

**IN THE SUPREME COURT OF THE STATE OF NEVADA**  
**Case No. 80884**

**FRANCHISE TAX BOARD OF THE STATE OF CALIFORNIA**

**Appellant**

**v.**

**GILBERT P. HYATT**

**Respondent**

On Appeal from the Eighth Judicial District Court, Clark County  
Case No. A382999  
THE HONORABLE TIERRA JONES, District Judge, Department X

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**APPENDIX TO RESPONDENT'S BRIEF ON BEHALF OF GILBERT P.  
HYATT - VOLUME 4 OF 17**

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MARK A. HUTCHISON, Nev. Bar No. 4639  
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HUTCHISON & STEFFEN, LLC.  
10080 Alta Drive, Suite 200  
Las Vegas, NV 89145  
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PETER C. BERNHARD, Nev. Bar No. 734  
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Las Vegas, NV 89135-2958  
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1888 Century Park East, Suite 1700  
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*Attorneys for Respondent Gilbert P. Hyatt*

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Doc No.	Description	Vol.	Bates Nos.
1	Court Minutes re: case remanded, dated September 3, 2019	1	RA000001
2	Plaintiff Gilbert P. Hyatt's Brief in Support of Proposed Form of Judgment That Finds No Prevailing Party in the Litigation and No Award of Attorneys' Fees or Costs, filed October 15, 2019	1, 2, 3, 4	RA000002- RA000846
3	Exhibits 14-34 to Plaintiff Gilbert P. Hyatt's Brief in Support of Proposed Form of Judgment That Finds No Prevailing Party in the Litigation and No Award of Attorneys' Fees or Costs to Either Party, filed October 15, 2019	4, 5, 6, 7, 8	RA000847- RA001732
4	Exhibits 35-66 to Plaintiff Gilbert P. Hyatt's Brief in Support of Proposed Form of Judgment That Finds No Prevailing Party in the Litigation and No Award of Attorneys' Fees or Costs to Either Party, filed October 15, 2019	8, 9, 10, 11, 12	RA001733- RA002724
5	Exhibits 67-82 to Plaintiff Gilbert P. Hyatt's Brief in Support of Proposed Form of Judgment That Finds No Prevailing Party in the Litigation and No Award of Attorneys' Fees or Costs to Either Party, filed October 15, 2019	12, 13, 14, 15, 16	RA002725- RA003697
6	Exhibits 83-94 to Plaintiff Gilbert P. Hyatt's Brief in Support of Proposed Form of Judgment That Finds No Prevailing Party in the Litigation and No Award of Attorneys' Fees or Costs to Either Party, filed October 15, 2019	16, 17	RA003698- RA004027

7	Correspondence re: 1991 state income tax balance, dated December 23, 2019	17	RA004028- RA004032
8	Court Minutes re: motion for attorney fees and costs, dated April 23, 2020	17	RA004033- RA004034

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7	Correspondence re: 1991 state income tax balance, dated December 23, 2019	17	RA004028- RA004032
1	Court Minutes re: case remanded, dated September 3, 2019	1	RA000001
8	Court Minutes re: motion for attorney fees and costs, dated April 23, 2020	17	RA004033- RA004034
3	Exhibits 14-34 to Plaintiff Gilbert P. Hyatt's Brief in Support of Proposed Form of Judgment That Finds No Prevailing Party in the Litigation and No Award of Attorneys' Fees or Costs to Either Party, filed October 15, 2019	4, 5, 6, 7, 8	RA000847- RA001732
4	Exhibits 35-66 to Plaintiff Gilbert P. Hyatt's Brief in Support of Proposed Form of Judgment That Finds No Prevailing Party in the Litigation and No Award of Attorneys' Fees or Costs to Either Party, filed October 15, 2019	8, 9, 10, 11, 12	RA001733- RA002724
5	Exhibits 67-82 to Plaintiff Gilbert P. Hyatt's Brief in Support of Proposed Form of Judgment That Finds No Prevailing Party in the Litigation and No Award of Attorneys' Fees or Costs to Either Party, filed October 15, 2019	12, 13, 14, 15, 16	RA002725- RA003697
6	Exhibits 83-94 to Plaintiff Gilbert P. Hyatt's Brief in Support of Proposed Form of	16, 17	RA003698- RA004027

	Judgment That Finds No Prevailing Party in the Litigation and No Award of Attorneys' Fees or Costs to Either Party, filed October 15, 2019		
2	Plaintiff Gilbert P. Hyatt's Brief in Support of Proposed Form of Judgment That Finds No Prevailing Party in the Litigation and No Award of Attorneys' Fees or Costs, filed October 15, 2019	1, 2, 3, 4	RA000002-RA000846



## CERTIFICATE OF SERVICE

Pursuant to NRAP 25, I certify that I am an employee of HUTCHISON & STEFFEN, PLLC, and that on this 1<sup>st</sup> day of October, 2020, I caused the above and foregoing document entitled **APPENDIX TO RESPONDENT'S BRIEF ON BEHALF OF GILBERT P. HYATT - VOLUME 4 OF 17** to be served by the method(s) indicated below:

\_\_\_\_\_ via U.S. mail, postage prepaid;  
  X   via Federal Express;  
\_\_\_\_\_ via hand-delivery;  
\_\_\_\_\_ via Facsimile;

upon the following person(s):

James A. Bradshaw, Esq.  
MCDONALD CARANO WILSON  
LLP  
100 West Liberty Street, 10th Floor  
Reno, NV 89501

*Attorneys for Appellant  
Franchise Tax Board of the State of  
California*

Robert L. Eisenberg, Esq.  
LEMONS, GRUNDY & EISENBERG  
6005 Plumas Street, Suite 300  
Reno, NV 89519

*Attorneys for Appellant  
Franchise Tax Board of the State of  
California*

Patricia K. Lundvall, Esq.  
MCDONALD CARANO WILSON  
LLP  
2300 West Sahara Avenue, Suite 1000  
Las Vegas, NV 89102

*Attorneys for Appellant  
Franchise Tax Board of the State of  
California*

          /s/ Kaylee Conradi            
An employee of HUTCHISON & STEFFEN, PLLC

Clara was asked if the apartment 237 appeared to be regularly occupied, and she stated no, that he he had told her that he travelled a lot. There had been no complaints about him from the other tenants. She checked the maintenance report from when the apartment was vacated in April of 1992. She said that the apartment was very clean when he moved out and that there were no damages to the apartment. They only had had to do minimal maintenance before renting it out again.

Mr. Hyatt had stated in his letter of 30 day notice that he had bought a house and that he was moving back to California. Grace Jeng had signed the move-out notice. He had listed as a forwarding address P.O. Box 60028 Las Vegas, Nevada.

Clara had stated that she did not observe Mr. Hyatt moving into the apartment, so she did not know how much or what type of furniture he had moved into the apartment.

When asked whether we had any record of how the rent had been paid, through the mail, in person, etc. We indicated that we have no record of it. Mr. Hyatt paid the rent by check each month. The file had an envelope which Mr. Hyatt had used to pay the rent. The envelope had a return address of P.O. Box 60028 Las Vegas. The envelope was postmarked from Long Beach, California and was dated 12/8/91. Clara stated that he would pay the rent ahead of time with a post dated check.

Clara did not remember seeing any vehicles at the apartment and does not remember seeing any other individuals at the apartment. She does not remember seeing any visitors to the apartment. She said that the mail for the apartments is delivered to their individual mailboxes. She said that she had not observed Mr. Hyatt ever using the swimming pool, jacuzzi, etc.

0000379

When asked if any of the tenants currently in the building where apartment 237 is lived there during the period from 10/91 through 4/92, Clara stated that apartments 133 and 135 had lived there for at least 5 years.

We have read the foregoing consisting of 3 page(s). We fully understand this statement and it is true, accurate and complete to the best of our knowledge and belief. We have made the corrections shown and placed our initials opposite each.

We made this statement freely and voluntarily, without any threats or rewards, or promises of reward having been made to us in return for it.

\_\_\_\_\_  
(Signature of Affiant)

\_\_\_\_\_  
(Signature of Affiant)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Telephone Number of Affiant)

\_\_\_\_\_  
(Telephone number of Affiant)

Subscribed and sworn to  
before me this 6th day  
of March, 1995 at  
Las Vegas, Nevada

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature of Witness)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Date)

0000380

STATE OF CALIFORNIA

FRANCHISE TAX BOARD

13 N. GLENOAKS BLVD., SUITE 200  
JRBANK, CA 91502-1170



**DEMAND TO FURNISH  
INFORMATION**

Authorized by  
California Revenue & Taxation Code  
Section 19504 (formerly 19254 (a) and 26423 (a)\*)

The People of the State of California to:

Ms. Sherri Lewis & Ms. Clara Kopp  
c/o Wagon Trails Apartments  
3225 South Pecos Road  
Las Vegas, Nevada 89121

In the Matter of:  
Gilbert Hyatt

Social Security No.: 069-30-9999  
or Corporation No.:  
For the years:

This Demand requires you to furnish the Franchise Tax Board with information specified below from records in your possession, under your control, or from your personal knowledge. The information will be used by this department for investigation, audit or collection purposes pertaining to the above-named taxpayer for the years indicated.

Please provide copies of the following documents from the file of Gilbert Hyatt:

1. copy of rental application.
2. Copy of applicant's employer, previous address, closest relative, etc.
3. Copy of 30 day notice letter from Mr. Hyatt.
4. Copy of envelope in file postmarked December 8, 1991.
5. Copy of a report from maintenance after Mr. Hyatt vacated the apartment.
6. Copy of forwarding address given by Mr. Hyatt

FRANCHISE TAX BOARD

By: Sheila Cox  
Authorized Representative

Dated: 3/10/95

Telephone: (818) 556-2942

Legislation effective January 1, 1994 (S.B. 3, Stats. 1993, Ch. No. 31) consolidated certain provisions of the California Revenue & Taxation Code which caused some sections to be revised and renumbered.

0000381

FTB 4973-39 (REV 3-94)

CONFIDENTIAL

H 01548

RA000738

ARA00381

SC 5/2/73



STATE OF CALIFORNIA  
CHISE TAX BOARD  
330 N. GLENOAKS BLVD., STE. 200  
BURBANK, CA 91502-1170

556-2942

3/23/95

Congratation Ner Tamid  
2761 Emerson Avenue  
Las Vegas, Nevada 89121

Gentlemen:

For the purpose of administering the Personal Income Tax Law of the State of California, we would appreciate your cooperation in providing the documents specified in our form FTB 4973-39 here enclosed.

For your convenience we have enclosed self addressed, postage paid envelopes.

Thank you very much for your cooperation.

*Sheila Cox*  
Sheila Cox  
Tax Auditor

0000382

2/107  
CONFIDENTIAL

H 01625

RA000739

ARA00382

STATE OF CALIFORNIA

FRANCHISE TAX BOARD

N. GLENOAKS BLVD., SUITE 200  
IRVINE, CA 92614-1170

DEMAND TO FURNISH  
INFORMATION

Authorized by  
California Revenue & Taxation Code  
Section 19504 (formerly 19254 (a) and 26423 (a)\*)

The People of the State of California to:

Congregation Ner Tamid  
2761 Emerson Avenue  
Las Vegas, Nevada 89121

In the Matter of:

Gilbert P. Hyatt

Social Security No. : 069-30-9999  
or Corporation No. :  
For the years :

This Demand requires you to furnish the Franchise Tax Board with information specified below from records in your possession, under your control, or from your personal knowledge. The information will be used by this department for investigation, audit or collection purposes pertaining to the above-named taxpayer for the years indicated.

1. Please verify dates of any contributions made since 1991.
2. Copy of application for membership.
3. Copy of any address changes submitted and date submitted.
4. Records of attendance at any services, meetings, or functions.

FRANCHISE TAX BOARD

By: S. Cox

Authorized Representative

Dated: 3/23/95

Telephone: (818) 556-2942

Regulation effective January 1, 1994 (S.B. 3, Stats. 1993, Ch. No. 31) consolidated certain provisions of the California Revenue & Taxation Code which caused some sections to be revised and renumbered.

FTB 4873-38 (REV 3-84)

0000383

CONFIDENTIAL

H 01626

RA000740

ARA00383

SC 3/24/95



STATE OF CALIFORNIA  
CHISE TAX BOARD  
3... GLENOAKS BLVD., STE. 200  
BURBANK, CA 91502-1170

556-2942

3/24/95

Las Vegas Sun  
800 S. Valley View Blvd.  
Las Vegas, Nevada 89153

For the purpose of administering the Personal Income Tax Law of the State of California, we would appreciate your cooperation in providing the documents specified in our form FTB 4973-39 here enclosed.

For your convenience we have enclosed self addressed, postage paid envelopes.

Thank you very much for your cooperation.

Sheila Cox  
Tax Auditor

0000384

3/109

CONFIDENTIAL  
H 01636

RA000741

ARA00384

SC 3/24/95



STATE OF CALIFORNIA

FRANCHISE TAX BOARD  
N. GLENOAKS BLVD., SUITE 200  
BANK, CA 91502-1170

## DEMAND TO FURNISH INFORMATION

Authorized by  
California Revenue & Taxation Code  
Section 19504 (formerly 19254 (a) and 26423 (a)\*)

The People of the State of California to:

Las Vegas Sun  
800 S. Valley View Blvd.  
Las Vegas, Nevada 89153

In the Matter of:

Gilbert P. Hyatt

Social Security No.: 069-30-9999  
or Corporation No.:  
For the years:

This Demand requires you to furnish the Franchise Tax Board with information specified below from records in your possession, under your control, or from your personal knowledge. The information will be used by this department for investigation, audit or collection purposes pertaining to the above-named taxpayer for the years indicated.

1. Indicate if the above individual has subscribed to the Las Vegas Sun during the period from 10/91 to the present. If yes, indicate the address that the subscription was sent to.
2. Was there a subscription to the Las Vegas Sun at 3225 S. Pecos apt. 237 during the period 11/91 - 4/92? If so, indicate the name of the person on whose account it was billed.

FRANCHISE TAX BOARD

By: S. Cox

Authorized Representative

Dated: 3/24/95

Telephone: (818) 556-2942

Legislation effective January 1, 1994 (S.B. 3, Stats. 1993, Ch. No. 31) consolidated certain provisions of the California Revenue & Taxation Code which caused some sections to be revised and renumbered.

FTB 4973-39 (REV 3-94)

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0000385

CONFIDENTIAL  
H 01637

RA000742

ARA00385



Sc 3/29/95



STATE OF CALIFORNIA  
CHISE TAX BOARD  
GLENDALE BLVD., STE. 200  
BURBANK, CA 91502-1170

556-2942

3/24/95

Las Vegas Valley Water District  
1001 S. Valley View Blvd.  
Las Vegas, Nevada 89153

For the purpose of administering the Personal Income Tax Law of the State of California, we would appreciate your cooperation in providing the documents specified in our form FTB 4973-39 here enclosed.

For your convenience we have enclosed self addressed, postage paid envelopes.

Thank you very much for your cooperation.

Sheila Cox  
Tax Auditor

0000386

3/110

CONFIDENTIAL  
H 01638

RA000743

ARA00386

SC 3/24/95



STATE OF CALIFORNIA

**FRANCHISE TAX BOARD**

N. GLENOAKS BLVD., SUITE 200  
BANK, CA 91502-1170

**DEMAND TO FURNISH  
INFORMATION**

Authorized by  
California Revenue & Taxation Code  
Section 19504 (formerly 19254 (a) and 26423 (a)\*)

The People of the State of California to:

Las Vegas Valley Water District  
1001 S. Valley View Blvd.  
Las Vegas, Nevada 89153

*In the Matter of:*

Gilbert P. Hyatt

Social Security No.: 069-30-9999  
or Corporation No.:  
For the years :

This Demand requires you to furnish the Franchise Tax Board with information specified below from records in your possession, under your control, or from your personal knowledge: The information will be used by this department for investigation, audit or collection purposes pertaining to the above-named taxpayer for the years indicated.

1. Copies of water bills (with the name of the person on whose account it was billed) at 7335 Tara, Las Vegas, Nevada for the following period:

April 1992 to December 1992  
January 1993 to December 1993  
January 1994 to December 1994  
January 1995 to present

**FRANCHISE TAX BOARD**

By: Sheila Cox

Authorized Representative

Dated: 3/24/95

Telephone: (818) 55562942

Legislation effective January 1, 1994 (S.B. 3, Stats. 1993, Ch. No. 31) consolidated certain provisions of the California Revenue & Taxation Code which caused some sections to be revised and renumbered.

FTB 4973-39 (REV 3-94)

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CONFIDENTIAL  
H 01639

RA000744

ARA00387

DC 3/21/9



STATE OF CALIFORNIA

CHISE TAX BOARD  
GLENDALES BLVD., STE. 200  
BURBANK, CA 91502-1170

556-2942

3/24/95

Silver State Disposal Service  
770 E. Sahara Blvd.  
Las Vegas, Nevada 89104

For the purpose of administering the Personal Income Tax Law of the State of California, we would appreciate your cooperation in providing the documents specified in our form FTB 4973-39 here enclosed.

For your convenience we have enclosed self addressed, postage paid envelopes.

Thank you very much for your cooperation.

Sheila Cox  
Tax Auditor

0000388

CONFIDENTIAL  
H 01640

3/111

RA000745

ARA00388

STATE OF CALIFORNIA

FRANCHISE TAX BOARD  
N. GLENDALE BLVD., SUITE 200  
BANK, CA 91502-1170



## DEMAND TO FURNISH INFORMATION

Authorized by  
California Revenue & Taxation Code  
Section 19504 (formerly 19254 (a) and 26423 (a)\*)

The People of the State of California to:

Silver State Disposal Service  
770 E. Sahara Blvd.  
Las Vegas, Nevada 89104

In the Matter of:

Gilbert P. Hyatt

Social Security No. : 069-30-9999  
or Corporation No. :  
For the years :

This Demand requires you to furnish the Franchise Tax Board with information specified below from records in your possession, under your control, or from your personal knowledge. The information will be used by this department for investigation, audit or collection purposes pertaining to the above-named taxpayer for the years indicated.

1. Copies of trash disposal bills (with the name of the person on whose account it was billed) at 7335 Tara Las Vegas, Nevada, for the following period:

April 1992 to December 1992  
January 1993 to December 1993  
January 1994 to December 1994  
January 1995 to present

### FRANCHISE TAX BOARD

By: Sheila Eor  
Authorized Representative

Dated: 3/24/95

Telephone: (818) 556-2942

Legislation effective January 1, 1994 (S.B. 3, Stats. 1993, Ch. No. 31) consolidated certain provisions of the California Revenue & Taxation Code which caused some sections to be revised and renumbered.

FTB 4073-38 (REV 3-94)

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CONFIDENTIAL  
H 01641

3/11/1

RA000746

ARA00389

DC 3/24/95



STATE OF CALIFORNIA

CHISE TAX BOARD  
GLENDALE BLVD., STE. 200  
BURBANK, CA 91502-1170

556-2942

3/24/95

Southwest Gas Corp.  
P.O. Box 98512.  
Las Vegas, Nevada 89193-8512

For the purpose of administering the Personal Income Tax Law of the State of California, we would appreciate your cooperation in providing the documents specified in our form FTB 4973-39 here enclosed.

For your convenience we have enclosed self addressed, postage paid envelopes.

Thank you very much for your cooperation.

Sheila Cox  
Tax Auditor

0000390

3/112

CONFIDENTIAL  
H 01642

RA000747

ARA00390

STATE OF CALIFORNIA

**FRANCHISE TAX BOARD**

13 N. GLENDALES BLVD., SUITE 200  
RIVERSIDE, CA 92502-1170



**DEMAND TO FURNISH  
INFORMATION**

Authorized by  
California Revenue & Taxation Code  
Section 19504 (formerly 19254 (a) and 26423 (a)\*)

The People of the State of California to:

Southwest Gas Corp.  
P.O. Box 98512  
Las Vegas, Nevada 89193-8512

*In the Matter of:*

Gilbert P. Hyatt

Social Security No. : 069-30-9999  
or Corporation No. :  
For the years :

This Demand requires you to furnish the Franchise Tax Board with information specified below from records in your possession, under your control, or from your personal knowledge. The information will be used by this department for investigation, audit or collection purposes pertaining to the above-named taxpayer for the years indicated.

1. Copies of gas bills (with the name of the person on whose account it was billed) at 7335 Tara, Las Vegas for the following period:

April 1992 to December 1992  
January 1993 to December 1993  
January 1994 to December 1994  
January 1995 to present

**FRANCHISE TAX BOARD**

By: Sheila Cox

Authorized Representative

Dated: 3/24/95

Telephone: (818) 556-2942

\* Legislation effective January 1, 1994 (S.B. 3, Stats. 1993, Ch. No. 31) consolidated certain provisions of the California Revenue & Taxation Code which caused some sections to be revised and renumbered.

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FTB 4873-39 (REV 3-94)

3/112 1

CONFIDENTIAL

H 01643

RA000748

ARA00391



STATE OF CALIFORNIA

**RANCHISE TAX BOARD**  
333 N. GLENOAKS BLVD., SUITE 200  
BURBANK, CA 91502-1170  
TELEPHONE: (818)

556-2942

8/4/95

Las Vegas Sun  
800 S. Valley View Blvd.  
Las Vegas, Nevada 89153

Gentlemen:

For the purpose of administering the Personal Income Tax Law of the State of California, we would appreciate your cooperation in providing the documents specified in our form FTB 4973-39 here enclosed.

For your convenience we have enclosed self addressed, postage paid envelopes.

Thank you very much for your cooperation.

Sheila Cox  
Tax Auditor

0000392

CONFIDENTIAL  
H 01852

RA000749

ARA00392

STATE OF CALIFORNIA  
FRANCHISE TAX BOARD  
333 N. GLENOAKS BLVD., SUITE 200  
BURBANK, CA 91502-1170

## DEMAND TO FURNISH INFORMATION

Authorized by  
California Revenue & Taxation Code  
Section 19504 (formerly 19254 (a) and 26423 (a)\*)

The People of the State of California to:

Las Vegas Sun  
800 S. Valley View Blvd.  
Las Vegas, Nevada 89153

In the Matter of:

Gilbert P. Hyatt

Social Security No. : 069-30-9999  
or Corporation No. :  
For the years :

This Demand requires you to furnish the Franchise Tax Board with information specified below from records in your possession, under your control, or from your personal knowledge. The information will be used by this department for investigation, audit or collection purposes pertaining to the above-named taxpayer for the years indicated.

1. Indicate if the above individual has subscribed to the Las Vegas Sun during the period from 1991 to the present. If yes, please indicate the start and stop dates of service and the address that the subscription was sent to.
2. Indicate if there were any subscriptions to the Las Vegas Sun at 3225 S. Pecos Apt 237 during 1991-1992 and at 7335 Tara from 1992 to the present. If so, indicate the start and stop dates of service and the name(s) of the person(s) on whose account it was billed.

### FRANCHISE TAX BOARD

By: S. Cox  
Authorized Representative

Dated: 8/4/95

Telephone: (818) 556-2942

\* Legislation effective January 1, 1994 (S.B. 3, Stats. 1993, Ch. No. 31) consolidated certain provisions of the California Revenue & Taxation Code which caused some sections to be revised and renumbered.

0000393

CONFIDENTIAL

H 01853

RA000750

ARA00393





**FRANCHISE TAX BOARD**

6150 VAN NUYS BOULEVARD, ROOM 100  
VAN NUYS, CA 91401  
Tel: (818) 901-5225  
Fax: (818) 901-5615

August 17, 1993

In reply refer  
to VN:MS

Attn: Michael W. Kern, CPA  
Piercy, Bowler, Taylor & Kern  
6600 W. Charleston Blvd., Suite #118  
Las Vegas, NV 89102

Re : Gilbert P. Hyatt  
CA Personal Resident/Non Resident Income Tax  
Audit For Years 1989 & 1990 & 1991  
Taxpayer ID # 069-30-9999

Dear Mr. Kern:

I have reviewed the information provided with your August 4, 1993 correspondence, and require the following additional data:

- 1) Copies of all contracts/agreements regarding the microprocessor chip between:
  - A) Hyatt and Fujitsu
  - B) Hyatt and Matsushita
  - C) Hyatt and Phillips
  - D) Hyatt and Pioneer
- 2) The 1991 Schedule C for LCD/Computers business deducted \$24,267,350 in commissions and fees. Please provide a schedule or list showing to whom these commissions and fees were paid to. Also provide either 1099's or cancelled checks for the commissions and fees paid during 1991.
- 3) Research & Development Expenses of \$233,885 were deducted on the 1991 Schedule C. Please provide a schedule showing the breakdown of these expenses.
- 4) Please furnish a copy of the closing escrow statement for the sale of the La Palma home at 7841 Jennifer Circle.
- 5) Please provide a copy of the leasing/rental agreement for the apartment on 3225 S. Pecos Road in Las Vegas, Nevada.

CONFIDENTIAL

H 01236

0000394

RA000751

ARA00394

Gilbert P. Hyatt  
August 17, 1993  
Page 2 Of 2

- 6) Please provide a copy of the closing escrow statement for the purchase of the home in Las Vegas, Nevada.

Please submit the requested information to the above address by September 14, 1993.

To ensure proper handling, attach a copy of this letter to your reply.

Thank you for your cooperation.

*Marc Shayer*  
Marc Shayer  
Tax Auditor

0000395

CONFIDENTIAL  
H 01237

RA000752

ARA00395

STATE OF CALIFORNIA

FRANCHISE TAX BOARD

333 N. GLENOAKS BLVD., SUITE 200

BURBANK, CA 91502-1170

TELEPHONE: (818) 336-2100



May 14, 1991

Mr. Gilbert P. Hyatt  
10000 W. Charleston Blvd., Suite 2118  
Las Vegas, NV 89102

Attn: Michael W. Kern, CPA  
Agency, Bowler, Taylor & Kern  
5000 W. Charleston Blvd., Suite 2118  
Las Vegas, NV 89102

Re : Gilbert P. Hyatt  
CA Personal Resident/Non Resident Income Tax  
Audit For Years 1989 & 1990 & 1991  
Taxpayer ID # 960-20-9999

Dear Mr. Kern:

The above audit case was transferred to me following the departure of Marc Sawyer from the Board. I have reviewed the files and found that the following were requested (among others) on August 17, 1990.

1) Copies of all contracts/agreements between:

- A) Hyatt and Fujitsu
- B) Hyatt and Matsushita
- C) Hyatt and Philips
- D) Hyatt and Pioneer

2) Copy of the escrow closing statement for the purchase of the home in Las Vegas, Nevada.

Only the agreement between Hyatt and U.S. Philips Corporation have been received. I would appreciate it if you provide copies of like agreement with Fujitsu, Matsushita and Pioneer as well. Please include correspondences between the above corporations and Hyatt subsequent to the signing of the agreements one of which is a letter from Pioneer to Hyatt regarding its decision not to exercise its option (referred to as "lapse of option" in Statement 7 of the 1991 Tax Return.)

I would like a copy of the escrow statement itself and not the escrow instructions. In addition, please provide copies of the following:

CONFIDENTIAL  
H 01279

102#5  
0000396

file copy  
marked 5/10/91  
3/20

RA000753

ARA00396

Wilbert M. Wyatt  
May 24, 1994  
Page 2 of 2

1. Cancelled checks in payment of property taxes for the Las Vegas house along with the paid property tax bills in 1992 and 1993.

2. Cancelled checks for the Security Deposit on 10/08/91 and monthly lease/rental payments on 1220 S. Pecos Rd., Las Vegas, Nevada, beginning 11/01/91.

Please submit the requested information to the above address by June 15, 1994.

To ensure proper handling, attach a copy of this letter to your reply.

Thank you for your cooperation.

Felix H. Soriano  
Tax Auditor

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*file copy*  
3/20.1

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STATE OF CALIFORNIA



FRANCHISE TAX BOARD

333 N. GLENOAKS BLVD., SUITE 200

BURBANK, CA 91502-1170

TELEPHONE: (818)

556-2942

6/22/95

Mr. Michael W. Kern CPA  
c/o Piercy, Bowler, Taylor, & Kern  
6100 Elton Ave. #1000  
Las Vegas, Nevada 89107

Re: Request for Information  
Gilbert P. Hyatt  
1991

Dear Mr. Kern:

I have received your letter with the documentation earlier this week. In addition to the items still outstanding, one additional item will be needed. The taxpayer should send a list of other individuals who are authorized to use his credit cards and bank accounts. For each account, list the authorized individual(s). If the taxpayer is the only person authorized to use the account, please state that Mr. Hyatt is the only authorized user of the account. If it is not possible to obtain this information from the banks and credit card companies, a signed statement from the taxpayer will be accepted.

Please send this information to my office by July 7, 1995.

Sheila Cox  
Tax Auditor

cc: Eugene Cowan

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TELEPHONE CORRESPONDENCE  
WITH TAXPAYER'S NEVADA REPRESENTATIVE  
MICHAEL KERN

Date	Person Contacted	Purpose
07/02/1993	Kern calls Shayer	Mike Kern called (702) 384-1120 - said he is representing Gilbert Hyatt left msg.
07/08/1993	Shayer calls Kern	Rtn. Call - rep. Not in left msg.
07/12/1993	Kern calls Shayer	Rep. Call and left msg.
07/12/1993	Shayer calls Kern	Called back and left msg.
07/13/1993	Kern calls Shayer	Rep called said he would be fwd POA Power of Attorney
08/19/1993	Kern calls Shayer	rep called left msg.
08/19/1993	Shayer calls Kern back	Called him back - t/p wants me to review contracts for patents at his lawyers office in Van Nuys- will call when they are available.
06/09/1994	Soriano returns Kern's call	Returned call to tax rep in Las Vegas re: my letter of 5/24; said he can not furnish requested documents now but will consult first with t/p's L.A. attorneys. Rep to call me.
12/01/1994	Cox calls Kern	Called rep and left a message for him to call me -
12/01/1994	Kern calls Cox	Spoke to Mr. Kern - told him that the case was transferred to me and that I will be sending a document request to him -
01/05/1995	Kern calls Cox	<p>Mike Kern (rep from Las Vegas) called - he has not met deadline - He wants to know why we want checks - He said that it would be too expensive - He said that he will provide a letter from the governor- He wants to know if we will pay for copying checks - I told him that I will check on this and get back to him.</p> <p>The taxpayer's representative Mike Kern called from Las Vegas to tell me that he wouldn't be meeting the deadline of 1/5/95 which had been set for the document request sent to his office. He said that he had been skiing with the taxpayer at Mount Charleston over the weekend and had discussed the issue with him. He explained to me that he is good friends with the taxpayer and that they often spend time together, and include their children sometimes.</p> <p>Mike felt that the document request is unreasonable, as it would cost the taxpayer too much in professional fees to copy all of the checks. He wanted to know if we would be willing to bear the cost, or if I would be willing to come to Las Vegas to do the photocopying myself. I told him that I would check on the policy of the department and get back to him about this.</p> <p>continues on next page</p>

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TELEPHONE CORRESPONDENCE  
WITH TAXPAYER'S NEVADA REPRESENTATIVE  
MICHAEL KERN

Date	Person Contacted	Purpose
01/05/1995 (cont)		<p>Mike said that he felt that he had provided enough documentation to prove that Mr. Hyatt was a Nevada resident. Mike said that Mr. Hyatt is in Nevada now: he owns a house in Nevada and no longer owns any property in California. According to Mike, Mr. Hyatt's cars are registered in Nevada. Mike said that Mr. Hyatt moved himself to Nevada in a trailer that Mr. Hyatt owns. After moving to Nevada, he changed the registration on this trailer to Nevada. Mike doesn't understand why we don't accept this.</p> <p>Mike explained that he and Mr. Hyatt had been involved in the political campaign for the Nevada Governor Miller. They also were supporting the Nevada senator and other judges. He said that Mr. Hyatt had been involved in GATT legislation. He said that he would provide a letter from the governor of Nevada stating that Mr. Hyatt was a Nevada resident, and that this should be sufficient documentation.</p> <p>I explained to Mike that I was not questioning whether or not Mr. Hyatt was in Nevada, that I was just trying to determine the date that he left California. I explained that the copies of the checks were required by our legal department. This documentation is analyzed to determine a pattern of the taxpayer's spending habits and to determine when the taxpayer severed ties with California and established ties in the state of Nevada.</p> <p>Mike said that he would have to talk to the attorney about this, as Mike was in Nevada, and was not well versed in California tax laws. He said that the taxpayer's legal firm was Mayor Riordan's firm. He said that he would get a letter from the governor of California, if necessary. I told him that I would accept this if he wanted to give it to me, but that I would not necessarily accept it as conclusive evidence.</p>
01/05/1995	Cox calls Kern	Called rep Mike Kern and informed him that we will need the names of bank accounts, locations, and account numbers. I told him that we would request information from the bank directly. He said that he would discuss this with the attorney.

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TELEPHONE CORRESPONDENCE  
WITH TAXPAYER'S NEVADA REPRESENTATIVE  
MICHAEL KERN

Date	Person Contacted	Purpose
02/17/1995	Kern calls Cox	Received a call from Mike Kern - He said that they have most of the documentation together - He has sent it to Eugene Cowan's office, as he is worried about the taxpayer's privacy. He said that I should contact Mr. Cowan to examine the records. He said that they have the cancelled checks for the phone bills, but that they were not able to get the phone records. He stated that the phone company only keeps the records for 60 days. - He said that many of his records such as calendar, etc. show calls to the taxpayer on a frequent basis, as they are good friends. He said that he would be willing to provide these records if necessary.
03/09/1995	Kern calls Cox	<p>The taxpayer's representative Mike Kern called from Las Vegas after I went to his office yesterday. I told him that I had been in town and that I had stopped by to introduce myself. I told him that we were in town on several cases to obtain information. He said that he would have cancelled his appointment if he had known. He asked if there was any specific questions about Gil and I said that there were not at the present.</p> <p>He said that Gil had called him because he had gotten a letter from the bank about our request for information about the safe deposit boxes. I explained to him that I had gotten the information about the safe deposit boxes from the cancelled checks and that I just wanted to verify the safe deposit boxes. I told him that we were not allowed to request financial information directly from the bank, and that we had to get authorization from the taxpayer.</p> <p>He said that they are trying to get all of the other financial information together for us as soon as possible. He asked whether they were in trouble as far as getting the documentation, and I explained that they were still within the deadline. I explained to him that I understand that it takes a long time to get this type of documentation together.</p>
04/11/1995	Kern calls Cox	<p>Rep called late in the afternoon - they are working on getting the information - They need about 10 more days - continued</p> <p>Mike Kern said that they are unable to get info from attorney Petty Brugman re: wire transfers. He said that attorney had been appointed - He said that they can get information regarding when the funds were transferred to Gil - I agreed to allow 10 more days.</p>

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NARRATIVE REPORT  
GILBERT P. HYATT  
SS #069-30-9999  
TYE 1991

3. Post Office Boxes

The taxpayer rented at least two P.O. boxes in Las Vegas. One of the boxes was forwarded to Mail Room Plus at 4012 S. Rainbow Blvd. in Las Vegas. (See w/p 3/18.1.) When we were in Las Vegas on 3/6/95, we went to the Mail Room Plus. The manager stated that the box 469 was closed and that someone else was using it. We sent a subsequent request to the U.S. Postmaster on 3/23/95, who confirmed that mail is delivered to Gilbert Hyatt at Mail Room Plus Suite (Box) 469. (See w/p 3/119.)

4. Voter Registration

Gilbert Hyatt registered to vote in Nevada on 11/27/91 and listed his address as 3225 S. Pecos Road Las Vegas, according to a letter received on 4/28/94 from the Clark County Department of Election (W/P 3/16).

On 7/13/94 auditor Felix Soriano called the Clark County Department of Election Records Department. He spoke with a woman named Shawna. He inquired whether Gilbert Hyatt actually voted in Nevada. According to their records, Gilbert Hyatt voted once in the 11/92 election. She told Felix that Gilbert Hyatt's registration affidavit showed the South Pecos Road address. On 7/5/94, Gilbert Hyatt re-registered claiming to be residing at 5441 Sandpiper Lane in Las Vegas and he was assigned to a different precinct. According to the Department of Elections employee, one must prove where he or she resides when registering or re-registering. Proof usually showing a bill address to the place or a driver's license with the same address claimed on the affidavit.

Felix called the Clark County assessor's office (702) 455-3882 to verify ownership of 5441 Sandpiper Lane Las Vegas. Evelyn of that office said that the property is in the name of Michael W. and La Don Kern since 12/14/82. Michael Kern is Gilbert Hyatt's accountant. The ownership of 5441 Sandpiper Lane in Las Vegas was verified using Lexis. Mike Kern sold this house on 10/27/94. They bought a new home at 3646 Ferndale Cove Drive in Las Vegas on 6/3/94.

PROGRESS REPORT

TAXPAYER <b>GILBERT P. HYATT</b>				AUDITOR <b>F. P. FORLONO</b>				
REPRESENTATIVE <b>Michael Kern / Eugene Cowan</b>				TELEPHONE NO.				
DATE	INITIALS	ACTION TAKEN				TIME		
		DATE ASSIGNED	TAX YEAR(S)	MODEL NUMBER	ESTIMATED DATE OF COMPLETION:	CURRENT HOURS	TOTAL TO DATE	
		DATE SCOPE	EARLIEST STATUTE DATE	ESTIMATED HOURS TO COMPLETE AUDIT:	O	F		
7/11		<p>Told conference with EUGENE COWAN &amp; RICHARD &amp; MCKENZIE; Examined Contracts / Licensing Agreements between T/P and FORTEN &amp; MANUSHTON.</p> <p>Trip to La Palma City Dept of Water Services Re-prior year bills to 7841. JENNIFER CR; They will evaluate request &amp; let me know</p>						94
7/13		<p>Called Clark County Dept of Election - Records Dept. (SHAWNA) - Check whether T/P actually voted: T/P voted once - in the 11/94 Election. Employee there told me that the T/P's registration affidavit showed the S. PERS RD. address. On 7-5-94 just recently, T/P re-registered claiming to be residing in 5441 SAND PIER LN, Las Vegas, NEVADA 89102 and assigned a different precinct. According to the Dept of Election employee, one must prove where he or she resides when registering or re-registering. Proof usually showing a bill addressed to the place OR D/L with same address claimed in the affidavit. FTB 100132 The Clerk</p>					10	156

FTB 6432 (REV. 4-86)

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PROGRESS REPORT

TAXPAYER <b>GILBERT P. HYATT</b>	AUDITOR <b>F. P. SORIANO</b>
REPRESENTATIVE <b>Michael Kern / Eugene Cowan</b>	TELEPHONE NO.
	TELEPHONE NO.

DATE	INITIALS	ACTION TAKEN				TIME		TOTAL TO DATE
		DATE ASSIGNED	TAX YEAR(S)	MODEL NUMBER	ESTIMATED DATE OF COMPLETION: 9/94	CURRENT HOURS		
		DATE SCOPE	EARLIEST STATUTE DATE	ESTIMATED HOURS TO COMPLETE AUDIT: 220	O	F		
7/13		County Assessor's Office, (707) 455-3882, to verify ownership of 5441 Sand Paper Lane, Las Vegas, Nevada - Evelyn of that office said the property is in the name of MICHAEL W. & LA DON KERN since 12-14-82. Michael W. Kern is the T/P's Representative in this audit.						
		QUESTION: WHERE IS T/P'S HOME?				6		162
7/14		Called La Palma City Water Service - follow up prior request. Spoke w/ Employee - Susan who says the request is being reviewed by the City Manager & City Attorney.				6		168
7/21		REVIEW FILE. WHERE ARE THE WORKPAPERS THAT REMOVED THE AUDIT ACTIONS THAT YOU HAVE TAKEN SO FAR? I WANT YOU TO START PREPARING WORKPAPERS TO PUT YOUR FINDINGS IN WRITING. IN ADDITION TO VERIFY THE TAXPAYER'S RESIDENCY STATUS, DID YOU CONSIDER THE STATE INCOME ISSUE?						
		APPROVED HOURS TO 220.						
7/28		Rec'd letter from City of La Palma Water Service. Examined Billing Summary from 1/91 - 6/94 on T/P's La Palma Home. Noted that the T/P does own the property as shown on the Summary. It appears that T/P requested that as of 11/26/91,				3		
7/29		FTB-100133				4		

FTB 5432 (REV. 4-86)

17 of 36

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END RECORD of Level 1 printed in FULL format.

\*\*\* THIS DATA IS FOR INFORMATION PURPOSES ONLY \*\*\*

PROPERTY TRANSFER RECORD FOR CLARK COUNTY, NV

Gr: MAYERS, JOHN E; MAYERS, LINDA L (Husband and Wife). Joint Tenancy

Mailing Address: 5441 SANDPIPER LANE, LAS VEGAS, NV 89102

Gr: KERN, MICHAEL W; KERN, LA DAWN (Husband and Wife)

Gr: Address: 5441 SANDPIPER LANE, LAS VEGAS, NV 89102

\*\*\*\*\* SALES INFORMATION \*\*\*\*\*

Ac Date: 10/27/1994

Ac Date: 11/2/1994

Ac Price: \$ 118,000 (Full Amount Computed From Transfer Tax)

Gr: Transfer Tax: \$ 153.40

Gr: Page: 541107/197

Gr: Use: GRANT DEED

Gr: Parcel Number: 100-12-010-000

Gr: Description: LOT: 160; BLOCK: 5; SUBDIVISION: LEWIS HOMES DESERT INN UNIT  
RECORDED'S MAP REFERENCE: MB21 P659

\*\*\*\*\* MORTGAGE INFORMATION \*\*\*\*\*

Gr: AMERICAN RESIDENTIAL MTG

Gr: Amount: \$ 112,100

Gr: 11/1/2024

Gr: Company: NEVADA TITLE COMPANY

\*\*\*\*\* PROPERTY DESCRIPTION \*\*\*\*\*

Gr: Use: SINGLE FAMILY RESIDENTIAL

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1st RECORD of Level 1 printed in FULL format.

\*\*\* THIS DATA IS FOR INFORMATION PURPOSES ONLY \*\*\*

PROPERTY TRANSFER RECORD FOR CLARK COUNTY, NV

Gr: KERN, MICHAEL W: KERN, LA DAWN (husband and wife), Community Property  
Mailing Address: 3646 FERNDALE GUE DRIVE, LAS VEGAS, NV 89129  
Gr: AMERICAN WEST HOMES INC (Corporation)  
Party Address: 3646 FERNDALE GUE DRIVE, LAS VEGAS, NV 89129

\*\*\*\*\* SALES INFORMATION \*\*\*\*\*

Date: 6/3/1994

Noted Date: 9/13/1994

Price: \$ 207,000 (Full Amount Computed From Transfer Tax)

Net Transfer Tax: \$ 259.10

Page: 940913/111

De: GRANT DEED

Asson's Parcel Number: 138-08-113-010

At Description: LOT: 29; BLOCK: 15; SUBDIVISION: GOWAN FORT APACHE PHASE "A"  
D; RECORDER'S MAP REFERENCE: MB55 PG23

\*\*\*\*\* MORTGAGE INFORMATION \*\*\*\*\*

Gr: AMERICAN RESIDENTIAL MFG

Amount: \$ 185,950

Term: 10/1/2009

Co Company: FIRST AMERICAN TITLE COMPANY

\*\*\*\*\* PROPERTY DESCRIPTION \*\*\*\*\*

Use: SINGLE FAMILY RESIDENTIAL

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CONFIDENTIAL

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STATE OF CALIFORNIA

FRANCHISE TAX BOARD

13 N. GLEN OAKS BLVD., SUITE 200

IRBANK, CA 91502-1170

EPHONE: (818) 556-2942



1/19/96

Mr. Eugene G. Cowan  
c/o Riordan & McKinzie  
300 S. Grand Avenue 29th Floor  
Los Angeles, CA 90071

Re: FTB audit of Gilbert P. Hyatt for 1992

Dear Mr. Cowan:

Based upon the findings of the audit of Mr. Hyatt for 1991, we have decided to formally open an audit for tax year 1992. A part year return (540NR) may be required for 1992.

Based upon information obtained from the 1992 1040, Mr. Hyatt received the following Schedule C gross receipts:

Phillips	\$48,880,582
Oki	2,975,000
Hitachi	32,914,542
	-----
TOTAL	\$84,770,124
	=====

DOCUMENT REQUEST:

1. Provide documentation supporting the above Schedule C receipts, such as contracts, royalty reports, bank statements, and documentation of wire transfers, to verify when the payments were received by Mr. Hyatt.

Please send this documentation to my office by February 9, 1996.

Call me if you have any questions or if you need any additional information.

Sheila Cox  
Tax Auditor

Page 1

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**AFF**

THOMAS R. C. WILSON, ESQ.  
 Nevada State Bar # 1568  
 MATTHEW C. ADDISON, ESQ.  
 Nevada State Bar # 4201  
 BRYAN R. CLARK, ESQ.  
 Nevada State Bar #4442  
 McDONALD CARANO WILSON McCUNE  
 BERGIN FRANKOVICH & HICKS LLP  
 2300 West Sahara Avenue, Suite 1000  
 Las Vegas, Nevada 89102  
 (702) 873-4100  
 Attorneys for Defendant

DISTRICT COURT  
 CLARK COUNTY, NEVADA

\* \* \* \* \*

GILBERT P. HYATT,  
 Plaintiff,

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

vs.

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

Defendants.

**AFFIDAVIT OF STEVEN J. ILLIA**

STATE OF CALIFORNIA  
 COUNTY OF SACRAMENTO } ss.

STEVEN J. ILLIA being first duly sworn upon oath deposes and says as follows:

1. I am currently employed as an Administrator II, Program Manager by the California Franchise Tax Board (the "FTB"). I have been employed by the FTB for 17 years and in my current position for 4 years. I have served as an auditor, audit supervisor and district manager prior to my present position as the Residency Audit Program Manager. I am responsible for the Residency Audit Program and as such I am familiar with the conduct, duties and requirements of tax auditors performing residency audits as required by California Revenue and Taxation Code

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Sections 17014, 19501, and 19504. I make this affidavit in my official capacity.

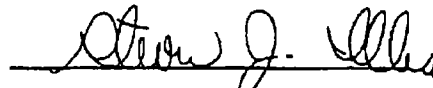
2. When a taxpayer claims a change from California residency to residency in another state the primary function of a tax auditor is to determine whether the taxpayer established significant permanent ties with the state of claimed residency, and whether significant permanent ties with California were severed on or near the asserted change of residency date. In making this analysis, it is the tax auditor's duty and responsibility to evaluate and verify the contentions of the taxpayer. 3. I have reviewed the signed affidavit of Sheila Cox concerning the Nevada activities involved in the residency audit of Gilbert P. Hyatt. The activities described by tax auditor Cox in her signed affidavit are completely consistent with a tax auditor's function during a residency audit.

4. The activities described in the Sheila Cox affidavit are fully within the course and scope of her employment as a tax auditor in the California Franchise Tax Board's Residency Audit Program.

5. I find nothing improper with the activities described in the Sheila Cox affidavit.


I hereby affirm under penalty of perjury that the assertions of this Affidavit are true.

DATED this 21st day of January, 2000.

  
Steven J. Illia

SUBSCRIBED and SWORN to before me

this 21 day of January, 2000.

  
Notary Public



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TOTAL P.03

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1 **AFF**

2 THOMAS R. C. WILSON, ESQ.

3 Nevada State Bar # 1568

4 MATTHEW C. ADDISON, ESQ.

5 Nevada State Bar # 4201

6 BRYAN R. CLARK, ESQ.

7 Nevada State Bar #4442

8 McDONALD CARANO WILSON McCUNE

9 BERGIN FRANKOVICH & HICKS LLP

10 2300 West Sahara Avenue, Suite 1000

11 Las Vegas, Nevada 89102

12 (702) 873-4100

13 Attorneys for Defendant

14  
15 DISTRICT COURT

16  
17 CLARK COUNTY, NEVADA

18 \*\*\*\*\*

19 GILBERT P. HYATT,

20 Plaintiff,

21 Vs.

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

25 Defendants.

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

**AFFIDAVIT OF PENELOPE BAUCHE**

26 STATE OF CALIFORNIA )  
27 ) ss.  
28 COUNTY OF LOS ANGELES )

PENELOPE BAUCHE being first duly sworn upon oath deposes and says as follows:

1. I am currently employed as an Administrator I audit supervisor by the California Franchise Tax Board (the "FTB"). I have been employed by the FTB for twelve years and in my current position for four and one-half years. As part of my duties, I am regularly required to read and examine information reported on taxpayer accounts in the ordinary course of operations. I am experienced in reviewing the Notice Display File ("NDF") and the interpretation of information that the NDF system provides. I have reviewed the NDF with respect with Gilbert P. Hyatt and make this affidavit in my

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1 official capacity. The following statements are based upon my personal knowledge and if called as a  
2 witness, I would testify competently thereto.

3 2. The NDF is an automated database that displays information regarding Notices of Proposed  
4 Assessments ("NPA") issued to taxpayers.

5 3. The NPA is a proposed assessment and not a final assessment.

6 4. For taxable year 1991, Gilbert P. Hyatt's NDF indicated that a NPA was issued on April 23,  
7 1996 for additional tax in the amount of \$1,876,471 and Fraud Penalty in the amount of \$1,407,353.25  
8 and mailed to Gilbert P. Hyatt and Mike Kern. (A true and correct copy of the 1991 NDF printout for  
9 Gilbert P. Hyatt is attached hereto as Exhibit A.)

10 5. The 1991 NPA for Gilbert P. Hyatt was protested. (A true and correct copy of the NDF -  
11 NPA Selection printout for 1991 and 1992 is attached hereto as Exhibit B.)

12 6. For taxable year 1992, Gilbert P. Hyatt's NDF indicated that a NPA was issued on August 14,  
13 1997 for additional tax in the amount of \$5,669,021 and Fraud Penalty in the amount of \$4,251,765.75  
14 and mailed to Gilbert P. Hyatt and Mike Kern. ((A true and correct copy of the 1992 NDF printout for  
15 Gilbert P. Hyatt is attached hereto as Exhibit C.)

16 7. The 1992 NPA for Gilbert P. Hyatt was protested. (A true and correct copy of the NDF -  
17 NPA Selection printout for 1991 and 1992 is attached hereto as Exhibit B.)

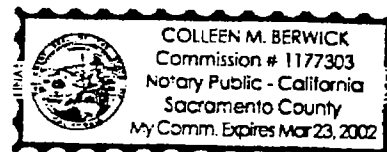
18 I hereby affirm under penalty of perjury that the assertions of this Affidavit are true.

19 DATED this 6 day of January \_\_, 2000.

20  
21  
22 Penelope Bauche  
23 Penelope Bauche

24 SUBSCRIBED and SWORN to before me  
25 this 6<sup>th</sup> day of January, 2000.

26 Colleen M Berwick  
27 Notary Public  
28



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ARA00411

STATE OF CALIFORNIA  
FRANCHISE TAX BOARD  
P.O. BOX 942867  
SACRAMENTO, CA 94267-0041  
(800) 852-2753

NOTICE OF  
PROPOSED ASSESSMENT

GILBERT P HYATT  
PO BX 60028  
LAS VEGAS NV 89160

04/23/96  
9261139901  
1991  
04728236  
069309999HYAT  
3671399CSF041901

MIKE KERN, CPA  
6100 ELTON  
LAS VEGAS NV 89107

INCOME AS REPORTED OR REVISED	\$ 17,727,743.00
FILING STATUS - SINGLE	
TAX - TABLE	1,945,940.00
TOTAL EXEMPTION CREDITS (AS ADJUSTED)	0.00
TOTAL TAX LIABILITY	1,945,940.00
LESS PREVIOUSLY ASSESSED	69,469.00
ADDITIONAL TAX	1,876,471.00
PENALTY: ACCURACY RELATED (FRAUD)	1,407,353.25
INTEREST TO 04/23/96	1,256,580.52
TOTAL ADDITIONAL TAX, PENALTY AND INTEREST	\$ 4,540,404.77

Section 17014 of the California Revenue and Taxation Code defines a resident as:

1. Every individual who is in this state for other than a temporary or transitory purpose; and
2. Every individual domiciled in this state who is outside the state for a temporary or transitory purpose.

Any individual who is a resident of this state continues to be a resident even though temporarily absent from the state.

CONTINUED ON PAGE 2

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Whether a taxpayer's purpose in entering or leaving California is temporary or transitory in character is essentially a question of fact to be determined by examining all the circumstances of each particular case. (Appeal of Anthony V. and Beverly Zupanovich, Cal. St. Bd. of Equal., Jan. 6, 1976.) The connections which a taxpayer maintains with this and other states are an important indication of whether his/her presence in or absence from California is temporary or transitory in character. (Appeal of Richard L. and Kathleen K. Hardman, Cal. St. Bd. of Equal., Aug. 19, 1975.) Some of the many contacts considered relevant are the maintenance of a family home, bank accounts, business relationships, voting registration, possession of a local driver's license, and ownership of real property. (Appeal of Bernard and Helen Fernandez, Cal. St. Bd. of Equal., June 2, 1971.)

We assessed the fraud penalty as provided by California Revenue and Taxation Code Section 19164(b), formerly section 18685(b). This penalty conforms to Internal Revenue Code Section 6663, which states that if any part of any underpayment of tax required to be shown on a return is due to fraud, there shall be added to the tax an amount equal to 75 percent of the portion of the underpayment which is attributable to fraud. We determined that the entire underpayment is due to fraud.

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NDF - NPA SELECTION

---(TPID: 069309999 )---

NO.	TY	NPA NO.	ACT/ STAT	REVENUE TYPE CODE	UNIT	USER	NPA AMOUNT	NPA/STAT DATE	MICROFCH DATE
001	91	9604728236	NPA PRO	RES 3671399	396	CSF	4540404.77	04/23/96	04/22/96
002	92	9704340945	NPA PRO	N/R 3671397	343	CLM	14115941.51	05/29/96	08/13/97
								08/14/97	10/22/97

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ARA00414

STATE OF CALIFORNIA  
FRANCHISE TAX BOARD  
P.O. BOX 942867  
SACRAMENTO, CA 94267-0041  
(800) 852-2753

NOTICE OF  
PROPOSED ASSESSMENT

GILBERT P HYATT  
PO BX 81230  
LAS VEGAS NV 89180-1230

08/14/97  
0000000000  
1992  
04340945  
069309999HYAT  
3671397CLM080601

MR. EUGENE G. COWAN  
RIORDAN & MCKINZIE  
300 S GRAND AV 29TH  
LOS ANGELES CA 90071

INCOME AS REPORTED OR REVISED		\$	0.00
FEDERAL ADJUSTED GROSS INCOME	84,973,440.00		
ITEMIZED DEDUCTIONS ALLOWED	-58,968.00		84,914,472.00
REVISED TAXABLE INCOME			84,914,472.00
FILING STATUS - SINGLE			
TAX - TABLE			9,336,332.00
TOTAL EXEMPTION CREDITS (AS ADJUSTED)			0.00
TAX TO BE APPORTIONED			9,336,332.00
APPORTIONMENT FACTOR			0.6072
APPORTIONED TAX			5,669,021.00
TOTAL TAX LIABILITY			5,669,021.00
LESS PREVIOUSLY ASSESSED			0.00
ADDITIONAL TAX			5,669,021.00
PENALTY: FRAUDULENT FAILURE TO FILE			4,251,765.75
INTEREST TO 08/14/97			4,195,154.76
TOTAL ADDITIONAL TAX, PENALTY AND INTEREST		\$	14,115,941.51

Section 17014 of the California Revenue and Taxation Code defines a resident as:

1. Every individual who is in this state for other than a temporary or transitory purpose; and
2. Every individual domiciled in this state who is outside the state for a temporary or transitory purpose.

Any individual who is a resident of this state continues to be a resident even though temporarily absent from the state.

CONTINUED ON PAGE 2

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GILBERT P HYATT

069309999

The term "domicile" has been defined as the one location with which for legal purposes a person is considered to have the most settled and permanent connection, the place where he/she intends to remain and to which, whenever he/she is absent, he/she has the intention of returning. (Whittell v. Franchise Tax Board, 231 Cal. App. 2d 278, 284 {41 Cal. Rptr. 673} (1964).) A person may have only one domicile at a time, (Whittell v. Franchise Tax Board, supra), and he/she retains that domicile until he/she acquires another elsewhere (In re: Marriage of Leff, 25 Cal. App. 3d 630, 642 {102 Cal. Rptr. 195} (1972)). The establishment of a new domicile requires actual residence in a new place and the intention to remain there permanently or indefinitely. (Estate of Phillips, 269 Cal. App. 2d 656, 659 {75 Cal. Rptr. 301} (1969).) One's acts must give clear proof of a concurrent intention to abandon the old domicile and establish a new one. (Chapman v. Superior Court, 162 Cal. App. 2d 421, 426-427 {328 P.2d} (1958).)

Whether a taxpayer's purpose in entering or leaving California is temporary or transitory in character is essentially a question of fact to be determined by examining all the circumstances of each particular case. (Appeal of Anthony V. and Beverly Zupanovich, Cal. St. Bd. of Equal., Jan. 6, 1976.) The connections which a taxpayer maintains with this and other states are an important indication of whether his/her presence in or absence from California is temporary or transitory in character. (Appeal of Richard L. and Kathleen K. Hardman, Cal. St. Bd. of Equal., Aug. 19, 1975.) Some of the many contacts considered relevant are the maintenance of a family home, bank accounts, business relationships, voting registration, possession of a local driver's license, and ownership of real property. (Appeal of Bernard and Helen Fernandez, Cal. St. Bd. of Equal., June 2, 1971.)

We consider you to be a resident of this state through April 2, 1992 and, as such, you are taxable on income from all sources through that date.

We have no record of receiving your personal income tax return for the year listed above. We have computed your liability based on information available from employers, federal returns under authorization of Section 6103(d) of the Internal Revenue Code, or other available sources.

The fraudulent failure to file a return penalty is assessed in accordance with California Revenue and Taxation Code section 18681(d), renumbered as section 19131(d). This penalty is calculated as 75% of the underpaid tax.

See the enclosed N/R Exhibit.

ENCLOSURE(S)

0000416

RA000773

ARA00416

McDONALD CARANO WILSON McCUNE BERGIN FRANKOVICH & HICKS LLP

ATTORNEYS AT LAW  
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3 **Attorney General**  
4 **DAVID S. CHANEY**  
5 **Supervising Deputy Attorney General**  
6 **FELIX E. LEATHERWOOD, State Bar No. 103929**  
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14 **Nevada State Bar # 1568**  
15 **MATTHEW C. ADDISON, ESQ.**  
16 **Nevada State Bar # 4201**  
17 **BRYAN R. CLARK, ESQ.**  
18 **Nevada State Bar # 4442**  
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21 **2300 West Sahara Avenue, Ste. 1000**  
22 **Las Vegas, Nevada 89102**  
23 **(702) 873-4100**  
24 **Attorneys for Defendant FTB**

25 **UNITED STATES DISTRICT COURT**  
26 **FOR THE DISTRICT OF NEVADA**

27 **GILBERT P. HYATT,**

28 **Plaintiff,**

**vs.**

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

**Defendants.**

**Case No. CV-S-98-00284-HDM (LRL)**

**AFFIDAVIT OF**  
**JOHN E. MAYER *JM***

**///**

0000417

RA000774

ARA00417



1 STATE OF NEVADA )

2 COUNTY OF CLARK )

) ss.

3 JOHN E. MAYER<sup>ss</sup> being first duly sworn upon oath deposes and says as follows:

4 1. I reside at 5441 Sandpiper Lane, Las Vegas, Nevada.

5 2. My wife, Linda Mayer<sup>ss</sup> and I purchased the residence at 5441 Sandpiper Lane  
6 from Michael Kern and his wife in November, 1994 and have lived at that address since  
7 that time.

8 3. I am aware that Michael Kern is a CPA, but I am not personally acquainted  
9 with Mr. Kern.

10 4. I have never met Gilbert P. Hyatt and have never heard his name prior to  
11 September, 1999 when I was interviewed.

12 5. Neither my wife nor I have ever given permission for any other person to use  
13 our residential address at 5441 Sandpiper Lane for voter registration purposes. I am not  
14 aware that Gilbert P. Hyatt uses our address as his residential address for voter  
15 registration purposes and have never given him permission to do so.

16 6. Gilbert P. Hyatt does not reside at our home at 5441 Sandpiper Lane. We  
17 have never received mail for Mr. Hyatt at this address.

18 7. This Affidavit is made of my own personal knowledge except where stated  
19 on information and belief, and as to those matters, I believe them to be true, and, if called  
20 as a witness, I would competently testify thereto.

21 ///

22 ///

23 ///

24 ///

25 ///

26 ///

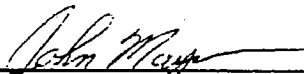
27 ///

28

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241 RIDGE STREET • P.O. BOX 2670  
RENO, NEVADA 89505-2670  
(775) 788-2000 • FAX (775) 788-2020

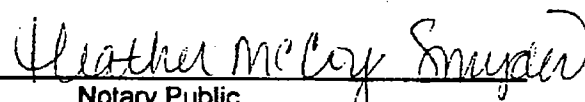
1 8. I hereby affirm under penalty of perjury that the assertions of this Affidavit are  
2 true.

3 DATED this 27 day of SEPT, 1999.  
4

5  
6   
7 John E. Mayer  
8

9 SUBSCRIBED and SWORN to before me

10 this 27<sup>th</sup> day of September, 1999.

11   
12 Notary Public  
13 39594



1 **DISC**  
2 **BILL LOCKYER**  
3 **Attorney General**  
4 **DAVID S. CHANEY**  
5 **Supervising Deputy Attorney General**  
6 **FELIX E. LEATHERWOOD, State Bar No. 103929**  
7 **GEORGE M. TAKENOCHI, State Bar No. 157963**  
8 **THOMAS G. HELLER, State Bar No. 162561**  
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18 **BRYAN R. CLARK, ESQ.**  
19 **Nevada State Bar # 4442**  
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21 **BERGIN FRANKOVICH & HICKS LLP**  
22 **2300 West Sahara Avenue, Suite 1000**  
23 **Las Vegas, Nevada 89102**  
24 **(702) 873-4100**  
25 **Attorneys for Defendants**

DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*\*

17 **GILBERT P. HYATT,**  
18 **Plaintiff,**

19 **vs.**

20 **FRANCHISE TAX BOARD OF THE**  
21 **STATE OF CALIFORNIA, and DOES 1-**  
22 **100, inclusive**

23 **Defendants.**

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

**AFFIDAVIT OF**  
**FELIX E. LEATHERWOOD**

24 **STATE OF CALIFORNIA )**  
25 **COUNTY OF LOS ANGELES )ss.**

26 **FELIX E. LEATHERWOOD being first duly sworn upon oath deposes and says as follows:**

27 **1. I am employed as a Deputy Attorney General with the California Attorney General's Office,**  
28 **and one of the attorneys for the Franchise Tax Board in this matter. I have personal knowledge of the**

1 facts in this affidavit, and could testify competently to these facts if called as a witness.

2 2. Since the beginning of this case, my role in this litigation has included representation of the  
3 Franchise Tax Board in connection with plaintiff Gilbert Hyatt's discovery efforts. From my work in  
4 this regard, I am personally familiar with the extent and nature of the discovery efforts of Hyatt's  
5 lawyers.

6 3. To date, Mr. Hyatt's lawyers have deposed a total of 24 witnesses in this case, most of whom  
7 are or were Franchise Tax Board employees. These depositions have involved over 315 hours of  
8 deposition time.

9 4. The transcripts of the depositions that Mr. Hyatt's lawyers have taken in this case to date total  
10 more than 11,000 pages, including one transcript that is approximately 2,400 pages.

11 5. Mr. Hyatt's lawyers have propounded 5 sets of requests for production of documents to the  
12 Franchise Tax Board to date, which included a total of 329 individual requests for production of  
13 documents, based on a review of Hyatt's discovery pleadings that I directed.

14 6. Mr. Hyatt's lawyers have made over 340 individual written requests for production of  
15 documents to deposed witnesses to date, over and above the document requests directed to the Franchise  
16 Tax Board, based on a review of Hyatt's discovery responses that I directed. Mr. Hyatt's lawyers have  
17 also made dozens of additional document requests on the record at depositions.

18 7. The Franchise Tax Board has produced approximately 17,514 pages of documents to date  
19 in response to the many document demands of Mr. Hyatt's lawyers, based on a review of the FTB's  
20 produced documents that I directed.

21 8. Attached as Exhibit 1 is a true and correct copy of an excerpt from Hyatt's deposition of  
22 Mark Shayer, a former Franchise Tax Board auditor, concerning the manner in which the Mr. Hyatt's  
23 1991 California tax return became the subject of Franchise Tax Board scrutiny.

24 9. Mr. Hyatt's lawyers have not limited their discovery to the Franchise Tax Board's Nevada  
25 acts. In fact, very little of the discovery of Mr. Hyatt's lawyers concerns the Franchise Tax Board's  
26 Nevada acts, and Mr. Hyatt's lawyers have expressly stated their belief that the bases of the FTB's  
27 alleged liability are "not limited to what happened in the State of Nevada." Attached as Exhibit 2 is a  
28 true and correct excerpt of a Discovery Commissioner hearing transcript containing this statement.

1 10. My role in this litigation has also included representation of the Franchise Tax Board in  
2 connection with its efforts to gather information to help defend against Mr. Hyatt's claims.

3 11. In connection with the Franchise Tax Board's efforts to defend this litigation, the Franchise  
4 Tax Board has interviewed and obtained documents from Darlene Beer, a former California notary that  
5 Mr. Hyatt has used. Attached as Exhibit 3 is a true and correct excerpt from what Ms. Beer identified  
6 as her notary log.

7 12. Attached as Exhibit 4 are true and correct copies of the voter registration application form  
8 for Mr. Hyatt and the Precinct Register for November 3, 1998 and November 8, 1998 that were recently  
9 provided by the Clark County Election Department to the Franchise Tax Board's representative.

10 13. Attached as Exhibit 5 are true and correct copies of pleadings and papers that are publicly  
11 available in the California divorce case Hyatt v. Hyatt, Case No. NWD 55911, which involved Mr.  
12 Hyatt.

13 14. Attached as Exhibit 6 is a true and correct copy of a picture of Mr. Hyatt's claimed Nevada  
14 home that appears on a video that the Franchise Tax Board obtained of a nationally televised segment  
15 of Hard Copy that aired on June 14, 1993.

16 15. Attached as Exhibit 7 are true and correct copies of pleadings and papers that are publically  
17 available in the California probate case of Anna Haber Hyatt, Case No. A-145624, which reflects that  
18 Gilbert Hyatt publicly disclosed his social security number.

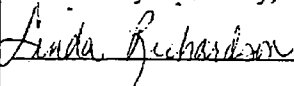
19 I hereby affirm under penalty of perjury that the assertions of this Affidavit are true.

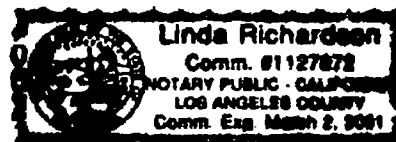
20  
21 By 

FELIX E. LEATHERWOOD

22 SUBSCRIBED and SWORN to before me

23 this 26<sup>th</sup> day of January, 2000.

24 , Notary Public.



25  
26 43684

27  
28 0000422

10:42 1 if in fact they really have moved.

10:42 2 Q. One thing I'd like to remind you on  
10:42 3 the record has to do with audible responses. I think  
10:42 4 I mentioned to you off the record that your prior  
10:43 5 transcript shows a few answers "uh-huh."

10:43 6 A. Uh-huh.

10:43 7 Q. Which is --

10:43 8 A. Yes, I just noticed I did it now.

10:43 9 Q. Thank you very much, and if I put my  
10:43 10 hand to my ear that will be saying that I either  
10:43 11 can't hear you or I'd like you to give an audible  
10:43 12 response.

10:43 13 A. Okay.

10:43 14 Q. What I'd like you to do before we go  
10:43 15 much further is talk about something that came up  
10:43 16 last time. You recalled triggering the auditor --  
10:43 17 the thing that triggered the audit being a Daily News  
10:43 18 article about Gil Hyatt?

10:43 19 MR. WILSON: Same objection.

10:43 20 THE WITNESS: Yes.

10:43 21 BY MR. BOURKE:

10:43 22 Q. And we looked all through all those  
10:43 23 articles that are in the 1991 audit file for Gil  
10:44 24 Hyatt and we couldn't find the Daily News article.  
10:44 25 Do you remember spending quite a bit of time doing

10:44 1 that?

10:44 2 A. Yes.

10:44 3 Q. I have been able to locate what I  
10:44 4 think is that article. Let me not put any words in  
10:44 5 your mouth. I'd like to show you what our court  
10:44 6 reporter has marked as Exhibit 251. Could you look  
10:44 7 at that, please?

10:44 8 MR. BOURKE: Do you have a copy of that,  
10:44 9 Counsel?

10:44 10 MR. WILSON: Yes, I do.

10:44 11 THE WITNESS: I have the original.

10:44 12 BY MR. BOURKE:

10:44 13 Q. Is this Daily News article dated June  
10:44 14 2nd, 1993 the article that triggered the Gil Hyatt  
10:44 15 audit?

10:44 16 MR. WILSON: Same objection.

10:44 17 THE WITNESS: It appears to be.

10:44 18 BY MR. BOURKE:

10:44 19 Q. Now, would you just read the very  
10:44 20 first two lines, it says, "A judge rejected on  
10:45 21 Tuesday claims by the ex-wife of microprocessor  
10:45 22 inventor Gilbert Hyatt." Do you see that?

10:45 23 A. Yes.

10:45 24 Q. Having read that does that make you  
10:45 25 believe that it's more probable than not that this is

Serving the San Fernando  
and Neighboring Valleys

# Daily News

WRIGHT 1993, DAILY NEWS

WEDNESDAY, JUNE 2, 1993

DAILY NEWS / WEDNESDAY, JUNE 2, 1993 / NEWS-3

0000425

☒ PLF ☐ DEFT  
Exhibit 251  
Date 10-1-99  
Witness Sharon Vol. 2  
Jean F. Holliday

## SAN FERNANDO VALLEY

### Millionaire inventor's ex-wife loses suit Judge says woman signed away rights to windfall from microprocessor in 1976 divorce

By Anne Barber  
Daily News Staff Writer

**VAN NUYS** — A judge rejected November 1992, seeking to set aside a 1976 divorce settlement by the ex-wife of microprocessor inventor Robert L. Hyatt, who she alleges part of her ex-husband's multimillion-dollar fortune was a computer patent.

Valley Superior Court Judge Robert Lettman said Priscilla "Ruth" Hyatt Maystead signed away her rights to her ex-husband's windfall when she put her name on a divorce decree 17 years ago.

"This just isn't going to work," Lettman told Maystead's attorney, Neal Raymond Hersh of Los Angeles. "I see a litigant who decides she wants a piece of the action. It's the same thing she tried to do in 1976."

Hersh said he is considering whether to appeal the ruling.

Maystead, 53, filed a lawsuit in November 1992, seeking to set aside the couple's divorce settlement, a year after learning that her former husband stood to make a great deal of money from computer-related patents.

Hyatt sold the patent for the single-chip microprocessor — described as the "brain" behind the personal computer and millions of other products — in July 1991.

Hersh argued in court that Maystead had been cheated out of her share of the microprocessor fortune by her husband and his attorneys and that they fraudulently claimed during divorce proceedings that the patents were worth about as much as the couple's other assets.

in the equity on the couple's home — \$13,000 to \$30,000.

"This lady was denied her day in court," said Hersh, filing his brief in the direction of Maystead, who set in the rear of the courtroom.

Hyatt, who lives in Las Vegas, has denied in court documents that he defrauded his ex-wife and claimed she herself has been lying.

By capitalizing on his good fortune, he claimed, Hyatt, fighting back recent appeals court, said she was under severe emotional trauma when she signed the settlement because she had been physically abused by her husband and emotionally injured with her attorney at the time, Robert Cobb.

"I'm very disappointed," Maystead said after the judge's ruling.

The judge "doesn't understand abuse. If you're abused, you're abused. You can't fight back effectively."

Hyatt has denied that he abused his ex-wife.

Maystead said she signed the 1976 agreement, which gave her the couple's Northridge house and other assets, because she was worried about supporting herself and the couple's children.

Maystead also contended she was tricked into signing the divorce agreement because her husband's attorneys told her it would free her from a debt she later found never existed.

Lettman dismissed Hersh's contention that Maystead wasn't seen-

ificantly savvy enough to know if she was being abused, you're abused. You can't fight back effectively."

"I think she knowingly entered into this agreement," Lettman said.

Hyatt has been legal-litigating about the amount of royalties he earns on the microprocessor and other computer-related inventions. But industry analysts have estimated that they could be worth hundreds of millions of dollars.

Hyatt has claimed that he spent the better part of 17 years trying to get his patent applications granted. He said his ex-wife made close during divorce negotiations that she didn't want to be involved in that pursuit.

RA000782

ARA00425



1 CASE NO. 98-A382999

2 DEPARTMENT XVIII

3

4 DISTRICT COURT

5 CLARK COUNTY, NEVADA

6

7 GILBERT P. HYATT, )

8 Plaintiff, )

9 vs. )

10 FRANCHISE TAX BOARD OF )  
11 THE STATE OF CALIFORNIA, )

12 Defendants. )

13

14

15 BEFORE THOMAS A. BIGGAR, DISCOVERY COMMISSIONER

16 WEDNESDAY, AUGUST 11, 1999  
17 10:30 a.m.

18

APPEARANCES:

19

For the Plaintiff: MARK A. HUTCHINSON, ESQ.

20

21 For the Defendant: JAMES W. BRADSHAW, ESQ.  
22 FELIX LEATHERWOOD, ESQ.

23

24

25

Reported by: Christa Broka, CCR #574

ALL-AMERICAN COURT REPORTERS  
(702) 240-4393

0000426

RA000783

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1 this action is not about any events that occurred  
2 in California. This action is about events that  
3 occurred in Nevada. That's precisely one of the  
4 big issues that we're trying to test here is, in  
5 fact, does this lawsuit extend into actions that  
6 only occurred in the State of California. Because  
7 a big part of our defense here is very frankly  
8 Mr. Hyatt has more than adequate remedies within  
9 the State of California to contest any decision.

10 If we committed any tortes there in  
11 enforcing our tax laws in the State of California,  
12 Mr. Hyatt has remedies in the State of California.

13 COMMISSIONER BIGGAR: All right,  
14 Mr. Leatherwood.

15 Mr. Hutchinson, now can you point to  
16 something -- does your complaint limit itself to  
17 tortes in Nevada?

18 MR. HUTCHINSON: Your Honor, I can't  
19 point to anything in my complaint that just limits  
20 us to the State of Nevada. We have alleged torts  
21 in general for fraud, invasion of privacy, abuse of  
22 process, those types of things. And we're not  
23 limited to what happened in the State of Nevada.  
24 Let me give you the best analogy I can, Your Honor,  
25 that it happens all the time with a bad faith

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ARA00427

1 insurance tort claim. Now, oftentimes is that  
2 something is alleged in a Nevada court and it's  
3 alleged to be a Nevada tort and it's tried in  
4 Nevada, but that doesn't preclude a plaintiff from  
5 obtaining policies, procedures, manuals,  
6 interviewing or deposing a high level insurance  
7 executive that may reside in Delaware. In fact,  
8 most of those procedures and policies conducted may  
9 actually have occurred in Delaware that resulted in  
10 an insurance bad faith claim and that's my analogy.  
11 That's what we've alleged here.

12 COMMISSIONER BIGGAR: Let's go over the  
13 individual requests here and let's try and dispose  
14 of this thing. I'm looking at the -- I guess, it  
15 would be the plaintiff's requests as they are  
16 individualized beginning on page --

17 MR. HUTCHINSON: Page 7 on the motion,  
18 Your Honor.

19 COMMISSIONER BIGGAR: Yes, beginning on  
20 page 7. Now, the requests that are numbered, I  
21 will designate them as opposed to the numbering  
22 that's done in the motion. I will address them as  
23 requests, the numbered requests. All right?

24 MR. HUTCHINSON: All right.

25 COMMISSIONER BIGGAR: Request No. 1 for

37

Act: Mo/Day/Yr/Time

Act: INHUB 01:15P

1	9/22/91	Act	9/22/91	Assignment to Act. Sub	Sept. 1991
2	9/22/91	Act.	9/22/91	Assignment to Act. Sub	Ed. C. Low
3	9/24/91	Act.	9/24/91	Assignment to Act. Sub	John M. Mc. White
4	9/24/91	Act.	9/24/91	Assignment to Act. Sub	Ronald R. Mc. White
5	9/25/91	Act.	9/25/91	Assignment to Act. Sub	George Lee Taylor
6	9/27/91	Act.	9/27/91	Assignment to Act. Sub	Charles R. Pratt
7	10/1/91	Act.	10/1/91	Assignment to Act. Sub	Myra Jeanne Kelly
8	10/1/91	Act.	10/1/91	Assignment to Act. Sub	Ronald H. Kelly
9	10/1/91	Act.	10/1/91	Assignment to Act. Sub	Quinn S. Moore
10	10/1/91	Act.	10/1/91	Assignment to Act. Sub	Ed. M. Kelly
11	10/1/91	Act.	10/1/91	Assignment to Act. Sub	Robert H. Kelly
12	10/1/91	Act.	10/1/91	Assignment to Act. Sub	Robert H. Kelly
13	10/1/91	Act.	10/1/91	Assignment to Act. Sub	Robert H. Kelly
14	10/1/91	Act.	10/1/91	Assignment to Act. Sub	Robert H. Kelly
15	10/1/91	Act.	10/1/91	Assignment to Act. Sub	Robert H. Kelly
16	10/1/91	Act.	10/1/91	Assignment to Act. Sub	Robert H. Kelly
17	10/1/91	Act.	10/1/91	Assignment to Act. Sub	Robert H. Kelly
18	10/23/91	Act.	10/23/91	Assignment to Act. Sub	Robert H. Kelly

FTB13948

RA000786

ARA00429

1	5/20/93	Acknowledgment	5/20/93	Consent to Service	Richard Deacon	Richard Deacon
2	5/20/93	Acknowledgment	5/20/93	Application for Relief	Richard Deacon	Richard Deacon
3	6/9/93	Acknowledgment	6/9/93	Just Claim Act	E. d. K. M. J. M. J.	E. d. K. M. J. M. J.
4	6/10/93	Acknowledgment	6/10/93	Just Claim Act	Just Claim Act	Just Claim Act
5	6/10/93	Acknowledgment	6/10/93	Just Claim Act	Just Claim Act	Just Claim Act
6	6/11/93	Acknowledgment	6/11/93	Just Claim Act	Just Claim Act	Just Claim Act
7	6/15/93	Acknowledgment	6/15/93	Just Claim Act	Just Claim Act	Just Claim Act
8	6/17/93	Acknowledgment	6/17/93	Just Claim Act	Just Claim Act	Just Claim Act

FTB13949

RA000787

ARA00430

# Mail-In Voter Registr in Application

State of Nevada

To register to vote in Nevada, you must:

- be a citizen of the United States
- be at least 18 years old on the date of the next ensuing election
- have continuously resided in the State of Nevada, in your county, at least 30 days and in your precinct at least 10 days before the next ensuing election
- not currently be lacking under any felony conviction or other loss of civil rights

Your application **CANNOT** be processed:

- unless it is complete: you are not registered to vote until all of the information required by the application has been provided to the county clerk
- without a: social security number, Nevada driver's license number, or i.d. card number (#7)

Important!

- you may NOT list business addresses as your residence unless you actually reside there (#3)

★ ★ OFFICE USE ONLY ★ ★

CANCELLED

- ☐ failed to vote ☐ death  
☐ change politics ☐ change address  
☐ other ☐ change name

Precinct Code

WIN025

USE PEN - PLEASE PRINT CLEARLY - BLACK INK PREFERRED

1	Reason(s) for registration: <input type="checkbox"/> new registration <input checked="" type="checkbox"/> address change <input checked="" type="checkbox"/> party change <input type="checkbox"/> name change			
2	Mr. Mrs. Miss Ms. <b>GILBERT</b>	Middle Name <b>PETER</b>	Last Name <b>HYATT</b>	Jr. Sr. III IV
3	Nevada Address Where You Live (not a post office box) <b>5441 SANDPIPER LA</b>		Apt./Space #	City <b>LAS VEGAS, NV</b> Zip Code <b>89102</b>
4	Address Where You Get Your Mail (if different from #3) <b>P.O. BOX 81230</b>		City <b>LAS VEGAS, NV</b>	Zip Code <b>89180</b>
5	Birth Date (mo/day/yr) <b>3/26/38</b>	6	Place of Birth (state or country) <b>NY, NY, USA</b>	7
6	Social Security, Nevada Driver's Lic., or Identification Card No. (required) <b>069-30-9999</b>		8	Telephone No. (optional) <b>702-871-9595</b>
9	Party Registration - check one box (required) <input checked="" type="checkbox"/> Democratic <input type="checkbox"/> Republican <input type="checkbox"/> Independent American <input type="checkbox"/> Libertarian <input type="checkbox"/> Natural Law <input type="checkbox"/> Populist <input type="checkbox"/> Nonpartisan (no party) <input type="checkbox"/> Other (write on line below) <b>Important:</b> If you do not affiliate with either the Democratic or Republican political party, you will receive a Nonpartisan Ballot and will not be allowed to vote for party candidates at the PRIMARY ELECTION.			
10	Name and Address on Your Last Voter Registration: <b>GILBERT PETER HYATT</b> First Name Last Name <b>PO BOX 60028</b> Street No. <b>LAS VEGAS NV 89160-0028</b> City State Zip			
11	Voter Declaration: READ THIS STATEMENT AND WARNING PRIOR TO SIGNING I do solemnly swear or affirm under penalty of perjury that: • I am a citizen of the United States and, • on the date of the next ensuing election I will have attained the age of 18 years and, • I will have continuously resided in the State of Nevada, in my county at least 30 days and in my precinct at least 10 days before the next ensuing election. I further swear or affirm under penalty of perjury that: • the present address I listed herein is my sole legal place of residence and that I claim no other place as my legal residence. I further swear or affirm that I am not now laboring under any felony conviction or other loss of civil rights which would make it unlawful for me to vote. <b>WARNING</b> Willingly giving a false answer to any question on this application is a felony and a civil penalty of up to a \$20,000 fine! SIGNATURE - Sign beside the "►" below: ► <i>Gilbert P. Hyatt</i> 7/3/94			
12	Name, Mailing Address & Signature of Person Who Assisted You With the Application: Name (print) _____ Signature _____ Street No. _____ City _____ State _____			7/5/94 XV 35450

Prescribed by Sec'y of State • NRS 293.524 • EL302 (Rev. 10/93)

CERTIFIED COPY  
 DOCUMENT ATTACHED IS A  
 TRUE AND CORRECT COPY  
 OF THE ORIGINAL ON FILE

JUN 21 1999

0000431

EXHIBIT

*Amend L. L. L.*

RA000788

ARA00431

PRECINCT REGISTER

FOR THE

GENERAL ELECTION

HELD IN

CLARK COUNTY, NEVADA

ON THE

8TH DAY OF NOVEMBER, 1994

PRECINCT WIN025

CERTIFIED COPY  
DOCUMENT ATTACHED IS A  
TRUE AND CORRECT COPY  
OF THE ORIGINAL ON FILE

JUL 27 1999

*Arnold L. Levy*  
REGISTRAR

0000432

RA000789

ARA00432

NAME OF PRECINCT: WINCHESTER

PRECINCT NUMBER: 025

SIGNATURE

COMBINED POLL BOOK, RUSTLER AND CHECK LIST

NAME AND ADDRESS

PAGE 43  
BALLOT #

I CERTIFY THE ABOVE FACTS ARE TRUE Sign for this		SIGNATURE		NAME AND ADDRESS		BALLOT #
<i>[Signature]</i>		<i>[Signature]</i>		HUNTER, GARY LEE 5876 DARBY AV Serial: MH01647		541 263
<i>[Signature]</i>		<i>[Signature]</i>		HUNTER, GLORIA JEANENE 5876 DARBY AV Serial: AA12365	0000433	541 353
<i>[Signature]</i>		<i>[Signature]</i>		HYATT, GILBERT PETER 5441 SANDPIPER LA Serial: XY35450		541 317
<i>[Signature]</i>		<i>[Signature]</i>		INGLE, H KEITH 3145 DUNEVILLE ST Serial: AB46694		541 204
<i>[Signature]</i>	MAIL BALLOT REQUESTED			INGLE, LYNNE C 3145 DUNEVILLE ST Serial: AB46693		
<i>[Signature]</i>		<i>[Signature]</i>		JACOB, LINDA ANN 3139 TONYRAM CI Serial: MF00525		541 516
<i>[Signature]</i>	INACTIVE			JACOBY, RUSSELL ANTHONY JR 4977 VIVALDI DR Serial: XB92672		
<i>[Signature]</i>		<i>[Signature]</i>		JACQUEMOUD, JACQUELYN 4928 VIVALDI DR Serial: NA50829		541 286
<i>[Signature]</i>		<i>[Signature]</i>		JAFEEY, ROSE MAZZA 4944 VIVALDI DR Serial: MT00816		541 417
<i>[Signature]</i>		<i>[Signature]</i>		JAVIER, IRENE FALEK 5736 W DESERT INN RD Serial: AB29062		541 423
<i>[Signature]</i>		<i>[Signature]</i>		JAVIER, NAPOLEON 5736 W DESERT INN RD Serial: AB29061		541 424

TOTAL NUMBER OF SIGNATURES ON THIS PAGE 9

HUNTER, GARY LEE

JAVIER, NAPOLEON



PRECINCT REGISTER

FOR THE

GENERAL ELECTION

HELD IN

CLARK COUNTY, NEVADA

ON THE

3RD DAY OF NOVEMBER, 1998

PRECINCT/DISTRICT

6048

0000434

CERTIFIED COPY  
DOCUMENT ATTACHED IS A  
TRUE AND CORRECT COPY  
OF THE ORIGINAL ON FILE

JUL 27 1999

*Arnold L. Levy*  
REGISTRAR

RA000791

ARA00434

PRECINCT NUMBER: 6048

COMBINED POLL BOOK/ROSTER

NAME AND ADDRESS

Page 25  
RECEIPT #

<i>James R. Hsie</i>	<i>James R. Hsie</i>	HSIE, JAMES ROBERT 3206 MOUNTAIN SPRING RD Reg #: 0442158	438 496
<i>Margaret Potee Hsie</i>	<i>Margaret Potee Hsie</i>	HSIE, MARGARET POTE 3206 MOUNTAIN SPRING RD Reg #: 0447186	438 459
<i>Lisa M. Hughes</i>	INACTIVE	HUGHES, LISA MICHELLE 5414 SANDPIPER LA Reg #: 0147748	
<i>Ronald E. Hughes</i>	INACTIVE	HUGHES, RONALD EDWARD 5414 SANDPIPER LA Reg #: 0147846	
<i>David M. Humm</i>	MB VOTED	HUMM, DAVID H 5118 GOLDEN ROD CI Reg #: 0153051	
<i>John Humphreys</i>		HUMPHREYS, J LYNN 3226 MOUNTAIN SPRING RD Reg #: 0156013	
<i>Matthew Hunt</i>	INACTIVE	HUNT, MATTHEW ROBERT 5203 GOLDEN SPRING AV Reg #: 0144673	
<i>I certify the above facts are true Long Lee Hunter</i>	<i>Long Lee Hunter</i>	HUNTER, GARY LEE 5876 DARBY AV Reg #: 0157840	438 472
<i>Gloria Jeanene Hunter</i>		HUNTER, GLORIA JEANENE 5876 DARBY AV Reg #: 0157844	
<i>Gilbert P. Hyatt</i>	<i>Gilbert P. Hyatt</i>	HYATT, GILBERT PETER 5441 SANDPIPER LA Reg #: 0167326	438 537
<i>Lillie W. Hyman</i>	<i>Lillie W. Hyman</i>	HYMAN, LILLIE W 3175 ANACAPA WY Reg #: 0167477	438 546

0000435

RA000792

ARA00435

Name, Address and Telephone No. of Attorney(s)

ROBERT S. GIBBS, ESQ.  
15760 Ventura Blvd., St. 700  
Encino, California 91436  
986-1950

Space Below for Use of Clerk Only

**FILED**

AUG 25 1975

BRUCE L. WICK, County Clerk  
J. Campbell  
BY C. GUTSELL, DEPUTY

Attorney(s) for Petitioner

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

In re the marriage of

Petitioner, PRISCILLA L. HYATT

and

Respondent: GILBERT P. HYATT

CASE NUMBER NWD 55911

☒ PETITIONER'S ☐ RESPONDENT'S

FINANCIAL DECLARATION

Husband: Gilbert P. Hyatt  
Age: 37 Social Security No.: 069-30-9999  
Occupation: Engineer

Dated:

Wife: Priscilla L. Hyatt  
Age: 35 Social Security No.: 548-56-7142  
Occupation: Housewife- part time artist

**PART A: INCOME AND EXPENSE STATEMENT**

(a) Gross monthly income from:

Salary and wages (including commissions, bonuses and overtime) payable

Pensions and retirement

Social security

Disability and unemployment insurance

Public assistance (welfare, AFDC payments, etc.)

Child/spousal support re prior marriage

Dividends and interest

Rents

All other sources (Specify)

Total monthly income

Husband	Wife
\$ 3,000.	\$ 500.

\$ 3,000.	\$ 500.
-----------	---------

(b) Itemize deductions from gross income:

Income taxes (state and federal)

Social security

Unemployment insurance

Medical or other insurance

Union or other dues

Retirement or pension fund

Savings plan

Other (Specify): Business expenses, materials, supplies, commissions paid, exhibit fees, travel expenses

Total deductions

unkn.	300.
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0000436

\$	\$ 300.
----	---------

(c) Net monthly income

\$ 3,000.	\$ 200.
-----------	---------

Form 1285-10-75

FINANCIAL DECLARATION

1285-50

RA000793

ARA00436

PART I. PROPERTY STATEMENT

☐ There is no property subject to disposition by the court in this proceeding.

☐ All property otherwise subject to disposition by the court in this proceeding has been disposed of by written agreement of the parties or stipulation made in open court.

☒ The following described property is subject to disposition by the court in this proceeding:

Asset/Obligation	Value of asset	Amount of obligation
Dwelling house - 11101 Amigo Ave., Northridge, CA	48,000.	23,700.
Digital Nutronics Corp. (close corp. of husband and wife)		
6 computer systems and parts	unk.	-0-
Patents - per attached list	unk.	2,000
Furniture & appliances	2,000.	-0-
1963 Chevrolet, Lic. # KIE618 - 2 dr.	100.	-0-
1967 Chevrolet, Lic. # UDE767 - 4 dr.	500.	-0-
Uncashed checks held by husband for services rendered - use list attached		
20 shares Teledyn stock	450.	-0-

☐ The following described separate property is subject to confirmation by the court in this proceeding:

Asset/Obligation	Value of asset	Amount of obligation
	\$	\$

0000437

Name, Address and Telephone No. of Applicant  
**GERMINE TRAUBER, ESQ**  
**100 South BURNSIDE, AL**  
**LOS ANGELES, CALIFORNIA**

RESIDENT  
Attorney for **PETITIONER**

**FILED**

SEP 8 - 1975

CLARENCE E. CADILL, County Clerk

BY F. BREITNER, DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF **LOS ANGELES**

In the marriage of

Petitioner: **PRISCILLA L. HYATT**

and

Respondent: **GILBERT D. HYATT**

CASE NUMBER

☐ PETITIONER'S ☒ RESPONDENT'S

FINANCIAL DECLARATION

Husband: **GILBERT D. HYATT** Dated

Age **37** Social Security No. **069-30-9999**

Occupation: **CONSULTANT**

**(ENGINEERING)**

Wife: **PRISCILLA L. HYATT**

Age **35** Social Security No. **548-56-7142**

Occupation **FULL TIME COMMERCIAL**

**ARTIST and PROMOTER**

PART A: INCOME AND EXPENSE STATEMENT

(a) Gross monthly income from:

Salary and wages (including commissions, bonuses and overtime) payable

(monthly/weekly/etc.)

Pensions and retirement

Social Security

Disability and unemployment insurance

Public assistance (welfare, AFDC payments, etc.)

Child/spousal support re prior marriage

Dividends and interest

Rents

All other sources (Specify)

Total monthly income

(b) Itemize deductions from gross income

Income taxes (state and federal)

Social security

Unemployment insurance

Medical or other insurance

Union or other dues

Retirement or pension fund

Charitable

Other

Husband

Wife

0000428

RA000795

ARA00438

PART B. PROPERTY STATEMENT

- ☐ There is no property subject to disposition by the court in this proceeding.
- ☐ All property otherwise subject to disposition by the court in this proceeding has been disposed of by written agreement of the parties or oral stipulation made in open court.
- ☒ The following described property is subject to disposition by the court in this proceeding:

Asset/Obligation	Value of asset	Amount of obligation
Dwelling 11101 Arigo Ave. NORTHRIDGE	\$ 60,000 <sup>00</sup>	\$ 23,000 <sup>00</sup>
Business { Computer system 37 Patents applications and patents Licensing & Patent Attorneys }	15,000 <sup>00</sup> (30,000 <sup>00</sup> )	
Household Effects	unknown	none
Common Area Telephon. stat	200 <sup>00</sup>	none
1963 Chevrolet Lic. & IE 618	50 <sup>00</sup>	none
1967 " Lic. & UOE 767	100 <sup>00</sup>	none
Wardrobe & Linen	19,000 <sup>00</sup>	none
Car (held by Rebtower)	5,000 <sup>00</sup>	none
Picture (Adair's display & supplies	17,000 <sup>00</sup>	

- ☐ The following described separate property is subject to confirmation by the court in this proceeding:

Asset/Obligation	Value of asset	Amount of obligation
	\$	\$

None

0000439

Name, Address and Telephone No. of Attorney(s)

ROBERT S. GIBBS, ESQ.  
15760 Ventura Blvd., St. 700  
Encino, California 91436  
986-1950

Space Below for Use of Clerk Only

**FILED**

AUG 25 1975

J. L. Smith, County Clerk  
J. Campbell  
BY C. CUNDELL, DEPUTY

Attorney(s) for Petitioner

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

In re the marriage of

Petitioner: PRISCILLA L. HYATT

and

Respondent: GILBERT P. HYATT

CASE NUMBER NWD 55911

☒ PETITIONER'S ☐ RESPONDENT'S

FINANCIAL DECLARATION

Husband: Gilbert P. Hyatt  
Age: 37 Social Security No.: 069-30-9999  
Occupation: Engineer

Dated:

Wife: Priscilla L. Hyatt  
Age: 35 Social Security No.: 548-56-7142  
Occupation: Housewife- part time artist

PART A: INCOME AND EXPENSE STATEMENT

(a) Gross monthly income from:

Salary and wages (including commissions, bonuses and overtime) payable  
Pensions and retirement  
Social security  
Disability and unemployment insurance  
Public assistance (welfare, AFDC payments, etc.)  
Child/spousal support to prior marriage  
Dividends and interest  
Rents  
All other sources (Specify)

Husband	Wife
\$ 3,000.	\$ 500.
\$ 3,000.	\$ 500.

Total monthly income

(b) Itemize deductions from gross income:

Income taxes (state and federal)  
Social security  
Unemployment insurance  
Medical or other insurance  
Union or other dues  
Retirement or pension fund  
Savings plan  
Other (Specify) Business expenses, materials,  
supplies, commissions paid, exhibit fees,  
travel expenses

unkn.	300.
\$	\$ 300.
\$ 3,000.	\$ 200.

Total deductions

(c) Net monthly income

0000440

1285.50

RA000797

ARA00440

PART 1. PROPERTY STATEMENT

☐ There is no property subject to disposition by the court in this proceeding.

☐ All property otherwise subject to disposition by the court in this proceeding has been disposed of by written agreement of the parties or stipulation made in open court.

☒ The following described property is subject to disposition by the court in this proceeding:

Asset/Obligation	Value of asset	Amount of obligation
Dwelling house - 11101 Amigo Ave., Northridge, CA	48,000.	23,700.
Digital Nutronics Corp. (close corp. of husband and wife)		
6 computer systems and parts	unk.	-0-
Patents - per attached list	unk.	2,000
Furniture & Appliances	2,000.	-0-
1963 Chevrolet, Lic. # KIE618 - 2 dr.	100.	-0-
1967 Chevrolet, Lic. # UDE767 - 4 dr.	500.	-0-
Uncashed checks held by husband for services rendered - use list attached		
20 shares Teledyn stock	450.	-0-

☐ The following described separate property is subject to confirmation by the court in this proceeding:

Asset/Obligation	Value of asset	Amount of obligation
	\$	\$

ROBERT W. BING

0000441



Name, Address and Telephone No. of Petitioner  
**GERARD E. TRAUBUELLER, ESQ**  
**100 South BURNSIDE, A/C**  
**LOS ANGELES, CALIFORNIA**

**RESPONDENT**  
Attorney for **PETITIONER**

FILED

SEP 8 - 1975

CLARENCE E. CABELL, County Clerk

BY F. BREITNER, DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF **LOS ANGELES**

In re the marriage of

Petitioner: **PRISCILLA L. HYATT**

and

Respondent: **GILBERT D. HYATT**

CASE NUMBER

☐ PETITIONER'S ☒ RESPONDENT'S

FINANCIAL DECLARATION

Husband: **GILBERT D. HYATT** Dated  
Age **37** Social Security No. **069-30-9999**  
Occupation: **CONSULTANT**  
**(ENGINEERING)**

Wife: **PRISCILLA L. HYATT**  
Age **35** Social Security No. **548-56-7142**  
Occupation: **FULL TIME COMMERCIAL**  
**ARTIST and PROMOTER**

PART A: INCOME AND EXPENSE STATEMENT

(a) Gross monthly income from:

Salary and wages (including commissions, bonuses and overtime) payable

(month/monthly/etc.)

Pensions and retirement

Social Security

Disability and unemployment insurance

Public assistance (welfare, AFDC payments, etc.)

Child/spousal support re prior marriage

Dividends and interest

Rents

All other sources: (Specify)

Total monthly income

Husband

Wife

\$

\$

\$

\$

\$

\$

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(b) Itemize deductions from gross income

Income taxes (state and federal)

Social security

Unemployment insurance

Medical or other insurance

Union or other dues

Engagement or pension fund

Charitable contributions

Gift taxes

Other

Other

Other

Other

Other

Other

Other

Other

Other

Other

Other

Other

Other

Other

Other

RA000799

ARA00442

PART 2. PROPERTY STATEMENT

- ☐ There is no property subject to disposition by the court in this proceeding.
- ☐ All property otherwise subject to disposition by the court in this proceeding has been disposed of by written agreement of the parties or oral stipulation made in open court.
- ☒ The following described property is subject to disposition by the court in this proceeding:

Asset/Obligation	Value of asset	Amount of obligation
Dwelling 11101 AMIGO Ave. NORTHRIDGE	\$ 60,000 <sup>00</sup>	\$ 23,000 <sup>00</sup>
Business (Computer system 37 Patents applications and patents Liabilities, & Patent Attorney)	15,000 <sup>00</sup>	(30,000 <sup>00</sup> )
Household effects	unknown	none
20 Common Shares Telcelm stock	200 <sup>00</sup>	none
1963 Chevrolet 2 HIE 618	50 <sup>00</sup>	none
1967 Lincoln 2 UDE 767	100 <sup>00</sup>	none
World Savings & Loan	19,000 <sup>00</sup>	none
Cash (held by Petitioner)	5,000 <sup>00</sup>	none
Patent (Patent supply & supplies)	17,000 <sup>00</sup>	none

- ☐ The following described separate property is subject to confirmation by the court in this proceeding:

Asset/Obligation	Value of asset	Amount of obligation
	\$	\$

None

0000443

10

<p>ATTORNEY FOR PARTY WITHOUT ATTORNEY: <b>NEAL RAYMOND HERSH, ESQ.</b>          LAW OFFICES OF NEAL RAYMOND HERSH          9100 WILSHIRE BLVD. SUITE 852 WEST TOWER          BEVERLY HILLS, CA 90212          ATTORNEY FOR RESPONDENT: <b>Petitioner</b></p> <p>SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES          STREET ADDRESS: <b>6230 SYLMAR AVENUE</b>          MAILING ADDRESS: <b>SAME</b>          CITY AND ZIP CODE: <b>VAN NUYS, CA 91401</b>          JUDICIAL DISTRICT: <b>NORTHWEST DISTRICT</b></p> <p>PLAINTIFF: <b>PRISCILLA MAYSTEAD aka PRISCILLA L. HYATT</b>          RESPONDENT/DEFENDANT: <b>GILBERT P. HYATT</b></p> <p>NOTICE OF MOTION <input type="checkbox"/> MODIFICATION  <input type="checkbox"/> Child Custody <input type="checkbox"/> Visitation <input type="checkbox"/> Injunctive Order  <input type="checkbox"/> Child Support <input type="checkbox"/> Spousal Support <input checked="" type="checkbox"/> Other (specify):  <input type="checkbox"/> Attorney Fees and Costs <b>TO SET VACATE JUDGMENT AND MARITAL SETTLEMENT AGREEMENT</b></p>	<p>TELEPHONE NO.: <b>(310) 550-7396</b></p> <p style="text-align: center;"><b>FILED</b></p> <p style="text-align: center;"><b>SEP 25 1992</b></p> <p style="text-align: center;">JAMES H. ROMERO, CLERK          RY. E. ROMERO, DEPUTY</p> <p>CASE NUMBER:  <b>NWD 55911</b></p>
--	--

1. To (name) RESPONDENT, GILBERT P. HYATT
2. A hearing on this motion for the relief requested in the attached application will be held as follows  
 If child custody or visitation is an issue in this proceeding, Civil Code section 4607 requires mediation before or concurrently with the hearing below

a. date 11/10/92 time 11:00 AM in ☐ dept. 5 ☐ rm.

b. Address of court ☒ same as noted above ☐ other (specify)

3. Supporting attachments

- a. Completed Application for Order and Supporting Declaration and a blank Responsive Declaration
- b. ☐ Completed Income and Expense Declaration and a blank Income and Expense Declaration
- c. ☐ Completed Property Declaration and a blank Property Declaration

d. ☒ Points and authorities

e. ☒ Other (specify): **DECLARATION OF PRISCILLA MAYSTEAD (aka) HYATT**

(TYPE OR PRINT NAME)

*Neal Raymond Hersh*  
 (SIGNATURE)

**ORDER SHORTENING TIME**

4. ☐ Time for ☐ service ☐ hearing is shortened. Service shall be on or before (date):

Date

JUDGE OF THE SUPERIOR COURT

Notice: If you have children from this relationship, the court is required to order payment of child support based on the income of both parents. The amount of child support can be large. It normally continues until the child is 18. You should supply the court with information about your finances. Otherwise the child support order will be based on the information supplied by the other parents.

You do not have to pay any fee to file responsive declaration in response to this order to show cause (including a completed income and expense declaration that will show your finances). The original of the responsive declarations must be filed with the court and a copy served on the other party at least five court days before the hearing date.

Please request for Proof of Service by Mail

Form Adopted by Rule 1205 in  
 Judicial Branch of California  
 July 10 (Rev. July 1, 1992)

**NOTICE OF MOTION**  
 (Family Law)

Gov. Code § 26009

0000444

RA000801

ARA00444

MARRIAGE OF (last name, first name of the  
HYATT, PRISCILLA & GILBERT

CASE NUMBER

NWD 55911

(THIS IS NOT AN ORDER)

☒ Petitioner ☐ Respondent ☐ Claimant requests the following orders be made:

☐ CHILD CUSTODY

☐ To be ordered pending the hearing

a. Child (name and age):

b. Request custody to (name):

c. ☐ Modify existing order

(1) filed on (date):

(2) ordering (specify):

d. ☐ Petitioner ☐ Respondent shall have the temporary physical custody of the minor children.

2. ☐ CHILD VISITATION

☐ To be ordered pending the hearing

a. ☐ Recreational

b. ☐ Other (specify):

c. ☐ Neither party shall remove the minor child or children of the parties

d. ☐ Modify existing order

(1) filed on (date):

(2) ordering (specify):

(1) ☐ from the State of California (2) ☐ other (specify):

3. ☐ CHILD SUPPORT (if support is awarded, a wage assignment order will be issued)

a. Child

NAME AND AGE

b. Support request

Monthly amount

\$

c. ☐ Modify existing order

(1) filed on (date):

(2) ordering (specify):

4. ☐ SPOUSAL SUPPORT (if support is awarded, a wage assignment order will be issued)

a. ☐ Amount requested (monthly): \$

c. ☐ Terminate existing order

(1) filed on (date):

(2) ordering (specify):

b. ☐ Modify existing order

(1) filed on (date):

(2) ordering (specify):

5. ☐ ATTORNEY FEES AND COSTS a. ☐ Fees: \$

b. ☐ Costs: \$

6. ☐ RESIDENCE EXCLUSION AND RELATED ORDERS

☐ To be ordered pending the hearing

☐ Petitioner ☐ Respondent must move out immediately and must not return to the family dwelling at (address):

☐ taking only clothing and personal effects needed until the hearing.

7. ☐ STAY-AWAY ORDERS

☐ To be ordered pending the hearing

a. ☐ Petitioner ☐ Respondent must stay at least \_\_\_\_\_ yards away from applicant and the following places:

(1) ☐ applicant's residence (address optional):

(2) ☐ applicant's place of work (address optional):

(3) ☐ the children's school (address optional):

(4) ☐ other (specify):

b. ☐ Contacts relating to pickup and delivery of children pursuant to a court order or a stipulation of the parties arrived at during mediation shall be permitted

8. ☐ RESTRAINT ON PERSONAL CONDUCT

☐ To be ordered pending the hearing

☐ Petitioner ☐ Respondent

a. ☐ shall not molest, attack, strike, threaten, sexually assault, or otherwise disturb the peace of the other party  
☐ and any person under the care, custody, and control of the other party

b. ☐ shall not contact or telephone the other party

☐ except that peaceful contacts relating to minor children of the parties shall be permitted.

(Continued on reverse)

Form Adopted by Rule 1285-20  
Judicial Council of California  
1285-20 (Rev. June 1, 1990)

APPLICATION FOR ORDER  
AND SUPPORTING DECLARATION  
(Family Law)

Civil Code § 4259

0000445

RA000802

ARA00445

1                                    DECLARATION OF PRISCILLA MAYSTEAD

2                                    IN SUPPORT OF PETITIONER'S MOTION TO SET ASIDE JUDGMENT

3 I, PRISCILLA MAYSTEAD, declare as follows:

4                                    1. I am the petitioner in the above-entitled action and  
5 submit this Declaration in support of my Motion To Set Aside And  
6 Vacate the Judgment that was entered on March 25, 1976 and the  
7 Marital Settlement Agreement which was incorporated therein.

8                                    2. I request that this Judgment and incorporated Marital  
9 Settlement Agreement be set aside, except for the provision  
10 dissolving the marriage, upon the grounds that the said Judgment and  
11 Agreement were obtained by extrinsic and intrinsic fraud, that they  
12 were based upon the willful and fraudulent representations of the  
13 Respondent, his counsel, and my counsel, that they were based on the  
14 breach of fiduciary duties on the part of the Respondent, that they  
15 were extremely inequitable.

16                                   3. The facts herein stated are known to me of my own  
17 personal knowledge and, if called and sworn as a witness, I could  
18 and would competently testify as to the truthfulness thereto except  
19 as to the matters which may be stated upon my information and belief  
20 and, as to those matters, I believe them to be true.

21                                   4. Respondent and I were married on June 14, 1959. In  
22 1966, Respondent worked for Teledyne, but wanted to work on his own  
23 inventions. In 1968, he quit his job and worked for one year on his  
24 inventions. He then formed Micro Computer, Inc., where he developed  
25 the microprocessor. He received \$5,000 from John Salzer, \$60,000  
26 from Irving Hirsch, and about \$250,000 in investments found by  
27 Stuart Lubitz (which included Noyce & Moore, the founders of Intel),  
28 an attorney who also helped Respondent file incorporation papers.

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1 Respondent applied for the patent over the microprocessor in  
2 December of 1970. However by 1971, all of the money provided by  
3 Hambrecht & Quist, (a venture capital firm which Respondent utilized  
4 to raise money) was gone. Through Stuart Lubitz, the investors  
5 tried to persuade Respondent to give up the control of the company  
6 and technology. When he refused, the investors withheld their  
7 funding. I am informed and believe the investors, including Lubitz,  
8 leaked the details of the computer chip microprocessor to others in  
9 the industry. Intel and Texas Instrument have since received credit  
10 for developing the computer chip. I am informed and believe and  
11 based upon such information and belief allege that Lubitz worked as  
12 a patent attorney for Intel for some time.

13 5. Meanwhile, I gave birth to our children, David, Dan,  
14 and Beth. Respondent virtually never assisted me in rearing the  
15 children but rather made incredible demands on me even though I was  
16 exhausted from taking care of the children after they were born.  
17 Respondent refused to help me with David after he was born on 9-5-  
18 60, even though I was driving 100 miles a day to try to finish my  
19 degree at Berkeley. Respondent made me feel as though David was my  
20 "problem" rather than his responsibility. Danny was born on 8-4-63  
21 after I was in a terrible car accident and had sustained serious  
22 permanent injuries. After my case was settled, my attorney told me  
23 that my doctor thought I had a horrible marriage and that he was  
24 concerned for my future. When I put the money from the insurance  
25 settlement in my own name (as my separate property as my attorney  
26 advised me to do), Respondent became so enraged that he beat me up  
27 (I was still recovering from the car accident at the time). I then  
28 put the money from the settlement in our joint account. After Beth

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1 was born on 9-16-66, I had a massive hemorrhage in delivery and was  
2 very ill. Beth was also very ill the first year with two bouts of  
3 pneumonia and many ear infections. Between being so weak from the  
4 hemorrhage, still suffering the permanent effects from the accident  
5 and taking care of three small children, I decided to quit school (I  
6 had been taking classes at UCLA, to try to finish my degree). When  
7 the money for the company ran out, I told Respondent that we had no  
8 money to put food on the table, Respondent once again became enraged  
9 and beat me up.

10 6. Living with Respondent was like living with a volcano.  
11 I never knew what small thing would set him off and make him beat  
12 me. Many times I called the police but they would not do anything.  
13 Respondent would beat me up on numerous occasions and then rape me.  
14 On at least one occasion, Respondent was beating our son, David, so  
15 I tried to stop him. He put my head through the wall instead. I  
16 begged him to get counseling, but when we did speak with a counselor  
17 on the phone (which was all Respondent would consent to do), the  
18 counselor told me to get away from him--that he was hopeless and  
19 dangerous. The only thing that scared me more than Respondent was  
20 poverty. Respondent repeatedly told me, "Your time is only worth 25  
21 cents an hour and my time is worth 25 dollars, so you should do what  
22 I tell you." For a long time, I believed him. The rapes, the  
23 physical abuse and the emotional abuse escalated until Respondent  
24 completely killed any sense of self worth that I had.

25 7. On or about July 1, 1975, I awoke early to make  
26 Respondent breakfast. Right after breakfast, Respondent left for a  
27 business appointment. I sat down to have a cup of coffee when he  
28 came back raging into the house. He overturned the kitchen table

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1 (which was full of breakfast dishes) and pinned me to the wall with  
2 the table. He then started to beat me on the head with a heavy  
3 metal stadium seat while screaming, "I am going to kill you!" I had  
4 no idea what the problem was. Then he yelled, "Someone left a map  
5 unfolded on the back seat of the car. I am going to kill you. I  
6 told you to keep the car clean!" Two of our minor children, David  
7 and Beth, who were ages 15 and 11 respectively at the time, had run  
8 into the bathroom to hide. The kids wanted to help me but David  
9 kept whispering to Beth to stay quiet or Respondent would kill them  
10 too. Three years later, Beth told me that she was the one who left  
11 the map unfolded on the car seat. I had to tell this poor child  
12 that it was not her fault, that her father was a sick man and it was  
13 not normal to become so unglued over such a small thing.  
14

8. As soon as Respondent stopped raging and left for his appointment, I took Beth and David, picked up our third minor child, Danny, from school, and went to a lawyer, Mr. Robert Gibbs. My friend, Irv Sokol, had recommended Mr. Gibbs to me. I paid Mr. Gibbs the \$1,000 retainer that he demanded and asked him to file a divorce. Mr. Gibbs told me to empty the bank accounts (there was about \$20,000) and put the money into an account in my own name, which I did. I also told Mr. Gibbs that I had about \$5,000 squirreled away which no one knew about. Then I went to stay with my sister, Kathy, with the children for a week.

24 9. I had saved the \$5,000 because I had been wanting to  
25 divorce Respondent for two years prior to when I saw Mr. Gibbs. I  
26 had approached other attorneys but no one would do anything unless  
27 I had money. I even called social services and they told me that  
28 there was a two year waiting list for restraining orders in cases of

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1 domestic violence. So for those two years, as the violent episodes  
2 increased, I had been hiding small amounts of money so I could file  
3 for divorce. I was terrified that he would kill me or the children,  
4 especially David.

5 10. After a week, Mr. Gibbs told me that if I did not  
6 move back into the house, I would lose it because it would mean that  
7 I had abandoned it. The house represented the only chance I had to  
8 support my kids because the payments were so low--about \$200 a  
9 month. I felt it was the only way I could feed and support the  
10 children. I really did not know if I could make a living and I was  
11 terrified of what would become of me and the children. Respondent  
12 had completely brainwashed me to believe that I was worthless and I  
13 had zero self-esteem. I was also terrified of my precarious health  
14 because of my injuries. So, I moved back into the house even though  
15 I was still terrified of Respondent.

16 11. When we went to court for the first time, Mr. Gibbs  
17 would not allow me in the courtroom. He told me I would not make a  
18 good impression, so I waited in the hallway. He told me that he  
19 asked Judge Milton Most to remove Respondent from the house. He  
20 told me that the judge said that he could not do that; that a man's  
21 home is his castle. Mr. Gibbs further said that he protested to the  
22 judge and explained that Respondent had repeatedly beat me, raped me  
23 and tried to kill me. He said that the judge replied that he should  
24 bring Respondent back after he murdered me, and he would try him for  
25 murder. Mr Gibbs then told me that I had to stay there with  
26 Respondent. This was a terrible situation because I was terrified  
27 of Respondent, he kept demanding sex and I was afraid to refuse. I  
28 finally was able to convince Respondent to move out by saying that

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1 maybe we could talk out our problems better that way. I even found  
2 his apartment.

3 12. When we went back to court for child support, the  
4 judge ordered Mr. Gibbs to give me \$500 out of my share of the  
5 savings, which had been impounded by the judge, to support me and  
6 the children. Respondent was also given \$500 out of his share of  
7 the savings to live on even though he was working and making \$25 an  
8 hour. Incidentally, Mr. Gibbs' bill for the court appearance was \$500  
9 which I had to pay right away. Needless to say that left me nothing  
10 to live on except my savings. I also asked the court for money for  
11 a van. Respondent had taken the better car and left me with a  
12 twelve year old broken down car that had bad tires and brakes. I  
13 needed a van to conduct my fledgling art business to drive long  
14 distances for some of my shows at odd hours. This was the only way  
15 I had to earn a living. I was given \$1800 by the court for the  
16 purchase of the van, so Respondent was given \$1800 as well. I asked  
17 Respondent to co-sign a loan to buy the van, to which he agreed  
18 since all the credit was in his name. After I purchased the van, he  
19 reneged and left me in the position where I had to pay the money or  
20 lose my deposit. I dug into my \$5,000 and paid for the van.  
21 Respondent then demanded half of what I had paid and half of any  
22 other money I had. I could not believe his greed. He told me that  
23 he was going to starve me out, that I deserved nothing, and that  
24 everything was his.

25 13. During this time, we had gone to court several times  
26 for settlement purposes. Each time Respondent would throw a temper  
27 tantrum, nothing would get resolved, and the court would give each  
28 of us \$500 from our savings. Of course, my \$500 went to Mr. Gibbs.

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2 his an apartment.

3  
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5 judge ordered Mr. Gibbs to give me \$500 out of my share of the  
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27 for settlement purposes. Each time Respondent would throw a temper  
28 tantrum, nothing would get resolved, and the court would give each  
29 of us \$500 from our savings. Of course, my \$500 went to Mr. Gibbs.

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1 Respondent received his share even though he had a steady income.  
2 I believe that this was his clever way to drain me and to avoid  
3 paying child support. Needless to say, I was being quickly drained  
4 and my fledgling art business could certainly not support me and our  
5 children.

6  
7 14. One day, after Respondent moved from our home, Mr.  
8 Gibbs asked me to come to his office in the late afternoon. After  
9 discussing my divorce situation, he invited me to go out with him  
10 for a drink at the Fireside Inn across the street from his office in  
11 Encino. Later we went back to his office and he successfully  
12 seduced me. I was very vulnerable and felt that I was totally  
13 frigid because Respondent used to rape me if I said I did not want  
14 sex, so consequently I could not respond to him. My sexual feelings  
15 had been in a deep freeze for so long that I was amazed that I could  
16 respond to Mr. Gibbs. He was very attractive and attentive and I  
17 fell completely in love with him. I had had no kindness in so long  
18 that I could not remember what it was like to be treated like a  
19 woman. The affair went on for several months. One time he came to  
20 the house and the rest of the time I would meet him at his office  
21 after hours.

22 15. After the second time we had a sexual encounter, Mr.  
23 Gibbs introduced me to his private investigator who he said was  
24 going to do some work for him. His investigator, a very tall, large  
25 man, invited me out for dinner. I was flattered and accepted. He  
26 told me he lived across the street from the Fireside Inn and asked  
27 if I would meet him at his apartment and we would go to dinner at  
28 the Inn. I did not see anything wrong with this (I was very naive,  
29 having been married for 16 years), so I went to his apartment. He

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1 became very amorous and when I resisted his advances, he tried to  
2 force himself on me and tear my clothes off. Apparently, Mr. Gibbs  
3 had told him of our encounters and offered my name as an "easy  
4 woman". I hit him on the head with a lamp and ran, leaving my  
5 jacket there. I ran to my car and locked myself in. He came out,  
6 apologized, and returned my jacket. I was shaking and hysterical.  
7 This certainly did not do much for my self-esteem.

8 16. Mr. Gibbs and I continued our relationship for a  
9 several of months, meeting at first twice a week. He told me that  
10 he had married his wife because she was pregnant, that they had a  
11 terrible marriage, and that the reason he stayed was because of his  
12 wonderful daughter whom he loved very much. He also told me that  
13 now that he was over forty that he was worried about his sexuality,  
14 that he was having a problem getting an erection. He said that I  
15 could help him with this. Each time, we made love on the brownish  
16 leather couch or on the floor of his office. He would lock the door  
17 and convince me not to worry about anyone walking in. It got to the  
18 point where whenever I met with him to talk about my divorce, it was  
19 understood that we would be making love afterwards.

20 17. One evening, after making love, he told me that he  
21 could not see me for a week--that he was busy. Then he told me one  
22 evening that he could not see me anymore because he was interested  
23 in someone else. I was devastated after Mr. Gibbs broke off our  
24 relationship. I thought I had found both an attorney and a  
25 boyfriend. I thought I was in love with him. After the break-up I  
26 became very depressed.

27 18. Thereafter, Mr. Gibbs continued as my attorney but he  
28 seemed to lose interest in the case. When I told him that I was

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1 worried about child support, that Respondent had refused to work  
2 during much of the prior five years, he replied that the court could  
3 not make him work. When I told him that I knew nothing about  
4 Respondent's patents, he said that he thought it was a big joke,  
5 that they were worthless. He was more concerned that the patent  
6 attorney Greg Roth of Fraser and Bogucki, wanted the bank account  
7 and proceeds from the sale of the house to satisfy Respondent's  
8 legal bills, which were approximately \$10,000. He also told me that  
9 I could be forced to sell the house. Meanwhile, we kept going back  
10 to court, and Mr. Gibbs told me he was powerless since Respondent  
11 was impossible to deal with. I felt abandoned by Mr. Gibbs, both  
12 legally and emotionally.

13 19. During one of the hearings, Respondent and I talked  
14 in the hall and I asked him what he wanted. He said, "I want  
15 everything," including for me to sign a blank income tax return. He  
16 said he would consider letting me keep the house if I gave him  
17 everything else, but we would have to pay the patent attorney what  
18 he wanted. Of course, since I had very little available money, this  
19 was impossible without selling the house.

20 20. Mr. Gibbs then set up a meeting with Greg Roth of  
21 Fraser and Bogucki, Respondent and myself. My attorney, Mr. Gibbs  
22 offered to make a deal with Fraser and Bogucki such that my share of  
23 the savings account would be given to them if they would not hold me  
24 responsible for any remaining portion of the remainder of their  
25 legal fees for services rendered in connection with Respondent's  
26 patent work. They refused this offer. They stated that they wanted  
27 to remain working for Respondent and that they believed in him.  
28 They told me that they would look only to Respondent for the payment

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1 of their bills, if I would sign away all of my right, title and  
2 interest in our joint patent rights. In other words, if I would  
3 give up all of my patent rights, they would sign a waiver absolving  
4 me of any responsibility for their outstanding legal fees.

5 21. As one could clearly imagine, I was very emotionally  
6 distraught at this time. Respondent had degraded and abused me  
7 throughout the entirety of our marriage. I was too frightened for  
8 years to leave Respondent. Once I gathered my strength to leave  
9 him, I hired Mr. Gibbs only to have him seduce me and commence a  
10 sexual affair with me. I fell in love with Mr. Gibbs. Thereafter,  
11 Mr. Gibbs abruptly ended our relationship. We were still in the  
12 middle of our divorce proceeding. I was further demoralized by the  
13 breakup of my affair with Mr. Gibbs. I was abandoned by my husband  
14 and abandoned, both legally and emotionally, by my divorce attorney.  
15 Of course, while all of this was going on, I was trying to protect  
16 myself and my children. I wanted to maintain the family residence  
17 for the children. Respondent told me that the only way I could keep  
18 the house was if I agreed to release my rights to the patents.

19 22. Mr. Gibbs told me the patents were worthless. To my  
20 knowledge, Mr. Gibbs did not, at any time, investigate the value of  
21 the patents in any way, shape or form. At no time did he or anyone  
22 else explain to me the potential value of the patents, nor did any  
23 one explain to me that it was possible that I could still end up  
24 with the house without releasing my rights to the patents. Mr.  
25 Gibbs kept telling me that the patents were worthless and that he  
26 could not do anything for me which was better than what Respondent  
27 was offering (i.e. my being awarded the house in exchange for the  
28 giving up all my right, title and interest in and to the patents).

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1 Respondent threatened me that if I did not agree to this settlement,  
2 he would spend every last dime that he had to make sure that the  
3 house would be sold and that the children and I would be out on the  
4 street homeless and penniless.

5 23. With Respondent's threats and Mr. Gibbs' coaxing, I  
6 agreed to release my rights to the patents so I could get the house.  
7 Had anyone told me that I would not lose the house if I did not sign  
8 the release, I would not have released my rights to the patents.

9 24. As a further example of Respondent's deceit,  
10 Respondent told me that he had a judgment against him for \$5000  
11 which he insisted on being paid out of the savings. He signed over  
12 the house to me and I was to give him the majority of our savings to  
13 pay my share of the judgment. I later found out that he never paid  
14 the judgment.

15 25. It was also agreed that I would receive \$700.00 per  
16 month in child support and \$50.00 per month in alimony. No  
17 investigation was made as to an appropriate level of support or as  
18 to Respondent's true income. There was no provision made for cost  
19 of living increases. A copy of the Judgment setting forth our  
20 agreement is attached hereto and incorporated herein by this  
21 reference as Exhibit "1".

22 26. It is also noteworthy that, at the time, the house  
23 had not appreciated significantly in value as real estate prices  
24 were fairly stagnant. Although the house was awarded to me at a  
25 value of \$10,000.00 that was its GROSS value. The equity in the  
26 home was then approximately \$15,000.00. My attorney Mr. Gibbs had  
27 not made any attempt or effort to appraise the house nor did he tell  
28

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1 as I was to receive the house at a net value rather than a gross  
2 value.

3 27. The fact that Respondent lied to me concerning the  
4 potential value of the patents is, in my opinion, unconscionable.  
5 Furthermore, Mr. Gibbs made no effort to investigate or appraise the  
6 value of the patents. I am not computer literate so I certainly did  
7 not know their value. My education was in Chemistry and Math, not  
8 in computers. I was desperate to feed and support my children, so  
9 I signed the agreement. My husband came to the house and removed  
10 everything that he wanted, including all the paper work relative to  
11 his business finances as well as our personal finances, including  
12 all my papers. He took all the furniture he wanted, etc. He also  
13 took the old blue Chevrolet, even though that was supposed to be  
14 mine. In short, Respondent was dealing with me as he had throughout  
15 our marriage, bullying and abusing me. My attorney was not  
16 interested in doing any investigation or analysis or otherwise  
17 protecting my interest throughout the entirety of divorce. I felt  
18 alone and abandoned and I had absolutely no choice but to sign the  
19 agreement.

20 28. Respondent had been litigating over the rights to the  
21 patent over the microprocessor and other inventions until the U.S.  
22 Patent and Trademark Office finally awarded him the patent rights.  
23 The first I heard of Respondent winning any rights over the patent  
24 was on September 16, 1991, when he gave a copy of the patent (a  
25 lengthy document that has small, detailed descriptions of the  
26 invention) to my daughter Beth for her birthday. I did not know the  
27 impact or effect of the patent until I saw an article in the L.A.  
28 Times on November 7, 1991. A copy of this article is attached and

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1 Respondent threatened me that if I did not agree to this settlement,  
2 he would spend every last dime that he had to make sure...

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1 incorporated herein as "Exhibit 2". The article indicated that  
2 Respondent could receive "tens of millions of dollars" for the  
3 royalties. In an article in the Investor's Business Daily, on March  
4 27, 1992, I read that Respondent had thus far "amassed an estimated  
5 \$70 million in royalties from seven of the world's largest consumer  
6 electronic manufacturers, including Sony Corp. and N.V. Philips."  
7 A copy of said article is attached and incorporated herein as  
8 "Exhibit 3". I am also informed and believe that Intel owes  
9 Respondent so much money, that Respondent will now own the entire  
10 company! Until November of 1991, I had no idea that the patent  
11 would be worth so much money.

12 29. I had placed my confidence in Mr. Gibbs, who abused  
13 that confidence by having a sexual affair with me and shortly  
14 thereafter abandoning me in the pursuit of my legal rights. I had  
15 been abused and deceived by Respondent whose physical and emotional  
16 abuse made me succumb to his demands. The money Respondent is  
17 receiving now is proceeds from OUR marital labor. While Respondent  
18 worked to develop his computer chip, I was his slave--the person who  
19 did everything for him, including feeding him, taking care of his  
20 children, receiving his physical strikes and emotional abuse, and  
21 providing a worn and tired body for his sexual demands. Due to the  
22 threats by Respondent and the nearly lack of representation on the  
23 part of my attorney, I was fraudulently deprived of millions of  
24 dollars.

25 30. A couple of years ago my son, David, was murdered by  
26 persons unknown. I alone have financed the majority of Beth's  
27 bachelor's degree except for a minimal contribution by Respondent,  
28 and now she would like to obtain a degree in physical therapy.

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1 Unfortunately I cannot afford to pay and Respondent refuses. Even  
2 though he has millions and millions of dollars, he refuses to  
3 contribute at all to Beth's education. The only thing he gave her  
4 was a birthday present last year--which was a copy of the patent!  
5 Only now is Respondent beginning to help Danny with his education  
6 financially.

7 31. Based on the foregoing, I respectfully request that  
8 the Court set aside those provisions of the Judgment of Dissolution  
9 and the Integrated Marital Property, Custody and Support Agreement  
10 dealing with property division and the rights to the patents applied  
11 for during the marriage.

12 I declare under penalty of perjury that the foregoing is  
13 true and correct. Executed this 16 day of September, 1992 at  
14 Beverly Hills, California.

15 *Priscilla Maystead*  
16 PRISCILLA MAYSTEAD  
17  
18  
19  
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1 incorporated herein as "Exhibit 2". The article indicated that

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Name, Address and Telephone No. of Attorney(s)

ROBERT S. GIBBS, ESQ.  
15760 Ventura Blvd., St. 700  
Encino, California 91436  
986-1950

Attorney(s) for Petitioner

Space Below for Use of Court Clerk Only

**FILED**

AUG 25 1975

JOHN L. LINDALL, County Clerk  
J. Campbell  
BY G. CAMPBELL, DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES

In re the marriage of

Petitioner: PRISCILLA L. HYATT

and

Respondent: GILBERT P. HYATT

CASE NUMBER NWD 55911

☒ PETITIONER'S ☐ RESPONDENT'S

FINANCIAL DECLARATION

Husband: Gilbert P. Hyatt  
Age: 37 Social Security No.: 069-30-9999  
Occupation: Engineer

Dated:

Wife: Priscilla L. Hyatt  
Age: 35 Social Security No.: 548-56-7142  
Occupation: Housewife- part time artist

PART A: INCOME AND EXPENSE STATEMENT

(a) Gross monthly income from:

Salary and wages (including commissions, bonuses and overtime) payable

Husband	Wife
\$ 3,000.	\$ 500.

Pensions and retirement

Social security

Disability and unemployment insurance

Public assistance (welfare, AFDC payments, etc.)

Child/spousal support re prior marriage

Dividends and interest

Rents

All other sources (Specify)

Total monthly income

\$ 3,000.	\$ 500.
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(b) Itemize deductions from gross income:

Income taxes (state and federal)

Social security

Unemployment insurance

Medical or other insurance

Union or other dues

Retirement or pension fund

Savings plan

Other (Specify) Business expenses, materials, supplies, commissions paid, exhibit fees, travel expenses

Total deductions

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\$	\$ 300.
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(c) Net monthly income

\$ 3,000.	\$ 200.
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PART I. PROPERTY STATEMENT

☐ None of the property subject to disposition by the court in this proceeding.

☐ All property otherwise subject to disposition by the court in this proceeding has been disposed of by written agreement of the parties or disposition made by the court.

☒ The following described property is subject to disposition by the court in this proceeding:

Asset/Obligation	Value of asset	Amount of obligation
Dwelling house - 11101 Amigo Ave., Northridge, CA	48,000.	23,700.
Digital Nutronics Corp. (close corp. of husband and wife)		
6 computer systems and parts	unk.	-0-
Patents - per attached list	unk.	2,000
Furniture & appliances	2,000.	-0-
1963 Chevrolet, Lic. # KIE618 - 2 dr.	100.	-0-
1967 Chevrolet, Lic. # UDE767 - 4 dr.	500.	-0-
Uncashed checks held by husband for services rendered - use list attached		
20 shares Teledyn stock	450.	-0-

☐ The following described separate property is subject to confirmation by the court in this proceeding:

Asset/Obligation	Value of asset	Amount of obligation
------------------	----------------	----------------------

0000437

RESPONDENT  
Petitioner

BY F. BREITNER, DEPUTY

in or the marriage of  
Priscilla L. Hyatt  
and  
Gilbert D. Hyatt

## FINANCIAL DECLARATION

Wife PRISCILLA L. HYATT  
Age 35 Social Security No. 548-56-9142  
Occupation FULLTIME COMMERCIAL  
ARTIST and PROMOTER

0000428

PART 2. PROPERTY STATEMENT

- ☐ There is no property subject to disposition by the court in this proceeding.
- ☐ All property otherwise subject to disposition by the court in this proceeding has been disposed of by written agreement of the parties or oral stipulation made in open court.
- ☒ The following described property is subject to disposition by the court in this proceeding:

Asset/Obligation	Value of asset	Amount of obligation
Dwelling 11101 AMIGO Ave NORTH RIDGE	\$ 60,000 <sup>00</sup>	\$ 23,000 <sup>00</sup>
Computer system		
27 Patents applications and potential liabilities & Patent Attorneys	15,000 <sup>00</sup>	(30,000 <sup>00</sup> )
Household effects	unknown	none
20 Common Stock Teladyn stock	200 <sup>00</sup>	none
1963 Chevrolet Lic # AIE 618	50 <sup>00</sup>	none
1967 " " Lic # UDE 767	100 <sup>00</sup>	none
World Savings & Loan	19,000 <sup>00</sup>	none
Cash (held by Plaintiff)	5,000 <sup>00</sup>	none
Artwork (Artist's supply & supplies)	17,000 <sup>00</sup>	

- ☐ The following described separate property is subject to confirmation by the court in this proceeding:

Asset/Obligation	Value of asset	Amount of obligation
	\$	\$

None

0000439





**PART A. PROPERTY STATEMENT**

☒ There is no property subject to disposition by the court in this proceeding.

☐ All property otherwise subject to disposition by the court in this proceeding has been disposed of by written agreement of the parties or disposition made in open court.

☒ The following described property is subject to disposition by the court in this proceeding:

Asset/Obligation	Value of asset	Amount of obligation
Dwelling house - 11101 Amigo Ave., Northridge, CA	48,000.	23,700.
Digital Nutronics Corp. (close corp. of husband and wife)		
6 computer systems and parts	unk.	-0-
Patents - per attached list	unk.	2,000
Furniture & appliances	2,000.	-0-
1963 Chevrolet, Lic. # KIE618 - 2 dr.	100.	-0-
1967 Chevrolet, Lic. # UDE767 - 4 dr.	500.	-0-
Uncashed checks held by husband for services rendered - use list attached		
20 shares Teledyn stock	450.	-0-

☐ The following described separate property is subject to confirmation by the court in this proceeding:

Asset/Obligation	Value of asset	Amount of obligation
------------------	----------------	----------------------

0000441

Name, Address and Telephone No. of Applicant  
**GERALD E. TRAQUER, ESQ**  
**100 South BURNSIDE, AL**  
**LOS ANGELES, CALIFORNIA**

Respondent  
Attorney for **DEFENDANT**

FILED

SEP 8 1975

CLARENCE E. CADILL, County Clerk

BY F. BREITNER, DEPUTY

SUPERIOR COURT OF CALIFORNIA, COUNTY OF **LOS ANGELES**

In re the marriage of

Petitioner: **PRISCILLA L. HYATT**

and

Respondent: **GILBERT O. HYATT**

CASE NUMBER

☐ PETITIONER'S ☒ RESPONDENT'S

FINANCIAL DECLARATION

Husband: **GILBERT O. HYATT** Dated

Age **37** Social Security No. **069-30-9999**

Occupation: **CONSULTANT**  
**(ENGINEERING)**

Wife: **PRISCILLA L. HYATT**

Age **35** Social Security No. **548-56-9142**

Occupation: **FULL TIME COMMERCIAL**  
**ARTIST and PROMOTER**

PART A: INCOME AND EXPENSE STATEMENT

(a) Gross monthly income from:

Salary and wages (including commissions, bonuses and overtime) payable

(weekly/monthly/yearly)

Pensions and retirement

Social Security

Disability and unemployment insurance

Public assistance (welfare, AFDC payments, etc.)

Child/spousal support re prior marriage

Dividends and interest

Rents

All other sources (Specify)

Total monthly income

(b) Itemize deductions from gross income

Income taxes (state and federal)

Social Security

Unemployment insurance

Medical or other insurance

Union or other dues

Retirement or pension fund

Other

Husband

Wife

0000442

RA000824

ARA00467

**PART 2. PROPERTY STATEMENT**

- ☐ There is no property subject to disposition by the court in this proceeding.
- ☐ All property otherwise subject to disposition by the court in this proceeding has been disposed of by written agreement of the parties or oral stipulation made in open court.
- ☒ The following described property is subject to disposition by the court in this proceeding:

Asset/Obligation	Value of asset	Amount of obligation
Dwelling 11101 AMIGO Ave NORTH RIDGE	\$ 60,000 <sup>00</sup>	\$ 23,000 <sup>00</sup>
Business (Computer system 27 Patents applications and patents Liabilities & Patent Attorney)	15,000 <sup>00</sup> (30,000 <sup>00</sup> )	
Household effects	unknown	none
20 Common Stock Telcom stock	200 <sup>00</sup>	none
1963 Chevrolet 2 HIE 618	50 <sup>00</sup>	none
1967 Buick Wildcat 2 UDE 767	100 <sup>00</sup>	none
World Savings & Loan	19,000 <sup>00</sup>	none
Cash (held by Rebtimer)	5,000 <sup>00</sup>	none
Notes (Artist supply & supplies)	17,000 <sup>00</sup>	

- ☐ The following described separate property is subject to confirmation by the court in this proceeding:

Asset/Obligation	Value of asset	Amount of obligation
	\$	\$

None

0000443

10

ATTORNEY FOR PARTY WITHOUT ATTORNEY (Filing and Address) <b>NEAL RAYMOND HERSH, ESQ.</b> <b>LAW OFFICES OF NEAL RAYMOND HERSH</b> <b>9100 WILSHIRE BLVD. SUITE 852 WEST TOWER</b> <b>BEVERLY HILLS, CA 90212</b> ATTORNEY FOR (Name) <b>Petitioner</b>		TELEPHONE NO.: (310) 550-7396 COURT USE ONLY <b>FILED</b> SEP 25 1992 JAMES H. ROMERO, CLERK RYAN ROMERO, DEPUTY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF LOS ANGELES OFFICE ADDRESS: 6230 SYLMAR AVENUE MAILING ADDRESS: SAME CITY AND ZIP CODE: VAN NUYS, CA 91401 JUDICIAL DISTRICT: NORTHWEST DISTRICT		
PLAINTIFF: <b>L. HYATT</b> PRISCILLA MAYSTEAD aka PRISCILLA		
DEFENDANT: <b>GILBERT P. HYATT</b>		
NOTICE OF MOTION <input type="checkbox"/> MODIFICATION <input type="checkbox"/> Child Custody <input type="checkbox"/> Visitation <input type="checkbox"/> Injunctive Order <input type="checkbox"/> Child Support <input type="checkbox"/> Spousal Support <input checked="" type="checkbox"/> Other (specify): <input type="checkbox"/> Attorney Fees and Costs <b>TO SET VACATE JUDGMENT AND</b> <b>MARITAL SETTLEMENT AGREEMENT</b>		CASE NUMBER NWD 55911

1. To (name) RESPONDENT, GILBERT P. HYATT
2. A hearing on this motion for the relief requested in the attached application will be held as follows  
 If child custody or visitation is an issue in this proceeding, Civil Code section 4607 requires mediation before or concurrently with the hearing below.

a. date 10/1/92 time 11:00 AM in ☐ dept. 5 ☐ rm. 5

b. Address of court ☒ same as noted above ☐ other (specify):

3. Supporting attachments

- a. Completed Application for Order and Supporting Declaration and a blank Responsive Declaration
- b. ☐ Completed Income and Expense Declaration and a blank Income and Expense Declaration
- c. ☐ Completed Property Declaration and a blank Property Declaration

d. ☒ Points and authorities

e. ☒ Other (specify): **DECLARATION OF PRISCILLA MAYSTEAD (aka) HYATT**

(TYPE OR PRINT NAME)

*Neal Raymond Hersh*  
 (SIGNATURE)

ORDER SHORTENING TIME

4. ☐ Time for ☐ service ☐ hearing is shortened. Service shall be on or before (date):

Date:

JUDGE OF THE SUPERIOR COURT

Notice: If you have children from this relationship, the court is required to order payment of child support based on the income of both parents. The amount of child support can be large. It normally continues until the child is 18. You should supply the court with information about your finances. Otherwise the child support order will be based on the information supplied by the other parent. You do not have to pay any fee to file responsive declaration in response to this order to show cause (including a completed income and expense declaration that will show your finances). The original of the responsive declarations must be filed with the court and a copy served on the other party at least five court days before the hearing date.

(See response for Proof of Service by Mail)

0000444

Form Approved by Rule 1285, 10  
 Judicial Conference of California  
 (Rev. 10 (Rev. July 1, 1985))

NOTICE OF MOTION  
 (Family Law)

Gov. Code § 26225

RA000826

ARA00469

MARRIAGE OF (last name, first name of parties)  
HYATT, PRISCILLA & GILBERT

CASE NUMBER

NWD 55911

(THIS IS NOT AN ORDER)

☒ Petitioner ☐ Respondent ☐ Claimant requests the following orders be made:  
☐ CHILD CUSTODY ☐ To be ordered pending the hearing

a Child (name and age)

b Request custody to (name)

c ☐ Modify existing order  
(1) filed on (date):  
(2) ordering (specify):

d ☐ Petitioner ☐ Respondent shall have the temporary physical custody of the minor children.

2 ☐ CHILD VISITATION ☐ To be ordered pending the hearing

a ☐ Reasonable

b ☐ Other (specify):

c ☐ Neither party shall remove the minor child or children of the parties

d ☐ Modify existing order  
(1) filed on (date):  
(2) ordering (specify):

(1) ☐ from the State of California (2) ☐ other (specify):

3 ☐ CHILD SUPPORT (if support is awarded, a wage assignment order will be issued)

a Child

NAME AND AGE

b Support request

Monthly amount

\$

c ☐ Modify existing order  
(1) filed on (date):  
(2) ordering (specify):

4 ☐ SPOUSAL SUPPORT (if support is awarded, a wage assignment order will be issued)

a ☐ Amount requested (monthly) \$

c ☐ Terminate existing order

(1) filed on (date):

(2) ordering (specify):

b ☐ Modify existing order  
(1) filed on (date):  
(2) ordering (specify):

5 ☐ ATTORNEY FEES AND COSTS a ☐ Fees: \$

b ☐ Costs: \$

6 ☐ RESIDENCE EXCLUSION AND RELATED ORDERS ☐ To be ordered pending the hearing

☐ Petitioner ☐ Respondent must move out immediately and must not return to the family dwelling at (address)

☐ taking only clothing and personal effects needed until the hearing.

7 ☐ STAY-AWAY ORDERS ☐ To be ordered pending the hearing

a ☐ Petitioner ☐ Respondent must stay at least \_\_\_\_\_ yards away from applicant and the following places:

(1) ☐ applicant's residence (address optional):

(2) ☐ applicant's place of work (address optional):

(3) ☐ the children's school (address optional):

(4) ☐ other (specify):

b ☐ Contacts relating to pickup and delivery of children pursuant to a court order or a stipulation of the parties arrived at during mediation shall be permitted

8 ☐ RESTRAINT ON PERSONAL CONDUCT ☐ To be ordered pending the hearing

☐ Petitioner ☐ Respondent

a shall not molest, attack, strike, threaten, sexually assault, or otherwise disturb the peace of the other party  
☐ and any person under the care, custody, and control of the other party

b ☐ shall not contact or telephone the other party

☐ except that peaceful contacts relating to minor children of the parties shall be permitted.

(Continued on reverse)

0000445

Form Adopted by Rule 1280-20  
Superior Court of California  
1990-20 (Rev. July 1, 1990)

APPLICATION FOR ORDER  
AND SUPPORTING DECLARATION  
(Family Law)

Civil Code § 4309

RA000827

ARA00470

1  
2 DECLARATION OF PRISCILLA MAYSTEAD

3 IN SUPPORT OF PETITIONER'S MOTION TO SET ASIDE JUDGMENT

4 I, PRISCILLA MAYSTEAD, declare as follows:

5 1. I am the petitioner in the above-entitled action and  
6 submit this Declaration in support of my Motion To Set Aside And  
7 Vacate the Judgment that was entered on March 25, 1976 and the  
8 Marital Settlement Agreement which was incorporated therein.

9 2. I request that this Judgment and incorporated Marital  
10 Settlement Agreement be set aside, except for the provision  
11 dissolving the marriage, upon the grounds that the said Judgment and  
12 Agreement were obtained by extrinsic and intrinsic fraud, that they  
13 were based upon the willful and fraudulent representations of the  
14 Respondent, his counsel, and my counsel, that they were based on the  
15 breach of fiduciary duties on the part of the Respondent, that they  
16 were extremely inequitable.

17 3. The facts herein stated are known to me of my own  
18 personal knowledge and, if called and sworn as a witness, I could  
19 and would competently testify as to the truthfulness thereto except  
20 as to the matters which may be stated upon my information and belief  
21 and, as to those matters, I believe them to be true.

22 4. Respondent and I were married on June 14, 1959. In  
23 1966, Respondent worked for Teledyne, but wanted to work on his own  
24 inventions. In 1968, he quit his job and worked for one year on his  
25 inventions. He then formed Micro Computer, Inc., where he developed  
26 the microprocessor. He received \$5,000 from John Salzer, \$60,000  
27 from Irving Hirsch, and about \$250,000 in investments found by  
28 Stuart Lubitz (which included Noyce & Moore, the founders of Intel),  
an attorney who also helped Respondent file incorporation papers.

DRAFT 09/16/92  
A:VAYSTEAD.DEC

0000446

1 Respondent applied for the patent over the microprocessor in  
2 December of 1970. However by 1971, all of the money provided by  
3 Hambrecht & Quist, (a venture capital firm which Respondent utilized  
4 to raise money) was gone. Through Stuart Lubitz, the investors  
5 tried to persuade Respondent to give up the control of the company  
6 and technology. When he refused, the investors withheld their  
7 funding. I am informed and believe the investors, including Lubitz,  
8 leaked the details of the computer chip microprocessor to others in  
9 the industry. Intel and Texas Instrument have since received credit  
10 for developing the computer chip. I am informed and believe and  
11 based upon such information and belief allege that Lubitz worked as  
12 a patent attorney for Intel for some time.

13 5. Meanwhile, I gave birth to our children, David, Dan,  
14 and Beth. Respondent virtually never assisted me in rearing the  
15 children but rather made incredible demands on me even though I was  
16 exhausted from taking care of the children after they were born.  
17 Respondent refused to help me with David after he was born on 9-5-  
18 60, even though I was driving 100 miles a day to try to finish my  
19 degree at Berkeley. Respondent made me feel as though David was my  
20 "problem" rather than his responsibility. Danny was born on 8-4-63  
21 after I was in a terrible car accident and had sustained serious  
22 permanent injuries. After my case was settled, my attorney told me  
23 that my doctor thought I had a horrible marriage and that he was  
24 concerned for my future. When I put the money from the insurance  
25 settlement in my own name (as my separate property as my attorney  
26 advised me to do), Respondent became so enraged that he beat me up  
27 (I was still recovering from the car accident at the time). I then  
28 put the money from the settlement in our joint account. After Beth

DATE 07/16/92  
BY JST/ADJ/DEC

0000447

1 was born on 8-16-66, I had a massive hemorrhage in delivery and was  
2 very ill. Beth was also very ill the first year with two bouts of  
3 pneumonia and many ear infections. Between being so weak from the  
4 hemorrhage, still suffering the permanent effects from the accident  
5 and taking care of three small children, I decided to quit school (I  
6 had been taking classes at UCLA, to try to finish my degree). When  
7 the money for the company ran out, I told Respondent that we had no  
8 money to put food on the table, Respondent once again became enraged  
9 and beat me up.

10 6. Living with Respondent was like living with a volcano.  
11 I never knew what small thing would set him off and make him beat  
12 me. Many times I called the police but they would not do anything.  
13 Respondent would beat me up on numerous occasions and then rape me.  
14 On at least one occasion, Respondent was beating our son, David, so  
15 I tried to stop him. He put my head through the wall instead. I  
16 begged him to get counseling, but when we did speak with a counselor  
17 on the phone (which was all Respondent would consent to do), the  
18 counselor told me to get away from him--that he was hopeless and  
19 dangerous. The only thing that scared me more than Respondent was  
20 poverty. Respondent repeatedly told me, "Your time is only worth 25  
21 cents an hour and my time is worth 25 dollars, so you should do what  
22 I tell you." For a long time, I believed him. The rapes, the  
23 physical abuse and the emotional abuse escalated until Respondent  
24 completely killed any sense of self worth that I had.

25 7. On or about July 1, 1975, I awoke early to make  
26 Respondent breakfast. Right after breakfast, Respondent left for a  
27 business appointment. I sat down to have a cup of coffee when he  
28 came back raging into the house. He overturned the kitchen table

DRAFT 09/16/92  
A:WVSTED.DEC

0000448



1 (which was full of breakfast dishes) and pinned me to the wall with  
2 the table. He then started to beat me on the head with a heavy  
3 metal stadium seat while screaming, "I am going to kill you!" I had  
4 no idea what the problem was. Then he yelled, "Someone left a map  
5 unfolded on the back seat of the car. I am going to kill you. I  
6 told you to keep the car clean!" Two of our minor children, David  
7 and Beth, who were ages 13 and 11 respectively at the time, had run  
8 into the bathroom to hide. The kids wanted to help me but David  
9 kept whispering to Beth to stay quiet or Respondent would kill them  
10 too. Three years later, Beth told me that she was the one who left  
11 the map unfolded on the car seat. I had to tell this poor child  
12 that it was not her fault, that her father was a sick man and it was  
13 not normal to become so unglued over such a small thing.

14 8. As soon as Respondent stopped raging and left for his  
15 appointment, I took Beth and David, picked up our third minor child,  
16 Danny, from school, and went to a lawyer, Mr. Robert Gibbs. My  
17 friend, Irv Sokol, had recommended Mr. Gibbs to me. I paid Mr.  
18 Gibbs the \$1,000 retainer that he demanded and asked him to file a  
19 divorce. Mr. Gibbs told me to empty the bank accounts (there was  
20 about \$20,000) and put the money into an account in my own name,  
21 which I did. I also told Mr. Gibbs that I had about \$5,000  
22 squirreled away which no one knew about. Then I went to stay with  
23 my sister, Kathy, with the children for a week.

24 9. I had saved the \$5,000 because I had been wanting to  
25 divorce Respondent for two years prior to when I saw Mr. Gibbs. I  
26 had approached other attorneys but no one would do anything unless  
27 I had money. I even called social services and they told me that  
28 there was a two year waiting list for restraining orders in cases of

DEAR 09/16/92  
ALM:STEAR.DEC

0000449

1 domestic violence. So for those two years, as the violent episodes  
2 increased, I had been hiding small amounts of money so I could file  
3 for divorce. I was terrified that he would kill me or the children,  
4 especially David.

5  
6 10. After a week, Mr. Gibbs told me that if I did not  
7 move back into the house, I would lose it because it would mean that  
8 I had abandoned it. The house represented the only chance I had to  
9 support my kids because the payments were so low--about \$200 a  
10 month. I felt it was the only way I could feed and support the  
11 children. I really did not know if I could make a living and I was  
12 terrified of what would become of me and the children. Respondent  
13 had completely brainwashed me to believe that I was worthless and I  
14 had zero self-esteem. I was also terrified of my precarious health  
15 because of my injuries. So, I moved back into the house even though  
16 I was still terrified of Respondent.

17 11. When we went to court for the first time, Mr. Gibbs  
18 would not allow me in the courtroom. He told me I would not make a  
19 good impression, so I waited in the hallway. He told me that he  
20 asked Judge Milton Most to remove Respondent from the house. He  
21 told me that the judge said that he could not do that; that a man's  
22 home is his castle. Mr. Gibbs further said that he protested to the  
23 judge and explained that Respondent had repeatedly beat me, raped me  
24 and tried to kill me. He said that the judge replied that he should  
25 bring Respondent back after he murdered me, and he would try him for  
26 murder. Mr Gibbs then told me that I had to stay there with  
27 Respondent. This was a terrible situation because I was terrified  
28 of Respondent, he kept demanding sex and I was afraid to refuse. I  
29 finally was able to convince Respondent to move out by saying that

DRAI 09/16/97  
ALVA STEAD, DEC

0000450

1 maybe we could talk out or problems better that way. I even found  
2 him an apartment.

3 12. When we went back to court for child support, the  
4 judge ordered Mr. Gibbs to give me \$500 out of my share of the  
5 savings, which had been impounded by the judge, to support me and  
6 the children. Respondent was also given \$500 out of his share of  
7 the savings to live on even though he was working and making \$25 an  
8 hour. Incidentally, Mr. Gibbs' bill for the court appearance was \$500  
9 which I had to pay right away. Needless to say that left me nothing  
10 to live on except my savings. I also asked the court for money for  
11 a van. Respondent had taken the better car and left me with a  
12 twelve year old broken down car that had bad tires and brakes. I  
13 needed a van to conduct my fledgling art business to drive long  
14 distances for some of my shows at odd hours. This was the only way  
15 I had to earn a living. I was given \$1800 by the court for the  
16 purchase of the van, so Respondent was given \$1800 as well. I asked  
17 Respondent to co-sign a loan to buy the van, to which he agreed  
18 since all the credit was in his name. After I purchased the van, he  
19 reneged and left me in the position where I had to pay the money or  
20 lose my deposit. I dug into my \$5,000 and paid for the van.  
21 Respondent then demanded half of what I had paid and half of any  
22 other money I had. I could not believe his greed. He told me that  
23 he was going to starve me out, that I deserved nothing, and that  
24 everything was his.

25 13. During this time, we had gone to court several times  
26 for settlement purposes. Each time Respondent would throw a temper  
27 tantrum, nothing would get resolved, and the court would give each  
28 of us \$500 from our savings. Of course, my \$500 went to Mr. Gibbs.

DATE: 09/16/92  
BY: JLM/STAD.DFC

0000451

1 maybe we could talk out or problems better that way; I even found  
2 him an apartment.

12. When we went back to court for child support, the judge ordered Mr. Gibbs to give me \$500 out of my share of the savings, which had been impounded by the judge, to support me and the children. Respondent was also given \$500 out of his share of the savings to live on even though he was working and making \$25 an hour. Incidentally, Mr. Gibbs' bill for the court appearance was \$500 which I had to pay right away. Needless to say that left me nothing to live on except my savings. I also asked the court for money for a van. Respondent had taken the better car and left me with a twelve year old broken down car that had bad tires and brakes. I needed a van to conduct my fledgling art business to drive long distances for some of my shows at odd hours. This was the only way I had to earn a living. I was given \$1800 by the court for the purchase of the van, so Respondent was given \$1800 as well. I asked Respondent to co-sign a loan to buy the van, to which he agreed since all the credit was in his name. After I purchased the van, he reneged and left me in the position where I had to pay the money or lose my deposit. I dug into my \$5,000 and paid for the van. Respondent then demanded half of what I had paid and half of any other money I had. I could not believe his greed. He told me that he was going to starve me out, that I deserved nothing, and that everything was his.

25 13. During this time, we had gone to court several times  
26 for settlement purposes. Each time Respondent would throw a temper  
27 tantrum, nothing would get resolved, and the court would give each  
28 of us \$500 from our savings. Of course, my \$500 went to Mr. Gibbs.

DAW 05/14/92  
ALW/TIM/MEC

5

0000452

0:15:00

1 Respondent received his share even though he had a steady income.  
2 I believe that this was his clever way to drain me and to avoid  
3 paying child support. Needless to say, I was being quickly drained  
4 and my fledgling art business could certainly not support me and our  
5 children.

6  
7 14. One day, after Respondent moved from our home, Mr.  
8 Gibbs asked me to come to his office in the late afternoon. After  
9 discussing my divorce situation, he invited me to go out with him  
10 for a drink at the Fireside Inn across the street from his office in  
11 Encino. Later we went back to his office and he successfully  
12 seduced me. I was very vulnerable and felt that I was totally  
13 frigid because Respondent used to rape me if I said I did not want  
14 sex, so consequently I could not respond to him. My sexual feelings  
15 had been in a deep freeze for so long that I was amazed that I could  
16 respond to Mr. Gibbs. He was very attractive and attentive and I  
17 fell completely in love with him. I had had no kindness in so long  
18 that I could not remember what it was like to be treated like a  
19 woman. The affair went on for several months. One time he came to  
20 the house and the rest of the time I would meet him at his office  
21 after hours.

22 15. After the second time we had a sexual encounter, Mr.  
23 Gibbs introduced me to his private investigator who he said was  
24 going to do some work for him. His investigator, a very tall, large  
25 man, invited me out for dinner. I was flattered and accepted. He  
26 told me he lived across the street from the Fireside Inn and asked  
27 if I would meet him at his apartment and we would go to dinner at  
28 the Inn. I did not see anything wrong with this (I was very naive,  
29 having been married for 16 years), so I went to his apartment. He

DEAL 09/16/92  
ALVISTEAD, DEC

0000453

0.1569

1 became very abusive and when I resisted his advances, he tried to  
2 force himself on me and tear my clothes off. Apparently, Mr. Gibbs  
3 had told him of our encounters and offered my name as an "easy  
4 woman". I hit him on the head with a lamp and ran, leaving my  
5 jacket there. I ran to my car and locked myself in. He came out,  
6 apologized, and returned my jacket. I was shaking and hysterical.  
7 This certainly did not do much for my self-esteem.

8 16. Mr. Gibbs and I continued our relationship for a  
9 several of months, meeting at first twice a week. He told me that  
10 he had married his wife because she was pregnant, that they had a  
11 terrible marriage, and that the reason he stayed was because of his  
12 wonderful daughter whom he loved very much. He also told me that  
13 now that he was over forty that he was worried about his sexuality,  
14 that he was having a problem getting an erection. He said that I  
15 could help him with this. Each time, we made love on the brownish  
16 leather couch or on the floor of his office. He would lock the door  
17 and convince me not to worry about anyone walking in. It got to the  
18 point where whenever I met with him to talk about my divorce, it was  
19 understood that we would be making love afterwards.

20 17. One evening, after making love, he told me that he  
21 could not see me for a week--that he was busy. Then he told me one  
22 evening that he could not see me anymore because he was interested  
23 in someone else. I was devastated after Mr. Gibbs broke off our  
24 relationship; I thought I had found both an attorney and a  
25 boyfriend. I thought I was in love with him. After the break-up I  
26 became very depressed.

27 18. Thereafter, Mr. Gibbs continued as my attorney but he  
28 seemed to lose interest in the case. When I told him that I was

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1 worried about child support, that Respondent had refused to work  
2 during much of the prior five years, he replied that the court could  
3 not make him work. When I told him that I knew nothing about  
4 Respondent's patents, he said that he thought it was a big joke,  
5 that they were worthless. He was more concerned that the patent  
6 attorney Greg Roth of Fraser and Bogucki, wanted the bank account  
7 and proceeds from the sale of the house to satisfy Respondent's  
8 legal bills, which were approximately \$10,000. He also told me that  
9 I could be forced to sell the house. Meanwhile, we kept going back  
10 to court, and Mr. Gibbs told me he was powerless since Respondent  
11 was impossible to deal with. I felt abandoned by Mr. Gibbs, both  
12 legally and emotionally.

13 19. During one of the hearings, Respondent and I talked  
14 in the hall and I asked him what he wanted. He said, "I want  
15 everything," including for me to sign a blank income tax return. He  
16 said he would consider letting me keep the house if I gave him  
17 everything else, but we would have to pay the patent attorney what  
18 he wanted. Of course, since I had very little available money, this  
19 was impossible without selling the house.

20 20. Mr. Gibbs then set up a meeting with Greg Roth of  
21 Fraser and Bogucki, Respondent and myself. My attorney, Mr. Gibbs  
22 offered to make a deal with Fraser and Bogucki such that my share of  
23 the savings account would be given to them if they would not hold me  
24 responsible for any remaining portion of the remainder of their  
25 legal fees for services rendered in connection with Respondent's  
26 patent work. They refused this offer. They stated that they wanted  
27 to remain working for Respondent and that they believed in him.  
28 They told me that they would look only to Respondent for the payment

9  
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BY: J. V. TENDRICK

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1 of their bills, if I would sign away all of my right, title and  
2 interest in our joint patent rights. In other words, if I would  
3 give up all of my patent rights, they would sign a waiver absolving  
4 me of any responsibility for their outstanding legal fees.

5 21. As one could clearly imagine, I was very emotionally  
6 distraught at this time. Respondent had degraded and abused me  
7 throughout the entirety of our marriage. I was too frightened for  
8 years to leave Respondent. Once I gathered my strength to leave  
9 him, I hired Mr. Gibbs only to have him seduce me and commence a  
10 sexual affair with me. I fell in love with Mr. Gibbs. Thereafter,  
11 Mr. Gibbs abruptly ended our relationship. We were still in the  
12 middle of our divorce proceeding. I was further demoralized by the  
13 breakup of my affair with Mr. Gibbs. I was abandoned by my husband  
14 and abandoned, both legally and emotionally, by my divorce attorney.  
15 Of course, while all of this was going on, I was trying to protect  
16 myself and my children. I wanted to maintain the family residence  
17 for the children. Respondent told me that the only way I could keep  
18 the house was if I agreed to release my rights to the patents.

19 22. Mr. Gibbs told me the patents were worthless. To my  
20 knowledge, Mr. Gibbs did not, at any time, investigate the value of  
21 the patents in any way, shape or form. At no time did he or anyone  
22 else explain to me the potential value of the patents, nor did any  
23 one explain to me that it was possible that I could still end up  
24 with the house without releasing my rights to the patents. Mr.  
25 Gibbs kept telling me that the patents were worthless and that he  
26 could not do anything for me which was better than what Respondent  
27 was offering (i.e. my being awarded the house in exchange for the  
28 giving up all my right, title and interest in and to the patents).

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1 Respondent threatened me that if I did not agree to this settlement,  
2 he would spend every last dime that he had to make sure that the  
3 house would be sold and that the children and I would be out on the  
4 street homeless and penniless.

5 23. With Respondent's threats and Mr. Gibbs' coaxing, I  
6 agreed to release my rights to the patents so I could get the house.  
7 Had anyone told me that I would not lose the house if I did not sign  
8 the release, I would not have released my rights to the patents.

9 24. As a further example of Respondent's deceit,  
10 Respondent told me that he had a judgment against him for \$5000  
11 which he insisted on being paid out of the savings. He signed over  
12 the house to me and I was to give him the majority of our savings to  
13 pay my share of the judgment. I later found out that he never paid  
14 the judgment.

15 25. It was also agreed that I would receive \$700.00 per  
16 month in child support and \$50.00 per month in alimony. No  
17 investigation was made as to an appropriate level of support or as  
18 to Respondent's true income. There was no provision made for cost  
19 of living increases. A copy of the Judgment setting forth our  
20 agreement is attached hereto and incorporated herein by this  
21 reference as Exhibit "1".

22 26. It is also noteworthy that, at the time, the house  
23 had not appreciated significantly in value as real estate prices  
24 were fairly stagnant. Although the house was awarded to me at a  
25 value of \$10,000.00 that was its GROSS value. The equity in the  
26 home was then approximately \$15,000.00. My attorney Mr. Gibbs had  
27 not made any attempt or effort to appraise the house nor did he tell  
28

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1 me I was to receive the house at a net value rather than a gross  
2 value.

3 27. The fact that Respondent lied to me concerning the  
4 potential value of the patents is, in my opinion, unconscionable.  
5 Furthermore, Mr. Gibbs made no effort to investigate or appraise the  
6 value of the patents. I am not computer literate so I certainly did  
7 not know their value. My education was in Chemistry and Math, not  
8 in computers. I was desperate to feed and support my children, so  
9 I signed the agreement. My husband came to the house and removed  
10 everything that he wanted, including all the paper work relative to  
11 his business finances as well as our personal finances, including  
12 all my papers. He took all the furniture he wanted, etc. He also  
13 took the old blue Chevrolet, even though that was supposed to be  
14 mine. In short, Respondent was dealing with me as he had throughout  
15 our marriage, bullying and abusing me. My attorney was not  
16 interested in doing any investigation or analysis or otherwise  
17 protecting my interest throughout the entirety of divorce. I felt  
18 alone and abandoned and I had absolutely no choice but to sign the  
19 agreement.

20 28. Respondent had been litigating over the rights to the  
21 patent over the microprocessor and other inventions until the U.S.  
22 Patent and Trademark Office finally awarded him the patent rights.

23 The first I heard of Respondent winning any rights over the patent  
24 was on September 16, 1991, when he gave a copy of the patent (a  
25 lengthy document that has small, detailed descriptions of the  
26 invention) to my daughter Beth for her birthday. I did not know the  
27 impact or effect of the patent until I saw an article in the L.A.  
28 Times on November 7, 1991. A copy of this article is attached and

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1 Respondent threatened me that if I did not agree to this settlement,  
2 he would spend every last dime that he had to take care of me.

1 incorporated herein as "Exhibit 2". The article indicated that  
2 Respondent could receive "tens of millions of dollars" for the  
3 royalties. In an article in the Investor's Business Daily, on March  
4 27, 1992, I read that Respondent had thus far "amassed an estimated  
5 \$70 million in royalties from seven of the world's largest consumer  
6 electronic manufacturers, including Sony Corp. and M.V. Philips."  
7 A copy of said article is attached and incorporated herein as  
8 "Exhibit 1". I am also informed and believe that Intel owes  
9 Respondent so much money, that Respondent will now own the entire  
10 company! Until November of 1991, I had no idea that the patent  
11 would be worth so much money.

12 29. I had placed my confidence in Mr. Gibbs, who abused  
13 that confidence by having a sexual affair with me and shortly  
14 thereafter abandoning me in the pursuit of my legal rights. I had  
15 been abused and deceived by Respondent whose physical and emotional  
16 abuse made me succumb to his demands. The money Respondent is  
17 receiving now is proceeds from GUR marital labor. While Respondent  
18 worked to develop his computer chip, I was his slave--the person who  
19 did everything for him, including feeding him, taking care of his  
20 children, receiving his physical strikes and emotional abuse, and  
21 providing a worn and tired body for his sexual demands. Due to the  
22 threats by Respondent and the nearly lack of representation on the  
23 part of my attorney, I was fraudulently deprived of millions of  
24 dollars.

25 30. A couple of years ago my son, David, was murdered by  
26 persons unknown. I alone have financed the majority of Beth's  
27 bachelor's degree except for a minimal contribution by Respondent,  
28 and now she would like to obtain a degree in physical therapy.

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1 Unfortunately I cannot afford to pay and Respondent refuses. Even  
2 though he has millions and millions of dollars, he refuses to  
3 contribute at all to Beth's education. The only thing he gave her  
4 was a birthday present last year--which was a copy of the patent  
5 Only now is Respondent beginning to help Danny with his education  
6 financially.

7 31. Based on the foregoing, I respectfully request that  
8 the Court set aside those provisions of the Judgment of Dissolution  
9 and the Integrated Marital Property, Custody and Support Agreement  
10 dealing with property division and the rights to the patents applied  
11 for during the marriage.

12 I declare under penalty of perjury that the foregoing is  
13 true and correct. Executed this 16 day of September, 1992 at  
14 Beverly Hills, California.

15  
16 *Priscilla Maystead*  
17 PRISCILLA MAYSTEAD  
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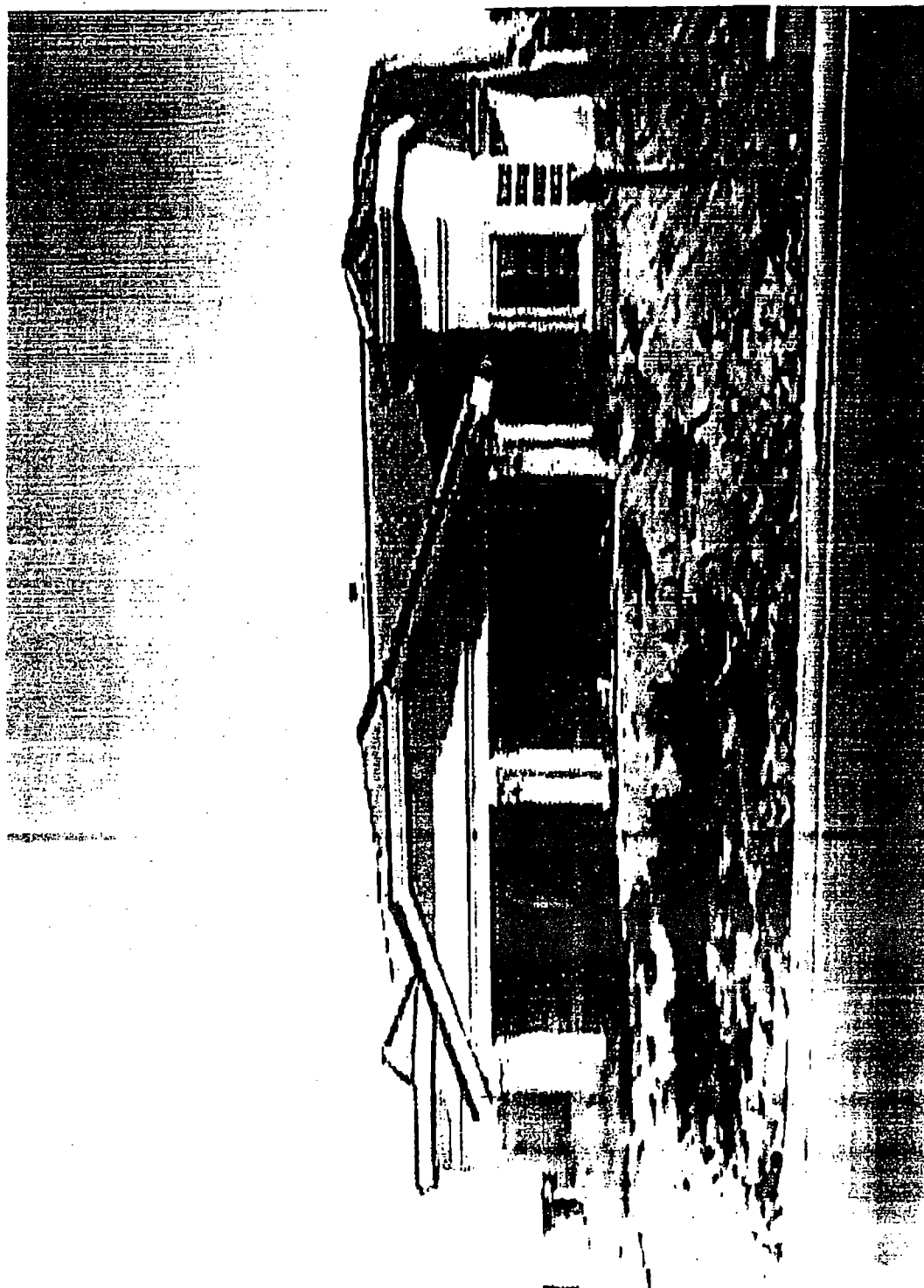
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1 incorporated herein as "Exhibit 2". The article indicated that  
2 Respondent...

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## SUPERVISING PROBATE JUDGE

Superior Court of the State of California

County of Orange

Santa Ana, California 92702

A- 145624

Case No.

FILED

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## GENERAL INSTRUCTIONS TO ESTATE REPRESENTATIVE

You have been appointed a representative of an estate by this Court. As such representative you become an officer of the Court and assume certain duties and obligations. An attorney is best qualified to advise you regarding these matters, but you should clearly understand the following:

GARY L. GRANVILLE, County Clerk

1. In managing the property of the estate you have several duties. You may not profit from your position as a representative, or, without prior court hearing and order, enter into any financial transaction with the estate. You must manage the estate's assets with the care of a prudent person dealing with the property of another. You must be cautious and you may not speculate. You must maintain adequate property, casualty and liability insurance. You must file tax returns and pay any taxes owing.
2. You must keep the money and property of this estate separate from your own and must never commingle them with your own or other property. When you open a bank account for the funds it must be in the name of the estate by its fiduciary (yourself). The securities of the estate must not be held in your name personally. You may not borrow from the assets and you should not make any distribution to anyone without first getting Court authority.
3. All disbursements should be made by check from the estate account and a detailed record kept of all receipts.
4. You may reimburse yourself and your attorney for official court costs paid by either of you, including charge of the County Clerk and the premium on your bond. **YOU MAY NOT PAY FEES TO YOUR ATTORNEY OR TO YOURSELF WITHOUT PRIOR ORDER OF COURT.**
5. Within three months after your appointment you must file with the Court an inventory of all money and other property belonging to the estate and held by you. You must arrange to have a Court-appointed referee file the value of such property and the inventory and appraisal must then be filed with the Court. (The representative, rather than the referee, determines the value of certain "cash items" and your attorney will advise you as to this procedure.)
6. You should consult with your attorney before you sell, lease, mortgage or invest the property of the estate to determine if a Court order is required.
7. Within one year after you have qualified as an estate representative, if your estate does not require filing of a federal estate tax return, and within 18 months if such a return is required, you must file a final account and petition for distribution of the estate or a verified report of the status of administration.
8. If you are a special administrator, your powers and duties may be more restricted than as stated above. Consult your attorney before you act.
9. If money is held in a blocked account, you may not withdraw any amount without a prior Court order.
10. The above is not intended to be an all-inclusive list of your duties and obligations. If you have any questions concerning your duties or responsibilities, ask your attorney before you act and/or petition the Court for instructions.

SUPERVISING PROBATE JUDGE

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I have read and understand the above instructions and acknowledge receipt of a copy of same.

My Social Security No. is 069-30-9992

My Driver's License No. is F0566131 G

DATED

11/7/88

*Gilbert P. Hyatt*  
ESTATE REPRESENTATIVE

GILBERT HYATT

3

RA000844

ARA00487

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name and address): <b>JOHN G. BRADSHAW</b> PROFESSIONAL LAW CORPORATION PENTHOUSE SUITE 600 WEST SANTA ANA BOULEVARD SANTA ANA, CALIFORNIA 92701 ATTORNEY FOR (Name): <b>Executor</b> State Bar No. 37814		TELEPHONE NO.: <b>667-0487</b>	FOR COURT USE ONLY
SUPERIOR COURT OF CALIFORNIA, COUNTY OF ORANGE 700 Civic Center Drive West Post Office Box 838 Santa Ana, CA 92702-0838			
ESTATE OF (NAME):  <b>ANNA HABER HYATT,</b>		DECEDENT	
NOTICE OF HEARING (Probate)		CASE NUMBER: <b>A-145624</b>	

This notice is required by law. This notice does not require you to appear in court, but you may attend the hearing if you wish.

1. NOTICE is given that (name): **Gilbert Hyatt**

(representative capacity, if any): **Executor**

has filed (specify):\*

First and Final Account and Report of  
 Executor and Petition for Its Settlement,  
 for Allowance of Executor's Commission,  
 for Ordinary Fees of Attorney Bradshaw,  
 for Extraordinary Fees of Attorney McCaffrey,  
 and for Final Distribution,

2. You may refer to the filed documents for further particulars. (All of the case documents filed with the court are available for examination in the case file kept by the court clerk.)

3. A HEARING on the matter will be held as follows:

Date: Oct. 1, 1991 Time: 9:00 am Dept.: 3 Room:  
 Address of court ☒ shown above ☐ is:

John G. Bradshaw  
 (TYPE OR PRINT NAME)

☒ Attorney or party

**JOHN G. BRADSHAW**

(SIGNATURE)

Date: September 5, 1991

☐ Clerk, by \_\_\_\_\_, Deputy

4. This notice was mailed on (date):

at (place): Santa Ana, CA

(Continued on reverse)

\* Do not use this form to give notice of hearing of the petition for administration (see Probate Code, § 8100).

Form Approved by the  
 Judicial Council of California  
 DE-120 (Rev. July 1, 1989)

NOTICE OF HEARING  
 (Probate)

Probate Code, §§ 1211, 1215, 1218, 1230

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ARA00488

DATE OF (NAME):

ANNA HABER YATT,

NUMBER:

A-145624

DECEDENT

CLERK'S CERTIFICATE OF ☐ POSTING ☐ MAILING

I certify that I am not a party to this cause and that a copy of the foregoing Notice of Hearing (Probate)

1. ☐ was posted at (address):

on (date):

2. ☐ was served on each person named below. Each notice was enclosed in an envelope with postage fully prepaid. Each envelope was addressed to a person whose name and address is given below, sealed, and deposited with the United States Postal Service at (place): California, on (date):

Date:

Clerk, by \_\_\_\_\_, Deputy

PROOF OF SERVICE BY MAIL

1. I am over the age of 18 and not a party to this cause. I am a resident of or employed in the county where the mailing occurred.

2. My residence or business address is (specify):

600 W. Santa Ana Blvd., Suite 1100, Santa Ana, CA 92701

3. I served the foregoing Notice of Hearing (Probate) on each person named below by enclosing a copy in an envelope addressed as shown below AND

a. ☒ depositing the sealed envelope with the United States Postal Service with the postage fully prepaid.

b. ☐ placing the envelope for collection and mailing on the date and at the place shown in item 4 following our ordinary business practices. I am readily familiar with this business' practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

4. a. Date mailed: Sept. 5, 1991

b. Place mailed (city, state): Santa Ana, CA

5. ☒ I served with the Notice of Hearing (Probate) a copy of the petition or other document referred to in the notice.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: September 5, 1991

D. Weir

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

See attached list.

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RA000846

ARA00489



1 **EXHS**

2 Mark A. Hutchison (4639)  
3 Hutchison & Steffen, PLLC  
4 10080 W. Alta Drive, Suite 200  
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7 mhutchison@hutchlegal.com

8 Peter C. Bernhard (734)  
9 Kaempfer Crowell  
10 1980 Festival Plaza Drive, Suite 650  
11 Las Vegas, NV 89135  
12 (702) 792-700  
13 pbernhard@kcnvlaw.com

14 *Attorneys for Plaintiff Gilbert P. Hyatt*

15 **DISTRICT COURT**  
16 **CLARK COUNTY, NEVADA**

17 GILBERT P. HYATT,

18 Plaintiff,

19 v.

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

23 Defendants.

Case No. A382999

Dept. No. X

**EXHIBITS 14 - 34 TO PLAINTIFF  
GILBERT P. HYATT'S BRIEF IN  
SUPPORT OF PROPOSED FORM OF  
JUDGMENT THAT FINDS NO  
PREVAILING PARTY IN THE  
LITIGATION AND NO AWARD OF  
ATTORNEYS' FEES OR COSTS TO  
EITHER PARTY**

24 Plaintiff Gilbert P. Hyatt hereby submits Exhibits 14 to 34 to Plaintiff Gilbert P. Hyatt's

25 ///

26 ///

27 ///

28 ///

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///

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**FILED**

OCT 15 2019

*Ann H. Plummer*  
CLERK OF COURT


FUS

RA000847

1 Brief in Support of Proposed Form of Judgment That Finds No Prevailing Party in the Litigation  
2 and No Award of Attorneys' Fees or Costs to Either Party.

3 Dated this 15th day of October, 2019.

4 HUTCHISON & STEFFEN, PLLC

5   
6  
7 Mark A. Hutchison (4639)  
8 10080 W. Alta Drive, Suite 200  
9 Las Vegas, NV 89145

10 Peter C. Bernhard (734)  
11 KAEMPFER CROWELL  
12 1980 Festival Plaza Drive, Suite 650  
13 Las Vegas, NV 89135

14 *Attorneys for Plaintiff Gilbert P. Hyatt*  
15  
16  
17  
18  
19  
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28

# **EXHIBIT 14**

1 **MOT**  
2 **BILL LOCKYER**  
3 **Attorney General**  
4 **RICHARD W. BAKKE**  
5 **Supervising Deputy Attorney General**  
6 **FELIX E. LEATHERWOOD, Admitted per SCR 42**  
7 **GEORGE M. TAKENOUCHI, Admitted per SCR 42**  
8 **THOMAS G. HELLER, Admitted per SCR 42**  
9 **Deputy Attorneys General**  
10 **THOMAS R. C. WILSON, ESQ.**  
11 **Nevada State Bar # 1568**  
12 **MATTHEW C. ADDISON, ESQ.**  
13 **Nevada State Bar # 4201**  
14 **BRYAN R. CLARK, ESQ.**  
15 **Nevada State Bar #4442**  
16 **McDONALD CARANO WILSON McCUNE**  
17 **BERGIN FRANKOVICH & HICKS LLP**  
18 **2300 West Sahara Avenue, Suite 1000**  
19 **Las Vegas, Nevada 89102**  
20 **(702) 873-4100**  
21 **Attorneys for Defendant Franchise Tax Board**

DISTRICT COURT  
CLARK COUNTY, NEVADA

\*\*\*\*\*

15 **GILBERT P. HYATT,**  
16 **Plaintiff,**

17 vs.

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

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

**MOTION FOR SUMMARY JUDGMENT  
UNDER NRCP 56(b), OR  
ALTERNATIVELY FOR DISMISSAL  
UNDER NRCP 12(h)(3)**

**FILED UNDER SEAL BY ORDER OF  
THE DISCOVERY COMMISSIONER  
DATED FEBRUARY 22, 1999**

Date of Hearing: 2/22/00  
Time of Hearing: 9A

25 Defendant FRANCHISE TAX BOARD OF THE STATE OF CALIFORNIA (the "FTB") moves  
26 the Court under Nevada Rule of Civil Procedure 56(b) for summary judgment on all remaining causes  
27 of action. In the alternative, the FTB moves to dismiss for lack of jurisdiction over the subject matter  
28 under Nevada Rule of Civil Procedure 12(h)(3).

1       The Court's power to impose liability on the FTB, if any, is limited to the FTB's conduct in the  
2 State of Nevada. This is because the FTB is a California government agency, and as such enjoys  
3 sovereign immunity under a variety of California laws from any attempt of Hyatt to litigate over the  
4 FTB's California acts. But even as to the FTB's Nevada acts, the undisputed facts show that there is  
5 no evidence from which a jury could reasonably find that the FTB committed an actionable invasion  
6 of privacy, an abuse of process, any outrageous conduct, or any act of fraud or negligent  
7 misrepresentation against plaintiff Gilbert Hyatt. Instead, the FTB's Nevada acts were a privileged part  
8 of the FTB's governmental functions, and were justified by Hyatt's own conduct that cast considerable  
9 doubt on his claim that he changed his state of residence from California to Nevada in late 1991. For  
10 these reasons, the FTB is entitled to summary judgment on the merits of Hyatt's claims.

11       In the alternative, the FTB is entitled to dismissal of all of Hyatt's claims under Nevada Rule  
12 of Civil Procedure 12(h)(3). Rule 12(h)(3) requires dismissal whenever it appears that the Court lacks  
13 jurisdiction over the subject matter. The undisputed facts show that all of the FTB's Nevada acts  
14 concerning Hyatt were taken as part of the FTB's administration of California's tax laws. Under  
15 principles of Full Faith and Credit, sovereign immunity, and constitutional choice of law, the Court  
16 must apply California's governmental immunity laws regarding tax administration to these Nevada acts  
17 just as it must apply these immunity laws to the FTB's California conduct. Under the same principles  
18 the Court also must apply California's administrative exhaustion laws to the entirety of Hyatt's case  
19 All of these California laws are jurisdictional bars to Hyatt's case, and their mandatory application  
20 requires dismissal of Hyatt's claims. Even if applying these laws was not mandatory, principles of  
21 comity suggest that the Court should apply them, and thus decline to exercise jurisdiction over this case  
22 Finally, this Court lack jurisdiction over Hyatt's case based on Nevada's own law of administrative  
23 exhaustion/ripeness.

24     \\

25     \\

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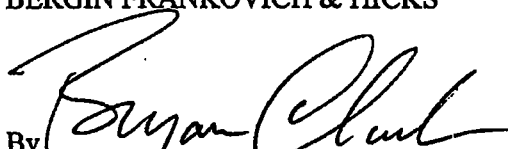
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28

1 This Motion is based on the attached Memorandum of Points and Authorities, affidavits, and  
2 exhibits, as well as all other matters properly of record.

3 DATED this 27<sup>th</sup> day of January, 2000.

4 McDONALD CARANO WILSON McCUNE  
5 BERGIN FRANKOVICH & HICKS

6  
7 By 

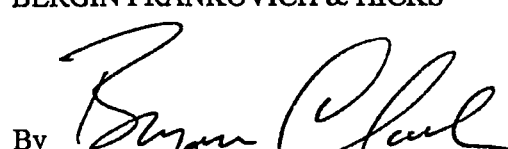
8 THOMAS R.C. WILSON  
9 BRYAN R. CLARK  
10 MATTHEW C. ADDISON  
11 2300 West Sahara Avenue, Suite 1000  
12 Las Vegas, Nevada 89102  
13 (702) 873-4100  
14 Attorneys for Defendant Franchise Tax Board

15 **NOTICE OF MOTION**

16 TO: ALL PARTIES AND THEIR COUNSEL OF RECORD;

17 PLEASE TAKE NOTICE that the undersigned will bring the foregoing MOTION FOR  
18 SUMMARY JUDGMENT UNDER NRCP 56(b), OR ALTERNATIVELY FOR DISMISSAL UNDER  
19 NRCP 12(h)(3) on for hearing before the above-entitled Court on the 27<sup>th</sup> day of Feb,  
20 2000, at the hour of 9 AM in Department \_\_\_\_ of the above-entitled Court, or as soon thereafter as  
21 counsel can be heard.

22 McDONALD CARANO WILSON McCUNE  
23 BERGIN FRANKOVICH & HICKS

24 By 

25 THOMAS R.C. WILSON  
26 BRYAN R. CLARK  
27 MATTHEW C. ADDISON  
28 2300 West Sahara Avenue, Suite 1000  
Las Vegas, Nevada 89102  
(702) 873-4100  
Attorneys for Defendant Franchise Tax Board

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1 **MEMORANDUM OF POINTS AND AUTHORITIES**

2 **INTRODUCTION**

3 This is a tort action involving claims of California government agency misconduct in Nevada.  
4 Gilbert Hyatt, a computer industry multimillionaire, claims that the State of California Franchise Tax  
5 Board, the California government agency that enforces California's personal income tax laws,  
6 committed seven types of torts in Nevada while auditing, and eventually refusing to accept, Hyatt's  
7 claim to have changed his state of residence from California to Nevada in late 1991, which if true would  
8 have allowed Hyatt to avoid California income tax on over one hundred million dollars that he received  
9 shortly thereafter. Hyatt has conducted an extraordinary amount of discovery in this case, even though  
10 FTB auditors spent less than three business days in Nevada checking Hyatt's claim of change of  
11 residency, and had only cursory phone and mail contacts with Nevada when checking Hyatt's claim.  
12 Despite these limited Nevada contacts, Hyatt's lawyers have spent approximately 315 hours in  
13 deposition, generated roughly 11,000 pages of transcripts from 24 deponents (including a 2400 page  
14 transcript from one witness!), propounded 329 separate document demands to the FTB, made over 340  
15 other document requests to deposed witnesses, and demanded and received over 17,000 pages of FTB  
16 produced documents. Hyatt's lawyers have done this because Hyatt wants this Nevada action to be a  
17 sweeping indictment of everything that the FTB did involving Hyatt, whether in Nevada or not. Hyatt  
18 knows that he is barred in California from bringing such a case, and is trying use the FTB's limited  
19 activity in Nevada as an end-around.

20 Hyatt has no right to proceed further on his misguided course. Given the FTB's status as a  
21 California government agency, the FTB cannot be held liable in this Court for its non-Nevada acts. In  
22 addition, none of the FTB's Nevada acts constitute actionable torts against Hyatt under any theory. The  
23 FTB took what few actions it did in Nevada as part of its mandatory governmental obligations, and as  
24 a result of Hyatt's shifting, dubious story about his claimed change of state of residence from California  
25 to Nevada. The FTB cannot be punished simply for doing its job, and thus is entitled to summary  
26 judgment on the merits of Hyatt's claims.

27 In the alternative, the FTB is entitled to dismissal of Hyatt's remaining claims under Nevada  
28 Rule of Civil Procedure 12(h)(3). California law contains multiple jurisdictional bars to Hyatt's lawsuit,

1 and principles of Full Faith and Credit, sovereign immunity, and constitutional choice of law require  
2 application of all of these California laws. Under these principles, the Court must apply California's  
3 governmental immunity laws regarding tax administration to the entirety of the FTB's conduct,  
4 including its Nevada acts. The same principles also require the Court to apply California's laws  
5 regarding exhaustion of administrative remedies to the entirety of this case. Hyatt has no right to  
6 proceed with this action under these laws. Even if applying these laws was not required, the Court  
7 should still apply them as a matter of comity. Hyatt's action is even barred by Nevada's own  
8 administrative exhaustion/ripeness law. For all of these reasons, Hyatt has no right to proceed further  
9 with his case against the FTB.

#### 10 **UNDISPUTED FACTS**

11 This case arises from the FTB's supposed misconduct during its California residency audits of  
12 Gilbert Hyatt for tax years 1991 and 1992. (First Am. Compl. ¶ 7, lines 2:8-3:16 (June 12, 1998).)  
13 When a California taxpayer claims a change in state of residence, the FTB sometimes performs a  
14 California residency audit to determine whether the taxpayer established significant permanent ties with  
15 the taxpayer's new state of claimed residency, and whether the taxpayer severed significant permanent  
16 ties with California on or near the asserted change of residency date. (Illia Affidavit ¶ 2, Cox Affidavit  
17 ¶ 36.)<sup>1</sup> The FTB is the California government agency that conducts residency audits as part of its  
18 governmental obligation to administer California's personal income tax laws. (Cal. Rev. & Tax. Code  
19 § 19501.) Hyatt is a computer industry figure who acknowledges being a long time California resident  
20 through at least most of 1991. (First Am. Compl. ¶ 60, lines 26-27.)

21 In 1990, Hyatt obtained patents on certain computer technologies, resulting in over one hundred  
22 million dollars of income in late 1991 and 1992. (First Am. Compl. ¶ 8, lines 21-23.) Substantial  
23 publicity surrounded Hyatt's patents, including a newspaper article that attracted an FTB auditor's  
24 attention in 1993. (Leatherwood Affidavit ¶ 8 & Ex. 1 (attaching excerpt from FTB auditor's  
25 deposition).) The 1993 article reported that Hyatt lived in Las Vegas, but was involved in a California  
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27 <sup>1</sup> All affidavits referenced in the FTB's motion are included in the pleading "Evidence  
28 Support of Franchise Tax Board's Motion for Summary Judgment, or Alternatively for Dismissal," filed  
concurrently. All affidavits and supporting exhibits are also numbered sequentially.

1 legal dispute with his ex-wife about substantial earnings from recent patent awards. (*Id.*) The FTB  
2 reviewed its records and found that Hyatt filed only a part-year income tax return with the State of  
3 California for 1991. (*See* First Am. Compl. ¶ 10, lines 21-24; Cox Aff. ¶ 4 & Ex. 1.) In that return,  
4 Hyatt alleged under penalty of perjury that he severed his California residency on October 1, 1991 and  
5 lived in California for 273 days during 1991. (Cox Aff. ¶ 4 & Ex. 1 p. 14.) On the return, he reported  
6 \$613,605 as California business income from a total receipts of \$42,266,667 that would have been  
7 reportable had he been a full year resident. (*Id.*)

8        Shortly after determining that Hyatt received more than \$42 million dollars shortly after  
9 claiming to have become a Nevada resident near the end of a tax year, the FTB initiated an audit of  
10 Hyatt's 1991 tax return. (*See* Cox Aff. ¶ 5 & Ex. 2 p. 34-35.) The FTB initiated its audit by sending  
11 a June 17, 1993 notice letter to Hyatt's Nevada post office box address, and a second notice letter after  
12 Hyatt did not respond to the first. (*Id.*) In response, Hyatt granted Powers of Attorney to a Nevada  
13 accountant, Michael W. Kern, and a California attorney, Eugene Cowan, to represent him during the  
14 audit. (*Id.* ¶ 6 & Ex. 3.) About one month later, the FTB mailed a letter and one of its standard forms  
15 ("FTB 3805F") to Hyatt's accountant, requesting basic information about Hyatt's residence status. (*Id.*  
16 ¶ 7 & Ex. 4 p. 41.) Hyatt's responses to this standard form became the bases for the FTB's subsequent  
17 actions concerning Hyatt.

18 **1. Hyatt's responses raised many questions about his change of residency claim.**

19        Hyatt's responses to this standard FTB form, and the FTB's attempts to verify their accuracy,  
20 raised many questions about his change of residency claim. For instance, Hyatt claimed in his response  
21 to have moved to Nevada on September 25, 1991, as opposed to the October 1, 1991 date asserted on  
22 his 1991 California income tax return. (Cox Aff. ¶¶ 4, 8 & Ex. 1, 5 pp. 14, 43.) But the FTB  
23 ultimately learned that Hyatt had a California doctor's appointment on September 26, 1991, and told  
24 this to Hyatt's accountant. (*Id.* ¶ 9 & Ex. 6, 7 pp. 52, 56.) In response, Hyatt then changed his alleged  
25 move date from September 25, 1991 to September 26, 1991, and alleged that on September 26, after  
26 he visited his doctor in California, he left for Nevada to begin establishing his residence and business  
27 there. (*Id.* ¶ 9 & Ex. 8 p. 93.)

28        But Hyatt never provided moving receipts for this date, instead claiming that he moved himself

1 by using a trailer, providing his son's June 1992 Nevada trailer registration as "proof" of a September  
2 1991 move. (Cox Aff. ¶ 11 & Ex. 11 pp. 227, 229.) In addition, Hyatt failed to provide the FTB any  
3 substantiation and corroborative documentation that he moved his personal effects to Nevada despite  
4 repeated requests and Hyatt's accountant's promise to do so. (*Id.* ¶ 10 & Ex. 9, 10 pp. 221, 222, 224,  
5 226.)

6 At the same time, Hyatt's credit card statements showed evidence of dining charges in California  
7 from September 1991 through March 1992. (Cox Aff. ¶ 12 & Ex. 12 pp. 233, 234.) The credit card  
8 statements showed evidence of numerous dining charges in California during this period, but Nevada  
9 dining charges on only one day from January 2, 1991 through March 16, 1992. (*Id.*) These dining  
10 charges included a charge at a California restaurant on October 2, 1991, the day after Hyatt's original  
11 claimed move date. (*Id.*) Getting the credit card statements that showed these charges required five  
12 separate request letters to Hyatt's accountant. (*Id.* ¶ 13 & Ex. 13 pp. 250, 252, 255, 264, 271.)

13 Hyatt also claimed in his response to have rented a Las Vegas apartment in October 1991, later  
14 providing a lease agreement with a lease start date of October 20, 1991. (Cox Aff. ¶ 14 & Ex. 14 p.  
15 283.) Upon learning of this start date, the FTB asked where Hyatt had stayed between September 25,  
16 September 26, or October 1 (Hyatt's various claimed move dates to Nevada) and October 20. (*Id.* ¶ 15  
17 & Ex. 15 pp. 289, 293.) Hyatt never answered this question, and never gave the FTB any  
18 documentation establishing where he supposedly stayed in Nevada from September 25 through October  
19 20. (*Id.* ¶ 16.) Instead, Hyatt's doctor and credit card statements suggested that Hyatt was in California  
20 on September 26 and on October 2, 1991, (*Id.* ¶¶ 9, 12 & Ex. 6, 12 pp. 52, 233, 239), and Hyatt's  
21 attorney stated that Hyatt was in Washington, Texas, and New York from October 14, 1991 to October  
22 22, 1991. (*Id.* ¶ 17 Ex. 8 pp. 94.)

23 Moreover, Hyatt's \$540 per month apartment was in a complex serving many tenants receiving  
24 federal HUD subsidies. (Cox Aff. ¶ 14 & Ex. 14, 16 pp. 283, 298.) The apartment manager also  
25 informed the FTB's auditor that she did not remember seeing Hyatt often, and that he usually paid the  
26 rent ahead of time with a post dated check. (*Id.* ¶ 18 & Ex. 16 p. 298, 299.) The manager showed the  
27 auditor one envelope in Hyatt's rental file. While it had Hyatt's Las Vegas post office box return  
28 address, it was postmarked from Long Beach, California on December 8, 1991. (*Id.*)



1 Hyatt further claimed in his response that he participated in various Nevada civic and social  
2 activities, including: (1) a computer hobby group; (2) a Jewish temple; (3) a business association; (4)  
3 a school tutoring program; (5) a national computer convention; (6) shopping at membership department  
4 and sports equipment stores; and (7) skiing on a Nevada mountain. (Cox Aff. ¶ 8 & Ex. 5 p. 51.) Hyatt  
5 also claimed to have conducted "international trade activity" with Nevada politicians Robert Miller and  
6 Richard Bryan. (*Id.*)

7 But many of Hyatt's supposed Nevada affiliations began in April 1992, not September or  
8 October 1991, by Hyatt's own admission. (Cox Aff. Ex. 5 p. 51.) Moreover, the FTB could never  
9 verify Hyatt's supposed Nevada affiliations that began before April 1992. For example, the FTB's letter  
10 to the computer hobby group and Jewish temple addresses that Hyatt gave were undeliverable. (*Id.* ¶  
11 19 & Ex. 17 pp. 303, 304.) As to the temple, Hyatt's representative later explained that he had told the  
12 FTB the wrong temple, but his second temple did not even respond to the FTB's inquiry. (*Id.* ¶ 19.)  
13 Similarly, the Nevada Development Authority that Hyatt identified had no record of Hyatt's  
14 membership, the Nevada Governor's office had no record of Hyatt, and the Nevada Senator's office did  
15 not respond to the FTB's inquiry. (*Id.* ¶ 19 & Ex. 18, 19 pp. 305, 307.) Even for affiliations after April  
16 1992, the FTB found discrepancies, as the school tutoring program could not verify Hyatt's claimed  
17 volunteer activity. (*Id.* ¶ 20 & Ex. 20 p. 308.)

18 Hyatt also alleged in his response that he sold his California home on October 1, 1991. (Cox  
19 Aff. ¶ 8 & Ex. 5 p. 43.) When the FTB asked for documentation of the sale, Hyatt provided three non-  
20 notarized, unrecorded documents, including a grant deed. (*Id.* ¶ 21 & Ex. 14 pp. 280, 281, 282.) The  
21 FTB then asked the Recorder's Office in the appropriate California county, which provided the same  
22 grant deed, notarized, but recorded on June 16, 1993. (*Id.* ¶ 21 & Ex. 21, 22 pp. 310, 311.) Curiously  
23 the notary stamp on the recorded deed was for a 4 year California notary commission to expire on  
24 December 5, 1995, evidencing that this notary commission was invalid to notarize a document on  
25 October 1, 1991, prior to the effective date of the commission. *See* Calif. Gov. Code § 8204; 31 Ops  
26 Atty. Gen. 258 (1958). The FTB's subsequent discovery has revealed the reason for this anomaly: Hyatt  
27 signed the deed in California on June 16, 1993, but the notary backdated the deed to October 1, 1991  
28 at Hyatt's request. (Leatherwood Aff. ¶ 11 & Ex. 3 (notary log excerpts evidencing June 16, 1993))

1 date.) The FTB's evidence from Hyatt's notary also shows that Hyatt was in California to notarize a  
2 different document on September 27, 1991, one day after the third and final date that Hyatt told the FTB  
3 that he moved to Nevada. (*Id.* Ex. 3.) Hyatt has made the same claim to have moved to Nevada on  
4 September 26, 1991 to this Court. (*E.g.*, First Am. Compl. ¶¶ 1, 7, 8.)

5 Hyatt also asserted in his response that he had registered to vote in Nevada in 1991, his first  
6 voter registration anywhere since at least 1986. (Cox Aff. Ex. 5 at 45-46.) When the FTB asked the  
7 Clark County Election Department for details, Election Department records showed that Hyatt had  
8 amended his registration in July 1994 to include a Las Vegas home address on Sandpiper Lane. (*Id.* ¶  
9 35 & Ex. 30 p. 402.) But the FTB learned that the home at this address had never been in Hyatt's name  
10 and was actually the home of Hyatt's accountant at the time of Hyatt's voter registration. (*Id.* ¶ 35 &  
11 Ex. 30-31 p. 402, 405.) The FTB also determined that Hyatt's accountant had purchased a different  
12 home in June 1994, and completed the sale of his Sandpiper Lane address to someone other than Hyatt  
13 in October 1994. (*Id.*) The FTB also found out that Hyatt had purchased a different home on Tarr  
14 Avenue in Las Vegas in April 1992. (*See* Cox Aff. Ex. 7 at 59.)

15 Thus, it appeared to the FTB that Hyatt was using a Nevada address that was not his own for  
16 voting purposes long after Hyatt claimed to have changed his state of residence. Indeed, the FTB's  
17 discovery efforts have confirmed that Hyatt listed Sandpiper Lane as his voting address from 1991  
18 through at least November 1998, but the real resident at the Sandpiper Lane address does not even know  
19 who Hyatt is. (Leatherwood Aff. ¶ 12 & Ex. 4 (Election Department Voter Register Application date  
20 July 5, 1994 and Precinct Registers for September 6, 1994 and November 3, 1998); Mayers Aff. ¶¶ 1-  
21 (affidavit of Sandpiper Lane resident from 1994 to the present).)

22 Finally, Hyatt's response to FTB form 3805F indicates that he received payments under  
23 multiple patent licensing agreements in 1991. (Cox Aff. ¶ 8 & Ex. 5 p. 44.) When the FTB obtained  
24 portions of two licensing agreements signed after the date of Hyatt's supposed change of residency, the  
25 FTB noted that the agreements listed a California mailing address for Hyatt. (*Id.* ¶ 22 & Ex. 23 pp. 31  
26 314, 327.) The agreements provided for large payments on or before October 31 and November 1  
27 1991, only a few weeks after Hyatt claimed to have changed his state of residency from California  
28 Nevada. (*Id.* ¶ 22 & Ex. 23.)

1    **2.     This case arises from the FTB's attempts to verify Hyatt's change of residency claim.**

2           After concluding its audit that uncovered the above discrepancies, the FTB issued a "Notice of  
3 Proposed Assessment" against Hyatt for 1991 for additional tax in the amount of \$1,876,471, and a  
4 fraud penalty in the amount of \$1,407,353.25. (Bauche Aff. ¶ 4 & Ex. A.) A Notice of Proposed  
5 Assessment is not a final tax assessment, but a preliminary determination of the FTB's intended course  
6 of action that is subject to taxpayer protest. (See Bauche Aff. ¶ 3; Cal. Rev. & Tax Code §§ 19042,  
7 19044.) The bases for the FTB's Notice of Proposed Assessment were Hyatt's significant and  
8 continuing California ties, and the absence of any significant Nevada ties, from September 1991 through  
9 the first part of 1992. (Cox Aff. ¶ 37.)

10          Based on the results of the 1991 audit, the FTB also began an audit on Hyatt for taxable year  
11 1992. (Cox Aff. ¶ 38.) As a result of this second audit, the FTB issued a separate Notice of Proposed  
12 Assessment for 1992 for additional tax in the amount of \$5,669,021, and a fraud penalty in the amount  
13 of \$4,251,765.75. (Bauche Aff. ¶ 6 & Ex. C.)

14          Hyatt has protested both Notices of Proposed Assessment, meaning that the Notices of Proposed  
15 Assessment are both under FTB administrative review. (Bauche Aff. ¶¶ 5, 7; *see also* Cal. Rev. & Tax.  
16 Code § 19044.) The FTB's California administrative proceedings related to Hyatt's protests are not  
17 over, and the FTB's Notices of Proposed Assessment are not yet final. (Bauche Aff. ¶¶ 5 & 7; *see also*  
18 Cal. Rev. & Tax Code § 19044.) Nevertheless, shortly after protesting the FTB's 1992 proposed  
19 assessment, Hyatt filed this Nevada case, seeking declaratory relief from this Court to determine his  
20 Nevada residency and California nonresidency under California law, and further alleging that the Board  
21 acted tortiously during the audit process. (Compl. (Jan. 6, 1998).) The bases of Hyatt's complaint, or  
22 at least what remains of it after the Court dismissed the declaratory relief action, (Partial Judgment on  
23 the Pleadings (Apr. 16, 1999)), are alleged FTB invasions of privacy (of three varieties), outrageous  
24 conduct, abuse of process, fraud, and negligent misrepresentations "in Nevada." (*E.g.*, First Amended  
25 Compl. ¶ 26, lines 22-24 ("This Court has personal jurisdiction . . . because of the FTB's . . . conduct  
26 within the State of Nevada (emphasis added)); ¶¶ 35, 42, 46, 51 (causes of action two through five, all  
27 alleging improper conduct "in Nevada" (emphasis added)); ¶ 56, lines 34 (sixth cause of action,  
28 complaining of abuse of process directed at Nevada residents); ¶ 62(c), lines 6-19 (seventh cause of

1 action, alleging acts in Nevada as evidence of fraud.)

2 The FTB's acts "in Nevada," or from California across the state border into Nevada, were as  
3 follows:

4 **Nevada field visit, March 1995:** In March 1995, Sheila Cox, the FTB auditor during most of  
5 the Hyatt audits, flew to Nevada with another auditor working on a different case. (Cox Aff. ¶¶ 23, 24  
6 & Ex. 16.) Ms. Cox and the other auditor spent partial days on each of three consecutive days trying  
7 to confirm Hyatt's change of residency claim. (*Id.* Ex. 16.) The auditors went to a local library to look  
8 for articles about Hyatt in local newspapers. (*Id.* Ex. 16 p. 297.) They went to the location of Hyatt's  
9 post office box to see if Hyatt received mail there. (*Id.* Ex. 16 p. 297.) They drove seven times to the  
10 neighborhood where Hyatt supposedly lived at a "confidential" address on Tara Avenue, and looked  
11 at the Tara Avenue house that he bought in April 1992 (it was seemingly vacant, with minimal  
12 landscaping). (*Id.* Ex. 16; *see also id.* Ex. 5 at 50 (claiming confidentiality as to home address).)

13 During the first visit to the neighborhood, the auditors also asked a mail carrier that came by,  
14 without identifying Hyatt, whether she delivered mail on Tara Avenue (she said yes but could not  
15 provide any information). (*Id.* Ex. 16 p. 298.) On the fourth neighborhood visit, Ms. Cox saw a  
16 package on the house's front porch and then walked up to the porch, and without touching it looked at  
17 the mailing address that was clearly visible (it was not addressed to Hyatt). (*Id.* Ex. 16 p. 300.) On the  
18 same visit, the auditors noticed several construction workers at a site across from the house on Tara  
19 Avenue and asked, without identifying Hyatt, if they had been working there long (they had just started  
20 working there). (*Id.* Ex. 16 p. 300.)

21 On the fifth neighborhood visit, the neighborhood trash man came by, and the auditors asked  
22 without identifying Hyatt, how much trash came from the house (answer: not much). (*Id.* Ex. 16 p.  
23 301.) During the seven neighborhood visits, the auditors also talked to a total of five people in  
24 surrounding homes, without identifying Hyatt, to see if they had seen anyone living at the house. (*Id.*  
25 Ex. 16.) The auditors also visited a local real estate office and asked the manager if the home where  
26 Hyatt claimed to live had been listed for sale recently. (*Id.* Ex. 16 p. 302.)

27 The rest of the FTB's March 1995 field visit involved visits to the Las Vegas apartment complex  
28 where Hyatt claimed to have once lived, a Sam's Club membership store, and the office of Hyatt

1 accountant, which Hyatt claimed was one of his Nevada business addresses. (*Id.* Ex. 16 p. 302.) At  
2 the apartment, the auditors spent approximately one hour looking at the apartment complex, asking the  
3 managers about their memory of Hyatt, asking one woman who lived just across from Hyatt's rented  
4 unit if she remembered him, and reviewing the items in Hyatt's rental file (including Hyatt's envelope  
5 with a Nevada return address and a California postmark). (*Id.* Ex. 16.) At the Sam's Club, the auditors  
6 met with the manager to determine if he could provide any membership information, without identifying  
7 Hyatt (the manager provided store numbers but could not provide any third party information). (*Id.* Ex.  
8 16 p. 301.) At the office of Hyatt's accountant, the auditors asked the receptionist if Hyatt's accountant  
9 or Hyatt himself was there. (*Id.* Ex. 16 p. 302.) The receptionist indicated that Kern was not present  
10 and that she did not know who Hyatt was. (*Id.* Ex. 16 p. 302.)

11 When a contact with a Nevada citizen required it, Ms. Cox, the lead auditor, identified herself  
12 as a California Franchise Tax Board employee and showed her Franchise Tax Board identification card.  
13 (Cox. Aff. ¶ 25 & Ex. 24.) If any person contacted requested information about the reason for the  
14 inquiry, Ms. Cox stated simply that it was regarding a tax matter. (*Id.* ¶ 25.) The auditors did not reveal  
15 Hyatt's name during any such contacts unless necessary, and never disclosed Mr. Hyatt's social security  
16 number or any comparable specifics about Mr. Hyatt to anyone during the field visit. (*Id.*)

17 **Nevada visit, November 1995:** During late November 1995, Ms. Cox accompanied another  
18 FTB auditor to Las Vegas to assist on the other auditor's cases. (Cox Aff. ¶ 26.) During the visit,  
19 because the other auditor's case work was in the vicinity of Hyatt's supposed residence on Tara  
20 Avenue, Ms. Cox made a brief observation of it. (*Id.*) She made no inquiries with other persons during  
21 this trip concerning the residency of Mr. Hyatt. (*Id.*)

22 **Contacts from California with third parties in Nevada:** The FTB's audit of Mr. Hyatt  
23 involved mail and phone contacts with Nevada third parties between July 15, 1993 and September 27,  
24 1995. (Cox Aff. ¶¶ 27-28.) Most (78%) of the FTB's third party contacts in Nevada by mail or phone  
25 were to persons or entities that Hyatt identified on his initial response to the FTB's request for residency  
26 information. (*Id.* ¶ 31.) The substance of the FTB's phone contacts with Nevada third parties are  
27 documented in the FTB's audit files for Hyatt. (*Id.* ¶ 27 & Ex. 25.) The FTB's mail contacts were  
28 either by letter alone, or by a letter accompanied by a "Demand to Furnish Information," a standard FTB

1 form. (*Id.* ¶ 28.)

2       The FTB's mail correspondence by letter alone involved twenty letters to fifteen Nevada  
3 recipients: the Department of Motor Vehicles (two letters), the Las Vegas Postmaster (three letters),  
4 five Clark County Government agencies (seven letters), Nevada Governor Robert Miller, Nevada  
5 Senator Richard Bryan, Dr. Steven Hall (Hyatt's dentist), University Medical Center, KB Plumbing,  
6 Mr. Pryor (a resident in Mr. Hyatt's claimed Las Vegas neighborhood), Mr. Eggers (another  
7 neighborhood resident), and Allstate Sand and Gravel. (Cox Aff. ¶ 29 & Ex. 26.) The FTB's mail  
8 correspondence by cover letter enclosing a "Demand to Furnish Information" form involved fifteen  
9 letters to twelve Nevada recipients: Temple Beth Am (two letters), the Sports Authority, Nevada  
10 Development Authority (two letters), Personal Computer Users Group, Bizmart, Sam's Club,  
11 Congregation Ner Tamid, Las Vegas Valley Water District, Silver State Disposal Service, Southwest  
12 Gas Corp., Las Vegas Sun (two letters), and the Wagon Trails Apartments. (*Id.* ¶ 30 & Ex. 27.)

13       When the above correspondence involved Nevada government agencies or businesses, the FTB  
14 generally identified Hyatt merely by name and social security number, and where necessary with Hyatt's  
15 claimed Nevada post office or home address. (Cox Aff. ¶¶ 29, 30 & Ex. 26, 27.) When the  
16 correspondence involved Nevada individuals, such as residents of Hyatt's neighborhood, the FTB often  
17 identified Hyatt only by name, or not at all. (*See id.* Ex. 26 pp. 348, 350, 352.) All of the FTB's letters  
18 enclosing a "Demand to Furnish Information" form were to businesses or other entities, rather than  
19 individuals. (*See id.* Ex. 27.) Most of these Nevada mail contacts were to government agencies or  
20 businesses that one would expect to maintain large citizen or client databases, such as the Clark County  
21 Election Department, the Department of Motor Vehicles, and Sam's Club. (*See id.* Ex. 26-27 pp. 339  
22 340, 373.)

23       **Contacts from California with Hyatt or his representatives in Nevada:** The FTB sent two  
24 initial notice letters to Hyatt's Las Vegas post office box, and corresponded with Hyatt's Nevada  
25 accountant via phone and mail from California from June 1993 through October 1995. (Cox Aff. ¶  
26 32, 33.) These contacts involved Nevada by necessity, as Hyatt claimed to have a Nevada address, and  
27 designated a Nevada accountant in conjunction with his Los Angeles, California attorney to handle the  
28 FTB's audits. (*Id.* ¶ 6 Ex. 3.) Copies of the letters that the FTB sent into Nevada to Hyatt or his

1 accountant over this period are attached. (*Id.* ¶ 32.) Auditors' notes of the telephone calls to Hyatt's  
2 accountant are also attached. (*Id.* ¶ 33 & Ex. 29.)

3 **3. Hyatt wants a Nevada trial on everything that the FTB did, whether in Nevada or not.**

4 While Hyatt invokes this Court's jurisdiction based on acts "in Nevada," Hyatt's massive  
5 discovery efforts indicate that he wants to litigate far more. Hyatt's lawyers have spent over 315 hours  
6 taking depositions, generated more than 11,000 pages of transcripts from 24 deponents (including a  
7 2,400 page transcript from a single witness), propounded 329 individual document demands to the FTB,  
8 made over 340 other document requests to deposed witnesses, and demanded and received over 17,000  
9 pages of FTB produced documents. (Leatherwood Aff. ¶¶ 3-7.) But very little of Hyatt's discovery  
10 concerns the FTB's Nevada acts, because Hyatt believes that the bases of the FTB's alleged tort liability  
11 are "not limited to what happened in the State of Nevada." (*Id.* ¶ 9 & Ex. 2 (statement of Hyatt's  
12 counsel).) Given Hyatt's discovery strategy, and his counsels' opinions about the scope of this case,  
13 it is clear that Hyatt wants this Nevada action to be a sweeping indictment of everything that the FTB  
14 did involving Hyatt, whether in Nevada or not.

15 **LEGAL STANDARDS**

16 **1. Summary judgment standard.**

17 The Court must grant the FTB's summary judgment motion if the FTB shows that there is "no  
18 genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of  
19 law." Nev. R. Civ. P. 56(c). Under this rule, the FTB bears the initial responsibility of informing the  
20 Court of the bases for its motion, and of identifying the evidence that it believes demonstrates the  
21 absence of a genuine factual issue. *Clauson v. Lloyd*, 103 Nev. 432, 435 n.3, 743 P.2d 631 (1987)  
22 (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 106 S.Ct. 2548 (1986)). The FTB can satisfy this  
23 initial responsibility by pointing to parts of the record that demonstrate "an absence of evidence  
24 supporting one or more of the prima facie elements of the non-moving party's case." *NGA #2 Limited*  
25 *Liability Company v. Rains*, 113 Nev. 1151, 1156, 946 P.2d 163 (also citing *Celotex*). The FTB may  
26 also discharge its initial responsibility with evidence that there are complete defenses to Hyatt's claims.  
27 See *Lester v. Buchanan*, 112 Nev. 1426, 1431, 929 P.2d 910 (1996).

28 Once the FTB satisfies its initial responsibility, Hyatt must point to specific facts, rather than

1 general allegations and conclusions, demonstrating the existence of a genuine issue of material fact.  
2 *Bird v. Casa Royale West*, 97 Nev. 67, 70, 624 P.2d 17 (1981). A genuine issue of material fact exists  
3 only where “the evidence is such that a reasonable jury could return a verdict for [Hyatt].” *Bulbman*,  
4 *Inc. v. Nevada Bell*, 108 Nev. 105, 110, 825 P.2d 588 (1992) (citations omitted). Hyatt “is not entitled  
5 to build a case on the gossamer threads of whimsy, speculation, and conjecture.” *Id.* (quoting *Collins*  
6 *v. Union Fed. Savings & Loan*, 99 Nev. 284, 294, 662 P.2d 610 (1983)).

7 **2. Dismissal standard under NRCP 12(h)(3).**

8 The Nevada Rules of Civil Procedure require dismissal of an action “whenever it appears by  
9 suggestion of the parties or otherwise that the court lacks jurisdiction over the subject matter.” Nev.  
10 R. Civ. P. 12(h)(3). A motion to dismiss for lack of subject matter jurisdiction can make two different  
11 types of attacks: facial or factual. A facial attack simply concerns whether the face of the complaint  
12 supports an exercise of the court’s jurisdiction. A factual attack, such as the present motion, challenges  
13 the court’s actual lack of subject matter jurisdiction regardless of the formal sufficiency of the  
14 allegations. *See generally* Wright & Miller, *Federal Practice and Procedure: Civil 2d* § 1350 at 211-  
15 218; *id.* § 1393 at 764-776. Issues of sovereign immunity are jurisdictional, and are properly raised  
16 under Rule 12(h)(3). *E.g., Ramey Const. Co. v. Apache Tribe of Mescalero Reservation*, 673 F.2d 315,  
17 318 (10th Cir. 1982).

18 **SUMMARY OF ARGUMENT**

19 The FTB’s acts outside Nevada cannot form a basis for liability in this Nevada Court. The FTB  
20 is a California government agency, and no authority allows this Nevada Court to impose liability on a  
21 California government agency for its California conduct. As to the FTB’s Nevada acts, there is no  
22 evidence on which a reasonable jury could return a verdict for Hyatt. The FTB took what few actions  
23 it did in Nevada as part of its governmental obligations to administer California’s tax laws, and as a  
24 result of Hyatt’s inability or unwillingness to provide satisfactory evidence of his claimed change of  
25 state of residence from California to Nevada. Moreover, Hyatt’s claims boil down to nothing more than  
26 trivial complaints that the FTB disclosed his name, alleged Las Vegas home address, and Social  
27 Security number to a few Nevada entities and individuals, and made statements in Nevada suggesting  
28 truthfully that the FTB’s contacts about Hyatt concerned a tax matter. The FTB cannot be punished



1 simply for doing its job, and the Court should award summary judgment to the FTB.

2 In the alternative, the FTB is entitled to dismissal of Hyatt's remaining claims under Nevada  
3 Rule of Civil Procedure 12(h)(3). California law contains multiple jurisdictional bars to Hyatt's lawsuit  
4 that derive from California's sovereign immunity, including governmental immunity laws regarding tax  
5 administration activities, and administrative exhaustion laws regarding taxation and tort claims.  
6 Principles of Full Faith and Credit, sovereign immunity, and constitutional choice of law all require  
7 application of these California laws to this case. Under these principles, the Court must apply  
8 California's governmental immunity laws regarding tax administration to the entirety of the FTB's  
9 conduct, including its Nevada acts, and Hyatt has no right to proceed further under these laws. Hyatt  
10 also has no right to proceed further with this case under California's administrative exhaustion laws,  
11 as Hyatt failed to exhaust his administrative remedies before filing this suit. Even if applying these laws  
12 was not required, the Court should still apply them as a matter of comity. Hyatt's case is even barred  
13 by Nevada's own administrative exhaustion/ripeness law. For all of these reasons, Hyatt's case should  
14 be dismissed.

#### 15 ARGUMENT

16 **1. The FTB's acts outside Nevada cannot form the basis for FTB liability in this case.**

17 As an initial matter, the Court must recognize that the FTB's conduct outside Nevada cannot  
18 form a basis for liability in this Court under any of Hyatt's claims. The FTB is a government agency  
19 of California, a sovereign state, and no authority allows this Nevada Court to impose liability on a  
20 branch of the California government based on acts that did not involve Nevada in any way. *Nevada v.*  
21 *Hall*, a favorite Hyatt case, involved a California court's imposition of liability on a Nevada agency  
22 based on an accident "in California," not an accident in Nevada or anywhere else. *Nevada v. Hall*, 44  
23 U.S. 410, 411, 99 S.Ct. 1182 (1978). *Mianecki v. Second Jud. District Court*, another Hyatt favorite  
24 involved allegations of failures to act in Nevada, and another state's conduct that necessarily involve  
25 Nevada; namely, approving a convicted sex offender's Nevada travel. *Mianecki v. Second Jud. Distric*  
26 *Court*, 99 Nev. 93, 95, 658 P.2d 422 (1983). Neither of these authorities permits a Nevada court to hold  
27 the FTB liable for anything that it did concerning Hyatt that occurred entirely in California or otherwise  
28 outside of Nevada.

1 Even if this were not the case, the FTB's entirely intrastate acts in California can only be  
2 evaluated under California's own laws, under which the FTB has statutory immunity from Hyatt's tort  
3 claims. Cal. Gov. Code § 860.2; *Mitchell v. Franchise Tax Board*, 183 Cal.App.3d 1133, 1136, 228  
4 Cal. Rptr. 750 (1986). California's laws regarding exhaustion of administrative remedies also bar  
5 Hyatt's attempt to litigate over the FTB's California acts. Hyatt has not yet exhausted his California  
6 administrative remedies concerning California tax matters, and has also never presented his tort claims  
7 to the California Board of Control, the California agency to which all tort claimants against the state  
8 must submit their claims before suing. Hyatt's failure to do either of these things before filing suit  
9 precludes litigation regarding the FTB's California acts in this case. Cal. Rev. & Tax. Code § 19381  
10 (barring legal action against any California official "to prevent or enjoin the assessment or collection  
11 of any tax," including taxes based on residency determinations, absent exhaustion of all applicable  
12 administrative remedies); Cal. Gov. Code §§ 911.2, 905.2 (making presentation of tort claim to  
13 California Board of Control a jurisdictional prerequisite to suit).

14 In opposition to the FTB's motion for judgment on the pleadings, Hyatt claimed that "[t]he FTB  
15 is in Nevada answering for its tortious conduct here. . .," not in California or elsewhere. (Plaintiff Gil  
16 Hyatt's Surreply at 5 (emphasis in original) (attached to Plaintiff's Motion for Leave to File Surreply  
17 (Apr. 2, 1999).) Opposing the same motion, Hyatt also claimed that "California's sovereignty ended  
18 at the Nevada border," which constitutes an acknowledgment of the FTB's sovereignty before the  
19 Nevada/California state line is crossed. (Opp. to Motion at 21, lines 19-20 (Mar. 15, 1999).) But given  
20 Hyatt's discovery efforts and prior pleadings, he will undoubtedly retreat from this acknowledgment  
21 of the FTB's sovereignty in opposition to this motion, and attempt to smear the FTB and avoid  
22 summary judgment or dismissal using the same non-Nevada allegations that Hyatt has made all along.  
23 The Court should disregard this tactic, and focus on the FTB's Nevada acts alone.

24 **2. The FTB is entitled to summary judgment concerning its Nevada acts.**

25 **A. None of the FTB's Nevada acts were tortious.**

26 When the Court focuses on the FTB's Nevada acts, described fully above, Hyatt obviously has  
27 no triable claim. Given the limited and appropriate nature of the FTB's Nevada acts, there is no  
28 evidence from which a jury could reasonably find that the FTB committed an actionable invasion

1 privacy, an abuse of process, any act constituting a tort of outrage, or any act of fraud or negligent  
2 misrepresentation. Instead, the FTB's Nevada acts were a privileged part of the FTB's governmental  
3 functions, and were justified by Hyatt's own conduct that cast considerable doubt on his claim that he  
4 changed his state of residence from California to Nevada in late 1991. The lack of evidence supporting  
5 Hyatt's claims, combined with the FTB's privilege to do what it did, require summary judgment for the  
6 FTB.

7 (1) There is no evidence from which a jury could reasonably find that the  
8 FTB's Nevada acts were an invasion of privacy.

9 Focusing on the FTB's Nevada acts, there is no evidence from which a jury could reasonably  
10 find that the FTB invaded Hyatt's privacy under any of the privacy causes of action in Hyatt's  
11 complaint: (a) unreasonable intrusion upon the seclusion of another; (b) unreasonable publicity given  
12 to private facts; and (c) casting Hyatt in a false light. (First Am. Compl., Causes of Action Two through  
13 Four.) Hyatt's first privacy tort for intrusion requires evidence of: "(1) an intentional intrusion  
14 (physical or otherwise); (2) on the solitude or seclusion of another; (3) that would be highly offensive  
15 to a reasonable person." *PETA v. Bobby Berosini, Ltd.*, 111 Nev. 615, 630-31, 895 P.2d 1269 (1995),  
16 *modified on other grounds*, 113 Nev. 644, 650, 940 P. 2d 134, 138 (1997) (citing Restatement (Second)  
17 Torts § 652A). Hyatt's second privacy tort for public disclosure of private facts requires evidence "that  
18 a public disclosure of private facts has occurred which would be offensive and objectionable to a  
19 reasonable person of ordinary sensibilities." *Montesano v. Donrey Media Group*, 99 Nev. 644, 649,  
20 668 P.2d 1081 (1983), *cert. denied*, 466 U.S. 959 (1984). Hyatt's false light claim requires proof that  
21 the FTB put Hyatt before the public in a false light in a manner that "would be highly offensive to a  
22 reasonable person," and also that the FTB "had knowledge of or acted in reckless disregard as to the  
23 falsity of the publicized matter and the false light in which [Hyatt] would be placed." *Rinsley v. Brandt*,  
24 700 F.2d 1304, 1306 (10th Cir. 1983); *see also PETA*, 111 Nev. at 622 n.4 (citing *Brandt*); Restatement  
25 (Second) of Torts § 652E. This last variety of privacy tort requires proof by "clear and convincing  
26 evidence. . . ." *Machleder v. Diaz*, 801 F.2d 46, 56 (2d Cir. 1986), *cert. denied*, 479 U.S. 1088 (1987);  
27 *see also PETA*, 111 Nev. at 622 n.4 (citing *Diaz*).

28 The evidence that unites all of these privacy torts, and that is wholly absent here, is evidence of

1 conduct that is at least offensive and objectionable to a reasonable person. Offensiveness is a legal issue  
2 as a threshold matter, *PETA*, 111 Nev. at 634-635, and there is no evidence of FTB acts in Nevada  
3 allowing a reasonable conclusion that the FTB engaged in such conduct. To the contrary, the evidence  
4 shows that all the FTB did in Nevada was try to verify Hyatt's claimed change of residency, using  
5 methods that disclosed minimal identifying information about Hyatt to a limited number of Nevada  
6 companies, government agencies, and citizens, many of whom Hyatt identified himself as able to  
7 corroborate his residency claim.

8       The context in which the FTB made these disclosures is an important consideration in evaluating  
9 their offensiveness. *PETA*, 111 Nev. at 634-635. Here, the context in which the FTB was operating  
10 was one in which Hyatt's "evidence" of a residency change simply did not add up. Hyatt claimed to  
11 changed his residency near the end of a year just before receiving \$100 million of otherwise taxable  
12 California income. (Cox Aff. ¶ 4 & Ex. 1 p. 12.) He told the FTB three different move dates to  
13 Nevada, providing his third and final move date after the FTB found evidence that his other move dates  
14 were necessarily false. (*Id.* ¶¶ 4, 8, 9 & Ex. 1, 5, 6, 7, 8 pp. 14, 43, 52, 56, 93; *see also* Leatherwood  
15 Aff. ¶ 11 & Ex. 3.) He was a multimillionaire, but claimed to have rented a Nevada apartment in a  
16 primarily lower-income complex, and moved his possessions with a family trailer. (Cox Aff. ¶¶ 11, 14  
17 & Ex. 11, 14 pp. 227, 283.) Hyatt never accounted for where he was in Nevada between September  
18 25, September 26 or October 1, 1991, his three alleged move dates, and October 20, 1991. (*Id.* ¶¶ 4,  
19 8, 9 & Ex. 1, 5, 6, 7, 8.) He sent at least one envelope to the Wagon Trails Apartment postmarked from  
20 California at a time when he was supposed to have already moved. (*Id.* ¶ 18.)

21       Hyatt also gave the FTB many supposed Nevada social and business contacts that the FTB could  
22 not verify. (Cox Aff. ¶¶ 19, 20 & Ex. 17, 18, 19, 20.) He had California dining charges on his credit  
23 cards for many months after he claimed to have changed his state of residence to Nevada, and Nevada  
24 dining charges on only one day during the same period. (*Id.* ¶ 12 & Ex. 12.) The sale deed for his  
25 house was not recorded until years after he sold it, and had irregularities on its face resulting from his  
26 backdating of the deed. (*Id.* ¶ 21 & Ex. 14, 21, 22; Leatherwood Aff. ¶ 11 & Ex. 3.) The FTB's  
27 discovery about this transaction also shows that Hyatt was in California on September 27, 1991, one  
28 day after the third and final date that Hyatt claimed to have moved. (Leatherwood Aff. Ex. 3.) The

1 receptionist at his supposed Nevada business address had never heard of him when asked. (Cox Aff.  
2 ¶ 24 & Ex. 16.) He registered to vote in Nevada using someone else's address long after the date that  
3 he had claimed to have moved. (Cox Aff. ¶ 35 & Ex. 30-31; Mayers Aff. ¶¶ 1-7; *see also* Leatherwood  
4 Aff. ¶ 12 & Ex. 4.) Two of his licensing agreements executed after he supposedly moved listed a  
5 California address for him. (Cox Aff. ¶ 22 & Ex. 23 pp. 313, 314, 327.)

6       Whether or not Hyatt was highly offended by the FTB's Nevada conduct, there was nothing  
7 objectively offensive about the FTB's Nevada conduct in the context of Hyatt's suspect change of  
8 residency claim. Instead, the FTB's disclosures were justified by Hyatt's own shifting, dubious story  
9 about his claimed change of residency, which occurred just before he received over \$100 million in  
10 income otherwise taxable in California. No reasonable person could find offensive and objectionable,  
11 the FTB's limited Nevada disclosures of Hyatt's name, address, and social security number in this  
12 context, which was largely of Hyatt's own creation. A reasonable person would expect such disclosures  
13 to help the FTB confirm or refute Hyatt's change of residency claim.

14       Indeed, even apart from the specific context of this case, a reasonable person with nothing to  
15 hide would not be offended by a state taxing agency's disclosure of minimal identifying information  
16 like the disclosures that the FTB made. A reasonable person with nothing to hide would also not be  
17 offended by cursory questions to potential witnesses about what activities, if any, they saw at a certain  
18 home or apartment, made by FTB employees stating simply, when necessary, that the inquiry concerned  
19 a tax matter. Just like a plaintiff alleging damages, a reasonable taxpayer "must expect reasonable  
20 inquiry and investigation to be made" of his or her assertions to the taxing agency, and "to this extent  
21 [their] interest in privacy is circumscribed." *See McLain v. Boise Cascade Corp.*, 271 Or. 549, 555, 533  
22 P.2d 343 (1975) (quoting *Forster v. Manchester*, 410 Pa. 192, 189 A.2d 147, 150 (1963).) Only an  
23 unreasonable person would expect taxing agencies to make such inquiries without disclosing a single  
24 piece of identifying information about a taxpayer, as Hyatt apparently does.

25       A reasonable person also would not consider the FTB's Nevada audit activities as "stating or  
26 insinuating . . . that [Hyatt] was under investigation in California, thereby falsely portraying [him] as  
27 having engaged in illegal or immoral conduct," as Hyatt does. (First Am. Compl. ¶ 46.) Instead, a  
28 reasonable person would consider the FTB's Nevada disclosures about Hyatt as conveying, at most, the

1 fact that the FTB was auditing Hyatt for some unspecified tax purpose. No FTB correspondence to third  
2 parties in Nevada ever said that Hyatt had engaged in "illegal or immoral" conduct. No statement of  
3 any FTB employee to third parties in Nevada ever communicated that either. Hyatt's contrary  
4 allegation is simply his lawyers' conclusory, unsupported "spin" on what the FTB really said and did  
5 in Nevada, which is insufficient to avoid summary judgment. *Wayment v. Holmes*, 112 Nev. 232, 237,  
6 912 P.2d 816 (1996) ("[Conclusory statements along with general allegations do not create an issue  
7 of material fact.]") (citing *Michaels v. Sudeck*, 107 Nev. 332,334, 810 P.2d 1212 (1991).)

8 In addition to the above defects common to all of Hyatt's privacy claims, there also is no  
9 evidence creating a genuine issue of material fact as to other elements of his privacy causes of action,  
10 as follows:

11 **Unreasonable intrusion upon Hyatt's seclusion.** There is no evidence of FTB acts in Nevada  
12 constituting an intrusion on Hyatt's solitude or seclusion. There is no evidence that the FTB's Nevada  
13 acts breached any private space of Hyatt's, or involved examination of any private affairs of Hyatt that  
14 he did not himself reference in response to FTB information requests. Hyatt's placing of some of his  
15 arguably private affairs in issue, such as his membership in a Nevada Jewish temple, negates any  
16 objectively reasonable expectation of seclusion or solitude as to those affairs. *PETA*, 111 Nev. at 631,  
17 895 P.2d at 1279. Again, cases involving persons seeking damages for injuries are instructive. *E.g.*,  
18 *McLain*, 271 Or. at 555, 533 P.2d at 346 ("It is . . . well established that one who seeks to recovery  
19 damages for alleged injuries must expect that his claim will be investigated and he waives his right o  
20 privacy to the extent of a reasonable investigation.")

21 Moreover, Hyatt's allegation that the FTB's minimal information disclosures in Nevada  
22 somehow contributed to the intrusion on Hyatt's solitude or seclusion makes no sense. (First. Am  
23 Compl. ¶¶ 34-35.) The intrusion tort concerns acts of investigation or examination of private matter  
24 or a secluded place, not the publication of anything to third parties. Restatement (Second) of Torts  
25 652B, Comment (b). Furthermore, Hyatt had no reasonable expectation of privacy that barred th  
26 FTB's limited Nevada disclosures of his name, supposed Nevada address, and social security numbe  
27 for the purpose of verifying his residency claim. To hold otherwise would seriously impede the FTB  
28 efforts to enforce California's tax laws.

1           **Unreasonable publicity given to private facts.** As with the previous tort, Hyatt had no  
2 reasonable expectation of privacy that barred the FTB's minimal information disclosures in Nevada for  
3 the purpose of verifying Hyatt's residency claim. There is also no evidence that the FTB's minimal  
4 information disclosures in Nevada constituted sufficient publicity to be actionable under this tort. As  
5 used to describe this tort, the word "[p]ublicity . . . means that the matter is made public, by  
6 communicating it to the public at large, or to so many persons that the matter must be regarded as  
7 substantially certain to become one of public knowledge." Restatement (Second) of Torts § 652D,  
8 Comment (a). Here, the FTB sent only eighteen pieces of correspondence to Nevada organizations or  
9 government offices that referenced Hyatt's social security number and/or linked his name with his  
10 supposedly confidential Las Vegas address on Tara Avenue. (*See Cox Aff.* ¶¶ 29, 30, & Ex. 26, 27.)  
11 The FTB's disclosure to this limited group of Nevada citizens and entities is not actionable "publicity"  
12 as a matter of law. *See Polin v. Dun & Bradstreet, Inc.*, 768 F.2d 1204, 1206-1207 (10th Cir. 1985) (no  
13 invasion of privacy claim for credit report issued to seventeen subscribers because "publicity"  
14 requirement not satisfied).

15           Even if the FTB had publicized information about Hyatt, there is no evidence that the  
16 supposedly confidential information that the FTB disclosed in Nevada (his name, allegedly  
17 "confidential" Nevada address, and social security number) actually were "private facts." There can  
18 be no liability for unreasonable publicity of information "when the defendant merely gives further  
19 publicity to information that is already public," such as a "matter of public record." Restatement  
20 (Second) of Torts § 652D, Comment (b). Here, the public already knew Hyatt's name from the  
21 substantial publicity surrounding his patent awards. (*See First. Am. Compl.* ¶ 8, lines 25-27  
22 (acknowledging publicity).) In addition, Hyatt had registered to vote in Nevada when the FTB began  
23 auditing Hyatt, making his social security number a matter of public record. (*Leatherwood Aff.* ¶ 12  
24 & Ex. 4.) Hyatt's "secret" Nevada home on Tara Avenue was also pictured in a segment on "Hard  
25 Copy," a national television news magazine, long before any of the FTB's Nevada disclosures. (*Id.* ¶  
26 14 & Ex. 6.) Furthermore, Hyatt's social security number is a matter of public record in California from  
27 at least two of his California court actions. (*Id.* ¶¶ 13, 15 & Ex. 5, 7.) These facts, coupled with the  
28 absence of evidence of highly offensive conduct, preclude Hyatt from recovery for this privacy tort.

1       **Casting Hyatt in a false light.** Hyatt's false light claim suffers from the additional defects that  
2 nothing that the FTB said in Nevada publicized a matter that was false. Both publicity and falsity are  
3 essential elements of Hyatt's false light claim. Restatement (Second) of Torts § 652E (requiring  
4 "publicity"); *id.*, comment (a) ("[I]t is essential...that the matter published concerning the plaintiff is  
5 not true."). The FTB's Nevada disclosures about Hyatt included only accurate identifying information  
6 about Hyatt, and at most indicated that Hyatt was the subject of an FTB audit, which was entirely true.  
7 (Cox. Aff. Ex. 26-27.) The FTB sent only eighteen pieces of Nevada correspondence that referenced  
8 Hyatt's social security number and/or linked his name with his supposedly confidential Las Vegas  
9 address, which is not tortious publicity as a matter of law. (Cox Aff. ¶¶ 29, 30 & Ex. 26, 27.)

10                       **(2) There is no evidence of FTB acts in Nevada from which a jury could**  
11                       **reasonably find extreme and outrageous conduct.**

12       The evidence concerning Hyatt's Fifth Cause of Action for the tort of outrage is similarly  
13 flawed. In *Branda v. Sanford*, the Nevada Supreme Court held that this tort requires, among other  
14 things, "extreme and outrageous conduct" on the defendant's part to be actionable:

15                       We recently explicitly recognized that liability can flow from intentional  
16                       infliction of emotional distress. . . . the elements of a prima facie case  
17                       [are]: (1) extreme and outrageous conduct by the defendant; (2) intent to  
18                       cause emotional distress or reckless disregard as to the probability; (3)  
                      severe emotional distress; and (4) actual and proximate causation of the  
                      emotional distress. *Branda v. Sanford*, 97 Nev. 643, 648, 637 P.2d 1223  
                      (1981).

19       A defendant's acts must be "extreme and outrageous" to "an average member of the community," and  
20 must go so far beyond "all possible bounds of decency" as to be considered "atrocious" and "utterly  
21 intolerable:"

22                       Liability has been found only where the conduct has been so outrageous  
23                       in character, and so extreme in degree, as to go beyond all possible  
24                       bounds of decency, and to be regarded as atrocious, and utterly  
25                       intolerable in a civilized community. Generally, the case is one in which  
26                       the recitation of the facts to an average member of the community would  
                      arouse his resentment against the actor, and lead him to exclaim,  
                      "Outrageous!" Restatement (Second) of Torts § 46, Comment (d); *see*  
                      *also Star v. Rabello*, 97 Nev. 124, 126, 625 P.2d 90 (1981) (citing  
                      section 46 of the Restatement in its analysis of the tort).

27       Conduct with "social value" is generally not actionable under these standards. *E.g., Forste*  
28 *v. Manchester*, 189 A.2d 147, 151-152 (Pa. 1963) (private detective's surveillance of plaintiff t



1 determine if she had made false insurance claim not actionable as a tort of outrage, in part because of  
2 the "social value" inherent in revealing false claims). It is for the Court to determine, in the first  
3 instance, whether the FTB's conduct may reasonably be regarded as so extreme and outrageous as to  
4 justify a jury trial. *See* Restatement (Second) of Torts § 46, Comment (h).

5 Here, there is no evidence of any FTB acts in Nevada from which a jury could reasonably find  
6 the FTB liable for the tort of outrage. The FTB's limited acts in Nevada were performed as part of its  
7 duty to administer the California Personal Income Tax Law. Calif. Rev. & Tax Code §§ 17014, 19501.  
8 The FTB's Nevada acts resulted from Hyatt's own inability or unwillingness to provide credible  
9 evidence of his claimed change of state of residence from California to Nevada in late 1991. They were  
10 directed primarily to Nevada references that Hyatt gave to support his claim, and merely asked for basic  
11 information related to Hyatt's residency in 1991 and 1992. Some of the FTB's acts involved disclosure  
12 of Hyatt's name, social security number, and claimed Nevada address, but such minimal disclosures  
13 were hardly "atrocious," "utterly intolerable," or beyond "all possible bounds of decency," particularly  
14 where this information was already publicly available from other sources. Instead, these disclosures,  
15 and the FTB's limited questioning of Nevada citizens about Hyatt's residence here, were part of the  
16 reasonable efforts of the California government to determine the truth or falsity of Hyatt's change of  
17 residency claim. As such, the FTB's Nevada acts had inherent "social value," and do not give rise to  
18 the tort of outrage. *Forster*, 189 A.2d at 151-152. No doubt every taxpayer faced with an additional  
19 assessment has anxieties and feels "outraged." Nobody likes the tax man. But Hyatt's own outrage at  
20 the FTB's proposed assessments against him does not arise from "extreme and outrageous" FTB  
21 conduct in Nevada as a matter of law.

22  
23 **(3) There is no evidence of FTB acts in Nevada from which a jury could reasonably find an FTB abuse of process.**

24 The evidence concerning Hyatt's Sixth Cause of Action for abuse of process is likewise  
25 insufficient. Hyatt does not allege that the FTB took any court action or employed any court process,  
26 but instead alleges that the FTB sought to "extort vast sums of money" from Hyatt by directing  
27 unauthorized "administrative quasi-subpoenas" into Nevada. (First Am. Compl. ¶ 55.) The FTB's  
28 "Demand to Furnish Information" form is what Hyatt calls an "administrative quasi-subpoena." (*Id.*

¶ 56.) The FTB sent this form to a few Nevada recipients during the course of the FTB's administrative tax process concerning Hyatt's change of residency claim. California law expressly authorizes the FTB to send this form to "persons residing within or without the state." Cal. Govt. Code § 11189 (providing for enforcement of FTB demands for documentation) (emphasis added); Cal. Rev. & Tax. Code § 19504 (empowering the FTB to demand "any book, papers, or other data which may be relevant" to the FTB's tax enforcement duties).

In *Dutt v. Kremp*, 111 Nev. 567, 575, 894 P.2d 354 (1995), the Nevada Supreme Court defined the tort of abuse of process:

An abuse of process claim consists of two elements: (1) an ulterior purpose other than resolving a legal dispute; and (2) a willful act in the use of process not proper in the regular conduct of the proceeding. . . . An "ulterior purpose" includes any "improper motive" underlying the issuance of legal process.

Most jurisdictions limit the tort to abuse of judicial process, as opposed to abuse of administrative process. *Gordon v. Community First State Bank*, 255 Neb. 637, 646-651, 587 N.W.2d 343 (Neb. 1998) (stating and adopting "majority rule" limiting abuse of process tort to judicial process). See also *Sea-Pac Co. v. United Food & Commer. Worker's Loc. Union*, 699 P.2d 217, 218-19, 103 Wash.2d 800 (1985) (summary judgment must be granted where no court process employed); *Foothill Ind. Bank v. Mikkelsen*, 623 P.2d 748, 757 (Wyo. 1981) (publication of a notice of mortgage foreclosure not involving court action was not use of "process" as required for the abuse of process tort); Keeton et al., *Prosser & Keaton on the Law of Torts* § 121 at 898 (5<sup>th</sup> ed. 1984) ("[T]he judicial process must in some manner be involved" for there to be an abuse of process.)

Nevada state courts have not addressed this issue, but the Nevada federal court's discussion of the tort under Nevada state law is consistent with the majority rule. *Laxalt v. McClatchy Newspapers*, 622 F. Supp. 737, 750-51 (D. Nev. 1985) ("The mere filing of a complaint with malicious intent is insufficient [to find an abuse of process] for there must also be some subsequent act to filing which abuses the process.") (emphasis added). Further, even the few jurisdictions extending the tort to abuse of an administrative process do so only as to a private party's misuse of the administrative process, as opposed to a misuse of the process by the administrative agency itself. E.g., *Hillside Associates v. Stravato*, 642 A.2d 664, 669 (R.I. 1994).

1 Hyatt's abuse of process claim cannot survive under the above standards. Hyatt's abuse of  
2 process allegations and evidence rest entirely on claimed abuse of an administrative process, not the  
3 judicial process of any court. Further, Hyatt's allegations and evidence do not concern a private party's  
4 misuse of the FTB's administrative process, but the FTB's supposed misuse of its own process, a novel  
5 liability theory that has no legal support. Hyatt cannot recover for abuse of process under the  
6 undisputed facts of this case. *Gordon*, 255 Neb. at 646-651; *Sea-Pac*, 699 P.2d at 218-19, 221;  
7 *Foothill*, 623 P.2d at 757; *Laxalt*, 622 F. Supp. at 750-51.

8  
9 **(4) There is no evidence of FTB acts in Nevada from which a jury could reasonably find fraud or negligent misrepresentation.**

10 There is also no evidence on which a jury could reasonably find that the FTB engaged in fraud  
11 or negligent misrepresentations in Nevada. The bases for Hyatt's fraud and negligent misrepresentation  
12 claims are that unnamed FTB representatives, at various unspecified times, falsely promised  
13 confidentiality concerning "various aspects of plaintiff's circumstances, including . . . his personal home  
14 address and his business and financial transactions and status," and falsely gave "express and implied  
15 assurances and representations" that the FTB's audit "was to be an objective inquiry into the status of  
16 his 1991 tax obligation." (First. Am. Compl. ¶¶ 61, 63, 68-69.) Hyatt alleges no specifics about either  
17 type of FTB misrepresentation, and his alleged "indices of the FTB's fraud" almost exclusively describe  
18 FTB correspondence, meetings, and other acts within California. (*Id.* ¶ 62(a)-(c).)

19 In Nevada, the elements of intentional misrepresentation are set forth in *Landex, Inc. v. State*  
20 *ex rel. List*, 94 Nev. 469, 478, 582 P.2d 786 (1978):

- 21 1. A false representation made by the defendant;
- 22 2. Knowledge or belief on the part of the defendant that the  
23 representation is false or, that he has an insufficient basis  
of information to make the representation;
- 24 3. An intention to induce the plaintiff to act or to refrain  
25 from acting in reliance upon the misrepresentation;
- 26 4. Justifiable reliance upon the representation on the part of  
27 the plaintiff in taking action or refraining from taking  
28 action; and
5. Damage to the plaintiff resulting from such reliance.

1 Hyatt must establish all of these elements by clear and convincing evidence. *Lubbe v. Barba*, 91 Nev.  
2 596, 599, 540 P.2d 115 (1975). Hyatt's negligent misrepresentation claim also requires that the FTB  
3 have supplied false information, but only allows recovery if the FTB supplied the information  
4 negligently to Hyatt at a time when it owed him a legal duty to provide accurate information, and did  
5 so "for the guidance of [Hyatt] in [his] business transaction[]." *Bill Stremmel Motors, Inc. v. First*  
6 *Nat'l. Bank of Nev.*, 94 Nev. 131, 134, 575 P.2d 938 (1978) (emphasis added).

7 The FTB has documented in this motion every oral and written statement that the FTB made to  
8 Hyatt or his representatives in Nevada, and none of those statements give rise to any claim under the  
9 above standards. (See Cox Aff. ¶¶ 32, 33.) None of those statements constituted a promise to Hyatt  
10 that the FTB would not disclose to third parties the basic information that the FTB learned during the  
11 audit (specifically, his "confidential" Las Vegas address), or the basic information that the FTB already  
12 knew before the audit (specifically, his name and social security number). (*Id.*) Even if any statement  
13 had constituted such a promise, California law put Hyatt on notice that such disclosures of identifying  
14 information to third parties could happen during an audit, negating any justifiable reliance on any such  
15 promise:

16 A return or return information may be disclosed in an judicial or  
17 administrative proceeding pertaining to tax administration, if any of the  
following apply:

18 (a) The taxpayer is a party to the proceeding, or the proceeding arose out  
19 of, or in connection with, determining the taxpayer's civil or criminal  
liability. . . . Cal. Rev. & Tax. Code § 19545.

20 See also *Franchise Tax Bd. v. Superior Court*, 164 Cal. App. 3d 526, 537, 210 Cal. Rptr. 605 (1985)  
21 (FTB investigations regarding tax liability matters are "administrative inquiries"); *Smith v. State*, 38  
22 Nev. 477, 151 P. 512, 513 (1915) ("Everyone is presumed to know the law and this presumption is not  
23 even rebuttable."). Moreover, Hyatt admittedly had a duty to cooperate with the FTB's requests for  
24 information, (see First Am. Compl. ¶ 71, lines 20-21), negating any claim that the FTB's supposed  
25 promises of confidentiality for even basic identifying information caused something to happen to Hyatt  
26 that would not have happened otherwise.

27 Hyatt's claim that unnamed FTB representatives falsely promised at various unspecified times  
28 that the FTB would be "objective" in its 1991 audit is similarly defective. (First Am. Compl. ¶ 63, line

23.) Again, Hyatt's acknowledged duty to cooperate with the FTB's audit negates any possibility that these representations caused Hyatt to suffer some injury that he would not have suffered otherwise. (*See id.* ¶ 71, lines 20-21.) In addition, Hyatt's attempt to use vague promises of "objectivity" as bases for fraud and negligent misrepresentation claims is merely a thinly disguised attempt to litigate the FTB's underlying residency determination in its entirety, and to have this Court adjudicate issues concerning the FTB's non-Nevada conduct. But the Court dismissed Hyatt's request for a residency determination for lack of subject matter jurisdiction, and has no power to adjudicate the same residency issues and non-Nevada acts through Hyatt's proposed alternate route. (*See Partial Judgment on the Pleadings* (Apr. 16, 1999); *supra* at 16-17.)

If the above were not enough, Hyatt's negligent misrepresentation claim suffers from an additional defect. The FTB's involvement with Hyatt concerned only a California residency audit and a proposed assessment of personal income taxes, not a "business transaction" between Hyatt and the FTB. The absence of conduct fitting "squarely within a business or commercial transaction" between Hyatt and the FTB is fatal to Hyatt's negligent misrepresentation claim. *Barmettler v. Reno Air, Inc.*, 114 Nev. 441, 956 P.2d 1382, 1387 (1998) (company's drug and alcohol policy did not create a business transaction between company and employee).

**B. The FTB was privileged to take the Nevada actions that it did in any event.**

The FTB's affirmative defense of privilege is also a basis for summary judgment for the FTB. (*Answer to First Am. Compl.* p. 7 ¶ 8, lines 16-20 (Aug. 13, 1998) (asserting privilege defense).) Hyatt's entire case is premised on the assumption that the FTB was required to accept as true his claim that he had changed his residency as of September 26, 1991. Based on this assumption, he alleges that even the FTB's minimal disclosures and activities in Nevada give rise to a whole host of actionable torts.

But it is fundamental that administrative agencies are privileged to make their own investigatory decisions, based upon their particular areas of expertise and exercise of their delegated authority. *General Motors Corp. v. Federal Energy Regulatory Commission*, 613 F.2d 939, 944 (D.C. App. 1979) (in the absence of specific legislative direction, the decision of an administrative body whether or not to conduct an investigation is committed to the agency's discretion). It is also well-established that an

1 agency is privileged to investigate merely upon suspicion that the law is being violated. *See, e.g.,*  
2 *United States v. Morton Salt Co.*, 338 U.S. 632, 642-43 (1950); *DeMasters v. Arend*, 313 F.2d 79, 87  
3 (9th Cir. 1963), *cert. dismissed*, 375 U.S. 936 (1963); *Brovelli v. Superior Court of Los Angeles Co.*,  
4 364 P.2d 462, 465 (Cal. 1961). An agency may even investigate because it wants assurance that the law  
5 is not being violated. *Morton Salt*, 338 U.S. at 639; *DeMasters*, 313 F.2d at 88; *Brovelli*, 364 P.2d at  
6 465.

7 To impose tort liability upon an agency simply because it did not accept a person's asserted  
8 position and instead conducted its own investigation has long been rejected. *Gibson v. Reynolds*, 77  
9 F. Supp. 629, 640 (D. Ark. 1948), *aff'd*, 172 F.2d 95 (8th Cir. 1949), *cert. denied*, 337 U.S. 925 (1949)  
10 (A Draft Board was "not required to adopt plaintiff's view" in an administrative inquiry); *Maroosis v.*  
11 *Smyth*, 187 F.2d 228, 233 (9th Cir. 1951), *cert. denied*, 342 U.S. 814 (1951) (An IRS Collector was not  
12 required to consider a taxpayer's books to be accurate, and it was within the Collector's power to count  
13 physically the taxpayer's inventory to determine the amount owed).

14 Tax agencies in particular are entitled to exercise broad investigative power. The U.S. Supreme  
15 Court held in *United States v. Powell*, 379 U.S. 48 (1964) that the government is not required to make  
16 a showing of probable cause before seeking judicial enforcement of an IRS summons to produce  
17 documents, leaving the determination of the advisability and content of the summons to the agency's  
18 discretion:

19 Although a more stringent interpretation is possible, one which would  
20 require some showing of cause for suspecting fraud, we reject such an  
21 interpretation because it might seriously hamper the Commissioner in  
22 carrying out investigations he thinks warranted, forcing him to litigate  
23 and prosecute appeals on the very subject which he desires to  
24 investigate... *Powell*, 379 U.S. at 53.

25 The same judicial deference to a taxing agencies' administrative discretion is evident in the  
26 many decisions holding the Internal Revenue Service and its agents immune from suit for alleged torts  
27 committed in their tax administration duties. *E.g., Johnson v. United States*, 680 F. Supp. 508, 515  
28 (E.D.N.Y. 1987) (United States and IRS district director immune in a civil suit in which the plaintiff  
alleged that the director committed wrongful acts arising out of the assessment and attempted collection  
of the plaintiff's income tax); *Josephson v. Joslin*, 38 F.R.D. 344, 346-347 (D.N.J. 1965) (IRS agent

1 allegedly engaged in willful and malicious harassment of plaintiff while in the course of examining the  
2 plaintiff's books and records to ascertain his income tax liability was immune from suit); *Stankevitz v.*  
3 *IRS*, 640 F.2d 205, 206 (9<sup>th</sup> Cir. 1981) (summary judgment for IRS and IRS agents on immunity grounds  
4 as against claim of conspiracy to deprive taxpayer of his constitutional rights by maliciously auditing  
5 his account, as well as assessing an unjust deficiency); *White v. Commissioner*, 537 F. Supp. 679, 684  
6 (D. Colo. 1982) (damage claim for an improper audit dismissed because "IRS officials are absolutely  
7 immune from damages resulting from their decisions to initiate or continue proceedings such as audits  
8 and assessments, which are subject to later IRS adjudications"); *McKenzie v. Moeller*, 76-2 U.S. Tax  
9 Cas. (CCH) § 9535, 38 AFTR 2d (RIA) 5463 (E.D. Wis. 1976) (IRS and IRS agents sued for invasion  
10 of privacy and deprivation of constitutional rights on the basis of the issuance of a summons to obtain  
11 information relative to the plaintiff's tax liability were entitled to immunity).

12         Given the FTB's privilege to act as it did in Nevada, Hyatt has no right to proceed to trial on any  
13 of his claims. The FTB's decisions to take certain minimal acts against Hyatt were a privileged part of  
14 the FTB's discretion to administer California's tax laws. California law gave the FTB the statutory  
15 authority and duty to investigate Hyatt's change of residency claim. Cal. Rev. & Tax. Code §§ 17014  
16 & 19501. California law also contemplated and allowed the FTB to demand documentation and make  
17 necessary disclosures about Hyatt for this purpose, and to enforce demands for documentation both  
18 within and without the state. Cal. Rev. & Tax. Code § 19504 (empowering the FTB to demand "any  
19 book, papers, or other data which may be relevant" to the FTB's tax enforcement duties); Cal. Govt.  
20 Code § 11189 (providing for enforcement of FTB demands for documentation to "persons residing  
21 within or without the state.") (emphasis added); Cal. Rev. & Tax. Code § 19545 (authorizing FTB  
22 disclosures of a tax return or "return information" in an administrative proceeding concerning a  
23 taxpayer's civil liability). The FTB did not have to take Hyatt at his word, particularly where his word  
24 raised more questions than it answered about his claim to have changed residency on September 25, 26,  
25 or October 1, 1991. (*See supra* at 6-10.)

26         The FTB's privilege defense to Hyatt's invasion of privacy claims in particular has even more  
27 legal support. The Restatement (Second) of Torts makes the conditional privileges available to  
28 defamation defendants also available to invasion of privacy defendants. Restatement (Second) of Torts

1 § 652G. One conditional privilege allows publication of private matters "if the circumstances induce  
2 a correct or reasonable belief that : (a) there is information that affects a sufficiently important interest  
3 of the publisher; and (b) the recipient's knowledge of the [private] matter will be of service in the lawful  
4 protection of the interest." *Id.* § 594. Another conditional privilege allows state officers of any rank  
5 to communicate otherwise private information "required or permitted in the performance of his official  
6 duties." *Id.* § 598A.

7       Given Hyatt's questionable claim to have changed residency, FTB employees reasonably  
8 believed that third parties in Nevada had information affecting an important FTB interest: determining  
9 whether Hyatt had fulfilled his obligations under California tax law. Restatement (Second) of Torts §  
10 594(a). The FTB also had a reasonable belief that disclosing Hyatt's name, address and social security  
11 number to these few Nevada third parties would help them provide accurate and complete information  
12 to the FTB, which would be of service to the protection of the FTB's important interest. *Id.* § 594(b).  
13 Hyatt cannot genuinely dispute the lawfulness of the FTB's protection of that interest, as the FTB is the  
14 agency with the affirmative statutory duty for administering California's tax laws. Cal. Rev. & Tax.  
15 Code § 19501. There can also be no genuine dispute that every act of an FTB employee in Nevada  
16 involved acts required or permitted in the employees' official duties. (*See Cox Aff.* ¶ 36; *Illia Aff.* ¶¶  
17 2, 3, 4.)

18 **3. Alternatively, the FTB is entitled to dismissal of Hyatt's claims under Nevada Rule of Civil**  
19 **Procedure 12(h)(3).**

20       The above demonstrates that Hyatt has no right to a trial even without consideration of the  
21 jurisdictional bars to Hyatt's claims under California law, of which there are several. California  
22 Government Code section 860.2, a reflection of California's sovereign immunity, specifically  
23 immunizes the FTB from liability for the torts that Hyatt claims, which all arise from FTB acts relating  
24 to application of California's tax laws:

25               Neither a public entity nor a public employee is liable for an injury  
26               caused by:

27               (a) Instituting any judicial or administrative proceeding or action for or  
28               incidental to the assessment or collection of a tax.

              (b) An act or omission in the interpretation or application of any law



1 relating to a tax.

2 In addition, California's Revenue and Taxation Code bars legal action against any California  
3 official "to prevent or enjoin the assessment or collection of any tax," including taxes based on  
4 residency determinations, prior to exhaustion of all applicable administrative remedies, which Hyatt has  
5 not yet done. Cal. Rev. & Tax. Code § 19381. California law further protects the FTB from Hyatt's  
6 tort lawsuit by making presentation of tort claims to California's Board of Control a jurisdictional  
7 prerequisite to suit, something that Hyatt did not do before filing. Cal. Gov. Code §§ 911.2, 905.2.

8 As described below, principles of Full Faith and Credit, sovereign immunity, and constitutional  
9 choice of law all require that the Court apply these California laws. Under these principles, the Court  
10 must apply California's governmental immunity laws regarding tax administration to the entirety of the  
11 FTB's conduct, including its Nevada acts, and Hyatt has no right to proceed further under these laws.  
12 The Court must also apply California's administrative exhaustion laws, but Hyatt failed to exhaust his  
13 administrative remedies before filing, which is another reason for dismissing this action. Even if  
14 applying these laws was not required, the Court should still apply them as a matter of comity. Finally,  
15 Nevada's own law of administrative exhaustion/ripeness is also a bar to Hyatt's actions. For all of these  
16 reasons, Hyatt's case should be dismissed.

17 **A. Full Faith and Credit requires the Court to apply California's governmental**  
18 **immunity and administrative exhaustion laws.**

19 Principles of Full Faith and Credit require the Court to apply California's governmental  
20 immunity laws regarding tax administration to the entirety of the FTB's conduct, including its conduct  
21 in Nevada. *Nevada v. Hall*, 440 U.S. 410, 424 n.24 (1979), *reh'g denied*, 441 U.S. 917 (1979). Full  
22 Faith and Credit also requires applying California's administrative exhaustion laws to the entirety of  
23 Hyatt's case. *Id.*

24 In *Nevada v. Hall*, a University of Nevada employee driving a State of Nevada car in California  
25 negligently caused an accident resulting in severe physical injury to California residents. At the time,  
26 Nevada law limited tort recoveries against the State of Nevada to \$25,000. *Nevada v. Hall*, 440 U.S.  
27 at 412. The California courts declined to apply this limitation, despite Nevada's argument that the Full  
28 Faith and Credit Clause required California to respect the limitations on Nevada's statutory waiver of

1 its immunity from suit. *Id.* at 412-413.

2 The Supreme Court affirmed, holding that the Full Faith and Credit Clause did not require  
3 California to apply Nevada's immunity laws to the California car accident. *Nevada v. Hall*, 440 U.S.  
4 at 424. The Court noted that California had an interest in providing full protection to those injured on  
5 its highways, and that requiring California to limit recovery based on Nevada law would have been  
6 obnoxious to California's policy of full recovery. *Id.* But the Court also stated that different state  
7 policies could require a different Full Faith and Credit analysis, particularly where one state's exercise  
8 of jurisdiction over a sister state could "interfere with [the sister state's] capacity to fulfill its own  
9 sovereign responsibilities:"

10 California's exercise of jurisdiction in this case poses no substantial  
11 threat to our constitutional system of cooperative federalism. Suits  
12 involving traffic accidents occurring outside of Nevada could hardly  
13 interfere with Nevada's capacity to fulfill its own sovereign  
14 responsibilities. We have no occasion, in this case, to consider whether  
15 different state policies, either of California or of Nevada, might require  
16 different analysis or a different result. *Nevada v. Hall*, 440 U.S. at 424  
17 n. 24.

18 Under *Nevada v. Hall*, negligently driving a car on the highways of a sister state is not an  
19 exercise of an inherent sovereign function. But auditing a citizen's claimed change of residency and  
20 corresponding state income tax liability is an exercise of an inherent sovereign function in which states  
21 have "a special and fundamental interest." *ANR Pipeline Co. v. Lafaver*, 150 F.3d 1178, 1193 (10<sup>th</sup> Cir.  
22 1998) (cert. denied, 142 L.Ed.2d 902.) ("Congress has made it clear in no uncertain terms that a state  
23 has a special and fundamental interest in its tax collection system.") The FTB's Nevada acts were all  
24 performed as part of such an audit, and thus were taken as part of the State of California's inherent  
25 sovereign right to collect and lay taxes. (*See Illia Aff.* ¶ 2; *Cox Aff.* ¶ 36.)

26 Given that the FTB's Nevada acts involved an inherent sovereign function, this case falls  
27 squarely within footnote 24 of the *Nevada v. Hall* opinion. Allowing Hyatt to proceed notwithstanding  
28 the existence of multiple California laws barring his action would seriously interfere with California's  
capacity to fulfill its sovereign responsibilities. California, and the FTB in particular, have the  
sovereign responsibility to administer California's tax laws for the benefit of California's citizens.  
Hyatt's case seeks to punish the FTB for making minimal disclosures in Nevada of identifying

1 information about Hyatt for the purpose of checking his compliance with these laws. Allowing Hyatt  
2 to litigate these acts further without applying California law exposes the FTB to additional legal  
3 expenses and the threat of punishment for trying to obtain relevant information located in other states  
4 during residency audits. The FTB would incur these additional litigation expenses before it has even  
5 finalized its proposed tax assessment against Hyatt, something that the FTB should never have to do.  
6 This necessarily interferes with the FTB's ability to administer California's tax laws, as consulting out-  
7 of-state sources and performing out-of-state investigations are things that the nature of a change of  
8 residency claim often requires.

9 For a Nevada Court to decline to apply California's governmental immunity and administrative  
10 exhaustion laws to Hyatt's case, which arises entirely from acts incident to California tax  
11 administration, would violate the Full Faith and Credit Clause of the United States Constitution. This  
12 Court should apply these laws to avoid such a violation, and as a result dismiss Hyatt's case.

13 **B. The Supreme Court's recent sovereign immunity decisions confirm that this Court**  
14 **should reject Hyatt's claims.**

15 If there was ever any doubt that the Court must give effect to California's governmental  
16 immunity and administrative exhaustion laws, the Supreme Court's recent sovereign immunity  
17 decisions dispel it. *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996), was the beginning of the  
18 Supreme Court's recent revisiting and clarification of states' expansive sovereign immunity, a process  
19 that continues to the present day. *E.g., Alden v. Maine*, — U.S. —, 119 S.Ct. 2240, 144 L.Ed.2d 636  
20 (1999) (provision of the Fair Labor Standards Act purporting to authorize private actions against  
21 unconsenting states in state courts was an unconstitutional abrogation of state sovereign immunity); *see*  
22 *also College Sav. Bank v. Florida Prepaid Postsecondary Educ. Expense Bd.*, — U.S. —, 119 S.Ct.  
23 2219, 144 L.Ed.2d 605 (1999) (federal Trademark Remedy Clarification Act did not validly abrogate  
24 state sovereign immunity); *Kimel v. Florida Bd. of Regents*, — U.S. —, 2000 WL 14165 (U.S. Fla. Jan.  
25 11, 2000) (federal Age Discrimination in Employment Act did not validly abrogate states' sovereign  
26 immunity from suit by private individuals); *Idaho v. Coeur d'Alene Tribe of Idaho*, 521 U.S. 261, 281,  
27 117 S.Ct. 2028, 138 L.Ed.2d 438 (1997) (the *Ex Parte Young* doctrine, a judicially created exception  
28 to state sovereign immunity, could not be applied in an action that implicated "special sovereignty

1 interests”).

2 Most notably for this case, the Supreme Court in *Alden* held that the States’ immunity from suit  
3 is a fundamental aspect of the sovereignty which the states enjoyed before ratification of the  
4 Constitution, and noted that “[t]he generation that designed and adopted our federal system considered  
5 immunity from private suits central to sovereign dignity.” *Alden*, 119 S.Ct. at 2247. The Court also  
6 noted that states’ sovereign immunity was merely “confirmed,” not “established,” by the Eleventh  
7 Amendment, and that the “fundamental postulates implicit in the constitutional design” are what courts  
8 must consider when evaluating a sovereign immunity claim:

9 The more natural inference is that the Constitution was understood, in  
10 light of its history and structure, to preserve the States’ traditional  
11 immunity from private suits. As the [Eleventh] Amendment clarified the  
12 only provisions of the Constitution that anyone had suggested might  
13 support a contrary understanding, there was no reason to draft with a  
14 broader brush. *Alden*, 119 S.Ct. at 2252.

15 \* \* \*

16 . . . The Eleventh Amendment confirmed rather than established  
17 sovereign immunity as a constitutional principle; it follows that the  
18 scope of the States’ immunity from suit is demarcated not by the text of  
19 the Amendment alone but by fundamental postulates implicit in the  
20 constitutional design. *Alden*, 144 S.Ct. at 2254 (emphasis added).

21 As Justice Rehnquist noted in his *Nevada v. Hall* dissent, one fundamental postulate implicit  
22 in the constitutional design is that an unconsenting state is not subject to suit in a sister state’s forum.  
23 *Nevada v. Hall*, 440 U.S. at 432-433. Thus, the Supreme Court’s recent sovereign immunity decisions  
24 both confirm that the FTB’s Full Faith and Credit analysis under *Nevada v. Hall* is correct, and act as  
25 an additional, separate basis for dismissing Hyatt’s case. By directing the Court to consider the  
26 “fundamental postulates implicit in the constitutional design,” as opposed to simply the text of  
27 constitutional provisions like the Eleventh Amendment, the Supreme Court has effectively announced  
28 that one state’s courts must respect a sister state’s sovereign immunity from suit. California’s  
governmental immunity and administrative exhaustion laws are reflections of that sovereignty, and thus  
the Court must apply them and dismiss this case.

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1           C.     **Constitutional Choice of law principles also require this Court to apply**  
2                 **California's governmental immunity and administrative exhaustion laws.**

3           Constitutional choice of law principles also require application of California's governmental  
4 immunity laws regarding tax administration to the entirety of the FTB's conduct, and application of  
5 California's administrative exhaustion laws to the entirety of Hyatt's case. When faced with  
6 constitutional choice-of-law questions, the U.S. Supreme Court has invalidated the choice of law of a  
7 state which had no significant contact or significant aggregation of contacts, creating state interests, with  
8 the parties and the occurrence or transaction, such that the state's choice of its law is arbitrary or  
9 fundamentally unfair. *See, e.g., Home Insurance Co. v. Dick*, 281 U.S. 397, 408 (1930) (nominal  
10 residence was inadequate to justify application of forum law); *John Hancock Mutual Life Insurance Co.*  
11 *v. Yates*, 299 U.S. 178, 182 (1936) (post-occurrence change of residence to the forum state was  
12 insufficient to justify application of forum law); *Allstate Insurance Co. v. Hague*, 449 U.S. 302, 312-13  
13 (1981), *reh'g denied*, 450 U.S. 971 (1981); *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 814-823  
14 (1985).

15           A plaintiff's residence and place of filing the action are generally accorded little or no  
16 significance in the constitutional analysis because of the dangers of forum shopping. *Phillips*  
17 *Petroleum*, 472 U.S. at 820. Fairness and expectation of the parties are more important. *Id.* at 822. As  
18 in the Full Faith and Credit analysis, the threat of interference with the other state's capacity to fulfill  
19 its own sovereign responsibilities plays an important role, because the Full Faith and Credit Clause is  
20 one of the several constitutional provisions relevant to making choice of law determinations. *Allstate*,  
21 449 U.S. 323 (Stevens, J., concurring) (the Full Faith and Credit Clause will not invalidate a forum's  
22 choice of law "unless that choice threatens the federal interest in national unity by unjustifiably  
23 infringing upon the legitimate interests of another state." (footnote omitted) (emphasis added)).

24           Even assuming that the FTB's Nevada's acts were tortious, this Court should apply California's  
25 governmental immunity and administrative exhaustion laws as a constitutional choice of law matter.  
26 The FTB's minimal contacts with Nevada make disregard of California's governmental immunity and  
27 administrative exhaustion laws fundamentally unfair. Although Hyatt attempts to portray FTB's  
28 contacts with Nevada as substantial with numerous references and averments (First. Am. Compl. ¶¶ 10-

23), FTB auditors spent less than three business days physically in Nevada on the Hyatt audit, and spent only nominal hours on phone and mail contacts from California to Nevada to check Hyatt's claims. (See Cox Aff. ¶ 34.) These contacts with Nevada are insignificant compared to the 624 total hours that the FTB spent trying to verify Hyatt's dubious residency claim for 1991. (*Id.*)

Reasonable parties' expectations compel the same conclusion. Any reasonable long-time California resident would expect that the FTB would audit his change of residency claim, if necessary, under California law. No reasonable person would expect Nevada law to govern the FTB's tax audit process merely because a former California resident made a questionable claim to have moved out of state. The only reasonable expectation of any person is that the entirety of FTB's actions, and the entirety of Hyatt's case, are subject to California's governmental immunity and administrative exhaustion laws. Furthermore, Nevada has no laws for the administration of income taxes, and thus there is no conflict between relevant Nevada and California laws.

Under these facts, Nevada's interest in this case is at most to provide a forum for Hyatt's convenience. On the other hand, California has an inherent sovereign interest in determining whether a long-time California resident remains liable for California state income taxes after he claims to have changed his residency to another state under suspicious circumstances. Here, residency itself was being investigated under California's inherent sovereign power to tax. Applying California's governmental immunity laws regarding tax administration to the entirety of the FTB's conduct, and California's administrative exhaustion requirements to the entirety of Hyatt's case, accommodates the important constitutional principles of federalism upon which our country was founded.

**D. The Court should decline to exercise jurisdiction over this case as a matter of comity.**

Even if the Court disagrees with all of the above, comity directs the Court to apply California's governmental immunity and administrative exhaustion laws and dismiss this case. Under the principle of comity, "the courts of one jurisdiction may give effect to the laws and judicial decisions of another jurisdiction out of deference and respect." *Mianecki*, 99 Nev. at 98, 658 P.2d at 425. Comity is particularly appropriate where a lawsuit poses a threat to a state's "capacity to fulfill its own sovereign responsibilities," as it furthers our constitutional system of cooperative federalism. See *Nevada v. Hall*,

1 440 U.S. at 424 n.24.

2 Under California law, the FTB enjoys governmental immunity from liability for the torts that  
3 Hyatt alleges, (Cal. Govt. Code. § 860.2), and Hyatt's tort claims are also jurisdictionally barred by the  
4 doctrines of exhaustion of administrative remedies and the claims filing requirements under the  
5 California Torts Claims Act. (*See supra* at 31-32.) Hyatt's concern FTB acts taken in connection with  
6 the administration of California's tax laws, a process in which California has "a special and fundamental  
7 interest," and that the FTB has not yet completed as to Hyatt. *ANR Pipeline*, 150 F.3d at 1193; *see*  
8 *supra* at 10. Because Hyatt's claims involve and affect an ongoing tax controversy between California  
9 and Hyatt, this Court should apply California's laws barring Hyatt's claims as a matter of comity, to the  
10 extent it is not required to do so otherwise. *See City of Philadelphia v. Cohen*, 184 N.E.2d 167, 169-70  
11 (N.Y. 1962), *cert. denied*, 371 U.S. 934 (1962) ("For our tribunals to sit in judgment on a tax  
12 controversy between another State and its present or former citizens would be an intrusion into the  
13 public affairs of [that other] State."). To decline application of California's laws to Hyatt's case would  
14 threaten the FTB's capacity to fulfill its sovereign responsibility to administer California's tax laws.

15 **E. The Court also lacks jurisdiction over this case under Nevada's own administrative**  
16 **exhaustion and ripeness law.**

17 This Court also lacks jurisdiction under Nevada law to proceed with Hyatt's claims before Hyatt  
18 exhausts the California administrative process. Nevada applies its ripeness doctrine to preclude  
19 jurisdiction over claims based upon a plaintiff's anticipation of final administrative adjudication.  
20 *Resnick v. Nevada Gaming Commission*, 104 Nev. 60, 65-66, 752 P.2d 229 (1988); *see also Public*  
21 *Service Commission v. Eighth Judicial District Court*, 107 Nev. 680, 683-85, 818 P.2d 396 (1991)  
22 (interlocutory review of agency determination "in any form" is precluded by the administrative  
23 exhaustion requirement). As previously discussed, Hyatt bases his tort claims upon actions taken by  
24 FTB personnel during the FTB's investigation into his claim of change of residency. But the FTB has  
25 only issued Notices of Proposed Assessments that Hyatt is still protesting through the FTB's  
26 administrative process. (Bauche Aff. ¶ 3, 5, 7 & Ex. 2.) As in *Resnick*, Hyatt is attempting to sue the  
27 FTB for matters that are still being adjudicated, something that Hyatt cannot do.

28 Application of Nevada's own administrative exhaustion/ripeness law to preclude Hyatt's case

1 is particularly appropriate because his claims arise out of a sister state's exercise of an inherent  
2 sovereign function essential to its existence, taxation. See *Shell Petroleum N.V. v. Graves*, 709 F.2d  
3 593, 597 (9th Cir. 1983). In *Shell*, a taxpayer brought a civil rights action against the FTB to enjoin it  
4 from assessing taxes based on a "unitary" business formula. As in this case, the FTB had merely issued  
5 notices of proposed assessments, and the taxpayer's formal protest had not reached final adjudication  
6 when the taxpayer sued the FTB. The Ninth Circuit affirmed dismissal of the case, in part because the  
7 controversy was still at the administrative stage and therefore unripe. *Shell*, 709 F.2d at 597.

8 If the FTB was a Nevada administrative agency, this Court would not hesitate to dismiss Hyatt's  
9 case for lack of jurisdiction based on Hyatt's failure to exhaust his administrative remedies. The fact  
10 that the FTB is California's tax agency makes such a dismissal even more appropriate. "[T]he proper  
11 procedure for raising a claim of an illegal [tax] agency proceeding is as a defense in the enforcement  
12 proceeding itself," not an anticipatory action of the type that Hyatt brings here. *Stankevitz v. IRS*, 640  
13 F.2d 205, 206 (9th Cir. 1981). Hyatt has not exhausted his administrative remedies with the FTB, and  
14 his case must therefore be dismissed under Nevada's administrative exhaustion/ripeness law.

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1 **CONCLUSION**

2 Hyatt has taken enough discovery to litigate ten cases, but there simply is no evidence entitling  
3 him to a trial. The FTB had every right to do what it did in Nevada, and the FTB is immune from  
4 Hyatt's suit in any event. The Court should grant the FTB's summary judgment motion, or alternatively  
5 dismiss this case.

6 DATED this 27<sup>th</sup> day of January, 2000.

7 McDONALD CARANO WILSON McCUNE  
8 BERGIN FRANKOVICH & HICKS

9  
10 By 

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DISTRICT COURT

CLARK COUNTY, NEVADA

\*\*\*\*\*

GILBERT P. HYATT,  
Plaintiff,

vs.

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

Defendants.

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

RECEIPT OF COPY

RECEIPT OF A COPY of the foregoing MOTION FOR SUMMARY JUDGMENT  
UNDER NRCP 56(b), OR ALTERNATIVELY FOR DISMISSAL UNDER NRCP 12(h)(3)

1  
2 AND EVIDENCE IN SUPPORT OF FRANCHISE TAX BOARD'S MOTION FOR  
3 SUMMARY JUDGMENT UNDER NRCP 56(B), OR ALTERNATIVELY FOR  
4 DISMISSAL UNDER NRCP 12 (H)(3) is hereby acknowledged this 27<sup>th</sup> day of January,  
5 2000.

6 Hutchison & Steffen

7  
8 By: Mark Hutchison / Danny  
9 Mark A. Hutchison, Esq.  
10 8831 W. Sahara Ave.  
11 Las Vegas, NV 89117

12 **CERTIFICATE OF SERVICE**

13 I hereby certify that I am an employee of McDonald Carano Wilson McCune Bergin  
14 Frankovich & Hicks LLP., and that I served a true and correct copy of **MOTION FOR**  
15 **SUMMARY JUDGMENT UNDER NRCP 56(b), OR ALTERNATIVELY FOR**  
16 **DISMISSAL UNDER NRCP 12(h)(3) AND EVIDENCE IN SUPPORT OF FRANCHISE**  
17 **TAX BOARD'S MOTION FOR SUMMARY JUDGMENT UNDER NRCP 56(B), OR**  
18 **ALTERNATIVELY FOR DISMISSAL UNDER NRCP 12 (H)(3)** on this 27<sup>th</sup> day of  
19 January, 2000, by depositing same in the United States Mail, postage prepaid thereon to the  
20 numbers noted below, upon the following:  
21

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# **EXHIBIT 15**

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IN THE SUPREME COURT OF THE  
STATE OF NEVADA

FRANCHISE TAX BOARD OF THE STATE OF  
CALIFORNIA,

Petitioner,

vs.

EIGHTH JUDICIAL DISTRICT COURT of the State of  
Nevada, in and for the County of Clark, Honorable Nancy  
Saitta, District Judge,

Respondent,

and

GILBERT P. HYATT,

Real Party in Interest.

**FILED**

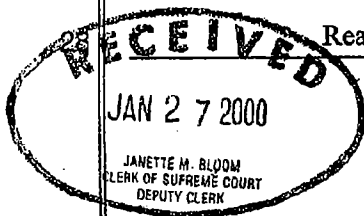
JAN 27 2000

JANETTE M. BLOOM  
CLERK OF SUPREME COURT  
BY                       
DEPUTY CLERK

Case No.

: 35549

Franchise Tax Board of the  
State of California's Petition  
for Writ of Mandamus, or in  
the alternative, for Writ of  
Prohibition



RA000901A00422

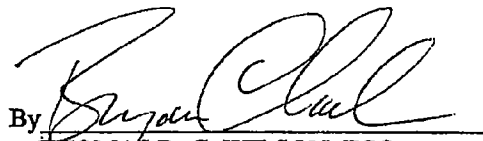
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Pursuant to NRS 34.150 *et seq.*, Petitioner Franchise Tax Board of the State of California ("FTB") hereby petitions this court for the issuance of a Writ of Mandamus, or in the alternative a Writ of Prohibition, directing Respondent Eighth Judicial District Court to (1) prohibit disclosure of documents in FTB's possession because those documents are privileged; and (2) strike the protective order entered by the district court and enter the protective order proposed by FTB.

Petitioner has no plain, speedy, or adequate remedy at law to compel the Respondent to perform its duty, and Petitioner's request for a Writ of Mandamus or Prohibition is necessary in order to compel Respondent to comply with the dictates of her office and to prevent further harm and injury to Petitioner. This Petition is made and based upon the exhibits attached hereto and the Memorandum of Points and Authorities filed herewith.

DATED this 25<sup>th</sup> day of January, 2000

McDONALD, CARANO, WILSON, McCUNE,  
BERGIN, FRANKOVICH & HICKS LLP

By   
THOMAS R. C. WILSON, ESQ.  
BRYAN R. CLARK, ESQ.  
JEFFREY A. SILVESTRI, ESQ.



## MEMORANDUM OF POINTS AND AUTHORITIES

### I. STATEMENT OF FACTS

#### A. Background facts

The undisputed facts of the case are as follows. Petitioner FTB is the California government agency responsible for collecting income taxes from California residents and non-residents with California income, and is the defendant in the litigation at issue.

This case arises from the FTB's California residency audits of plaintiff Gilbert Hyatt for 1991 and 1992. Hyatt is a computer industry figure who acknowledges being a long time resident of California through at least most of 1991. See First Amended Complaint, attached hereto as Exhibit 1, ¶ 60, lines 26-27.

In 1990, Hyatt temporarily secured patents on certain computer technologies, resulting in over one hundred million dollars of income in late 1991 and 1992. Id., ¶ 8, lines 21-23. Substantial publicity surrounded the award of Hyatt's patents, including a 1993 newspaper article that attracted the FTB's attention. The article reported that Hyatt was a long time California resident, and stated that he had moved to Nevada shortly after receipt of his patent awards. The FTB reviewed its records and found that Hyatt filed only a part-year income tax return with the State of California for 1991. Id., ¶ 10. In that return, Hyatt claimed that he became a resident of Nevada on September 26, 1991, and was no longer subject to California income tax on his income as of that date. Based on his alleged California non-residency subsequent to October 1, 1991, Hyatt reported just \$614,000 as California business income for 1991, even though his total income for the year was over \$42 million. In June 1993, the FTB began an audit of Hyatt's 1991 tax return to determine whether he owed additional taxes to the state of California.

1  
2 The FTB investigated Hyatt's claim of California non-residency by contacting various  
3 Nevada persons and entities which included government organizations, businesses, and private  
4 persons. Id. at ¶ 12. After conducting its audit, the FTB determined that Hyatt was still a  
5 California resident for all of 1991 and through April 3, 1992. Accordingly, Hyatt was given notice  
6 of additional tax assessments for the tax year 1991 in the amount of \$1,876,471.00, and for tax  
7 year 1992 in the amount of \$5,669,021.00. In addition, the FTB found that Hyatt engaged in  
8 fraudulent conduct with respect to his alleged move, and proposed the assessment of fraud  
9 penalties for the tax year 1991 in the amount of \$1,407,353.25 and for the tax year 1992 in the  
10 amount of \$4,251,765.75 for 1992. Plaintiff is currently protesting the proposed tax and penalty  
11 assessments in California through the FTB's administrative process as established by the California  
12 legislature.  
13

14  
15 Hyatt filed this lawsuit on January 6, 1998, asserting that the FTB committed numerous  
16 torts against him in Nevada during its investigation regarding his claim to Nevada residency as of  
17 September 26, 1991. Hyatt's first amended Complaint states eight causes of action as follows:  
18

- 19 1. Declaratory Relief;
- 20 2. Invasion of Privacy - Intrusion upon the Seclusion of Another;
- 21 3. Invasion of Privacy - Publicity Given to Private Facts;
- 22 4. Invasion of Privacy - Casting in False Light;
- 23 5. Tort of Outrage;
- 24 6. Abuse of Process;
- 25 7. Fraud; and
- 26 8. Negligent Misrepresentation.
- 27
- 28

Hyatt's first cause of action for declaratory relief — asking the district court to adjudicate the issue of his residency and conclude that he became a resident of Nevada on September 26, 1991 — was dismissed for lack of jurisdiction after the District Court concluded that Hyatt's residency was an issue for the State of California to determine in its parallel administrative proceedings. The remainder of Hyatt's causes of action contend that in the course of its investigation the FTB committed various wrongs: specifically that it disclosed confidential information — Hyatt's social security number and home address — to third parties, and cast him in a negative light by indicating to third parties that he was under investigation by the State of California for possible underpayment and non-payment of income taxes.

On March 29, 1999, Hyatt filed his Motion to Compel Re Missing, Redacted, and Sanitized Documents From FTB's Residency Audit Files of Gil Hyatt. In conjunction with this motion, the Discovery Commissioner ordered the FTB to produce all documents in the FTB's files pertaining to other taxpayers who may have a relationship with Hyatt. As a result of the Discovery Commissioner's orders, the FTB ultimately produced all documents pertaining to the FTB's tax audit of plaintiff for tax years 1991 and 1992, which consisted of the residency audit files for the 1991 and 1992 tax years, the audit review files, and the protest files, and all documents pertaining to the non-party taxpayers. All of these documents have been grouped together and loosely characterized by the Discovery Commissioner as the Residency Audit Files of Gil Hyatt for the 1991 and 1992 tax years.

The FTB produced the Hyatt Residency Audit Files consisting of 3573 pages. Of this amount, 84 pages were redacted or withheld from production based upon a claim of statutory privilege. Of the 84 pages containing privileged information, 43 pages were produced as redacted

1  
2 copies and 41 pages were actually withheld. The FTB identified each document withheld or  
3 redacted based on a claim of statutory privilege. See FTB's First Supplemental Privilege Log,  
4 attached hereto as Exhibit 2.

5  
6 On November 9, 1999, Discovery Commissioner Biggar ruled that FTB had to disclose  
7 certain documents which the FTB contends are both privileged communications barred from  
8 discovery, and which relate to the ongoing administrative protest currently proceeding before the  
9 FTB. See Discovery Commissioner's Report and Recommendations (regarding privilege issues),  
10 attached hereto as Exhibit 3. Even though ruling against the FTB on its claim of privilege  
11 regarding a limited range of documents, the Discovery Commissioner conceded that the FTB's  
12 evidentiary objections were not frivolous. The Discovery Commissioner specifically commented:

13  
14 I had no problem with the defense claims; and they have produced a lot of documents on  
15 the file. The documents that we were dealing with were in the most part fairly difficult to  
16 make a decision on, so I have no problem with your claims, you know, and having  
17 submitted in camera. I don't think -- there were no frivolous claims, and I don't expect to  
18 see that from the plaintiff's side. Okay.

19 See November 9, 1999, Hearing Transcript, p. 96, line 25 to p. 97, line 1-7, attached hereto as  
20 Exhibit 4.

21 FTB filed an objection to the Discovery Commissioner's Report and Recommendations  
22 with the Eighth Judicial District Court. See Objection to Report and Recommendation, attached  
23 hereto as Exhibit 5. However, the District Court affirmed the Discovery Commissioner's ruling on  
24 December 21, 1999, and that decision was filed with the clerk on December 27, 1999.

25 Additionally, after the FTB provided Hyatt with its files and records pertaining the audit,  
26 review, and protest of Hyatt residency claims for the tax years 1991 and 1992, but before Hyatt  
27 had provided meaningful discovery, the Discovery Commissioner ruled that the parties must  
28

1  
2 exchange documents pursuant to a Protective Order which prohibited the State of California from  
3 using or disclosing information from any of the documents designated "N.V. Confidential" by  
4 Hyatt for any governmental purpose, including the parallel administrative protest proceeding  
5 brought in California by the plaintiff challenging the FTB's tax assessments and penalties. The  
6 protective order also limits and sharply restricts the FTB's and the State of California's ability to  
7 use the documents and information secured through the instant litigation to prepare a defense to  
8 plaintiff's claims, to prepare witnesses for depositions and trial, and otherwise prepare for trial.  
9  
10 See Discovery Commissioner's Report and Recommendation (regarding Protective Order),  
11 attached hereto as Exhibit 6. FTB filed an objection to the Discovery Commissioner's Report and  
12 Recommendations with the Eighth Judicial District Court. See Objection to Report and  
13 Recommendation, attached hereto as Exhibit 7. However, the District Court affirmed the  
14 Discovery Commissioner's ruling on December 21, 1999, and that decision was filed with the clerk  
15 on December 27, 1999. Through this writ petition, the FTB challenges this ruling.  
16

17  
18 B. Facts Regarding Privilege Issues

19 During the course of this litigation, the FTB has voluntarily produced the Residency Audit  
20 Files in response to Hyatt's various requests, whether under the California Information Practices  
21 Act of 1977, Nevada Rule of Civil Procedure 16.1, or pursuant to the orders of the Discovery  
22 Commissioner. The FTB has consistently objected to producing some documents and produced  
23 redacted versions of other documents based on the fact that those documents constituted either  
24 attorney work-product or were protected from discovery by the attorney-client communication,  
25 official information, and deliberative process privileges. The documents which were withheld or  
26 produced in redacted form are listed on FTB's privilege log, which is attached as Exhibit 2. As  
27  
28

1  
2 previously noted, the Discovery Commissioner commented that the validity of the FTB's  
3 evidentiary objections were a close call. Exhibit 4, at p. 96, line 25 to p. 97, line 1-7.

4  
5 Specifically at issue in this writ petition are the documents that the Discovery  
6 Commissioner ordered the FTB to disclose in the hearing on November 9, 1999, and which ruling  
7 was affirmed by the District court on December 21, 1999. See Exhibit 3. These documents are as  
8 follows: FTB 100139, FTB 100218, FTB 100288 & 100289-100292, FTB 100401, FTB 100908-  
9 100909, FTB 101634-101645, FTB 101646-101656; FTB 104117 through FTB 104122  
10 (duplicated as FTB 03091 through FTB 03096)<sup>1</sup>; and FTB 07381.<sup>2</sup> A detailed explanation of each  
11 document is provided in the section below regarding the privilege under which the document was  
12 withheld or redacted.

13  
14 The Discovery Commissioner findings regarding the FTB's privilege claims — Findings  
15 Four, Five, and Six — are critical to the FTB's challenge of the discovery orders regarding the  
16 privilege issues. Finding Number Four states:

17  
18 At the November 9, 1999 hearing, the Discovery Commissioner found that the entire  
19 process of the FTB audits of Hyatt, including the FTB assessments of taxes and the  
20 protests, is at issue in this case and a proper subject of discovery based on Judge Saitta's  
21 ruling on the FTB's Motion for Judgment on the Pleadings leaving intact all of Hyatt's tort  
22 claims. Specifically, Hyatt is alleging fraud, among other torts, by the FTB in the manner it  
23 audited him and assessed and attempted to collect taxes and penalties from him. Hyatt's  
24 claim of fraud against the FTB entitles him to discovery on the entire audit and assessment

25  
26 <sup>1</sup>The Discovery Commissioner's Report and Recommendation lists these  
27 documents as "FTB 104117 and FTB 03096 and FTB 104122 and FTB 03091." See  
28 Exhibit 3, p. 6. This notation is an error. The documents at issue are the review notes of  
Carol Ford, which were produced with the document numbers as stated in the text above.

<sup>2</sup>These documents were previously provided to the Discovery Commissioner *in camera*, and have not been produced to Hyatt pending this writ petition. FTB has provided these documents to this Court in a sealed envelope and has not provided the documents to Hyatt.

process performed by the FTB that was and is directed at him as part of the FTB's attempt to collect taxes from Hyatt.

Exhibit 3, page 3, lines 1-9 (referred to herein as "Finding Four").

Finding Number Five provides:

At the November 9, 1999 hearing, the Discovery Commissioner found that the FTB's assertions of the deliberative-process privilege as to documents listed on the FTB's May 26, 1999 "First Supplemental" privilege log and as to the FTB's assertions of such privilege during depositions in the examples provided to the Court were improper and overruled in their entirety. In making this finding, the Discovery Commissioner determined that the FTB's attempt to assert the deliberative-process privilege in this case is a distortion of the privilege, in particular because the process of the FTB audits directed at Hyatt is squarely at issue in this case. In making this finding, the Discovery Commissioner also took into consideration all arguments made by Hyatt in opposing the FTB's assertion of the deliberative-process privilege including, but not limited to, the fact that the privilege applies only to higher-level policy decisions.

Exhibit 3, page 3, lines 10-20 (referred to herein as "Finding Five").

Finding Number Six provides:

At the November 9, 1999 hearing, the Discovery Commissioner found that the attorney-client privilege does not apply to Anna Jovanovich's work, communications, information, or documents generated or received in regard to the Hyatt audits, assessments by the FTB, and the subsequent protest proceedings for the period of time Jovanovich was still in the employment of the FTB. This finding is based upon Ms. Jovanovich's participation throughout the FTB's audits, assessments, and protests relating to Mr. Hyatt in which Ms. Jovanovich was an integral part of the audit process, not just an attorney providing occasional legal advice on specific questions of law.

Exhibit 3, page 3, lines 21-28 (referred to herein as "Finding Six").

C. Facts Regarding the Protective Order

On April 16, 1999, the FTB served Hyatt with Defendant's First Request for Production of Documents and Things and Entry Upon Land for Inspection and Other Purposes, attached hereto as Exhibit 8. The FTB requested, among other things, documents and things related to Hyatt's residency in Nevada, other litigation in which he was or had been involved, royalties from his

1  
2 computer patents, and his claims of damages against the FTB. On about May 17, 1999, Hyatt  
3 served the FTB with his written responses and objections. See Plaintiff Gilbert P. Hyatt's  
4 Objections and Responses to Defendant's First Request for Production of Documents and Things,  
5 Etc., attached hereto as Exhibit 9. Hyatt withheld all documents responsive to FTB's discovery  
6 requests based on claims of confidentiality or privilege.  
7

8 After several discussions and exchanges of correspondence among counsel regarding the  
9 FTB's contention that Hyatt's responses were inadequate, on September 24, 1999, Hyatt  
10 supplemented his responses and objections. See Supplemental Responses of Gil Hyatt to  
11 Defendant's First Request for Production of Documents and Things and Entry Upon Land for  
12 Inspection and Other Purposes, attached hereto as Exhibit 10. Hyatt, however, still withheld all  
13 documents and information sought by the FTB based on claims of evidentiary privileges and  
14 confidentiality. Hyatt specifically refused to produce any documents pursuant to FTB's discovery  
15 requests until a protective order was in place because he claimed all documents sought were  
16 privileged, confidential, or contained trade secrets, commercially sensitive material or confidential  
17 proprietary data, or to somehow further invaded his or a third party's privacy. See Exhibit 10,  
18 Supplemental Responses to Requests 11, 13 and 20.  
19  
20

21 The parties' negotiations for a stipulated protective order were unsuccessful. After a five-  
22 month delay in the production of documents, the FTB brought a motion to compel responses and  
23 production of documents. In connection with the FTB efforts to compel production of these  
24 documents, the FTB provided the Discovery Commissioner with its proposed version of the  
25 protective order, which is attached hereto as Exhibit 11. Hyatt also provided the Discovery  
26 Commissioner with his proposed version of the protective order, which is attached hereto as  
27  
28



1  
2 Exhibit 12. Before the Discovery Commissioner, the FTB argued that there was no justification  
3 offered for the necessity of a protective order. The purpose and effect of the protective order is to  
4 prevent the FTB and the State of California from using evidence and information secured during  
5 the Nevada litigation within the context of the California tax proceeding and other legitimate  
6 governmental functions. In addition, the FTB pointed out that Hyatt's protective order imposes  
7 great burden and expense on the FTB by greatly restricting its counsel's ability to use discovery  
8 materials to prepare the defense and confer with their client, while not imposing a similar  
9 reciprocal discovery restrictions on Hyatt.  
10

11  
12 The Discovery Commissioner on November 9, 1999, imposed a protective order by  
13 adopting a modified version of two different protective orders submitted by Hyatt, and issued a  
14 lengthy Report and Recommendation prepared by Hyatt on December 3, 1999. See Exhibit 6.  
15 The Report and Recommendation, without stating any justification, concluded that Hyatt's  
16 protective order, with some modifications, was appropriate. Commissioner Biggar reasoned that  
17 Hyatt's proposed protective order "will provide protection for 'Confidential Information' so  
18 designated by the parties and will also allow the parties to use 'Confidential Information' as  
19 necessary within the confines of this [the Nevada] litigation in order to prosecute, in the case of  
20 Hyatt, and defend, in the case of the FTB, the claims at issue." Exhibit 6 at page 2, lines 12-18. In  
21 other words, the Nevada District Court may prosecute the State of California for millions of  
22 dollars under seal and in secret.  
23  
24

25 Subsequently, on December 16, 1999, the FTB filed with the District court an Objection to  
26 Discovery Commissioner's Report and Recommendations Regarding Protective Order for  
27 Confidential Information Decided in Conjunction with Defendant Franchise Tax Board of the State  
28

1  
2 of California's Motion to Compel Discovery Responses ("Objection"). See Exhibit 7. In its  
3 Objection, the FTB reiterated the arguments it made to the Discovery Commissioner, specifically  
4 that Hyatt's protective order: undermined the FTB's ability to defend the lawsuit effectively;  
5 interfered with the internal administration of California law by barring the State of California from  
6 lawfully sharing and using information it secured in this litigation with California officials without  
7 informing the plaintiff, securing the plaintiff's approval, or adopting a procedure externally  
8 imposed upon it by the Nevada District Court; was fundamentally unfair, oppressive, and  
9 burdensome to the State of California as a sovereign entity and a litigant before the Nevada  
10 District Court; and is particularly troublesome because it undermined and modified the ability of  
11 counsel to consult with its client, prepare a defense, and evaluate evidence offered by the plaintiff  
12 in support of his claims against the State of California. In sum, it compromises and restricts the  
13 ability of the State of California and its attorneys to use evidence secured through discovery, which  
14 is patently unfair because the restrictions are only imposed on the defendant State of California  
15 while plaintiff has used information and evidence secured in this litigation in proceedings before  
16 California officials.  
17  
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20 Over the FTB's Objection, however, the District Court, without explanation, adopted the  
21 Discovery Commissioner's Report and Recommendations.  
22  
23 ...  
24 ...  
25 ...  
26 ...  
27 ...  
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## II. ISSUES PRESENTED AND RELIEF SOUGHT

The issues presented are as follows:

A. Whether the District Court erred in concluding that the documents listed as FTB 100139, FTB 100218, FTB 100288 & 100289-100292, FTB 100401, FTB 100908-100909, FTB 101634-101645, FTB 101646-101656, FTB 104117-FTB 104122 (duplicated at FTB 03091- FTB 03096)<sup>3</sup>, and FTB 07381 were not privileged and had to be disclosed to Hyatt.

B. Whether the District Court abused its discretion in entering the Protective Order.

The FTB requests that the Nevada Supreme Court conclude that the documents listed above are privileged and protected from disclosure to Hyatt. Furthermore, the FTB requests that this Court strike the Protective Order entered by the district court and enter the Protective Order submitted by the FTB.

## III. ANALYSIS

### A. STANDARD OF REVIEW

This court has stated:

In pertinent part, NRS 34.320 provides that a 'writ of prohibition . . . arrests the proceedings of any tribunal . . . exercising judicial functions, when such proceedings are without or in excess of the jurisdiction of such tribunal.' Conversely, a writ of mandamus issues to 'compel the performance of an act which the law especially enjoins as a duty.' NRS 34.160. A 'writ may be issued only by the supreme court to an inferior tribunal . . . where there is not a plain, speedy, and adequate remedy in the course of law.' NRS 34.330.

Columbia/HCA Healthcare Corp. v. Eighth Judicial District Court, 113 Nev. 521, 525, 936 P.2d 844, 846-47 (1997).

This Court has concluded that the writ process can be used to prevent improper discovery. "We have previously stated extraordinary relief is a proper remedy to prevent improper discovery."

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<sup>3</sup>See footnote 1.

1  
2 Schlatter v. District Court, 93 Nev. 189, 193, 561 P.2d 1342, 1344 (1977). See also Clark County  
3 Liquor and Gaming Licensing Board v. Clark, 102 Nev. 654, 659-60, 730 P.2d 443, 447 (1986)  
4 (stating that writs have issued when the discovery order requires disclosure of privileged  
5 information.); Hetter v. District Court, 110 Nev. 513, 515 874 P.2d 762, 763 (1994). The  
6 Schlatter Court stated that the writ process is proper to remedy improper discovery because  
7 disclosure of privileged material is "irretrievable once made," and a party would be "deprived of  
8 any remedy from the [District court's] erroneous ruling if she was required to disclose the  
9 information and then contest the validity of the order on direct appeal." Schlatter, 93 Nev. at 193,  
10 561 P.2d at 1344.

11  
12 In Mays v. District Court, 105 Nev. 60, 61, 768 P.2d 877 (1989) this Court noted that  
13 while it generally declines to review discovery orders by extraordinary writ, it will do so in  
14 exceptional circumstances. Furthermore, the Mays Court concluded that even in discovery  
15 matters, mandamus will lie to control discretionary action where the district court manifestly  
16 abuses its discretion. Id. at 63, 768 P.2d at 879 (citing Round Hill Gen. Imp. Dist v. Newman, 97  
17 Nev.601, 637 P.2d 534 (1981)).

18  
19 The issues presented for review by this court involve the disclosure of privileged  
20 information, and also involve the District Court's manifest abuse of discretion in entering the  
21 protective order which severely limits FTB's ability to consult witnesses and prepare for trial and  
22 to use the documents generated in this litigation in a related California administrative proceeding  
23 which contains many of the same issues. As such, this court should exercise its discretion,  
24 consider this writ petition, and grant FTB the relief it requests.  
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1  
2 B. THE DISTRICT COURT ERRED IN CONCLUDING THAT THE  
3 DOCUMENTS LISTED AS FTB 100139, FTB 100218, FTB 100288 & 100289-  
4 100292, FTB 100401, FTB 100908-100909, FTB 101634-101645, FTB 101646-  
5 101656, FTB 104117-FTB 104122 (DUPLICATED AT FTB 03091- FTB 03096)  
6 AND FTB 07381 WERE NOT PRIVILEGED AND HAD TO BE DISCLOSED  
7 TO HYATT.

8  
9 1) The Attorney-Client Privilege Bars Disclosure of Confidential Communications  
10 Between Client and Lawyer

11 The FTB has asserted that many of the documents requested by Hyatt are protected from  
12 discovery under the attorney-client privilege because they involve confidential communications  
13 with FTB's Tax Counsel. The specific documents at issue are listed as FTB 100139, FTB 100218,  
14 FTB 100288 & 100289-100292, FTB 100401, FTB 100908-100909, FTB 101634-101645, and  
15 FTB 07381.

16 The attorney-client privilege allows a client to refuse to disclose and prevent another from  
17 disclosing confidential communications between the client or his representative and his attorney or  
18 his attorney's representative, which communications were made for the purpose of facilitating the  
19 rendition of legal services to the client. N.R.S. 49.095. It is the oldest of the privileges for  
20 confidential communications known to the common law. The privilege rests on the theory that  
21 encouraging clients to make full disclosure to their attorneys enables the latter to act more  
22 effectively, justly and expeditiously, a benefit outweighing the risks posed to truth finding. Haynes  
23 v. State, 103 Nev. 309, 317, 739 P.2d 497, 502 (1987).

24 The privilege exists to protect "not only the giving of professional advice to those who can  
25 act on it but also the giving of information to the lawyer to enable him to give sound and informed  
26 advice." Upjohn Co. v. United States, 449 U.S. 383, 390 (1981) (citations omitted); see also First  
27 Chicago Intern. v. United Exchange Co., Ltd., 125 FRD 55, 58 (S.D.N.Y. 1989) (documents  
28

1  
2 created at corporate counsel's request to provide counsel with facts necessary to render legal  
3 opinion protected by attorney-client privilege). While the privilege does not extend to mere facts,  
4 "[a] fact is one thing and a communication concerning that fact is an entirely different thing."  
5 Upjohn, 449 U.S. at 395-396. Hyatt is entitled to discover the relevant facts, but not to discover  
6 documents that reflect or constitute confidential legal communications regarding those facts. Id.  
7

8 The FTB, as a public entity of the State of California, fits the definition of "client" under  
9 Nevada law. N.R.S. §49.045. The attorney-client privilege applies where there is a confidential  
10 legal communication between an FTB lawyer and a "representative of the client," which means "a  
11 person having authority to obtain professional legal services, or to act on advice rendered pursuant  
12 thereto, on behalf of the client." N.R.S. §49.075. The attorney-client privilege applies with equal  
13 force to confidential legal communications involving in-house and outside counsel. Upjohn, 449  
14 U.S. at 394-397; American Optical Corp. v. Medtronic, Inc., 56 FRD 426, 430 (D. Mass. 1972).  
15

16 Nevada and California law are in harmony in the confidential treatment accorded attorney-  
17 client communications. See California Evidence Code §§ 175 and 951. In California and Nevada,  
18 the attorney-client privilege applies to client communications in the course of professional  
19 employment that are intended to be confidential. In California and Nevada, client communications  
20 with public lawyers are accorded the same scope of protection as client communications with  
21 private lawyers. Under California law, FTB's Tax Counsel are public lawyers appointed by the  
22 FTB and acting under legislative authority. See California Revenue & Taxation Code section  
23 17023. The FTB's Tax Counsel is required to have been admitted as a member of the California  
24 State Bar as a term of employment. See California Franchise Tax Board Tax Counsel Job  
25 Description, attached hereto as Exhibit 13. The FTB's Tax Counsel is a separate operational  
26  
27  
28

1  
2 branch within the Franchise Tax Board. See Franchise Tax Board Organizational Chart, attached  
3 hereto as Exhibit 14.

4  
5 Moreover, based on the principles of comity and choice of law grounds, the confidential  
6 communications involving FTB's Tax Counsel and FTB's employees are attorney-client  
7 communications and protected by the privilege of confidentiality. All these confidential  
8 communications with FTB's Tax Counsel occurred outside of Nevada and inside of California or  
9 deal with the application of California tax law to Hyatt. In California, communications between a  
10 public lawyer and the client are treated as confidential communications within the ambit of the  
11 attorney-client communication privilege. See California Evidence Code section 950 et. seq.,  
12 Roberts v. City of Palmdale 5 Cal.4th 363, 371-72, 20 Cal.Rptr.2d 330, 334 (Cal. 1993); People  
13 ex rel. Deukmejian v. Brown 29 Cal.3d 150, 159, 172 Cal.Rptr. 478, 482 (Cal. 1981) Ward v.  
14 Superior Court 70 Cal.App.3d 23, 138 Cal.Rptr. 532 (Ct. App. 1977); People ex rel. Department  
15 of Public Works v. Glen Arms Estae, Inc. 230 Cal.App.2d 841, 41 Cal.Rptr. 303 (Ct. App. 1964).  
16 Moreover, in California, where the public lawyer's advice pertains to a matter as to which the  
17 agency possesses independent authority, a distinct attorney-client relationship with the agency is  
18 created. Civil Service Commission v. Superior Court 163 Cal.App.3d 70, 78, 290 Cal.Rptr. 159,  
19 164.

20  
21  
22 Moreover, in California, the Legislature has provided additional protections to shield the  
23 disclosure of attorney-client communications under the California Public Records Act, Cal. Govt.  
24 Code section 6254 (a), (b), and (k) (West Supp. 1999), when public lawyers and public employees  
25 communicate in writing. See Roberts v. City of Palmdale 5 Cal.4th 363, 373, 20 Cal.Rptr.2d 330,  
26 335 (Cal. 1993). Thus, in addition to the general attorney-client communications that fall within  
27  
28

1  
2 the ambit of California Evidence Code sections 950 et. seq., the California Supreme Court has  
3 extended the preclusion against disclosing confidential communications involving attorney and  
4 client to: (1) preliminary drafts, notes, or interagency or intra-agency memoranda which are not  
5 retained by the public agency in the ordinary course of business; (2) records pertaining to pending  
6 litigation to which the public agency is a party; and (3) records the disclosure of which is exempted  
7 or prohibited pursuant to federal or state law. See Roberts v. City of Palmdale 5 Cal.4th 363,  
8 373, 20 Cal.Rptr.2d 330, 335 (Cal. 1993); California Public Records Act, Cal. Govt. Code section  
9 6254 (a), (b), and (k) (West Supp. 1999).

10  
11 The District Court below, and the Discovery Commissioner, made an erroneous  
12 determination by concluding that confidential communications between the FTB's Tax Counsel  
13 and FTB employees are not within the protections of the attorney-client communication privilege.  
14 Under both California and Nevada law, FTB Tax Counsel are lawyers, and any confidential  
15 communication between a lawyer and client is privileged from disclosure unless the confidential  
16 communication falls within narrowly prescribed exceptions to the rule. Under both Nevada and  
17 California law, confidential communications made between lawyer and client during the course of  
18 an lawyer-client relationship are not subject to discovery. With both states, there are limited  
19 exceptions in which the lawyer-client relationship does not apply. The only exception to the  
20 lawyer-client privilege sought by plaintiff was under the crime-fraud exception, and the Discovery  
21 Commissioner specifically found that the crime-fraud exception did not apply. See Transcript of  
22 Discovery Commissioner's November 9, 1999 hearing, Exhibit 4, at p. 75. Accordingly, the  
23 lawyer-client privilege of both California and Nevada should act to bar disclosure and discovery of  
24 confidential communications between FTB Tax Counsel and FTB employees.  
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1. FTB 100139

This document is an internal FTB communication between Anna Jovanovich and Sheila Cox. At the time the document was drafted, Ms. Jovanovich was an FTB attorney and Ms. Cox was the auditor on the Hyatt file. The redactions relate to conversations that Ms. Cox had with Ms. Jovanovich, an FTB attorney, about the Hyatt case. The redaction reflects that legal advice, not business advice, was offered by Ms. Jovanovich, because the advice concerns a recommendation about what additional information might be necessary in order to make an appropriate residency determination under California's tax laws.

The Discovery Commissioner determined that the document was not privileged based on Finding Four and Finding Six. However, these findings are erroneous. In Finding Four, the Discovery Commissioner stated that the "entire process of the FTB audits of Hyatt, including the FTB assessments of taxes and the protests, is at issue in this case" and that Hyatt "is alleging fraud, among other torts, by the FTB in the manner it audited him and assessed and attempted to collect taxes and penalties from him [and that] Hyatt's claim of fraud against the FTB entitles him to discovery on the entire audit and assessment process performed by the FTB." Exhibit 3, p. 3. However, just because the Discovery Commissioner concluded that Hyatt had alleged fraud and was therefore entitled to discover the entire process of the FTB's audit, does not mean that Hyatt is entitled to discover documents covered by the attorney-client privilege.

Hyatt argued to the Discovery Commissioner, in a separate appendix to the motion, that the FTB auditors and attorneys engaged in fraudulent activity such that the Discovery Commissioner should invoke the "crime-fraud" doctrine to permit inspection of documents which otherwise would be protected by the privilege. However, Hyatt was unsuccessful, and the

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2 Discovery Commissioner stated that he "was not going to embrace [the crime-fraud exception] as  
3 a reason for the recommendation on the production" of documents which FTB claimed were  
4 protected by the attorney client privilege. See Exhibit 4, p. 75. Therefore, the crime-fraud  
5 doctrine does not apply in this case.  
6

7 Even a court intent on discarding the attorney-client privilege and permitting a review of  
8 documents based on the fact that crime or fraud has occurred has an obligation to hear testimony  
9 and, if warranted, conduct an *in camera* review of the documents. Courts have adopted a two-  
10 pronged test in making such a determination. First, the court must find "a factual basis adequate  
11 to support a good faith belief by a reasonable person' that an *in camera* review of the materials  
12 reveals evidence to establish the claim that the crime-fraud exception applies." United States v.  
13 Zolin, 491 U.S. 554, 572 (1989) (quoting Caldwell v. District Court, 644 P.2d 26, 33 (1982)); see  
14 also Seattle N.W. Securities v. SDG Holding, 812 P.2d 488, 497 (Wash. Ct. App. 1991); Central  
15 Construction Co. v. Home Indem. Co., 794 P.2d 595, 598 (Alaska 1990). Second, once such a  
16 showing is made, the judge has discretion to conduct the *in camera* review based on the facts and  
17 circumstances of the particular case. Zolin, 491 U.S. at 572.  
18  
19

20 The Discovery Commissioner, presumably, considered the foregoing crime-fraud exception  
21 analysis and concluded that Hyatt had not proven that the crime-fraud exception applied, by stating  
22 that he "was not going to embrace [the crime-fraud exception] as a reason for the recommendation  
23 on the production" of documents which FTB claimed were protected by the attorney client  
24 privilege. See Exhibit 4, p.75. As such, the crime-fraud exception has not been established by  
25 Hyatt and did not serve as a basis for the Discovery Commissioner's ruling. Hyatt did not  
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27  
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1  
2 challenge the Discovery Commissioner's conclusion on this point. Absent such a finding, the  
3 attorney-client privilege still attaches to the relevant documents.  
4

5 Furthermore, Finding Six is erroneous because it disregards and ignores the fact that  
6 Jovanovich at all times acted as an FTB attorney, engaged in communications with her client —  
7 the FTB — regarding legal advice on the Hyatt audit.

8 Specifically, with regard to FTB 100139, Ms. Jovanovich was an FTB attorney at the time  
9 the document was drafted, and the document reflects legal advice from Ms. Jovanovich to Ms.  
10 Cox regarding what information would be required to make a legal determination that Hyatt was a  
11 resident of California and owed California income tax. Therefore, the document is clearly a  
12 communication between an attorney and client regarding legal advice and should be privileged.  
13

14 At a May 5, 1999, hearing on the attorney-client privilege issue, the Discovery  
15 Commissioner commented that FTB 100139 presented the same factual situation as FTB 100216  
16 (which was duplicated in typewritten form in FTB 100209), which was produced only in redacted  
17 form. See Transcript of Discovery Commissioner's May 5, 1999 hearing, pg. 49, line 22-23,  
18 attached hereto as Exhibit 15. The redacted portion of FTB 100216 includes a recitation of a legal  
19 communication that Richard Gould, FTB Tax Counsel, had with Mark Shayer, a former FTB  
20 employee auditor who was the auditor of Hyatt before Sheila Cox. The redacted entry reflects Mr.  
21 Gould's legal advice to Mr. Shayer about certain California tax statutes and decisions that might  
22 apply to the Hyatt audit. The Discovery Commissioner concluded that the redactions were  
23 privileged because they constituted attorney-client communications. See Discovery  
24 Commissioner's Report and Recommendation, Exhibit 3, p. 4; Exhibit 15, pp. 42-45.  
25  
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1  
2 Despite the fact that the Discovery Commissioner concluded that the FTB 100216 was  
3 privileged, and that FTB 100139 presented the same circumstances as the FTB 100216, only with  
4 Anna Jovanovich as the FTB in-house lawyer and Sheila Cox as the auditor on the Hyatt matter,  
5 the Discovery Commissioner concluded that the redactions on FTB 100139 were discoverable,  
6 based solely on the Findings Four and Six. There should be no difference between the analysis that  
7 is applied to FTB 100216 and that applied to FTB 100139 — both Gould and Jovanovich were  
8 attorneys providing legal advice to FTB employees. The comparison between FTB 100216 and  
9 FTB 100319 shows the fallacy of the Discovery Commissioner's findings.

10  
11 Findings Four and Six are erroneous. The Discovery Commissioner concluded that the  
12 crime-fraud exception does not apply in this case and, therefore, there is no justification for a  
13 conclusion that Hyatt is entitled to inspect FTB documents which are otherwise protected by the  
14 attorney-client privilege. Furthermore, in the audit of Hyatt, Jovanovich acted solely as a legal  
15 advisor to the audit staff and this conduct in no way extinguishes the attorney-client privilege. The  
16 Discovery Commissioner's conclusions in Finding Six are erroneous because so long as Jovanovich  
17 was acting in her capacity as an attorney and giving legal advice to her client — the FTB — the  
18 communications are protected from disclosure by the attorney-client privilege, especially in light of  
19 the Discovery Commissioner's conclusion that the crime-fraud exception did not apply in this case.  
20 Moreover, the finding that Anna Jovanovich was an integral part of the audit is a distortion of fact.  
21 The audit extended over a six year period. It consumed over six hundred hours of auditor time.  
22 Over this six year period, Anna Jovanovich consulted with the auditor on the Hyatt matter seven  
23 times and contributed less than fifteen hours of her time during this period.  
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**2. FTB 100218 & FTB 100401**

The redacted portion of FTB 100218<sup>4</sup> reflects a question from Sheila Cox, the FTB auditor at the time, to in-house FTB lawyer Anna Jovanovich. The question constitutes an internal FTB communication, and the document expressly states what an FTB client representative said to an FTB attorney in order to obtain legal guidance as to how to proceed with the Hyatt audit. As such, Hyatt's demand for production is the equivalent of asking Ms. Cox "What did you say to the attorney?" — a question which Ms. Cox could not be compelled to answer:

"A fact is one thing and a communication concerning that fact is an entirely different thing. The client cannot be compelled to answer the question, 'What did you say or write to the attorney?' but may not refuse to disclose any relevant fact within his knowledge merely because he incorporated a statement of such fact into his communication to this attorney." Upjohn, 449 U.S. at 395-396 (quoting Philadelphia v. Westinghouse Electric Corp., 205 F.Supp. 830, 831 (E.D. Pa. 1962).)

The remaining analysis of this document is identical to that presented in conjunction with FTB 100319. Ms. Jovanovich was acting as an FTB attorney at the time of the communication, Ms. Cox was seeking legal advice from Ms. Jovanovich, and the crime-fraud doctrine does not apply. As a result, the communication is protected from discovery.

**3. FTB 100288 & FTB 100289-92**

FTB 100288 is a cover memo for FTB 111289-92, which is a memorandum that is prominently marked "Not for Public Distribution, Confidential, Attorney-Client Privileges." The Discovery Commissioner suggested that no attorney-client privilege applies based on Findings Four and Six because the documents were distributed to five people. However, these documents

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<sup>4</sup>FTB 100401 is a duplicate document of FTB 100218. The same arguments regarding privilege stated under FTB 100218 apply with equal force to this document.

1  
2 on their face indicate that the distribution was simply to the five FTB employee attendees of a  
3 meeting in California, where FTB attorney Richard Gould discussed legal issues with all of them.  
4 As a reminder, the Discovery Commissioner concluded that Richard Gould was an FTB attorney  
5 who was not involved in the Hyatt audit in any other capacity, and that communications with  
6 Gould wherein he offers legal advice are privileged.  
7

8 To hold that this distribution waives the attorney-client privilege is to hold that in-house  
9 attorneys cannot give legal advice to more than one client representative at a time, and it suggests  
10 that a corporation cannot disseminate legal advice to all of the people who need to know it. The  
11 memorandum provides analysis of a method of taxation, the legal requirements to invoke that  
12 method, and the possible application of that method to the Hyatt audit. The memorandum  
13 contains citations to tax codes and court cases, and unquestionably constitutes legal advice from  
14 the FTB attorney. Moreover, the issues discussed in memorandum may become relevant in the  
15 Hyatt protest, which is an ongoing administrative proceeding.  
16

17  
18 **4. FTB 100908-909**

19 This document is an internal memorandum from Mark Shayer, a former FTB employee, to  
20 Anna Jovanovich, FTB's Tax Counsel. The second page contains several specific legal questions  
21 for Ms. Jovanovich, based on the case summary on the first page. Mr. Shayer, as the auditor in  
22 October 1993, had the power to request advice from Ms. Jovanovich on behalf of the FTB, and  
23 was thus a client representative for purposes of Nevada privilege law. N.R.S. §49.075. Since the  
24 privilege protects "not only the giving of professional advice to those who can act on it but also the  
25 giving of information to the lawyer to enable him to give sound and informed advice," the entire  
26 document is privileged. Upjohn, 449 U.S. at 390 (citations omitted). Moreover, the confidential  
27  
28

1  
2 communication occurred in California where it is protected by the attorney-client communication  
3 privilege.

4  
5 While the Discovery Commissioner concluded that FTB 100216 -- a communication from  
6 My. Shayer to Mr. Gould requesting legal advice -- was privileged, the Discovery Commissioner  
7 concluded that FTB 100908-99 was not protected by the attorney-client privilege based on  
8 Findings Four and Six, which are erroneous. The letter is addressed to Ms. Jovanovich as "Lead  
9 Technical Counsel," and Mr. Shayer was requesting specific legal advice regarding the imposition  
10 of taxes. This document is clearly covered by the attorney-client privilege and must not be  
11 disclosed.  
12

13 **5. FTB 101634-101645 & FTB 101646-101656**

14 These documents are two versions of a memorandum from Sheila Cox to Anna Jovanovich  
15 in the FTB Legal Department. They discuss the factual history of the case and the potential bases  
16 for application of the civil fraud penalty to Mr. Hyatt. The Discovery Commissioner concluded  
17 that the documents were not privileged based on Findings Four and Six.  
18

19 As stated before, the fact is that Ms. Jovanovich was acting as an FTB attorney, and the  
20 document was directed to her from her "client," Ms. Cox, an FTB auditor. The documents contain  
21 a summary of the factual history of the case, and while it is true that the facts in the memo are not  
22 privileged, "[a] fact is one thing and a communication concerning that fact is an entirely different  
23 thing." Upjohn, 449 U.S. at 395-396, these memos show exactly what Ms. Cox said to an FTB  
24 lawyer, and are privileged in their entirety.  
25

26 The Court should not operate under the assumption that these facts have been hidden from  
27 Hyatt. To the contrary, the audit narrative for the 1991 Hyatt audit describes all of the factual  
28

1  
2 matters in these memoranda, as part of the proof that Hyatt tried to perpetrate an amateurish tax  
3 fraud on the State of California. This audit narrative was produced to Hyatt. See Hyatt's  
4 Appendix of Exhibits, attached hereto as Exhibit 16. This is not a case in which Ms. Cox told facts  
5 to Ms. Jovanovich in an attempt to cloak them with privilege. Rather, Ms. Cox laid all these  
6 matters out as part of her exhaustive narratives which have already been made available to Mr.  
7 Hyatt together with referenced back up materials, facts either considered or relied on, as well as  
8 the entire audit file. Furthermore, Hyatt has extensively reviewed all the facts of the audit by  
9 examining Ms. Cox for nine days in deposition.  
10

11  
12 **6. FTB 07381**

13 This document reflects a conversation between Anna Jovanovich and Richard Gould  
14 regarding tax sourcing issues. At the time of the conversation, Gould and Jovanovich were FTB's  
15 Tax Counsel discussing the protest of Hyatt. This document reflects Gould's legal opinions  
16 regarding the availability of using the sourcing method to assess California income taxes on Hyatt,  
17 and is unquestionably a privileged communication between two staff attorneys and is entitled to  
18 protection under the attorney-client privilege. The Discovery Commissioner order FTB to disclose  
19 these documents based on Findings Four and Six.  
20

21 This document is no different than FTB 100216 in that it is a communication from Gould  
22 to another FTB employee regarding legal advice on a method of taxation. Because this is a  
23 situation where Gould was the party giving the advice, it should be privileged regardless of what  
24 capacity Jovanovich was acting in at the time of the communication.  
25  
26  
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28



2) Attorney Work-Product Is Not Subject To Discovery.

FTB also claims that one document listed on the privilege log that was ordered disclosed by the Discovery Commissioner is protected from disclosure by the attorney work product doctrine. N.R.C.P. 26(b)(3) limits the discovery of documents and tangible things prepared in anticipation of litigation or for trial by or for another party or by or for that other party's representative. The doctrine protects an attorney's mental impressions, conclusions, or legal theories concerning the litigation, as reflected in memoranda, correspondence, interviews briefs, or in other tangible and intangible ways. Wardleigh v. Second Judicial Dist. Court, 111 Nev. 345, 357, 891 P.2d 1180, 1188 (1995).

1. FTB 07381

This document has been discussed in the section regarding attorney-client privilege. It is also protected from disclosure because it reflects the mental impressions, conclusions and legal theories of FTB attorneys. As such, this document is clearly privileged and protected from disclosure. Furthermore, despite the Discovery Commissioner's Finding Four, there has been no ruling that the crime-fraud exception applies, and therefore, there is no exception to the work-product privilege available to Hyatt

3) Some of the documents are protected by the Deliberative Process privilege.

The FTB is claiming the deliberative process privilege with respect to six documents, totaling ten pages, including FTB 104117 through 104122 and FTB 100289 through FTB 100292.

Hyatt is barred from discovering the mental and deliberative processes of an administrative agency. This is commonly referred to as the deliberative process privilege, which has a basis in

both state and federal law. This prohibition against examination of the mental and deliberative processes of the FTB as a substitute for examination of the facts themselves is recognized as the Morgan/Fairfield rule (313 U.S. 409, 422; 14 Cal.3d 768, 779) in U.S. and California courts. See County of San Diego v. Superior Court, 176 Cal.App.3d 1009, 1024 (1986) The oldest case establishing this principal is Martin v. Mott (1872) 12 Wheat. 19, 31, 6 L.Ed. 527. Mr. Justice Story stated there:

Whenever a statute gives a discretionary power to any person, to be exercised by him upon his own opinion of certain facts, it is a sound rule of construction, that the statute constitutes the sole and exclusive judge of the existence of those facts.

The leading case on the subject is United States v. Morgan, 313 U.S. 409, 421-422 (referred to as the "Fourth Morgan" case) where the United States Supreme Court stated:

But, finally, a matter not touching the validity of the order requires consideration over the Government's objection the district court authorized the market agencies to take the deposition of the Secretary. The secretary thereupon appeared in person at the trial. He was questioned at length regarding the process by which he reached the conclusions of his order, including the manner and extent of this study of the record and his consultation with subordinates. His testimony shows that he dealt with the enormous record in a manner not unlike the practice of judges in similar situations, and that he held various conferences with the examiner who heard the evidence. Much was made of his disregard of a memorandum from one of his officials who, on reading the proposed order urged considerations favorable to the market agencies. But the short of the business is that the Secretary should never have been subjected to this examination. (Emphasis added.)

In ISI Corporation v. United States, 503 F.2d 558 (9th Cir. 1974), the court held that opinions, conclusions and reasoning of governmental officials are not subject to discovery. There, the Ninth Circuit affirmed the trial court's denial of the corporation's motion to compel answers from an Internal Revenue Service auditor and noted, "Relying on other district court opinions [citation] the district judge held that 'the opinions, conclusions and reasoning of governmental

officials are not subject to discovery.' We accept this statement as a correct rule of law ...." *Id.* at 559 (citation omitted).

In Green v. Internal Revenue Service, 556 F.Supp. 79, 84-85 (N.D. Ind. 1982), *affd.* 734 F.2d 18 (1984), the court discussed at length the policy and rationale behind the privilege which protects the deliberative process<sup>5</sup> of a governmental agency:

The governmental privilege protects material reflecting the decisions or policy making process of Governmental agencies ... The Courts in the above cases denied production of documents on the ground that internal agency documents containing the opinions, conclusions and reasoning reached by governmental officials in connection with their official duties are entitled to a qualified protection from disclosure.

The governmental privilege is based upon two important policy considerations. First, it was developed to promote frank discussion among those upon whom rests the responsibility for making the determinations that enable the Government to operate ... Second, the privilege is designed to shield from disclosure the mental processes of executive and administrative personnel.

The privilege applies to intra-governmental documents reflecting advisory opinions, recommendations and deliberations which comprise part of the process by which governmental decisions are formulated. Once claimed, the privilege protects material relating to the methods by which a decision is reached, as well as the matters considered, the contributing influences, and the rule played by the word of others .... The privilege has also been held to apply to '[o]pinions, legal analysis and recommendations, ".... 'opinions, conclusions and reasoning of Governmental officials, ....'conclusions or opinions,'... material reflecting deliberative or policy-making processes, ... and documents which are part of the 'administrative reasoning process.'....

*Id.* at 84-85 (citation omitted).

<sup>5</sup>The deliberative process privilege is really the well established rule which exempts from disclosure intergovernmental communications containing conclusions, opinions and reasoning. (United States v. Leggett and Platt, Inc. 542 F.2d 655 (6th Cir. 1976).) The discussion of the privilege is clouded because the disclosure statutes, such as Freedom of Information Act, the California Public Records Act and the Information Practices Act, have often adopted this common law privilege as the basis for exemption from disclosure. The release of information under the disclosure acts is different than litigation; however, the cases which discuss deliberative process in this light may be helpful in the understanding of the common law privilege.

1  
2 The privilege to preserve the confidentiality of the governmental decision making process  
3 also has been applied in numerous other cases involving the Internal Revenue Service. For  
4 example, in Bank of America v. U.S., U.S. District Court, No. Dist. Calif., May 24, 1979, 78-2  
5 USTC (CCH ¶ 9493), the court stated, "[i]f disclosure of the requested IRS files would inhibit free  
6 and open discussion between governmental officials or unduly embarrass the government, the files  
7 may be subject to a qualified privilege for the opinions and views of government officials."  
8

9 Similarly, in Furman v. U.S., U.S. District Court, South Carolina, Greenville Div., Nov. 25,  
10 1983, 83-2 USTC (CCH ¶ 9739), the court denied the taxpayer's discovery requests upon the  
11 Internal Revenue Service for all reports, correspondence and internal documents prepared by the  
12 Internal Revenue Service audits agents in anticipation of the case. The Court, in denying the  
13 discovery requests, stated: "[t]he Government has a well established privilege with exempts from  
14 disclosure intra governmental communications containing conclusions, opinions and reasoning. . . .  
15 This is especially true in tax cases where the taxpayer must rely on the validity of its own position  
16 under the applicable taxing provisions."  
17

18 California courts which have considered these same issues have reached the same  
19 conclusion - a litigant may not probe the deliberative processes of the administrative agency. He is  
20 limited to a review of the administrative record.  
21

22 For the most part, the form of deliberative process discussed above is designed for cases  
23 which attack a decision made by the agency. However, in this case, Hyatt is not, theoretically,  
24 attacking the FTB's Notice of Proposed Assessment. If he were, he would be prohibited by the  
25 cases cited above from discovering the Review Notes and the internal memorandum discussing  
26 sourcing. However, it must be considered that Hyatt is protesting his proposed assessment in  
27  
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1  
2 California via the administrative proceeding and there is no doubt that Hyatt will litigate if the  
3 proposed assessment is upheld. Therefore, Hyatt must be denied access to these documents since  
4 he would not be entitled to them in California court and the interest that California has in  
5 maintaining the integrity of its administrative system and taxing authority outweighs any interest  
6 Hyatt may have in these particular documents. Hyatt cannot be allowed to undermine the statutory  
7 privileges the State of California has in protecting its decision-making process by bringing suit in a  
8 sister state. Comity requires this result.  
9

10 From the vein of deliberative process discussed above, which is founded upon the  
11 separation of powers principle and limits judicial review of an executive agency decision-making  
12 process, a second vein has developed. Instead of focusing on high-level policy or regulatory acts,  
13 this second vein is founded upon the judicial acknowledgment of the importance and usefulness of  
14 free-flowing ideas and opinions in government agencies. This form pertains to agency decisions  
15 and the flow of information, including personal opinions from a subordinate to a superior. It is  
16 upon this second version of the privilege that the FTB primarily relies.  
17  
18

19 Several cases support the application of the "self-critical analysis" version of the privilege in  
20 a variety of situations, outside the review of the adoption of a policy. Most notably and most  
21 on-point, in Maricopa Audubon Society v. US Forest Service, 108 F.3d 1089 (9<sup>th</sup> Cir 1997), the  
22 Ninth Circuit upheld the deliberative process privilege in this context. In that case the government  
23 was allowed to withhold portions of "an internal investigation report on allegedly illegal and  
24 unethical management" of a region of the Forest Service. The Court held that in order to invoke  
25 the privilege, 1) the materials must be predecisional in nature and form part of the agency's  
26  
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1  
2 deliberative process; and 2) the agency must identify a specific decision to which the document is  
3 pre-decisional (which avoids creation of "secret, working law."). Id. at 1093-1094.

4  
5 The Maricopa Court went on to define a "predecisional" document as one "prepared in  
6 order to assist an agency decisionmaker in arriving at his decision," which may include  
7 "recommendation ... and other subjective documents which reflect the personal opinions of the  
8 writer rather than the policy of the agency." Id. at 1093. The Court stated that a predecisional  
9 document is part of the "deliberative process" if disclosure would expose an agency's  
10 decisionmaking process in such a way as to "discourage candid discussion within the agency and  
11 thereby undermine the agency's ability to perform its functions." Id. at 1093.

12  
13 **1. FTB 104117 - 104122 (Duplicated at FTB 03091-03096)**

14 Five of the documents (six pages) being claimed as privileged under the deliberative  
15 process privilege are FTB 104117 through FTB 104122. These comprise "review comments"  
16 prepared by Carol Ford, a residency audit case reviewer. Upon completion of an audit, the auditor  
17 (or her supervisor) forwards the file to the FTB's "central office" for the issuance of the Notice of  
18 Proposed Assessment. In the case at bar, Penelope Bauche was the employee responsible for the  
19 final decision of whether or not to release the Notice.  
20

21 To assist Ms. Bauche in her decision-making process, a member of her staff, in this case  
22 Carol Ford, reviews the file prepared by the auditor for completeness and sustainability. The  
23 reviewer documents her comments and Ms. Bauche may use those comments to determine if a  
24 Notice of Proposed Assessment should be issued or if the file should be returned to audit for  
25 further development. The review comments are not deemed to be part of the "audit file" since they  
26 are merely the memorialization of the department's final critical analysis of the sufficiency of the  
27  
28

1  
2 audit. When Ms. Bauche completes her use of the comments, they are often forwarded to the  
3 auditor's supervisor for the second use of auditor evaluation.

4  
5 These documents must be protected from discovery because the review comments were  
6 prepared by Ms. Ford, Ms. Bauche's subordinate, to assist Ms. Bauche in her decision to issue the  
7 Notice of Proposed Assessment. Indeed, the comments did or may have reflected Ms. Ford's  
8 personal opinions and not the views of the agency. The review comments were prepared in the  
9 confidential environment of the FTB review unit with the only possible release being to that of a  
10 supervisor in connection with personnel review. California State Personnel records are  
11 confidential. California Government Code §18934.  
12

13 If review comments became available to taxpayers in their contests to dispute taxes, the  
14 candid review and disclosure of the sufficiency of the supporting audit would be jeopardized. A  
15 subordinate would no longer be able to express her opinions candidly for fear that such opinions  
16 would be attributed to the department or that she would "take the blame" if her "opinions" were  
17 not accurate statements under the law. Hyatt's aggressive discovery in this case makes these fears  
18 well founded. Hyatt has already subjected the auditors and reviewers to days of depositions.  
19

20 The FTB has satisfied the procedural requirements to assert the privilege. First, the claim  
21 of privilege must be lodged by the head of the agency cognizant of the matter, after personal  
22 consideration of the allegedly privileged nature of the information. Coastal Corp. v. Duncan, 86  
23 FRD 514, 517 (D. Del. 1980). In the FTB's briefing to the Discovery Commissioner, it included a  
24 Declaration executed by Paul Usedom, Chief of the Audit Division, supporting the FTB's assertion  
25 of privilege. See Affidavit of Paul Usedom, attached hereto as Exhibit 17. Mr. Usedom's  
26 declaration is not very specific since any further discussion of the documents or their use in the  
27  
28

1  
2 audit would disclose the deliberative process which the FTB seeks to protect. United States of  
3 America v. Board of Education of the City of Chicago, 610 F. Supp. 695 (1985).

4  
5 After the threshold requirements are met, the Court must weigh the competing interests for  
6 and against disclosure. Villaume v. United States of America, 616 F.Supp 185 (1985). The  
7 Discovery Commissioner abused his discretion by not considering California's interest in not  
8 producing the documents. See Exhibit 4, pp. 53--58. The FTB has produced over 3,500 pages of  
9 audit workpapers, over 70 pages of Narrative Reports, two Notices of Proposed Assessment and  
10 several witnesses for exhaustive deposition. With respect to the FTB's disclosure, the FTB has  
11 been consistent and discriminating in its claim of privilege. As a public agency, the FTB has been  
12 as forthcoming as it can be, while protecting its sovereign interests.

13  
14 The review comments do not contain the reasoning behind the conduct in carrying out the  
15 audit. It is only that conduct which is at issue in this case. Indeed, Ms. Ford's review occurred  
16 after the audit was virtually complete and never had any contact whatsoever with the State of  
17 Nevada. Hyatt is trying to discover the review notes to support his imminent tax battle in  
18 California. Thus, plaintiff's demand for discovery of what and how the FTB evaluated the factual  
19 record in the audit case violates the prohibition against discovery of the agency's deliberative  
20 process. Accordingly, further discovery should be denied.

21  
22 **2. FTB 100288 & FTB 100289-92**

23  
24 The memo at issue is the memorialization of a meeting between the auditors on this case,  
25 Monica Embry of the Policy Section and Richard Gould of the Legal Branch. The GTA Policy  
26 Section exists to provide policy analysis to auditors, similar to the legal advice provided by the  
27 attorneys in the legal branch. The meeting was held to discuss the viability of a sourcing theory for  
28



1  
2 the taxation of patent royalties. Ms. Embry served as the "secretary" of the meeting, and therefore  
3 wrote up the memo. This document should be protected not only under the attorney-client  
4 privilege, but also under the deliberative process privilege.  
5

6 When a Notice of Proposed Assessment is issued, the proposed tax is merely tentative until  
7 the expiration of the protest period or the completion of the protest administrative process. If the  
8 proposed assessment is upheld, the FTB issues a Notice of Action, at which time the tax is due and  
9 payable and no longer tentative. The Notice of Action does not need to be based on the same  
10 theory as the Notice of Proposed Assessment. Since the protest procedure is in essence a de novo  
11 review of the audit, the hearing officer may change the tax due or revise the tax theory upon which  
12 the tax is based. To allow a memo which discusses an alternative theory of taxation to be  
13 disclosed to a taxpayer before the protest procedure is complete and before the Notice of Action  
14 has been issued would jeopardize the purpose and usefulness of such meetings and  
15 memorializations. As discussed above, Hyatt is involved in an ongoing dispute over the proposed  
16 tax assessment. His further litigation in California, should the assessment be upheld, is almost  
17 certain.  
18  
19

20 According to Coastal States Gas Corp. v Department of Energy, 617 F.2d 854 (D.C. Cir.  
21 1980), the three major purposes of the deliberative process privilege are: "(1) to assure that  
22 pre-decisional opinions and recommendations will flow freely from subordinates to  
23 decisionmakers, without fear of public ridicule or criticism, (2) to protect prematurely disclosed  
24 policies or opinions before they are officially adopted as agency policy, and (3) to protect from  
25 misleading the public with opinions and recommendations that may have played a minor role in the  
26 policy decision, but were not actually the ultimate deciding factor."  
27  
28

1  
2 Since the decisionmaking process with respect to the assessment of tax is ongoing and the  
3 Notice of Action has not yet been issued, the release of this memo, which discusses an alternative  
4 taxing theory, would be premature. The FTB may eventually adopt or reject the position reflected  
5 in the memorandum and its disclosure to the taxpayer would hamper the department's ability to  
6 freely discuss theories and, especially, memorialize them in writing. Further, the taxpayer may be  
7 misled by the memo or the defense of the FTB's position may be hindered, should the FTB decide  
8 to follow a contradictory course to that outlined in the memo. The Discovery Commissioner again  
9 abused his discretion by not considering the FTB's interest in maintaining the confidentiality of that  
10 memo. Further, the interests of comity require that the ruling to produce this memorandum be  
11 vacated.  
12

13  
14 B. THE DISTRICT COURT ABUSED ITS DISCRETION IN ENTERING THE  
15 PROTECTIVE ORDER.

16 The District Court abused its discretion in entering the protective order because it unfairly  
17 limits FTB's ability to prepare for trial, prepare witnesses for deposition, and use the confidential  
18 documents in its parallel administrative proceeding in California. In sum, the protective order  
19 interferes with and prevents the FTB from having access to and use of relevant information  
20 secured through permissible discovery under the Nevada Rules of Civil Procedure without the  
21 imposition of special restrictions and sanctions against the FTB and its employees. The Protective  
22 Order denies the State of California due process under the Nevada, California, and United States  
23 Constitutions because it is one-sided, oppressive, burdensome, and unjustified. The purpose and  
24 design of the Protective Order is to control and, in some instances, to prevent, the State of  
25 California from using discovery secured in this Nevada lawsuit in administrative proceedings in  
26  
27  
28

1  
2 California. The Protective Order is lengthy, complicated, builds in lengthy delays in discovery,  
3 gives Hyatt arbitrary and total control of the "confidential" process, precipitates unnecessary  
4 motion practice, drastically limits the State of California's use of discovery materials, greatly  
5 reduces defense counsel's ability to use discovery materials with its client, prevents preparation of  
6 witnesses, gives the plaintiff automatic discovery as to defense witnesses, consultants and work  
7 product, reverses the burden of justifying discovery of relevant materials, unnecessarily increases  
8 the expense of discovery, unnecessarily burdens the defense, witnesses, experts, court reporters,  
9 and the court, and gives unnecessary protection to documents and information which have no  
10 value or is already public information.  
11

12  
13 The Protective Order is unfair because it imposes terms and conditions on the use of  
14 evidence secured through discovery on the State of California that are not imposed on the plaintiff.  
15 The State of California is barred from using an entire class of evidence in administrative  
16 proceedings involving the plaintiff without first complying with an involved, complicated, and  
17 burdensome process, which gives the plaintiff veto power, while the same terms and conditions are  
18 not imposed on plaintiff. Exhibit 6, ¶¶ 3 and 4. The Protective Order interferes with the State of  
19 California's ability to candidly and freely discuss the merits of the plaintiff's lawsuit, prepare  
20 defenses to plaintiff's claims, and interferes with the ability of the State of California and its  
21 attorneys to prepare witnesses and other evidence with evidence secured through permissible  
22 discovery. Id. at ¶ 2.  
23  
24

25 Most importantly, FTB cannot show the documents to an entire class of witnesses — those  
26 who did not draft the document, receive the document, or previously see the document — unless  
27 they get specific permission from Hyatt. Id. at ¶¶ 2(a), 3, 7, and 12. Such restriction limits the  
28

1  
2 FTB's ability to discuss the documents with witnesses without first identifying those witnesses to  
3 Hyatt. This provides Hyatt with the unfair advantage of knowing the identity of every witness that  
4 the FTB consults, and Hyatt has the ability to refuse to permit the FTB from showing the  
5 confidential documents to the witness. Id. at ¶ 2(a). The FTB is faced with a situation where the  
6 first time it can show the confidential documents to a witness is at that witness's deposition. Such  
7 a situation limits FTB's ability to prepare witnesses for depositions or otherwise discuss the  
8 documents with those witnesses. Therefore, the entry of such an order is an abuse of discretion.

9  
10 However, FTB's proposed stipulation and protective order still requires the FTB to  
11 maintain the confidentiality of documents and information produced by the Hyatt in this litigation,  
12 but it permits the FTB to discuss the documents with witnesses (conditioned upon them signing an  
13 agreement to keep the materials confidential) without having to seek Hyatt's prior permission to  
14 do so. This permits FTB to adequately prepare for trial and depositions. Furthermore, the FTB's  
15 protective order permits the FTB and Hyatt to use the discovered documents only in this case and  
16 the parallel California proceedings. This allows for the practice already prevailing between the  
17 parties. Mr. Hyatt has repeatedly used discovery materials obtained in this litigation to support his  
18 tax case in California. These include the following correspondence submitted by Hyatt's  
19 representatives which reference matters acquired by Hyatt from the FTB in discovery and  
20 referencing Sheila Cox' or Julie Meyer's deposition testimony:  
21  
22

23	1/19/99	Letter from Kern to Julie Meyer re correcting audit record re royalty income
24	1/22/99	Letter from Kern to Julie Meyer re correcting audit record re check assignment errors
25	1/22/99	Letter from Kern to Julie Meyer re correcting audit record re credit card assignment errors
26		
27		
28		

- 1/25/99 Letter from Kern to Julie Meyer re correcting audit record re check assignment errors
- 1/26/99 Letter from Kern to Julie Meyer re correcting audit record re LV addressed envelopes submitted to FTB on 1/8/99
- 1/26/99 Letter from Kern to Julie Meyer re correcting audit record re check and credit card assignment errors and LV addressed envelopes submitted to FTB
- 1/26/99 Letter from Kern to Julie Meyer re correcting audit record re check and credit card assignment errors and LV addressed envelopes submitted to FTB (Duplicate of H 06891-907 with additional schedules page attached re checks to credit card companies)
- 2/3/99 Letter from Kern to FTB, Julie Meyer transmitting LV addressed envelopes and demanding record correction
- References:
- PO Box 81230, zip 89180 (4/22/92-1/4/93)
- PO Box 60028, zip 89160 (2/1/92-10/26/92)
- 3225 S. Pecos, 89121 (12/16/91-4/13/92)
- 4012 S. Rainbow #469 89129 (7/31/92-11/24/92)
- 3/10/99 Letter from Kern to Julie Meyer responding to Meyer's 2/22/99 letter which responded to Kern's seven letters to correct errors and demand for "proper" answer pursuant to CCC Sec. 1798 and referencing her deposition and designation as compliance person re Information Practices Act

The FTB should be permitted to consider evidence discovered in this case which might bear one way or another on Mr. Hyatt's claim of Nevada residency which is presently being considered in the parallel California proceeding. This comports with the practice already being employed by Hyatt. This Court should strike the protective order entered by the district court and enter the protective order proposed by the FTB.

#### IV. Conclusion

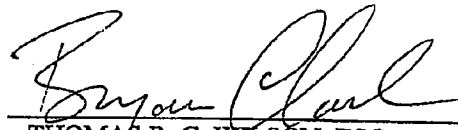
The FTB has demonstrated that the Discovery Commissioner's rulings regarding the privilege issues, and the District Court's affirmation of those rulings, were incorrect. The FTB has

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1  
2 also proven that the Discovery Commissioner's entry of Hyatt's proposed protective order, and the  
3 District Court's affirmation of those rulings, were abuses of discretion. Therefore, the FTB  
4 requests that this Court (1) conclude that all of subject documents are privileged and protected  
5 from disclosure; and (2) strike the protective order entered by the District Court as recommended  
6 Discovery Commissioner and enter the protective order proposed by the FTB.  
7

8 DATED this 25<sup>th</sup> day of January, 2000.

9  
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11  
12  
13 

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**CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of McDonald Carano Wilson McCune Bergin Frankovich & Hicks LLP., and that I served a true and correct copy of FRANCHISE TAX BOARD OF THE STATE OF CALIFORNIA'S PETITION FOR WRIT OF MANDAMUS, OR IN THE ALTERNATIVE, FOR WRIT OF PROHIBITION on this 25<sup>th</sup> day of January, 2000, by depositing same in the United States Mail, postage prepaid thereon to the numbers noted below, upon the following:

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DISTRICT COURT  
CLARK COUNTY, NEVADA

15 GILBERT P. HYATT,  
16 Plaintiff,

17 vs.

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

Case No.: A382999  
Dept No.: XVIII

**GIL HYATT'S OPPOSITION TO FTB'S  
MOTION FOR SUMMARY  
JUDGMENT**

**FILED UNDER SEAL BY ORDER OF  
THE DISCOVERY COMMISSIONER  
DATED FEBRUARY 22, 1999**

Hearing Date: April 21, 2000  
Hearing Time: 9:00 A.M.

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D.

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1 **I. Issues presented.**

2 The FTB's motion cannot be granted for the following three *decisive* issues:

3 1. **Torts.** Last year in denying the FTB's motion for judgment on the pleadings, the  
4 Court ruled that Hyatt properly pled the torts alleged in his First Amended Complaint. The same  
5 facts Hyatt alleged last year in opposing the FTB's motion, plus additional facts gathered to date  
6 during discovery, are now presented with evidentiary support in opposition to this Motion for  
7 Summary Judgment. The FTB clearly disputes some, if not all, the material facts Hyatt asserts in  
8 support of his tort claims. Summary Judgment cannot therefore be granted in this case.

9  
10 2. **Jurisdiction.** Last year the Court also rejected the FTB's "legal" defenses to all  
11 of Hyatt's tort claims and ruled that it did have subject matter jurisdiction over the tort claims.  
12 There has been no change in facts or change in the law which would warrant the Court  
13 reconsidering its prior ruling. Summary Judgment cannot therefore be granted in this case based  
14 on any of the FTB's already rejected legal defenses.

15  
16 3. **Discovery.** In denying the FTB's motion for judgment on the pleadings last year  
17 on all of Hyatt's tort claims, the Court instructed that there be no "foot dragging" on discovery  
18 because there was "a lot of work" to do, given the claims remaining in the case. Yet, since the  
19 Court's ruling last year the FTB has derailed discovery by defaulting on its discovery obligations  
20 and refusing to provide even court-ordered discovery. Summary Judgment cannot be granted  
21 because of the outstanding discovery owed by the FTB.

22  
23 **II. Summary of argument.**

24 The FTB continues to create decoys calculated to postpone the inevitable trial in this  
25 matter. Hyatt respectfully submits that the FTB can and will be held accountable in Nevada for  
26 attempting to intimidate a Nevada resident to extort money from him by invading his privacy,  
27 threatening additional invasions of his privacy, and engaging in intentionally tortious conduct.  
28 As Hyatt will demonstrate by compelling evidence, the FTB's methodology for collecting taxes

1 from Hyatt may not be remotely validated under any form of lawful, constitutional taxing  
2 authority; thus, the FTB may not justify its tortious conduct against Hyatt under the mantle of  
3 taxing prerogatives.

4 Hyatt respectfully suggests that given the court's past rulings, the motion is not only  
5 repetitious to the extreme, but is truly a "freak of nature" as a legal dispositional device. If ever a  
6 case was fraught with disputes of material issues of fact, it is this one. It is also long past time  
7 for continuing to tolerate the FTB's contumacious refusal to comply with the discovery orders of  
8 the Discovery Commissioner and this Court. If the FTB continues to use California as a shield  
9 against submitting to the lawful discovery orders of the Nevada Court to which it has conceded  
10 jurisdiction, then it is respectfully suggested that an appropriate sanction, after such protracted  
11 recalcitrance, would be to strike the FTB's answer.

12 **A. Overview of the arguments set forth in the FTB's motion.**

13 After setting forth its disputed and false version of the facts on residency, the FTB's  
14 motion makes three flawed legal arguments: (1) the FTB cannot be held liable in Nevada  
15 because its "Nevada" contacts are not sufficient to establish the torts alleged; (2) this Court lacks  
16 subject matter jurisdiction over the FTB based on a number of different theories, all of which  
17 were previously rejected by the Court a year ago; and (3) the FTB was privileged to engage in its  
18 "Nevada" tortious conduct, an argument which was also rejected by the Court last year. Hyatt  
19 summarizes below his response to each of the FTB's arguments.

20 **B. Hyatt's tort claims are not limited by state boundaries and cannot be "split"**  
21 **and divided between California and Nevada; the Court has personal**  
22 **jurisdiction over the FTB and can grant full relief for the tort claims.**

23 The FTB assumes that Hyatt's tort claims can be split and divided by state borders such  
24 that this Nevada Court would have jurisdiction only over tortious acts in Nevada, but not the  
25 tortious conduct occurring in California that is directly related to and a proximate cause of the  
26 injuries suffered by Hyatt in Nevada. It is hornbook law that a cause of action cannot be "split"  
27 with parts of a claim heard in one state while other parts of the claim are heard in another state.

28 Moreover, once a court has personal jurisdiction over a defendant, the court has  
jurisdiction over that defendant for all purposes related to the claims at issue in the case. The

1 Court can therefore grant full relief to Hyatt for claims now before the Court.

2  
3 **C. There is significant evidentiary support for each of the tort claims — the very**  
4 **claims Hyatt outlined last year in opposing the FTB's motion for judgment**  
5 **on the pleadings.**

6 This Court previously ruled that the tort claims, as detailed in Hyatt's opposition to the  
7 FTB's motion for judgment on the pleadings, did properly state causes of action for which Hyatt  
8 may seek relief in this Court. The FTB nonetheless again presents this Court with the same  
9 rejected arguments regarding the scope and legal basis of the tort claims.

10 Although this Court's prior ruling on the FTB's motion for judgment on the pleadings  
11 validated Hyatt's right to pursue his tort claims, the FTB apparently is of the dubious opinion  
12 that it has numerous bites at the apple. Hyatt will therefore address once again, the legal basis  
13 for the viable claims he has asserted against the FTB and set forth his evidentiary support.  
14 Despite the FTB's unprecedented stonewalling — including ignoring court orders — Hyatt has  
15 significant, established factual support for each element of every asserted tort.

16 **D. There is no basis for the Court to revisit its prior ruling on subject matter**  
17 **jurisdiction or its prior ruling on the non-existent privilege asserted by the**  
18 **FTB.**

19 The FTB reasserts an unfettered right to engage in whatever conduct it deems necessary  
20 to collect taxes, including the disregard for a sister state's sovereignty, while tortiously and  
21 injuriously imposing itself on a long-term Nevada resident. This asserted unfettered right was  
22 rejected by this Court in the FTB's motion for judgment on the pleadings and is directly contrary  
23 to U.S. Supreme Court and Nevada Supreme Court precedent.

24 The FTB's primary argument that this case interferes with its sovereign power has  
25 previously been rejected by this Court and is factually erroneous. Neither as a result of this case,  
26 nor through any other conduct by Hyatt, has the FTB been prevented from proceeding with its  
27 assessment and collection of taxes from Hyatt. As has been analogized in the past, this case and  
28 the Protest are separate trains traveling on two separate parallel sets of tracks.

In short, the FTB has every right to process its tax claims against Hyatt in California, and

Hyatt is vigorously opposing those claims through the “protest”<sup>1</sup> now occurring in that state. This tort case does not inhibit or in any way limit the FTB’s ability to try to assess and collect taxes from Hyatt in California (or Hyatt’s ability to defend against those efforts). This tort case, however, involves Hyatt’s right as a Nevada citizen to the protection of the Nevada court system to seek redress for the FTB’s invasion of privacy and other torts committed by the FTB during its now seven-year effort to extract money from Hyatt.

The five arguments asserted by the FTB regarding subject-matter jurisdiction were rejected last year by the Court, as was the FTB’s claim of privilege in regard to its tortious conduct. The following summary reminds the Court of the issues already raised by the FTB and rejected by the Court last year. It also summarily addresses the FTB’s one new argument that is based on inapplicable case law.

**Full Faith and Credit:** The FTB’s argument concerning Full Faith and Credit is directly addressed and disposed of through the holdings in *Miannecki* and *Nevada v. Hall*. Nevada’s strong self-interest requires that it take jurisdiction of this case.

The FTB’s attempt to squeeze within an asserted — although not recognized — exception to *Nevada v. Hall* is based upon a false and very much disputed premise that this case somehow interferes with the FTB’s efforts in California. This case in no way impedes the FTB’s tax collection effort. Indeed, a top FTB legal officer swore under oath at the outset of this case that it would *not* interfere with the protest. The FTB has never complained during the protest that this case interferes with the protest, and the FTB admitted that it renewed its efforts to process the protest after the Court dismissed the declaratory relief claim last year. Finally, according to the current protest officer, there is an “ethical wall” around her. Thus, she cannot be influenced or in any way impeded by the Nevada litigation.

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<sup>1</sup> As explained to the Court last year in Hyatt’s opposition to the FTB’s notice of motion for judgment on the pleadings, the FTB issued, in 1996 and 1997 respectively, a Proposed Assessment of additional taxes to Hyatt for each of the 1991 and 1992 tax-years. Hyatt has preserved his rights to contest such proposed assessments by filing a “protest” in regard to each. The FTB is therefore, and has been since 1996, processing the protest by, at least in theory, having one of its own protest officers conduct an independent review of the underlying audits and proposed assessments. See Cowan Affid., ¶¶ 31-32.

1       **Comity:** The FTB argues that the Court should as a matter of comity decline to hear this  
2 case. This argument has been raised in virtually every motion the FTB has filed and has been  
3 rejected each time by the Court. The issue was definitively addressed in both *Mianecki* and  
4 *Nevada v. Hall*. It was California's refusal to give comity to Nevada that resulted in the holding  
5 in *Nevada v. Hall*. California cannot expect comity if it does not give comity.

6       **Choice of law:** The FTB argues that under Constitutional choice-of-law provisions, the  
7 Court should recognize California's own governmental-immunity laws. This argument is also  
8 refuted by the holdings in *Mianecki* and *Nevada v. Hall*, as the argument is based on the faulty  
9 premise that Nevada has no self-interest in this case. *Mianecki* and *Nevada v. Hall* hold to the  
10 contrary as do other Nevada and Supreme Court precedent. Nevada has a very strong self-  
11 interest in this case.

12       **Recent U.S. Supreme Court cases:** Based on five sovereign immunity cases recently  
13 decided by the U.S. Supreme Court, the FTB argues that this case should be dismissed. This is  
14 the FTB's only new argument. The five cases, however, addressed a state's sovereign immunity  
15 relative to the Federal Government. None of them held, implied, hinted, or even questioned the  
16 Court's holding in *Nevada v. Hall*, that the courts of a forum state need not accord sovereign  
17 immunity to a sister state for its tortious conduct injuring a resident of the forum state. In fact,  
18 the most recent sovereign-immunity case cited by the FTB reaffirms and emphasizes the vitality  
19 of *Nevada v. Hall*.

20       **Exhaustion of Administrative Remedies:** The FTB argues that Hyatt should have  
21 exhausted administrative remedies under *Nevada law*. Nevada law applies to Nevada  
22 government agencies, not California government agencies. Moreover, there is no administrative  
23 remedy for the torts claimed by Hyatt. The FTB raised failure to exhaust administrative  
24 remedies in its previous motion, and it was rejected by the Court as to Hyatt's tort claims.

25       **Privilege:** Just as the FTB does not have immunity for torts committed against a Nevada  
26 resident, it is not privileged to engage in torts as part of its tax collection effort against a Nevada  
27 resident.  
28

**E. Summary judgment is not appropriate because the FTB has refused to provide discovery.**

Shortly after this Court denied the FTB's motion for judgment on the pleadings last year, the FTB ceased providing virtually any discovery. Since June 1, 1999, the FTB has produced a total of one FTB employee for deposition. After losing the motion for judgment on the pleadings last year, the FTB decided it would defend the tort case by not providing discovery. Prior to June 1, 1999, the FTB produced approximately 20 employees for deposition. Through small admissions gained from the various depositions, Hyatt had been building his case "brick by brick". In response, the FTB has simply stopped providing witnesses. There is now a court order for discovery — discovery requested over a year ago and first subject to a motion to compel last April — for which the FTB is seeking a writ with the Nevada Supreme Court. Significant discovery has been on hold, waiting for the FTB's compliance. Instead of acting as if it has nothing to hide, the FTB has refused to provide discovery — despite this Court's admonition that there be no "foot-dragging."

If not denied outright, this motion should be continued until discovery can be completed.

**III. Statement of facts.**

The FTB's one-sided version of the residency dispute set forth in its supposedly "undisputed" facts section is easily rebutted point by point in Hyatt's accompanying affidavit. For brevity, Hyatt here addresses only the most blatant "facts" that are misstated and/or misconstrued by the FTB in its moving papers. Hyatt, first however, summarizes for the Court the most salient facts relative to Hyatt's tort claims based upon the depositions taken to date, affidavits submitted herewith, and documentary evidence.

**A. Summary of disputed facts supporting Hyatt's tort claims.**

**1. Gil Hyatt is a very private person.**

Gil Hyatt is and has been a Nevada resident since 1991.<sup>2</sup> He is and has been a private

<sup>2</sup> See, e.g., Hyatt Affid., ¶ 2, 18, 77.

1 person.<sup>3</sup>

2 Hyatt's profession and business require security and privacy. Hyatt is by trade an  
3 engineer, scientist, and inventor. He worked from the late 1960s to the 1990s in seclusion to  
4 conceive and patent some of the most revolutionary inventions in computer history.<sup>4</sup>

5 During 20 years of struggle with the Patent Office, Hyatt persevered during hard times,  
6 living a frugal lifestyle. Despite a self-imposed and preferred anonymity during two decades of  
7 work — with no government subsidies or research grants — he developed and eventually  
8 received patents on computer technology that helped create the personal computer industry.<sup>5</sup>

9 While working in the aerospace industry, Hyatt received top level security clearances  
10 from the Department of Defense ("DOD"). He is an expert in security matters, having held DOD  
11 secret clearances for almost 30 years and being director of security for his aerospace consulting  
12 company.<sup>6</sup> He uses this expertise to protect his secret technology and business materials. He is  
13 justly concerned about industrial espionage and the theft of technology and trade secrets. His  
14 early inventions were leaked to competitors, allowing them to capitalize on his technology and  
15 reap billions of dollars in benefits derived from his inventions.<sup>7</sup>

16 When the Patent Office finally issued certain of his pioneering patents in 1990, Hyatt  
17 became the subject of a flurry of media and public attention in California. Hyatt had been  
18 victimized in California by thefts of his intellectual property, and by a personal tragedy — the  
19 murder of his son, the perpetrator of which was never brought to justice by California authorities.

20  
21 **2. In 1991, Hyatt moved to Nevada, and eight years later he is still living in his**  
22 **chosen domicile, Nevada.**

23 For professional and personal reasons, Hyatt began planning a move to Las Vegas in

24 <sup>3</sup> See, e.g., Hyatt Affid., ¶ 6.

25 <sup>4</sup> See, e.g., Hyatt Affid., ¶¶ 80, 130-31.

26 <sup>5</sup> See, e.g., Hyatt Affid., ¶¶ 80, 131.

27 <sup>6</sup> See, e.g., Hyatt Affid., ¶ 131.

28 <sup>7</sup> See, e.g., Hyatt Affid., ¶¶ 137.

1 1990. After substantial preparation, Hyatt left California and permanently moved to Las Vegas  
2 on September 26, 1991.<sup>8</sup>

3 Immediately after moving to Las Vegas, Hyatt sold his California house, leased and  
4 moved into a Las Vegas apartment, and shopped for a house to purchase.<sup>9</sup> He made the first of  
5 thirteen offers and counteroffers on Las Vegas houses on December 10, 1991 soon after his move  
6 into his rented apartment.<sup>10</sup>

7 Soon after his move to Las Vegas, Hyatt was diagnosed with a malignant cancer. He  
8 traveled to California a number of times to be examined by cancer specialists and undergo major  
9 surgery.<sup>11</sup> Each time Hyatt immediately returned to his home in Las Vegas.<sup>12</sup> The FTB has used  
10 the fact of Hyatt traveling to California for medical treatment needed to save his life as a basis  
11 for asserting he was a California resident during the six-month period for which his Nevada  
12 residency is disputed.<sup>13</sup>

13 Shortly after Hyatt's cancer surgery, escrow closed on his Las Vegas house (April 2,  
14 1992) and he moved from his leased apartment into his new house.<sup>14</sup> Hyatt had formed a Las  
15 Vegas trust, with his Nevada CPA Michael Kern as trustee to protect his privacy, and he  
16 purchased his Las Vegas house through this trust so that his name would not appear on the public  
17 records. Hyatt intended to keep a "low profile" and his colleagues shielded his name from public  
18 records (utilities, property records and the like) so that his street address would remain private.<sup>15</sup>

19 One of the security measures Hyatt has employed is to keep his most sensitive documents  
20

21 <sup>8</sup> See, e.g., Hyatt Affid., ¶¶ 2, 18, 77.

22 <sup>9</sup> See, e.g., Hyatt Affid., ¶¶ 120, 182.

23 <sup>10</sup> See, e.g., Hyatt Affid., ¶ 28.

24 <sup>11</sup> See, e.g., Hyatt Affid., ¶ 24.

25 <sup>12</sup> See, e.g., Hyatt Affid., ¶ 2.

26 <sup>13</sup> Cox Narrative Report at H00054, H00059, see Exhibit 1 to the Appendix of Evidence,  
27 ("Appendix"). All documents cited herein are attached to Appendix.

28 <sup>14</sup> See, e.g., Hyatt Affid., ¶¶ 16, 107.

<sup>15</sup> See, e.g., Hyatt Affid., ¶¶ 172, 176.



1 in his private home-office. His ownership of the house in the Trust's name preserved his  
2 anonymity.<sup>16</sup>

3 **3. Hyatt's Nevada business prospered.**

4 After Hyatt moved to Las Vegas, his licensing business started to blossom, and until the  
5 FTB destroyed his licensing program in 1995, his business was a significant success.<sup>17</sup> Hyatt's  
6 licensing program stopped short after the FTB's disclosure of confidential and private  
7 information about Hyatt in direct contradiction to the FTB's repeated representations of  
8 confidentiality.

9 **4. The FTB conducted an uncontrolled investigation, surveillance, and audit  
10 that invaded Hyatt's privacy and destroyed Hyatt's licensing business.**

11 In 1993, *two years after* Hyatt moved to Nevada, an FTB employee read a news article  
12 regarding Hyatt.<sup>18</sup> Based upon nothing more, the FTB then commenced its efforts to secure  
13 substantial sums from Hyatt even though Hyatt had long since become a Nevada resident.

14 For seven years, the FTB has investigated, surveilled, and audited Hyatt and publicly  
15 disclosed his confidential information, including the location of his secret technology. The FTB  
16 investigated, questioned, demanded documents from, and surveilled Hyatt, his car, home,  
17 business associates, doctors, rabbis, lawyers, accountants, partners, friends, enemies, ex-wife,  
18 felon-brother, Las Vegas neighbors, former California neighbors, Las Vegas landlords, dating  
19 service, professional organizations, banks, mutual funds, postman, and even his trash man.<sup>19</sup>  
20 They even went to his front porch to snoop at mail on the doorstep and recorded the timing,  
21 description, and quantity of his trash.<sup>20</sup>

22 This relentless assault on Hyatt's right to be left alone interfered with his contacts with

23 <sup>16</sup> See, e.g., Hyatt Affid., ¶¶ 130-138, 171-172, 176.

24 <sup>17</sup> See, e.g., Hyatt Affid., ¶ 87.

25 <sup>18</sup> Shayer depo., pp. 67-68. All deposition pages cited herein are attached to the Appendix.  
26 The article identified Hyatt as a *Las Vegas* resident.

27 <sup>19</sup> Cox Narrative Report at H00042-00049 and 00054-00060, see Exhibit 1 to Appendix.

28 <sup>20</sup> Cox Progress Report (H 00404 - 00406), see Exhibit 27 to Appendix; Cox depo., Vol. IV,  
pp. 1077; C. Les depo., Vol. II, pp. 268-69, 405.

1 Nevada public officials and government agencies.<sup>21</sup>

2 Assigning the work to an inexperienced auditor who was handling her first residency  
3 case,<sup>22</sup> the FTB concluded that Hyatt owed California a great deal of money. The invasion of  
4 privacy the FTB practiced in the course of its relentless pursuit of Hyatt included fraudulent  
5 promises and representations that it would keep Hyatt's secret information strictly confidential.<sup>23</sup>  
6 The FTB acknowledged that Hyatt had a significant concern regarding the protection of his  
7 privacy.<sup>24</sup> This is discussed in much greater detail below.

8 The greatest damage Hyatt suffered as a result of the FTB's breaches of confidentiality is  
9 the destruction of his patent licensing business. As part of its investigation, the FTB demanded  
10 from Hyatt and agreed to keep confidential copies of Hyatt's confidential agreements with his  
11 Japanese patent licensees, Hitachi and Matsushita, and his membership in the Licensing  
12 Executives Society.<sup>25</sup> Hyatt had promised his Japanese licensees these agreements would be  
13 strictly confidential. The licensing agreements with the Japanese licensees contained a  
14 confidentiality clause.<sup>26</sup>

15 The FTB, nonetheless, violated its obligation to keep the information confidential. The  
16 FTB communicated with the Japanese licensees making clear that Hyatt was under investigation  
17 by the FTB.<sup>27</sup> From the date of the FTB confidentiality breaches, Hyatt has obtained no new  
18 licensees. His royalty income from new licensees has since dropped to zero.<sup>28</sup>

19 **5. The massive invasion of Hyatt's privacy was unnecessary and the FTB**  
20 **"investigation" was an outrageous sham.**

21 <sup>21</sup> See, e.g., Hyatt Affid., ¶¶ 32-33, 124.

22 <sup>22</sup> Cox depo., Vol. IV p. 1125.

23 <sup>23</sup> Cowan Affid., ¶¶ 8-26.

24 <sup>24</sup> *Id.*

25 <sup>25</sup> *Id.*

26 <sup>26</sup> Cowan Affid., ¶¶ 8-26.

27 <sup>27</sup> FTB 02143 and 02147, Exhibit 2 to Appendix.

28 <sup>28</sup> See, e.g., Hyatt Affid., ¶¶ 136, 162.

The FTB conducted a biased investigation in which the lead auditor destroyed key evidence that supported Hyatt (*e.g.*, her contemporaneous handwritten notes and computer records of bank-account analysis) and relied heavily on three “affidavits” that are not true affidavits.<sup>29</sup> Even more outrageous is that the FTB disregarded, refused to investigate, and “buried” the facts favorable to Hyatt which it uncovered during its invasive audit. The FTB simply ignored:

- the current neighbors in Nevada who supported Hyatt’s Nevada residency claim;
- the former neighbors in California who told of Hyatt’s move to Nevada;
- the friends and business associates who told of Hyatt’s move to Nevada;
- his adult son who witnessed Hyatt’s move to Nevada;
- his Nevada rent, utilities, telephones, and insurance payments;
- his Nevada voter registration and driver’s license;
- his Nevada home purchase offers and escrow papers; and
- his Nevada religious, professional, and social affiliations.<sup>30</sup>

The FTB only credited adversaries of Hyatt had vengeful motives, such as his ex-wife and his estranged brother.<sup>31</sup> Even then, the FTB auditor misrepresented that she had “affidavits” from them when she did not have any such affidavits.

Hyatt timely filed protests to the FTB’s assessments.<sup>32</sup> The FTB sat on his protests for *almost three years*.<sup>33</sup> Meanwhile, interest compounds *daily* at almost \$5,000 per day.

Part of the outrageous conduct of the FTB came from the FTB’s lawyers. One of those lawyers, Anna Jovanovich, pointedly stated that high profile or wealthy taxpayers such as Hyatt typically settle the proceedings before litigation, as they do not want to risk their personal financial information being made public.<sup>34</sup> Hyatt clearly understood the threat that any challenge to the FTB’s demands would result in the dissemination of Hyatt’s personal and financial

<sup>29</sup> Cox depo., Vol. II, pp. 341-42.

<sup>30</sup> Cox depo., Vol. I., pp. 168-69; Vol. VI, pp. 1618-1619; *See, e.g.*, Hyatt Affid., ¶ 53.

<sup>31</sup> *See, e.g.*, Hyatt Affid., ¶¶ 14, 140-141, 148, 175.

<sup>32</sup> Cowan Affid., ¶¶ 31 and 34.

<sup>33</sup> Cowan Affid., ¶¶ 29.

<sup>34</sup> Jovanovich depo., Vol. 1 pp. 230-233; Jovanovich June 12, 1997 hand written notes, *see* Exhibit 3 to Appendix; Cowan Affid., ¶¶ 38-41.

1 information at subsequent administrative and court proceedings.<sup>35</sup>

2 **B. Summary of Hyatt's rebuttal to FTB's "Undisputed Facts."**

3 This is a tort case. But because the FTB devotes so much time to the residency dispute  
4 and in so doing presents its typical one-sided, incomplete and very disputed version, Hyatt  
5 briefly rebuts here the most obvious of the FTB's unfounded, unsupported, and erroneous  
6 assertions as to Hyatt's residency. Hyatt's affidavit rebuts this issue in great detail.

7 First, the FTB asserts that Hyatt received \$42 million shortly after he became a Nevada  
8 resident and near the end of a "tax year."<sup>36</sup> In short, the FTB is asserting that Hyatt knew he was  
9 about to receive substantial income and moved to Nevada simply to avoid California income tax  
10 on such expected wealth. To the contrary, Hyatt had no expectation — let alone any certainty  
11 — that he would receive substantial income in late 1991 and during 1992.<sup>37</sup> Clearly, this is an  
12 issue of material fact that is very much in dispute.

13 The FTB discusses the uncertainty as to whether Hyatt moved to Nevada on September  
14 25 or 26, 1991 or October 1, 1991.<sup>38</sup> As it did throughout the audit, and now during this  
15 litigation, the FTB ignores the mountain of evidence that answers its own questions and instead  
16 draws the strongest possible conclusion against Hyatt based on one or two pieces of evidence  
17 that do not strictly correspond with the vast majority of evidence supporting Hyatt. The FTB  
18 references to a couple of credit-card receipts, but ignores hundreds of Nevada contacts Hyatt  
19 identified for the FTB.<sup>39</sup> The precise date on which Mr. Hyatt moved to Nevada is very much in  
20 dispute.<sup>40</sup>

21 The FTB also questions Hyatt's Nevada affiliations that the FTB was supposedly unable  
22

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23 <sup>35</sup> See, e.g., Hyatt Affid., ¶¶ 13, 73.

24 <sup>36</sup> Moving papers, at p. 6, lns. 8-9.

25 <sup>37</sup> See, e.g., Hyatt Affid., ¶¶ 65-67, 80-87.

26 <sup>38</sup> Moving papers, at p. 6 lns. 19-27.

27 <sup>39</sup> See, e.g., Hyatt Affid., ¶¶ 24-38.

28 <sup>40</sup> See, e.g., Hyatt Affid., ¶¶ 24-38, 77.

1 to verify. Hyatt answers these assertions not only with his own affidavit,<sup>41</sup> but with affidavits  
2 from third parties and other documents to establish that Hyatt did have significant contacts with,  
3 e.g., Nevada politicians Robert Miller and Richard Bryan, a Jewish temple that Hyatt identified  
4 to the FTB, and numerous other associations and affiliations that Hyatt identified to the FTB.<sup>42</sup>

5 Hyatt also rebuts the FTB's assertion concerning back dating of a grant deed. Hyatt  
6 denies this.<sup>43</sup> What the FTB does not point out concerning the grant deed in question is that it  
7 was signed and notarized *before Hyatt had any notice from the FTB that he was being audited*.  
8 In other words, whatever happened in regard to the grant deed, it had nothing to do with the FTB  
9 audit.

10 The FTB also references Hyatt's voter registration in 1994, a period well after that in  
11 dispute relating to Hyatt's residency. Yet, the FTB refused to recognize and acknowledge the  
12 significance of Hyatt's first voter registration in Nevada in November of 1991. The FTB  
13 discounted such contact with Nevada as a mere formality.<sup>44</sup>

14 Finally, the FTB cites the fact that two licensing agreements for which Hyatt received  
15 income in late 1991 reference a California address.<sup>45</sup> The FTB does not explain to the Court that  
16 the correspondence address on such agreements was not Hyatt's former California residence, but  
17 rather an old post-office box and the address of an attorney's office in California used by Hyatt.<sup>46</sup>  
18 Moreover, the two agreements at issue had been cultivated and negotiated in an unexpectedly  
19 short time frame *by Hyatt's licensing agent* such that Hyatt had to be tracked down while  
20 traveling to sign one of the two agreements and had barely moved into his Nevada apartment at  
21  
22

23 <sup>41</sup> See, e.g., Hyatt Affid., ¶¶ 24-38.

24 <sup>42</sup> See, e.g., Hyatt Affid., ¶¶ 24-38.

25 <sup>43</sup> See, e.g., Hyatt Affid., ¶¶ 76.

26 <sup>44</sup> Cox depo., Vol. IX, p. 2257.

27 <sup>45</sup> Moving papers, p. 9, lns. 22-28.

28 <sup>46</sup> See, e.g., Hyatt Affid., ¶ 42.

1 the time he was presented the second agreement for immediate signature.<sup>47</sup>

2 In sum, the FTB's one-sided version of "undisputed" facts sets forth key issues in  
3 *dispute*.

4 **IV. The FTB is liable for its acts — both inside and outside of Nevada — that caused  
injury to Hyatt in Nevada.**

5 The FTB concludes its section of "undisputed facts" with a discussion of the FTB's  
6 "Nevada" acts. The FTB accuses Hyatt of taking the "*unreasonable*." position that discovery in  
7 this case and evidence relevant to establishing the tort claims is not limited to the borders of the  
8 state of Nevada. From a practical standpoint, the FTB has already lost this debate.  
9 Commissioner Biggar ruled against the FTB on this issue, his report and recommendation was  
10 approved and signed by this Court.<sup>48</sup> Commissioner Biggar has told the FTB in no uncertain  
11 terms that it is wrong, that it is engaging in a subterfuge, and that it should open its files if it has  
12 nothing to hide.<sup>49</sup>

13 Indeed, other than the FTB's *res judicata* subject-matter jurisdiction arguments, the  
14 FTB's motion is based entirely on the proposition that the Court must consider only acts that  
15 took place entirely in Nevada in evaluating the intentional torts at issue. The FTB thereby  
16 concedes that summary judgment is not appropriate if the Court considers all the evidence Hyatt  
17 has gathered, regardless of its source.

18 **A. Because this Court has personal jurisdiction over the FTB for the torts alleged,  
19 the Court has power to grant full relief uninhibited by state boundaries.**

20 The FTB tries to dictate to the Court that it "must recognize the FTB's conduct outside of  
21 Nevada cannot form a basis for liability in this Court. . . ."<sup>50</sup> The FTB's strong words, however,  
22 are accompanied by no legal precedent and are directly contrary to the very authority it cites. In  
23

24 <sup>47</sup> See, e.g., Hyatt Affid., ¶¶ 44, 64-67, 80-87.

25 <sup>48</sup> December 27, 1999 order approving Discovery Commissioner's Report and  
Recommendation, see Exhibit 4 to Appendix.

26 <sup>49</sup> November 9, 1999, hearing transcript, at pp. 55-57 and 70-71, February 2, 2000, hearing  
27 transcript, at p. 5. The cited portions of those transcripts are attached to the Appendix as Exhibits  
28 5 and 6, respectively.

<sup>50</sup> Moving papers, at p. 16, lns. 17-18.

1 asserting this position, the FTB is confusing established legal precedent with its obstreperous and  
2 ill-founded discovery strategy.

3 **1. The FTB cannot split Hyatt's causes of action.**

4 Nevada, like every other state, does not allow a cause of action to be "split." In regard to  
5 a tort claim, full relief must be obtained by the plaintiff in a single action.

6 The wrongful act of defendant creates the plaintiff's cause of action. Policy  
7 demands that all forms of injury or damage sustained by the plaintiff as a  
8 consequence to the defendant's wrongful act be recovered in one action rather  
9 than in multiple actions.<sup>51</sup>

10 The FTB's bizarre argument that the Court can only consider Nevada acts to determine  
11 the FTB's liability for the tort claims would require that an aggrieved party must sue a tortfeasor  
12 in multiple locations in order to obtain full recovery. Again, there is no legal precedent for the  
13 FTB's attempted splitting of Hyatt's tort claims along state boundaries.

14 **2. The FTB can be held liable for the consequences in Nevada of its acts.**

15 The FTB's bizarre argument that the torts should be divided by state boundary is contrary  
16 to the great weight of legal authority, which holds that a party can be held liable in the forum  
17 state for the effects, *i.e.* the injuries to a resident in the forum state, caused by tortious conduct  
18 which took place *outside* the forum state.<sup>52</sup> Nevada courts are in accord.

19 *Ridgon v. Buff City Transfer & Storage Co.* held that "since the defendants' acts allegedly  
20 injured [plaintiff] in Nevada, 'it is beyond dispute that [Nevada] has a significant interest in  
21 redressing injuries that actually occur within the state.'"<sup>53</sup> *Ridgon* explained that the Nevada  
22 Supreme Court has "previously held that physical presence within Nevada is not required" where  
23 consequences were suffered in Nevada.<sup>54</sup> *Ridgon* also cited the United States Supreme Court's

24 <sup>51</sup> *Smith v. Hutchins*, 93 Nev. 431, 432, 566 P.2d 1136, 1137 (1977) (citing *Reno Club, Inc.*  
25 *v. Harrah*, 70 Nev. 125, 260 P.2d 304 (1953)).

26 <sup>52</sup> *See, e.g., Calder v. Jones*, 465 U.S. 783, 104 S.Ct. 1482, 1487, 79 L.Ed.2d 804 (1984).

27 <sup>53</sup> 649 F. Supp. 263 (D. Nev. 1986) (quoting *Keeton v. Hustler Magazine, Inc.*, 465 U.S. 770,  
28 776, 104 S.Ct. 1473, 1479, 79 L.Ed.2d 790 (1984).)

<sup>54</sup> 649 F. Supp. at 266 (citing *Burns v. Second Jud. Dist Ct.*, 97 Nev. 237, 627 P.2d 403  
(1981) and *Certain-Teed Products Corp. v. Second Jud. Dist. Ct.*, 87 Nev. 18, 479 P.2d 781, 784

1 holding that a defendant is liable in the forum state "whose only 'contact' with the forum was to  
2 knowingly cause injury in the forum state through a foreign act."<sup>55</sup>

3 The conduct of which Hyatt complains, regardless of where each act took place, is more  
4 than sufficient to hold the FTB liable in Nevada because Hyatt's injury occurred in Nevada. For  
5 example, *Fegert, Inc. v. Chase Commercial Corp.*<sup>56</sup> found it appropriate to hold a defendant  
6 liable in Nevada for claims arising from the alleged "harassment and pressuring" of a Nevada  
7 resident even though the defendant's only Nevada contact was hiring the attorneys who allegedly  
8 engaged in the harassment and pressuring.<sup>57</sup> *Fegert* cited prior U.S. Supreme Court precedent  
9 that "emphasizes the significance of the place where the brunt of the harm was suffered in  
10 deciding the propriety of exercising jurisdiction over an out of state defendant."<sup>58</sup> Causing  
11 harmful consequences in Nevada is sufficient grounds for holding a defendant liable in Nevada.<sup>59</sup>

12 Courts in other states, including the FTB's home state of California, have held it  
13 sufficient to assert jurisdiction over non-residents who never set foot in the forum state but sent  
14 letters or placed telephone calls into the forum state causing injury to a resident in the forum  
15 state.

16 [A]n individual may have contact with the forum state where he causes another to  
17 act whether or not the individual has himself contacted the state. Thus, Comment  
18 a to section 37 of the Restatement (2d), Conflict of Laws states: "A state has a  
19 natural interest in the effects of an act within its territory even though the act itself  
20 was done elsewhere. The state may exercise judicial jurisdiction on the basis of  
21 such effects over the individual who did the act. . . ."<sup>60</sup>

22 (1971)).

23 <sup>55</sup> 649 F. Supp. at 267 (citing *Calder v. Jones*, 465 U.S. 783, 789-90, 104 S.Ct. 1482, 79  
24 L.Ed.2d 804 (1984)).

25 <sup>56</sup> 586 F. Supp. 933 (D. Nev. 1984).

26 <sup>57</sup> 586 F. Supp. 936.

27 <sup>58</sup> 586 F. Supp. at 936 (citing *Calder*, 104 S.Ct. at 1487).

28 <sup>59</sup> *Jarstad v. Nat. Farmers Union Property and Casualty Co.*, 92 Nev. 380, 387, 552 P.2d 49  
(1976).

<sup>60</sup> *Seagate Technology v. A.J. Kogyo Co.*, 219 Cal. App. 3d 696, 268 Cal.Rptr. 586, 589  
(1990). See also *Schlusell v. Schlusell*, 141 Cal. App.3d 194, 198, 190 Cal.Rptr. 95 (1983)  
("[P]lacing of criminal telephone call to California no different than shooting a gun into the



Hyatt has found no reported case in which a court, with personal jurisdiction over a defendant for the claims alleged, limited the discovery, the evidence at trial, or the recovery of the Plaintiff by state boundaries.

**3. Having personal jurisdiction over the FTB, the Court has authority to provide full relief to Hyatt for the tort claims alleged.**

It is hornbook law that a court with personal jurisdiction over a defendant has full authority to address the claims at issue.

The Nevada Supreme Court held long ago in *Sweeney v. G.D. Schultes*<sup>61</sup> that once Nevada has personal jurisdiction over a non-resident defendant “the court [has] jurisdiction to proceed and grant any relief to which the plaintiff [is] entitled. . . .” *Sweeney* found that Nevada had jurisdiction over defendants who had made a general appearance despite an apparent mistake in the form of the summons. While the *Sweeney* decision dates back to 1885, the law has not changed.<sup>62</sup>

Recent pronunciations on the issue from courts in other jurisdictions are entirely consistent with *Sweeney*.

[T]he relief sought in the complaint is not the guiding factor because if jurisdiction attaches at all under the [long-arm] statute, the nonresident is before the Court for any and all relief that might be necessary to do justice between the parties by virtue of the fact that the jurisdiction conveyed by the statute is in personam jurisdiction.<sup>63</sup>

Federal courts also have concluded that, so long as they have personal jurisdiction over the defendant, the non-residency of the defendant is of no consequence and in no way limits the

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state”); *Rusack v. Harsha*, 470 F. Supp. 285, 292 (M.D. Pa. 1978) (holding that sending of defamatory letter into state and causing injury in state subjects defendant to jurisdiction); *Stifel v. Lindhorst*, 393 F. Supp. 1085, 1088 (M.D. Pa.), *aff’d*, 529 F.2d 512 (3d Cir. 1975), *cert. denied*, 425 U.S. 962 (1976) (holding that sending of defamatory letter into state and causing injury in state subjects defendant to jurisdiction).

<sup>61</sup> 19 Nev. 53, 57, 6 p. 44 (1885).

<sup>62</sup> Indeed, the *Sweeney* case despite its age is still cited in the annotations under Rule 4 of the Nevada Rules of Civil Procedure.

<sup>63</sup> *Gans v. M.D.R. Liquidating Corp.*, 1990 WL 2851 (Del. Ch. Jan. 10, 1990).

1 court's authority to grant relief.<sup>64</sup>

2 There is simply no authority that would allow the FTB to split Hyatt's tort claims and not  
3 allow him to present the wrongful conduct of the FTB that occurred in California or Arizona,<sup>65</sup>  
4 where such wrongful conduct supports the torts being litigated in this Nevada case.

5 In this regard, the FTB appears to be making a belated and futile a back-door challenge to  
6 personal jurisdiction. Lack of sufficient contacts with the forum state may be a determining  
7 factor in a motion to dismiss for lack of personal jurisdiction, but once a party makes a general  
8 appearance and concedes personal jurisdiction, as here, the limited or minimum contacts analysis  
9 has no application.

10 **B. The FTB's reliance on *Mianecki* is grossly misplaced because its holding is**  
11 **directly contrary to the position asserted by the FTB.**

12 The FTB's only cited legal authorities for its torts-are-divided-by-state-boundaries  
13 argument are *Mianecki v. Second Judicial District Court*<sup>66</sup> and *Nevada v. Hall*.<sup>67</sup> In citing these  
14 two cases, the FTB mocks Hyatt's prior citation to them by describing each of them as a Hyatt  
15 "favorite." Yet, *Mianecki*, and its progeny, conclusively *disprove* the premise of the FTB's  
16 motion. *Mianecki* and its progeny hold that a state or state agency need never set foot in the  
17 forum state while engaging in its tortious behavior, and yet can be held liable for the damage  
18 which the tortious conduct caused in the forum state.

19 In *Mianecki*, Wisconsin was held liable for its negligent conduct that took place entirely  
20 in *Wisconsin*. Specifically, Wisconsin's release of a parolee and placement outside the state  
21 resulted in injury in Nevada to a Nevada resident. Wisconsin never entered nor intentionally  
22

23 <sup>64</sup> *Posner Laboratories, Inc. v. Pro-line Corp.*, 1978 U.S. Dist. Lexis 16334 at 7 (S.D.N.Y.  
24 1978); see also, *Geo-Physical Maps, Inc. v. Toyecraft Corp.*, 162 F. Supp. 141, 148 (S.D.N.Y.  
25 1958).

26 <sup>65</sup> Some of the tortious conduct may have taken place in Arizona because that is where Anna  
27 Jovanovich, a key FTB employee, worked and resided during most of the relevant time period.  
28 Jovanovich depo., Vol. I, pp. 50-52, 168, 185-86, 193, 198, 250-51.

<sup>66</sup> 99 Nev. 93, 658 P.2d 422, *cert. dismissed*, 464 U.S. 806 (1983).

<sup>67</sup> 440 U.S. 410, 99 S.Ct 1182, 59 L.Ed.2d 416, *reh'g. denied*, 441 U.S. 917 (1979).

1 directed any activity into Nevada. The negligent conduct by Wisconsin's parole board occurred  
2 entirely in Wisconsin. This was sufficient to subject Wisconsin to personal jurisdiction of the  
3 Nevada courts, given the injury that Wisconsin's tortious out-of-state conduct caused in  
4 Nevada.<sup>68</sup>

5 *Nevada v. Hall*, on the other hand, has no application to this issue. It in no way suggested  
6 or even hinted that only conduct occurring in the forum state is admissible when seeking to hold  
7 a sister state liable for torts which cause injury in the forum state. Hyatt therefore gladly accepts  
8 *Mianecki* and *Nevada v. Hall* as two of his favorites. Their holdings entitle Hyatt to a trial on the  
9 merits of his tort claims against the FTB.

10 Finally, the FTB goes to great lengths to quote Hyatt's prior briefs wherein he stated that  
11 "the FTB is in Nevada answering for its tortious conduct here . . ." and "California sovereignty  
12 ended at the Nevada border." These statements are consistent with Hyatt's position here. The  
13 FTB is rightfully answering in Nevada for its torts that resulted in substantial injury in Nevada to  
14 a Nevada resident.

15  
16 **V. Hyatt has viable claims for all of the torts set forth in his First Amended Complaint.**

17 The FTB's attempt to limit consideration of the FTB's misconduct to Nevada "contacts"  
18 is an admission that, when the FTB's conduct is considered in total, there is no basis to even  
19 consider summary judgment. In that regard, the FTB has failed to set forth a basis on which the  
20 motion could be granted under Rule 56 of the Nevada Rules of Civil Procedure.

21 Hyatt nonetheless addresses below each of the torts at issue in this action. Because the  
22 FTB chose to again ignore the torts as approved by the Court in denying the FTB's motion for  
23 judgment on the pleadings, Hyatt first addresses the scope and necessary elements of each tort  
24 consistent with the Court's ruling on the motion for judgment on the pleadings. Hyatt then  
25 summarizes, "brick-by-brick," the factual evidence gathered to date in support of each tort. Most  
26 of the facts are interrelated and support each of the torts.

27  
28  

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<sup>68</sup> Additional discussion and cases from other states so holding *infra* at pp. 53-56.

**A. Nevada being a notice-pleading state, the Court must consider all possible claims by Hyatt and not limit review to the four corners of the complaint.**

Last year in opposing the FTB's motion for judgment on the pleadings, Hyatt presented to the Court both in his written opposition and oral argument his tort evidence as it had been developed to that date. The Court denied the FTB's motion in regard to Hyatt's tort claims and ruled that the claims as outlined in Hyatt's opposition were viable and should proceed to discovery. The Court's prior treatment in liberally construing Hyatt's claims was consistent with Nevada's notice-pleading standard.<sup>69</sup>

Here, the FTB again wants to limit this Court to consideration of only the strict theories and facts specifically alleged in Hyatt's First Amended Complaint. The FTB's limitations are not supported by law on a motion for judgment on the pleadings, and they are equally unsupported by law on this motion for summary judgment. Courts must exercise "great care" before granting a summary judgment by ensuring no disputed issue of material fact remains.<sup>70</sup> This caution is driven by a probing search of the entire record for disputed material facts. The formal issues framed by Hyatt's pleadings are not controlling.<sup>71</sup> Instead, the court must consider all facts, even if technically beyond the scope of the pleadings:

The question, of course, in the granting of any motion for summary judgment is whether or not there is a genuine issue as to any material fact regardless of whether or not such an issue is raised by the formal pleadings. . . . Thus, it is incumbent that a court examine all the proffered materials that are extraneous to the pleadings to determine whether there is a genuine issue of material fact to be tried.<sup>72</sup>

Summary judgment is barred if opposing materials — affidavits, depositions and answers

<sup>69</sup> Nev. R. Civ. P. Rule 8(a).

<sup>70</sup> See, e.g., *Montgomery v. Ponderosa Constr., Inc.*, 101 Nev. 416, 418, 705 P.2d 652, 654 (1985).

<sup>71</sup> See *Yates v. Transamerica Ins. Co., Inc.*, 928 F.2d 199, 202 (6th Cir. 1991).

<sup>72</sup> See *Brennan v. Reynolds & Co.*, 367 F. Supp. 440, 442 (N.D. Ill. 1973), (citing *Hazeltine Research, Inc. v. General Electric Co.*, 183 F.2d 3, 7 (7th Cir. 1950)).

to interrogatories and otherwise — reveal the slightest doubt about the operative facts.<sup>73</sup> Hyatt is entitled to have accepted as true all the evidence and all inferences supported by the evidence,<sup>74</sup> and the factual allegations in affidavits must be presumed correct.<sup>75</sup> The FTB may not use summary judgment as a procedural shortcut to resolving factual disputes.<sup>76</sup>

**B. Material facts are in dispute as to Hyatt's invasion of privacy claims.**

Despite losing its motion for judgment on the pleadings, the FTB reverts to its previous argument that invasion of privacy law should be what it *unsuccessfully* argued last year. Hyatt therefore reviews the applicable law for this tort, as ruled by the Court last year. Hyatt then outlines the facts showing the FTB's conduct to be in violation of the various forms of the invasion of privacy tort.

The historical origins of the right of privacy are instructive and therefore reviewed briefly below. In particular the right to "informational privacy" is discussed as it is now well-recognized by courts, but apparently not by the FTB. As it did during the motion for judgment on the pleadings, the FTB ignores this vibrant form of the invasion of privacy tort. The more traditional forms of invasion of privacy are then discussed.

**1. The right to privacy — in particular "informational privacy" — protects an individual such as Hyatt from the type of abuse committed by the FTB**

The U.S. Constitution (specifically the Fourth Amendment) and the constitutions of many states — including Nevada and California — forbid unreasonable searches and seizures. Springing forth from this Constitutional right is the right of privacy.<sup>77</sup> Nevada, California, and

<sup>73</sup> See, e.g., *Posadas v. City of Reno*, 109 Nev. 448, 452, 851 P.2d 438, 442 (1993); *Washoe Medical Center, Inc. v. Churchill County*, 108 Nev. 622, 625, 836 P.2d 624, 625 (1992); *Sawyer v. Sugarless Shops, Inc.*, 106 Nev. 265, 267-68, 792 P.2d 14, 15 (1990).

<sup>74</sup> See, e.g., *Johnson v. Steel, Inc.*, 100 Nev. 181, 183, 678 P.2d 676, 677 (1984).

<sup>75</sup> See *Pacific Pools Constr. v. McClain's Concrete, Inc.*, 101 Nev. 557, 559, 706 P.2d 849, 851 (1985).

<sup>76</sup> See *Parman v. Petricciani*, 70 Nev. 427, 272 P.2d 492 (1954).

<sup>77</sup> *Griswold v. Connecticut*, 381 U.S. 479, 484, 85 S.Ct. 1678, 14 L.Ed.2d 510 (1965). The Fourth Amendment, including the right to privacy, applies in a civil context as well as criminal. *Soldal v. Cook County*, 506 U.S. 56, 87, n. 11, 113 S.Ct. 538, 121 L.Ed.2d 450 (1992) (holding

the U.S. Supreme Court enshrine privacy as a fundamental right.<sup>78</sup>

Nevada has “long recognized the existence of the right to privacy.”<sup>79</sup> Nevada law further requires that, in determining whether a particular action is “highly offensive,” courts should and do consider the degree of intrusion, the intruder’s objectives, and *the expectations of those whose privacy is invaded*.<sup>80</sup>

The Nevada Supreme Court articulated one of the reasons that the FTB’s massive intrusion into Hyatt’s life infringed on his privacy: “The principle is well established that searches conducted outside the judicial process, without prior approval by judge or magistrate, are *per se* unreasonable under the Fourth Amendment — subject only to a few specifically established and well-delineated exceptions.”<sup>81</sup>

There is a two-part test for assessing whether governmental action violates the Fourth Amendment. The first question is whether a person has exhibited an actual or *subjective* expectation of privacy. Hyatt easily establishes this subjective prong of the test, for he is very private.<sup>82</sup> Even though Hyatt received considerable publicity after his micro-computer patent issued in 1990 and during his patent interference dispute with Texas Instruments, the publicity was primarily business-related, not personal.<sup>83</sup>

The second question is whether that expectation of privacy is one that *society* deems to be

“the protection against unreasonable searches and seizures fully applies in the civil context”).

<sup>78</sup> See Request for Judicial Notice, at 5, submitted with opposition to motion for judgment on the pleadings, Exhibit 7 to Appendix.

<sup>79</sup> *People for Ethical Treatment of Animals (PETA) v. Bobby Berosini, Ltd.*, 111 Nev. 615, 895 P.2d 1269 (1995), *modified on other grounds*, 113 Nev. 632, 940 P.2d 127 (1997) (crediting Justice Louis Brandeis and Professor William Prosser for the invention of the tort of privacy, noting that the *Restatement* language, drafted by Dean Prosser, has been “adopted, often verbatim, by the vast majority of American jurisdictions.”).

<sup>80</sup> *PETA*, 111 Nev. at 634 (emphasis added).

<sup>81</sup> *Alward v. State*, 112 Nev. 141, 151, 912 P.2d 243, 250 (1996) (citing to U.S. Supreme Court precedent and earlier Nevada Supreme Court precedent).

<sup>82</sup> See, e.g., Hyatt Affid., ¶ 6-8, 127-138.

<sup>83</sup> *Katz v. United States*, 389 U.S. 347, 351, 88 S.Ct. 507, 19 L.Ed.2d 576 (1967).