary Judgment.

4
5 First Writ Proceeding in the Nevada Supreme Court

6 On July 7, 2000, the FTB filed a petition for a writ of mandamus seeking review of
7 this Court's order denying the FTB's motion for summary judgment. On September 13,
8 2000, the Nevada Supreme Court accepted review of the FTB's petition for writ of
9 mandamus. The FTB's petition again argued that this Court should dismiss the case in
10 order to give full faith and credit to California's immunity laws that protect the FTB from suit
11 in California. The FTB again cited Nevada v. Hall, 440 U.S. 410 (1979) and again argued
12 that its holding was not applicable in this case because the FTB's taxing power was a
13 sovereign function.

14 On June 13, 2001, the Nevada Supreme Court issued an order granting the FTB's
15 petition for a writ of mandamus regarding this Court's order denying the FTB's summary
16 judgment motion on the basis that Hyatt did not put forth sufficient evidence to establish his
17 alleged tort claims.

18 On July 2, 2001, Hyatt filed a petition for rehearing of the Nevada Supreme Court's
19 June 13, 2001 order dismissing the case. Hyatt argued that the FTB's petition had not
20 raised the issue of the sufficiency of the evidence to support Hyatt's tort claims, that the
21 parties had not briefed that issue, and that Hyatt had sufficient evidence to establish each
22 tort claim. On July 13, 2001, the Nevada Supreme Court ordered additional briefing from
23 both sides on Hyatt's petition for rehearing.

24 On April 4, 2002, the Nevada Supreme Court granted Hyatt's petition for rehearing
25 and reversed its prior order dismissing the case, concluding that Nevada has jurisdiction to
26 hear Hyatt's intentional tort claims against the FTB under Nevada v. Hall and that Nevada
27 would not dismiss those claims on the ground of comity because the State of Nevada
28

1 allows its state agencies to be sued in Nevada District Court for intentional torts. The
2 Nevada Supreme Court, however, dismissed Hyatt's Eighth Cause of Action – Negligent
3 Misrepresentation against the FTB on the ground of comity because the State of Nevada
4 does not allow its state agencies to be sued in Nevada District Court for negligence.

5
6 First Review by the United States Supreme Court

7 On October 15, 2002, the United States Supreme Court granted the FTB's petition
8 for certiorari, which sought review of the Nevada Supreme Court's April 4, 2002 order. The
9 FTB's petition for review and its briefing on the merits did not assert for seek review on the
10 issue of whether Nevada v. Hall was wrongly decided and should be reversed, but rather
11 again argued that an exception to Nevada v. Hall should be established, so that certain
12 "sovereign" functions, such as taxing activities, be exempted from the holding in Nevada v.
13 Hall. Hyatt opposed the FTB's arguments, again citing Nevada v. Hall.

14 On April 23, 2003, the United States Supreme Court issued a decision denying the
15 FTB's appeal in a unanimous 9 to 0 decision that cited Nevada v. Hall, rejected the FTB's
16 asserted exception to Nevada v. Hall, and concluded that the Nevada Supreme Court had
17 appropriately applied comity by allowing Hyatt's intentional tort claims to proceed in
18 Nevada state court while dismissing Hyatt's negligence claim. Franchise Tax Board of
19 California v. Hyatt, 538 U.S. 488 (2003) ("*Hyatt I*"). On May 23, 2003, the United States
20 Supreme Court issued the mandate returning this case to Nevada state court.

21
22 Second Amended Complaint

23 On April 18, 2006, after obtaining leave of court, Hyatt filed a Second Amended
24 Complaint that added a single cause of action: Eighth Cause of Action – Breach of
25 Confidentiality.

26 //

27 //

1 Franchise Tax Board's Offer of Judgment

2 On November 26, 2007, the FTB made an offer of judgment to Hyatt under Nevada
3 Rules of Civil Procedure 68 and former Nevada Revised Statute 17.115 in the amount of
4 \$110,000, inclusive of costs and fees. Hyatt did not respond to the offer within the Rule's
5 10-day period, so it expired.

6
7 Trial, Verdict, and Judgment

8 On April 14, 2008, this matter came on for trial before this Court, the Honorable
9 Jessie Walsh, District Judge, presiding, and a jury, concluding with the verdicts of the jury
10 on August 6, 2008 (*liability for and amount of compensatory damages*), on August 11, 2008
11 (*liability for punitive damages*), and on August 14, 2008 (*amount of punitive damages*).
12 The jury rendered a verdict in favor of Hyatt and against the FTB on all causes of action
13 presented to the jury, specifically Hyatt's second cause of action for invasion of privacy
14 (*intrusion upon seclusion*), third cause of action for invasion of privacy (*publicity of private*
15 *facts*), fourth cause of action for invasion of privacy (*false light*), fifth cause of action for
16 intentional infliction of emotional distress, sixth cause of action for abuse of process,
17 seventh cause of action for fraud, and eighth cause of action for breach of confidential
18 relationship. The jury awarded Hyatt compensatory damages of \$85,000,000 for emotional
19 distress; compensatory damages of \$52,000,000 for invasion of privacy; attorney's fees as
20 special damages of \$1,085,281.56; and punitive damages of \$250,000,000.

21 On September 8, 2008, this Court entered a judgment consistent with the jury's
22 verdicts. On January 4, 2010, this Court awarded Hyatt costs in the amount of
23 \$2,539,068.65 as the prevailing party in the case.

24
25 Appeal of the Judgment

26 On February 10, 2009, the FTB filed a notice of appeal from the judgment with the
27 Nevada Supreme Court, and thereafter the FTB and Hyatt filed their respective briefs for
28

1 the appeal. The FTB filed an opening brief on August 7, 2009. The FTB noted in footnote
2 80 that "it is questionable whether there is still validity to "Nevada v. Hall and that the
3 Nevada Supreme Court "may evaluate the continuing validity of an old United States
4 Supreme Court opinion."

5 On September 18, 2014, the Nevada Supreme Court affirmed in part and reversed
6 in part the judgment entered by this Court on September 8, 2009, without any reference to
7 or discussion of Nevada v. Hall. The Nevada Supreme Court affirmed the portion of the
8 judgment in favor of Hyatt on his cause of action for fraud and the award of \$1,085,281.56
9 in damages and affirmed specific findings as to the evidence that supported the fraud
10 claim. The Nevada Supreme Court also affirmed the portion of the judgment in favor of
11 Hyatt as to liability on his cause of action for intentional infliction of emotional distress while
12 ordering a new trial as to the amount of damages for that claim. The Nevada Supreme
13 Court reversed the judgment in favor of Hyatt on his other claims for invasion of privacy
14 (*intrusion upon seclusion*), invasion of privacy (*publicity of private facts*), invasion of privacy
15 (*false light*), abuse of process and breach of confidential relationship, ordering Hyatt to take
16 nothing for those claims and ordering the award of costs to be re-determined.

17 18 Second Review by the United States Supreme Court

19 On June 30, 2015, the United States Supreme Court granted the FTB's petition for
20 certiorari, which sought review of the Nevada Supreme Court's September 18, 2014
21 decision. The FTB's petition for review and then briefing on the merits argued that Nevada
22 v. Hall should be reversed on the grounds that a state court has no jurisdiction over a sister
23 state or its agencies or, alternatively, that the award of damages in favor of Hyatt must be
24 limited to \$50,000 per claim in accord with Nevada law applicable to claims made against
25 Nevada state agencies. Hyatt opposed the FTB on both grounds.

26 On April 19, 2016, the United States Supreme Court in a 4 to 4 vote denied the
27 FTB's request to reverse Nevada v. Hall, but granted the FTB's alternative request for relief

1 and ordered that the FTB must be treated the same as a Nevada state agency in regard to
2 damage limitations. The United States Supreme Court ordered the case remanded to the
3 Nevada state court for treatment consistent with the Court's ruling. Franchise Tax Board of
4 California v. Hyatt, 163 S. Ct. 1271 (1016) ("*Hyatt II*"). On May 23, 2016, the United States
5 Supreme court issued the mandate returning the case to Nevada Supreme Court.

6
7 *Revised Decision from the Nevada Supreme Court*

8 On December 26, 2017, the Nevada Supreme Court issued a decision ordering that
9 Hyatt's recovery for his fraud claim and his intentional infliction of emotional distress claim
10 be limited to \$50,000 each and remanded the case to this Court to decide the issue of
11 costs.

12
13 *Third Review by the United States Supreme Court*

14 On June 29, 2018, the United States Supreme Court granted the FTB's petition for
15 certiorari, which sought review of the Nevada Supreme Court's December 26, 2017
16 decision. The FTB's petition for review and then briefing on the merits again argued that
17 the Nevada v. Hall should be reversed on the ground that a state court has no jurisdiction
18 over a sister state or its agencies. Hyatt again opposed the FTB's appeal on this ground.

19 On May 13, 2019, the United State Supreme Court in a 5 to 4 decision reversed
20 Nevada v. Hall and remanded the case to the Nevada state court for treatment consistent
21 with the Court opinion. Franchise Tax Board of California, 139 S. Ct. 1485 (2019) ("*Hyatt*
22 *III*"). On June 17, 2019, the United States Supreme Court issued the mandate returning
23 the case to the Nevada Supreme Court.

24
25 *Remand to this Court*

26 On August 5, 2019, the Nevada Supreme Court issued a remittitur returning the
27 case to this Court ordering that it vacate the judgment in favor of Hyatt and take any further
28

1 necessary action consistent with its order and the United States Supreme Court's order.
2 On September 3, 2019, this Court vacated the prior judgment in favor of Hyatt and ordered
3 both Hyatt and the FTB to submit briefing by no later than October 15, 2019, to address the
4 form of judgment to be entered in this action and who, if either party, is the prevailing party
5 in this action.

6 7 JUDGMENT

8 NOW, THEREFORE, and based on the foregoing, this Court has reviewed and
9 considered the procedural history in this case, including the decisions and orders in this
10 case issued by the United States Supreme Court and the Nevada Supreme Court, and the
11 recent briefing submitted by the parties in the form of judgment to be entered in this case
12 and who, if either party, is the prevailing party.

13 IT IS ORDERED, ADJUDGED AND DECREED that (i) this case is dismissed and
14 Hyatt take nothing from any of the causes of action he asserted in this action, and (ii)
15 neither party is deemed the prevailing party for the purpose of awarding costs or attorney's
16 fees, and neither party is therefore awarded costs or attorney's fees in this action.

17 Hyatt brought this action in good faith in reliance on the United States Supreme
18 Court precedent Nevada v. Hall. During the last 21 years while relying on Nevada v. Hall,
19 Hyatt prevailed in both the Nevada Supreme Court (2002) and the United States Supreme
20 Court in 2003 (*Hyatt I*) and then obtained a large jury verdict and final judgment against the
21 FTB (2008), which the Nevada Supreme Court affirmed in part (2014). The United States
22 Supreme Court's reversal of its long-standing Nevada v. Hall precedent in Hyatt III in 2019
23 stripping this Court of jurisdiction over the FTB could not have been anticipated by Hyatt.

24 Hyatt also had a good faith belief that he would prevail at trial on his claims and
25 recover in excess of the \$110,000 offer of judgment made by the FTB in 2007. Hyatt did
26 obtain a verdict and final judgment well in excess of that amount. The damages limitation
27 to Hyatt's claims was not decided and imposed until 2016 in *Hyatt II*. It was therefore not
28

1 grossly unreasonable or in bad faith for Hyatt to not accept the FTB's offer of judgment of
2 the \$110,000 in 2007. The FTB may have believed when it served its offer of judgment
3 that the offer was reasonable in its amount or timing and would be accepted by Hyatt, but
4 Hyatt was relying on Nevada v. Hall, which had been the law since 1979. As of 2007, the
5 FTB had not asserted any argument or taken any action to reverse the Nevada v. Hall
6 precedent. Further, as of 2007, this case had been reviewed by both the Nevada Supreme
7 Court (2002) and the United States Supreme Court (2003), and the FTB had not argued
8 that Nevada v. Hall was wrongly decided and should be reversed. The FTB did not assert
9 that argument or seek that relief with the United States Supreme Court until 2015 after
10 ruling by this Court and exhausting all appeals in the Nevada Supreme Court.

11 The Court therefore concludes that based on the orders of the United States
12 Supreme Court and the Nevada Supreme Court, this case is dismissed. This Court further
13 concludes that consistent with the orders of the higher courts, as a matter of law and
14 equity, there is no prevailing party in this action and neither party is entitled to an award of
15 costs or attorney's fees.

16 IT IS SO ORDERED.

17
18 DATED this 21st day of February, 2020.

19
20 
21 TIERRA JONES
22 DISTRICT COURT JUDGE
23
24
25
26
27
28

- 1
- 2
- 3
- 4
- 5
- 6
- 7
- 8
- 9
- 10
- 11
- 12
- 13
- 14
- 15
- 16
- 17
- 18
- 19
- 20
- 21
- 22
- 23
- 24
- 25
- 26
- 27
- 28

Electronically served on all parties as noted in the Court's Master Service List and/or mailed to any party in proper person.


Tess Driver
Judicial Executive Assistant
Department 10