

**IN THE SUPREME COURT OF THE STATE OF NEVADA**

GILBERT P. HYATT,

Appellant,

vs.

FRANCHISE TAX BOARD OF THE  
STATE OF CALIFORNIA,

Respondent.

Case No.: 84707

**OPPOSITION TO APPELLANT  
GILBERT HYATT'S MOTION  
FOR EXTENSION OF TIME TO  
FILE OPENING BRIEF AND  
APPENDIX**

Electronically Filed  
Sep 26 2022 10:56 a.m.  
Elizabeth A. Brown  
Clerk of Supreme Court

Appellant Gilbert Hyatt (“Hyatt”) has already exercised his right to obtain a 14-day telephonic extension of the deadline to file his Opening Brief and Appendix. He now moves the Court for an additional 16 days to file the same. Respondent Franchise Tax Board of the State of California (“FTB”) has never opposed giving Hyatt a 30-day extension by which to file his Opening Brief and Appendix.

Instead, what FTB opposes is the implication in Hyatt’s Motion that FTB somehow unreasonably withheld the same when the parties considered a stipulation to avoid the Court’s intervention. *See* Hyatt’s Motion at p. 3. FTB was willing to grant Hyatt a 30-day extension on the condition that Hyatt would not move for further extensions of the same deadline. Two desires motivated this condition: (1) to avoid FTB having to prepare an answering brief over the upcoming holiday periods; and (2) to move this multi-decade litigation to a final resolution without further procedural delays from Hyatt.

As to the first, any additional requests from Hyatt for an extension beyond the initial 30-day extension would push the deadline for FTB's Answering Brief into the window between Thanksgiving and the December holidays. Mindful of the time and travel schedules of FTB's representatives, FTB's counsel sought Hyatt's confirmation that he would not impose this burden on FTB through additional extensions beyond the first one. Hyatt refused this request, though he offered no meaningful reason as to why.

As to the second, the Court is aware of the long history of this case and its multiple trips to this Court and the United States Supreme Court, and Hyatt's parallel attacks in other jurisdictions on FTB's sovereignty. After this Court's most recent opinion, Hyatt sued FTB yet again in California, apparently only to prolong his litigation war against FTB. Having finally obtained a ruling on costs in this Nevada matter, FTB simply wishes to bring it to a close without further delay from Hyatt during briefing of this appeal. FTB does not wish to be stuck litigating against Hyatt in multiple jurisdictions. Still, that is what Hyatt will achieve for as long as this current appeal persists.

Hyatt goes to great lengths to frame that appeal as a complex one involving "over 10,000 documents" and "unprecedented issues" before the Court. Hyatt's Motion at p. 3. But the Court's most recent opinion and the appellate opinions before it have whittled this case down to a single, straightforward issue: did the

district court abuse its discretion in awarding FTB its mandatory costs under NRS 18.020 and the Court's framework for evaluating the same under *Cadle Co. v. Woods & Erickson, LLP*? This is not an unprecedented issue. Quite the opposite, the Court has authored an extensive number of published opinions guiding the Nevada bar and district courts on this issue. The district court dutifully followed the same here, and additional extensions for Hyatt beyond the agreed upon 30-day extension are unnecessary to brief the single issue.

Nor is the record on this issue as voluminous as Hyatt makes it seem. After this Court's most recent opinion in April 2021, the district court held a single hearing that lasted portions of two days. Consistent with FTB's practice in this Court, FTB submitted hyperlinked briefing to ease the burden for the district court and the parties in reviewing the record and locating relevant documents and testimony. This briefing framed the record on any potential appeal, and the only additional documents needed for Hyatt to create the Appendix before this Court were (1) the final order entered by the district court, which is a mere three pages; and (2) the transcript of the hearing, which the district court's reporter filed back in February 2022. Preparing the Appendix does not take additional time beyond a 30-day extension.

As a result, while FTB does not oppose (and never has opposed) extending Hyatt's deadline to file an opening brief to October 13, 2022, FTB requests that

Hyatt be precluded from seeking additional extensions of the deadline. Any such additional extension would prejudice FTB's ability to file an Answering Brief, and it would only further prolong FTB defending itself against Hyatt's parallel attacks in multiple jurisdictions.

Dated this 26th day of September, 2022.

McDONALD CARANO LLP

By: /s/ Rory T. Kay  
Pat Lundvall (NSBN 3761)  
Rory T. Kay (NBSN 12416)  
McDONALD CARANO LLP  
2300 West Sahara Avenue, Suite 1200  
Las Vegas, Nevada 89102  
Telephone: (702) 873-4100  
lundvall@mcdonaldcarano.com  
rkay@mcdonaldcarano.com

*Attorneys for Respondent*

## **CERTIFICATE OF SERVICE**

I hereby certify that I am an employee of McDonald Carano LLP, and on the 26th day of September, 2022, a copy of the foregoing Opposition To Appellant Gilbert Hyatt's Motion For Extension Of Time To File Opening Brief And Appendix was e-filed and e-served on all registered parties to the Supreme Court's electronic filing system.

/s/ Beau Nelson

An employee of McDonald Carano LLP